Flood and Water Management Act 2010

2010 CHAPTER 29

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An Act to make provision about water, including provision about the management of risks in connection with flooding and coastal erosion.

[8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent

Preamble: England, Wales

PART 1

FLOOD AND COASTAL EROSION RISK MANAGEMENT

1. Key concepts and definitions

1 “Flood” and “coastal erosion”

(1) “Flood” includes any case where land not normally covered by water becomes covered by water.

(2) It does not matter for the purpose of subsection (1) whether a flood is caused by—

(a) heavy rainfall,

(b) a river overflowing or its banks being breached,

(c) a dam overflowing or being breached,

(d) tidal waters,

(e) groundwater, or
(e) anything else (including any combination of factors).

(3) But “flood” does not include—
   (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system, or
   (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991).

(4) “Coastal erosion” means the erosion of the coast of any part of England or Wales.

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**Commencement**

Pt 1 s. 1(1)-(4): September 1, 2010 for the purpose of the exercise of power specified in 2010 c.29 s.4(2)(f); October 1, 2010 otherwise (2010 c. 29 Pt 1 s. 4(2)(f); SI 2010/2169 art. 3(2)(a), art. 4; SI 2010/2169 Sch. 1 para. 1)

**Extent**

Pt 1 s. 1(1)-(4): England, Wales

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**2 “Risk”**

(1) “Risk” means a risk in respect of an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.

(2) “Flood risk” means a risk in respect of flood.

(3) “Coastal erosion risk” means a risk in respect of coastal erosion.

(4) In each case the potential harmful consequences to be considered in assessing risk include, in particular, consequences for—
   (a) human health,
   (b) the social and economic welfare of individuals and communities,
   (c) infrastructure, and
   (d) the environment (including cultural heritage).

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**Commencement**

Pt 1 s. 2(1)-(4)(d): September 1, 2010 for the purpose of the exercise of power specified in 2010 c.29 s.4(2)(f); October 1, 2010 otherwise (2010 c. 29 Pt 1 s. 4(2)(f); SI 2010/2169 art. 3(2)(b), art. 4; SI 2010/2169 Sch. 1 para. 1)

**Extent**

Pt 1 s. 2(1)-(4)(d): England, Wales
3 “Risk management”

(1) “Risk management” means anything done for the purpose of—
   (a) analysing a risk,
   (b) assessing a risk,
   (c) reducing a risk,
   (d) reducing a component in the assessment of a risk,
   (e) altering the balance of factors combined in assessing a risk, or
   (f) otherwise taking action in respect of a risk or a factor relevant to the assessment of a risk (including action for the purpose of flood defence).

(2) In particular, risk management includes things done—
   (a) that increase the probability of an event but reduce or alter its potential consequences, or
   (b) that increase the probability of an event occurring at one time or in one place but reduce the probability of it occurring at another time or in another place.

(3) The following are examples of things that might be done in the course of flood or coastal erosion risk management—
   (a) planning, erecting, maintaining, altering or removing buildings or other structures (including structures built or used for flood defence purposes),
   (b) maintaining or restoring natural processes,
   (c) reducing or increasing the level of water in a place (whether or not it results in a change to the water level in another place),
   (d) carrying out work in respect of a river or other watercourse (such as taking things out of it or supporting or diverting the banks),
   (e) moving things onto, off or around a beach, or carrying out other works in respect of the shoreline,
   (f) using statutory or other powers to permit, require, restrict or prevent activities,
   (g) making arrangements for financial or other support for action taken by persons in respect of a risk of, or in preparing to manage the consequences of, flooding or coastal erosion,
   (h) making arrangements for forecasting and warning,
   (i) preparing, gathering and disseminating maps, plans, surveys and other information, and
   (j) providing education and giving guidance (including, for example, guidance on changes to land management).

Commencement

Pt 1 s. 3(1)-(3)(j): September 1, 2010 for the purpose of the exercise of power specified in 2010 c.29 s.4(2)(f); October 1, 2010 otherwise (2010 c. 29 Pt 1 s. 4(2)(f); SI 2010/2169 art. 3(2)(c), art. 4; SI 2010/2169 Sch. 1 para. 1)

Extent

Pt 1 s. 3(1)-(3)(j): England, Wales
4  “Flood risk management function”

(1) “Flood risk management function” means a function listed in subsection (2) which may be exercised by a risk management authority for a purpose connected with flood risk management.

(2) The functions are—
   (a) a function under this Part,
   (b) a function under section 159 or 160 of the Water Resources Act 1991,
   (c) a flood defence function within the meaning of section 221 of that Act,
   (d) a function under the Land Drainage Act 1991,
   (e) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and
   (f) any other function, under an enactment, specified for the purposes of this section by order made by the Minister.

(3) In this section and section 5“the Minister” means—
   (a) the Secretary of State in relation to flood and coastal erosion risk management in England, and
   (b) the Welsh Ministers in relation to flood and coastal erosion risk management in Wales.

Commencement
Pt 1 s. 4(1), (2)(a)-(2)(e): October 1, 2010  (SI 2010/2169 art. 4, Sch. 1 para. 1)
Pt 1 s. 4(2): September 1, 2010
Pt 1 s. 4(2)(f): September 1, 2010 for the purpose to provide power for the Minister as defined in 2010 c.29 s.4(3); October 1, 2010 otherwise  (2010 c. 29 Pt 1 s. 4(3); SI 2010/2169 art. 3(1), art. 4; SI 2010/2169 Sch. 1 para. 1)
Pt 1 s. 4(3)-(3)(b): September 1, 2010 for the purpose to provide power for the Minister to make an order under 2010 c.29 s.4(2)(f); October 1, 2010 otherwise  (2010 c. 29 Pt 1 s. 4(2)(f); SI 2010/2169 art. 3(1), art. 4; SI 2010/2169 Sch. 1 para. 1)

Extent
Pt 1 s. 4(1)-(3)(b): England, Wales

5  “Coastal erosion risk management function”

(1) “Coastal erosion risk management function” means a function listed in subsection (2) which may be exercised by a risk management authority for a purpose connected with coastal erosion.

(2) The functions are—
   (a) a function under this Part,
   (b) a function under the Coast Protection Act 1949, and
   (c) any other function, under an enactment, specified for the purposes of this section by order made by the Minister.
6 Other definitions

(1) “Main river” has the meaning given by section 113 of the Water Resources Act 1991.

(2) “Watercourse” has the meaning given by section 72(1) of the Land Drainage Act 1991.

(3) “Ordinary watercourse” means a watercourse that does not form part of a main river.

(4) “Groundwater” means all water which is below the surface of the ground and in direct contact with the ground or subsoil.

(5) “Surface runoff” means rainwater (including snow and other precipitation) which—
   (a) is on the surface of the ground (whether or not it is moving), and
   (b) has not entered a watercourse, drainage system or public sewer.

(6) In subsection (5)(b)—
   (a) the reference to a watercourse includes a reference to a lake, pond or other area of water which flows into a watercourse, and
   (b) “drainage system” has the meaning given by paragraph 1 of Schedule 3.

(7) “Lead local flood authority” in relation to an area in England means—
   (a) the unitary authority for the area, or
   (b) if there is no unitary authority, the county council for the area.

(8) “Unitary authority” means—
   (a) the council of a county for which there are no district councils;
   (b) the council of a district in an area for which there is no county council;
   (c) the council of a London borough;
   (d) the Common Council of the City of London;
   (e) the Council of the Isles of Scilly.

(9) “Lead local flood authority” in relation to an area in Wales means—
   (a) the county council for the area;
   (b) the county borough council for the area.

(10) “Internal drainage board” has the same meaning as in section 1 of the Land Drainage Act 1991.

(11) “Water company” means […] —
   (a) [a company which holds ] an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991, or
   (b) [a person who holds ] a licence under Chapter 1A of Part 2 of that Act.
(12) “Highway authority” has the meaning given by section 1 of the Highways Act 1980.

(13) “Risk management authority” means—

(a) the Environment Agency,

[(aa) the Natural Resources Body for Wales,]

(b) a lead local flood authority,

(c) a district council for an area for which there is no unitary authority,

(d) an internal drainage board,

(e) a water company, and

(f) a highway authority.

(14) “English risk management authority” means—

(a) the Environment Agency,

(b) a risk management authority within subsection (13)(b), (c) or (f) for an area that is wholly in England,

(c) an internal drainage board for an internal drainage district that is wholly or mainly in England, and

(d) a water company that exercises functions in relation to an area in England.

(15) “Welsh risk management authority” means—

(a) [the Natural Resources Body for Wales],

(b) a risk management authority within subsection (13)(b), (c) or (f) for an area that is wholly in Wales,

(c) an internal drainage board for an internal drainage district that is wholly or mainly in Wales, and

(d) a water company that exercises functions in relation to an area in Wales.

(16) “Cross-border internal drainage board” means an internal drainage board for an internal drainage district that is partly in England and partly in Wales.

Notes

1 Words repealed by Water Act 2014 c. 21 Sch.7 para.144(a) (April 1, 2016 as SI 2016/465 art.2(m) and Sch.1 para.1(ff) subject to transitional provisions specified in SI 2016/465 art.4 and Sch.2 para.3(f))

2 Words inserted by Water Act 2014 c. 21 Sch.7 para.144(b) (April 1, 2016 as SI 2016/465 art.2(m) and Sch.1 para.1(ff) subject to transitional provisions specified in SI 2016/465 art.4 and Sch.2 para.3(f))

3 Words inserted by Water Act 2014 c. 21 Sch.7 para.144(c) (April 1, 2016 as SI 2016/465 art.2(m) and Sch.1 para.1(ff) subject to transitional provisions specified in SI 2016/465 art.4 and Sch.2 para.3(f))

4 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.452(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

5 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.452(3) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending

Pt 1 s. 6(17): added by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(2) (date to be appointed)

Commencement

Pt 1 s. 6(1)-16: September 1, 2010 for the purpose of the exercise of power specified in 2010 c.29 s.4(2)(f); October 1, 2010 otherwise (2010 c. 29 Pt 1 s. 4(2)(f); SI 2010/2169 art. 3(2)(d), art. 4; SI 2010/2169 Sch. 1 para. 1)
2. Strategies, co-operation and funding

7 National flood and coastal erosion risk management strategy: England

(1) The Environment Agency must develop, maintain, apply and monitor a strategy for flood and coastal erosion risk management in England (a “national flood and coastal erosion risk management strategy”).

(2) The strategy must specify—
   (a) the English risk management authorities,
   (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to England,
   (c) the objectives for managing flood and coastal erosion risk,
   (d) the measures proposed to achieve those objectives,
   (e) how and when the measures are to be implemented,
   (f) the costs and benefits of those measures, and how they are to be paid for,
   (g) the assessment of flood and coastal erosion risk for the purpose of the strategy,
   (h) how and when the strategy is to be reviewed,
   (i) the current and predicted impact of climate change on flood and coastal erosion risk management, and
   (j) how the strategy contributes towards the achievement of wider environmental objectives.

(3) The Agency must consult the following about the national flood and coastal erosion risk management strategy—
   (a) the English risk management authorities,
   (b) the public,
   (c) so far as the strategy may affect flood and coastal erosion risk management in Wales, the Welsh Ministers, and
   (d) so far as the strategy may affect flood and coastal erosion risk management in Scotland, the Scottish Ministers.

(4) The Agency must publish a summary of the strategy.

(5) The Agency may issue guidance about the application of the strategy.

(6) The Agency may, in particular, issue guidance about how English risk management authorities are to comply with the duties under sections 13(1) and 14.

(7) The Agency must submit a draft of the strategy and any guidance under this section to the Secretary of State for review.

(8) On a review, the Secretary of State may—
   (a) approve the draft strategy or guidance, with or without modification, or
(b) reject it.

(9) The Secretary of State must lay any approved strategy or guidance before Parliament; and it may not be issued if during the period of 40 days beginning with the date of laying (ignoring any periods for which Parliament is dissolved or prorogued or for which both Houses are adjourned for more than 4 days) either House of Parliament resolves that it should not be issued (in that form).

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**Commencement**

Pt 1 s. 7(1)-(9): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

**Extent**

Pt 1 s. 7(1)-(9): England, Wales

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8 National flood and coastal erosion risk management strategy: Wales

(1) The Welsh Ministers must develop, maintain and apply a strategy for flood and coastal erosion risk management in Wales (a “national flood and coastal erosion risk management strategy”).

(2) The strategy must specify—
   (a) the Welsh risk management authorities,
   (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to Wales,
   (c) the objectives for managing flood and coastal erosion risk,
   (d) the measures proposed to achieve those objectives,
   (e) how and when the measures are to be implemented,
   (f) the costs and benefits of those measures, and how they are to be paid for,
   (g) the assessment of flood and coastal erosion risk for the purpose of the strategy,
   (h) how and when the strategy is to be reviewed,
   (i) the current and predicted impact of climate change on flood and coastal erosion risk management, and
   (j) how the strategy contributes towards the achievement of wider environmental objectives.

(3) The Welsh Ministers must consult the Secretary of State about the national flood and coastal erosion risk management strategy, so far as the strategy may affect flood and coastal erosion risk management in England.

(4) The Welsh Ministers must publish a summary of the strategy.

(5) The Welsh Ministers may issue guidance about the application of the strategy.

(6) The Welsh Ministers may, in particular, issue guidance about how Welsh risk management authorities are to comply with the duties under sections 13(1) and 14.

(7) The Welsh Ministers must lay any guidance in draft before the National Assembly for Wales; and it may not be issued if during the period of 40 days beginning with the date of laying (ignoring any periods for which the National Assembly is dissolved or is in recess for more than 4 days) the National Assembly resolves that it should not be issued (in that form).

(8) The Welsh Ministers must lay the strategy before the National Assembly for Wales.
9 Local flood risk management strategies: England

(1) A lead local flood authority for an area in England must develop, maintain, apply and monitor a strategy for local flood risk management in its area (a “local flood risk management strategy”).

(2) In subsection (1) “local flood risk” means flood risk from—
   (a) surface runoff,
   (b) groundwater, and
   (c) ordinary watercourses.

(3) In subsection (2)(c) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse.

(4) The strategy must specify—
   (a) the risk management authorities in the authority's area,
   (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area,
   (c) the objectives for managing local flood risk (including any objectives included in the authority's flood risk management plan prepared in accordance with the Flood Risk Regulations 2009),
   (d) the measures proposed to achieve those objectives,
   (e) how and when the measures are expected to be implemented,
   (f) the costs and benefits of those measures, and how they are to be paid for,
   (g) the assessment of local flood risk for the purpose of the strategy,
   (h) how and when the strategy is to be reviewed, and
   (i) how the strategy contributes to the achievement of wider environmental objectives.

(5) The strategy must be consistent with the national flood and coastal erosion risk management strategy for England under section 7.

(6) A lead local flood authority must consult the following about its local flood risk management strategy—
   (a) risk management authorities that may be affected by the strategy (including risk management authorities in Wales), and
   (b) the public.

(7) A lead local flood authority must publish a summary of its local flood risk management strategy (including guidance about the availability of relevant information).

(8) A lead local flood authority may issue guidance about the application of the local flood risk management strategy in its area.
(9) A lead local flood authority must have regard to any guidance issued by the Secretary of State about—
   (a) the local flood risk management strategy, and
   (b) guidance under subsection (8).

Commencement
Pt 1 s. 9(1)-(9)(b): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 1 s. 9(1)-(9)(b): England, Wales

10 Local flood risk management strategies: Wales

(1) A lead local flood authority for an area in Wales must develop, maintain, apply and monitor a strategy for local flood risk management its area (a “local flood risk management strategy”).

(2) In subsection (1) “local flood risk” means flood risk from—
   (a) surface runoff,
   (b) groundwater, and
   (c) ordinary watercourses.

(3) In subsection (2)(c) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse.

(4) The strategy must specify—
   (a) the risk management authorities in the authority's area,
   (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area,
   (c) the objectives for managing local flood risk (including any objectives included in the authority's flood risk management plan prepared in accordance with the Flood Risk Regulations 2009),
   (d) the measures proposed to achieve those objectives,
   (e) how and when the measures are expected to be implemented,
   (f) the costs and benefits of those measures, and how they are to be paid for,
   (g) the assessment of local flood risk for the purpose of the strategy,
   (h) how and when the strategy is to be reviewed, and
   (i) how the strategy contributes to the achievement of wider environmental objectives.

(5) The strategy must be consistent with the national flood and coastal erosion risk management strategy for Wales under section 8.

(6) A lead local flood authority must consult the following about its local flood risk management strategy—
   (a) risk management authorities that may be affected by the strategy (including risk management authorities in England), and
   (b) the public.
(7) A lead local flood authority must publish a summary of its local flood risk management strategy (including guidance about the availability of relevant information).

(8) A lead local flood authority may issue guidance about the application of the local flood risk management strategy in its area.

(9) A lead local flood authority must submit a draft of the strategy and any guidance under this section to the Welsh Ministers for review.

(10) On a review, the Welsh Ministers may—
    (a) approve the draft strategy or guidance, with or without modification, or
    (b) reject it.

Commencement
Pt 1 s. 10(1)-(10)(b): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 1 s. 10(1)-(10)(b): England, Wales

11 Effect of national and local strategies: England

(1) In exercising its flood and coastal erosion risk management functions, an English risk management authority must—
    (a) act in a manner which is consistent with the national strategy and guidance, and
    (b) except in the case of a water company, act in a manner which is consistent with the local strategies and guidance.

(2) But—
    (a) subsection (1) does not apply in relation to the function of the Environment Agency under section 7(1);
    (b) the Agency must have regard to the national and local strategies and guidance in exercising that function.

(3) In exercising a flood or coastal erosion risk management function in relation to an area in England, a water company must have regard to the local strategies and guidance.

(4) In exercising any other function in a manner which may affect a flood risk or coastal erosion risk, an English risk management authority must have regard to the national and local strategies and guidance.

(5) A cross-border internal drainage board for an internal drainage district that is mainly in Wales must—
    (a) act in a manner which is consistent with the local strategies and guidance, and
    (b) have regard to the national strategy and guidance.

(6) Subsection (5) does not affect the duties of a cross-border internal drainage board under section 12.
[(6A) In exercising a function in a manner which may affect a flood risk or coastal erosion risk in England, the Natural Resources Body for Wales must have regard to the national and local strategies and guidance. ]¹

(7) The Secretary of State may by order require a specified person to have regard to the national and local strategies and guidance in exercising a statutory function which may affect a flood risk or coastal erosion risk in England.

(8) In this section—

(a) references to the national strategy and guidance are references to (i) the national flood and coastal erosion risk management strategy under section 7, and (ii) any guidance on the national strategy issued by the Environment Agency, and

(b) references to the local strategies and guidance are references to (i) any local flood risk management strategy under section 9 for the relevant area, and (ii) any guidance on a local strategy issued by a lead local flood authority.

(9) In subsection (7) “statutory function” means a function conferred by or under an enactment.

Notes

¹ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.453 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 1 s. 11(1)-(9): July 19, 2011 in relation to England; November 1, 2011 otherwise (SI 2011/1770 art. 3(a); SI 2011/2204 art. 4(a))

Extent

Pt 1 s. 11(1)-(9): England, Wales

Law In Force

12 Effect of national and local strategies: Wales

(1) In exercising its flood and coastal erosion risk management functions, a Welsh risk management authority must—

(a) act in a manner which is consistent with the national strategy and guidance, and

(b) except in the case of a water company, act in a manner which is consistent with the local strategies and guidance.

(2) In exercising a flood or coastal erosion risk management function in relation to an area in Wales, a water company must have regard to the local strategies and guidance.

(3) In exercising any other function in a manner which may affect a flood risk or coastal erosion risk, a Welsh risk management authority must have regard to the national and local strategies and guidance.

(4) A cross-border internal drainage board for an internal drainage district that is mainly in England must—

(a) act in a manner which is consistent with the local strategies and guidance, and

(b) have regard to the national strategy and guidance.
(5) Subsection (4) does not affect the duties of a cross-border internal drainage board under section 11.

[ (5A) In exercising a function in a manner which may affect a flood risk or coastal erosion risk in Wales, the Environment Agency must have regard to the national and local strategies and guidance. ]

(6) The Welsh Ministers may by order require a specified person to have regard to the national and local strategies and guidance in exercising a statutory function which may affect a flood risk or coastal erosion risk in Wales.

(7) In this section—
   (a) references to the national strategy and guidance are references to (i) the national flood and coastal erosion risk management strategy under section 8, and (ii) any guidance on the national strategy issued by the Welsh Ministers, and
   (b) references to the local strategies and guidance are references to (i) any local flood risk management strategy under section 10 for the relevant area, and (ii) any guidance on a local strategy issued by a lead local flood authority.

(8) In subsection (6) “statutory function” means a function conferred by or under an enactment.

Notes

1 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.454 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 1 s. 12(1)-(8): November 1, 2011 (SI 2011/2204 art. 4(b))

Extent

Pt 1 s. 12(1)-(8): England, Wales

13 Co-operation and arrangements

(1) A relevant authority must co-operate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions.

(2) A relevant authority may share information with another relevant authority for the purpose of discharging its duty under subsection (1).

(3) In subsections (1) and (2) “relevant authority” means—
   (a) a risk management authority, and
   (b) the Welsh Ministers.

(4) A risk management authority may arrange for a flood risk management function to be exercised on its behalf by—
   (a) another risk management authority, or
   (b) a navigation authority (within the meaning given by section 219 of the Water Industry Act 1991).
(5) But subsection (4) does not apply in relation to—
   (a) the function of the Environment Agency under section 7(1), or
   (b) the function of a lead local flood authority under section 9(1) or 10(1).

(6) A coast protection authority may, with the appropriate consent, arrange for a person to exercise a coastal erosion risk management function on its behalf.

(7) In subsection (6) the “appropriate consent” means—
   (a) in relation to a coast protection authority in England, the consent of the Environment Agency, and
   (b) in relation to a coast protection authority in Wales, the consent of the Welsh Ministers.

(8) The Environment Agency \[ or the Natural Resources Body for Wales \]^1 may arrange for a coastal erosion risk management function to be exercised on its behalf by—
   (a) a coast protection authority,
   (b) a lead local flood authority, or
   (c) an internal drainage board.

(9) In subsections (4), (6) and (8) a reference to a flood risk management function or a coastal erosion risk management function includes a reference to anything that may be done by a risk management authority for a purpose connected with the exercise of that function.

(10) In this section “coast protection authority” has the meaning given by section 1 of the Coast Protection Act 1949.

Notes

1 Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.455 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 1 s. 13(1)-(10): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent

Pt 1 s. 13(1)-(10): England, Wales

14 Power to request information

(1) An authority listed in subsection (2) may request a person to provide information in connection with the authority’s flood and coastal erosion risk management functions.

(2) The authorities are—
   (a) the Environment Agency, […]\(^1\)
   \([ (aa) the Natural Resources Body for Wales, and ]\(^2\)
   (b) lead local flood authorities.

(3) The Welsh Ministers may request a person to provide information in connection with the function under section 8.

(4) Information requested under subsection (1) or (3) must be provided—
(a) in the form or manner specified in the request, and
(b) within the period specified in the request.

Notes
1 Word repealed by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.456(2)(a) (April 1, 2013: repeal has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
2 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.456(2)(b) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement
Pt 1 s. 14(1)-(4)(b): April 6, 2011 (SI 2011/694 art. 4(1)(a))

Extent
Pt 1 s. 14(1)-(4)(b): England, Wales

15 Civil sanctions

(1) An authority that requests a person (P) to provide information under section 14(1) or (3) may give P an enforcement notice if P fails to comply with the request.

(2) An enforcement notice must—
(a) specify the information requested,
(b) state that the authority may impose a penalty if P fails to provide the information within a specified period, which must be at least 28 days beginning with the date of issue of the notice, and
(c) state that P may make representations to the authority about the notice within that period.

(3) The authority may by penalty notice impose a penalty on P if P fails to provide the specified information in the specified period.

(4) The amount of the penalty—
(a) is to be determined by the authority, but
(b) must not exceed £1000.

(5) In deciding whether to impose a penalty and in determining the amount of a penalty the authority must have regard to—
(a) any representations under subsection (2)(c), and
(b) any partial compliance with the initial request under section 14.

(6) The penalty notice must—
(a) specify the reasons for the decision to impose a penalty,
(b) state a period within which payment must be made, which must be at least 14 days beginning with the date of issue of the notice, and
(c) notify P of the right of appeal under subsection (8).

(7) A penalty is recoverable as a debt.
(8) The Minister must by regulations provide a right of appeal against penalties; and the regulations must—

(a) confer jurisdiction on the Minister, a court or a tribunal, and
(b) make provision about procedure.

(9) The Minister may by order substitute a different amount for the amount specified in subsection (4)(b) to reflect a change in the value of money.

(10) In this section “the Minister” means—

(a) the Secretary of State in relation to penalties issued by—

(i) lead local flood authorities for areas in England, and
(ii) the Environment Agency in respect of a failure to comply with a request in connection with a flood or coastal erosion risk management function in relation to England, and

(b) the Welsh Ministers in relation to penalties issued by—

(i) lead local flood authorities for areas in Wales,
(ii) [the Natural Resources Body for Wales] in respect of a failure to comply with a request in connection with a flood or coastal erosion risk management function in relation to Wales, and
(iii) the Welsh Ministers.

(11) A reference in this section to an authority includes a reference to the Welsh Ministers.

(12) The first sets of regulations under subsection (8) may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and

(b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.457 (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 1 s. 15(1)-(12)(b): January 18, 2011 in relation to the power for the Minister as defined in 2010 c.29 s.15(10) to make regulations under 2010 c.29 s.15(8); April 6, 2011 in relation to Wales otherwise; not yet in force otherwise (SI 2011/95 art. 2(a); SI 2011/694 art. 4(2))

Extent

Pt 1 s. 15(1)-(12)(b): England, Wales

16 Funding

(1) The Environment Agency may make grants in respect of expenditure incurred or expected to be incurred in connection with flood or coastal erosion risk management in England.
(2) The Welsh Ministers may make grants in respect of expenditure incurred or expected to be incurred in connection with flood or coastal erosion risk management in Wales.

(3) A grant may be subject to conditions (including conditions as to repayment and interest).

Commencement
Pt 1 s. 16(1)-(3): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 1 s. 16(1)-(3): England, Wales

17 Levies

(1) The Environment Agency may issue levies to the lead local flood authority for an area [in England]¹ in respect of the Agency's flood and coastal erosion risk management functions in that area.

(1A) The Natural Resources Body for Wales may issue levies to the lead local flood authority for an area in Wales in respect of the Natural Resources Body for Wales' flood and coastal erosion risk management functions in that area. ²

(2) A levy issued under this section shall be issued in accordance with regulations under section 74 of the Local Government Finance Act 1988.

(3) The [Agency and the Natural Resources Body for Wales shall each]³ be treated as a levying body within the meaning of that section.

(4) This section is subject to the requirement in section 23(3) to obtain the consent of the appropriate Regional Flood and Coastal Committee.

Notes
1 Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.458(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
2 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.458(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)
3 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.458(4) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending
Pt 1 s. 17(4): words inserted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(3) (date to be appointed)

Commencement
Pt 1 s. 17(1), (4): April 1, 2011 (SI 2011/694 art. 3(a))
Pt 1 s. 17(2)-(3): October 1, 2010 for the power to make regulations under 1988 c.41 s.74; April 1, 2011 otherwise (1988 c. 41 Pt IV s. 74; 2010 c. 29 Pt 1 s. 17; SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2011/694 art. 3(a))
3. Supplemental powers and duties

18 [Reports about flood and coastal erosion risk management]¹


[1(1A) The Natural Resources Body for Wales must report to the Minister about flood and coastal erosion risk management in Wales.]³

(2) In particular, the report must include information about the application of the national flood and coastal erosion risk management strategies under sections 7 and 8.

(3) The Minister may make regulations about—
   (a) the times or intervals at which a report must be made, and
   (b) the content of a report.

(4) In this section “the Minister” means—
   (a) the Secretary of State in relation to flood and coastal erosion risk management in England, and
   (b) the Welsh Ministers in relation to flood and coastal erosion risk management in Wales.

Notes

¹ Heading substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.459(4) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

² Words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.459(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

³ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.459(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 1 s. 18(1)-(4)(b): July 19, 2011 in relation to England; November 1, 2011 otherwise (SI 2011/1770 art. 3(b); SI 2011/2204 art. 4(c))

Extent

Pt 1 s. 18(1)-(4)(b): England, Wales
Law In Force

19 Local authorities: investigations

(1) On becoming aware of a flood in its area, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate—
   (a) which risk management authorities have relevant flood risk management functions, and
   (b) whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.

(2) Where an authority carries out an investigation under subsection (1) it must—
   (a) publish the results of its investigation, and
   (b) notify any relevant risk management authorities.

Commencement
Pt 1 s. 19(1)-(2)(b): April 6, 2011 (SI 2011/694 art. 4(1)(b))

Extent
Pt 1 s. 19(1)-(2)(b): England, Wales

Law In Force

20 Ministerial directions

(1) The Minister may direct a risk management authority to exercise a flood or coastal erosion risk management function on behalf of another risk management authority (the “defaulting authority”).

(2) The Minister may give a direction under subsection (1) only if satisfied that the defaulting authority—
   (a) has failed to exercise the function, or
   (b) has failed to exercise the function in accordance with the national strategies under sections 7 and 8 or the local strategies under sections 9 and 10.

(3) A direction under subsection (1) may include provision about the recovery of costs of compliance from the defaulting authority.

(4) The Minister must—
   (a) send a copy of the direction to the defaulting authority, and
   (b) publish the direction.

(5) But the Minister may decide not to publish a direction if it appears that to do so would be contrary to the interests of national security.

(6) In this section “the Minister” means—
   (a) the Secretary of State in relation to risk management authorities that exercise functions only in England,
   (b) the Welsh Ministers in relation to risk management authorities that exercise functions only in Wales, and
   (c) the Secretary of State and the Welsh Ministers acting jointly in relation to risk management authorities that exercise functions in both England and Wales.
## 21 Lead local authorities: duty to maintain a register

(1) A lead local flood authority must establish and maintain—
   (a) a register of structures or features which, in the opinion of the authority, are likely to
   have a significant effect on a flood risk in its area, and
   (b) a record of information about each of those structures or features, including information
   about ownership and state of repair.

(2) The Minister may by regulations make provision about the content of the register and record.

(3) The lead local flood authority must arrange for the register to be available for inspection at all
    reasonable times.

(4) The Minister may by regulations provide for information of a specified description to be excluded
    from the register or record.

(5) In this section, “the Minister” means—
    (a) the Secretary of State in relation to authorities in England, and
    (b) the Welsh Ministers in relation to authorities in Wales.

### Commencement
Pt 1 s. 20(1)-(6)(c): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

### Extent
Pt 1 s. 20(1)-(6)(c): England, Wales

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### 4. Regional Flood and Coastal Committees

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## 22 Establishment

(1) The [appropriate agency]¹ —
   (a) must divide England and Wales into regions for the purposes of this section,
(b) must establish a Regional Flood and Coastal Committee for each region that is wholly or mainly in England (an “English Committee”), and

(c) must establish a Regional Flood and Coastal Committee for each region that is wholly or mainly in Wales (a “Welsh Committee”).

(2) The Minister may by regulations—

(a) specify the procedure to be followed by the [appropriate agency]2 in exercising its functions under subsection (1)(a) (which may include provision about revision, consultation and appeals);

(b) make transitional provision with respect to the establishment of Regional Flood and Coastal Committees in place of regional flood defence committees.

[(3) The functions of the appropriate agency under subsection (1)(a) are, in any case affecting both a region that is wholly or mainly in England and a region that is wholly or mainly in Wales, exercisable by the Environment Agency and the Natural Resources Body for Wales acting jointly.]3

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.460(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

2 Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.460(3) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

3 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.460(4) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending

Pt 1 s. 22: words inserted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(4) (date to be appointed)

Pt 1 s. 22(1): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(a)(i) (date to be appointed)

Pt 1 s. 22(1): words repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(a)(ii) (date to be appointed)

Pt 1 s. 22(1): words repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(a)(iii) (date to be appointed)

Pt 1 s. 22(2): word substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(b)(i) (date to be appointed)

Pt 1 s. 22(2): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(b)(ii) (date to be appointed)

Pt 1 s. 22(3): repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(5)(c) (date to be appointed)

Commencement

Pt 1 s. 22(1), (2)-(2)(b): October 1, 2010

Pt 1 s. 22(1)(a): April 1, 2011 (SI 2011/694 art. 3(b))

Pt 1 s. 22(1)(b)-(1)(c): October 1, 2010 for the purpose specified in SI 2010/2169 art.4, Sch.1; April 1, 2011 otherwise (SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2011/694 art. 3(b))
23 Consultation and consent

(1) The [appropriate agency]¹ must—
   (a) consult each Regional Flood and Coastal Committee about the way in which the [appropriate agency]² proposes to carry out its flood and coastal erosion risk management functions in relation to the Committee's region, and
   (b) take into account any representations (whether made in response to a consultation or otherwise) made by the Committee about the exercise of the [appropriate agency's]³ flood and coastal erosion risk management functions in that region.

(2) The [appropriate agency]⁴ may not implement the regional programme without the consent of the Regional Flood and Coastal Committee for the region concerned.

(3) The [appropriate agency]⁴ may not issue a levy under section 17 to a lead local flood authority without the consent of the Regional Flood and Coastal Committee for the region concerned.

(4) The [appropriate agency]⁴ may not spend revenue under section 118 of the Water Resources Act 1991 without the consent of the Regional Flood and Coastal Committee for the region in which the revenue is raised.

