

Wales Flood and Coastal Erosion Committee

The Case for Change in Legislation and Associated Policy on Flood & Coastal Erosion Risk Management in Wales Final Report of the Policy and Legislation Sub-Committee

September 2022

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Section 1 – Introduction and Background

1. Introduction

- 1.1 The Flood and Coastal Erosion Committee (FCEC) was established by the Environment (Wales) Act 2016¹ to advise the Welsh Ministers on all aspects of flood and coastal erosion risk management (FCERM).
- 1.2 The flooding events of recent years have emphasised how the climate emergency is affecting communities and businesses across Wales. The consequences of climate change are already upon us. Those events have highlighted the urgency of making further progress in strengthening our resilience. As we face increasing risks, there is a need to ensure appropriate and enabling policy and legislation is in place.
- 1.3 The new National Strategy for FCERM,² published in October 2020, represents a key step forward in providing the leadership required to tackle these challenges. The Committee is committed to playing a full role in supporting the implementation of the Strategy.
- 1.4 This report sets out our draft advice to Ministers with regard to legislation and associated policy for FCERM. This reflects the obligation placed on the Committee by Measure 1 of the National Strategy, *‘to establish the scope and consider the need for changes to legislation to clarify and support the delivery of FCERM in Wales by 2022’*.
- 1.5 A draft of the final report was issued for consultation with industry stakeholders for a period of three weeks between 8th and 19th July 2022. A brief summary of this consultation and the responses received is included in Appendix E.

¹ <http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

² [40996 National Strategy for Flood and Coastal Erosion Risk Management in Wales \(English\) \(gov.wales\)](https://gov.wales/40996)

2. The Policy and Legislation Sub Committee

2.1 In order to progress this aspect of our work programme, the FCEC established a Policy and Legislation Sub-Committee (PLSC), and this met for the first time in December 2020. Its terms of reference and the scope of its review were agreed by the Committee in January 2021. Membership of the Sub-Committee is made up of FCEC members and is as follows:

From December 2020 to March 2022

Adrian Philpott (Chair)	Natalie Haines	Lorna Davis
Jeremy Parr	Andrew Stone	Paul Blackman
Mike Wellington		

From April 2022 to present day

Andrew Stone (Chair)	Natalie Haines	Lorna Davis
Jeremy Parr	Dave Harris	Paul Blackman
Mike Wellington		

FCEC Member Jean-Francois Dulong of the Welsh Local Government Association has also participated in and contributed to the work of this Sub-Committee.

2.2 The Sub-Committee's scope for this report is summarised below:

- Focus on legislation as required by Measure 1 of the National Strategy for FCERM;
- Consider potential changes or opportunities associated with policy and guidance where these may emerge. These may provide permanent solutions, or short-term improvements whilst changes to legislation are considered;
- Consider potential issues, barriers, gaps, conflicts and opportunities with regards to legislation;
- Include in scope consideration of the Flood and Water Management Act (FWMA) 2010, coastal protection and land drainage legislation;
- Exclude from scope areas which are already being considered separately, e.g. SuDS legislation (FWMA Schedule 3).

3. The Problem

- 3.1 FCERM is governed through a suite of legislation and policies with some dating as far back from 1949.
- 3.2 The most recent Act, the FWMA came into force in October 2010 following the recommendations from the Pitt Review into the UK wide flooding of 2007. The general intentions were to improve the management of risk from flooding by providing a new framework for managing flood risk, and by altering associated existing legislation.
- 3.3 However, there is a general perception amongst FCERM practitioners that current legislative and policy frameworks do not effectively support some aspects of the management of risk from flooding and erosion.
- 3.4 Problems often raised include a lack of clarity, some gaps in legislation, and being outdated to address increasing risks and issues linked with climate change. Adaptation, which is an emerging way to manage and mitigate the effects of climate change, both on the coast and inland, also suffers from a lack of policies and legislation to enable its mainstream application.
- 3.5 In identifying the range of issues affecting FCERM, we looked at the reasons why these deficiencies become more significant in certain circumstances and where they created most problems.
- 3.6 We also acknowledged there were other difficulties which did not stem from the governance framework, but which impacted on effective FCERM. The loss of specialisms together with limitations on resources, were constraining the capacity of Risk Management Authorities (RMAs) to exercise their functions and improve collaboration. These issues have been thoroughly considered in the report of the FCEC Resource Sub-Committee.

4. Scope of Report and Defining the Focus Areas for Review

4.1 The Sub-Committee initially identified a long list of *'potential issues to fix'* to define the scope of this report. This long list is presented in Appendix A and was compiled from:

- A review of invited input received;
- The results of a literature review;
- The extensive knowledge and experience of the Sub-Committee members.

4.2 In supporting Sub-Committee members' short listing for more in depth analysis, the following questions were considered:

- How far would this issue contribute to Work Programme Theme 5 – (*National Strategy Measure 1 by 2022*) - *Review of the policy and legislation around FCERM in Wales*.
- How strategic is the issue? Would its resolution play a significant role in delivering National Strategy Measures or Objectives, or would failure to resolve it significantly prejudice their delivery? Might its resolution prejudice the delivery of some Measures or Objectives?
- How wide is the issue organisationally? Would its resolution benefit most or all RMAs, or would its benefit be mainly focused on a single RMA?
- How wide is the issue substantively? Would its resolution help to tackle many areas of flood risk, or would its benefits be mainly focused on a limited area?
- How enduring is the issue? Is it likely to extend into the medium or long term, or is it mainly of shorter-term duration?
- How significant is the issue quantitatively? Would its resolution have substantial benefits in reducing flood risk?
- How wicked is the issue? To what extent would it cross organisational boundaries and require outside influence to progress its resolution?

4.3 Following an appraisal by Sub-Committee members against the above questions, we concluded that three focus areas should be taken forward for a more detailed review: -

- 1) Control of Flood Risk Management Assets – Including FWMA 2010 Schedule 1;
- 2) Roles and Responsibilities;
- 3) Adaptation and Resilience.

4.4 The work of the Sub-Committee has been aided significantly by the work of the Law Commission for England and Wales, who have been undertaking a consultation on proposals for a potential law reform project. This has developed into a dialogue between the Sub-Committee and the Commission with a definite synergy between issues highlighted by the Sub-Committee and potential proposals for a programme of law reform.

Section 2 – Detailed Review of Focus Areas

5. Control of Flood Risk Management Assets

- 5.1 There is increasing pressure on investment to maintain assets to an appropriate standard. Having control of assets to ensure adequate performance is therefore paramount for effective FCERM. However, a range of issues can impact on the ability of RMAs to adequately manage or control these assets.
- 5.2 For example, limitations in FWMA 2010 Schedule 1 make it difficult to designate or adequately control public assets such as Highway Authority walls, ponds and basins below the threshold in Reservoirs Act and private assets. Effectively, RMAs are currently lacking powers to enforce the maintenance of flood risk assets to ensure they fulfil their function.
- 5.3 Although they are themselves RMAs, Highway Authorities also have a duty to keep highways free of obstructions, this includes flood water, preventing highways from attenuating pluvial run-off and thus preventing residential property flooding. Highways are often conduits and can change the natural flow path of flood water from upland catchments resulting in flooding to areas which would otherwise not be affected. Highway Authorities in some cases are only responsible for highway gullies and connection pipework, the drainage systems to which they connect can be in the control of third parties or other RMAs.
- 5.4 Coastal assets are often in private ownership with little understanding of risk and maintenance requirements. The RMAs for coastal protection and erosion are the Local Authorities and NRW, with coastal defence being the duty of NRW. Protection and defence are interlinked, and the differentiation between the two is often not clear.
- 5.5 The following key recommendations have been developed within this focus area based on the evidence described in detail in Table 2 in Appendix B:
- WG commission a review of Schedule 1 (if possible, through the Law Commission) and continue to engage all relevant initiatives, including the current DEFRA research project - Review of Flood and Coastal Erosion Risk Management Assets;
 - Review the Highways Act 1980 to ensure compatibility with the FWMA 2010, in order to enhance resilience to climate change specifically flooding and improve flood risk management across all RMAs;

- Consider RMA powers to adopt designated assets in order to assist in the process of designation, as current owners would be less likely to object to designation if maintenance liabilities were removed, or consider additional powers to enforce maintenance;
- Create a National Register of Significant and Designated Assets and supporting guidance on what should be designated;
- Consider including payments to farmers to manage agricultural land to control surface water run-off within the Single Farm Payments replacement scheme;
- Promote best practice case studies where Coastal Protection Authorities have worked with multiple private landowners to facilitate coastal protection schemes.

5.6 The Sub-Committee acknowledges the work of the Law Commission on Tips Safety and the recently published white paper by the Welsh Government. There can be similarities drawn between the white paper proposals for managing assets that may pose a risk from disused coal tips and that of Flood Risk Assets in private ownership and/or non-defence assets that provide a flood defence. At the time of drafting this report the final drafting of the Tips Safety legislation remains to be completed. However, due to the similarities in the challenges of asset management it is suggested that the Tips Safety legislation could be a template for future asset management within the FCERM community.

6. Roles and Responsibilities

- 6.1 Roles and responsibilities are defined through a range of legislation and policies and are summarised in Welsh Government's National Strategy for FCERM. They set the framework in which RMAs deliver their responsibilities, either as duties or through the use of permissive powers.
- 6.2 However, we have found through our consultation with stakeholders that a combination of potentially outdated legislation, and a history of practice that has relied on case law and precedent, has resulted in a potentially disjointed and confusing picture when it comes to roles and responsibilities, with some ambiguities and gaps.

- 6.3 This is an area ripe for consideration and consolidation, and FCEC has been liaising with the Law Commission (LC) about the possibility of flood legislation being reviewed under the LC's 14th programme of work. We recommend that this should be pursued by Welsh Government.
- 6.4 The following key recommendations have been developed within this focus area based on the evidence described in more detail in Table 3 in Appendix C:
- Review roles and responsibilities of RMAs, and legal powers and duties on the coast;
 - Review the use of permissive powers by RMAs, including consideration of the overlaps, gaps and areas of ambiguity;
 - Review the roles and responsibilities of riparian owners;
 - Review the case for 'future proofing' our legislation to incorporate the need for adaptation to climate change.
- 6.5 It is also noted that whilst a legislative review would provide the solid framework necessary for RMAs to operate under, there is a need for improving transparency and communication between RMAs.

