



British Property Federation response to:

DEFRA's consultation on 'The Flood Reinsurance Scheme - Regulations'

September 2014

1. The British Property Federation (BPF) is pleased to respond to the consultation by the Department for Environment Food and Rural Affairs on the regulations pertaining to the Flood Reinsurance scheme (flood Re).
2. The British Property Federation is the voice of property in the UK, representing companies, owning, managing and investing in property. This includes a broad range of businesses comprising commercial and residential property owners, housing associations and financial institutions including pension funds, corporate property owners as well as a number of regional landlord associations. A list of our largest members can be found at the following link: http://www.bpf.org.uk/en/members/our_members.php
3. This response will not directly address the individual questions that have been posed in the consultation but will respond to a number of key issues which have been raised by our members with regards to the regulations. We would be delighted to provide any further information or clarification on any aspect of our response on request. In the first instance, please contact Stephanie Pollitt, Assistant Director (Real Estate), Tel: 0207 802 0104 or Email: spollitt@bpf.org.uk
4. Since our initial response to DEFRA's consultation on Flood Reinsurance (Flood Re), we have worked with a number of stakeholders including the Association of Residential Managing Agents, the Council of Mortgage Lenders and the Leasehold Knowledge Partnership to help alert government and the insurance industry of the potentially damaging effects of the proposed property exclusions. This response encompasses a number of views from these and other organisations.
5. Whilst we appreciate that Flood Re's primary focus is to help provide affordable flood insurance to householders, we have been somewhat dismayed that the leasehold and private rented sector have been excluded purely on the basis of the type of insurance cover they obtain. Given that insurance policies for these sectors is deemed commercial, Government and the insurance industry have seen fit to exclude these properties from the

scope of Flood Re on the perceived basis that they are able to find competitive cover within the market. However, we have pointed out that the issue is not so clear cut and owners of these properties are effectively being discriminated against because of the type of property they own. The distinction between “commercial” businesses as defined by the insurers seems to be completely arbitrary and at odds with what the general public might view as “residential” or “domestic” business. The general public would commonly consider that if an underlying asset being insured is wholly residential, then the insurance policy should in turn be a residential arrangement, yet this is not reflected by insurers and their policies.

6. The property industry has, over recent months, experienced much uncertainty over whether flood insurance would continue to remain available and affordable following the expiry of the Statement of Principles last year and whilst we were pleased to see that the ABI’s members had agreed to continue their obligations to insure people from flood beyond June 2013; this has somewhat resulted in a double edged sword for the purposes of evidence. Government and the ABI have remained resolute that excluded properties will not experience problems accessing affordable insurance based on the fact that there are no current indications of a problem. However, as we have repeatedly pointed out, the problem cannot and will not manifest itself until the Statement of Principles ceases and Flood Re begins, by which point, it will be too late for these sectors. Furthermore, we have grave concerns regarding the literal cliff edge that these excluded properties will face when they come to renew or buy insurance. Very little work has gone into understanding these issues and whilst we agree that it is important for Flood Re to be given the attention it needs to work, we are conscious that the excluded groups have been very much left to their own devices.

Definitions

7. We agree that the scheme document should contain detailed definitions pertaining to home insurance and dwelling. However, we believe that the definitions need to be clarified in order that those properties which have been excluded from the scheme are not included for the purposes of collecting a levy. We are concerned that the definition of a dwelling is far too broad and all encompassing and therefore should be clarified to ensure that, if leasehold and private rented sector properties are to be excluded from the protection of Flood Re, that they are also excluded from paying the costs of the scheme.
8. We also acknowledge the inclusion of leasehold properties of three units or fewer within the scope of Flood Re and we are pleased to see that they have been identified within the regulations. We are still concerned that the figure of three units is somewhat arbitrary and neither the insurance industry nor Government has been able to confirm how and why this figure has been identified. We therefore have no real understanding as to what extent this concession will have on the industry. Additionally, the concession is further limited by the imposition of a number of restrictions including the requirement for the freeholder to be in residence within the block and the insurance to be purchased by the freeholder. We find these restrictions particularly onerous and believe that because of these, the concession is in danger of having little or no effect for smaller leasehold units.