Notes

¹ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.461(2)(a) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

² Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.461(2)(b) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

³ Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.461(2)(c) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

⁴ Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.461(3) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending

Pt 1 s. 23(1): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(6)(a)(i) (date to be appointed)

Pt 1 s. 23(1)(a): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(6)(a)(ii) (date to be appointed)

Pt 1 s. 23(1)(b): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(6)(a)(iii) (date to be appointed)

Pt 1 s. 23(2): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(6)(b) (date to be appointed)
24 Membership

The Minister may by regulations make provision about—

(a) the number of members of a Regional Flood and Coastal Committee,
(b) conditions of eligibility for appointment,
(c) the method of selection and appointment of the members (including who is to appoint them), and
(d) the proceedings of a Committee (including provision about (i) quorum, and (ii) the nature and extent of a majority required for specified purposes).

25 Money

(1) The Minister may direct the [appropriate agency] \(^1\) to pay to or in respect of persons who chair or have chaired Regional Flood and Coastal Committees—

(a) remuneration,
(b) allowances,
(c) sums by way of or in respect of pension, and
(d) compensation, if the Minister thinks that a person who ceases to chair a Committee should, because of special circumstances, receive compensation.

(2) The [appropriate agency] \(^2\) may pay allowances to members of Committees.
(3) The Minister may determine amounts or maximum amounts to be paid under this section.

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.462(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

2 Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.462(3) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending

Pt 1 s. 25(1): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(8)(a)(i) (date to be appointed)
Pt 1 s. 25(1)(d): word substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(8)(a)(ii) (date to be appointed)
Pt 1 s. 25(2): words substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(8)(b) (date to be appointed)
Pt 1 s. 25(3): word substituted by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(8)(c) (date to be appointed)

Commencement

Pt 1 s. 25(1)-(3): April 1, 2011 (SI 2011/694 art. 3(d))

Extent

Pt 1 s. 25(1)-(3): England, Wales

26 “The Minister”
In this group of sections “the Minister” means—
  (a) the Secretary of State in relation to English Committees, and
  (b) the Welsh Ministers in relation to Welsh Committees.

Amendments Pending

Pt 1 s. 26: repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(9) (date to be appointed)

Commencement

Pt 1 s. 26(a)-(b): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent

Pt 1 s. 26(a)-(b): England, Wales
[ 26A “The appropriate agency”
In this group of sections, “the appropriate agency” means—
(a) the Environment Agency in relation to English Committees, and
(b) the Natural Resources Body for Wales in relation to Welsh Committees.
] ¹

Notes
¹ Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.463 (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Amendments Pending
Pt 1 s. 26A: repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(9) (date to be appointed)

Extent
Pt 1 s. 26A(a)-(b): England, Wales

[ 4A. Flood and Coastal Erosion Committee for Wales ] ¹

Notes
¹ Added by Environment (Wales) Act 2016 anaw. 3 Pt 7 s.81(1) (date to be appointed)

[ 26B Establishment and functions

(1) There is established a committee to be known as the Flood and Coastal Erosion Committee or Pwyllgor Llifogydd ac Erydu Arfordirol.

(2) The purpose of the Committee is to advise the Welsh Ministers on matters relating to flood and coastal erosion risk management.

(3) The Welsh Ministers may by regulations confer or impose additional functions on the Committee for any purpose connected with flood or coastal erosion risk management in Wales.
] ¹

Notes
¹ Added by Environment (Wales) Act 2016 anaw. 3 Pt 7 s.81(1) (date to be appointed)

Extent
Pt 1 s. 26B(1)-(3): England, Wales
[26C] Constitution

(1) The Welsh Ministers may by regulations make provision about the membership of the Flood and Coastal Erosion Committee, including—
   (a) the number of members,
   (b) conditions of eligibility for appointment, and
   (c) the method of selection and appointment of members (including who is to appoint them).

(2) The Welsh Ministers may by regulations make provision about the proceedings of the Committee, including—
   (a) quorum, and
   (b) the nature and extent of a majority required for specified purposes.

Notes

1 Added by Environment (Wales) Act 2016 anaw. 3 Pt 7 s.81(1) (date to be appointed)

Extent

Pt 1 s. 26C(1)-(2)(b): England, Wales

[26D] Payments relating to members

(1) The Welsh Ministers may by regulations make provision for the payment to or in respect of persons who chair or have chaired the Flood and Coastal Erosion Committee of—
   (a) remuneration;
   (b) allowances;
   (c) sums by way of or in respect of pension;
   (d) compensation for loss of office.

(2) The Welsh Ministers may by regulations make provision for the payment of allowances to members of the Committee.

(3) Regulations under this section—
   (a) must specify who is to make any payment for which the regulations make provision;
   (b) may make provision about the circumstances in which a payment is to be made;
   (c) may determine, or provide for the determination of, the amount or maximum amount of a payment.

Notes

1 Added by Environment (Wales) Act 2016 anaw. 3 Pt 7 s.81(1) (date to be appointed)

Extent

Pt 1 s. 26D(1)-(3)(c): England, Wales
5. General

27 Sustainable development

(1) In exercising a flood or coastal erosion risk management function, an authority listed in subsection (3) must aim to make a contribution towards the achievement of sustainable development.

(2) The Minister must issue guidance about how authorities are to discharge the duty under subsection (1) (including guidance about the meaning of sustainable development); and the authorities must have regard to the guidance.

(3) The authorities are—
   (a) lead local flood authorities,
   (b) district councils,
   (c) internal drainage boards, and
   (d) highway authorities.

(4) In this section “flood risk management function” means (in place of the definition in section 4) any of the following functions which may be exercised by an authority listed in subsection (3), in so far as it is or may be exercised for a purpose connected with flood risk management—
   (a) a function under this Part,
   (b) a function under the Land Drainage Act 1991,
   (c) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and
   (d) any other function specified for the purposes of this section by order made by the Minister.

(5) In this section “Minister” means—
   (a) the Secretary of State, in relation to English authorities, and
   (b) the Welsh Ministers, in relation to Welsh authorities.

(6) For the purposes of subsection (5)—
   (a) an “English authority” is—
      (i) a lead local flood authority, district council or highway authority for an area in England, and
      (ii) an internal drainage board for an internal drainage district that is wholly or mainly in England;
   (b) a “Welsh authority” is—
      (i) a lead local flood authority or highway authority for an area in Wales, and
      (ii) an internal drainage board for an internal drainage district that is wholly or mainly in Wales.
28 Power to make further amendments

(1) The Minister may by order amend an Act listed in subsection (2) if the Minister thinks the amendment necessary or desirable in consequence of this Part.

(2) The Acts are—
   (a) the Public Health Act 1936 (so far as relevant to water),
   (b) the Coast Protection Act 1949,
   (c) the Highways Act 1980 (so far as relevant to water),
   (d) the Land Drainage Act 1991,
   (e) the Water Resources Act 1991, and
   (f) the Environment Act 1995.

(3) In this section “the Minister” means—
   (a) the Welsh Ministers, where the amendment relates to—
       (i) a matter in respect of which functions may be exercised by the Welsh Ministers, the First Minister for Wales or the Counsel General to the [Welsh Government]¹, or
       (ii) a matter within the legislative competence of the National Assembly for Wales, and
   (b) the Secretary of State, for all other purposes.

(4) An order under this section may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of an order made by the Secretary of State, and
   (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

Notes
¹ Words substituted by Wales Act 2014 c. 29 Pt 1 s.4(4)(a) (February 17, 2015)
Restructuring

(1) The Minister may by order transfer responsibilities of lead local flood authorities, district councils or internal drainage boards in respect of flood risk and coastal erosion risk to risk management authorities or other bodies.

(2) An order may in particular—
   (a) amend the definition of risk management authority in section 6;
   (b) reassign a flood risk management function;
   (c) reassign a coastal erosion risk management function.

(3) An order may amend this Act or another enactment.

(4) Before making an order the Minister must consult the bodies that would be affected by it.

(5) An order under this section may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of an order made by the Secretary of State, or
   (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

(6) In this section “the Minister” means—
   (a) the Secretary of State in relation to English risk management authorities and other bodies with responsibilities in relation to England, and
   (b) the Welsh Ministers in relation to Welsh risk management authorities and other bodies with responsibilities in relation to Wales.

Designation of features

Schedule 1 (designation of features) shall have effect.


Commencement
Pt 1 s. 30: April 6, 2011 for provisions specified in SI 2011/694 art.4(1)(d); August 1, 2012 otherwise (SI 2011/694 art. 4(1)(d); SI 2012/2000 art. 2(a))

Extent
Pt 1 s. 30: England, Wales

31 Amendment of other Acts
Schedule 2 (which amends other Acts in connection with this Part) shall have effect.

Commencement
Pt 1 s. 31: October 1, 2010 for provisions specified in SI 2010/2169 art.4 and Sch.1; April 1, 2011 for provisions specified in SI 2011/694 art.3(c); April 6, 2011 for provisions specified in SI 2011/694 art.4(1)(e); July 19, 2011 in relation to England for provisions specified in SI 2011/1770 art.3; October 1, 2011 in relation to Wales for provisions specified in SI 2011/2204 art.3(2)(b)-(d); April 6, 2012 for provisions specified in SI 2012/879 art.3(a); not yet in force otherwise (2000 c. 22 Pt II s. 21F; 2010 c. 29 Sch. 2 para. 25, Sch. 2 para. 28; 2010 c. 29 Sch. 2 para. 54; SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2011/694 art. 3(c), art. 4(1)(e); SI 2011/1770 art. 3(c), art. 3(f); SI 2011/2204 art. 3(2); SI 2012/879 art. 3(a))

Extent
Pt 1 s. 31: England, Wales

PART 2
MISCELLANEOUS

32 Sustainable drainage
Schedule 3 (sustainable drainage) shall have effect.

Commencement
Pt 2 s. 32: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Pt 2 s. 32: England, Wales
33  Reservoirs
Schedule 4 (reservoirs) shall have effect.

Commencement
Pt 2 s. 33: October 1, 2011 for provisions specified in SI 2011/2204 art.3(1)(e)-(k); July 30, 2013 for provisions specified in SI 2013/1590 art.3(b) in relation to England; April 1, 2016 in relation to Wales otherwise; not yet in force otherwise (SI 2011/2204 art. 3(1); SI 2013/1590 art. 3; SI 2016/79 art. 2(a))

Extent
Pt 2 s. 33: England, Wales

34  Special administration
Schedule 5 (special administration) shall have effect.

Commencement
Pt 2 s. 34: October 1, 2010 for provisions specified in SI 2010/2169 art.4 and Sch.1; April 1, 2011 for provisions specified in SI 2011/694 art.3(f); not yet in force otherwise (1991 c. 56 Pt IV c. II s. 106B, Pt V c. I s. 144C(4); 1991 c. 56 Pt V c. I s. 144C(5), Pt V c. I s. 144C(8); 2010 c. 29 Sch. 5 para. 3, Sch. 5 para. 5; 2010 c. 29 Sch. 5 para. 6; SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2011/694 art. 3(f))

Extent
Pt 2 s. 34: England, Wales

35  Provision of infrastructure
(1) After section 36 of the Water Industry Act 1991 insert—

“PART 2A
REGULATION OF PROVISION OF INFRASTRUCTURE

36A  Regulations
(1) The Minister may make regulations about the provision of infrastructure for the use of water undertakers or sewerage undertakers.

(2) The regulations may in particular—
   (a) confer regulatory functions on the Authority;
   (b) apply provisions of Part 2 with or without modification;
(c) make provision similar to a provision of Part 2.

(3) The regulations must specify the activities to which they apply; in particular, the regulations may—
   (a) apply to designing, constructing, owning and operating infrastructure, and
   (b) define “infrastructure”.

(4) The regulations—
   (a) may make provision only in relation to projects or works that in the Minister's opinion are of a size or complexity that threatens the undertaker's ability to provide services for its customers, and
   (b) in conferring powers, must restrict them to projects or works that, in the opinion of the person exercising the power, are of a size or complexity that threatens the undertaker's ability to provide services for its customers.

(5) Sections 36B to 36D and 36F specify other kinds of provision that the regulations may make; and in those sections “infrastructure project” means a project, or part of a project, in connection with any of the things specified in subsection (3)(a).

36B Tendering

(1) Regulations under section 36A may—
   (a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;
   (b) allow the Authority to specify one or more infrastructure projects which must be put out to tender;
   (c) allow the Minister to delegate the power under paragraph (a) to the Authority.

(2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.

(3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose.

(4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.

(5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations—
   (a) may require the undertaker to consult the Authority or the Minister about the terms on which an infrastructure project is put out to tender;
   (b) may specify factors to be taken into account in considering bids;
   (c) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept (if any).

36C Criteria for tendering

(1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1).

(2) The regulations may—
(a) provide that the Authority must consult the Minister before exercising a power by virtue of section 36B(1);
(b) require the Authority to publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1).

36D Designation as an infrastructure provider

(1) Regulations under section 36A may enable the Minister or the Authority to designate as an “infrastructure provider” a person who appears to the Minister or Authority to be wholly or partly responsible for an infrastructure project that was put out to tender in accordance with regulations by virtue of section 36B.

(2) The regulations may—
(a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers),
(b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers),
(c) relieve water or sewerage undertakers of specified duties to a specified extent,
(d) provide for designation to be conditional,
(e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a),
(f) include provision about enforcement of powers, duties, conditions and limitations, and
(g) include provision for variation or revocation of designation.

36E Ministerial responsibility

(1) In this Part “the Minister” means—
(a) the Secretary of State, in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers,
(b) the Welsh Ministers, in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers, and
(c) the Secretary of State and the Welsh Ministers acting jointly in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers and one or more Welsh undertakers.

(2) In this section and section 36F—
(a) “an English undertaking” means a water undertaking or sewerage undertaking whose area is wholly or mainly in England, and
(b) “a Welsh undertaking” means a water undertaking or sewerage undertaking whose area is wholly or mainly in Wales.
36F Cross-border infrastructure projects

(1) Regulations under section 36A may make provision about cross-border infrastructure projects.

(2) In this section “cross-border infrastructure project” means an infrastructure project which—
   (a) relates to infrastructure in Wales which is for the use of an English undertaker, or
   (b) relates to infrastructure in England which is for the use of a Welsh undertaker.

(3) Regulations made by the Secretary of State about cross-border infrastructure projects—
   (a) may confer functions on the Welsh Ministers, and
   (b) must require the Secretary of State or the Authority to consult the Welsh Ministers before exercising any power under section 36B(1) to specify projects which must be put out to tender.

(4) Regulations made by the Welsh Ministers about cross-border infrastructure projects—
   (a) may confer functions on the Secretary of State, and
   (b) must require the Welsh Ministers or the Authority to consult the Secretary of State before exercising any power under section 36B(1) to specify projects which must be put out to tender.

36G Regulations: procedure

(1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of regulations made by the Secretary of State,
   (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers, or
   (c) each House of Parliament and the National Assembly for Wales, in the case of regulations made by the Secretary of State and the Welsh Ministers acting jointly.

(2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister's opinion represent interests likely to be affected by the regulations.

(3) Section 213 applies to regulations made by the Welsh Ministers under section 36A as it applies to regulations made by the Secretary of State.”

(2) In section 213(1) of the Water Industry Act 1991 (regulations) for “or 17D(8)” substitute “, 17D(8), 36A”.

Amendments Pending
Pt 2 s. 35(2): words repealed by Water Act 2014 c. 21 Sch. 7 para. 145 (date to be appointed)

Commencement
Pt 2 s. 35(1)-(2): October 1, 2010 for the purpose of water or sewerage undertakers whose areas are wholly or mainly in England; not yet in force otherwise (SI 2010/2169 art. 4, Sch. 1 para. 1)
36 Water use: temporary bans
For section 76 of the Water Industry Act 1991 (temporary hosepipe bans) substitute—

“76 Temporary bans on use

(1) A water undertaker may prohibit one or more specified uses of water supplied by it if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution.

(2) Only the following uses of water may be prohibited—
   (a) watering a garden using a hosepipe;
   (b) cleaning a private motor-vehicle using a hosepipe;
   (c) watering plants on domestic or other non-commercial premises using a hosepipe;
   (d) cleaning a private leisure boat using a hosepipe;
   (e) filling or maintaining a domestic swimming or paddling pool;
   (f) drawing water, using a hosepipe, for domestic recreational use;
   (g) filling or maintaining a domestic pond using a hosepipe;
   (h) filling or maintaining an ornamental fountain;
   (i) cleaning walls, or windows, of domestic premises using a hosepipe;
   (j) cleaning paths or patios using a hosepipe;
   (k) cleaning other artificial outdoor surfaces using a hosepipe.

(3) The Minister may by order—
   (a) add a non-domestic purpose to the list in subsection (2);
   (b) remove a purpose from the list in subsection (2).

(4) A prohibition must specify—
   (a) the date from which it applies, and
   (b) the area to which it applies (which may be all or part of the undertaker’s area).

(5) A person who contravenes a prohibition—
   (a) is guilty of an offence, and
   (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges which are made in respect of prohibited uses (including arrangements for repayment or credit where charges are paid in advance).

(7) A water undertaker may vary or revoke a prohibition.

76A Temporary bans: supplemental

(1) A prohibition may—
(a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way);
(b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).

(2) The Minister may by order—
(a) provide for exceptions to a category of use in section 76(2) (whether or not added under section 76(3));
(b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in section 76(2) (whether or not added under section 76(3));
(c) define a word or phrase used in section 76(2) (whether or not added under section 76(3)).

(3) In particular, an order may—
(a) restrict a category of use by reference to how water is drawn;
(b) frame an exception by reference to ownership of land by a specified person or class of person;
(c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;
(d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer).

(4) In this section and section 76“the Minister” means—
(a) the Secretary of State in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in England, and
(b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in Wales.

(5) Subject to provision under subsection (2), a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe.

76B Temporary bans: procedure

(1) A prohibition takes effect only if this section is complied with.

(2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms—
(a) in at least two newspapers circulating in the area to which it is to apply, and
(b) on the water undertaker's internet website.

(3) The notice must give details of how to make representations about the proposed prohibition.

(4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.

(5) A water undertaker must give notice of a revocation of a prohibition—
(a) in at least two newspapers circulating in the area to which it is to apply, and
(b) on the water undertaker's internet website.
(6) The revocation may not take effect until at least one notice under subsection (5) has been given.

76C Orders under sections 76 and 76A

(1) Section 213 applies to orders under section 76(3) or 76A(2) as it applies to regulations.

(2) But—

(a) an order made by the Secretary of State under section 76(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,
(b) an order made by the Welsh Ministers under section 76(3) may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
(c) an order made by the Welsh Ministers under section 76A(2) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

Commencement
Pt 2 s. 36: September 1, 2010 for the purpose specified in SI 2010/2169 art.3(3) subject to transitional provisions specified in SI 2010/2169 art.5; October 1, 2010 subject to transitional provisions specified in SI 2010/2169 art.5 otherwise (1991 c. 56 Pt III c. III s. 76A(2), Pt III c. III s. 76A(4); SI 2010/2169 art. 3(3), art. 4; SI 2010/2169 art. 5, Sch. 1 para. 1)

Extent
Pt 2 s. 36: England, Wales

37 Civil sanctions

(1) An order under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) which makes provision about offences under the Acts listed in subsection (2) may include provision about offences inserted, amended or affected by this Act.

(2) Those Acts are—

(a) the Coast Protection Act 1949,
(b) the Reservoirs Act 1975,
(c) the Land Drainage Act 1991,
(d) the Water Industry Act 1991, and
(e) the Water Resources Act 1991.

Commencement
Pt 2 s. 37(1)-(2)(e): April 6, 2011 (SI 2011/694 art. 4(1)(f))

Extent
Pt 2 s. 37(1)-(2)(e): England, Wales
38 Incidental flooding or coastal erosion: [appropriate agency] ¹

(1) If Conditions 1, 2 and 3 are satisfied [the appropriate agency] ² may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause—
   (a) flooding,
   (b) an increase in the amount of water below the ground, or
   (c) coastal erosion.

(2) Condition 1 is that [the appropriate agency] ² considers the work in the interests of—
   (a) nature conservation (including conservation of the landscape),
   (b) preservation of cultural heritage, or
   (c) people's enjoyment of the environment or of cultural heritage.

(3) Condition 2 is that [the appropriate agency] ² considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d).

(4) Condition 3 is that [the appropriate agency] ² has consulted—
   [(za) the other appropriate agency, if—
     (i) the work is carried out in its area, or
     (ii) consequences of the kinds listed in subsection (1) are likely to occur in its area,
   ] ³
   (a) the lead local flood authority for the area in which the work is to be carried out,
   (b) the district council (if any) for that area,
   (c) the internal drainage board (if any) for that area, and
   (d) persons who own or occupy land that, in the opinion of [the appropriate agency] ², is likely to be directly affected by the work.

(5) In carrying out work in reliance on this section, [the appropriate agency] ² must have regard to—
   (a) the national flood and coastal erosion risk management strategies under sections 7 and 8,
   (b) any guidance issued under those sections,
   (c) the local flood risk management strategy under section 9 or 10 for the area concerned, and
   (d) any guidance issued under those sections by the lead local flood authority for the area concerned.

(6) [The appropriate agency] ² may arrange for work to be carried out in reliance on this section on the [appropriate agency’s] ⁴ behalf by—
   (a) a lead local flood authority,
   (b) a district council, or
   (c) an internal drainage board.

(7) Subsection (1) may be relied on to carry out work whether or not it forms part of the exercise of other powers; but nothing in subsection (1) restricts the powers of [the appropriate agency] ² under another enactment.

(8) The Minister must by order apply to this section (with or without modifications) provisions of the Water Resources Act 1991 about—
   (a) compulsory purchase,
   (b) powers of entry, and
(c) compensation.

(9) An order under subsection (8) may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of an order made by the Secretary of State, or
   (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

(10) In this section “the Minister” means—
   (a) the Secretary of State in relation to England, and
   (b) the Welsh Ministers in relation to Wales.

[ (10A) In this section—
   “the appropriate agency” means—
   (a) the Environment Agency, in relation to work for the benefit of England, and
   (b) the Natural Resources Body for Wales, in relation to work for the benefit of Wales;
   “area”, in relation to an appropriate agency, means—
   (a) in the case of the Environment Agency, England, and
   (b) in the case of the Natural Resources Body for Wales, Wales.]

(11) Other expressions in this section have the same meaning as in Part 1.

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.464(6) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

2 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.464(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

3 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.464(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

4 Word substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.464(4) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

5 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.464(5) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 2 s. 38(1)-(11): January 18, 2011 in relation to the power for the Minister as defined in 2010 c.29 s.38(10) to make an order under 2010 c.29 s.38(8); December 1, 2011 subject to transitional provision specified in SI 2011/2856 art.4(1) otherwise (SI 2011/95 art. 2(b); SI 2011/2856 art. 3(a), art. 4(1))

Extent

Pt 2 s. 38(1)-(11): England, Wales
39 Incidental flooding or coastal erosion: local authorities

(1) If Conditions 1 to 4 are satisfied a local authority may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause—
   (a) flooding,
   (b) an increase in the amount of water below the ground, or
   (c) coastal erosion.

(2) Condition 1 is that the authority considers the work in the interests of—
   (a) nature conservation (including conservation of the landscape),
   (b) preservation of cultural heritage, or
   (c) people's enjoyment of the environment or of cultural heritage.

(3) Condition 2 is that the authority considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d).

(4) Condition 3 is that—
   (a) the authority has consulted the [appropriate agency]¹, and
   (b) if the work affects a main river, the [appropriate agency]¹ has consented to it.

(5) Condition 4 is that the authority has consulted—
   (a) any other local authority whose area may be affected by the work, and
   (b) other persons who own or occupy land that, in the opinion of the authority, is likely to be directly affected by the work.

(6) In this section “local authority” means—
   (a) a lead local flood authority,
   (b) a district council for an area for which there is no unitary authority, and
   (c) an internal drainage board.

(7) In carrying out work in reliance on this section, an authority must have regard to—
   (a) the national flood and coastal erosion risk management strategies under sections 7 and 8,
   (b) any guidance issued under those sections,
   (c) the local flood risk management strategy under section 9 or 10 for the area concerned, and
   (d) any guidance issued under those sections by the lead local flood authority for the area concerned.

(8) An authority may arrange for work to be carried out in reliance on this section on its behalf by—
   (a) the [appropriate agency]¹, or
   (b) another local authority.

(9) Subsection (1) may be relied on to carry out work whether or not it forms part of the exercise of other powers; but nothing in subsection (1) restricts the powers of an authority under another enactment.

(10) The Environment Agency may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in England in respect of work carried out in reliance on this section.
(11) The Welsh Ministers may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in Wales in respect of work carried out in reliance on this section.

(12) The Minister must by order apply to this section (with or without modifications) provisions of the Water Resources Act 1991 about—
   (a) compulsory purchase,
   (b) powers of entry, and
   (c) compensation.

(13) An order under subsection (12) may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of an order made by the Secretary of State, or
   (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

(14) In this section “the Minister” means—
   (a) the Secretary of State in relation to England, and
   (b) the Welsh Ministers in relation to Wales.

[(14A) In this section, “the appropriate agency” means—
   (a) the Environment Agency, in relation to work in England, and
   (b) the Natural Resources Body for Wales in relation to work in Wales.
]²

(15) Other expressions in this section have the same meaning as in Part 1.

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.465(2) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

2 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.465(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Pt 2 s. 39(1)-(15): January 18, 2011 in relation to the power for the Minister as defined in 2010 c.29 s.39(14) to make an order under 2010 c.29 s.39(12); December 1, 2011 subject to transitional provision specified in SI 2011/2856 art.4(2) otherwise (SI 2011/95 art. 2(c); SI 2011/2856 art. 3(b), art. 4(2))

Extent

Pt 2 s. 39(1)-(15): England, Wales

Law In Force

40 Building regulations: flood resistance

(1) After paragraph 8(5) of Schedule 1 to the Building Act 1984 (building regulations: application to buildings erected before the regulations come into force) insert—

“(5A) The provision that may be made by building regulations includes provision imposing on a person carrying out work of any type in relation to a building (whenever erected), or
in relation to any service, fitting or equipment provided in or in connection with a building (whenever erected), a requirement to do things for the purpose mentioned in section 1(1)(a) of this Act in so far as it relates to the resistance or resilience of buildings in respect of flooding.”

(2) In paragraph 8(6) of that Schedule after “sub-paragraph (5)” insert “or (5A)”.

Commencement
Pt 2 s. 40(1)-(2): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 2 s. 40(1)-(2): England, Wales

41 Compulsory works orders

(1) The amendments made to section 167(1) of the Water Industry Act 1991 (compulsory works orders) by paragraph 50 of Schedule 2 to the Planning Act 2008 (amendments consequential on the development consent regime) shall cease to have effect.

(2) Instead, after section 167(2) insert—

“(2A) The Secretary of State may not exercise the power under subsection (2) in respect of anything to be done in England.”

(3) The amendment made by subsection (2) does not prevent anything being done by the Welsh Ministers (as a result of a transfer of functions under or by virtue of the Government of Wales Act 1998 or 2006).

Commencement
Pt 2 s. 41(1)-(3): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 2 s. 41(1)-(3): England, Wales

42 Agreements on new drainage systems

(1) After section 106A of the Water Industry Act 1991 (sustainable drainage — inserted by Schedule 3 to this Act) insert—
“106B  Requirement to enter into agreement before construction

(1) A person may exercise the right under section 106(1) in respect of a lateral drain or sewer constructed after the commencement of this section only if Conditions 1 and 2 are satisfied.

(2) Condition 1 is that an agreement was entered into under section 104 in respect of the drain or sewer.

(3) Condition 2 is that the agreement included—
   (a) provision about the standards according to which the drain or sewer was to be constructed, and
   (b) provision about adoption of the drain or sewer by the sewerage undertaker.

(4) Provision for the purposes of Condition 2(a) must either—
   (a) incorporate or accord with standards published by the Minister, or
   (b) depart from those standards by express consent of the parties to the agreement.

(5) Provision for the purposes of Condition 2(b) must—
   (a) include provision for adoption to occur automatically upon the occurrence of specified events, and
   (b) comply with any regulations made by the Minister (which may concern the provision required by paragraph (a) of this subsection).

(6) Subsection (1) does not apply—
   (a) to drainage systems required to be approved in accordance with Schedule 3 to the Flood and Water Management Act 2010, or
   (b) in other circumstances specified by the Minister in regulations.

(7) Where a person seeks to exercise the right under section 106(1) in reliance on satisfying Conditions 1 and 2, an undertaker may not refuse connection—
   (a) whether or not in reliance on section 106(4), and
   (b) whether or not the terms of the agreement under section 104 (including terms required by this section) have been complied with.

(8) In this section “the Minister” means—
   (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
   (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.”

(2) For section 105(2) of the Water Industry Act 1991 (appeals: s.104 agreements)

   “(2) A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).”

(3) At the end of section 104 of that Act (agreement to adopt) add—

   “(9) Undertakers shall have regard to any guidance about agreements under this section issued by—
   (a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or
(b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.”

(4) At the end of section 112 (requirement that proposed drain or sewer be constructed so as to form part of general system) add—

“(8) A requirement imposed under this section may not be inconsistent with, or more onerous than, standards published for the purposes of section 106B.”

Amendments Pending
Pt 2 s. 42(2): repealed by Water Act 2014 c. 21 Sch. 7 para. 146(a) (date to be appointed)
Pt 2 s. 42(3): substituted by Water Act 2014 c. 21 Sch. 7 para. 146(b) (date to be appointed)

Commencement
Pt 2 s. 42(1)-(4): October 1, 2010 for the power to make regulations under 1991 c.56 s.106B(5) and (6); October 1, 2012 for the purpose specified in SI 2012/2048 art.2(1) subject to transitional provisions specified in SI 2012/2048 art.3; not yet in force otherwise (1991 c. 56 Pt IV c. II s. 106B(5), Pt IV c. II s. 106B(6); 1991 c. 56 Pt IV c. II s. 106B(8); SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2012/2048 art. 2(1), art. 3)

Extent
Pt 2 s. 42(1)-(4): England, Wales

Partially In Force

43 Drainage: concessionary charges for community groups

(1) An undertaker's charges scheme under section 143 of the Water Industry Act 1991 may include provision designed to reduce charges to community groups in respect of surface water drainage from their property.

(2) Each undertaker may determine—
   (a) whether to include provision in reliance on subsection (1);
   (b) which classes of community group to benefit;
   (c) what constitutes a community group (provided that the class is restricted to bodies that in the undertaker's opinion provide benefit to the local community);
   (d) what reduction to allow (subject to subsection (3));
   (e) different reductions for different classes of community group.

(3) A reduction may not reduce a charge to nil, and must result in the application of a band or charge used for general purposes of the section 143 scheme.

(4) For the purpose of subsection (2)(c) a benefit to the local community may—
   (a) be provided voluntarily, in the exercise of statutory functions or otherwise;
   (b) be provided exclusively to the local community or to the local community as well as to a wider class or area;
   (c) consist of or relate to the provision of (i) youth groups or community centres, (ii) places of worship or other religious facilities, (iii) recreational, cultural, social or sporting facilities, or (iv) a benefit of any other kind.
(5) Undertakers and the Water Services Regulation Authority shall have regard to any guidance issued by the Minister in respect of any aspect of subsections (2) to (4).

(6) “The Minister” means—

(a) in the case of an undertaker whose area is wholly or mainly in England, the Secretary of State, and
(b) in the case of an undertaker whose area is wholly or mainly in Wales, the Welsh Ministers.

Commencement
Pt 2 s. 43(1)-(6)(b): October 1, 2010 for the purpose of water or sewerage undertakers whose areas are wholly or mainly in England; not yet in force otherwise (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 2 s. 43(1)-(6)(b): England, Wales

44 Social tariffs

(1) An undertaker’s charges scheme under section 143 of the Water Industry Act 1991 may include provision designed to reduce charges for individuals who would have difficulty paying in full.

(2) Subsection (1) includes schemes which have the effect of subsidisation by other persons.

(3) The Water Services Regulation Authority’s powers [under the Water Industry Act 1991 in connection with undertakers' charges schemes under section 143 of that Act]¹ are subject to subsections (1) and (2).

(4) The Minister must issue guidance in respect of subsections (1) and (2) which must, in particular, include factors to be taken into account in deciding whether one group of customers should subsidise another; for which purpose the Minister shall have regard to the need to balance the desirability of helping individuals who would have difficulty paying in full with the interests of other customers.

(5) Undertakers and the Authority shall have regard to any guidance issued by the Minister under subsection (4).

(6) “The Minister” means—

(a) in the case of an undertaker whose area is wholly or mainly in England, the Secretary of State, and
(b) in the case of an undertaker whose area is wholly or mainly in Wales, the Welsh Ministers.

Notes
¹ Words substituted by Water Act 2014 c. 21 Sch.7 para.147 (December 18, 2015)

Commencement
Pt 2 s. 44(1)-(6)(b): October 1, 2011 (SI 2011/2204 art. 3(1)(c))
45 Water and sewerage charges: non-owner occupiers

(1) After section 144B of the Water Industry Act 1991 (charges: charging by volume) insert—

“144C Non-owner occupiers

(1) This section applies to residential premises which are occupied by one or more persons other than the owner (and not by the owner).

(2) The owner must arrange for the undertaker to be given information about the occupiers.

(3) If the owner fails to comply with subsection (2), the occupiers’ liability for charges under this Chapter becomes shared jointly and severally with the owner.

(4) The Minister may make regulations—
   (a) about the information to be given under subsection (2);
   (b) about timing and procedure in connection with subsection (2) or (3).