7. Adaptation and Resilience

- 7.1 Adaptation and resilience of communities to the effects of climate change has been highlighted in a number of strategic documents, including the Welsh Government's response to the climate emergency, its 5-year climate change adaptation plan entitled Prosperity for All: A Climate Conscious Wales³. It is also considered within the National FCERM Strategy in terms of mostly Coastal Adaptation. Undoubtedly, a combination of insufficient funding to protect all communities in Wales coupled with ever increasing risks will make adaptation one of the mainstream ways of managing these risks. Following consultation with key stakeholders, it was noted that the current governance and legislative frameworks have themselves not evolved rapidly enough to enable wider delivery of adaptation.
- 7.2 Our work in this area has therefore focused on identifying potential barriers and issues and providing recommendations to improve governing frameworks.

The key issues identified as part of this workstream include:

- Different distribution of RMA powers around the coast between the Coastal Protection Act (CPA) 1949 & FWMA 2010. CPA 1949 is framed around erosion whereas we now need to deliver climate change adaptation. The different distribution of powers is not aligned with delivering climate change adaptation around the coast.
- Conflicting legislation as a barrier to delivering adaptation in particular around the coast. The Rights of Way and Highways Acts were not originally developed to be aligned with climate change adaptation around the coast.
- The limitations of market led building insurance means that properties are rarely made more resilient to flooding following an event.
- Building Regulations are inadequate in requiring properties to be flood resilient.

³ [Prosperity for All: A Climate Conscious Wales \(gov.wales\)](https://www.gov.wales/prosperity-for-all-a-climate-conscious-wales)

7.3 The following key recommendations have been developed within this focus area based on the evidence described in more detail in Table 4 in Appendix D:

- Obtain legal advice on benefits, viability and scope of consolidation of the CPA 1949 and FWMA 2010, in particular to clarify roles and responsibilities;
- Consider the creation of a Wales wide single body or team to coordinate and implement medium to long term climate change adaptation policy, and to explore how CJs and PSBs could play a major role in supporting such body or team;
- Consider opportunity for creation of Coastal Change Management Areas linked to Local Development Plans within TAN15;
- Regarding Highways Act section 56 to A) Seek legal advice to understand how this law applies when a PROW is lost due to natural processes and/or climate change, and B) If above task indicated a review of this law **would** assist climate change adaptation, then pass recommendations to the Law Commission for their consideration;
- Adaptation body or team to undertake a GIS analysis of where SMP Managed Realignment policies and PROW are in close proximity to understand extent of conflict in coastal areas of Wales;
- Improve resilience of properties that are flooded (build back better) through influence of the insurance industry and improving Building Regulations requirements for new properties that are built in defended flood zones or as part of strategic urban regeneration;
- Commission a review of legislative options for implementation of building back better if required;
- Revise building regulations to require flood resilience on new development where permission is granted in flood risk areas, such as defended areas or strategic urban regeneration locations.

8. Conclusion

- 8.1 The review carried out by this Sub Committee has identified multiple issues with current legislation and associated policy, which are impacting on the ability of RMAs to effectively deliver FCERM responsibilities.
- 8.2 Although the focus areas were generally agreed quickly by the Sub Committee through prioritisation based on biggest impacts, the specific issues within those focus areas were significant and wide ranging making shortlisting challenging. The Control of Flood Risk Assets focus area especially raised a lot of issues and corresponding recommendations.
- 8.3 It is evident that whilst a large number of our recommendations direct towards a need to review and update existing legislation, including barriers and blockers and identification of solutions, a number of the issues can, and should be fixed through policy development, guidance and improved communication and collaboration between RMAs, especially around the use of permissive powers.
- 8.4 We acknowledge and welcome the ongoing work of the Welsh Government in developing the Coastal Adaptation Guidance as a useful tool to RMAs. However, our work in this area has highlighted a real need to update existing legislation if Wales is to adequately implement adaptation and further build the resilience of communities.
- 8.5 The recommendations developed within each of the individual focus areas, and captured within Sections 5,6 & 7 of this report, have been reviewed and consolidated into 10 proposals which are presented in Section 9.

9. Proposals

<p><u>Proposal 1</u></p> <p>Consider all options to secure a review of FCERM and related legislation, including its incorporation within the Law Commission’s 14th Programme of Work, and to encompass in particular:</p> <p>1.1 Mechanisms for the management and maintenance of assets not in the control of RMAs, including a review of FWMA 2010 Schedule 1;</p> <p>1.2 Mechanisms for the delivery of climate change adaptation;</p> <p>1.3 Mechanisms for ensuring the compatibility of the Highways Act 1980 with the FWMA 2010 and Water Industry Act 1991;</p> <p>1.4 Roles and responsibilities of RMAs on the coast under the Coastal Protection Act 1949 and the FWMA 2010;</p> <p>1.5 Roles and responsibilities of riparian owners.</p>	<p>Lead Agency – WG Water & Flood Division and Office of the Legislative Counsel; Supporting Partners – Law Commission, WLGA, RMAs and FCEC.</p>
<p><u>Proposal 2</u></p> <p>Consider the creation of a national register of Significant FCERM assets not in the control of RMAs. This would also support the LLFAs duty to maintain a register of significant public and private FCERM assets under s21 of the FWMA 2010.</p>	<p>Lead Agency – WG Water & Flood Division Supporting Partners – NRW, WLGA, RMAs.</p>
<p><u>Proposal 3</u></p> <p>Develop guidance on the use of permissive powers by RMAs, addressing overlaps, gaps and areas of ambiguity, and mechanisms for improving communications and transparency.</p>	<p>Lead Agency – WG Water & Flood Division; Supporting Partners - WLGA, RMAs.</p>
<p><u>Proposal 4</u></p> <p>Consider the creation of a Wales-wide body or team to develop, co-ordinate and implement medium to long-term climate change adaptation policy.</p>	<p>Lead Agency - WG</p>
<p><u>Proposal 5</u></p> <p>Lead the development and delivery of a national programme of research on behalf of all RMAs to facilitate better FCERM asset management and climate change adaptation, including the current “Review of Flood and Coastal Erosion Risk Management Assets”.</p>	<p>Lead Agency – WG Water & Flood Team Supporting Partners – FCEC.</p>

<p><u>Proposal 6</u></p> <p>Consider including the control of surface water run-off from agricultural land within the proposed Single Farm Payments replacement scheme.</p>	<p>Lead Agency – WG Water & Flood Team Supporting Partners – WG Agricultural Division.</p>
<p><u>Proposal 7</u></p> <p>Promote best practice case studies where Coastal Protection Authorities have worked with multiple private landowners to facilitate coastal protection schemes.</p>	<p>Lead Agency – WG Water & Flood Team Supporting Partners – FCEC, RMAs.</p>
<p><u>Proposal 8</u></p> <p>Develop planning policy and guidance, potentially through further development of TAN15:</p> <p>1.1 To encourage coastal Local Planning Authorities to consider the identification of Coastal Change Management Areas within their Local Development Plans;</p> <p>1.2 To require property flood resilience measures to be included within new development where permission is granted within flood risk areas, such as defended areas or strategic urban regeneration locations.</p>	<p>Lead Agency - WG Planning Division Supporting Partner – WLGA.</p>
<p><u>Proposal 9</u></p> <p>Gather data on the proximity of coastal public rights of way to Shoreline Management Plan managed realignment areas, to understand the extent of potential conflicts.</p>	<p>Lead Agency – Wales Coastal Groups Forum</p>
<p><u>Proposal 10</u></p> <p>Engage with Flood Re and the wider insurance industry on standards for building back better after flooding events, with a timescale for improvement, and consider a review of legislative options if needed.</p>	<p>Lead Agency - WG Water & Flood Team</p>

Appendices

Appendix A - Long List of Options for Review

Issues, Barriers & Opportunities – Long List

Purpose of this Document

To help sub-committee members decide which 1 to 3 priority focus areas they think should be taken forward to a Short List for more in depth work. The following questions were taken into consideration: -

- How far would this issue contribute to Work Programme Theme 5 – *(National Strategy Measure 1 by 2022) - Review of the policy and legislation around FCERM in Wales.*
- How strategic is the issue? Would its resolution play a significant role in delivering National Strategy Measures or Objectives, or would failure to resolve it significantly prejudice their delivery? Might its resolution prejudice the delivery of some Measures or Objectives?
- How wide is the issue organisationally? Would its resolution benefit most or all Risk Management Authorities (RMAs), or would its benefit be mainly focused on a single RMA?
- How wide is the issue substantively? Would its resolution help to tackle many areas of flood risk, or would its benefits be mainly focused on a limited area?
- How enduring is the issue? Is it likely to extend into the medium or long term, or is it mainly of shorter term duration?
- How significant is the issue quantitatively? Would its resolution have substantial benefits in reducing flood risk?
- How wicked is the issue? To what extent would it cross organisational boundaries and require outside influence to progress its resolution?

Source of the Information Below

The list below is compiled from feedback received to date, both from the literature review and individual responses from FCEC Policy and Legislation Sub Committee members.

They are summarised and selective comments from members of the PLSC.

They have been grouped and summarised, but due to the nature of opinions and comments there is a subjectivity and potential cross over of themes.

The long list contains 22 themes which are summarised in Table 1. The list is in no particular priority order.