9. Throughout our engagement with the ABI and DEFRA, we have attempted to assist officials with understanding the finer details of the leasehold industry. This is of particular importance with regards to their insurance policies which must be purchased on a block basis to ensure that the whole of the property and its common parts are insured against risk. In doing so, the type of insurance policy is deemed as commercial rather than domestic and is therefore excluded from scope. We are however confused to see that common hold properties have been added within the regulations as being included. This sends a number of mixed messages as common hold properties are owned and managed by a company known as the common hold association and which all owners of the flats within that common hold block are members. By the very nature of this company arrangement, the insurance will be held as a commercial policy which has been cited as the exact reason why leasehold properties have been excluded from Flood Re.
10. We are not advocating that properties held on a common hold basis are removed from scope but we do feel that these parts of the regulations need to be given further thought to ensure no anomalies such as this exist.
11. One further point that needs to be considered is the geographical scope of Flood Re and its extension to Scotland. Our assumption is that Flood Re will also apply to properties in Scotland and if this is indeed the case, it should be noted that the terminology varies with regards to Scottish property. For example, leasehold properties are referred to as tenements and therefore it may be prudent to include this within the definitions to ensure absolute clarity.

Monitoring of excluded properties

12. We are pleased to see that Government has made a commitment to undertake monitoring of those properties which are excluded. We have been conscious that throughout this process there has been a distinct lack of understanding with regards to how the excluded leasehold and private rented sector will be affected. Despite research being undertaken by BIBA into the affordability of insurance for these sectors, the insurance industry and Government has resisted calls to re-examine the exclusions. We appreciate that Government may prefer to commission and undertake its own research in order that it may monitor the parts of the industry that it specifically needs to understand, however, the research undertaken by BIBA was originally commissioned by Downing Street and we find it remarkable that it is now deemed not fit for purpose.
13. Despite this, we are encouraged that DEFRA has committed to understanding how the leasehold and private rented sectors will fair with regards to accessing affordable insurance but our concerns remain around the wording around how monitoring and assessment of the results will be undertaken. We have voiced these concerns to DEFRA already particularly with regards to the use of the word 'systemic'¹ as we feel that it is too rigid and will allow

¹ 'Water Bill: Part 4 – Flood Insurance. Scope of Flood Re' Department for Environment, Food and Rural Affairs, March 2014

localised affordability issues to be overlooked. By its very nature flooding will hit some areas harder than others and therefore high insurance costs and premiums will vary across the country. The issue will therefore never be systemic or widespread but contained to specific areas. We have been assured by officials that the wording should not be taken too literally, but despite this assurance we would still prefer to see a softening of the wording and greater clarification on the criteria which will act as the trigger point for action.

14. With regards to the trigger points for action we would be keen to stay engaged and work with DEFRA and the ABI at such a time when the monitoring has been completed and an assessment of that work undertaken. Further to this, we would like to see a timetable of monitoring work and when the results are due to be scrutinised and published so that we may be of as much assistance as possible.
15. Finally, there does not appear to be any mechanism to allow the Flood Reinsurance Scheme to be amended to include new categories of property, if this is deemed necessary at a later date. Without this, the Government's commitment to monitoring the effects on leaseholder properties is an empty one. The consultation document states that once designated, the Scheme document cannot be amended² indicating that, should any changes be needed; a new Scheme document would have to be designated through regulations, which will presumably require affirmative resolution, just like the original. We feel this would be rather cumbersome and time consuming and it may be prudent to allow some mechanism to include new properties if required, particularly if the Government's policy objectives were not met.

Stephanie Pollitt
Assistant Director (Real Estate)

² 'The Flood Reinsurance Scheme – Regulations' Department for Environment, Food and Rural Affairs, July 2014