(5) The Minister may make regulations exempting owners from liability under subsection (3) where—
   (a) information supplied by them is false or incomplete, but
   (b) they have taken steps specified by the regulations to ensure its accuracy or completeness.

(6) “Residential premises” means premises that are—
   (a) occupied by one or more persons as a home (but not necessarily as their only or main home), and
   (b) a “dwelling”, a “house in multiple occupation” or “accommodation for the elderly” within the meaning of paragraphs 1 to 3 of Schedule 4A.

(7) Where a person is the “owner” of premises by virtue of being agent or trustee (see section 219(1)) the duty and liability under this section attach to the principal (and not to the agent or trustee).

(8) “The Minister” means—
   (a) the Secretary of State, in relation to services provided by an undertaker whose area is wholly or mainly in England, and
   (b) the Welsh Ministers, in relation to services provided by an undertaker whose area is wholly or mainly in Wales (for which purpose section 213 applies with references to the Secretary of State and either House of Parliament being taken as references to the Welsh Ministers and the National Assembly for Wales).”

(2) Transitional provision of an order commencing this section may, in particular, provide for application of the duty in new section 144C(2) to depend on service of a notice by an undertaker.
Commencement
Pt 2 s. 45(1)-(2): October 1, 2010 for the power to make regulations under 1991 c.56 s.144C(4) and (5); January 1, 2015 so far as not already commenced and in relation to an undertaker whose area is wholly or mainly in Wales; not yet in force otherwise (1991 c. 56 Pt V c. I s. 144C(4), Pt V c. I s. 144C(5); 1991 c. 56 Pt V c. I s. 144C(8); SI 2010/2169 art. 4, Sch. 1 para. 1; SI 2014/3155 art. 2)

Extent
Pt 2 s. 45(1)-(2): England, Wales

Law In Force

46 Abolition of Fisheries Committee (Scotland)

(1) The Fisheries Committee appointed under section 5(2) of the Electricity (Scotland) Act 1979 (and continued in existence by paragraph 5 of Schedule 9 to the Electricity Act 1989) is abolished.

(2) In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) omit the entry relating to the Fisheries (Electricity) Committee.

(3) In Schedule 9 to the Electricity Act 1989 (preservation of amenity and fisheries) omit paragraph 5.

(4) In Schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities) omit the entry relating to the Fisheries (Electricity) Committee.

(5) In Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (other Scottish public authorities) omit paragraph 65.

Commencement
Pt 2 s. 46(1)-(5): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 2 s. 46(1): Scotland
Pt 2 s. 46(2)-(5): England, Wales

PART 3
GENERAL

Law In Force

47 Pre-consolidation amendments

(1) The Secretary of State may by order amend a water Act—
(a) to eliminate differences between two or more provisions (whether or not of the same Act);
(b) to simplify procedure;
(c) to correct errors or resolve obscurity.

(2) The Secretary of State may make an order only if satisfied that—
(a) it will make it easier to consolidate one or more water Acts, and
(b) the substantive effect of the change (if any) is proportionate to the advantage to be gained by consolidating the legislation and does not remove any protection.

(3) The water Acts are—
(a) this Act,
(b) the Public Health Act 1936 (so far as relevant to water),
(c) the Coast Protection Act 1949,
(d) the Reservoirs Act 1975,
(e) the Highways Act 1980 (so far as relevant to water),
(f) the Land Drainage Act 1991,
(g) the Water Industry Act 1991,
(h) the Water Resources Act 1991, and
(i) the Environment Act 1995 (so far as relevant to water).

(4) An order may, in particular, aim to standardise provisions relating to—
(a) appeals;
(b) compulsory purchase;
(c) rights of entry;
(d) compensation.

(5) An order under this section may not be made unless—
(a) the Welsh Ministers have consented to the making of the order,
(b) a draft has been laid before and approved by resolution of each House of Parliament, and
(c) a Bill for consolidating the enactments amended by the order (with or without other enactments) has been presented to either House of Parliament.

(6) A draft laid under subsection (5) must be accompanied by an explanation of—
(a) the effect of any changes made, and
(b) how they will make consolidation easier.

Commencement
Pt 3 s. 47(1)-(6)(b): October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Pt 3 s. 47(1)-(6)(b): England, Wales

48 Subordinate legislation
(1) In this section “subordinate legislation” means regulations and orders under this Act.
(2) Subordinate legislation—
   (a) may apply generally or only for specified purposes,
   (b) may make different provision for different purposes, and
   (c) may include incidental, consequential or transitional provision.

(3) Subordinate legislation shall be made by statutory instrument.

(4) Subordinate legislation made by the Secretary of State shall be subject to annulment in pursuance
of a resolution of either House of Parliament.

(5) Subordinate legislation made by the Welsh Ministers shall be subject to annulment in pursuance
of a resolution of the National Assembly for Wales.

(6) But subsections (4) and (5) do not apply—
   (a) where an alternative procedure is expressly provided, or
   (b) to orders under section 49.

Commencement
Pt 3 s. 48(1)-(6)(b): April 8, 2010

Extent
Pt 3 s. 48(1)-(6)(b): England, Wales, Scotland

49 Technical provision

(1) This Act binds the Crown; but—
   (a) nothing in this Act affects (i) Her Majesty in Her private capacity, or (ii) land in which
       there is an interest which belongs to Her Majesty in right of the Crown or of the Duchy of
       Lancaster, or to the Duchy of Cornwall, and
   (b) subject to paragraph (a), section 221(2) to (8) of the Water Industry Act 1991 (Crown
       application) apply to this Act (for which purpose section 221(6) applies to all powers under
       this Act).

(2) There shall be paid out of money provided by Parliament—
   (a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and
   (b) any increase attributable to this Act in the sums payable under any other Act out of
       money so provided.

(3) This Act comes into force as follows—
   (a) sections 22(1)(a), 28, 29, 34 (and Schedule 5), 41, 46 and paragraph 43 of Schedule 4
       come into force in accordance with provision made by order of the Secretary of State,
   (b) section 22(1)(b) and (2) and sections 23 to 26, so far as they relate to English
       Committees, come into force in accordance with provision made by order of the Secretary
       of State,
   (c) section 22(1)(c) and (2) and sections 23 to 26, so far as they relate to Welsh Committees,
       come into force in accordance with provision made by order of the Welsh Ministers,
(d) sections 35, 36 and 42 to 45, so far as they relate to water or sewerage undertakers whose areas are wholly or mainly in England, come into force in accordance with provision made by order of the Secretary of State,
(e) sections 35, 36 and 42 to 45, so far as they relate to water or sewerage undertakers whose areas are wholly or mainly in Wales, come into force in accordance with provision made by order of the Welsh Ministers,
(f) section 37, so far as it relates to orders made by a Minister of the Crown under Part 3 of the Regulatory Enforcement and Sanctions Act 2008, comes into force in accordance with provision made by order of the Secretary of State,
(g) section 37, so far as it relates to orders made by the Welsh Ministers under Part 3 of the Regulatory Enforcement and Sanctions Act 2008, comes into force in accordance with provision made by order of the Welsh Ministers,
(h) other provisions of Parts 1 and 2 come into force in relation to England in accordance with provision made by order of the Secretary of State,
(i) other provisions of Parts 1 and 2 come into force in relation to Wales in accordance with provision made by order of the Welsh Ministers,
(j) section 47 comes into force on a day specified by order of the Secretary of State, and
(k) section 48 and this section come into force on Royal Assent.

(4) An order under subsection (3) may, in particular, provide for experimental staged commencement by reference to specified areas or other criteria.

(5) This Act extends only to England and Wales, except that—
(a) section 46(1) extends to Scotland only,
(b) the amendments in section 46(2) to (5) have the same extent as the provisions amended,
(c) paragraph 43 of Schedule 4 extends to England and Wales and Scotland, and
(d) section 48 and this section extend to Scotland in their application to a provision mentioned in paragraphs (a) to (c).

(6) An amendment by this Act of another Act does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 or 2006; and—
(a) this subsection applies irrespective of whether the amendment amends an existing function or confers a new function,
(b) if and to the extent that the amendment creates a new function replacing or similar to a function that has been transferred to the Welsh Ministers by or by virtue of those Acts, the new function is to be treated as having been transferred in the same way as the old,
(c) a provision made by or by virtue of either of those Acts in respect of a function amended or replaced by this Act (such as a provision about laying documents before the National Assembly for Wales instead of before Parliament) continues to apply to the provision as amended or replaced, and
(d) a transfer by or by virtue of those Acts in respect of a provision applied by subsection (1)(b) above has effect in relation to the provision as applied.

(7) This Act may be cited as the Flood and Water Management Act 2010.
Amendments Pending
Pt 3 s. 49(3)(c): repealed by Environment (Wales) Act 2016 anaw. 3 Sch. 2(4) para. 25(10) (date to be appointed)

Commencement
Pt 3 s. 49(1)-(7): April 8, 2010

Extent
Pt 3 s. 49(1)-(7): England, Wales

SCHEDULE 1
RISK MANAGEMENT: DESIGNATION OF FEATURES

Section 30

Law In Force

1 “Designating authority”
In this Schedule “designating authority” means—
(a) the Environment Agency,
(b) a lead local flood authority,
(c) a district council (whether or not it is a lead local flood authority), and
(d) an internal drainage board.

Notes
1 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.466(2) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement
Sch. 1 para. 1(a)-(d): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 1(a)-(d): England, Wales

Law In Force

2 “Responsible authority”
(1) The responsible authority in relation to a structure or feature designated under this Schedule is the authority which made the designation, unless sub-paragraph (2) applies.
(2) If an authority has adopted a designation in accordance with sub-paragraph (3), the responsible authority in relation to the designated structure or feature is the adopting authority.

(3) A designating authority may adopt a designation if—
   (a) the authority which made the designation no longer has relevant functions,
   (b) the authority proposing to adopt the designation has relevant functions, and
   (c) the designation has not already been adopted by another authority.

(4) In sub-paragraph (3) “relevant functions” means flood or coastal erosion risk management functions which may be affected by the existence or location of the designated structure or feature.

Commencement
Sch. 1 para. 2(1)-(4): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 2(1)-(4): England, Wales

3 “Owner”
In this Schedule “owner” in relation to anything which is or may be designated means—
   (a) the owner of the land on or in which the structure or feature is situated, or
   (b) if different, the person responsible for managing or controlling the structure or feature.

Commencement
Sch. 1 para. 3(a)-(b): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 3(a)-(b): England, Wales

4 Designation
(1) If the following conditions are satisfied, a designating authority may designate for the purposes of this Schedule—
   (a) a structure, or
   (b) a natural or man-made feature of the environment.

(2) Condition 1 is that the designating authority thinks the existence or location of the structure or feature affects—
   (a) a flood risk, or
   (b) a coastal erosion risk.

(3) Condition 2 is that the designating authority has flood or coastal erosion risk management functions in respect of the risk which is affected.
(4) Condition 3 is that the structure or feature is not designated by another authority for the purposes of this Schedule.

(5) Condition 4 is that the owner of the structure or feature is not a designating authority.

Commencement
Sch. 1 para. 4(1)-(5): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 4(1)-(5): England, Wales

Law In Force

5 Effect of designation

(1) A person may not alter, remove or replace a designated structure or feature without the consent of the responsible authority.

(2) A designation is a local land charge.

Commencement
Sch. 1 para. 5(1)-(2): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 5(1)-(2): England, Wales

Law In Force

6 Consent to alteration, removal or replacement

(1) The responsible authority may by notice given to the owner—
   (a) consent to specified alterations, or alterations of a specified kind, to a designated structure or feature;
   (b) vary or withdraw consent under paragraph (a) (but not retrospectively).

(2) The responsible authority may by notice given to the owner consent to the removal or replacement of a designated structure or feature.

(3) The authority may give notice under sub-paragraph (1) or (2)—
   (a) on the application of the owner, or
   (b) if it otherwise thinks it appropriate.

(4) Consent may be—
   (a) general or specific;
   (b) absolute or conditional.
(4A) Before exercising a function under this paragraph in relation to an alteration, removal or replacement which may affect a flood or coastal erosion risk in Wales, the Environment Agency must consult the Natural Resources Body for Wales.

(4B) Before exercising a function under this paragraph in relation to an alteration, removal or replacement which may affect a flood or coastal erosion risk in England, the Natural Resources Body for Wales must consult the Environment Agency. 1

(5) The responsible authority may refuse to give consent applied for under sub-paragraph (3)(a) only on the ground that, in the authority’s opinion, the proposed alteration, removal or replacement would affect a flood risk or a coastal erosion risk.

Notes

1 Added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.466(3) (April 1, 2013: insertion has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Sch. 1 para. 6(1)-(5): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent

Sch. 1 para. 6(1)-(5): England, Wales

Law In Force

7 Provisional designation notice: procedure

(1) A designating authority may make a provisional designation by giving notice to the owner.

(2) The notice must specify—
   (a) the structure or feature to be provisionally designated,
   (b) the date on which the provisional designation takes effect,
   (c) the reasons for the provisional designation,
   (d) how representations to the responsible authority may be made, and
   (e) the period within which representations may be made.

(3) The period specified in the notice under sub-paragraph (2)(e) must be a period of at least 28 days beginning with the date of the notice.

(4) A provisional designation ceases to have effect at the end of the period of 60 days beginning with the date of the notice, unless it is confirmed under paragraph 8.

(5) The following paragraphs apply in relation to a provisional designation as they apply in relation to a designation: paragraphs 5(1), 6 and 9 to 14.

Commencement

Sch. 1 para. 7(1)-(5): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent

Sch. 1 para. 7(1)-(5): England, Wales
8 Designation notice: procedure

(1) A designating authority may make a designation by giving notice confirming a provisional designation to the owner.

(2) In deciding whether to confirm a provisional designation the authority must have regard to any representations made in accordance with paragraph 7.

(3) A notice under sub-paragraph (1) may not be given—
   (a) before the end of the period specified in the provisional notice under paragraph 7(2)(e) within which representations may be made;
   (b) after the end of the period of 60 days beginning with the date of the provisional notice.

(4) The notice must—
   (a) specify the provisional notice to which it relates,
   (b) specify the structure or feature to be designated,
   (c) specify the reasons for the designation,
   (d) give information about the procedure for bringing an appeal under regulations under paragraph 15, and
   (e) specify the period within which an appeal may be brought.

Commencement

Sch. 1 para. 8(1)-(4)(e): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent

Sch. 1 para. 8(1)-(4)(e): England, Wales

9 Cancellation

(1) The responsible authority may cancel a designation by giving notice to that effect to the owner.

(2) The authority may give notice under sub-paragraph (1)—
   (a) on the application of the owner, or
   (b) if it otherwise thinks cancellation appropriate.

(3) The notice must specify—
   (a) the designated structure or feature,
   (b) the date on which the cancellation takes effect, and
   (c) the reasons for the cancellation.
10 Notice to other authorities

(1) This paragraph applies where an authority—
   (a) makes a designation, or
   (b) cancels a designation.

(2) The authority must notify any other designating authority which it thinks may have an interest in the designation or cancellation.

11 Enforcement notice

(1) If a person contravenes paragraph 5(1) the responsible authority may give an enforcement notice.

(2) The notice may be given to—
   (a) the person who contravened paragraph 5(1), or
   (b) the owner of the designated structure or feature.

(3) The notice must direct the recipient to take specified steps, within a specified period, to remedy the contravention.

(4) If a person (P) fails to comply with an enforcement notice—
   (a) P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
   (b) the responsible authority may authorise a person to take the steps specified in the notice,
   (c) the responsible authority may require P to pay expenses incurred under paragraph (b), and
   (d) payment required under paragraph (c) is recoverable as a debt.
Commencement
Sch. 1 para. 11(1)-(4)(d): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 11(1)-(4)(d): England, Wales

Law In Force

12 Emergency powers

(1) This paragraph applies if—
   (a) a person has contravened paragraph 5(1), and
   (b) the responsible authority thinks the contravention may immediately and materially increase or alter a flood risk or coastal erosion risk.

   (2) The authority may—
   (a) act to remedy the contravention without giving an enforcement notice,
   (b) require the owner to pay the expenses of that action, and
   (c) recover the expenses as a debt.

Commencement
Sch. 1 para. 12(1)-(2)(c): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 12(1)-(2)(c): England, Wales

Law In Force

13 Powers of entry

(1) A person authorised by the responsible authority may at any reasonable time enter land—
   (a) to determine whether a person has contravened paragraph 5(1),
   (b) to determine whether a person has complied with an enforcement notice,
   (c) to take steps specified in accordance with paragraph 11(4), or
   (d) to act in accordance with paragraph 12(2).

   (2) A person authorised by a designating authority may at any reasonable time enter land for the purpose of determining whether a structure or feature may be designated by the authority under paragraph 4.

   (3) A person may not demand entry to land which is occupied unless—
      (a) at least 7 days’ notice has been given to the occupier, specifying the purpose for which entry is required, or
      (b) the entry is for the purpose mentioned in sub-paragraph (1)(d).
(4) A person seeking to enter land under this paragraph must on request produce evidence of authorisation.

(5) It is an offence to obstruct a person entitled to enter land under this paragraph.

(6) A person guilty of an offence under sub-paragraph (5) is liable—
    (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both, or
    (b) on summary conviction, to a fine not exceeding the statutory maximum.

Commencement
Sch. 1 para. 13(1)-(6)(b): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 13(1)-(6)(b): England, Wales

14 Compensation for owners and third parties

(1) The relevant authority must pay compensation if, as a result of the exercise of the powers conferred by paragraph 13, a person (P)—
    (a) incurs loss as a result of anything done on P's land, or
    (b) is disturbed in the enjoyment of P's land.

(2) But compensation is not payable to P if Condition 1 or 2 is satisfied.

(3) Condition 1 is that—
    (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(a) or (d), and
    (b) P has contravened paragraph 5(1).

(4) Condition 2 is that—
    (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(b) or (c), and
    (b) P has failed to comply with an enforcement notice under paragraph 11.

(5) Compensation paid by an authority is to be treated as an expense incurred under paragraph 11(4)(b) or 12(2)(a) (if it is paid in respect of loss or disturbance resulting from the exercise of powers under paragraph 13(1)(c) or (d)).

(6) Disputes about compensation are to be determined by the Upper Tribunal.

(7) In this paragraph “relevant authority” means the authority that authorised the entry to land under paragraph 13(1) or (2).
Commencement
Sch. 1 para. 14(1)-(7): August 1, 2012 (SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 14(1)-(7): England, Wales

Law In Force

15 Appeals
(1) The Minister must by regulations provide a right of appeal against—
   (a) designations,
   (b) a decision in connection with consent on an application under paragraph 6,
   (c) a refusal to cancel a designation on an application under paragraph 9, and
   (d) enforcement notices.
(2) The regulations must—
   (a) confer jurisdiction on the Minister, a court or a tribunal, and
   (b) make provision about procedure.
(3) Where an appeal against a designation is brought—
   (a) the designation continues to have effect while the appeal is pending;
   (b) the person hearing the appeal may cancel the designation.
(4) Where an appeal against an enforcement notice is brought—
   (a) the effect of the notice is suspended while the appeal is pending;
   (b) the person hearing the appeal may determine that the notice is to cease to have effect.
(5) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and
   (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

Commencement
Sch. 1 para. 15(1)-(5)(b): April 6, 2011 for the purpose of providing power for the Minister, as defined in 2010 c.29 Sch.1 para.17, to make regulations; August 1, 2012 otherwise (SI 2011/694 art. 4(1)(g); SI 2012/2000 art. 2(b))

Extent
Sch. 1 para. 15(1)-(5)(b): England, Wales

Law In Force

16 Notices and applications
The Minister may by regulations make provision about—
(a) the form, content and method of service of a notice under this Schedule,
(b) the form and content of an application under this Schedule, and
(c) the procedure for determining an application.

Commencement

Sch. 1 para. 16(a)-(c): April 6, 2011 for the purpose of providing power for the Minister, as defined in 2010 c.29 Sch.1 para.17, to make regulations; August 1, 2012 otherwise (SI 2011/694 art. 4(1)(g); SI 2012/2000 art. 2(b))

Extent

Sch. 1 para. 16(a)-(c): England, Wales

17 “The Minister”

(1) This paragraph defines “the Minister” in this Schedule.

(2) In relation to designations of structures or features in England, “the Minister” means the Secretary of State.

(3) In relation to designations of structures or features in Wales, “the Minister” means the Welsh Ministers.

Commencement

Sch. 1 para. 17(1)-(3): April 6, 2011 (SI 2011/694 art. 4(1)(h))

Extent

Sch. 1 para. 17(1)-(3): England, Wales

SCHEDULE 2

RISK MANAGEMENT: AMENDMENT OF OTHER ACTS

Section 31

Coast Protection Act 1949

1

The Coast Protection Act 1949 is amended as follows.
Commencement
Sch. 2 para. 1: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 1: England, Wales

Law In Force

2
Section 2 (constitution of coast protection boards) is repealed.

Commencement
Sch. 2 para. 2: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 2: England, Wales

Law In Force

3
After section 2 insert—

“2A Coastal erosion risk management authorities
The following are “coastal erosion risk management authorities” for the purposes of this Act—

(a) coast protection authorities, and
(b) the Environment Agency.”

Commencement
Sch. 2 para. 3: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 3: England, Wales
Section 4 (general powers) is amended as follows.

For subsection (1) substitute—

“(1) A coast protection authority may carry out coast protection work inside or outside the authority’s district if Conditions 1 and 2 are satisfied.

(1A) Condition 1 is that the authority thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.

(1B) Condition 2 is that the purpose of the work is to manage a coastal erosion risk, within the meaning of Part 1 of the Flood and Water Management Act 2010, in the authority's district.

(1C) The Environment Agency may carry out coast protection work if it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.”

Omit subsection (2).

In subsection (3) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement

Sch. 2 para. 4(1)-(4): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent

Sch. 2 para. 4(1)-(4): England, Wales

Section 5 (coast protection work: objections and approvals) is amended as follows.

In subsection (1)—

(a) for “coast protection authority” substitute “coastal erosion risk management authority”,
(b) for “area of the authority” substitute “area in which the proposed work is to take place”, and
(c) for the words from “on the Environment Agency” to the end substitute “on the persons listed in subsection (1A).”

After subsection (1) insert—

“(1A) The notice shall be served—

(a) on any internal drainage board in whose district any of the work is to be carried out, and

Law In Force
(b) in the case of work proposed by a coast protection authority, on the Environment Agency.”

(4) In subsection (3) for “and on the authority” substitute “, the authority proposing to carry out the work and, in the case of work proposed by a coast protection authority, the Environment Agency”.

(5) In subsection (5)—
   (a) at the beginning insert “In the case of work proposed by a coast protection authority,” and
   (b) for “Minister” substitute “Environment Agency”.

(6) After subsection (5) insert—

“(5A) In the case of work proposed by the Environment Agency, the Agency—
   (a) may not begin the work before the time for serving notices of objection has expired and any objections have been determined by the Minister, and
   (b) must have regard to any determination of the Minister in deciding whether to carry out the proposed work, with or without modification.”

(7) In subsection (6)—
   (a) for “coast protection authority”, in the first place where it occurs, substitute “coastal erosion risk management authority”,
   (b) for “the coast protection authority shall” substitute “the authority shall”,
   (c) in paragraph (a) for “where it is not represented on the coast protection authority” substitute “(in the case of work carried out by a coast protection authority)”, and
   (d) in paragraph (b) omit “which are not so represented and”.

Commencement
Sch. 2 para. 5(1)-(7)(d): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 5(1)-(7)(d): England, Wales

6
In section 6 (power to make schemes for carrying out work) in subsection (1) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement
Sch. 2 para. 6: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 6: England, Wales
7

(1) In section 8(1) (confirmation of works schemes)—
   (a) for “coast protection authority” substitute “coastal erosion risk management authority”,
   (b) for “area of the authority” substitute “area in which the proposed work is to take place”,
   and
   (c) after “Environment Agency” insert “(in the case of a scheme prepared by a coast
       protection authority)”).

(2) In section 8(5) for “coast protection authority” substitute “coastal erosion risk management
     authority”.

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8

In section 9 (carrying out of work) in subsection (4) for “coast protection authority” substitute
“coastal erosion risk management authority”.

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9

In section 10 (recovery of coast protection charges) in subsections (2), (5) and (8) for “coast
protection authority” substitute “coastal erosion risk management authority”.

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10
In section 12 (maintenance and repair) in subsections (1) and (3) for “coast protection authority” substitute “coastal erosion risk management authority”.

11
In section 13 (recovery of maintenance cost) in subsections (1), (3)(b), (4) and (6) for “coast protection authority” substitute “coastal erosion risk management authority”.

12
(1) Section 14 (compulsory acquisition of land) is amended as follows.

(2) In subsection (1)–

(a) for “coast protection authority” insert “coastal erosion risk management authority”, and

(b) omit from “Provided that” to the end.
(3) Omit subsection (2).

**Commencement**

Sch. 2 para. 12(1)-(3): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

**Extent**

Sch. 2 para. 12(1)-(3): England, Wales

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**Law In Force**

13

In section 19 (compensation for depreciation of value of an interest in land) in subsections (1) and (2) for “coast protection authority”, in each place, substitute “coastal erosion risk management authority”.

**Commencement**

Sch. 2 para. 13: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

**Extent**

Sch. 2 para. 13: England, Wales

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14

Section 20 (contributions towards expenses) is repealed.

**Commencement**

Sch. 2 para. 14: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

**Extent**

Sch. 2 para. 14: England, Wales

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15

Section 21 (grants to coast protection authorities) is repealed.
Commencement
Sch. 2 para. 15: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 15: England, Wales

Law In Force

16
In section 23 (power to sell materials) in subsections (1) and (2) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement
Sch. 2 para. 16: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 16: England, Wales

Law In Force

17
In section 24 (arbitrations) in subsection (3) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement
Sch. 2 para. 17: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 17: England, Wales

Law In Force

18
In section 25 (powers of entry and inspection) in subsections (1) and (9)(b) for “coast protection authority” substitute “coastal erosion risk management authority”.

Law In Force
Commencement
Sch. 2 para. 18: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 18: England, Wales

19
In section 26 (power to require information) in subsections (1) and (2) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement
Sch. 2 para. 19: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 19: England, Wales

20
In section 27 (acquisition of right of passage) in subsections (1), (4)(b) and (5) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement
Sch. 2 para. 20: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent
Sch. 2 para. 20: England, Wales

21
In section 28 (power of Minister to facilitate coast protection work) in subsections (1) and (2) for “coast protection authority”, in each place, substitute “coastal erosion risk management authority”.

Commencement

Sch. 2 para. 21: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent

Sch. 2 para. 21: England, Wales

Law In Force

22
In section 44 (regulations and orders) in subsection (2) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement

Sch. 2 para. 22: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent

Sch. 2 para. 22: England, Wales

Law In Force

23
In section 45 (service) in subsection (2) for “coast protection authority” substitute “coastal erosion risk management authority”.

Commencement

Sch. 2 para. 23: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(d); SI 2011/2204 art. 3(2)(b))

Extent

Sch. 2 para. 23: England, Wales

Law In Force

24
In section 49 (interpretation) for the definition of “coast protection work” substitute—

““coast protection work” means any of the following done for the purpose of managing a coastal erosion risk (within the meaning of Part 1 of the Flood and Water Management Act 2010)—

(a) anything done to construct, alter, repair, maintain or remove works;
(b) anything done for the purpose of maintaining or restoring natural processes;
(c) planting vegetation.”

Land Drainage Act 1991

25
The Land Drainage Act 1991 is amended as follows.

Commencement
Sch. 2 para. 25: October 1, 2010 (SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent
Sch. 2 para. 25: England, Wales

26
Section 8 (concurrent powers of the Environment Agency) is repealed.

Commencement
Sch. 2 para. 26: April 6, 2012 (SI 2012/879 art. 3(b))

Extent
Sch. 2 para. 26: England, Wales

27
In section 9(1) (default powers of the Agency)—
(a) omit “but without prejudice to section 8 above”, and
(b) omit “flooding or”.

Commencement
Sch. 2 para. 27(a)-(b): April 6, 2012 (SI 2012/879 art. 3(b))

Extent
Sch. 2 para. 27(a)-(b): England, Wales

28
At the end of section 11 (arrangements between drainage authorities) add—

“(5) Two internal drainage boards may agree that one is to provide administrative, professional or technical services for the other.”

Commencement
Sch. 2 para. 28: October 1, 2010 (SI 2010/2169 art. 4)

Extent
Sch. 2 para. 28: England, Wales

29
(1) After section 14 (general drainage powers of boards and local authorities) insert—

“14A General powers: flood risk management works

(1) A lead local flood authority may carry out flood risk management work if Conditions 1 and 2 are satisfied.

(2) An authority listed in subsection (3) may carry out flood risk management work if—

(a) Conditions 1 and 3 are satisfied, or

(b) Conditions 1 and 4 are satisfied.

(3) The authorities are—

(a) an internal drainage board,

(b) a district council, and

(c) a lead local flood authority for an area for which there is no district council.

(4) Condition 1 is that the authority considers the work desirable having regard to the local flood risk management strategy for its area under section 9 or 10 of the Flood and Water Management Act 2010.
(5) Condition 2 is that the purpose of the work is to manage a flood risk in the authority's area from—
   (a) surface runoff, or
   (b) groundwater.

(6) Condition 3 is that the purpose of the work is to manage a flood risk in the authority's area from an ordinary watercourse.

(7) In subsection (6) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse.

(8) Condition 4 is that the purpose of the work is to manage a flood risk in the authority's area from the sea and either—
   (a) the work is within subsection (9)(a), (b) or (f), or
   (b) the Environment Agency has consented to the work.

(9) In this section “flood risk management work” means anything done—
   (a) to maintain existing works (including buildings and structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
   (b) to operate existing works (such as sluicegates or pumps);
   (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
   (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
   (e) for the purpose of maintaining or restoring natural processes;
   (f) to monitor, investigate or survey a location or a natural process;
   (g) to reduce or increase the level of water in a place;
   (h) to alter or remove works.

(10) Nothing in this section authorises a person to enter land except for the purpose of maintaining existing works.

(11) Section 14(5) and (6) applies in relation to the exercise by any authority of powers under this section as to the exercise of powers under section 14.

(12) The powers under section 62 and 64 are available to an authority for a purpose in connection with the exercise of powers under this section.

(13) In this section the following terms have the meaning given by Part 1 of the Flood and Water Management Act 2010—
   (a) flood risk,
   (b) lead local flood authority,
   (c) surface runoff, and
   (d) groundwater.”

(2) In section 14(1)(b)—
   (a) omit “either”, and
   (b) omit sub-paragraph (ii) (and the “or” before it).

(3) Omit section 14(4)(b) (and the “or” before it).
Commencement
Sch. 2 para. 29(1)-(3): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent
Sch. 2 para. 29(1)-(3): England, Wales

Law In Force

30
Section 17 (supervision by the Agency: works) is repealed.

Commencement
Sch. 2 para. 30: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent
Sch. 2 para. 30: England, Wales

Law In Force

31
(1) Section 21 (enforcement of obligations to repair watercourses and bridges) is amended as follows.

(2) For subsection (6)(b) substitute—

“(b) in relation to any watercourse, bridge or drainage works in an area outside an internal drainage district, are references to the lead local flood authority for the area.”

(3) After subsection (6) add—

“(7) “Lead local flood authority” has the meaning given by section 6 of the Flood and Water Management Act 2010.”

Commencement
Sch. 2 para. 31(1)-(3): April 6, 2012 (SI 2012/879 art. 3(b))

Extent
Sch. 2 para. 31(1)-(3): England, Wales
(1) Section 23 (prohibitions on obstructions) is amended as follows.

(2) For subsection (1)(b) substitute—

“(b) erect a culvert in an ordinary watercourse, or
(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse;”.

(3) After subsection (1) insert—

“(1A) Consent under this section may be given subject to reasonable conditions.

(1B) An internal drainage board or lead local flood authority must consult the Environment Agency before carrying out work within subsection (1)(a), (b) or (c) if the board or authority is “the drainage board concerned” for the purposes of this section.

(1C) The drainage board concerned must have regard to any guidance issued by the Environment Agency about the exercise of the board's functions under this section.”

(4) In subsection (2) for “and the amount of that fee shall be £50 or such other sum as may be prescribed” substitute “and the amount of the fee shall be determined in accordance with a prescribed charging scheme.”

(5) In subsection (8) for “section 24” substitute “sections 24 and 25”.

(6) For subsection (8)(b) substitute—

“(b) in relation to a watercourse in an area outside an internal drainage district, are references to the lead local flood authority for the area.”

(7) After subsection (8) add—

“(9) “Lead local flood authority” has the meaning given by section 6 of the Flood and Water Management Act 2010.”

Commencement

Sch. 2 para. 32(1)-(3), (5)-(7): April 6, 2012 subject to transitional provisions specified in SI 2012/879 art.4 (SI 2012/879 art. 3(b), art. 4)

Sch. 2 para. 32(4): Date to be appointed (not yet in force)

Extent

Sch. 2 para. 32(1)-(7): England, Wales
(2) In subsection (1)—
   (a) omit “Subject to section 26 below”, and
   (b) omit “or local authority”.

(3) Omit subsection (2).

(4) In subsections (6)(a), (7) and (8) omit “or local authority”.

Commencement
Sch. 2 para. 33(1)-(4): April 6, 2012 subject to transitional provisions specified in SI 2012/879 art.4 (SI 2012/879 art. 3(b), art. 4)

Extent
Sch. 2 para. 33(1)-(4): England, Wales

Law In Force

34
Section 26 (competing jurisdictions under section 25) is repealed.

Commencement
Sch. 2 para. 34: April 6, 2012 subject to transitional provisions specified in SI 2012/879 art.4 (SI 2012/879 art. 3(b), art. 4)

Extent
Sch. 2 para. 34: England, Wales

Law In Force

35
(1) Section 33 (commutation of obligations) is amended as follows.