Table 1 - Issues, Barriers or Opportunities

Ref	Theme	Issue	Comment
1	Designation of features	The FWMA introduced the designation of features as a tool to give RMAs more control over third party owned features and man-made structures which play an important role in managing flood risk. Schedule 1 places a duty on the owner not to alter, remove or replace a designated structure or feature without the consent of the council or responsible authority.	The key limitation of this provision is that it doesn't give powers to the designating authority to request asset owners to maintain the structural integrity of a designated asset or to repair any defect or damages. Instead, councils have to rely on other powers under the Land drainage Act to issue notices or use powers of entry to undertake remedial work. <u>As such, due to 'a lack of teeth' schedule 1 is not being used as tool in FRM.</u>
1a	Designation of features?	Riparian Asset ownership and a lack of control over maintenance and performance 3. There is a general issue with asset ownership, liability, and maintenance, the majority of which are in private/riparian ownership. This leads to incorrect assessment and classification of asset as well as a degradation in its performance. 4. It is difficult to exert any control over the asset as an RMA 5. The issue of riparian ownership fits a more rural setting but is unfit for modern highly urbanized areas. Expectations are different. 6. The barrier to more "public" ownership of assets would be maintenance costs, 7. There is likely to be a saving in enforcement costs (however, I am unsure how much enforcement is carried out due to the cost)	
1b	Designation of features	Within the FWMA 2010, Schedule 1 is intended to provide Risk Managing Authorities (RMA) powers to designate features that have an effect on flood risk (or coastal erosion risk) such designations are meant to prevent the private owners from altering, replacing or removing a	

Ref	Theme	Issue	Comment
		<p>designated feature however, the power does not extend to the ongoing maintenance and where necessary upgrade/rebuild of such structures.</p> <p>In simple terms a Land owner with a designated flood wall is not responsible for maintaining said wall, but is controlled from altering the structure intentionally i.e altering or changing the structure without permission from the designating authority. If however, following a flood event that the wall is damaged, collapses, scours, etc there is no power within the Schedule 1 to require the land owner to maintain, replace, rebuild or enhance the structure i.e. Schedule 1 does not take into account the maintenance and longevity of the designated structure.</p>	
1c	<p>Designation of features?</p> <p><i>Riparian owner responsibilities</i></p>	<p>Riparian owners, in the first instance are unaware of their responsibilities to manage the ordinary watercourse within their landownership or the wider implications that the aging infrastructure below ground poses a risk to their properties and the wider community if left unmaintained.</p> <p>When managing the risk of this infrastructure the LLFA/Land Drainage Authority (LDA) have two powers related to ordinary watercourses within the Land Drainage Act 1991 specifically:</p> <ul style="list-style-type: none"> • Section 24 – Contraventions of Prohibition on Obstructions etc. • Section 25 - Powers to require works for maintaining flow of watercourse. <p>When utilising these powers we are limited to a reactive use of the powers in so far as we can only enforce where a resident has undertaken works without consent or where an ordinary watercourse becomes obstructed i.e. culvert barrels collapsed or restricted by accumulated debris.</p> <p>With our current powers we are unable to require riparian landowners to upgrade their Ordinary Watercourse Infrastructure either for imminent structural failure or indeed the systems being under</p>	

Ref	Theme	Issue	Comment
		<p>capacity. This places the management of surface water and ordinary watercourse in a reactive perspective for private infrastructure.</p> <p>Notably LLFA/LDA can be afforded more powers to control ordinary watercourse via the adoption of Land Drainage Bylaws however, these powers do not plug the gap as above and focus on requiring consents prior to works taken place.</p>	
1d	Designation of structures	<ul style="list-style-type: none"> • Designation (in Schedule 1 of FWMA) in itself does not help much – no real teeth in the legislation apart from saying “a person may not alter, remove or replace a designated structure or feature without the consent of the responsible authority”. • There is confusion about what designation achieves and some are quick to suggest it as a solution whereas it is rarely so. 	
1e	Designation of flood assets	5) Clarity on designation of flood assets and where that sits against other organisations assets such as Welsh Water’s, who has the power to move assets?	
1f	Designation of features and LLFA duty to maintain a register	<ul style="list-style-type: none"> • Lack of consistency – role for more national guidance <ul style="list-style-type: none"> • No consistency in the update schedule or content of registers. • Commercial confidentiality and copyright issues can be barriers to data sharing. • LLFAs can only improve 3rd party assets through enforcement. • Different RMAs keep their own separate registers of drainage assets. 	
1g	Designation of features	<ul style="list-style-type: none"> • Lack of legislation, the ‘designation’ of assets does not create any duty to maintain them as such the power is rarely used with 81 of 86 authorities questioned saying they had never designated an asset. 	
1h	Designation of features ?	<ul style="list-style-type: none"> • Legislation that lacks clarity, there is lack of clarity of who is responsible for the maintenance of culverts that pass below several properties. Many landowners are unaware or do not understand their roles and responsibilities regarding watercourses, including culverts. 	
1i	Designation of features	<ul style="list-style-type: none"> • The legal interpretation of a public sewer vs surface water sewer in the context of a culverted watercourse 	

Ref	Theme	Issue	Comment
		<ul style="list-style-type: none"> If there is a change in sewer classification, and not transferred to another RMA the asset will be “orphaned” and not been maintained. Very ‘anti’ - Pitt and increases flood risk, if reverts to riparian landowner or other party and they aren’t notified no maintenance will be carried out. Riparian landowners will not be aware of transfer and not able to afford to carry out maintenance works 	
1j	Designation of features	<ul style="list-style-type: none"> Right to connect to SW sewers removed can prevent surface water flooding issues being resolved or provide a safe guard if SuDS systems fail especially infiltration device if high ground water levels persist after a long duration flood event 	
2	Roles and responsibilities	<p>Clarifying roles and responsibilities between RMAs has always been a challenge impacting on communities’ confidence, increasing confusion but also creating a range of issues amongst RMAs at operational and strategic level.</p>	<p>Under the FWMA and Coast Protection Act RMAs have a duty to manage flood risk from various sources and coastal erosion but only have permissive powers to undertake remedial work. In essence this means that for a range of reasons RMAs may choose not to intervene in certain areas which they are responsible for.</p> <p>Whilst this approach can be justified due to a lack of resources, funding or prioritisation, it further increases confusion and anger amongst communities, increase risk and push some RMAs to intervene where they are not responsible for. Furthermore, a range of issues can arise with this approach, liability, maintenance, detriment and so forth.</p>
2a	Roles and responsibilities	<p>There is a big link between roles and responsibilities and legislation.</p> <p>Roles and responsibilities in FRM are complicated, and generally confusing to the public. It is often said that the problem is that roles and responsibilities aren’t clear. I think it is less a case about roles and responsibilities not being clear or needing to be adjusted, or about trying to explain</p>	

Ref	Theme	Issue	Comment
		roles and responsibilities to the general public (because it is complicated and most people don't really care), and more about working together across RMAs and organisations for the public good. So is there any aspect of legislation change that could help? e.g. statutory Strategic/Integrated Catchment FRM Plans? But working across organisations is challenging, even with best of intentions.	
2b	Roles and responsibilities	The public do not understand RMA roles and responsibilities – This may be true, but this may not have a legislative solution. Legislation may be clear, complicated, and difficult to understand from a lay persons perspective but legally clear. So the 'solution' may not be legislation and therefore not in scope of PLSC.	
2c	Roles and responsibilities	So there is a point here about whether we do have the best operating model. I've given this a fair degree of thought down the years. I think Pitt Review gave LAs the lead on local flood risk (non-main river and surface water) for a reason, and that reason is sound. I think it created the strategic oversight for good reason, it was a gap. And I think there is a role for a national body for non-local rivers that span LAs, and for the sea. So I don't think these big ticket roles and responsibilities are the main issue or holding us back. But if as a group we think they are, we should identify where and suggest what to do about it.	
2d	Roles and responsibilities	Budget and Resources I also think an important part of roles and responsibilities is having the budget and resources to undertake those roles and responsibilities effectively. It's no good having the role or responsibility if you can't undertake it effectively. Budget restrictions mean that all RMAs need to prioritise the work. The powers we have are generally 'permissive' for a good reason – we can't do everything, everywhere, we can't stop all flooding, and no-one has a 'right' not to be flooded.	

Ref	Theme	Issue	Comment
2e	Roles and responsibilities	Fit for the Future	A question I think we need to ask is whether the roles and responsibilities and Groups for FRM (and what we do) are 'fit for the future' and good for a world of Flood Risk Management, Climate Emergency and Climate Adaptation. I think there is something about making adaptation (and mitigation) statutory in some way if we are serious about climate emergency and well-being of future generations. That's a big step though and I haven't really thought through what that would mean or what
2f	Roles and responsibilities	Legislation v other mechanisms (e.g. policy position):	<p>I think too there is a distinction to be made about the need for a legislation change versus the value of a (Government) policy position on an issue. Many good and desirable things to do (e.g. whole catchment planning, levering in contributions etc) may not need a legislative change. Likewise, I think there is something around behavioural norms and nudging behaviours to do the right thing e.g. don't build on flood plains, don't concrete over your front garden. Maybe these don't need legislative change?</p> <p>I think there is a risk we put massive effort into legislative change for it to get bogged down in process and legislative delays. Makes me think again that the blockers and opportunities don't necessarily need legislative fixes?</p> <p>I think influencing non-FRM policy is hugely important, and FCEC is doing a good role here e.g. agriculture policy, planning policy</p>
2g	Roles and responsibilities	<ul style="list-style-type: none"> • Review RMAs? Any missed opportunities from say, Network Rail not being a RMA? • National Strategy roles and responsibilities in relation to flood and coastal risk management. RMA duties on Network Rail? 	

Ref	Theme	Issue	Comment
	Network Rail	<ul style="list-style-type: none"> Network Rail – Should there be legislation, so they have a statutory duty to provide a flood risk management function in places. We may want this as RMAs but they may not, they may be very happy that they don't have this 	
2h	Roles and responsibilities	<ul style="list-style-type: none"> There is much confusion and (often opportunistic) interpretation of NRW's role, responsibilities and powers (and those of other RMAs). It would be really good to have some sort of "Terms of Reference" which makes it clear what we can do, cannot do, what we have duties to do, have powers to do etc. including erosion, private/orphan assets. This could also include legalities of being an asset maintainer, rather than an asset owner. It would help inform politicians, public and other RMAs. 	
2i	Roles and responsibilities	<ul style="list-style-type: none"> WG seem reluctant to direct RMAs at times – e.g. direct RMAs to use a single national asset database. Not doing this causing lots of complications and inefficiencies, and service delivery is inconsistent across Wales including to public. 	
2j	Roles and responsibilities	<ul style="list-style-type: none"> Need for much better clarity on role of WG Flood and Resilience teams, often confusion, both seem to have role in incidents but also things fall between them 	
2k	Roles and responsibilities	<ul style="list-style-type: none"> Roles and responsibilities for community engagement are not clear. 	
2l	Roles and responsibilities With linkage to Collaboration	<ul style="list-style-type: none"> We did note during consultations on the National Strategy how important it was to provide some clarity on roles and responsibilities of RMAs in their operations. This was to make good on that outlined in the FWMA on that same issue. Unfortunately, this was an opportunity lost. Collaboration is something that all RMAs should, and largely do, welcome in order to glean the most value out of projects and not just from a flood/erosion risk point of view. However, lack of clarity on the mechanic of this collaborative approach beyond stating that such obligations are a 'duty' is a 'blocker' to its ultimate realisation. There always has been ambiguity on roles and responsibilities within FCERM especially on the coast and navigating this is especially difficult in times of dwindling resources where they are diverted to discharge what are the statutory obligations for all involved. 	

Ref	Theme	Issue	Comment
		<ul style="list-style-type: none"> All collaborative instigations from experience start with a caution on who funds/contributes what and when. Implementing any meaningful collaborations in these types of scenarios is difficult. Having clarity on who leads collaborative approaches to what are always the same problems, whilst all recognising the 'duty' to partake would be a hugely positive move. Whilst I accept completely this is easier said than done, but any clarity on the matter would be a step forward. PSBs seem the logical home for such clarity but again I'm not sure how well these function? 	
2m	Roles and Responsibilities	<ul style="list-style-type: none"> Issues arise where an Ordinary Watercourse connects into a Main River, flooding may occur along the whole length of watercourse but as LLFA is responsible for OWC and NRW Main River it can be difficult to secure funding to resolve flooding issue as LLFA and NRW's programmes don't align and approach the 5 Case Business Model differently. Residents flooded don't care if the flood water is from an OWC or Main River. Projects on both designations are ultimately funded by WG. 	
3	Coast Protection Act- Marine Licensing	NRW and Maritime Local Authorities (MLAs) are classed as Coast Protection Authorities in the Coast Protection Act 1949 giving them a range of duties and powers including the ability to undertake (or consent to) coast protection works and maintenance. Most of these activities will however be linked to the Marine Licensing regime	<p>The current marine licensing process which is managed by NRW is taking longer and longer impacting on the ability of councils to deliver coast protection works and maintenance and their ability to spend WG grants within the fiscal year. Furthermore, and whilst exemptions are in place these are often deemed subjective and open to interpretations by marine licensing officers leading to the unnecessary</p> <p>Need to apply for licenses for some type of works.</p>
3a	Coast Protection Act- Marine Licensing	<p>Marine Licensing Exemptions Review</p> <ul style="list-style-type: none"> There are inequalities in terms of marine licence exemptions for NRW undertaking maintenance and/or land drainage related works at the coast but not for LAs. WG Marine commissioned a review but outputs not known. 	

Ref	Theme	Issue	Comment
3b	Coast Protection Act- Marine Licensing	We also would consider flexibility around marine licence and emergency works, powers required for coastal protection authority to carry out urgent repair works (that require work outside the footprint of existing structures).	
4	Ordinary watercourse consent fee	In April 2012 the responsibility for issuing ordinary watercourse consent under Section 23 Land Drainage Act 1991 passed from Natural Resources Wales (NRW) to Local Authorities. Charges for consents have been set since 1991 at £50 which does not cover the costs to local authorities for considering and issuing consents with the financial shortfall usually being absorbed by the authority added to current financial pressure.	Ordinary watercourse consents are part of the range of tools available to councils to manage flood risk and control third party activities. The level of work involved will vary depending on the activity and scale but the fee set in the LDA is unfortunately insufficient leaving councils out of pockets. Whilst a range of WG initiative have taken place to ensure that activities delivered by councils and NRW alike are cost neutral (EPRs, planning fees, etc) the same has not been done for this service. A lack of suitable fee may lead towards a lack of prioritisation by councils or the application of a risk based approach which in itself can create challenges.
4a	Ordinary watercourse consent fee	S.23.(2) of the Land Drainage Act 1991 that only allows a fee of £50 to be charged for flood defence consents. Crazy and a gross underestimate of the costs involved in processing such applications.	
5	Collaboration	Collaboration amongst RMAs is paramount to ensure effective delivery of FCERM, maximise opportunities for joint working and capitalise on skilled workforce. Currently, this high level collaboration happens through the 3 non-	The 3 regional groups are the only RMAs led groups focussing on FCERM in Wales and should be at the forefront of initiatives to improve how we deliver FCERM, serve as advisory bodies and influence decision makers

Ref	Theme	Issue	Comment
		statutory FCERM Regional Groups but at an operational level is dictated by corporate priorities, resources and funding availability.	both internally and externally. However due to a lack of members seniority, capacity and capability, very little of this is done.
5a	Collaboration	I think though there is something about <i>how</i> we work together, taking the statutory roles and responsibilities into account. So I mean the composition and purpose of the various Groups we have in Wales, what they do and how they interact. Have we the best structure there? I appreciate this may be going off the legislation point, but I think it is related. E.g. there may be something more that can be made of Regional groups here, or a Wales-wide RMA forum.	
5b	Collaboration	Wales Flood Groups are voluntary and not resourced to deliver the challenges facing Wales. So the suggestion could be that there may be a benefit in giving The Flood Groups a statutory function, with this will come resource and funding questions but also more responsibility and accountability on these Groups to deliver to a stated purpose	
5c	Collaboration	No forum for all 22 RMAs to meet. Could be a legislative solution to this but is legislation really the only way to make this happen?	
6	Planning	<ul style="list-style-type: none"> • Planning - where we put things and people is massively important. 'Put water at the heart of decision-making' type territory. Long term spatial planning, NDF, WBFG type stuff too at the big scale. Plus definitely links to Agri Policy and land use. Got to work out ways to make space for water, ultimately. Maybe to extent of designating land as a flood resource (or something). • Also 'Design for exceedance' type concepts. Accept that some places will get wet and design for it • SUDS properly embedded and funded. • Detriment also is an issue - maybe sometimes some detriment for extreme events for the greater good should be allowed e.g. if you avoid flooding huge number of houses upstream for a bit of detriment downstream, maybe that is OK. But not allowed in planning process. • No development in areas at flood risk? • Maybe something about responsibilities of riparian owners being in legislation 	

Ref	Theme	Issue	Comment
		<p>Make properties more flood-resilient</p> <ul style="list-style-type: none"> Insurance companies only replace like-for-like and not betterment. Change this. Plus reward good behaviours e.g. discounted premium if you install flood resilience Update Building Regs for flood resilience, and build it in from the start Grants for flood-affected houses to put back better, or supporting community flood plans 	
6a	Planning	<ul style="list-style-type: none"> Review of role of LLFA role in Town and Country planning act, change in TAN 15 but LLFA not a statutory consultee? 	
6b	Planning	<p>NRW Flood Review comment: <i>We need to complement defences with other measures, such as holding back water higher up in the catchment, making space for water in valleys,</i></p> <ul style="list-style-type: none"> Against PPW (and TAN15) that states “no increase in flood risk elsewhere” --- requires change planning policy, but personally don’t believe this is the main barrier to their uptake? 	
7	Planning/Building Regs/ Insurance?	<p>Make properties more flood-resilient</p> <ul style="list-style-type: none"> Insurance companies only replace like-for-like and not betterment Building Regs for flood resilience. Grants for flood-affected houses to put back better. 	
7a	Planning/Building Regs/ Insurance?	<ul style="list-style-type: none"> Build back better after flood event rather than back to pre-flood standard Insurance companies won’t permit properties flood to include resilience measures in flood repair work as classed as betterment, Build back better will reduce flooding damage in future and make communities more resilient 	
8	Flood Defences	<ul style="list-style-type: none"> Flood defence network should be regarded as a key part of the nation’s critical infrastructure and it needs investment to keep it fit for purpose or look to replace it where necessary. Does this require or benefit from some sort of designation powers for someone? Maybe there are links to National Infrastructure Commission – though we tried to make that link and NIC didn’t bite (they have many competing priorities) Idea of an associated “ringfenced critical infrastructure” revenue maintenance budget. May be something about design standards. National Infrastructure Commission in England is proposing national design standards as a minimum standard. Worth looking at 	

Ref	Theme	Issue	Comment
8a	Flood Defences	<ul style="list-style-type: none"> Move from Powers to Responsibility? (with associated “ringfenced critical infrastructure” revenue maintenance budget) 	
8b	Flood Defences	<ul style="list-style-type: none"> Non-flood defences that act as flood defences – adopt? 	
8c	Flood Defences	<ul style="list-style-type: none"> Installation of flood barriers in the public Highway Floodgates can be installed in the highway but no powers to operate or close in a storm as open the Police have the powers to obstruct or redirect traffic via a TTRO. RMA’s affected would be LLFA and Highway Authorities acting quickly in a flood event to prevent flooding rather than wait until an emergency has arisen. 	
8d	Flood Defences	<ul style="list-style-type: none"> Section 137 of the Highway Act 1980 prevents the use of highways being used to store flood water in a managed manner. S137 HA 1980 states that “if a person, without lawful authority or excuse, in any way willfully obstructs the free passage along a highway he is guilty of an offence”. If modifying a highway to prevent flood water running off the highway into residential properties by containing the flood water on the highway and improving the highway drainage system. Highway Authority can prevent this by citing section 137 HA 1980 and suggesting that keeping flood water on the Highway was creating an obstruction to traffic. Manage flooding from rivers and surface water run-off in an effective and economic manner. 	
9	Flood risk from industrial heritage sites	<ul style="list-style-type: none"> Big big issue for Wales – industrial legacy. Not sure what the policy/legislation lever is though –may be there needs to be a requirement for risk assessments? 	
10	Flood Risk Management Plans	<ul style="list-style-type: none"> The Flood Risk Regulations 2009 provide a barrier to risk management authorities because they have to be met with dictated cycles and timeframes. Due to this rigidity, it leaves little scope for improvements. LLFAs particularly get stung by having to produce a Local Flood Risk Management Strategy under the FWMA 2010 and 	<ul style="list-style-type: none"> Given that we have just left the EU, revisiting the Flood Risk Regulations 2009 provides a really big opportunity. It is sound and reasonable to share what we plan to do to manage flood risk in our communities at risk (basically a good thing). However, being constrained to a 6 year planning cycle doesn’t have any real basis and it would be more advantageous if in the

Ref	Theme	Issue	Comment
		potentially a FRMP too. And for this cycle, the timing is completely out of sync.	future we aspire to an annual plan so the information that is shared is the most up to date it could be. 6 year plans take a lot of time to progress and produce, so if we were able to move to an annual planning cycle that is embedded in work planning, we could make a big efficiency saving.
11	Catchment Based Water Management	<ul style="list-style-type: none"> Integrated Catchment Water Management, managing water from source to sea – Do we want this – Does it need legislative change? 	
12	Strategic oversight role	<ul style="list-style-type: none"> Clarity on oversight role for NRW, what it is and isn't, often misunderstood or just added to. It's not defined in legislation, but WG National FCERM Strategy has attempted to define it. Also consider what it could be, with adequate resourcing this could support progress to a 'catchment approach' to join up areas of work, develop partnerships and deliver multiple outcomes. There is a link to how funding is allocated – can it be 'joined up' more to enable a better overview of flood risk activities across Wales 	
13	Funding	<ul style="list-style-type: none"> Need for a position/policy statement on how to lever in contributions – there are no mechanisms. 	
13a	Funding	<ul style="list-style-type: none"> Increased clarity on responsibility around funding, NRW have tidal flooding in the National Strategy but local authorities lead on CRMP (100% funding based on source) 	
13b	Funding	<ul style="list-style-type: none"> How will biodiversity net gain (BNG) and the Environment Act tie into Wellbeing of Future Generations Act; there has to be some way to account for BNG and environmental gain which is compatible with WFGA assessments (or the other way around?) 	
13c	Funding	<ul style="list-style-type: none"> What are the current requirements for taking into account community level support (both financial and non-financial support) on the decision making process? Will that reflect int WFGA assessment? 	