(2) In subsection (1) for “Agency or the drainage board for the internal drainage district” substitute “relevant authority for the area”.

(3) In subsection (2)—
   (a) for “Agency or an internal drainage board propose” substitute “relevant authority proposes”, and
   (b) for “Agency or board” substitute “authority”.

(4) In subsection (3) for “Agency or board”, in each place, substitute “relevant authority”.

(5) After subsection (5) insert—

“(5A) In this section and section 34, references to the relevant authority for an area—
   (a) in relation to work in an area which forms part of an internal drainage district, are references to the drainage board for the district, and
(b) in relation to work in any other area, are references to the lead local flood authority for the area.

(5B) “Lead local flood authority” has the meaning given by section 6 of the Flood and Water Management Act 2010.”

(6) For subsection (6)(a) substitute—

“(a) in relation to a lead local flood authority for an area in England, means the Secretary of State,

(aa) in relation to a lead local flood authority for an area in Wales, means the Welsh Ministers, and”.

Commencement

Sch. 2 para. 35(1)-(6): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent

Sch. 2 para. 35(1)-(6): England, Wales

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36

(1) Section 34 (financial consequences of commutation) is amended as follows.

(2) In subsection (2) for “Agency or internal drainage board” substitute “relevant authority”.

(3) In subsection (4)—

(a) for “Agency or internal drainage board” substitute “relevant authority”, and

(b) for “Agency or, as the case may be, that board” substitute “relevant authority”.

(4) In subsection (5) for “Agency or, as the case may be, the internal drainage board” substitute “relevant authority”.

(5) In subsection (6)—

(a) for “Agency or an internal drainage board” substitute “relevant authority”, and

(b) for “Agency or board” substitute “authority”.

(6) In subsections (7) and (9) for “Agency or internal drainage board” substitute “relevant authority”.

Commencement

Sch. 2 para. 36(1)-(6): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent

Sch. 2 para. 36(1)-(6): England, Wales
37
In section 59 (grants) omit subsection (4)(c).

Commencement
Sch. 2 para. 37: April 6, 2011 (SI 2011/694 art. 4(1)(i))

Extent
Sch. 2 para. 37: England, Wales

38
(1) Section 66 (byelaws) is amended as follows.

(2) For subsection (1) substitute—

“(1) An internal drainage board may make byelaws for Purpose 1, 2 or 3.
(1A) A local authority, except an English county council, may make byelaws for Purpose 1, 2, 3 or 4.
(1B) An English county council which is a lead local flood authority may make byelaws for Purpose 3 or 4.
(1C) Purpose 1 is to secure the efficient working of a drainage system in the authority's district or area.
(1D) Purpose 2 is to regulate the effects on the environment in the authority's district or area of a drainage system.
(1E) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 14A.
(1F) Purpose 4 is to secure the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).”

(3) In subsection (2) for “Without prejudice to the generality of subsection (1) above but subject as aforesaid, an internal drainage board or local authority, other than an English county council, may, in particular, make byelaws for any of the following purposes, that is to say” substitute “Byelaws may, in particular, have the purpose of”.

(4) For subsection (3) substitute—

“(3) An internal drainage board may not rely on this section to do anything in connection with a main river, the banks of a main river or any drainage works in connection with a main river.”
Commencement
Sch. 2 para. 38(1)-(4): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent
Sch. 2 para. 38(1)-(4): England, Wales

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Law In Force
39
In section 72 (interpretation) in subsection (1) after the definition of “conservancy authority” insert—

"culvert" means a covered channel or pipe which prevents the obstruction of a watercourse or drainage path by an artificial construction."

Commencement
Sch. 2 para. 39: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(e); SI 2011/2204 art. 3(2)(c))

Extent
Sch. 2 para. 39: England, Wales

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Water Resources Act 1991

Law In Force
40
The Water Resources Act 1991 is amended as follows.

Commencement
Sch. 2 para. 40: April 1, 2011 (SI 2011/694 art. 3(g))

Extent
Sch. 2 para. 40: England, Wales

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Law In Force
41
Section 106 (obligation to carry out flood defence functions through committees) is repealed.
42
In section 110 (main river structures: applications for consent) in subsection (1) for “and the amount of that fee shall be £50 or such other sum as may be prescribed” substitute “and the amount of the fee shall be determined in accordance with a prescribed charging scheme”.

43
(1) Section 118 (special duties with respect to flood defence revenues) is amended as follows.
(2) In subsection (1)—
   (a) for “flood defence functions” substitute “flood and coastal erosion risk management functions, within the meaning of Part 1 of the Flood and Water Management Act 2010,”,
   and
   (b) for “local flood defence district” substitute “flood risk management region”.
(3) In subsection (2) for “local flood defence district” substitute “flood risk management region”.
(4) Omit subsection (3)(b) (and the “or” before it).
(5) In subsection (4) for “local flood defence district” substitute “flood risk management region”.
(6) In subsection (5)—
   (a) in paragraph (b) for “flood defence district” substitute “flood risk management region”,
   and
   (b) for “local flood defence district” substitute “flood risk management region”.
(7) Omit subsection (6).
(8) At the end add—
“(7) In this section “flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010.”

Commencement
Sch. 2 para. 43(1)-(8): April 1, 2011 (SI 2011/694 art. 3(g))

Extent
Sch. 2 para. 43(1)-(8): England, Wales

44
Section 133 (power to authorise the Agency to issue levies) is repealed.

Commencement
Sch. 2 para. 44: April 1, 2011 (SI 2011/694 art. 3(g))

Extent
Sch. 2 para. 44: England, Wales

45
In section 159 (powers to lay pipes in streets) after subsection (1) insert—

“(1A) The Agency may carry out work within subsection (1)(a) to (c) if—
(a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
(b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.”

Commencement
Sch. 2 para. 45: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(f); SI 2011/2204 art. 3(2)(d))

Extent
Sch. 2 para. 45: England, Wales
46
In section 160 (power to lay pipes in other land) after subsection (1) insert—

“(1A) The Agency may carry out work within subsection (1)(a) to (c) if—
(a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
(b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.”

Commencement
Sch. 2 para. 46: July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(f); SI 2011/2204 art. 3(2)(d))

Extent
Sch. 2 para. 46: England, Wales

47
(1) Section 165 (powers to carry out works) is amended as follows.
(2) For subsection (1) substitute—

“(1) The Agency may—
(a) carry out flood risk management work within subsection (1D)(a) to (f) if Conditions 1 and 2 are satisfied;
(b) carry out flood risk management work within subsection (1D)(g) or (h) if Condition 1 is satisfied.

(1A) Condition 1 is that the Agency considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.

(1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—
(a) the sea, or
(b) a main river.

(1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.

(1D) In this section “flood risk management work” means anything done—
(a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
(b) to operate existing works (such as sluicegates or pumps);
(c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
(d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
(e) for the purpose of maintaining or restoring natural processes;
(f) to monitor, investigate or survey a location or a natural process;
(g) to reduce or increase the level of water in a place;
(h) to alter or remove works.”

(3) In subsection (2) omit “, irrespective of whether the works are in connection with a main river;”.

(4) In subsection (5)—
   (a) omit “in connection with a main river”, and
   (b) at the end add “under this section”.

(5) In subsection (7) omit from “; and subsections (2)” to the end.

(6) The heading becomes “General powers to carry out works”.

Commencement
Sch. 2 para. 47(1)-(6): July 19, 2011 in relation to England; October 1, 2011 otherwise (SI 2011/1770 art. 3(f); SI 2011/2204 art. 3(2)(d))

Extent
Sch. 2 para. 47(1)-(6): England, Wales

Law In Force

48
After section 204(2)(c) (exceptions to prohibition on disclosure of information) insert—

“(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;”.

Commencement
Sch. 2 para. 48: April 1, 2011 (SI 2011/694 art. 3(g))

Extent
Sch. 2 para. 48: England, Wales

Law In Force

49
In Schedule 25 (byelaws) for paragraph 5(1)(a) and (b) substitute—
“for any of Purposes 1 to 4.

(1A) Purpose 1 is to secure the efficient working of a drainage system.
(1B) Purpose 2 is to regulate the effects on the environment of a drainage system.
(1C) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 165.
(1D) Purpose 4 is to secure the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).”
For section 6(4) (general supervision by the Environment Agency) substitute—

“(4) The Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood and coastal erosion risk management, in accordance with Part 1 of the Flood and Water Management Act 2010.”

Sections 14 to 19 and Schedules 4 and 5 (flood defence committees) are repealed.

Notes

1 Repealed by Localism Act 2011 c. 20 Sch.25(4) para.1 (May 4, 2012 as SI 2012/1008)
SCHEDULE 3

SUSTAINABLE DRAINAGE

Section 32

Notes

1 Repealed by Localism Act 2011 c. 20 Sch.25(4) para.1 (May 4, 2012 as SI 2012/1008)

1 “Drainage system”

(1) In this Schedule “drainage system” means a structure designed to receive rainwater except—
   (a) a public sewer, or
   (b) a natural watercourse.

(2) The reference to a structure includes a reference to—
   (a) any part of an existing or proposed structure, and
   (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater.

(3) “Public sewer” has the meaning given by section 219(1) of the Water Industry Act 1991.

(4) “Natural watercourse” means a river or stream.

Commencement

Sch. 3 para. 1(1)-(4): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 1(1)-(4): England, Wales

2 “Sustainable drainage”

“Sustainable drainage” means managing rainwater (including snow and other precipitation) with the aim of—
   (a) reducing damage from flooding,
   (b) improving water quality,
   (c) protecting and improving the environment,
   (d) protecting health and safety, and
   (e) ensuring the stability and durability of drainage systems.
Commencement
Sch. 3 para. 2(a)-(e): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 2(a)-(e): England, Wales

3 Cross-border systems
Where a drainage system is partly in Wales and partly in England, each part is to be treated as a separate system for the purposes of this Schedule (except that decisions in relation to one part may be made having regard to the existence and effect of the other part).

Commencement
Sch. 3 para. 3: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 3: England, Wales

4 “The Minister”
In this Schedule “the Minister” means—
(a) for drainage systems in Wales, the Welsh Ministers, and
(b) for drainage systems in England, the Secretary of State.

Commencement
Sch. 3 para. 4(a)-(b): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 4(a)-(b): England, Wales

5 National standards
(1) The Minister shall publish national standards for the implementation of sustainable drainage.
(2) Standards must address the way in which drainage systems—
(a) are designed,
(b) are constructed,
(c) are maintained, and
(d) operate.

(3) Standards may—
   (a) permit or require approving bodies to form judgments by reference to specified criteria;
   (b) require approving bodies to have regard to guidance to be issued by the Minister.

(4) The Minister must consult before publishing standards.

Commencement

Sch. 3 para. 5(1)-(4): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 5(1)-(4): England, Wales

Not Yet In Force

6 Approving body

(1) The approving body for a drainage system is—
   (a) the unitary authority for the area in which it is, or in which it is to be constructed, or
   (b) if there is no unitary authority, the county council for the area.

(2) “Unitary authority” means—
   (a) the council of a county for which there are no district councils;
   (b) the council of a district in an area for which there is no county council;
   (c) a county borough council;
   (d) the council of a London borough;
   (e) the Common Council of the City of London;
   (f) the Council of the Isles of Scilly.

(3) The Minister may by order appoint a body as approving body for drainage systems in all areas
or in one or more specified areas (instead of the body that would be the approving body under
sub-paragraph (1)).

(4) An order under sub-paragraph (3) may—
   (a) appoint a body as approving body for specified purposes only;
   (b) appoint different bodies as approving body for different purposes.

(5) An order under sub-paragraph (3) may confer on the approving body a power of a kind
exercisable by the body that would be the approving body under sub-paragraph (1).

(6) An order under sub-paragraph (3)—
   (a) if it includes provision under sub-paragraph (4) or (5)—
      (i) may not be made by the Secretary of State unless a draft has been laid before
         and approved by resolution of each House of Parliament, and
      (ii) may not be made by the Welsh Ministers unless a draft has been laid before and
         approved by resolution of the National Assembly for Wales, and
   (b) otherwise, shall be subject to annulment in pursuance of a resolution of—
      (i) either House of Parliament, in the case of an order of the Secretary of State, or
      (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.
7 Requirement for approval

(1) Construction work which has drainage implications may not be commenced unless a drainage system for the work has been approved by the approving body.

(2) For the purposes of sub-paragraph (1)—
   (a) construction work means anything done by way of, in connection with or in preparation for the creation of a building or other structure, and
   (b) construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater.

(3) Sub-paragraph (1) does not apply to work requiring development consent under section 31 of the Planning Act 2008 (nationally significant infrastructure projects).

(4) The Minister may by order—
   (a) provide that a specified class of work is to be or not to be treated as construction work;
   (b) provide for work to be or not to be treated as having drainage implications in specified circumstances;
   (c) provide exceptions to sub-paragraph (1).

(5) For the avoidance of doubt, anything that covers land (such as a patio or other surface) is a structure for the purposes of sub-paragraph (2)(a).

8 Applications for approval

(1) This paragraph provides two approaches for applying for approval required by paragraph 7.

(2) If the construction work does not require planning permission, the application for approval under paragraph 7 must be made in accordance with paragraph 9.
(3) If the construction work requires planning permission, the application for approval under paragraph 7 may be—
   (a) made in accordance with paragraph 9, or
   (b) combined with the application for planning permission in accordance with paragraph 10.

(4) “Planning permission” means planning permission under the Town and Country Planning Act 1990.

Commencement
Sch. 3 para. 8(1)-(4): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 8(1)-(4): England, Wales

Not Yet In Force

9 Free-standing application for approval

(1) This paragraph provides for free-standing applications for approval under paragraph 7.

(2) An application must—
   (a) be in any form required by the approving body,
   (b) contain or be accompanied by any information required by the approving body, and
   (c) be accompanied by any fee chargeable in accordance with paragraph 13.

Commencement
Sch. 3 para. 9(1)-(2)(c): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 9(1)-(2)(c): England, Wales

Not Yet In Force

10 Combined applications

(1) This paragraph provides for the combination of an application for approval under paragraph 7 with an application for planning permission.

(2) Paragraph 9(2) applies to that part of the combined application that seeks approval under paragraph 7.

(3) The planning authority must—
   (a) consult the approving body (if different) in determining the application for planning permission, and
   (b) inform the approving body (if different) of its determination of the application for planning permission.
(4) When informing the applicant of the determination of the application for planning permission the planning authority must also inform the applicant of the approving body's determination of the application for approval.

Commencement
Sch. 3 para. 10(1)-(4): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 10(1)-(4): England, Wales

11 Determination of application for approval

(1) On considering an application for approval the approving body must—

(a) grant it, if satisfied that the drainage system if constructed as proposed will comply with national standards for sustainable drainage, or

(b) refuse it, if not satisfied.

(2) Approval granted under sub-paragraph (1)(a) may be subject to conditions; in particular, a condition may—

(a) relate to the construction of the drainage system (which may involve modification of the proposal for construction),

(b) provide that approval takes effect only if and when the applicant provides a non-performance bond in accordance with paragraph 12,

(c) relate to inspection, or

(d) require the payment of fees chargeable under paragraph 13 by reference to work undertaken in connection with approval.

(3) Before determining an application the approving body must consult—

(a) any sewerage undertaker with whose public sewer the drainage system is proposed to communicate;

(b) the Environment Agency, if the drainage system directly or indirectly involves the discharge of water into a watercourse;

(c) the relevant highway authority for a road which the approving body thinks may be affected;

(d) British Waterways, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them;

(e) an internal drainage board, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse (within the meaning of section 72 of the Land Drainage Act 1991) within the board's district.

(4) As soon as is reasonably practicable after determining an application for approval the approving body must notify—

(a) the applicant or, in the case of a combined application, the planning authority, and

(b) any person consulted under sub-paragraph (3).
(5) The Minister may make regulations about timing and procedure for determination of applications for approval; and the regulations may, in particular, specify the consequences of failure to comply with them.

Amendments Pending

Sch. 3 para. 11(3)(b): words inserted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch. 2(1) para. 467(2) (date to be appointed: insertion came into force on April 1, 2013 subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7 but cannot take effect until the commencement of 2010 c.29 Sch.3 para.11(3)(b))

Sch. 3 para. 11(3)(ba): added by Natural Resources Body for Wales (Functions) Order 2013/755 Sch. 2(1) para. 467(3) (date to be appointed: insertion came into force on April 1, 2013 subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7 but cannot take effect until the commencement of 2010 c.29 Sch.3 para.11(3))

Sch. 3 para. 11(3)(d): words substituted by British Waterways Board (Transfer of Functions) Order 2012/1659 Sch. 3(1) para. 20 (date to be appointed: substitution came into force on July 2, 2012 but cannot take effect until the coming into force of 2010 c.29 Sch.3 para.11)

Commencement

Sch. 3 para. 11(1)-(5): Date to be appointed

Extent

Sch. 3 para. 11(1)-(5): England, Wales

12 Non-performance bonds

(1) A non-performance bond is a bond of a kind and to a value specified in a condition imposed on the grant of an application for approval.

(2) The effect of the bond must be that the value of the bond is payable to the approving body if it certifies that the drainage system—

(a) has been constructed in a manner that is not in accordance with the approved proposals, or

(b) is unlikely to be completed.

(3) Before giving a certificate under sub-paragraph (2) the approving body must consult the applicant for approval (“the developer”).

(4) Where an approving body gives a certificate under sub-paragraph (2)—

(a) it must notify the developer,

(b) the approving body may undertake any work necessary to ensure that the drainage system is completed in such a manner as to make it likely to operate in compliance with national standards for sustainable drainage, and

(c) the sums received under the bond may be applied to the expenses of that work, and any excess is to be paid to the developer.
(5) In requiring a non-performance bond an approving body must specify a value which does not exceed the best estimate of the maximum likely cost of work required to ensure that the drainage system accords with the approved proposals.

(6) The Minister may issue guidance about what amounts may be required by way of non-performance bonds; and approving bodies must have regard to the guidance.

Amendments Pending
Sch. 3 para. 12(4)(c): words inserted by Water Act 2014 c. 21 Pt 5 s. 88(a) (date to be appointed: insertion came into force on July 14, 2014 but cannot take effect until the commencement of 2010 c.29 Sch.3 para.12(4)(c))

Sch. 3 para. 12(4)(c): words substituted by Water Act 2014 c. 21 Pt 5 s. 88(b) (date to be appointed: substitution came into force on July 14, 2014 but cannot take effect until the commencement of 2010 c.29 Sch.3 para.12(4)(c))

Commencement
Sch. 3 para. 12(1)-(6): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 12(1)-(6): England, Wales

13 Fees
(1) The Minister shall by regulations provide for fees for applications for approval.

(2) The regulations may—
   (a) provide for fees to be determined by reference to specified criteria (including the extent or nature of construction works);
   (b) provide for fees to be paid by reference to work done by the approving authority in connection with approval.

(3) In making regulations the Minister must have regard to the desirability of ensuring that fee income does not significantly exceed the costs (direct and indirect) that approving bodies incur in connection with approval.

Commencement
Sch. 3 para. 13(1)-(3): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 13(1)-(3): England, Wales

14 Enforcement
(1) The Minister shall by order provide for the enforcement of the requirement for approval in paragraph 7(1).
(2) An order may, in particular, make provision about cases where—
(a) construction is commenced without a drainage system having been approved,
(b) conditions of approval are breached, or
(c) construction does not conform to the approved proposals.

(3) An order may, in particular, provide for—
(a) notices (including enforcement notices, stop notices, temporary notice and breach of
condition notices),
(b) applications to a court or tribunal,
(c) powers (including (i) discretionary powers conferred on the Minister or specified
authorities, (ii) powers of entry, (iii) powers of inspection, and (iv) powers to undertake
and charge for remedial work),
(d) offences of failure to comply with the regulations or notices under them,
(e) financial penalties,
(f) rights of appeal, and
(g) compensation.

(4) An order may apply (with or without modification) or make provision similar to a provision of
the Town and Country Planning Act 1990.

(5) An order—
(a) may not be made by the Secretary of State unless a draft has been laid before and
approved by resolution of each House of Parliament, and
(b) may not be made by the Welsh Ministers unless a draft has been laid before and approved
by resolution of the National Assembly for Wales.

Commencement
Sch. 3 para. 14(1)-(5)(b): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 14(1)-(5)(b): England, Wales

15 Guidance
The Minister may issue guidance about the process of seeking and obtaining approval; and approving
bodies must have regard to the guidance.

Commencement
Sch. 3 para. 15: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 15: England, Wales
16 Sewers and roads

(1) After section 106(1A) of the Water Industry Act 1991 (right to connect to public sewers) insert—

“(1B) The right under subsection (1) is subject to section 106A.”

(2) After section 106 insert—

“106A Sustainable drainage

(1) This section applies to a drainage system construction of which required approval under Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).

(2) A person may exercise the right under section 106(1) in respect of surface water only if—

(a) the construction of the drainage system was approved under that Schedule, and
(b) the proposals for approval included a proposal for the communication with the public sewer.

(3) Where subsection (2) is satisfied, the connection may not be refused—

(a) under section 106(4), or
(b) on grounds that the drainage system absorbs water from more than one set of premises or sewer, or from land that is neither premises nor a sewer.”

(3) After section 115(5) of the Water Industry Act 1991 (highway drains and sewers) insert—

“(5A) A sewerage undertaker must accept any use by a highway authority which is in accordance with a drainage system approved under Schedule 3 to the Flood and Water Management Act 2010.”

Commencement

Sch. 3 para. 16(1)-(3): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 16(1)-(3): England, Wales

17 Duty to adopt

(1) An approving body must adopt a drainage system which satisfies the following conditions.

(2) Condition 1 is that the drainage system was constructed in pursuance of proposals approved under paragraph 7.

(3) Condition 2 is that the approving body is satisfied—

(a) that the drainage system was constructed, and functions, in accordance with the approved proposals (including any conditions of approval), or
(b) that the approving body can issue or has issued a certificate under paragraph 12(2).
(4) An approving body must have regard to any guidance issued by the Minister about the application of Condition 2.

(5) Condition 3 is that the drainage system is a sustainable drainage system, as defined by regulations made by the Minister.

(6) Where part of a drainage system is exempt from adoption a reference in this Schedule to the adoption of a drainage system includes a reference to adoption of part of a drainage system.

### Commencement

Sch. 3 para. 17(1)-(6): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

### Extent

Sch. 3 para. 17(1)-(6): England, Wales

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Not Yet In Force

18 **Exception 1: single-property systems**

(1) The adoption duty does not apply to a drainage system which is designed only to provide drainage for a single property.

(2) The adoption duty does not apply to any part of a drainage system which is designed only to provide drainage for a single property.

(3) The Minister may by regulations make provision for determining when a drainage system, or part of a drainage system, is to be or not to be treated as designed only to provide drainage for a single property.

### Commencement

Sch. 3 para. 18(1)-(3): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

### Extent

Sch. 3 para. 18(1)-(3): England, Wales

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Not Yet In Force

19 **Exception 2: roads**

(1) The adoption duty does not apply to any part of a drainage system which is a publicly-maintained road.

(2) If part of an adopted drainage system becomes a publicly-maintained road, the adoption lapses in respect of that part.

(3) Sub-paragraphs (4) and (5) apply—

   (a) where a drainage system is adopted and part of the system is a publicly-maintained road (and that part therefore need not be adopted);
(b) where a drainage system is entirely on a publicly-maintained road (and the adoption duty does not therefore apply to it).

(4) The maintaining authority must exercise its functions in respect of the road—
(a) in accordance with the approved proposals for the drainage system (including any conditions of approval), and
(b) in accordance with national standards for sustainable drainage.

(5) The maintaining authority must designate the road under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties).

(6) “Publicly-maintained road” means a highway to which the duty under section 41 of the Highways Act 1980 applies (maintenance at public expense); (and a reference to a road includes a reference to part of a road).

Commencement
Sch. 3 para. 19(1)-(6): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 19(1)-(6): England, Wales

The adoption duty does not apply to a drainage system constructed under section 114A of the Water Industry Act 1991 (drainage systems relieving public sewers).
1]

Notes
1 Added by Water Act 2014 c. 21 Pt 1 c.2 s.21(3) (July 14, 2014)

Extent
Sch. 3 para. 19A: England, Wales

20 Additional exceptions
The Minister may by order provide additional exceptions to the adoption duty.

Commencement
Sch. 3 para. 20: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 20: England, Wales
21 Power to adopt
An approving body may voluntarily adopt all or part of a sustainable drainage system, as defined by regulations made by the Minister, to which the duty to adopt does not apply.

Commencement
Sch. 3 para. 21: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 21: England, Wales

22 Effect of adoption
(1) Where an approving body adopts a drainage system it becomes responsible for maintaining the system.
(2) In maintaining the system the adopting body must comply with national standards for sustainable drainage.

Commencement
Sch. 3 para. 22(1)-(2): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent
Sch. 3 para. 22(1)-(2): England, Wales

23 Process of adoption in pursuance of duty to adopt
(1) This paragraph describes the procedure for adoption in pursuance of the duty to adopt.
(2) An approving body may adopt a drainage system—
   (a) on its own initiative, or
   (b) at the request of the person who applied for approval under paragraph 7 ("the developer").
(3) A request must be made in the form (if any) prescribed by the approving body.
(4) Where an approving body receives a request it must—
   (a) determine it within such period as the Minister may prescribe by order, and
   (b) notify the developer as soon as is reasonably practicable of the decision and of any right of appeal.
(5) Where an approving body adopts a drainage system on its own initiative it must notify the developer as soon as is reasonably practicable.
(6) Where an approving body gives notice under sub-paragraph (4)(b) or (5) it must—
(a) ensure that the notice specifies the extent of the drainage system being adopted,
(b) copy the notice to the sewerage undertaker in whose area the drainage system is,
(c) copy the notice to any person who appears to the approving body to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance),
(d) copy the notice to any other person whom the approving body were obliged to consult on the application for approval,
(e) copy the notice to any person who appears to the approving body to own or occupy land from which water will be drained by the drainage system,
(f) arrange for the inclusion of the drainage system (including any non-adopted part) in the relevant register under section 21,
(g) release any bond provided under paragraph 12,
(h) arrange for the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body), and
(i) designate under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.

(7) The Minister may make regulations about the timing and manner of compliance with sub-paragraph (6).

Commencement

Sch. 3 para. 23(1)-(7): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 23(1)-(7): England, Wales
(b) the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body).

(4) The notification under sub-paragraph (2) must specify the extent of the drainage system being adopted.

(5) The Minister may make regulations about the timing and manner of compliance with sub-paragraphs (2) and (3).

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**25 Appeals**

(1) The Minister must by regulations provide a right of appeal against—
   (a) decisions under this Schedule about applications for approval (including decisions about conditions), and
   (b) decisions under this Schedule about the duty to adopt.

(2) The regulations must—
   (a) confer jurisdiction on the Minister, a court or a tribunal, and
   (b) make provision about procedure.

(3) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and
   (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

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**26 Building Act 1984**

(1) At the end of section 21 of the Building Act 1984 (provision of drainage) add—

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“(7) This section does not apply to works in connection with which approval is required in accordance with Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).”

(2) The power in section 59(1)(c) of the Building Act 1984 (power to give notice about unsatisfactory condition of drains) applies to sustainable drainage systems, as defined by regulations under paragraph 17(5) above, as to works mentioned in that section; and for that purpose—
   (a) it does not matter whether the drainage system, or any part of it, is adopted under this Schedule, and
   (b) a reference to a local authority is to be treated as a reference to the relevant approving body.

(3) At the end of section 59 add—

   “(7) Schedule 3 to the Flood and Water Management Act 2010 extends the power under subsection (1)(c) of this section to sustainable drainage systems as defined in regulations under that Schedule.”

(4) In section 84(1) of the Building Act 1984 (paving and drainage of yards and passages) for the words “to a proper outfall” substitute “(having regard both to the need to remove water from the court, yard or passage and also to the need to dispose of it satisfactorily in the course of or after its removal)”.

Commencement

Sch. 3 para. 26(1)-(4): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 26(1)-(4): England, Wales

Not Yet In Force

27 New Roads and Street Works Act 1991

At the end of section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) insert—

   “(5) In addition to criteria for designation prescribed under subsection (2)(a), Schedule 3 to the Flood and Water Management Act 2010 requires designation in certain circumstances (relating to sustainable drainage systems).”

Commencement

Sch. 3 para. 27: Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 27: England, Wales
28 Works on public land

(1) The Minister may make regulations requiring a statutory undertaker to notify the approving body before commencing statutory works on public land where the works will or may affect the operation of a drainage system on that land.

(2) “Public land” means land owned or occupied by a designating authority for the purposes of Schedule 1.

(3) The regulations shall define—
   (a) “statutory undertaker”, and
   (b) “statutory works”.

(4) The regulations may specify criteria for determining what works are to be treated as works that will or may affect the operation of a drainage system.

(5) The regulations may include provision about—
   (a) timing, and
   (b) procedure.

(6) The regulations may—
   (a) specify consequences of failure to comply with a provision of the regulations;
   (b) include provision requiring, or enabling an approving body to require, a statutory undertaker who is carrying out or has carried out works affecting a drainage system to carry out further work in relation to the system (which may include, in particular, a requirement to leave the system in a state approved by the approving body, having regard to national standards on sustainable drainage);
   (c) give approving bodies default powers to undertake work and recover costs.

(7) The regulations may amend an enactment so as to introduce a crossreference to the regulations.

Commencement

Sch. 3 para. 28(1)-(7): Date to be appointed (not yet in force) (2010 c. 29 Pt 3 s. 49(3))

Extent

Sch. 3 para. 28(1)-(7): England, Wales

SCHEDULE 4

RESERVOIRS

Section 33

Introduction
The Reservoirs Act 1975 is amended as follows.

Commencement
Sch. 4 para. 1: October 1, 2011 (SI 2011/2204 art. 3(1)(d))

Extent
Sch. 4 para. 1: England, Wales

“Large raised reservoir”

Before section 1 insert—

“A1 “Large raised reservoir”: England and Wales

(1) In this Act “large raised reservoir” means—
   (a) a large, raised structure designed or used for collecting and storing water, and
   (b) a large, raised lake or other area capable of storing water which was created or
   enlarged by artificial means.

(2) A structure or area is “raised” if it is capable of holding water above the natural level
of any part of the surrounding land.

(3) A raised structure or area is “large” if it is capable of holding 10,000 cubic metres of
water above the natural level of any part of the surrounding land.

(4) The Minister must make regulations about how to calculate capacity for the purpose of
subsection (3) (and “natural level” and “surrounding land” are to be construed in accordance
with the regulations).

(5) The Minister may by regulations provide for a structure or area to be treated as “large”
by reason of proximity to, or actual or potential communication with, another structure or
area.

(6) In making regulations under subsection (5) the Minister shall aim to ensure that a structure
or area is treated as large under the regulations only if 10,000 or more cubic metres of water
might be released as a result of the proximity or communication mentioned in that subsection.

(7) The Minister may by order substitute a different volume of water for the volume specified
in subsection (3) or (6).

(8) The Minister may by regulations provide for specified things not to be treated as large
raised reservoirs for the purposes of this Act.
(9) A reference to a large raised reservoir includes a reference to anything used or designed to contain the water or control its flow.”

Commencement
Sch. 4 para. 2: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 2: England, Wales

3
(1) Omit section 1(1) to (3) (meaning of “reservoir”).
(2) In section 6 (construction and alteration) in subsection (1) for “existing reservoir” substitute “existing structure or area”.
(3) In section 6(3) for “existing reservoir” substitute “existing structure or area”.
(4) In section 8 (failure to comply with construction or alteration requirements) in subsection (1) for “existing reservoir” substitute “existing structure or area”.
(5) In section 12B (flood plans and national security) in subsection (2) for “a large raised reservoir” substitute “large or raised”.

Commencement
Sch. 4 para. 3(1)-(5): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 3(1)-(5): England, Wales

Registration

4
After section 2(2A) (registration) insert—

“(2B) The undertaker must register a large raised reservoir with the relevant authority.
(2C) The Minister may make regulations about registration under this section.
(2D) Regulations under subsection (2C) may, in particular, include provision about—
(a) the information to be registered, and
(b) the time by which information, or changes to information, must be registered.

(2E) The regulations may require an undertaker to notify the relevant authority about—
(a) proposed alterations to which section 6 applies;
(b) a proposal to abandon a large raised reservoir under section 14;
(c) the appointment, or termination of appointment, of an engineer for a purpose of this Act.”

Commencement
Sch. 4 para. 4: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 4: England, Wales

In section 21 (duty to provide information)—
(a) in subsection (1)(a) omit the words from “(whether” to “capacity”, and
(b) omit subsections (2) to (4).

Commencement
Sch. 4 para. 5(a)-(b): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 5(a)-(b): England, Wales

In section 22 (criminal liability) before subsection (1) insert—
“(A1) It is an offence for an undertaker to fail to comply with either of the following—
(a) the requirement to register a large raised reservoir imposed by section 2(2B);
(b) a requirement of regulations made under section 2(2C).

(A2) A person guilty of an offence under subsection (A1) is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.”
After section 2 (registration) insert—

**“2A  Consideration of risk and provisional designation: England and Wales**

(1) As soon as is reasonably practicable after the registration of a large raised reservoir under section 2[the appropriate agency] shall consider whether the reservoir is to be designated as a high-risk reservoir (applying the criteria set out in section 2C).

(2) [the appropriate agency] may—
   (a) make a provisional designation by giving notice to the undertaker, or
   (b) notify the undertaker that the reservoir is not designated as a high-risk reservoir.