Ref	Theme	Issue	Comment
13d	Funding	<ul style="list-style-type: none"> Standard of protection for FRM projects funded by WG must achieve standard of 1 in 100 year plus climate change If standard not achieved communities open to flood risk when a reduced standard would provide protection from all but extreme events Larger defences contribute to climate change by producing more CO2 	
14	IDDs	<ul style="list-style-type: none"> NRW delivered a WG commissioned piece of work to adjust boundaries of IDD boundaries but this has not been acted on. WG need to draft an Order to confirm the IDD boundary review Scheme. This was submitted Feb 2018 and we have to keep placating landowners where we said change was coming following our public consultation. District boundaries will likely to change in future under coastal adaptation pressures reducing their size / possible removal altogether. Any future IDD changes likely to be a lengthy and likely costly exercise even if legislative hooks/process exists. Are IDD boundaries best placed with NRW? It's a local flood risk, for local authorities? 	
15	Reservoirs	<ul style="list-style-type: none"> There may be implications from the 'Toddbrook Review' second phase, which is due imminently. There are some other aspects, such as no legislative levers for requiring on-site emergency plans, and interpretation of legislation e.g. when is an "area capable of storing water" a reservoir? 	
15a	Reservoirs	<ul style="list-style-type: none"> Reservoir flooding – I think any changes will emerge from Toddbrook Reviews, so don't think we need to be concerned about this 	
16	Coastal adaptation	<ul style="list-style-type: none"> Lack of mechanisms to enable land-use change (links to Agriculture Bill) Issues with the application of Habs Regs and compensatory habitat Public Rights of Way legislation may lead to local authorities requiring continued maintenance of PROW along coastal strips that may no longer be sustainable and subject to NRW FRM asset withdrawal and/or coastal adaptation. This represents a significant challenge to coastal adaptation process. 	

Ref	Theme	Issue	Comment
16a	Coastal Adaptation	<ul style="list-style-type: none"> I think Meghan Alexander made a point about PRow. Meghans point SMPs can be in conflict with Highways Act and PRow 	
16b	Coastal Adaptation	<ul style="list-style-type: none"> Coastal erosion will lead to financial burdens on individuals (loss of property) and commercial entities (loss of property, loss of custom?) and may lead to reduced revenues for local councils. How can these issues be factored into decision making? 	
16c	Coastal Adaptation	<ul style="list-style-type: none"> Climate change guidance – UK guidance different (UKCP18) to that used in Wales (UKCP09) the different guidance has a substantial difference in predicted sea level rise and influences what can be afforded to protect coastal communities Unclear which guidance on Climate Change to use in Wales 	
16d	Coastal Adaptation SMP2	<ul style="list-style-type: none"> SMP2 policies being fixed not straightforward to change policy, introduction of WBFGA since SMP2 has changed the approach we take which might not align with WBFGA goals. As we approach the end of Epoch 1, policies set for Epochs 2 & 3 may no longer be appropriate to protect communities and achieve WBFGA goals 	
16e	Coastal Adaptation	Lack of measures that address medium and long-term risks, in particular coastal adaptation.	May be scope for new or enhanced legislation to drive the coastal adaptation agenda. Strengthen the PSB agenda?
17	Powers to offer services to other RMAs?	<ul style="list-style-type: none"> Powers to offer services and recover costs on behalf of LLFAs or other RMAs (don't think we can?) for example: <ul style="list-style-type: none"> if LLFAs wanting to do more on warning for minor watercourses or surface water flooding and there was agreement NRW could provision (with funding) some elements of the service on their behalf e.g. systems if LLFAs wanted us to add their local river gauges to management systems. Rationale being it might be more efficient for RMAs and the customer to do things like this (e.g. all river gauges on one website, one flood warning system capability not 22) 	
17a	Powers of LLFA to obtain information	Strengthen LLFA powers to gain information from other organisations, i.e. Section 14 flood and water management act, power to request but no duty on other organisations to provide. Sub Section 4 needs to be reworded.	

Ref	Theme	Issue	Comment
18	Use of Permissive Powers	LLFAs believe that this is a get out of jail free card for NRW not to discharge their duties, which some feel then fall the LLFAs to pick up. As LLFAs also have permissive powers that maybe a very contentious issue given resources etc.	
19	Section 19 Reports	<ul style="list-style-type: none"> • Cardiff Council not producing one for Storm Dennis as threshold not met. Produce s.19 for all flood events? • NRW to produce s.19s (requires change in FWM Act) • Standardise requirement and reporting timescale. • Make s.19 recommendations mandatory implementations • Templates, timelines, criteria all need improvement 	
19a	Section 19 Reports	<ul style="list-style-type: none"> • Lack of consistency in application of S19 reports – role for more national guidance <ul style="list-style-type: none"> a. No common format for reports. b. Lack of local community input into reports. c. No follow up recommendations of reports. d. No system to monitor reports to see general trends or lessons that may be learned from them. 	
19b	Section 19 Reports	<ul style="list-style-type: none"> • No standard for Section 19 Flood Inspection Reports across the UK and Wales • Inconsistency in trigger levels and approach so different styles of reports are produced depending on location, needs standardising. 	
20	Main Rivers	<ul style="list-style-type: none"> • Reviewing Main Rivers --- adding more or taking off! Or ability to update periodically (say every 6 years in line with FR regs plans 	
21	Controlling surface water drainage for sites not under Schedule 3 or non-adoptable SUDs	In principle the SAB and LLFA have no powers available to manage Historical Surface water drainage infrastructure (not controlled by the requirements of schedule 3) or non-adoptable SuDs infrastructure post completion of a development site.	

Ref	Theme	Issue	Comment
22	NFM	NFM requires landowners to be part of the discussion, and the costs and benefits of their contribution to good flood, water resource and water quality, biodiversity, carbon sink management etc needs to be assessed, accounted for and regulated and paid for somehow. Leaky dams are all very well, but real dams will be needed and these will sterilize land and require long term management costs, leaky dams will need some management.	
22a	NFM	<ul style="list-style-type: none"> • Land Drainage Act 1991 Section 25 gives Powers to require works for maintaining flow of a watercourse and Section 28 Orders requiring the cleansing of ditches etc. • As we look to use Natural Flood Management, we are designing in impediments to the flow contrary to the mentioned sections of the LDA which a landowner may try to use to prevent the use of NFM. 	
22b	NFM	<ul style="list-style-type: none"> • NFM must be considered as an option in the long list but there is insufficient evidence it provides benefits greater than a 1 in 30 year event and therefore unlikely to be used widespread. • NFM could used as part of wider mitigation options whilst further research is carried out. 	
		Not in scope of PLSC work but captured below for information	
	SuDS and SAB	<p>As regards the SAB –</p> <ol style="list-style-type: none"> 1. Review of fees, currently the fee for small applications can seem disproportionate to the size of development. While the fee for larger applications which require more scrutiny can be low. 2. Review of smaller applications, possibly simplify the application form. 3. A consistent national approach to the adoption process is needed, including the maintenance funding requirements. Currently SAB's are having to develop the whole legal side of adoption and maintenance funding themselves, with very little guidance. This leads to inconstancy and risks to the local authority. We have emphasised this point to WG/WLGA in a recent meeting – and feel that this should be their priority moving forward. 	

Appendix B – Focus Area - Control of Flood Risk Management Assets Detailed Review

Table 2

Issue Refn	Issue/Problem to 'Fix'- Level 1	Issue/Problem to 'Fix'- Level 2	Related Legislation
CoA1	The ' <i>designating authority</i> ', as defined by FWMA Schedule 1 and Risk Management Authorities (RMAs) have inadequate control of some important FCERM assets	Individual assets operate together in asset systems, but may not be structurally & hydraulically fit for purpose, prejudicing the ability of the asset system in operating satisfactorily when needed	FWMA 2010 Schedule 1
CoA4	Conflicting legislation as a barrier to controlling assets to and managing flood risk	Highways Act is intended to provide the creation, improvement and maintenance of roads for the acquisition of land.	Highways Act 1980
CoA6	Different distribution of RMA powers around the coast between CPA 1949 & FWMA	CPA1949 is framed around erosion whereas we now need to deliver climate change adaptation	Coastal Protection Act 1949

Associated issues identified by the Policy and Legislation Sub-Committee and to be considered by this workstream are:

AR1 This different distribution of powers are not aligned with delivering climate change adaptation around the coast

RR1 Areas around the coast where multiple RMAs have overlapping roles and responsibilities.

The Control of Assets workstream has taken forward issues CoA1 and CoA6 and support the Adaptation workstream taking forward CoA4 under AR1

This workstream has also considered the current Legislation which could be used to implement Natural Flood Management (separate document).

Issue/Problem to 'Fix'- Level 1: The '*designating authority*', as defined by FWMA Schedule 1 and Risk Management Authorities (RMAs) have inadequate control of some important FCERM assets.