(3) A provisional designation notice must specify—
   (a) the reasons for the provisional designation,
   (b) how representations to [the appropriate agency] may be made, and
   (c) the period within which those representations may be made.

(4) The Minister may by order specify a minimum period within which representations may be made under subsection (3)(c).

**2B  Designation**

(1) [the appropriate agency] may designate a large raised reservoir as a high-risk reservoir by giving notice confirming a provisional designation to the undertaker.

(2) In deciding whether to confirm a provisional designation [the appropriate agency] must have regard to the representations made in accordance with section 2A.

(3) A notice under subsection (1) may not be given before the end of the period within which representations may be made under section 2A(3)(c).

(4) The notice must—
   (a) specify the provisional notice to which it relates,
   (b) specify the reasons for the designation,
(c) give information about the procedure for bringing an appeal under regulations under section 2E,
(d) specify the period within which an appeal may be brought, and
(e) specify the date on which the designation takes effect, which must be after the end of the period specified under paragraph (d).

2C **Meaning of “high-risk reservoir”**

(1) The appropriate agency may designate a large raised reservoir as a high-risk reservoir if—
   (a) the appropriate agency thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered, and
   (b) the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.

(2) The conditions specified in regulations under subsection (1)(b) may, in particular, include conditions as to—
   (a) the purpose for which the reservoir is used,
   (b) the materials used to construct the reservoir,
   (c) the way in which the reservoir is constructed, and
   (d) the maintenance of the reservoir.

(3) Sections 10 to 12 make provision about requirements for inspection, monitoring and supervision of high-risk reservoirs.

(4) References in this Act to a “high-risk reservoir” are references to a large raised reservoir that has been designated under section 2B as a high-risk reservoir.

2D **Review**

(1) The appropriate agency must carry out a review if it thinks that—
   (a) the designation of a large raised reservoir as a high-risk reservoir may have ceased to be appropriate, or
   (b) it may be appropriate to designate a large raised reservoir as a high-risk reservoir.

(2) Sections 2A to 2C apply following a review as they apply following the registration of a reservoir.

2E **Appeals**

(1) The Minister must by regulations provide a right of appeal against designations under section 2B.

(2) The regulations must—
   (a) confer jurisdiction on the Minister, a court or a tribunal, and
   (b) make provision about procedure.

(3) Where an appeal against a designation is brought—
   (a) the designation is suspended while the appeal is pending;
   (b) the person or body hearing the appeal may cancel the designation.”
Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.468(1) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Sch. 4 para. 7: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent

Sch. 4 para. 7: England, Wales

Law In Force

8 In section 7 (certificates of construction engineers) in subsection (5) after “a reservoir” insert “which is designated, or in the opinion of the engineer is likely to be designated, as a high-risk reservoir”.

Commencement

Sch. 4 para. 8: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent

Sch. 4 para. 8: England, Wales

Panels of engineers

Law In Force

9 At the end of section 4 (panel of civil engineers) add—

“(10) The Secretary of State and the Welsh Ministers acting jointly may establish one or more panels of engineers under this section (“joint panels”).

(11) For the purposes of anything done in relation to a joint panel, a reference in this section to the Secretary of State is a reference to the Secretary of State and the Welsh Ministers acting jointly.”
Construction and alteration

Law In Force

10

(1) Section 6 (construction and alteration) is amended as follows.

(2) In subsection (1) after “increase”, in both places, insert “or decrease”.

(3) In subsection (3) omit “addition to the”.

(4) In subsection (4) after “increase” insert “or decrease”.

(5) Omit subsection (6).

(6) At the end add—

“(6A) This section and sections 7 and 8 do not apply in relation to alterations, or proposed alterations, to decrease the capacity of a large raised reservoir so that it is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (in which case section 13 applies instead).

(6B) The Minister may by order substitute a different volume of water for the volume specified in subsection (6A).”
(b) omit “or addition” in the last place it occurs.

(2) In section 7(2) for “addition” substitute “alteration”.

(3) In section 7(3)—
(a) for “addition”, in the first place it occurs, substitute “alteration”, and
(b) omit “or, as the case may be, the reservoir with the addition”.

(4) In section 7(4) and (6) for “addition” substitute “alteration”.

(5) In section 8 (failure to comply with construction or alteration requirements) in subsection (1)—
(a) in paragraph (a) after “increase” insert “or decrease”, and
(b) for “addition” substitute “alteration”.

(6) At the end of section 8(3) add “within the period which the report must specify in respect of each recommendation.”

(7) In section 8(4) for “addition” substitute “alteration”.

(8) In section 8(5)—
(a) omit “or addition”, and
(b) omit “or, as the case may be, the reservoir with the addition”.

(9) In section 8(6) omit “or, as the case may be, the reservoir with the addition”.

(10) In section 10 (inspections) in subsection (9)(b) for “addition” substitute “alteration”.

Commencement
Sch. 4 para. 11(1)-(10): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 11(1)-(10): England, Wales

High-risk reservoirs: inspections

Law In Force

12

(1) Section 10 (inspections) is amended as follows.

(2) In subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.

(3) In subsection (2) for the words from “large raised reservoir” to the end substitute “high-risk reservoir must be inspected under this section at the times specified by regulations made by the Minister.”

(4) In subsection (3) for the words from “the time” to the end substitute—

“(a) the time of the next inspection;
(b) the maintenance of the reservoir;
(c) any measures required in the interests of safety and the period within which those measures must be taken.”

(5) After subsection (3) insert—

“(3A) If the inspecting engineer has not provided a report before the end of the period of 6 months beginning with the date of completion of the inspection, the engineer must—
(a) notify [the appropriate agency]¹, and
(b) provide a written statement of the reasons.”

(6) In subsection (5) after “safety” insert “or as to the maintenance of the reservoir”.

(7) After subsection (5) insert—

“(5A) The undertaker must comply with a recommendation made under subsection (3)(b), unless the recommendation is the subject of a reference under section 19 and the reference has not been determined.”

(8) In subsection (6) for “as soon as practicable” substitute “, within the period specified in the report,”.

(9) After subsection (6) insert—

“(6A) The inspecting engineer must include in the report of the inspection—
(a) a statement as to whether all of the safety measures recommended in the previous report under subsection (3)(c) have been taken, and
(b) either (i) recommendations to take any safety measure that has not yet been taken or (ii) an explanation of why it is no longer required.”

(10) In subsection (7) for “large raised reservoir” substitute “high-risk reservoir”.

Notes

¹ Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.468(1) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Sch. 4 para. 12(1)-(10): October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales subject to transitional and savings provisions specified in SI 2016/79 art.2(c) and art.3 (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(c), art. 3)

Extent

Sch. 4 para. 12(1)-(10): England, Wales

Law In Force

13
In section 17 (powers of entry) in subsection (1)(b) after “safety” insert “, or as to the maintenance of the reservoir,”.
Commencement
Sch. 4 para. 13: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 13: England, Wales

[Law In Force]

14
In section 19(1)(a) after “safety” insert “, or as to the maintenance of the reservoir”.

Commencement
Sch. 4 para. 14: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(b))

Extent
Sch. 4 para. 14: England, Wales

[Law In Force]

15
In section 22 (criminal liability) after subsection (1) insert—

“(1AA) An undertaker who fails to comply with section 10(5A) is guilty of an offence.

(1AB) A person guilty of an offence under subsection (1A) is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.”

Commencement
Sch. 4 para. 15: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales subject to transitional and savings provisions specified in SI 2016/79 art.2(c) and art.3 (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(c), art. 3)

Extent
Sch. 4 para. 15: England, Wales

High-risk reservoirs: monitoring and supervision
16
In section 11 (records) in subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.

Commencement
Sch. 4 para. 16: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales subject to transitional and savings provisions specified in SI 2016/79 art.2(c) and art.3 (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(c), art. 3)

Extent
Sch. 4 para. 16: England, Wales

17
(1) Section 12 (supervision) is amended as follows.
(2) In subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.
(3) After subsection (2) insert—

“(2A) The supervising engineer must provide the undertaker with a written statement of any steps taken to maintain the reservoir in accordance with the recommendations of the inspecting engineer under section 10(3)(b).

(2B) The engineer must provide a statement under subsection (2A) at least once every 12 months.”

(4) In subsection (4) for “large raised reservoir” substitute “high-risk reservoir”.
(5) At the end add—

“(6) The supervising engineer may direct the undertaker to carry out a visual inspection of the reservoir at specified intervals for the purpose of identifying anything that might affect the safety of the reservoir.

(7) The undertaker must notify the supervising engineer of—
   (a) each visual inspection that is carried out, and
   (b) anything noticed in the course of it.

(8) The Minister may issue guidance about supervision in accordance with this section (and may take compliance into account when making decisions under section 4).”

(6) In section 20(4) (reports, certificates etc.) after paragraph (e) add—

“(f) any written statement given under section 12(2) or (2A);
   (g) any direction given under section 12(6);”
18
In section 21(5) (information) for “large raised reservoir” substitute “high-risk reservoir”.

Commencement
Sch. 4 para. 18: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales subject to transitional and savings provisions specified in SI 2016/79 art.2(c) and art.3 (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(c), art. 3)

Extent
Sch. 4 para. 18: England, Wales

19
In section 22 (criminal liability) after subsection (1AB) (inserted by paragraph 15) insert—

“(1AC) An undertaker who, without reasonable excuse, fails to comply with a direction to carry out a visual inspection under section 12(6) or with the notification requirement under section 12(7) is guilty of an offence.

(1AD) A person guilty of an offence under subsection (1AC) is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.”

Commencement
Sch. 4 para. 19: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales subject to transitional and savings provisions specified in SI 2016/79 art.2(c) and art.3 (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(c), art. 3)

Extent
Sch. 4 para. 19: England, Wales

Flood plans
(1) Section 12A (flood plans) is amended as follows.

(2) In subsection (1) omit the words from “setting” to the end.

(3) After section 12A(1) insert—

“(1A) A flood plan is a document—
(a) giving information about the areas that may be flooded in the event of an uncontrolled escape of water from the large raised reservoir,
(b) specifying the action that the undertaker would take in order to prevent an uncontrolled escape of water, and
(c) specifying the action that the undertaker would take in order to control or mitigate the effects of a flood.”

Commencement

Sch. 4 para. 20(1)-(3): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent

Sch. 4 para. 20(1)-(3): England, Wales

21

After section 12A insert—

“12AA Flood plans: preparation

(1) This section applies where an undertaker is directed to prepare a flood plan under section 12A.

(2) The undertaker must prepare a flood plan in consultation with the appointed engineer.

(3) The undertaker may not provide a copy of, or publish, a flood plan in accordance with a direction under section 12A(2)(d) or (e) unless the appointed engineer has certified that the requirements of a direction under section 12A(2)(a) and (b) are satisfied.

(4) The undertaker must test a flood plan at such times and in such manner as may be directed by the appointed engineer.

(5) In the event of flooding, or if flooding is reasonably expected to occur, the undertaker must implement the flood plan without delay.

(6) The undertaker—
(a) must keep a flood plan under review, and
(b) may revise a flood plan.
(7) The undertaker must revise the flood plan in accordance with the directions of the appointed engineer.

(8) The following apply to a revision of a flood plan as they apply to a flood plan—

(a) subsections (2) to (7), and
(b) any requirements of a direction under section 12A.

(9) In this section “appointed engineer” means—

(a) in the case of a high-risk reservoir, the supervising engineer, and
(b) in any other case, the engineer appointed for the purposes of this section.”

Commencement
Sch. 4 para. 21: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 21: England, Wales

Law In Force
22

(1) Section 19 (references) is amended as follows.

(2) After subsection (1) insert—

“(1A) If an engineer determines that the requirements of a direction under section 12A(2)(a) and (b) are not satisfied for the purposes of section 12AA(3), the undertaker may refer the matter to a referee in accordance with rules under this section.”

(3) In subsection (2) after “recommendation” insert “or determination”.

(4) In subsections (3) and (4) for “this section” substitute “subsection (1)”. 

(5) After subsection (4) insert—

“(4A) A referee under subsection (1A) may direct the engineer to issue a certificate for the purposes of section 12AA(3).”

Commencement
Sch. 4 para. 22(1)-(5): October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(f); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(f); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 22(1)-(5): England, Wales
23

(1) Section 20 (reports, certificates etc.) is amended as follows.
(2) In subsection (4)(c) omit “modifying any such report as is mentioned in paragraph (b) above”.
(3) After subsection (4)(g) (inserted by paragraph 17(6)) add—

“(h) any direction given under section 12AA(4) or (7).”

Commencement
Sch. 4 para. 23(1)-(3): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 23(1)-(3): England, Wales

24

In section 22 (criminal liability) after subsection (1AD) (inserted by paragraph 19) insert—

“(1AE) An undertaker who fails to comply with section 12AA(4), (6)(a) or (7) is guilty of an offence and liable—

(a) on conviction on indictment, to a fine, or
(b) on summary conviction, to a fine not exceeding the statutory maximum.

(1AF) An undertaker who fails to comply with section 12AA(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

Commencement
Sch. 4 para. 24: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 24: England, Wales

Discontinuance

25

(1) Section 13 (discontinuance) is amended as follows.
(2) In subsection (1) for the words from “more than 25,000” to “adjoining the reservoir” substitute “10,000 cubic metres of water above the natural level of any part of the surrounding land”.

(3) After subsection (1) insert—

“(1A) An engineer employed for the purposes of subsection (1) may issue a certificate (the “interim certificate”) if the engineer thinks that the level of water in the reservoir should be reduced before the alteration is completed.

(1B) The interim certificate must specify—

(a) the reduced water level,
(b) the time by which it must be reduced, and
(c) the conditions (if any) on which the reservoir may be filled to the reduced level.

(1C) The undertaker must ensure that the reservoir does not contain water except in accordance with the interim certificate.

(1D) The engineer employed for the purposes of subsection (1) may vary an interim certificate by giving written notice to the undertaker.

(1E) An interim certificate ceases to have effect on the issue of a certificate under subsection (2).”

(4) In subsection (3) for the words from “more than 25,000” to “adjoining the reservoir” substitute “10,000 cubic metres of water above the natural level of any part of the surrounding land”.

(5) At the end add—

“(4) The Minister may by order substitute a different volume of water for the volume specified in subsection (1) or (3).

(5) Where it appears to [the appropriate agency] that a qualified civil engineer has not been employed as required by subsection (1) [the appropriate agency] may by notice require the undertaker—

(a) to appoint a qualified civil engineer for the purposes of this section before the end of the period of 28 days beginning with the day on which the notice is given, unless the appointment has already been made, and
(b) to notify [the appropriate agency] of the appointment (whether it was made before or after the notice was given).”

Notes

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.468(1) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement

Sch. 4 para. 25(1)-(5): October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent

Sch. 4 para. 25(1)-(5): England, Wales
26
(1) In section 15 (reserve powers) in subsection (1) after “12” insert “, 13”.
(2) In section 21 (duty to provide information) in subsection (5) after “10(6)” insert “, 13”.
(3) In section 22 (criminal liability) in subsection (1)(b) after “12” insert “, 13”.

Commencement
Sch. 4 para. 26(1)-(3): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 26(1)-(3): England, Wales

Abandonment

27
(1) Section 14 (abandonment) is amended as follows.
(2) In subsection (2) for the words from “before” to “afterwards” substitute “within the period specified in the report”.
(3) At the end add—

“(6) The Minister may by regulations make provision about what is and is not to be treated for the purposes of this Act as—
(a) abandonment of use of a large raised reservoir as a reservoir, and
(b) bringing a large raised reservoir back into use as a reservoir.”

Commencement
Sch. 4 para. 27(1)-(3): October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 27(1)-(3): England, Wales

28
In section 20 (reports, certificates etc.) in subsection (4)(b) omit from “and stated” to “safety”.
Powers of entry

Law In Force

29
In section 17 (powers of entry) for subsection (1)(a) substitute—

“(a) for the purpose of carrying out an inspection, survey or other operation to determine whether any provision of this Act applies;”.

Appeals

Partially In Force

30
After section 19 (references) insert—

“19A Appeals

(1) The Minister must by regulations provide a right of appeal against—

(a) a requirement to appoint an engineer under sections 8(1), 9(7), 10(7), 12(4), 13(5) and 14(4), and

(b) a requirement to carry a recommendation of an engineer into effect under sections 8(3A), 9(7), 10(7) and 14(4).

(2) The regulations must—
(a) confer jurisdiction on the Minister, a court or a tribunal, and
(b) make provision about procedure (including the effect of pending appeals).”

Commencement
Sch. 4 para. 30: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); not yet in force otherwise (SI 2011/2204 art. 3(1)(e))

Extent
Sch. 4 para. 30: England, Wales

Directions of engineers

Partially In Force

31
In section 20(1) (general provision about documents: prescribed form) for “or certificate” substitute “, certificate or directions”.

Commencement
Sch. 4 para. 31: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(f); not yet in force otherwise (SI 2011/2204 art. 3(1)(f))

Extent
Sch. 4 para. 31: England, Wales

Assessment of reports and statements

Partially In Force

32
After section 20 insert—

“20A Assessment of reports and statements

(1) The Minister may by regulations make provision for the assessment of the quality of reports and written statements prepared by—
   (a) inspecting engineers, and
   (b) supervising engineers.
(2) The regulations may make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers; and the regulations may specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision about—
   (a) the criteria for assessment,
   (b) the documents, or categories of documents, that are to be assessed,
   (c) the assessment procedure, which may include provision about oral or written representations, and
   (d) timing.”

Commencement

Sch. 4 para. 32: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); not yet in force otherwise (SI 2011/2204 art. 3(1)(e))

Extent

Sch. 4 para. 32: England, Wales

Information and reports

33

After section 21 (duty to provide information) insert—

“21A Power to require information

(1) For the purposes of carrying out its functions under this Act, [the appropriate agency] ¹ may by notice require an undertaker to provide information specified in the notice.

(2) The notice may require the information to be provided—
   (a) within a specified period;
   (b) in a specified manner or form.

(3) The period specified under subsection (2)(a) must be a period of at least 28 days beginning with the day on which the notice is issued.

21B Reports

(1) The Minister may by regulations require a specified person to make a report to the Environment Agency about any incident of a specified kind which affected, or could have affected, the safety of a large raised reservoir.

(2) The regulations may, in particular, provide that the duty to report applies to—
   (a) an undertaker, and
   (b) an engineer appointed for any purpose of this Act.
(3) The regulations may make provision about—
(a) the form and manner of a report,
(b) the timing of a report.”

Notes
1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.468(1) (April 1, 2013: substitution has effect subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7)

Commencement
Sch. 4 para. 33: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2011/2204 art. 3(1)(e); SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 33: England, Wales

34
In section 22 (criminal liability) after subsection (4) insert—

“(4A) An undertaker who fails to comply with a requirement of a notice given under section 21A is guilty of an offence.

(4B) An undertaker who fails to comply with a requirement to make a report under regulations made under section 21B is guilty of an offence.

(4C) A person guilty of an offence under subsection (4A) or (4B) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

Commencement
Sch. 4 para. 34: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 34: England, Wales

Enforcement: supplementary

35
In section 22 (criminal liability) in subsection (1)—
(a) omit “by the wilful default of the undertakers”, and
(b) omit “unless there is reasonable excuse for the default or failure”.

**Commencement**

Sch. 4 para. 35(a)-(b): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

**Extent**

Sch. 4 para. 35(a)-(b): England, Wales

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**Law In Force**

36

After section 22B insert—

“**22C Expenses**

The undertaker must pay to [the appropriate agency]1 the amount of expenses reasonably incurred by [the appropriate agency]1 in connection with the consultation of an engineer under—

(a) section 8(3B),
(b) section 9(8),
(c) section 10(8), and
(d) section 14(5).”

**Notes**

1 Words substituted by Natural Resources Body for Wales (Functions) Order 2013/755 Sch.2(1) para.468(1) (July 30, 2013: substitution came into force on April 1, 2013 subject to transitional provisions and savings specified in SI 2013/755 art.10 and Sch.7 but cannot take effect until the commencement of 2010 c.29 Sch.4 para.36 on July 30, 2013)

**Commencement**

Sch. 4 para. 36: July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

**Extent**

Sch. 4 para. 36: England, Wales

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*Arrangements for civil protection: charges*

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**Partially In Force**

37

After section 22C (inserted by paragraph 36) insert—
“22D  Arrangements for civil protection: charges

(1) A person who is listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (a “Category 1 responder”) may charge an undertaker a fee in accordance with a scheme prescribed by regulations made by the Minister.

(2) The purpose of the scheme must be to enable Category 1 responders to charge fees to undertakers in respect of costs incurred in carrying out functions under section 2 of the 2004 Act in connection with their reservoirs.”

Commencement
Sch. 4 para. 37: October 1, 2011 for the purposes specified in SI 2011/2204 art.3(1)(e); not yet in force otherwise (SI 2011/2204 art. 3(1)(e))

Extent
Sch. 4 para. 37: England, Wales

Regulations and orders

Law In Force

38

(1) Section 5 (power to prescribe by regulations) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) At the end add—

“(2) A statutory instrument under this Act—
(a) may make provision that applies generally or only for specified purposes,
(b) may make different provision for different purposes, and
(c) may include incidental, consequential or transitional provision.

(3) Regulations or an order made under any provision listed in subsection (5) or (7) shall be made by statutory instrument.

(4) A statutory instrument containing regulations, rules or an order made under any provision listed in subsection (5)—
(a) shall be subject to annulment in pursuance of a resolution of either House of Parliament, in the case of an instrument made by the Secretary of State, or
(b) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales, in the case of an instrument made by the Welsh Ministers.

(5) The provisions are—
(a) section A1(4) and (5),
(b) section 2(2) or (2C),
(c) section 2A(4),
(d) section 2E(1),
(6) A statutory instrument containing regulations or an order made under any provision listed in subsection (7) may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of regulations or an order made by the Secretary of State, or
   (b) the National Assembly for Wales, in the case of regulations or an order made by the Welsh Ministers.

(7) The provisions are—
   (a) section A1(7) and (8),
   (b) section 2C(1)(b),
   (c) section 6(6B),
   (d) section 10(2), and
   (e) section 13(4).

(8) The first sets of regulations under section 2E or 19A may not be made unless a draft has been laid before and approved by resolution of—
   (a) each House of Parliament, in the case of the first regulations made by the Secretary of State under either section, and
   (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers under either section.”

Commencement
Sch. 4 para. 38(1)-(3): October 1, 2011 (SI 2011/2204 art. 3(1)(g))

Extent
Sch. 4 para. 38(1)-(3): England, Wales

Charges
Law In Force

39 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (b) insert—

“(ba) as a means of recovering costs incurred by it in performing functions conferred by the Reservoirs Act 1975 the Agency may require the payment to it of such charges as may from time to time be prescribed;”.

Commencement
Sch. 4 para. 39: October 1, 2011 (SI 2011/2204 art. 3(1)(h))

Extent
Sch. 4 para. 39: England, Wales

Power to make further provision

Law In Force

40

(1) The Minister may by order make such further amendments to the Reservoirs Act 1975 as appear necessary or desirable in consequence of the amendments made by this Schedule.

(2) An order under sub-paragraph (1) may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of an order made by the Secretary of State, or

(b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

Commencement
Sch. 4 para. 40(1)-(2)(b): October 1, 2011 (SI 2011/2204 art. 3(1)(i))

Extent
Sch. 4 para. 40(1)-(2)(b): England, Wales

Regulatory impact assessment
(1) The Minister must carry out a review of the burden on undertakers in relation to large raised reservoirs of complying with the Reservoirs Act 1975 as amended by this Schedule.

(2) The review must be carried out at the end of the period of 12 months beginning with the operative date.

(3) In sub-paragraph (2) the “operative date” means the first date on which all of the following have come into force—
   (a) section A1 of the Reservoirs Act 1975 (inserted by paragraph 2 of this Schedule), and
   (b) regulations under sections 2(2C), 2C(1)(b) and 10(2) of that Act as amended by this Schedule.

(4) The Minister must prepare and publish a report of the review.

Commencement
Sch. 4 para. 41(1)-(4): July 30, 2013 in relation to England; April 1, 2016 in relation to Wales (SI 2013/1590 art. 3(b); SI 2016/79 art. 2(d))

Extent
Sch. 4 para. 41(1)-(4): England, Wales

Ministerial responsibility

(1) In this Schedule, and the amendments of the Reservoirs Act 1975 made by this Schedule, a reference to the Minister is a reference to—
   (a) the Secretary of State, in relation to England, and
   (b) the Welsh Ministers, in relation to Wales.

(2) After section 27B of the Reservoirs Act 1975 insert—

   “27C Ministerial responsibility
   References to “the Minister” in this Act are to be construed in accordance with paragraph 42 of Schedule 4 to the Flood and Water Management Act 2010.”

Commencement
Sch. 4 para. 42(1)-(2): October 1, 2011 (SI 2011/2204 art. 3(1)(j))

Extent
Sch. 4 para. 42(1)-(2): England, Wales
Cross-border England-Scotland reservoirs

(1) In this paragraph—
   (a) a “cross-border reservoir” means a large-raised reservoir which is partly in England and partly in Scotland,
   (b) for that purpose “large-raised reservoir” has the meaning given by section A1 of the Reservoirs Act 1975 as inserted by paragraph 2,
   (c) “the English regime” means the Reservoirs Act 1975 as amended by this Schedule, and
   (d) “the Scottish regime” means the Reservoirs (Scotland) Act 2011 and any order or regulations made, guidance issued or directions given under that Act.

(2) The Secretary of State, with the consent of the Scottish Ministers, may by order provide that in relation to cross-border reservoirs—
   (a) the Scottish regime shall apply and the English regime shall not apply, or
   (b) the English regime shall apply and the Scottish regime shall not apply.

(3) An order may relate to—
   (a) a specified reservoir, or
   (b) a class of reservoir.

(4) An order may provide—
   (a) for any modifications of the English regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir, or
   (b) for any modifications of the Scottish regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir.

(5) An order under this paragraph may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Notes

1 Words substituted by Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015/48 art.15 (April 1, 2016 being the day on which 2011 asp 9 s.8(2) comes into force for all purposes)

Commencement

Sch. 4 para. 43(1)-(5): October 1, 2011 (SI 2011/2204 art. 3(1)(k))

Extent

Sch. 4 para. 43(1)-(5): England, Wales, Scotland
SCHEDULE 5
SPECIAL ADMINISTRATION

Section 34

Transfer schemes

Law In Force

1
(1) This paragraph amends paragraph 2 of Schedule 2 to the Water Industry Act 1991 (transfer schemes).
(2) In sub-paragraph (1) omit “and, in relation to the matters affecting them, of any other appointees”.
(3) In sub-paragraph (3) for “, of the existing appointee and, in relation to the matters affecting them, of any other appointees,” substitute “and the existing appointee”.
(4) In sub-paragraph (4) for “, the new appointee and, in relation to the provisions of the order which affect them, any other appointees” substitute “and the new appointee”.

Commencement
Sch. 5 para. 1(1)-(4): April 1, 2011 (SI 2011/694 art. 3(j))

Extent
Sch. 5 para. 1(1)-(4): England, Wales

Law In Force

2
At the end of paragraph 3(2)(b) of Schedule 2 add “(but may not impose new liabilities on any other appointee);”.

Commencement
Sch. 5 para. 2: April 1, 2011 (SI 2011/694 art. 3(j))

Extent
Sch. 5 para. 2: England, Wales

Objectives
3

After section 23(2A) of the Water Industry Act 1991 (special administration order: effect) insert—

“(2B) Where a company is in special administration as a result of an order made on the
grounds that the company is or is likely to be unable to pay its debts—
(a) a purpose of the special administration order is to rescue the company as a going
concern, and
(b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special
administrator thinks that—
(i) it is not likely to be possible to rescue the company as a going concern,
or
(ii) transfer is likely to secure more effective performance of the functions
or activities mentioned in subsection (2)(a) or (2A)(a).

(2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they
referred to carrying out functions, or carrying on activities, pending rescue or transfer.

(2D) For the purpose of rescuing the company as a going concern a special administrator
may propose—
(a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
(b) a compromise or arrangement in accordance with Part 26 of the Companies Act
2006.

(2E) The Secretary of State may by regulations made by statutory instrument—
(a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in
respect of the arrangements and compromises mentioned in subsection (2D) in so
far as they apply to a company which is or has been in special administration;
(b) make other supplemental provision about those arrangements and compromises
(which may, in particular, apply or modify the effect of an enactment about
insolvency or companies).

(2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
(a) the Secretary of State,
(b) the Welsh Ministers, or
(c) the Authority.

(2G) Regulations under subsection (2E) may not be made unless—
(a) the Welsh Ministers have consented to the making of the regulations, and
(b) a draft has been laid before and approved by resolution of each House of
Parliament (and section 213(1) shall not apply).”

Commencement

Sch. 5 para. 3: October 1, 2010 for the power to make regulations under 1991 c.56 s.23(2E); not yet in force otherwise
(1991 c. 56 Pt II c. II s. 23(2E); SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent

Sch. 5 para. 3: England, Wales
Financial assistance

4

(1) This paragraph amends sections 153 and 154 of the Water Industry Act 1991 (government financial assistance where special administration order made).

(2) For section 153(1)(b) substitute—

“(b) offer indemnities in respect of liabilities or loss incurred or sustained in the course of functions under the order.”

(3) After section 153(1) insert—

“(1A) An indemnity under subsection (1)(b) may be offered to—
(a) the special administrator,
(b) an employee of the special administrator,
(c) a member or employee of a firm of which the special administrator is or was a member or employee (or a successor of that firm),
(d) a body corporate of which the special administrator is or was an employee, or
(e) an officer, employee or member of a body corporate within paragraph (d).”

(4) In section 153(3) for “by Schedule 3 to this Act” substitute “by or under section 23”.

(5) After section 153(3) insert—

“(3A) Arrangements for a grant, loan or indemnity which are made while a special administration order is in force may continue to have effect after the order ceases to have effect.”

(6) In section 154(2) for “Immediately” substitute “As soon as is reasonably practicable”.

(7) In section 154(3) for “possible” substitute “is reasonably practicable”.

(8) In section 154(5) for “by Schedule 3 to this Act” substitute “by or under section 23”.

(9) This paragraph has effect in respect of special administration orders made whether before or after this section comes into force.

Commencement
Sch. 5 para. 4(1)-(9): April 1, 2011 (SI 2011/694 art. 3(j))

Extent
Sch. 5 para. 4(1)-(9): England, Wales
5

(1) In section 23 of the Water Industry Act 1991 (special administration order) after subsection (2G) (inserted by paragraph 2 above) insert—

“(2H) A transfer under subsection (2) or (2A) may be effected by—
(a) transferring all or part of the company's undertaking to a wholly-owned subsidiary of the company, and
(b) then transferring securities in the subsidiary to another company.”

(2) The Secretary of State may by order amend Schedule 2 to the Water Industry Act 1991 in consequence of sub-paragraph (1).

(3) An order under sub-paragraph (2) may not be made unless—
(a) the Welsh Ministers have consented to the making of the order, and
(b) a draft has been laid before and approved by resolution of each House of Parliament.

(4) Amendments made by or under this paragraph apply to special administration orders made before or after the commencement of this section.

Commencement

Sch. 5 para. 5(1)-(4): October 1, 2010 for the power to make regulations under 1991 c.56 Sch.2; not yet in force otherwise (1991 c. 56 Sch. 2; SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent

Sch. 5 para. 5(1)-(4): England, Wales

Application of general administration law

6

(1) For section 23(3) of (and Schedule 3 to) the Water Industry Act 1991 (special administration order: application of Insolvency Act 1986) substitute—

“(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).

(3A) The Secretary of State may make regulations about special administration which—
(a) apply (with or without modification) an insolvency provision;
(b) disapply an insolvency provision;
(c) modify the effect of an insolvency provision;
(d) make provision similar to, and in place of, an insolvency provision.

(3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration,
(ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules.

(3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).

(3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—
   (a) the Welsh Ministers have consented to the making of the regulations, and
   (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).”

(2) Section 24(4) and (5) of the Water Industry Act 1991 (which apply to special administration orders specified provisions of the Insolvency Act 1986) shall cease to have effect.

(3) Section 249(1)(a) and (aa) of the Enterprise Act 2002 (which preserve an old version of Insolvency Act 1986 in its application to water and sewerage undertakers and suppliers) shall cease to have effect.


Commencement

Sch. 5 para. 6(1)-(4): October 1, 2010 for the power to make regulations under 1991 c.56 s.23(3A); not yet in force otherwise (1991 c. 56 Pt II c. II s. 23(3A); SI 2010/2169 art. 4, Sch. 1 para. 1)

Extent

Sch. 5 para. 6(1)-(4): England, Wales

Strategic supplies

(1) In section 66G(10) of the Water Industry Act 1991 (designation of strategic supply) after “its own customers” insert “, and supplies which it is obliged to make under section 66A or 66C.”.

(2) In section 66H(10) of the Water Industry Act 1991 (designation of collective strategic supply) after “its own customers” insert “, and supplies which it is obliged to make under section 66A or 66C.”.
Explanatory Notes

Introduction

1. These Explanatory Notes relate to the Flood and Water Management Act 2010 which received Royal Assent on 8 April 2010. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

Summary and Background

3. The Act takes forward some of the proposals in three previous strategy documents published by the UK Government — Future Water, Making Space for Water and the UK Government's response to the Sir Michael Pitt's Review of the Summer 2007 floods. The Act also takes forward parts of the draft Flood and Water Management Bill and takes into account pre-legislative scrutiny of the draft Bill by the Environment, Food and Rural Affairs Committee.


Overview of the Structure of the Act

5. The Flood and Water Management Act has three Parts:

Part 1: Flood and Coastal Erosion Risk Management

6. This Part gives the Environment Agency a strategic overview of the management of flood and coastal erosion risk in England, and a similar role in Wales to Welsh Ministers. In accordance with the Government's Response to the Pitt Review, it also gives upper tier local authorities in England, and local authorities in Wales, responsibility for preparing and putting in place strategies for managing flood risk from groundwater, surface water and ordinary watercourses in their areas.
7. The Environment Agency, local authorities and other bodies are given duties and powers that relate to these responsibilities directly by this Act, and by way of amendments made by this Act to the Water Resources Act 1991, the Land Drainage Act 1991 and the Coast Protection Act 1949.

8. In particular, this Part amends the Coast Protection Act 1949 to give the Environment Agency powers in relation to coastal erosion risk management to add to their current powers on coastal flooding.

9. It also provides for Regional Flood and Coastal Committees to replace Regional Flood Defence Committees. These will advise the Environment Agency and their consent will be required prior to implementation of the Environment Agency's regional programme for their area. They will retain their decision-making powers in respect of raising and spending the local levy and their remit is extended to cover coastal erosion as well as flooding.

10. This Part also provides additional legal powers for certain authorities in England and Wales formally to designate assets or features which affect flood or coastal erosion risk. It increases regulatory control of the significant number of assets or features which form flood and coastal erosion risk management systems, but which are not maintained or operated by those formally responsible for managing the risk.

Part 2: Miscellaneous

11. This Part includes provisions on sustainable drainage, reservoirs, special administration, provision of infrastructure, temporary bans on non-essential uses of water, civil sanctions, incidental flooding or coastal erosion of land, flood resistant repairs to property, compulsory works orders, agreements on new drainage systems, concessionary surface water drainage charges for community groups, social tariffs for water charges, water and sewerage charges for non-owner occupiers and the abolition of the Fisheries Committee (Scotland).

Part 3: General

12. This Part sets out various supplementary provisions which apply generally to the Act.

Territorial Extent and Application


14. Ministerial powers in flood and water policy areas do not always follow the geographical boundary of England and Wales. The extent of the Secretary of State's and Welsh Ministers' jurisdictions may instead follow, for example, water and sewerage undertakers' areas of appointment rather than the national boundary.

15. The Act does not generally extend to Scotland. However, it includes a section for the abolition of the Fisheries Committee (Scotland), a Scottish Body concerned with advising on the effects of hydroelectric power activities on water quality and fish stocks in freshwater fisheries in Scotland. The functions of that Committee are now carried out by the Scottish Environment Protection Agency. The provision does not fall within the terms of the Sewel Convention.

16. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. In relation to a provision in this Act which triggered the Convention, the Scottish Parliament's consent was secured in the form of a Legislative Consent Motion (LCM). The LCM covers the provision on cross-border reservoir safety, which creates an enabling power to make provision by order for responsibility for any future cross-border reservoirs to be established based on the particular circumstances.
17. The Act does not extend to Northern Ireland.

**Commentary**

**Part 1: Flood and Coastal Erosion Risk Management**

**Key concepts and definitions**

**Section 1: “Flood” and “coastal erosion”**

18. Subsection (1) defines a “flood” as including cases where land not normally covered by water becomes covered by water. Subsection (2) indicates some of the sources from which a flood could occur. This list is not exhaustive or limiting.

19. Subsection (3) excludes certain forms of flooding from the definition of “flood”. The first exclusion is flooding from any part of a sewerage system, unless caused by increases in volume from rainfall (including snow or other precipitation). Flooding from a sewerage system is covered under section 94(1)(a) of the Water Industry Act 1991. The second exclusion is flooding from a burst water main (as defined in section 219 of the Water Industry Act 1991). Flooding from a water main is covered by section 37(1)(b) of that Act.

20. Subsection (4) defines “coastal erosion” as erosion of the coast of England and Wales.

**Section 2: “Risk”**

21. Subsection (1) defines “risk”. This is a component of the concept of flood and coastal erosion risk management. Risk is defined so that it relates to both the probability of an occurrence and the seriousness of its consequences.

22. Subsection (2) and (3) define “flood risk” and “coastal erosion risk”.

23. Subsection (4) sets out examples (not an exhaustive list) of potential harmful consequences that should be considered when assessing risk.

**Section 3: “Risk management”**

24. This section sets out what “risk management” means in relation to flooding and coastal erosion. Subsection (1) sets out the range of purposes for which actions may be undertaken in order to address risk.

25. Subsection (2) lists two examples of what is included within the definition of risk management to illustrate the scope of the concept. Risk management can include practices that increase the likelihood of flooding or coastal erosion in a specific area, either to achieve particular outcomes in that location or to manage the effect of flooding or coastal erosion elsewhere. Subsection (3) lists examples of things which might be done to manage flood risk or coastal erosion risk. Neither list is exhaustive or limiting.

**Section 4: “Flood risk management function”**

26. This section defines a “flood risk management function” as including existing functions from specified Acts as well as functions under Part 1 of the Act. The effect of defining a function as a flood risk management function is to bring it within the scope of certain provisions in the Act which require such functions to be performed in specified ways. For instance, under sections 11 and 12 such functions must be carried out in a manner which is consistent with the strategies provided for in sections 7 to 10, and by virtue of section 13 bodies exercising those functions must co-operate with one another. The Secretary of State in England and Welsh Ministers in Wales may by order...
specify further statutory functions to be within the definition of a flood risk management function, but they cannot create new statutory functions under this section. The functions of water companies are not included within the list of flood risk management functions listed in the Act but these may be included by order.

Section 5: “Coastal erosion risk management function”

27. This section defines a “coastal erosion risk management function” as a function under the Coast Protection Act 1949 as well as functions under Part 1 of the Act. The effect of this definition is the same as in section 4. The Secretary of State in England and Welsh Ministers in Wales may, by order, specify further statutory functions to be within the definition of a coastal erosion risk management function, but they cannot create new statutory functions under this section.

Section 6: “Other definitions”

28. Subsections (1) to (5) define terms that relate to the various sources of flood risk. The definition of groundwater is different from that in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (known as the Water Framework Directive). In the Act it is defined in a way that is relevant to flood risk management so as to include any water which is below the surface of the ground and in contact with the ground or subsoil. This does not include water in buried pipes or other containers.

29. “Surface run-off” means precipitation on the surface of the ground, but if such precipitation drains to a watercourse, drainage system or the sewerage system, and water overflows from there to be on the surface of the ground, this water is not within the definition of surface run-off. Subsection (6) brings lakes, ponds, or other areas of water that flow into a watercourse within the meaning of a watercourse for the purpose of the definition of surface run-off. Drainage system has the same meaning as in paragraph 1 of Schedule 3 to the Act.

30. Subsections (7) to (12) define various bodies which are “risk management authorities” (subsection (13)). Subsections (7) and (9) introduce the concept of a “lead local flood authority”, which is the unitary authority or, where there is no unitary authority, the county council for an area in England, and the county council or the county borough council in Wales. These bodies lead on the local flood risk management strategy. The bodies which exercise flood or coastal erosion risk management functions or related functions are collectively defined as “risk management authorities” under subsection (13).

31. Subsections (14), (15) and (16) define English and Welsh risk management authorities (which include some cross-border authorities) as well as cross-border internal drainage boards.

Strategies, co-operation and funding

Section 7: National flood and coastal erosion risk management strategy: England

32. This section requires the Environment Agency to develop a national strategy (“the strategy”) for flood and coastal erosion risk management in England, to maintain it (which includes reviewing and updating it), and monitor its application (see subsection (1)).

33. Subsection (2) requires that the strategy must set out at least:

• the English risk management authorities;
• their functions;
• the objectives of the strategy;
• the measures proposed to achieve those objectives;
• how and when the measures are to be implemented and the strategy reviewed;
• the approximate costs and benefits of these measures and how they will be paid for;
• the assessment of risk that is relied on in preparing the strategy as well as the current and predicted impact of climate change on managing these risks; and
• how the strategy will contribute to wider environmental objectives. This relates to the sustainable development duty at section 27 and the environmental works powers at sections 38 and 39.

34. The Environment Agency must also publish a summary of this strategy (see subsection (4)).

35. The Environment Agency must consult the general public as well as the other English risk management authorities, and the Scottish Executive and Welsh Ministers where their territory may be affected, in drawing up the strategy (see subsection (3)).

36. Subsections (5) and (6) provide for the Environment Agency to issue guidance about the application of the strategy, which may in particular include guidance about the exercise of the duties to co-operate and the powers to enter into arrangements and to require information.

37. The strategy and any guidance must be reviewed and approved by the Secretary of State (subsections (7) and (8)). The approved strategy and any guidance must be laid before Parliament by the Secretary of State and may not be issued if, during the period specified in subsection (9), either House of Parliament resolves that it should not be issued in that form.

Section 8: National flood and coastal erosion risk management strategy: Wales

38. This section requires the Welsh Ministers to develop, maintain and apply a national strategy for flood and coastal erosion risk management in Wales. They are not required to monitor the strategy as in England. As with the strategy for England, the strategy for Wales will cover all sources of flooding except those from sewerage systems or caused by burst water mains.

39. Subsection (2) lists the matters that should be included in the strategy as a minimum requirement. These are the same as required for the national flood and coastal erosion risk management strategy for England.

40. Subsection (3) requires the Welsh Ministers to consult the Secretary of State in England about matters which may affect flood and coastal erosion risk management in England. Subsections (5) and (6) also allow Welsh Ministers to issue guidance in particular in relation to the duties to co-operate, and the powers to enter into arrangements and to require information. Subsection (4) requires the Welsh Ministers to publish a summary of the strategy.

41. The Welsh Ministers are required to lay the strategy before the National Assembly for Wales (subsection (7)). They are also required to lay any guidance issued under this section before the National Assembly and the guidance may not be issued if, during the period specified in subsection (8), the National Assembly resolves that it should not be issued in that form.

Section 9: Local flood risk management strategies: England

42. This section requires all lead local flood authorities in England to develop, maintain (which includes updating and reviewing), apply, and monitor the application of, a strategy for local flood risk in their area. They must also prepare a summary of the strategy (see subsections (1) and (7)).

43. The strategy must at least set out who the risk management authorities are in the area and their relevant functions, the authority's objectives for managing flood risk, as well as proposed measures to deliver the objectives, and timescales for implementation of the measures; how those measures
are to be paid for as well as their costs and benefits, how and when the strategy will be reviewed, and how the strategy contributes to the achievement of wider environmental objectives (see subsection (4)(a)–(i)).

44. Local flood risk is defined as a risk of flood arising from surface run-off, groundwater, or an ordinary watercourse, which for these purposes includes a lake or pond which flows into an ordinary watercourse (see subsections (2) and (3)).

45. A lead local flood authority must consult affected risk management authorities and the public about its strategy (subsection (6)).

46. Subsection (8) provides a power to a lead local flood authority to provide guidance about the application of the strategy in its area and subsection (9) requires the authority to have regard to any guidance issued by the Secretary of State about the strategy and any associated guidance issued by the authority.

Section 10: Local flood risk management strategies: Wales

47. This section requires each lead local flood authority in Wales (county and county borough councils) to develop, maintain, apply and monitor a strategy for local flood risk management and coastal erosion risk management within its area. Local flood risk is defined in subsection (2) in the same way as for England. The minimum content of the strategy is detailed in subsection (4) and is also the same as in England.

48. The lead local flood authority is required to publish a summary of the strategy and may issue guidance on the application of the strategy within its area (subsections (7) and (8)). The strategy must be submitted for review to the Welsh Ministers, who may approve, vary, or reject it (subsection (9) and (10)).

49. Lead local flood authorities are required to consult risk management authorities and the public in developing their strategies (subsection (6)).

Section 11: Effect of national and local strategies: England

50. This section requires English risk management authorities, in exercising their flood and coastal erosion risk management functions, to act in a manner consistent with the national flood and coastal erosion risk management strategy and guidance under section 7. These risk management authorities must also, with the exception of water companies, act consistently with relevant local flood risk management strategies and related guidance issued under section 9.

51. This requirement does not apply to the Environment Agency in the exercise of its functions under section 7(1) (see subsection (2)), although as a public authority it would none the less be required to take into account all relevant considerations in deciding how to exercise those functions.

52. English risk management authorities are required to have regard to the national and local strategies in exercising any other function that may affect a flood risk or coastal erosion risk in England (subsection (4)).

53. Water companies are required to have regard to local strategies and guidance in exercising a flood or coastal erosion risk management function in relation to an area in England (subsection (3)).

54. A cross-border internal drainage board for an internal drainage district that is mainly in Wales but partly in England must act consistently with local strategies and guidance for that part of their district which is in England. However, they need only have regard to the national strategy and
guidance for England under section 7. This provision does not affect their duties under section 12 in respect of the national strategy for Wales, which they will have to act consistently with (subsections (5) and (6)).

55. Subsection (7) gives the Secretary of State power, by order, to require a specified person to have regard to the strategies and guidance when exercising a statutory function, as defined in subsection (9), which could impact on flood risk or coastal erosion risk in England. This power will be exercised to require other bodies, whose activities affect flood or coastal erosion risk, to have regard to relevant strategies.

Section 12: Effect of national and local strategies: Wales

56. Subsection (1) requires the Welsh risk management authorities, in exercising their flood and coastal erosion risk management functions, to act in a manner which is consistent with the national strategy and guidance under section 8. These risk management authorities must also, with the exception of water companies, act consistently with the local flood risk strategies and guidance under section 10.

57. Welsh risk management authorities are required to have regard to the national and local strategies in exercising any other function that may affect a flood risk or coastal erosion risk in Wales (subsection (3)).

58. Subsection (2) requires a water company, when exercising a flood and coastal erosion risk management function in relation to an area in Wales, to have regard to the local strategies and guidance.

59. A cross-border internal drainage board for an internal drainage district that is mainly in England but partly in Wales, must act consistently with local strategies and guidance for that part of their district which is in Wales. However, they need only have regard to the national strategy and guidance for Wales under section 8. This provision does not affect their duties under section 11 in respect of the national strategy for England, which they will have to act consistently with (subsections (4) and (5)).

60. Subsection (6) gives the Welsh Ministers power, by order, to require a specified person to have regard to the strategies and guidance when exercising a statutory function, as defined in subsection (8), which could impact on flood risk or coastal erosion risk in Wales.

Section 13: Co-operation and arrangements

61. This section requires a relevant authority to co-operate with any other relevant authority which is exercising flood or coastal erosion risk management functions. Relevant authorities are defined in subsection (3) and include risk management authorities (defined in section 6) and Welsh Ministers.

62. Subsection (2) gives risk management authorities the power to share information, in response to a request or voluntarily, where this is for the purpose of a risk management authority fulfilling its duty to co-operate.

63. Subsection (4) allows a risk management authority to arrange for a flood risk management function to be exercised on its behalf by another risk management authority or a navigation authority. However, subsection (5) specifically excludes the functions relating to a national strategy for England (under section 7) or local strategies (under sections 9 and 10) from being exercised by another body. This does not prevent a lead local flood authority entering into arrangements for another body to prepare its strategy, or carry out any other work that relates to its duties under
section 9 in England or 10 in Wales, as long as the lead local flood authority remains the decision-maker.

64. Subsections (6) and (7) allow a coast protection authority, with the consent of the Environment Agency, to make arrangements for any of its coastal erosion risk management functions to be exercised on its behalf by another person. Subsection (8) allows the Environment Agency to make arrangements for any of its coastal erosion risk management functions to be exercised on its behalf by a coast protection authority, a lead local flood authority or an internal drainage board.

65. The effect of this section is to give risk management authorities the flexibility to act on behalf of one another and to form informal partnerships. Guidance provided by the Environment Agency and the Welsh Ministers under sections 7 and 8 is intended to assist this process.

Section 14: **Power to request information**

66. This section empowers the Environment Agency and lead local flood authorities to request a person to provide information in connection with that body's flood and coastal erosion risk management function (see subsections (1) and (2)). It provides a similar power for the Welsh Ministers (subsection (3)).

67. Subsection (4) provides that the information must be provided in the form, manner and time period specified in the request.

Section 15: **Civil Sanctions**

68. This section provides a non-criminal sanction to encourage compliance with section 14. It allows an authority to serve an enforcement notice if a request under section 14 to provide information is not complied with. The enforcement notice must restate what information is required and inform the recipient that the authority may impose a penalty if they do not provide the information. It must also state that representations can be made (subsections (1) and (2)).

69. If the information is not received within a period specified in the enforcement notice (which must be at least 28 days) then the authority may impose a penalty of up to £1000. The authority must have regard to any representations and any partial compliance with the information request when determining whether to impose a penalty and how big it should be. The penalty notice must say why the penalty was imposed, and contain information about how to appeal.

70. A right of appeal is to be provided by regulations made by the Minister under this section and the first set of regulations must be made in accordance with the affirmative resolution procedure. The penalty is recoverable as a debt. The Minister has the power to change the maximum penalty, but only in order to reflect the value of money. Subsection (10) defines “the Minister” for the purposes of this section as the Secretary of State for England and the Welsh Ministers for Wales.

Section 16: **Funding**

71. This section enables the Environment Agency to pay grants to any person in respect of expenditure incurred, or expected to be incurred, in connection with flood or coastal erosion risk management in England and provides the Welsh Ministers with the same power in relation to Wales. Subsection (3) allows such grants to be made subject to conditions, including conditions for repayment and interest.

Section 17: **Levies**
This section enables the Environment Agency to issue a levy to a lead local flood authority, in respect of flood and coastal erosion risk management functions, carried out in that local authority's area by the Environment Agency.

Levies must be issued in accordance with regulations made under section 74 of the Local Government Finance Act 1988. The issue of levies is subject to the Environment Agency obtaining the consent of the appropriate Regional Flood and Coastal Committee under section 23.

**Supplemental powers and duties**

**Section 18: Environment Agency: reports**

This section requires the Environment Agency to report about flood and coastal erosion risk management to the Minister (who may by way of regulations specify reporting times or intervals and the information which a report should contain). The report must include information about the application of the national flood and coastal erosion risk management strategies under sections 7 and 8.

**Section 19: Local authorities: investigations**

This section requires a lead local flood authority to investigate flooding incidents in its area which it becomes aware of, and to the extent that it considers necessary or appropriate. This is in order to: (a) identify which risk management authority has flood risk management functions in respect of the flooding; and (b) establish whether that authority has responded or is proposing to respond to the flood. The lead local flood authority must publish the results of any investigation and notify any relevant risk management authority of those results. While the management responsibility for a flood may be clear in many cases, there may be occasions where this is not so and the purpose of this provision is to require the lead local flood authority to investigate where appropriate, so as to try and ascertain where responsibility for managing the flood risk lies and what is being done about it.

**Section 20: Ministerial directions**

This section allows the Minister (the Secretary of State in England and the Welsh Ministers in Wales) to direct a risk management authority to exercise a flood or coastal erosion risk management function on behalf of another risk management authority (subsection (1)). The Secretary of State and the Welsh Ministers can act separately in respect of risk management authorities in England or Wales, or jointly in respect of a risk management authority that operates in both England and Wales.

A direction may only be given where the Minister is satisfied that the defaulting authority has failed to exercise the function either at all, or in a way that accords with national or local strategies issued under sections 7 to 10 (see subsection (2)).

The Minister has the power to include a provision in the direction as to the recovery of costs (see subsection (3)).

The Minister must send a copy of any direction to the authority concerned, and publish the direction (except where this might be contrary to the interests of national security) (subsections (4) and (5)).

**Section 21: Lead local authorities: duty to maintain a register**

This section requires lead local flood authorities to establish and maintain a register of structures, or features, which may significantly affect a flood risk in their area and also a record of information
about such structures and features including ownership and state of repair. The Minister may make
regulations about the content of the register and record and also describe information to be excluded
from them (subs (2) and (4)).

81.Subsection (3) provides that the register must be available for public inspection at all reasonable
times. This requirement does not apply to the record which may contain personal or other confidential
data. The method by which inspection of the register is provided is not specified in the legislation,
and so a lead local flood authority will have discretion as to whether the register should, for instance
be placed on its website or to provide access by some other means.

Notes
2 Making space for water: Taking forward a new Government strategy for flood and coastal erosion risk management
4 Draft Flood and Water Management Bill, April 2009.
http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/?lang=en
http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/policystatement/?lang=en

Regional Flood and Coastal Committees
Section 22: Establishment

82.This section requires the Environment Agency to establish Regional Flood and Coastal
Committees (RFCCs) for regions in England and Wales. To do so, it must divide England and
Wales into regions for this purpose. The Environment Agency also has the power to alter these
boundaries.

83.The Minister is given the power, to set out in regulations, the procedure that must be followed
by the Environment Agency in creating or varying regional boundaries which may include provisions
in respect of consultation and appeals (subs (2)(a)).

84.These committees will replace Regional Flood Defence Committees (RFDCs) and the Minister
is given a power, by order, to make transitional provision for this change (subs (2)(b)).

Section 23: Consultation and consent

85.This section requires the Environment Agency to consult an RFCC about the way in which it
intends to exercise its flood and coastal erosion risk management functions in the Committee’s
region, and to take into account any representations made.

86.Subsection (2) requires the consent of the relevant RFCC to be obtained before the Environment
Agency can deliver the regional programme of flood and coastal erosion risk management it
determines.
Subsection (3) requires the Environment Agency, before it issues any levy under section 17, to first obtain the consent of the relevant RFCC. Under subsection (4) the Environment Agency must also obtain the consent of the relevant RFCC before spending any revenue raised under section 118 of the Water Resources Act 1991.

Section 24: Membership

This section gives an order making power to the Minister to set out requirements relating to membership of the Regional Flood and Coastal Committees. The order may provide for the number of members of a Committee, conditions of eligibility, their method of selection and appointment (including arrangements for election or other means of selection), and proceedings of a Committee including as to quorum and the extent of the majority needed for different decisions. This power may be used to enable the Minister to provide for a majority of local authority representatives on an RFCC to approve in order for the RFCC to provide the consent required in section 23 for the Environment Agency to issue a levy or spend revenue.

Section 25: Money

This section allows the Minister to direct the Environment Agency to make specified payments to Regional Flood and Coastal Committee Chairs (and former Chairs). The Environment Agency may also pay allowances to members of these committees. The Minister has the power to determine the amounts or maximum amounts that may be paid under this section (see subsections (1) to (3)).

Section 26: “The Minister”

This section defines “the Minister” as being the Secretary of State in relation to English Committees and Welsh Ministers in relation to Welsh Committees for the purpose of provisions in this Part relating to Regional Flood and Coastal Committees.

General

Section 27: Sustainable development

This section gives lead local flood authorities, district councils, internal drainage boards and highway authorities a duty to aim to make a contribution towards the achievement of sustainable development when discharging their flood or coastal erosion risk management functions (subsection (1)). This duty does not apply to the Environment Agency, which already has such a duty under section 4 of the Environment Act 1995. Nor does it relate to water companies as the water industry regulator, Ofwat, has such a duty which applies to its regulation of the industry.

Subsection (2) requires the Minister to issue guidance on how the specified authorities should contribute to the achievement of sustainable development through their flood or erosion risk management functions. It requires the specified authorities to have regard to the Minister's guidance. The Minister already has a duty, under section 4 of the Environment Act 1995, to provide guidance to the Environment Agency on how it should exercise its functions so as to contribute to sustainable development.

For the purpose of this section, subsection (4) defines the term “flood risk management function” and subsection (5) defines “the Minister” as the Secretary of State in relation to English authorities and Welsh Ministers in relation to Welsh authorities. English authorities are lead local flood authorities, district councils and highways authorities for areas in England as well as internal drainage boards for a district which is mainly or wholly in England. Welsh authorities are lead local flood authorities or highways authorities for areas in Wales as well as internal drainage boards for a district which is wholly or mainly in Wales (subsection (6)).
Section 28: **Power to make further amendments**

94. This section allows the Minister to amend, by order, the Public Health Act 1936 (so far as relevant to water), the Coast Protection Act 1949, The Highways Act 1980 (so far as relevant to water) the Land Drainage Act 1991, the Water Resources Act 1991 and the Environment Act 1995 if the Minister considers this necessary or desirable in consequence of this Part of the Act. The term “the Minister” is defined in subsection (3) for the purposes of these powers. Orders under this section are subject to the affirmative resolution procedure.

Section 29: **Restructuring**

95. This section gives the Minister the power to amend, by order, this Act or any other enactment, to transfer the responsibilities of lead local flood authorities, district councils and internal drainage boards for flood risk or coastal erosion risk to other risk management authorities or other bodies (subsections (1) and (3)).

96. In particular, this power may be used to redefine the meaning of “risk management authority” such as by including different authorities within the definition, or to reassign a flood or coastal erosion risk management function such as by reallocating works powers amongst the risk management authorities (subsection (2)).

97. Subsection (4) specifies that the Minister must consult the authorities that would be affected by any changes. Subsection (5) requires that an order made under this section must be subject to the affirmative resolution procedure.

98. Subsection (6) defines the term “the Minister” for the purposes of this section.

Section 30: **Designation of features**

99. Section 30 introduces Schedule 1: Risk Management: Designation of Features.

100. This Schedule to the Act provides additional legal powers for certain authorities in England and Wales (as explained below) to formally designate assets or features which affect flood or coastal erosion risk. It increases regulatory control of the significant number of assets or features which form flood and coastal erosion risk management systems, but which are not maintained or operated by those formally responsible for managing the risk.

Schedule 1: **Risk Management: Designation of features**

“**Designating authority**”

101. Paragraph 1 defines the Environment Agency, local authorities and internal drainage boards as “designating authorities” who may designate features under this Schedule. They will be responsible for managing the designation process, which includes issuing the appropriate notices to the owners of features being designated, and considering any representations made about a notice.

“**Responsible authority**”

102. Paragraph 2 ensures that once a feature has been designated, the “responsible authority” (beside the owner) has an ongoing and exclusive role in exercising functions in respect of the feature. It is the responsible authority that will monitor and enforce the designation and it is the responsible authority that has the power to consent to the alteration, removal or replacement of a feature.

103. In effect, the designating authority becomes the responsible authority once the designation has been confirmed (by the issue of a designation notice). However, it is possible for an authority to enter into arrangements with other relevant authorities to carry out functions on its behalf.
example of this might be the establishment of a single designating unit for an area in the spirit of co-operation and the interests of efficiency. The relevant provisions can be found at section 13.

104. A designation will be made as part of an authority's risk management activity; authorities may not transfer their designations to another authority except in exceptional circumstances. Specifically, a designation may be adopted by another authority with relevant functions if the responsible authority ceases to have relevant functions itself: the relevant functions will be in respect of the risk the designated feature affects. There are specific circumstances when this may be the case, for example if a new unitary authority is established for an area which necessitates a transfer of responsibilities from a former district authority to a newly established unitary authority.

“Owner”

105. Paragraph 3 defines the “owner” of a feature that may be designated. The owner is either the owner of the land on which the feature is situated, or if different, the person that manages or controls the feature.

Designation

106. Paragraph 4 defines a feature as “a structure, or a natural or man-made feature of the environment”. It is a broad definition which may include things that affect flood or coastal erosion risk in an area but are unlikely to have protection under existing law. Examples may include (but are not limited to) features and structures such as walls, channels, culverts, sluices, raised ground and embankments.

107. A feature may be designated if:
    • the designating authority is of the opinion that the existence or location of the feature affects flood risk or coastal erosion risk;
    • the designating authority has responsibility for the risk that is affected;
    • the feature has not been designated already, including by another authority; and
    • it is not owned by a designating authority.

Effect of a designation

108. Paragraph 5 prohibits a person from altering, removing, or replacing a designated structure or feature without the permission of the responsible authority. If a person contravenes this requirement, the responsible authority may take enforcement action.

109. It also requires that a designation is registered as a local land charge by the designating authority. If the designation is cancelled, the responsible authority will remove the local land charge.

110. It does not provide for cost recovery in registering or cancelling a local land charge in respect of a designated feature.

Consent to alteration, removal or replacement

111. Paragraph 6 sets out that the responsible authority may give consent to alter, remove or replace a designated feature. Any such consent must be given by notice to the owner. Notice may be given following an application by the owner, or if the responsible authority thinks it appropriate for another reason.

112. The responsible authority may, by notice, vary or withdraw consent that it has given; the notice to vary or withdraw consent may not be backdated.
The responsible authority may refuse to give consent, but it may only do so if it is of the opinion that the proposed alteration, removal or replacement would affect a flood risk or coastal erosion risk. If a person has been refused consent, they may appeal the decision of the responsible authority in accordance with regulations made under paragraph 15 of this schedule.

**Provisional designation notice: procedure**

114. Paragraph 7 provides that before a feature may be formally designated, the designating authority must first issue a provisional designation notice to the owner of the feature in question.

115. The provisional designation notice must provide important information about the provisional designation. As a minimum the notice must set out:

- the feature in question;
- the date from which the feature is provisionally designated;
- why the feature is being provisionally designated;
- how the owner of the feature may make representations to the designating authority in respect of the notice; and
- the period in which representations may be made.

116. During the period of notice, the owner has the right to make representations to the designating authority on the provisional designation, which the authority must consider before confirming a designation by means of a designation notice.

117. However, because the provisions are designed to protect the flood and coastal erosion risk management properties of the feature in question (by preventing changes from being made that could affect its flood or coastal risk management properties), the feature is to be treated as though it has been formally designated for the duration of the period of notice.

118. This means that no alteration, removal or replacement of the feature may be made without the written consent of the designating authority. The designating authority may issue an enforcement notice in respect of a person that contravenes a provisional designation notice and it is an offence to fail to comply with an enforcement notice in respect of a provisional designation as it is for a final designation.

119. The designating authority may also cancel a provisional designation by issuing a notice to that effect.

**Designation notice: procedure**

120. Paragraph 8 sets out that a designation notice may be issued by the designating authority that confirms indefinitely the status of the provisional designation.

121. A designation notice may not be issued until the period of notice for making representations has expired. The designating authority must have regard to any representations made within the period of notice in deciding whether to confirm the designation.

122. The designation notice must be issued within 60 days of the date of issue of the provisional designation notice. After this time the provisional designation will cease to have effect. If the designating authority still wants to designate the feature after that time, then a new provisional designation notice is required. The designating authority may not confirm a designation or take any enforcement action in respect of a provisional designation once the period of notice has expired.

123. The designation notice must include certain particulars about the feature and designation including what is being designated and why, and give information about the appeals process.
124. The owner of the feature may appeal a designation notice, for example if the authority has not taken account of reasonable representations made in respect of the provisional designation that preceded the designation notice.

Cancellation

125. Paragraph 9 provides that the responsible authority may cancel a designation (including a provisional designation). It may do so at the owner's request or where it thinks it appropriate for another reason, for example if a new flood defence system has come on-line that negates the need for the designation. An owner may appeal if their request for a cancellation is denied.

126. Where the responsible authority intends to cancel a designation it must issue a notice to the owner that must specify the details of the feature to which it refers, the date on which it comes into effect, and the reason for the cancellation.

127. The responsible authority must remove the local land charge. The authority is not empowered to charge for a cancellation.

Notice to other authorities

128. Paragraph 10 requires the responsible authority to notify other authorities about a designation or cancellation where the other authority is likely to have an interest. This is in addition to requirements under section 21 for the lead local flood authority to keep a register of features and a record of information about them, the duty to co-operate, and the power to enter into arrangements under section 13.

Enforcement notice

129. Paragraph 11 provides powers to enable the responsible authority for a designated feature to enforce the designation. It is not an offence in the first instance to contravene paragraph 5(1) (the prohibition on altering, removing or replacing a designated feature without the consent of the responsible authority) but it is an offence not to comply with a subsequent enforcement notice, described in paragraph 133 of these notes below.

130. The responsible authority may issue an enforcement notice to the person that contravened paragraph 5(1), or the owner of the feature.

131. An enforcement notice must give instructions to the person on whom it is served, setting out the corrective measures the person must undertake and by when they should be completed in order to restore the feature to its proper state. If an enforcement notice is ignored the authority may carry out the remedial work and may recover costs incurred from the person on whom the enforcement notice was served.

132. An enforcement notice may be appealed in accordance with regulations made under paragraph 15 of this Schedule.

133. Paragraph 11(4)(a) provides that it is an offence to fail to comply with an enforcement notice, and that if found guilty, a person may be fined up to a maximum amount as set out in level 5 of the standard scale.

134. The enforcement powers also apply to a provisional designation notice until such time as it expires.

Emergency powers

135. Paragraph 12 includes specific powers for a responsible authority to act in an emergency.
136. This paragraph only applies if: (a) a person carries out works to alter, remove or replace a designated feature without obtaining consent; and (b) the responsible authority considers that this increases an immediate and serious flood or coastal erosion risk that warrants emergency action. In such an emergency situation the authority may take remedial action without the need to first serve an enforcement notice. Such emergency action includes entry to the land on which the feature is located (see paragraph 13 of Schedule 1).

137. The authority may recover from the owner any costs incurred in carrying out the emergency works.

**Powers of entry**

138. Paragraph 13 gives powers of entry to land for the following purposes:

- to establish whether a person has altered, removed or replaced a designated feature without consent of the relevant authority;
- to determine whether a person has complied with an enforcement notice;
- to take the steps set out in an enforcement notice if the person on which it was served has not taken them; or
- to act in an emergency.

139. The authority must give at least 7 days notice to the occupier of the land and state the reason for entry unless an emergency necessitates earlier intervention.

140. Anyone exercising the powers of entry must provide on request written proof of their authorisation to enter the land.