Issue/Problem to 'Fix'- Level 2: Individual assets operate together in asset systems, but may not be structurally & hydraulically fit for purpose, prejudicing the ability of the asset system in operating satisfactorily when needed.

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
CoA1	The designating authority cannot designate or adequately control public assets such as Highway Authority walls	Latest CIRIA Research suggest the use of Schedule 1 has been <20 in the last 10 years and the understanding of schedule 1 is low.	FWMA 2010 (Including National FCERM Strategy). FWMA Schedule 1	<ul style="list-style-type: none"> • Correcting the issues could lead to a large increase in resilience to flooding from exiting non-defence assets. • More Non-defence assets becoming Defence assets maintained and inspected by RMA • A more accurate and comprehensive national assets database. • Less reliance on third party agreements and/or landowner maintenance and compliance to maintain a SOP • Clear accountability and responsibility for management, inspection and maintenance of the asset. • Raising owners awareness of the 	<ol style="list-style-type: none"> 1) WG commission a review of Schedule 1 (Law Commission) and/or engage with DEFRA research project - Review of Flood and Coastal Erosion Risk Management Assets 2) Change in legislation to make the designation of assets easier. 3) Review of the appeals process 4) Funding to maintain the designated assets would assist in the process as current owners less likely to object to designation if maintenance liabilities removed or additional powers to enforce funding. 5) Education on Schedule 1 to both RMAs and stakeholders. 6) Creation of a National Register of Designated Assets 7) Alternatives to formal designation which could
CoA1	The RMAs have great difficulty controlling private assets which perform a flood risk management function e.g. private garden walls	Considering the amount of assets for forming a flood defence function but are non-defence assets this suggests there is a potential for non-defence assets to be altered or fail.	Highways Act 1980		
CoA1	The RMAs lack powers to enforce the maintenance of assets that perform a flood risk function that are in non-RMA ownership	Correcting the issues could lead to a large increase in resilience to exiting non-defence assets. CIRIA's Draft report cited a number of key challenges associated with the designation process. These reflect a broad range of conflicts and challenges which could present themselves	Land Drainage Act 1991 Railways Act 1993 Reservoirs Act 1975		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
		<p>at various points within the designation process and include:</p> <ol style="list-style-type: none"> 2. Disagreements between asset/landowner and designating authority. 3. Increased legal responsibility without sufficient resources to deliver from both the asset owner and designating authority perspectives. 4. Concern over cost and liability of the asset. 5. Concern over property value and potential for planning. 6. Political challenges. 7. Siloed procedure, discouraging ownership and difficult with an integrated management approach. 8. Lack of clarity on responsibility of maintenance costs. 9. Lack of time/resources for additional duties such as management and inspection of the asset. 10. Conflict between primary function and a flood defence function. 11. Assumptions over construction and current performance level of the asset. 12. Insufficient competence to manage the asset as a flood defence asset. 		<p>function and responsibility of the asset.</p> <ul style="list-style-type: none"> • Protection of the asset and prevention of asset removal or future use of the asset that could have detriment to its performance as a flood defence. • Recognition of an asset's role within the wider flood risk system. • Greater control over asset management and maintenance. • Ability to develop a coherent network or unified defence. • Improved access to funding and protection. • Improved flood risk management within an area. • Formalised recording of an asset within the flood management system. • Ability to develop a network of defences which includes a mixed public private ownership. 	<p>include the following should be explored:</p> <ol style="list-style-type: none"> 8) Planning regulations. 9) Environmental permits and consents. 10) Integrated Management Plans. 11) Memoranda of Understanding (MOU). 12) Existing Easements. 13) Maintenance requirements as part of private asset. 14) Authority making the asset owner aware of obligations/responsibility. 15) Local Land Charges. 16) Discretionary statutory powers to work on assets. 17) Purchase of land. 18) Guidance documents on the process

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
		<p>13. Landowner/asset owner may be reluctant to lose control of the asset.</p> <p>14. Lack of understanding and awareness of the designation process.</p> <p>15. The designation process is difficult to enact.</p> <p>16. Concern about whether designation provides additional benefits over alternatives such as permitting/consent regulations.</p> <p>8. Conflicting legislation between primary requirement and designation, inspection regimes and funding/planning.</p> <p>9. Concern that funding to maintain the asset will not be available if the primary function of the asset is no longer required conflict between the legislation governing the primary function of the asset and restrictions imposed as a result of designation</p> <p>10. Organisations may not have sufficient resource and legal support, budget and time required to implement and monitor the legal designation</p> <p>CIRIA's Study concluded that the number of disadvantages outweighs</p>			

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
		the number of advantages of designation.			

Issue/Problem to 'Fix'- Level 1: Conflicting legislation as a barrier to controlling assets to and managing flood risk

Issue/Problem to 'Fix'- Level 2: Highways Act is intended

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
CoA6	<p>Highway Authorities have a duty to keep highways free of obstructions, this includes flood water, preventing highways from attenuating pluvial run-off and preventing residential property flooding; Highways are often conduits and can change the natural flow path of flood water from upland catchments resulting in flooding to areas which would otherwise not be affected. Highway Authorities in some cases are only responsible for highway gullies and connection pipework, the</p>	<p>Highway Authorities provide and manage highway drainage from the road network under the Highways Act 1980. They must also ensure that road projects do not increase flood risk. They maintain and repair the roads for which they have responsibility (maintainable at the public expense), which sometimes includes the drains that run beneath the road surface, as well as the road surfaces and footpaths themselves. They also have a statutory legal duty to maintain the highway which includes keeping the highway free from flooding and provide adequate drainage.</p> <p>Farmers manage their agricultural land in a way that reduces run-off. As well as reducing flood risk, this slows down damaging soil erosion, so it is in the farmer's interests as well. Soil management measures form an important part of the regulations governing the payment of agricultural subsidies. Although the procedures on this will change, farmers will still have to follow the accepted best</p>	<p>Highway Act 1980</p> <p>The following sections are of relevance to this Issue:</p> <p><i>S 41 – Duty to maintain Highways maintainable at public expense.</i></p> <p>This includes a duty to provide an adequate drainage system and keep the Highway free from flooding.</p> <p>S 100 – Drainage of Highways</p> <p>Gives the Highway Authority powers for the purpose of draining or preventing surface water from</p>	<ul style="list-style-type: none"> • Increase resilience to local communities • Potential low cost solutions to manage flood risk • Enhanced RMA collaboration • Enhanced collaboration with other stakeholders including adjoining landowners. 	<ul style="list-style-type: none"> • The Highway Act enacted in 1980 should be reviewed to identify to ensure compatibility with the Flood and Water Management Act 2010 which will enhance resilience to flooding and improve flood risk management across all RMAs. • Consider clarity of scope in managing flood risk holistically not just on Highways whilst upholding public safety to highway users. • Consider amending S137 and 333 to Statutory powers rather than permissive duties. • Amend the Highways Act to enable flood water storage on the public highway in extreme events (definition to be agreed and local conditions understood) without comprising public safety but enhancing flood resilience.

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
	<p>drainage systems to which they connect are in the control of third parties or other RMAs.</p>	<p>practice on the matter. Unfortunately, very heavy rain can cause run-off from farmers' fields even when soil is well managed. Due to Brexit Common Agricultural Policy will be replaced with new system due to be introduced in 2025, current system doesn't consider loss of land due to attenuation of flood water.</p> <p>Anecdotal feedback on project delivery:</p> <p>Denbigh Flood Risk Management Scheme 2009 - Properties flooded due to run off from highway, solution was to reposition drop kerbs and allow flood water to attenuate on public highway, objection from Highway Authority prevent this to be considered further.</p> <p>Current Legal Claim (not named so no redaction required) Highway Authority being sued for damage to downstream property caused by surface water run-off from upland catchment running along public highway and discharging over kerbs at low spot and causing erosion to land and undermining structure.</p> <p>Flood Risk Engineer for Local Authority (FCC) Operatives closed</p>	<p>flowing onto the Highway.</p> <p>The power can be utilised by the Highway Division on third party land in an attempt to mitigate impact upon the public Highway. This also allows the Highway Authority to lay/construct grips within the highway curtilage. Consideration however must be given to possible compensation payments if the discharge of water impacts upon private land.</p> <p><i>S101 Power to fill roadside ditches</i></p> <p>Power to fill in, or place pipes in and fill in, dangerous roadside ditches, where the ditch is not required for drainage purposes and where</p>		<ul style="list-style-type: none"> Highway Authorities to consider implications of draining highway on adjacent landowners. Powers to be given to other RMA to close highway to erect flood prevention measures in collaboration with Highway Authorities. Consider Blue-Green infrastructure to manage flood risk retrospectively, further research considering example elsewhere e.g. Copenhagen Making Blue Strategy 2010. Consideration to flood routing on highways, designing in flow routes for flood water which could result in changes to the Design Risk Manual for Roads and Bridges and other design specifications for example changes to highway design to create channel storage of surface water Changes should be adopted uniformly across the UK, if not possible then Wales should be a leader (WB&FG Act goal – A globally responsible Wales)

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
		<p>highway due to fluvial flooding which was re-opened by Police as proper procedure not followed.</p> <p>Anecdotal evidence. LLFA in NE England unable to deploy flood barrier prior to flooding event as didn't have authority to close highway to erect temporary structure.</p>	<p>the adjoining occupier consents.</p> <p><i>S 102 Provision of works for protecting Highways against hazards of nature</i></p> <p>Highway Authority has the power to provide and maintain such barriers or other works as they consider necessary for the purposes of protecting the Highway against snow, flood, landslide or other hazards of nature</p> <p>This section allows barriers to be created within the adopted Highway or land which the County Council have rights over, or has been acquired by the Highway Authority. This power is exercised at the discretion of the Highways Authority.</p>		<ul style="list-style-type: none"> • Consideration to SuDS retrofitted to existing highways to create space for water. • Payments to farmers post Brexit to manage agricultural land to control surface water run-off with payments included in the Single Farm Payments replacement scheme.