141. Paragraph 13(5) makes it an offence to obstruct a person authorised by the authority from entering land for the purposes of exercising default enforcement powers and emergency powers. Anyone found guilty is liable to up to: (a) two years imprisonment or a fine or both (on indictment); or (b) a fine up to the statutory maximum (on summary conviction).

**Compensation for owners and third parties**

142. Paragraph 14 provides that an authority must pay compensation to a person in respect of damage to their land resulting from the exercise of the powers of entry.

143. However, compensation is not payable to a person who has altered, removed or replaced the feature without the relevant authority's consent, or has failed to comply with an enforcement notice.

144. There is an exception: if an authority has exercised its powers unreasonably then compensation should be paid in respect of any damage suffered as a result of the unreasonable use of powers irrespective of whether a notice has been contravened. This is in addition to any civil remedies that are available to someone who has suffered damage.

**Appeals**

145. The owners of designated features will have a right of appeal in accordance with regulations made under paragraph 15 against:

- a designation notice (but not a provisional designation notice, in respect of which representations may be made);
- a decision in connection with a consent to alter, remove or replace a designated feature;
- refusal to cancel a designation; and
- receipt of an enforcement notice.

146. Sub-paragraph (2) makes provision about the regulations.
147. Sub-paragraph (3) stipulates that where an appeal is made: a) the designation remains in place until the appeal has been determined; and b) the person or legal body who hears and determines the appeal may cancel the designation.

148. Sub-paragraph (4) specifies that if someone appeals against an enforcement notice: a) the timescale for completion of the specified remedial action is temporarily suspended until the appeal has been determined; and b) the person or legal body who hears and determines the appeal may cancel the notice if appropriate. Sub-paragraph (5) specifies that the first set of regulations under paragraph 15 are subject to the affirmative resolution procedure.

Notices and applications

149. Paragraph 16 provides that the Minister (as defined in paragraph 17 of this Schedule) may make regulations (by statutory instrument) about the serving of notices, and the form and procedure for applications under this Schedule.

“The Minister”

150. Paragraph 17 defines the “Minister” for the purposes of Schedule 1 as meaning the Secretary of State in England and Welsh Ministers in Wales.

Section 31: Amendments of other Acts


152. Currently between them, those Acts provide the legislative framework for flood defence and coast protection. Part 1 of the Act establishes a risk management approach to flood and coastal erosion and that Part and the amended Acts taken together allocate responsibility for sources of flood and coastal erosion risk to certain bodies and provide powers to do works, which go wider than “defence” and “protection”, in order to manage the risks.

153. The amendments also apply existing provisions in the Acts to the flood and coastal erosion risk management regime. In particular these amendments apply existing consenting and enforcement provisions and also appeal, compensation, rights of entry and compulsory purchase provisions to the new powers. The Schedule also amends the Local Government Act 2000 so as to apply provisions of that Act to the actions of risk management authorities.

Schedule 2: Amendment of other Acts

Coast Protection Act 1949 (CPA)

154. Paragraphs 1 to 24 concern amendments to the CPA.

155. Under the CPA, the district council of each maritime district is the “coast protection authority” for that area unless a “coast protection board” has been constituted for the area under section 2 of the CPA. In practice no coast protection boards have been created and paragraph 2 repeals section 2 of the CPA removing this option.

156. The effect of paragraphs 3 and 4 of the Schedule is to insert section 2A into, and amend section 4 of the CPA so as to grant the Environment Agency the same powers to do coast protection work that are held by coast protection authorities. In conjunction with the definition of coast protection work inserted by paragraph 24 (see below) the new provisions also widen the scope of works which
can be done under the Act by both the Environment Agency and coast protection authorities, to include anything done for the purpose of maintaining or restoring natural processes. This enables coastal erosion risk management works to be undertaken. However, there are additional conditions that apply before the wider power can be used. These are that the Environment Agency or authority must think the work is desirable, having regard to the national flood and coastal risk management strategies under sections 7 and 8, and that, in relation to a coast protection authority, the purpose of the work must be to manage a coastal erosion risk in its area.

157. Paragraphs 5(5) and 5(6) provide for the Environment Agency to approve coast protection works under section 5 of the CPA rather than the Minister. Paragraph 5 also contains consequential amendments needed to ensure that the powers which are being extended to the Environment Agency are accompanied by an extension of the notification and objection provisions and protections. It also ensures that the extra works powers that coast protection authorities are acquiring are similarly accompanied by these protections.

158. Paragraphs 6 to 9 make consequential amendments to sections 6, 8, 9 and 10 of the CPA to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the powers of coast protection authorities to make works schemes.

159. Paragraphs 10 and 11 make consequential amendments to sections 12 and 13 of the CPA, to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the general powers of coast protection authorities to maintain and repair works, and to allow them the same cost recovery provisions with the same inbuilt protections.

160. Paragraph 12 makes consequential amendments to section 14 of the CPA to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the existing powers of coast protection authorities to compulsorily acquire land, and with the same inbuilt protections (such as the requirement for ministerial consent and dispute, appeal and compensation provisions).

161. Paragraph 13 makes consequential amendments to section 19 of the CPA to ensure that the Environment Agency (and coast protection authorities in respect of their wider powers) are subject to the compensation provisions which apply to people affected by the exercise of the powers being acquired.

162. Paragraphs 14 and 15 repeal sections 20 and 21 of the CPA, which provide for funding to coast protection authorities in respect of coast protection work, from exchequer grants and contributions from certain county councils. These sections are no longer needed by virtue of the funding power in section 16 of this Act, which allows the Environment Agency and Welsh Ministers to make grants in respect of coastal erosion risk management expenditure.

163. Paragraphs 16 to 21 make further consequential amendments to sections 23 to 28 of the CPA to apply to the Environment Agency (and coast protection authorities in respect of their wider powers) the provisions made by those sections (such as power of entry provisions).

164. Paragraphs 22 and 23 make consequential amendments to the technical provisions in sections 44 and 45 of the CPA to extend their effect to the Environment Agency (and coast protection authorities in respect of their wider powers).

165. Paragraph 24 inserts a definition of “coast protection work” into section 49 of the CPA. This has the effect of widening the scope of works which can be done under the Act, by both the
Environment Agency and coast protection authorities to include anything done for the purpose of maintaining or restoring natural processes.

Land Drainage Act 1991 (LDA)

166. Paragraphs 25 to 39 concern amendments to the LDA.

167. Paragraph 26 repeals section 8 of the LDA, which allows the Environment Agency to exercise powers vested in internal drainage boards under sections 21 and 23 of that Act concurrently with the internal drainage board. Paragraph 27 repeals default powers of the Environment Agency under section 9(1) of the LDA insofar as they relate to flooding.

168. Paragraph 28 amends section 11 of the LDA which makes provision for the Environment Agency and internal drainage boards to enter into arrangements for the purposes of carrying out certain works and, in particular, for internal drainage boards to carry out and maintain drainage works on behalf of one another. This amendment provides for internal drainage boards to provide administrative, professional or technical services to one another by agreement. This would allow internal drainage boards to operate as consortia.

169. Paragraph 29 amends the LDA by adding a new section, 14A, after section 14. Section 14A gives lead local flood authorities powers to carry out flood risk management works provided that the authority considers this work to be desirable, having regard to the local flood risk management strategy for the area and it is for the purpose of managing a flood risk from surface run-off or groundwater (subsection (1)).

170. Subsections (2) and (3) of section 14A give internal drainage boards, district councils and lead local flood authorities (where there is no district council) powers to carry out flood risk management works in respect of ordinary watercourses, and the sea in their area where they consider this work to be desirable, having regard to the local flood risk management strategy for the area. In respect of works for the purpose of managing flood risk from the sea, the consent of the Environment Agency is required where those works are to improve existing works, construct or repair new works, maintain or restore natural processes or features, reduce or increase the level of water in a place, or alter or remove works.

171. These powers are wider than the existing powers in section 14 of the LDA and include anything done to: (a) maintain existing works, including cleansing, repairing or otherwise maintaining the efficiency of any existing watercourse or drainage work; (b) operate existing works; (c) improve existing works, including anything done to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve any drainage work; (d) construct or repair new works, which may include anything done to make any new watercourse or drainage work, improve a beach, dune or salt-marsh or erect machinery; (e) maintain or restore natural processes; (f) monitor, investigate or survey a location or a natural process; (g) reduce or increase the level of water in a place; (h) alter or remove any works.

172. These powers are subject to the same compensation, compulsory acquisition and powers of entry provisions as apply to the powers in section 14 of the LDA. The powers under section 14A are also subject to existing protections provided by the planning regime. This would be the main mechanism through which third parties might appeal against new works which might impact negatively upon them.
173. Paragraph 30, in repealing section 17 of the LDA, removes the direct supervisory capacity that the Environment Agency exercises over local authorities in the carrying out of their drainage works powers. Instead, the authorities are required to exercise their powers in accordance with the local flood risk management strategy.

174. Paragraph 31 amends section 21 of the LDA (which allows the internal drainage board or Environment Agency to take action to enforce obligations to maintain or repair any watercourse, bridge or other drainage work). The Environment Agency will no longer exercise this power in England or Wales. The internal drainage board (within its district) and otherwise the lead local flood authority for the area in question will exercise this power. The Environment Agency will continue to exercise this power in both England and Wales so far as it relates to main rivers under section 107(2) of the Water Resources Act 1991.

175. Paragraphs 32, 33 and 34 make various amendments to sections 23, 25 and 26 of the LDA.

176. Section 23 of the LDA, prior to this amendment, prohibits the construction of certain kinds of obstructions in ordinary watercourses without the prior consent of the drainage board (currently the Environment Agency or internal drainage board (for works within its district)). The structures which are caught by this section include culverts which are likely to affect the flow of water in the watercourse. The wording of this provision implies that it is possible to construct a culvert which does not affect the flow, and that such a culvert would not require consent. The amendment in paragraph 32(2) changes this to require that any new culvert must have consent since any culvert necessarily affects the flow of a watercourse.

177. Sub-paragraph (3) of paragraph 32 amends section 23 of the 1991 Act to remove the Environment Agency as the consenting authority for watercourses outside of an internal drainage district, and replace it with lead local flood authorities. Internal drainage boards will remain the consenting authority for watercourses within an internal drainage district.

178. Sub-paragraph (3) of paragraph 32 also amends section 23 to require lead local flood authorities and internal drainage boards to consult with the Environment Agency when they are consenting work that they are themselves proposing. This is to minimise the potential for conflict of interest. Lead local flood authorities and internal drainage boards must also have regard to any guidance provided by the Environment Agency on consenting.

179. Sub-paragraph (4) of paragraph 32 amends section 23 to change the procedure by which fees may be determined. Instead of fees being changed by Ministerial order, they will be changed in accordance with a charging scheme that is prescribed by order. Sub-paragraph (6) amends the meaning of the reference to “the drainage board concerned” used in sections 23 and 24 so that the Environment Agency's role as a drainage board for watercourses outside of an internal drainage district is taken over by lead local flood authorities. Sub-paragraph (5) extends this amended meaning of “the drainage board concerned” to section 25. Sub-paragraph (7) applies the definition of “lead local flood authority” in the Act to the use of the term in LDA.

180. Paragraph 33 amends section 25 of the LDA (powers to require works for maintaining flow of watercourse) to give the powers of the Environment Agency to lead local flood authorities. Internal drainage boards retain their powers. Section 26, which deals with competing jurisdictions, is repealed by paragraph 34.

181. Paragraphs 35 and 36 amend sections 33 and 34 of the LDA. Section 33 provides for the Environment Agency and drainage boards to commute (with Ministerial consent) land drainage obligations not related to main rivers and section 34 makes provision for the financial consequences
of commutation. The amendments to section 33 remove the Environment Agency's power to commute obligations and provide that: (i) where the obligations relate to an area which forms part of an internal drainage district then the drainage board for the district will have the power; (ii) for any other area, a lead local flood authority will have the power. The amendments to section 34 are consequential to reflect the changes in section 33. Paragraph 37 omits subsection (4)(c), relating to sea flooding, from section 59 of the LDA leaving that section to apply in relation to grants for drainage works.

182.Paragraph 38 amends section 66 of the LDA which provides a power to make byelaws. These amendments extend the byelaw making power to the relevant authorities which are empowered to carry out works under section 14 of the LDA, as a result of other amendments made by this Act. The amendments also extend the purposes for which byelaws can be made from securing the efficient working of a drainage system; and regulating the effect on the environment of a drainage system, to: (a) securing the effectiveness of flood risk management works, with the meaning of section 14A of the LDA as inserted by the Act; and (b) securing the effectiveness of works done under section 38 or 39 of the Act.

183.Paragraph 39 introduces a definition of “culvert”, defining it as a covered channel or pipe designed to prevent the obstruction of a watercourse or drainage path by an artificial construction. There is no definition in current legislation.

Water Resources Act 1991 (WRA)

184.Paragraphs 40 to 49 concern amendments to the WRA.

185.Paragraph 41 repeals section 106 of the WRA so that the Environment Agency no longer has to carry out its flood management functions through the Regional Flood Defence Committees. Under section 23 of this Act, those Committees will have an advisory and consenting function instead.

186.Paragraph 42 amends section 110 of the WRA to change the procedure by which fees may be determined. Instead of fees being changed by Ministerial order, they will be changed in accordance with a charging scheme that is prescribed by order.

187.Paragraph 43 amends section 118 of the WRA, which states how revenue raised by the Environment Agency can be spent, to replace the reference to “flood defence functions” with a reference to the broader concept of “flood and coastal erosion risk management functions” which this Act introduces. It also replaces references to “local flood defence district” and “flood defence district” with “flood risk management region” which are the regions created by the Environment Agency, by the exercise of its powers under section 22. It repeals section 118(6), which relates to local flood defence districts which will no longer exist. Paragraph 44 repeals section 133 of the WRA the effect of which is replaced by section 17 of the Act.

188.Paragraphs 45 and 46 amend sections 159 and 160 of the WRA, and allow the pipe laying powers in those sections to be used for flood risk management purposes.

189.Paragraph 47 adds new provisions to the beginning of section 165 of the WRA. The new provisions allow the Environment Agency to carry out flood and coastal erosion risk management works provided that: (a) the Environment Agency thinks that the work is desirable having regard to the national flood and coastal erosion risk management strategy (under sections 7 and 8 of the Act); and (b) that the purpose of the works is to manage a flood risk from the sea, or a main river
(although for certain works only the first condition need be satisfied). “Main river” includes a reference to a lake, pond or other area of water which flows into a main river.

190. Flood and coastal erosion risk management works include anything done to: (a) maintain existing works, including cleansing, repairing or otherwise maintaining the efficiency of any existing watercourse or drainage work; (b) operate existing works; (c) improve existing works, including anything done to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve any drainage work; (d) construct or repair new works, which may include anything done to make any new watercourse or drainage work, improve a beach, dune or salt-marsh, or erect machinery; (e) maintain or restore natural processes; (f) monitor, investigate or survey a location or a natural process; (g) reduce or increase the level of water in a place; (h) alter or remove any works.

191. These new powers are subject to the same compensation, compulsory acquisition, and powers of entry provisions as apply to the existing powers in section 165. It should be noted that the new powers are also subject to existing protections provided by the planning regime. This would be the main mechanism through which third parties might appeal against new works which might impact negatively upon them.

192. The new powers are wider than the existing powers in section 165 in the same way that the powers inserted by paragraph 26 into the LDA are wider, in that they may be used to: (i) remove works; (ii) maintain, restore, and monitor natural processes; or (iii) reduce or increase the level of water in a place.

193. Sub-paragraphs (3) to (6) make consequential amendments to section 165 of the Water Resources Act.

194. Paragraphs 48 and 50 (see under Water Industry Act 1991 below) respectively amend section 204(2) of the WRA and 206(3) of the Water Industry Act 1991. These sections create a number of exceptions to the general prohibition on disclosure of information gained by companies or individuals under those Acts. These amendments to those sections add the provision of information in response to a request under section 14 to those exceptions from that prohibition.

195. Paragraph 49 amends paragraph 5(1) of Schedule 25 to the WRA to extend the powers of the Environment Agency to make byelaws. Byelaws may be made for the purposes of securing the efficient working of a drainage system and regulating the effect on the environment of a drainage system. This amendment provides in addition for byelaws to be made for the purposes of securing the effectiveness of flood risk management works, within the meaning of section 165 of the WRA, as amended by the Act and securing the effectiveness of works done under section 39 or 40 of the Act.

Water Industry Act 1991


Environment Act 1995


198. Paragraph 52 amends section 6 of the Environment Act 1995 to provide the Environment Agency with general supervision over all flood and coastal erosion risk management matters.
199. Paragraph 53 repeals sections 14 to 19 and Schedules 4 and 5. These provisions are no longer needed in the light of provisions for Regional Flood and Coastal Committees under sections 22 to 26 of this Act.

Local Government Act 2000

200. Paragraph 54, by adding a new section 21F to the Local Government Act 2000, extends the powers of overview and scrutiny committees in England under the Local Government Act 2000. It provides powers to lead local flood authorities to allow for the scrutiny of risk management authorities as to the exercise of their flood and coastal erosion risk management functions.

201. It gives risk management authorities a duty to comply with requests for information, or responses to reports, from the overview and scrutiny committees.

202. It provides for the Secretary of State to make regulations about the duties set out above. This can include provisions about procedures, notices, exemptions, requirements to provide information orally, the nature of information and publication.

203. Risk management authorities must have regard to the reports and recommendations of the overview and scrutiny committees.

204. This provision also provides for the Secretary of State's existing powers to make regulations, in respect of joint overview and scrutiny committees, to be used in respect of scrutiny under this new provision.

Part 2: Miscellaneous

Section 32: Sustainable drainage

205. Section 32 introduces Schedule 3: Sustainable Drainage.

Schedule 3: Sustainable drainage

206. This Schedule introduces standards for the design, construction, maintenance and operation of new rainwater drainage systems, and an ‘approving body’. The body, which will generally be a unitary, county or county borough local authority, will be required to approve most types of rain-water drainage systems before any construction work with drainage implications can start. Where the system affects the drainage of more than one property, the approving body will be required to adopt and maintain the system upon satisfactory completion. The Schedule also amends section 106 of the Water Industry Act 1991 to make the right to connect surface water run-off to public sewers conditional on the approval of the drainage system by the approving body.

“Drainage system”

207. Paragraph 1 defines “drainage system” for Schedule 3 as a structure designed to receive rainwater, other than a public sewer or a natural watercourse.

“Sustainable drainage”

208. Paragraph 2 defines the term “sustainable drainage” for the purposes of this Schedule.

Cross-border systems

209. Paragraph 3 states that in situations where part of a drainage system is in Wales and part in England then the parts will be treated as separate systems for the purposes of this Schedule. However, decisions on one part should be taken with regard for the other part.

“The Minister”
Paragraph 4 defines the Minister as the Welsh Ministers for drainage systems in Wales, and the Secretary of State for drainage systems in England.

National Standards

Paragraph 5 imposes a duty on the relevant Minister to publish national standards about how drainage systems should be designed, constructed, maintained and operated for the purpose of implementing sustainable drainage. These national standards are referred to in other paragraphs in this Schedule.

Sub-paragraph (3) provides that the standards may permit or require approving bodies to form judgments on drainage systems using specific criteria. Approving bodies must also take account of any guidance which is issued by the Minister.

The Ministers must consult before publishing the standards.

Approving body

Paragraph 6 sets out who is to act as the “Approving Body” for drainage systems for an area. In the first instance, the Approving Body is to be the unitary or county council for the area.

The relevant Minister may appoint by order another body to be the Approving Body, instead of the unitary or county council. The order may apply to all areas, or to one or more specified areas.

Sub-paragraph (4) allows the Minister to appoint the alternative Approving Body for a specified purpose only, and for different bodies to be appointed for different purposes. For example the approval and adoption functions could be split, and transferred to two different bodies.

Sub-paragraph (5) states, that when appointing a different body to act as the Approving Body for a particular area, the order may also confer additional powers on that body that would assist them in acting as the Approving Body. It may only confer powers which are already available to a unitary or county council. For example, this might be used to give local authority powers of entry to the new Approving Body for maintenance purposes so as to put them in the same position as the unitary or county council would have been. Where additional powers are conferred on the Approving Body, the order will be subject to the affirmative resolution procedure either in Parliament or the National Assembly for Wales.

An order appointing another body as Approving Body will be subject to the negative resolution procedure. Where the order includes provision to split approving body functions under sub-paragraph (4) or to confer additional powers under sub-paragraph (5), the affirmative resolution procedure will apply.

Requirement for approval

Paragraph 7 provides that approval by the Approving Body is required before commencement of any construction work which has drainage implications. This paragraph defines construction work as anything done by way of, or in connection with, or in preparation for, the creation of a building, including any structure that covers land (such as a patio). Construction work has drainage implications if the building or structure will affect the ability of the land to absorb rainwater. Approval for construction work is not required if that construction work is a nationally significant infrastructure project, as defined in section 31 of the Planning Act 2008. These projects will require approval from the Infrastructure Planning Commission.

Sub-paragraph (4) allows Ministers to define what is to be treated as construction work, or as having drainage implications, and therefore what requires approval. It also enables the Minister to
set exemptions to the requirement for approval. This power is exercisable by order and will be subject to the negative resolution procedure.

**Applications for approval**

221. Paragraph 8 provides for two approaches for applying for approval from the Approving Body. Where planning permission under the Town and Country Planning Act is not required, then the application is to be made as a “free-standing” application, directly to the Approving Body. Where planning permission is required then the applicant can choose to make a combined application with planning permission, by lodging both applications to the planning authority at the same time.

**Free-standing application for approval**

222. Paragraph 9 provides the procedure for free-standing applications. The Approving Body may require applications to be made in a particular form, and applications must contain any information that the Approving Body requires in order to determine the application. If a fee is payable then it must also be accompanied by that fee.

**Combined applications**

223. Paragraph 10 provides the procedure where an applicant chooses to have their application for approval combined with planning permission. In a case like this, the applicant must give the planning application and the application for approval required by this Schedule to the planning authority. The application for approval of the drainage will need to contain the same information, be in the same form, and be accompanied by a fee in the same way as if a free standing application were made.

224. The planning authority will be obliged to consult with the Approving Body (if it is a different body than the planning authority), so that the Approving Body can determine the drainage application. The planning authority must inform the Approving Body of its final decision on the planning application. The planning authority must also inform the applicant of the final decision of the Approving Body on the drainage system at the same time as it informs the applicant of its final decision on planning permission.

**Determination of application for approval**

225. Paragraph 11 provides the process for determining an application for approval. An Approving Body must grant an application if it is satisfied that the drainage system complies with the national standards for sustainable drainage. If it is not satisfied then it must refuse the application. Approval may be granted subject to conditions on the construction, or modifications to the original proposals. The Approving Body may grant approval on the condition that the applicant provides a non-performance bond. In such a case, the approval only takes effect once the applicant has provided the non-performance bond. Grant of approval may relate to inspection of the drainage system or there may be a condition which requires payment of fees payable for the processing of the application for approval of a drainage system.

226. Before determining an application the Approving Body must consult a number of relevant bodies. If a connection to the sewer is proposed, it must consult the relevant sewerage undertaker; if the drainage system will discharge to a watercourse, it must consult the Environment Agency; if the drainage system is likely to affect a road, it must consult the relevant highway authority; if the drainage system is to discharge under, or directly or indirectly into a waterway managed by British Waterways, it must consult British Waterways; and finally it must consult the appropriate
internal drainage board if the Approving Body thinks that the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse within that board's district.

227. Once the Approving Body has made a decision, it must notify the applicant (or, in the case of a combined application, the planning authority), and any relevant consultees, of its decision as soon as it reasonably can.

228. The Secretary of State or Welsh Ministers may make regulations about the timing and procedure for determination of applications for approval and the consequences of the failure to comply with these regulations. These regulations are subject to the negative resolution procedure.

**Non-performance bonds**

229. Paragraph 12 explains what a non-performance bond is. When approving an application, the Approving Body may require the applicant to deposit a non-performance bond as a condition of granting approval. The value of the bond will be decided by the Approving Body, but it cannot exceed the best estimate of the most that it will cost to build the drainage system in line with the approved proposals. Sub-paragraph (6) provides for the Minister to issue guidance, to which approving bodies must have regard, about what amounts may be required for the bond.

230. If the Approving Body certifies that the drainage system has not been constructed in accordance with approved proposals or is unlikely to be completed, it may give a certificate leading to forfeit of the bond. Before doing this it must consult the applicant about whether it should do this. Once it has decided to issue a certificate leading to forfeit of the bond, it must then use the money to complete the drainage work in compliance with national standards. If any money is left over, the Approving Body must pay the remaining amount back to the applicant.

**Fees**

231. Paragraph 13 provides for the Minister to make regulations on fees for applications for drainage approval. The provisions allow for the regulations to provide for fees to be determined by reference to criteria specified in the regulations, for instance the extent or nature of the construction works. The regulations can also provide for fees to be paid by reference to the costs of work done by the authority to process the approval. In making the regulations, the Minister must have regard to the desirability that the income from fees does not significantly exceed the costs incurred in processing an approval.

**Enforcement**

232. Paragraph 14 requires the Minister to make an order to make provision about enforcement of the requirement for approval under this Schedule. The order can be used to make provision for taking enforcement action in cases where construction starts without approval of its drainage system, where any of the conditions that the approval was based on are breached or where construction of the drainage system does not follow the approved proposals.

233. The order can include provisions about notices including enforcement notices, stop notices, temporary notices and breach of condition notices; allowing for applications to be made to a court or tribunal; confer powers including discretionary powers on the Minister or other authorities, powers of entry, powers of inspection and powers to undertake and charge for remedial work; and provisions about the consequences of failure to comply with the order itself or notices produced under it. If the Minister wishes, the order can apply or make provisions similar to provision in the Town and Country Planning Act 1990.

234. The order under this paragraph will be subject to the affirmative resolution procedure.
**Guidance**

235. Paragraph 15 provides for the Minister to issue guidance, to which approving bodies must have regard, on the process of seeking and obtaining approval.

**Sewers and roads**

236. Paragraph 16 amends section 106A of the Water Industry Act 1991 and inserts a new section 106A. The effect of this amendment is to limit the existing right to connect to the public sewer in certain cases. Where the connection to the sewer is part of a drainage system which requires approval under this Schedule, connection will only be allowed where the application for approval of the drainage plans proposes a connection to the public sewer, and that application is approved by the Approving Body.

237. At present, under section 106(4) of the Water Industry Act, a sewerage company may refuse to allow a connection to the public sewer if it thinks that the mode of construction or condition of associated drains and sewers would be prejudicial to its sewerage system. This paragraph provides that the sewerage company will no longer be able to refuse a connection in respect of surface water on these grounds in a case where the sewer connection is part of the approved drainage system. It also provides that a connection to the sewer may not be refused on the grounds that drainage system drains more than one property or sewer, or absorbs water from other land as well as from premises and sewers.

238. Sub-paragraph (3) inserts a new subsection into section 115 of the Water Industry Act to require a sewerage undertaking to accept any drainage from a highway drain which is in accordance with a drainage system approved under this Schedule.

**Duty to adopt**

239. Paragraph 17 imposes a duty on the Approving Body to adopt any new drainage system which meets these conditions:

   a. Condition 1 is satisfied where the drainage system has been constructed in line with an approved drainage plan which conforms to the national standards.
   b. Condition 2 is satisfied where the Approving Body is satisfied that the drainage system has been built and functions in accordance with the approved plan (and complies with any conditions or approval) or alternatively where the Approving Body can, or has, issued a certificate that the non-performance bond will be used to complete the drainage system, for the reasons described under non-performance bonds. The Approving Body must also have regard to any guidance issued by the Minister on this condition.
   c. Condition 3 is satisfied if the system is a “sustainable drainage system”, as defined by regulations made by the Minister.

240. Where part of a drainage system is exempt from adoption, this duty to adopt continues to apply to the rest of the system as if it were a whole drainage system in its own right.

**Exception 1: single property systems**

241. Paragraph 18 provides that the Approving Body is not under a duty to adopt any drainage system, or part of a drainage system, which only provides drainage for single properties. The Minister can make regulations to define when a drainage system or part of a drainage system provides drainage for a single property.

**Exception 2: Roads**
242. Paragraph 19 provides that the Approving Body is not under a duty to adopt drainage systems, or parts of a drainage system which are also a publicly maintained road. This paragraph defines the term “publicly-maintained road” and provides that a reference to a “road” could refer to a road in its entirety or just a part of a road.

243. Where part of an adopted drainage system is a publicly maintained road, or where a drainage system is entirely contained within a publicly-maintained road, the road maintaining authority (the highway authority), must exercise its functions in accordance with the approved plan for the drainage system, including any conditions of approval, and in accordance with national standards. The functions affected would include the highway authority's functions of maintaining a road, and arranging for it to be properly drained under the Highways Act 1980. The maintaining authority must also designate the road as a “street with special engineering difficulties” under section 63 of the New Roads and Street Works Act 1991.

Additional exceptions

245. Paragraph 20 allows the Minister to provide additional exceptions to the duty to adopt a drainage system. This power must be exercised by order and would be subject to the negative resolution procedure.

Power to Adopt

246. Paragraph 21 enables the Approving Body to voluntarily adopt a sustainable drainage system, where it is not under a duty to do so. The relevant Minister may make regulations defining the types of sustainable drainage systems which may be voluntarily adopted.

Effect of adoption

247. Paragraph 22 provides that where an Approving Body adopts a drainage system, it must maintain the drainage system in line with the National Standards.

Process of adoption in pursuance of duty to adopt

248. Paragraph 23 details the process of adoption where the Approving Body is under a duty to adopt the drainage system. The person who applied for approval, referred to as “the developer”, can formally request the Approving Body to adopt a drainage system (for example, when it considers that it has completed the system in line with the approved plans). But the Approving Body does not need to wait for a formal request to be made if it considers on its own initiative that it is under a duty to adopt the drainage system.

249. The Approving Body may prescribe the form required for the developer to make formal requests for adoption. Where an Approving Body receives a formal request for adoption, it must determine the request within any time limit imposed by the Minister by order. The Approving Body must notify the developer of its decision, and of its right to appeal as soon as is reasonably practicable.

250. Where an Approving Body give notice of adoption it must ensure that the notice specifies the extent of the drainage system being adopted. The notice must be copied to the relevant sewerage
undertaker. The notice (together with details of the arrangements for access and maintenance in the approved plans) must be copied to anyone appears to owns land on which the drainage system is located, and anyone whose property appears to be drained by the system. The notice must also be copied to the developer and any other statutory consultees to the approval process.

251. The Approving Body must also include the drainage system in the local authority register which is established under Part 1 of the Act, and designate any parts of the drainage systems which are eligible for designation and not owned by the Approving Body. It must also release any unused non-performance bond which was paid as a condition of approval back to the developer.

252. Finally, the Approving Body must designate any adopted part of the drainage system that is a street as a “street with special engineering difficulties”, as under section 63 of the New Roads and Street Works Act 1991. The definition of “street” in this context is set out in section 48 of the New Roads and Street Works Act 1991.

253. The Minister can make regulations about timing, and manner of compliance with these obligations. These regulations are subject to the negative resolution procedure.

Process of Voluntary adoption

254. Paragraph 24 sets out what happens where the duty of adoption does not apply to a drainage system, but the Approving Body nonetheless decides to adopt it. When doing so it must notify the relevant sewerage undertaker and anyone who owns land on which the drainage system is located or from which the drainage system will drain water. The notification must specify the extent of the drainage system which is being adopted.

255. The Approving Body must also include the drainage system in the local authority register which is established under Part 1 of the Act, and designate any parts of the drainage systems which are on third party land and which are eligible to be designated under Schedule 1 of the Act.

256. The Minister can make regulations about the timing and manner in which notification, registration and designation are carried out. Any such regulations will be subject to the negative resolution procedure.

Appeals

257. Paragraph 25 requires the Minister to make regulations providing a right of appeal against decisions about applications for approval (including decisions about conditions), and decisions about the duty to adopt. The regulations must specify jurisdiction for appeals on the Minister, a court or tribunal, and make provision for the procedures and circumstances for appeal.

258. The first set of regulations made under this paragraph will be subject to the affirmative resolution procedure.

Building Act 1984


260. Section 21 of the Building Act 1984 provides that when a developer deposits plans of a building or extension in accordance with Building Regulations, the local authority can direct that the building be connected to a sewer. This paragraph amends section 21 so as to provide that where the construction work requires approval under this Schedule, the power in section 21 will no longer apply.
Section 59(1)(c) of the Building Act 1984 provides that where a cesspool, private sewer, drain or other specified types of drainage work which are provided for a building are in such a condition so as to be prejudicial to health or a nuisance, the local authority may require the owner of the building to carry out work. This paragraph extends the power in this section so that it also applies to sustainable drainage systems (whether or not they are adopted) in the same way as it applies to cesspools, sewers, drains etc. Insofar as it relates to sustainable drainage systems, the power may be exercised by the Approving Body — under the Building Act 1984 the powers are only available to district councils, whereas Approving Bodies will generally be county councils. The Building Act 1984 is amended to include a reference to these provisions.

This paragraph amends section 84(1) of the Building Act 1984 to ensure that sustainable drainage systems are appropriately dealt with in the relevant Building Act provisions relating to courts, yards and passages.

New Roads and Street Works Act 1991

Paragraph 27 provides for changes to the New Roads and Street Works Act 1991 to “sign-post” the fact that this Act contains duties to designate sustainable drainage systems under section 63 of the New Roads and Street Works Act 1991 and extends the criteria for designation to reflect this.

Works on public land

Paragraph 28 concerns statutory works conducted by a statutory undertaker on public land which affects (or may affect) that land's drainage system. The Minister may make regulations requiring a statutory undertaker to notify the approving body before starting such works.