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p><i>S 103 - Provision of posts to indicate depth of flood water</i></p> <p><i>S108 Power to divert a navigable watercourse</i></p> <p><i>S 110 Power to divert non-navigable watercourse and carry out work on any watercourse</i></p> <p><i>S 130 - Protection of public rights</i></p> <p>This imposes a general duty for the Highway Authority to assert and protect the rights of the public to use and enjoy the Highway. In order to fulfil this duty, the Highways Authority has a responsibility to remove encroachments and obstructions of the Highway. Flooding is classified as an obstruction.</p>		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p><i>S137 – Penalty for wilful obstruction</i></p> <p>This section can relate to a third party wilfully allowing the transfer of water from their land ownership on to the public Highway, thus causing an obstruction to the free passage of the Highway. This permissive power is exercised at the discretion of the Highways Authority.</p> <p><i>S149 - Removal of things so deposited on Highways as to be a nuisance etc.</i></p> <p>It is a possibility that flood water from third party land could be classified as a deposit and therefore a nuisance.</p>		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p><i>S 150 Duty to remove snow soil etc. from highway</i></p> <p><i>S 163 Prevention of water falling on or flowing on to Highway.</i></p> <p>Highway Authority can require the occupier of premises adjoining a Highway to construct or erect and maintain such channels, gutters or down pipes as may be necessary to prevent water from the roof or any other part of the premises falling on persons using the Highway or prevent surface water from the premises flowing onto the footway</p> <p><i>S 299 - Right to discharge water</i></p> <p>This gives the right for surface water drains to discharge into inland or tidal waters, subject to compensation payable to owners or</p>		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p>occupiers who suffer damage.</p> <p><i>S 264 - Vesting of drains etc. of certain roads</i></p> <p><i>S 333 - Saving for rights and liabilities as to interference with Highways</i></p> <p>This section preserves the common law right of the Highway Authority to remove an obstruction from the Highway or abate a nuisance or other interference with the Highway.</p> <p>Section 333 similar to Section 137 this permissive power can be exercised by the Highway</p> <p>Authority to enforce upon a third party landowner that they refrain from allowing water to transfer from</p>		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p>their land on to the public Highway</p> <p><i>S 339 - Saving for works etc. of drainage authorities etc.</i></p> <p>This requires a Highway Authority to obtain the consent of the authority's Flood Risk Management Team before any watercourse is used, interfered with, or before works are carried out on any watercourse or drainage works. The Highway Authority must obtain consent from NRW if the waterbody is designated as a Main River</p> <p>FWMA 2010 (Including National FCERM Strategy and Schedule 3).</p>		

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
			<p>The Flood and Water Management Act (2010) promotes working with natural processes wherever possible. Natural flood management methods can reduce erosion as well as improving water quality and the wider environment. Flooding land is often more effective than changing land management practices.</p> <p>Civil Contingencies Act 2004</p> <p>Wildlife and Countryside Act 1981.</p> <p>It is against the law to adversely affect species protected under this act.</p>		

Issue/Problem to 'Fix'- Level 1: Different distribution of RMA powers around the coast between CPA 1949 & FWMA

Issue/Problem to 'Fix'- Level 2: CPA1949 is framed around erosion whereas we now need to deliver climate change adaptation

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
CoA4	Coastal Assets often in private ownership with little understanding of risk and maintenance requirements. Coastal Protection the duty of Local Authorities and Coastal Defence the duty of NRW. Protection and Defence are interlinked.	<p>Coastal protection and flood protection schemes do not in themselves contribute to economic Gross Value Added. Work under both coastal erosion and flood risk management can be viewed as preventative spend as they help limit damage to property, reduce business losses and protect livelihoods. Each project undergoes detailed cost benefit analysis to determine the best scheme option. The potential losses are categorised as: Residential and non-residential properties People; Community facilities; Utilities Assets; Transport links; Environmental designated areas; Designated cultural heritage sites; and Agricultural land.</p> <p>Coastal Assets can provide Direct or In-direct protection to the wider community not just the owner of the asset.</p>	<p>Coast Protection Act 1949</p> <p>Well Being and Future Generations (Wales) Act 2015</p> <p>FWMA (Including National FCERM Strategy)</p> <p>Shoreline Management Plans</p> <p>Crow Act 1991</p> <p>Highways Act 1980</p> <p>Public Rights of Way Act 1990</p>	<ul style="list-style-type: none"> • Assets managed and maintained better • Provides protection directly or indirectly to wider community • Fosters better Stakeholder engagement • Multiple benefits not just coastal protection of area at threat of erosion or flooding. 	<ul style="list-style-type: none"> • Seek case studies where Coastal Protection Authority has worked with multiple private landowners to facilitate a coastal protection scheme. • Consider the work and collaborate with Adaptation and Resilience sub-group to ensure all risks and benefits are considered. • Establishment of Single Action Stakeholder Groups to consider whole frontage works and not piecemeal solutions • Give consideration to wider benefits.

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
		<p>Issues with easements and access may need to remove existing properties and infrastructure in order to facilitate coastal protection works. Difficulties in carrying out retrospective improvement works.</p> <p>Responsibility for maintenance sits with asset owner not RMAs.</p>			

Appendix C – Focus Area - Roles and Responsibilities – Detailed Review

Table 3

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation, Policy & Guidance	Benefits	Recommendations
RR1	Lack of clarity between RMAs to support the delivery of coastal and erosion risk management, especially where responsibilities overlap	<p>Numerous anecdotal examples provided by officers.</p> <p>Lack of clarity on lead organisation to deliver adaptation activities.</p> <p>Disconnect between roles and responsibilities in the FWMA and CPA</p>	<p>Coast Protection Act 1949</p> <p>Flood & Water Management Act</p> <p>National FCERM Strategy</p> <p>Shoreline Management Plans</p>	<p>Providing clarity to RMAs and the public on who is best placed to lead certain activities around the coast</p> <p>Ensure equal powers are given to RMAs to facilitate delivery on the coast and ease the burden of marina licensing requirements for certain types of activities.</p> <p>Support delivery of national policy on adaptation</p>	<p>The WG should ask the Law Commission to evaluate the Coast Protection Act and consider options for an updated legislation to ensure a robust, integrated and future-proofed regulatory system which considers climate change impacts, adaptation, and the aspirations of the National FCERM Strategy and wider Welsh Government policy.</p> <p>In doing so, roles and responsibilities set out in the CPA should also be clarified and updated to align with present day and future needs as well as increasing clarity for both RMAs and the public.</p> <p>We further recommend that RMAs improve communication channels to ensure organisations are up to date with planned and ongoing activities at a local scale.</p>

				(including measure 18 of the NS) and SMPs	Progress and proposals should be reported to the Committee and set-out as part of the WLGA/NRW Memorandum of Understanding.
RR2	Lack of clarity for RMAs and the public due to overlapping responsibilities where communities can be simultaneously impacted by flooding from main river & ordinary watercourse.	Numerous anecdotal examples provided by officers, especially in cases where one RMA may step-in where another has responsibility to do so.	FWMA (Including National FCERM Strategy) Land Drainage Act & case law	All Wales Reference contribution to National Strategy Objectives	Review the roles and responsibilities set out by different legislation as well as case law in areas where roles and responsibilities overlap. This should include all RMAs as well as riparian responsibilities. The objectives of this review should be to identify opportunities and changes to align these with present day and future needs as well as increasing clarity for both RMAs and the public. It is recommended that legal advice is sought for this piece of work to offer a level of impartiality and assessment of potential legal implications of proposed changes.
RR8	The way RMAs decide to use permissive powers is not properly understood by other RMAs and the public.	Anecdotal examples provided by RMAs Public and political complaints due to a lack of transparency Lack of	FWMA Coast Protection Act 1949. Land Drainage legislation and case law	Benefits would be national firstly in improving communication and relationship between RMAs which tend to	Improving transparency and clarity on how RMAs currently choose to exercise their permissive powers. The focus should be on improving transparency of the decision making process and prioritisation of work. There is a need to

	<p>This increases confusion and lack of understanding of Roles & Responsibilities as well as deteriorate relationships between RMAs.</p>			<p>deteriorate due to a lack of clarity, transparency, and communication.</p> <p>Support the delivery of the NS Objectives A and E</p>	<p>actively engage with officers and elected members alike.</p> <p>It is recommended that each RMA produce a briefing note or learning material clearly explaining their policy in this area. This material should be shared with other RMAs and the public.</p> <p>It is recommended that a legal led exercise should also be undertaken with the objective of identifying potential improvements, either through clarity and/or more efficient delivery by changing current permissive powers and duties, with due consideration given to case law;</p> <ul style="list-style-type: none"> • To consider case law and the pros/cons of changing anything to either a permissive power or duty • To consider current permissive powers and duties and the pros/cons of making changes to these
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Appendix D – Focus Area - Adaptation and Resilience – Detailed Review

Table 4

Issue/Problem to 'Fix'- Level 1: Different distribution of RMA powers around the coast between CPA 1949 & FWMA

Issue/Problem to 'Fix'- Level 2: CPA1949 is framed around erosion whereas we now need to deliver climate change adaptation

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
AR1	The different distribution of powers are not aligned with delivering climate change adaptation around the coast	<p>Fairbourne Learning Project report, 2019 –</p> <ul style="list-style-type: none"> Organisations involved included PSB adaptation sub committee, local authority, NRW, Welsh Government plus utilities/infrastructure providers. Require clear accountability and capability (technical and resource) to develop a masterplan and engage with the community. Risk to continuity of knowledge in relying on a small numbers of highly informed individuals, potentially within organisations for whom this work might only represent a small component of their overall responsibilities <p>Local Authority feedback on Newgale 28/4/21 –</p> <ul style="list-style-type: none"> Poor community knowledge of SMPs. Large resource (time) 	Coast Protection Act 1949 FWMA (Including National FCERM Strategy)	<p>All Wales RMAs</p> <ul style="list-style-type: none"> Clarity of roles & accountability Develop capability 	<p>6) Obtain legal advice on benefits, viability and scope of consolidation of the CPA 1949 and FWMA.</p> <p>7) Consider within this the scope for clarity of roles in managing coastal adaptation in particular.</p> <p>8) Consider benefit in the identification or creation of a single body or team or ringfenced resources to coordinate and implement long term climate change adaption policy, and masterplan working across local authority boundaries. Perhaps sitting in WG or WLGA? Having the accountability and capability (technical and resource) to develop a masterplan and engage with the community in a consistent way. This could be a new body, but more likely</p>

		<p>requirement to communicate issues and solutions to the community.</p> <ul style="list-style-type: none"> • Lack of knowledge of community on land owner rights. • Often a knee jerk reaction from local AMs/MPs against adaptation (onus on protection at all costs). • Nervousness around adaption/managed realignment where blight is an issue and lack of clarity as to how to address. • As adaption often involves moving infrastructure/community/business there is not a clear traditional work programme that it fits into. • CPO processes are geared towards traditional road schemes and not conducive to adaptation. • Process to update SMPs is not straightforward if community engagement identifies exceptional issues <p>Understanding effective flood and coastal erosion risk governance in England and Wales Nov 21</p> <ul style="list-style-type: none"> • Responsibilities for coastal adaptation are obscure and appear to be slipping through the gaps created by siloed governance. The lack of clarity has implications for holding actors to account. • There was some concern that collaboration and partnership working could potentially dilute 			<p>formed from existing RMA's or development of existing non-funded bodies such as the Wales Coastal Group Forum. Team would also deliver coastal adaptation projects in Wales. Would take pressure off local authorities.</p> <p>9) Consider opportunity for creation of Coastal Change Management Areas linked to Local Plans, as used in England or similar.</p>
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		<p>accountability and blur the boundaries of responsibility. Responsibilities (and associated liabilities) need to be clear.</p> <ul style="list-style-type: none"> • There is a lack of awareness of SMPs and poor accessibility to those outside of FCERM. • Whilst pragmatic, the Welsh National FCERM Strategy arguably lacks long-term ambition, with many measures focused on 2021/22. Adaptation is not an explicit objective in the revised strategy and Welsh Government has been criticised for lacking a sense of urgency to address adaptation challenges. • Main actors within FCERM are regulated or overseen by different areas of government, with different (sometimes competing) agendas and priorities, which can make cross-sectoral integration difficult. • There is scope to strengthen the role of Regional Flood Groups and their ability to support strategic activities in FCERM, as well as linking FCERM with wider regional agendas (such as economic growth: WLGA, 2018). • Research suggests that Public Service Boards are not yet fulfilling their potential when it comes to connecting FCERM with other local initiatives. There is a need to increase awareness of the wide range of wellbeing benefits attached to FCERM activities, both 			
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		<p>within the FCERM community and beyond (such as push and pull messaging, as recommended by Alexander and others, 2019)</p> <ul style="list-style-type: none"> • The complexity and confusion surrounding roles and responsibilities has continued to be raised by scrutiny bodies in England and Wales. This concern was also voiced by some interviewees, alongside calls for a legislative review (including the Coast Protection Act 1949 and the Flood and Water Management Act 2010) • Interviewees emphasised the need to clarify and establish the legal remit of roles and responsibilities pertaining to climate change adaptation, noting that governance for adaptation is highly fragmented and unclear • In some situations, there is a reported mismatch between those who have a formal role/responsibility and those who have the capacity and capability to act (especially at the local level) • Certain limitations have been observed with regards to Regional Flood Groups in relation to their non-statutory nature, the lack of seniority in members and 'inability of current members to make corporate commitments', which mean the groups often lack strategic direction (WLGA, 2018: 18) 			
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Issue/Problem to 'Fix'- Level 1: Conflicting legislation as a barrier to delivering adaptation

Issue/Problem to 'Fix'- Level 2: In particular around the coast

Issue Refn	Issue/Problem to 'Fix'- Level 3	Evidence	Related Legislation	Benefits	Recommendations
AR3	In particular Public Rights of Way and Highways Act which were not originally developed to be aligned with climate change adaptation around the coast	<ul style="list-style-type: none"> • Amroth TRO • Swanbridge NAI/access • Newgale road alternative – project to realign highway away from an area of coastal change has been facilitated / progress via Highway Authority under powers of Highways Act (funded by WG Resilient Roads programme) • Cwm Ivy – Local Authority (Swansea) has an absolute duty to maintain POW – cost or time no mitigation factor. POW are on a Definitive Map and protected by law. 2 ways to remove: Extinguishment Order or Diversion Order (section 116-118 of the Highway Act). Extinguishment Orders can only be used in very specific circumstances i.e. when it can be provide the POW is not used. Diversion Order can only be used if 	Public Rights of Way Act 1990 Highways Act 1980 CROW Act 1991	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Create a resourced adaptation body or team that have the experience, capability and resource to deliver coastal adaptation projects (link to AR1 recommendation). • A) Seek legal advice to understand the latest how this law applies when a POW is lost due to natural processes and/or climate change. B) If above task indicated a review of this law was assist climate change adaptation, then pass recommends to the Law Commission for their consideration. • Adaptation body or team to undertake a GIS analysis of where SMP Managed Realignment policies and POW are in close proximity to understand extent of conflict in coastal areas of Wales (link to AR1 recommendation).

		<p>replacement route provides “same enjoyment” and “length”. Inspectorate to decide if this is met. On coastal realignment, meeting these criteria is often very challenging but its setting.</p> <ul style="list-style-type: none"> • Anyone can serve a Section 56 order to get a POW reinstated. • The leading case is Sandgate UDC v Kent CC (1895-99). The following extracts from the judgement are perhaps particularly pertinent (footpaths are highways in the same way as “roads” so the principles apply): “Is it common sense to say that where the obligation is to maintain the road and keep it in repair, you can by neglect, allow that duty to be so disregarded that in time the road may be washed away, so that your liability or obligation ceases? Such a proposition is in my mind absolutely monstrous. The obligation...is absolute, that they must keep in repair the roads in their parish. Can anything be more clear than this?” And further: “You cannot for reasons of public policy which are obvious 			
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		<p>enough, allow the roads to get out of repair. The obligation has always been held to be absolute and everlasting, and you cannot get rid of it except by statute.”</p> <ul style="list-style-type: none"> • Other example: Donnernook Donna Nook Managed Realignment Conservation Case RSPB – Initially refused planning permission due to loss of G1/2 agricultural land (local policy) and as SMP was not adopted by council. Overturned at appeal, when the local plan was abolished and SMP adopted. <p>Diverted path of setback defence had to be constructed and walked by Inspector before the old one could be Diverted. “The managed realignment has now been created but issues with diverting a footpath have held up breaching of the flood bank to allow the site to flood.” EA appealed to Department of Transport and then via Public Inquiry to SoS who eventually approved with amendments Your Ref: (kingschambers.com) “He is therefore of the view that</p>			
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		<p>only a 345 metre length of footpath no. 18 is needed to be stopped up rather than the proposed 2,736 metres. The Secretary of State notes</p> <p>from the Inspector's comments that this would create two cul-de-sacs, however, this</p> <p>would enable access to be maintained for those who wish to access the beach and</p> <p>local habitats, whilst at the same time enabling the development to proceed as per the planning permission." Published costs of this process are £2mil.</p> <ul style="list-style-type: none"> • Land change can result in failure under FWMA "incidental flooding" duty of care. • Land change can result in breach of other legal agreement such as Management agreement for conservation (as in case between NT and NRW at Cwm Ivy), IDD (legal agreement to drain land), impacts to Agri- 			
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		<p>environmental Scheme agreements.</p> <ul style="list-style-type: none"> • Stat Powers of other – i.e. Gas Undertakers to access their assets • Landownership complicated if land also has shooting/mineral or fishing right separate to the freeholder. • Public safety – are these safe? • Waste – cost of disposal is prohibitive <p>National strategy focus people and property and not infrastructure.</p> <p>Note that draft Coastal Adaptation Guidance Wales states that PROW legislation change may be a future solution.</p>			
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Issue Refn	Issue/Problem to 'Fix'- Level 1	Evidence	Related Legislation	Benefits	Recommendations
AR5	Limitations of market led building insurance means that properties are not made more resilient to flooding following an event (incorporates AR6)	Leads to repeat incidents and greater long term costs and disruption.	<ul style="list-style-type: none"> • Are amendments needed to the regulation of the insurance industry in Wales, or in Wales and England • Building Regulations 	<p>All Wales</p> <ul style="list-style-type: none"> • Increase resilience, 'build back better' 	<ul style="list-style-type: none"> • WG to influence insurance industry via Flood Re on standards being proposed by the Building Back Better initiative, with a timescale for roll out in Wales. • If the above is not implemented satisfactorily, commission review of legislative options for implementation.

AR8	Building Regulations are inadequate in requiring properties to be flood resilient	Very few properties are flood resilient in areas at risk of flooding	Building Regulations	All Wales <ul style="list-style-type: none"> • Improve resilience of new housing stock 	<ul style="list-style-type: none"> • Change to Building Regulations to mandate flood resilience on new houses where permission is granted in flood risk areas e.g. defended areas or strategic urban regeneration.
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Appendix E – Summary of Consultation Response

A final version of the draft report was issued for consultation for a period of three weeks between the 8th and 29th of July 2022.

The organisations consulted upon include: FCEC members, Regional Directors, Regional Groups, NRW, the Chartership Institute of Water and Environmental Management (CIWEM), the Institution of Civil Engineers (ICE) and the Royal Town Planning Institute (RTPI).

A number of responses were received from FCEC members, in addition to the South East Wales Regional Group (Caerphilly County Borough Council), North Wales Regional Group (Gwynedd Council), NRW Committee, ICE and RTPI.

Those that responded to the consultation demonstrated a general support for the recommendations and proposals outlined within the draft report. A number of issues were raised outside of the context of the report. These issues have been passed onto members of the Sub-Committee for future consideration and discussion.

All consultation responses were considered for the final version of the report.

Appendix F - Guide to Acronyms

CPA - Coastal Protection Act

CIWEM - Chartered Institute of Water and Environmental Management

CJC – Corporate Joint Committee

DEFRA – Department for Environment, Food and Rural Affairs

FCEC – Flood and Coastal Erosion Committee

FCERM – Flood and Coastal Erosion Risk Management

FWMA – Flood and Water Management Act

LC – Law Commission

ICE – Institution of Civil Engineers

NFM – Natural Flood Management

NRW – Natural Resources Wales

PLSC - Policy and Legislation Sub-Committee

PROW – Public Right of Way

PSB – Public Service Board

RMA – Risk Management Authority

RTPI – Royal Town Planning Institute

SuDS – Sustainable Urban Drainage Systems

SMP – Shoreline Management Plan

WG – Welsh Government