Sub-paragraphs (2) and (3) make provision about the definitions of the terms “public land”, “statutory undertaker” and “statutory work.”

The regulations may specify criteria for determining whether works affect a land's drainage system, and may include provision on timing and procedure. The regulations may also specify the consequences of a failure to comply with the regulation's provisions.

The regulations may also require, or enable, the approving body to require a statutory undertaker carrying out such works to carry out further work on the system. This may include a requirement to leave the system in a state approved by the approving body, having regard to national standards for sustainable drainage.

The regulations could also give powers to the approving body to undertake work and recover their costs.

Finally, the regulations may amend existing primary legislation to include a cross-reference to the new regulations.

Section 33: Reservoirs

This section introduces Schedule 4: Reservoirs. This Schedule to the Act makes various amendments to the Reservoirs Act 1975, including amendments to introduce a risk-based approach to reservoir safety in England and Wales reflecting the danger that reservoir failures might pose to human life.

Schedule 4: Reservoirs

Introduction
Paragraph 1 introduces the specific amendments to the Reservoirs Act 1975 as it applies in England and Wales. References below to the Minister are to the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

“Large raised reservoir”

Paragraph 2 amends the definition of “large raised reservoir” for the purposes of the Reservoirs Act 1975. The new definition of large raised reservoir replaces the existing definitions of “reservoir”, “raised reservoir” and “large raised reservoir” in section 1(1) to (3) of the Reservoirs Act 1975.

New section A1(1) provides that a large raised reservoir is (a) a large, raised structure designed or used for collecting and storing water; and (b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means. New section A1(1)(a) includes non-impounding, bunded reservoirs (reservoirs with a continuous embankment around their perimeter which are filled with water from, for example, river or groundwater sources and rain). New section A1(1)(b) includes impounding reservoirs (formed by the construction of an embankment across a watercourse or lake).

The terms “raised” and “large” are further defined in subsection (2) and (3) of new section A1. A “raised” structure or area will be “large” if it is capable of holding 10,000 cubic metres of water or more above the natural level of any part of the surrounding land. The volume specified in subsection (3) may be amended by order by the Minister under subsection (7) of new section A1.

Subsection (4) of new section A1 allows the Minister to make regulations specifying in more detail how the capacity of a large raised reservoir is to be calculated for the purposes of the Reservoirs Act 1975. This power enables the Minister to provide clarification to engineers and reservoir undertakers how the volume capacity of a reservoir must be calculated for the purposes of determining whether a structure or area falls within the new definition of large raised reservoir.

Subsection (5) of new section A1 enables the Minister to provide in regulations for a structure which is designed or used for collecting and storing water, or a lake or other area capable of storing water which was created or enlarged by artificial means, to be treated as “large” by reason of its proximity to, or actual, or potential communication with another such structure or area. Where two or more reservoirs lie on the same watercourse, the uncontrolled release of water from an upstream reservoir may cause a reservoir downstream to also fail. The power will enable the Minister to extend the definition of large raised reservoir to include, for example an area or structure which is not capable of holding 10,000 cubic metres of water, but which, if it failed, could cause a connected reservoir which is also not capable of holding 10,000 cubic metres of water to release 10,000 cubic metres of water or more downstream.

Subsection (6) of new section A1 requires the Minister to aim to ensure, when making these regulations, that such a structure or area is treated as “large” only if 10,000 cubic metres of water or more might be released as a result of this proximity or communication.

Subsection (8) allows the Minister to make regulations providing for specified things not to be treated as large raised reservoirs for the purposes of the Reservoirs Act 1975.

Subsection (9) of new section A1 defines a large raised reservoir further to include anything used or designed to contain the water or its flow.

Orders made under subsection (7) and regulations made under subsection (8) of new section A1 are subject to the affirmative resolution procedure. Regulations made under subsections (4) and (5) are subject to the negative resolution procedure. See further paragraph 38 of Schedule 4.

Registration

282. Paragraph 4 inserts additional provisions after section 2(2A) of the Reservoirs Act 1975 about the registration of large reservoirs.

283. The Reservoirs Act 1975 already requires the Environment Agency to establish and maintain a register of large raised reservoirs in England and Wales and a record of information about each of them (see section 2(2)). New section 2(2B) makes it a requirement for the undertaker of a large raised reservoir to register the reservoir with the Environment Agency in accordance with regulations made under new section 2(2C) so as to ensure that the Environment Agency is able to keep its register complete and up-to-date.


285. Paragraph 6 inserts section 22(A1) before section 22(1) of the Reservoirs Act 1975. Under new section 22(A1), it is an offence to fail to comply with the requirements of new section 2(2B) or a requirement specified in regulations made under new section 2(2C). New section 22(A2) sets out the penalty for the offence under section 22(A1).

286. Regulations made under new section 2(2C) are subject to the negative resolution procedure (see further paragraph 38 of Schedule 4).

High-risk reservoirs

287. Paragraphs 7 and 8 insert new sections 2A to 2E after section 2 of the Reservoirs Act 1975 and make consequential amendments to the Act.

288. New section 2A(1) requires the Environment Agency, as soon as reasonably practicable after a large raised reservoir has been registered under new section 2(2B), to consider whether it is to be designated as a “high-risk reservoir”. Where the Environment Agency proposes to designate a large raised reservoir as a high-risk reservoir, it must notify the undertaker of its provisional designation, including the reasons for this designation, and how and within what period representations to the Environment Agency can be made (section 2A(2) and (3)).

289. New section 2B(1) empowers the Environment Agency to designate a large raised reservoir as a high risk one by giving notice confirming a provisional designation.

290. New section 2C sets out the criteria by reference to which the Environment Agency may determine that a large raised reservoir is a high-risk reservoir. Under subsection (1) of new section 2C the Environment Agency may determine that a large raised reservoir is a high-risk reservoir if the Environment Agency thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered unless the reservoir satisfies any conditions specified in regulations that may be made by the Minister. Subsection (2) of new section 2C gives an indication of the conditions that may be specified in regulations made under new section 2C(1)(b).

291. The undertaker of a high-risk reservoir will be required to comply with sections 10, 11 and 12 of the Reservoirs Act 1975 (as amended), whereas the undertaker of a large reservoir that is not so designated will not.

292. New section 2D requires the Environment Agency to carry out a review in relation to a large raised reservoir that has not been designated as a high-risk reservoir following its registration if it later thinks that it may be appropriate to designate the reservoir as a high-risk reservoir. Such a review may be appropriate where development has taken place downstream or alterations to the
reservoir have affected the reservoir's inundation zone. The Environment Agency must also carry out a review if it thinks that the designation of a large raised reservoir as a high-risk reservoir may have ceased to be appropriate. The procedure that applies in relation to the designation of a large raised reservoir as a high-risk reservoir following a review is the same as the procedure that applies following its registration.

293. New section 2E requires the Minister to make regulations providing a right of appeal against designations made under new section 2B. The regulations must define which person or body has jurisdiction in relation to the appeal and set out the appeal procedure. Under subsection (3) of new section 2E a designation is suspended pending the outcome of the appeal. The first set of regulations made under section 2E is subject to the affirmative resolution procedure; otherwise regulations made under this section are subject to the negative resolution procedure (see paragraph 38 of Schedule 4).

Panels of Engineers

294. Paragraph 9 adds new subsections (10) and (11) to section 4 of the Reservoirs Act 1975 to enable the Secretary of State and Welsh Ministers to jointly establish one or more panels of engineers in relation to England and Wales. Engineers on the panel(s) would be appointed to act as construction, inspecting or supervising engineers for the purposes of the Act.

Construction and alteration

295. Paragraph 10 amends section 6 of the Reservoirs Act 1975 which relates to construction and alteration of large raised reservoirs.

296. Sub-paragraphs (2) to (5) amend section 6 of the Reservoirs Act 1975 so that the Act also applies to alterations to a large raised reservoir to decrease its capacity.

297. Sub-paragraph (6) adds new subsections (6A) and (6B) to section 6 of the Reservoirs Act 1975. New subsection (6A) provides that section 13 of the Reservoirs Act 1975 applies to alterations or proposed alterations to decrease the capacity of a large raised reservoir so that it is incapable of holding 10,000 cubic metres of water above the natural level of the surrounding land. New subsection (6B) allows the Minister, by order, to substitute a different volume of water for the volume specified in subsection (6A) in line with changes to the volume capacity specified in new section A1(3). An order made under new section 6(6B) is subject to the affirmative resolution procedure (see further paragraph 38 of Schedule 4).

298. Paragraph 11 makes consequential amendments to the Reservoirs Act 1975. Paragraph 11(6) also amends section 8(3) of the Reservoirs Act 1975 (powers of the enforcement authority in the event of non-compliance with the requirements as to construction or alteration of large raised reservoirs) to require the undertaker to carry out any recommendations an appointed engineer sees fit to make in the interests of safety within the periods specified in the engineer's report. The engineer's report must specify the period within which each recommendation contained in the report must be carried out.

High-risk reservoirs: inspections


300. Sub-paragraph (2) amends section 10(1) of the Reservoirs Act 1975 so as to only require the undertakers of high-risk reservoirs to have their reservoirs periodically inspected.
301. Sub-paragraph (3) amends section 10(2) of the Reservoirs Act 1975 to enable the Minister to make regulations about the times at which a high-risk reservoir must be inspected. Regulations made under section 10(2) (as amended) are subject to the affirmative resolution procedure.

302. Sub-paragraph (4) amends section 10(3) of the Reservoirs Act 1975 to allow the inspecting engineer to make any recommendations he sees fit as to: (a) the timing of the next inspection; (b) the maintenance of the reservoir; and (c) any measures required in the interests of safety and the period in which those measures must be taken. Sub-paragraph (8) amends section 10(6) of the Reservoirs Act 1975 to require undertakers to carry out any recommendations as to measures required in the interests of safety made by the inspecting engineer within the period specified in the engineer's report. Sub-paragraph (6) amends section 10(5) of the Reservoirs Act 1975 to require the inspecting engineer to include in the certificate he is required to give under section 10(5) any recommendations as to the maintenance of the reservoir included in the engineer's report. Sub-paragraph (7) adds a new subsection 10(5A) and requires the undertaker to comply with any recommendation made by an inspecting engineer under section 10(3)(b) of the Reservoirs Act 1975 (as amended) as to the maintenance of the reservoir.

303. Sub-paragraph (5) inserts a new subsection after section 10(3) of the Reservoirs Act 1975 to require an inspecting engineer to notify the Environment Agency if he or she has not provided a report before the end of the period of 6 months, beginning with the date of completion of the inspection of the reservoir and to provide a written statement of the reasons for this.

304. Sub-paragraph (9) inserts into section 10 of the Reservoirs Act 1975 subsection (6A). This subsection requires an inspecting engineer to include in his or her report, a statement as to whether all of the safety measures recommended in the previous inspection report have been taken. Where they have not, the inspecting engineer must either include in the report recommendations to take any safety measure that has not yet been taken or an explanation of why it is no longer required.

305. Paragraphs 13 and 14 contain various consequential amendments to the Reservoirs Act 1975 resulting from the new provision allowing an inspecting engineer to make recommendations as to the maintenance of the reservoir.

306. Paragraph 15 inserts subsections (1AA) and (1AB) after section 22(1) of the Reservoirs Act 1975 (criminal liability). Under new section 22(1AA), it is an offence to fail to comply with the requirements of section 10(5A). The penalty for this offence is set out in new subsection 22(1AB).

**High-risk reservoirs: monitoring and supervision**

307. Paragraphs 16 and 17 amend sections 11 and 12 of the Reservoirs Act 1975 (monitoring and supervision). Sections 11 and 12, as amended, apply to high-risk reservoirs only.

308. Paragraph 17(3) inserts subsections (2A) and (2B) after section 12(2) of the Reservoirs Act 1975. New subsections 12(2A) and (2B) require the supervising engineer to provide the undertaker with a statement of any steps taken to maintain the reservoir in accordance with the recommendations of the inspecting engineer under new section 10(3)(b) at least once every 12 months.

309. Paragraph 17(5) adds subsections (6) to (8) to the end of section 12 of the Reservoirs Act 1975. New section 12(6) gives the supervising engineer the power to direct the undertaker to carry out a visual inspection of the reservoir at specified intervals for the purpose of identifying anything that might affect the safety of the reservoir. These provisions will enable supervising engineers to set out how undertakers can keep a look out for potential problems, such as growing leaks or...
embankment subsidence which if caught early can avoid worse problems, including emergency situations, developing later on. New section 12(7) requires the undertaker to notify the supervising engineer of each visual inspection that is carried out and anything noticed in the course of it. New section 12(8) allows the Minister to issue guidance to supervising engineers about supervision in accordance with section 12 of the Reservoirs Act 1975 (as amended).

310. Paragraph 19 inserts subsections (1AC) and (1AD) into section 22 of the Reservoirs Act 1975 (criminal liability). Under new section 22(1AC), it is an offence, without reasonable excuse, to fail to comply with the requirements of new section 12(6) or 12(7). New section 22(1AD) sets out the penalty for this offence.

**Flood plans**


312. Paragraphs 20(2) and (3) amend the definition of a flood plan in section 12A(1) of the Reservoirs Act 1975 to provide that a flood plan must also give information about the areas that may be flooded in the event of an uncontrolled escape of water, and describe the action the undertaker would take in order to prevent an uncontrolled escape of water. Paragraph 21 inserts new section 12AA, which sets out the procedure to be followed and other requirements that apply where an undertaker is directed to prepare a flood plan. The undertaker must prepare a flood plan in consultation with the appointed engineer and may not provide a copy of it or publish it, as directed, unless the engineer has certified that it meets the requirements of section 12A(2)(a) and (b). Paragraph 22 amends section 19 to allow the undertaker to challenge a failure by the appointed engineer to issue a certificate under new section 12AA(3).

313. Paragraph 24 inserts subsection (1AE) into section 22 of the Reservoirs Act 1975 (criminal liability). New section 22(1AE) makes it an offence to fail to comply with the requirements of new section 12AA(4), (5), (6)(a) or (7) and sets out the penalties for these offences.

**Discontinuance**


315. Sub-paragraphs (2) and (4) amend section 13(1) and 13(3) of the Reservoirs Act 1975 to substitute for “more than 25,000” the figure “10,000” to reflect the new definition of large raised reservoir (see paragraph 2 of Schedule 4).

316. Paragraph 25(3) inserts new subsections (1A) to (1E) after section 13(1) of the Reservoirs Act 1975. These provisions allow a qualified civil engineer to issue an interim certificate if he thinks that the level of water in the reservoir should be reduced before the alteration is completed, and requires the undertaker to ensure that the reservoir does not contain water except in accordance with the interim certificate.

317. Paragraph 25(5) adds at the end of section 13 of the Reservoirs Act 1975 new subsections (4) and (5). New section 13(4) enables the Minister by order to substitute a different volume of water for that specified in section 13(1) and 13(3) in line with changes made to the volume capacity specified in new section A1. New section 13(5) allows the Environment Agency to serve a notice requiring the undertaker to appoint a qualified civil engineer where it appears to the Environment Agency that such an engineer has not been employed as required by section 13(1) of the Reservoirs Act 1975. Paragraph 26 makes consequential amendments to sections 15 (reserve powers) and 22(1)(b) (criminal liability) of the Reservoirs Act 1975.
318. An order made under new section 13(4) is subject to the affirmative resolution procedure.

Abandonment


320. Paragraph 27(2) amends section 14(2) of the Reservoirs Act 1975 to require the undertakers of a large raised reservoir who are proposing to abandon the use of their reservoir, to carry out any recommendations as to measures to be taken in the interests of safety made by the appointed engineer within the period specified in the report.

321. Paragraph 27(3) adds section 14(6) to the Reservoirs Act 1975, which enables the Minister to make regulations providing for what is and is not to be treated as abandonment of use of a large raised reservoir and bringing back a large raised reservoir into use as a reservoir for the purpose of the Act.

322. Regulations made under new section 14(6) are subject to the negative resolution procedure.

Appeals

323. Paragraph 30 inserts section 19A to the Reservoirs Act 1975. Under sections 8(1), 9(7), 10(7), 12(4), 13(5) and 14(4) of the Act (as amended), the Environment Agency may serve an enforcement notice on the undertakers of a large raised reservoir requiring them to appoint an engineer where it appears to the Environment Agency that the undertakers have not appointed one as required. Under sections 8(3A), 9(7), 10(7) and 14(4), the Environment Agency may also serve an enforcement notice on the undertakers of a large raised reservoir where it appears to the Environment Agency that the undertakers have not carried out any recommendation of an engineer as to measures in the interests of safety. Section 19A requires Ministers to make regulations to provide a right of appeal against the requirements in these enforcement notices. The regulations must define which person or body has jurisdiction in relation to the appeal and set out the appeal procedure. The first set of regulations made under section 19A is subject to the affirmative resolution procedure; otherwise regulations made under this section are subject to the negative resolution procedure (see paragraph 38 of Schedule 4).

Directions of engineers

324. Paragraph 31 amends section 20(1) of the Reservoirs Act 1975 to include directions made by an engineer under the Act in the list of forms that may be prescribed (see also paragraph 21).

Assessment of reports and statements

325. Paragraph 32 inserts section 20A after section 20 of the Reservoirs Act 1975. This will allow the Minister to make regulations for the assessment of the quality of reports and written statements prepared by inspecting and supervising engineers (new section 20A(1)), including for the assessment to be made by a committee of members of the Institution of Civil Engineers (new section 20A(2)). Regulations may set out the criteria and procedures for assessment. The provision will provide a basis on which improvements to, and a greater consistency in, engineers' reports etc can be achieved and will help to identify where prescribed forms or guidance needs to be revised.

326. Regulations made under new section 20A(1) are subject to the negative resolution procedure.

Information and reports

328. New section 21A (power to require information) allows the Environment Agency by notice to require an undertaker to provide specified information where the information is required by the Environment Agency for the purposes of carrying out its functions under the Reservoirs Act 1975.

329. New section 21B (reports) allows the Minister to make regulations to require a specified person to report to the Environment Agency on any incident of a specified kind which affected or could have affected the safety of a large raised reservoir. This will enable the Minister to specify the kinds of incident that should be reported to the Environment Agency for collating and dissemination to reservoir undertakers and panel engineers. The intention is that issues of safety arising from individual incidents should be disseminated to undertakers and the profession so that all can learn from individual incidents and if necessary technical guidance can be issued.

330. Paragraph 34 inserts subsection (4A) to (4C) after section 22(4) of the Reservoirs Act 1975 (criminal liability) to make it an offence to fail to comply with a requirement of a notice under new section 21A or to make a report under regulations made under new section 21B.

331. Regulations made under new section 21B(1) are subject to the negative resolution procedure.

**Enforcement: supplementary**

332. Paragraph 35 amends section 22(1) of the Reservoirs Act 1975 (criminal liability) by removing the references in that section to “by the wilful default of the undertakers” and “unless there is reasonable excuse for the default or failure” to make the offences strict liability offences.

333. Paragraph 36 inserts new section 22C after section 22B of the Reservoirs Act 1975 (criminal liability). Under new section 22C, the undertaker must pay to the Environment Agency the amount of expenses reasonably incurred by the Environment Agency in connection with the consultation of an engineer when exercising its enforcement powers under sections 8 (construction and alteration), 9 (re-use of abandoned reservoirs), 10 (inspection) or 14 (abandonment) of the Reservoirs Act 1975.

**Arrangements for civil protection: charges**

334. Paragraph 37 inserts section 22D in the Reservoirs Act 1975. This section allows Category 1 responders (as listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004) to charge an undertaker a fee in accordance with a scheme prescribed by regulations made by the Minister. The purpose of such a scheme is to enable Category 1 responders to charge fees in respect of the costs they incur in carrying out functions under section 2 of the Civil Contingencies Act 2004 in connection with large raised reservoirs.

**Regulations and Orders**

335. Paragraph 38 amends section 5 of the Reservoirs Act 1975 (power to prescribe by regulations) to make further provision in relation to regulations, rules and orders made by the Minister under the Reservoirs Act 1975.

**Charges**


**Power to make further provision**
Paragraph 40(1) provides that the Minister may make such further amendments to the Reservoirs Act 1975 as appear necessary, or desirable in consequence of the amendments made by Schedule 4.

An order made under sub-paragraph (1) is subject to the affirmative resolution procedure.

**Regulatory impact assessment**

Paragraph 41 will require the Secretary of State in relation to reservoirs in England and the Welsh Ministers in relation to reservoirs in Wales, to review, prepare and publish a report, on the burdens on undertakers of large raised reservoirs of complying with the Reservoirs Act 1975, as amended by Schedule 4.

The review must be carried out at the end of the period of 12 months beginning with the date on which all of the following are first brought into force in relation to all large raised reservoirs (as defined in new section A1): new section A1 (“large raised reservoir”): England and Wales); the regulations under new section 2(2C) (registration); the regulations under new section 2C(1)(b) (conditions (if any) which a large raised reservoir must satisfy in order for it not to be designated as a high-risk reservoir where section 2C(1)(a) applies); and the regulations under section 10(2), as amended (the times at which a high-risk reservoir must be inspected).

**Ministerial responsibility**

Paragraph 42 provides that in the amendments to the Reservoirs Act 1975 made by this Schedule, a reference to the Minister is to the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

**Cross-border England-Scotland reservoirs**

Paragraph 43 makes provision about a large raised reservoir which is partly in Scotland and partly in England. It enables the Secretary of State, with the consent of Scottish Ministers, to provide by order for the English reservoir safety regime (see paragraph 43(1)(c)) or the Scottish reservoir safety regime (see paragraph 43(1)(d)) to apply to any specified large raised reservoir or a class of large raised reservoir.

**Section 34: Special Administration**

This section introduces Schedule 5: Special Administration.

This Schedule to the Act amends the special administration regime provisions in the Water Industry Act 1991 to align it more closely with the general administration regime, as amended by the Enterprise Act 2002. The special administration regime comes into play when a water company (a water undertaking, sewerage undertaking or qualifying licensed water supplier) becomes insolvent or fails to carry out its statutory functions or licensed activities to such an extent that a transfer to a new owner is seen as the only reasonable way to protect the interests of water and sewerage customers. The amendments provide the appointed special administrator with an additional purpose to the pursuit of the “transfer purpose” to instigate a rescue plan. The Schedule also amends provisions and includes new provisions related to the transfer purpose, and provides powers to adapt general insolvency and company law provisions for the purpose of the special administration regime.

**Schedule 5: Special Administration**

**Transfer schemes**
345. Paragraph 1 amends Schedule 2 to the Water Industry Act 1991, which in certain circumstances allow a water or sewerage undertaker or qualified licensed water supplier to transfer its business (or part of its business) to a new appointee by way of a transfer scheme. A transfer scheme may be used to facilitate the smooth transfer of the business of a water company in special administration to the new appointee. Paragraph 1 removes the provisions requiring the consent of third party undertakers with an interest in the transfer before the transfer scheme is prepared, approved or modified.

346. Paragraph 2 makes a further amendment to provide that a transfer scheme may not impose new liabilities on third party undertakers.

Objectives

347. Paragraph 3 amends section 23 of the Water Industry Act 1991 to change the purposes of a special administration order where the water company is placed in special administration on the grounds that it is, or is likely to be, unable to pay its debts. The effect of new section 23(2B) is to require the special administrator to seek to rescue the water company as a going concern (the “rescue purpose”), rather than to transfer its business in accordance with the transfer purpose set out in section 23(2)(a) or (2A)(a). However, the special administrator must pursue the transfer purpose instead of the rescue purpose where the special administrator thinks that a rescue is unlikely to be possible or that the objectives of a special administration order would be better achieved through a transfer.

348. New section 23(2C), as read with the existing subsections (2)(b) and (2A)(b), places a duty on the special administrator to ensure that the water company properly carries out its statutory functions or licensed activities until the transfer purpose or the rescue purpose has been met.

349. New section 23(2D) allows the special administrator to propose a company voluntary arrangement under Part 1 of the Insolvency Act 1986 or a compromise, or arrangement in accordance with Part 26 of the Companies Act 2006 as part of a rescue package to be agreed with creditors.

350. New section 23(2E) to (2G) provides the Secretary of State with a regulation making power to modify the provisions in the Insolvency Act 1986 and the Companies Act 2006, in relation to these types of arrangements and compromises, and to make other additional provision about these types of arrangements and compromises in order to adapt them to water companies in special administration and meet the objectives of the special administration regime. The regulations may in particular confer functions on the Secretary of State, the Welsh Ministers or the Water Services Regulation Authority. The Secretary of State can only make regulations with the consent of the Welsh Ministers and they are subject to the affirmative resolution procedure.

Financial assistance

351. Paragraph 4 amends sections 153 and 154 of the Water Industry Act 1991, which contain provisions relating to the granting of financial assistance by the Secretary of State or the Welsh Ministers where a special administration order has been made.

352. Sub-paragraphs (2), (3) and (4) expand the power which enables the Secretary of State and the Welsh Ministers to offer indemnities to a special administrator, the employees and other members of the firm or body corporate in respect of liabilities or loss incurred or sustained under the order.

353. Sub-paragraph (5) provides that arrangements for grants, loans or indemnities made by the Secretary of State or the Welsh Ministers may continue after a special administration order ceases to have effect.
354. Sub-paragraphs (6) and (7) amend the provisions which require the Secretary of State and the Welsh Ministers to respectively inform Parliament and the National Assembly for Wales where a guarantee is given under section 154. Subsection (6) replaces a requirement on the Secretary of State and the Welsh Ministers to “immediately” lay details of any guarantees made in connection with a special administration order before Parliament or the National Assembly for Wales, as appropriate, with a requirement to lay the details “as soon as reasonably practicable”. Subsection (7) makes a similar change to the requirement to lay a statement of any sums paid by the Secretary of State or the Welsh Ministers, under a guarantee in connection with a special administration order. This means that in practice the laying of documents might be delayed until both Houses of Parliament or the National Assembly for Wales are sitting rather than during recess or some other time when they are not sitting.

**Hive down**

355. Paragraph 5 inserts a new subsection into section 23 of the Water Industry Act 1991 to provide that where the transfer purpose is pursued, the special administrator may “hive down” or transfer the whole or part of the company's business to a wholly-owned subsidiary of the company in advance of a transfer of the securities in that subsidiary to one or more new owners.

356. Sub-paragraphs (2) and (3) provide for the Secretary of State, with the consent of the Welsh Ministers, to make an order amending Schedule 2 to the Water Industry Act 1991 to allow the use of transfer schemes to transfer the whole or part of the business of a company in special administration by way of hive down. The order is subject to the affirmative resolution procedure.

357. Sub-paragraph (4) allows the hive down provisions to be applied to companies which went into special administration before commencement of these new provisions.

**Application of general administration law**

358. Paragraph 6 replaces section 23(3) of, and Schedule 3 to, the Water Industry Act 1991. It applies Schedule B1 to the Insolvency Act 1986 (as inserted by the Enterprise Act 2002) to the special administration regime in place of older insolvency legislation that was generally replaced by Schedule B1, but preserved by the Enterprise Act 2002 for the purposes of the special administration regime. It also provides that the Secretary of State, with the consent of the Welsh Ministers, may make regulations to apply, disapply or modify Schedule B1, other Insolvency Act 1986 provisions and other relevant insolvency legislation for the purposes of the special administration regime.

**Strategic supplies**

359. Paragraph 7 amends sections 66G(10) and 66H(10) of the Water Industry Act 1991. These sections allow the Water Services Regulatory Authority (Ofwat) to designate an introduction of water by a licensed water supplier as a strategic supply where, without the introduction or introductions, there would be a substantial risk that the undertaker would not be able to maintain supplies to all customers. The current definition of “customer” does not currently include licensed water suppliers who receive wholesale water supplies from the undertaker in order to supply their customers. The amendment in paragraph 7 ensures that the Authority can take wholesale supplies by the water undertaker to licensed water suppliers (and thereby their customers) into account when determining whether to designate one or more introductions of water by another licensed water supplier as a strategic supply.

**Section 35: Provision of infrastructure**
360. This section inserts a new Part 2A into the Water Industry Act 1991 ("the Act") under the title of "Regulation of Provision of Infrastructure".

361. New section 36A in the Act allows the "Secretary of State or Welsh Ministers" ("the Minister" defined in new section 36E) to introduce regulations to regulate the provision of infrastructure by a third party for the eventual use by water undertakers or sewerage undertakers. The regulations may in particular:

- confer regulatory functions on the Authority (Ofwat) to enable it to regulate the provision of infrastructure;
- apply the same or similar provisions contained in Part 2 of the Act with or without modification. These provisions include such matters as appointment of water and sewerage undertakers, enforcement orders, special administration orders and restrictions on voluntary winding up and insolvency proceedings.

362. The new section also provides that the regulations must specify the activities to which they apply which may include the designing, constructing, owning and operating of infrastructure to be used by undertakers (for example, it could include complex, novel or exceptionally large-scale construction projects that may expose customers to new financial risks) and allows them to define the term "infrastructure", which may include parts of a project or a project in its entirety. However, the regulations must only make provision or confer functions in relation to projects or works that are of a size or complexity that threatens an undertaker's ability to provide services for its customers (e.g. if there is a possibility that customers could be exposed to risks connected with the delivery of the projects that may result in the undertaker not being able to carry out its statutory functions or meet other obligations).

363. A new section 36B in the Act provides that the regulations under section 36A may allow the Ministers or the Authority (if the role has been delegated to it by the Minister) to specify one or more infrastructure projects which must be put out to tender. The regulations must also prohibit water and sewerage undertakers from carrying out infrastructure projects if they have been identified as the type of projects which have to be put out to competitive tender. However, the regulations may permit or require undertakers to carry out certain preparatory work associated with an infrastructure project and must also include provisions outlining which of the undertakers' associate companies (e.g. parent or sister companies) may participate in tender processes. In addition the regulations must specify the procedures to be followed in a tender exercise. These provisions may specify factors that need to be taken into account by undertakers when considering bids (if any) and must enable an undertaker to determine which bid to accept.

364. This section also introduces a new section 36C in the Act which requires that the regulations must specify the criteria to be used in determining whether an infrastructure project must be put out to competitive tendering. The regulations may also require the Authority to seek the consent of the relevant Minister before exercising its delegated powers under new section 36B and to publish guidance on how it will determine which infrastructure projects will be subject to tendering.

365. New section 36D provides that the regulations may enable the Authority to designate a successful bidder as an "infrastructure provider". The regulations may:

- confer full or limited powers and duties consistent with, or similar to, those in the Act upon infrastructure providers, the Authority, the Ministers and other public bodies (e.g. the Drinking Water Inspectorate or the Environment Agency);
- relieve water and sewerage undertakers from certain duties in relation to the infrastructure project; and
• vary, revoke or provide conditions of appointment on the designation and provide enforcement provisions.

366. New section 36E in the Act, defines “the Minister”. It provides that the Secretary of State is the Minister in relation to any infrastructure project that is provided or to be provided for the use of any English undertakers and that the Welsh Ministers are the Minister for any infrastructure project that is provided or to be provided for the use of any Welsh undertakers. Where the infrastructure project that is provided or to be provided is for the use of one or more English undertakers and one or more Welsh undertakers the Minister is the Secretary of State and the Welsh Ministers acting jointly.

367. New section 36F provides that in relation to infrastructure in Wales (for the use of undertakers wholly or mainly in England), regulations made by the Secretary of State must require the Secretary of State or Ofwat to consult the Welsh Ministers before specifying projects which must be put out to tender.

368. In relation to infrastructure in England (for the use of undertakers wholly or mainly in Wales), regulations made by the Welsh Ministers must require the Welsh Ministers or Ofwat to consult the Secretary of State before specifying projects which must be put out to tender.

369. New section 36G provides that regulations cannot be made unless a draft has been laid before, and approved by resolution of both Houses of Parliament in relation to regulations made by the Secretary of State, the National Assembly for Wales in relation to regulations made by the Welsh Ministers, and both Houses of Parliament and the National Assembly for Wales in relation to regulations made by the Secretary of State and the Welsh Ministers acting jointly. Ministers must also consult with persons likely to be affected by the regulations before the draft is laid before Parliament or the Assembly.

Section 36: Water use: temporary bans

370. This section replaces section 76 of the Water Industry Act 1991 with a similar power to allow a water undertaker, in relation to water which it supplies, to temporarily prohibit or restrict specific uses of water. New section 76(1) allows a water undertaker to ban specified uses of water if the undertaker thinks that it is experiencing, or it may experience, a serious shortage of water for distribution.

371. A water undertaker may only ban one or more of the uses of water which appear in section 76(2). Most of the uses which appear in this list only apply to the use of water which is drawn through a hosepipe or similar apparatus (see further section 76A(5)). However, in the case of filling or maintaining a domestic swimming pool or paddling pool, or filling or maintaining an ornamental fountain, the use of water which may be prohibited extends to all means of filling and would also cover filling by means of fixed or permanent plumbing. A water undertaker need not ban a specified use of water entirely (new section 76A(1)). It may limit the scope of a ban by, for example, excluding specified groups of customers and apparatus and restricting the use of water at specified times only.

372. New section 76(3) enables the Minister (defined in new section 76A(4) as the Secretary of State in relation to prohibitions which may be issued by undertakers whose areas are wholly or mainly in England, and the Welsh Ministers in relation to prohibitions which may be issued by undertakers whose areas are wholly or mainly in Wales) to add other uses of water to the list in section 76(2) and to remove a purpose from the list. Under section 76(3), a use of water may only be added to the list if it is for a non-domestic purpose — that is a purpose which does not fall within the meaning of “domestic purposes” in section 218 of the Water Industry Act 1991. An order adding
another use of water to, or removing a use of water from, the list in section 76(2) will be subject to the affirmative resolution procedure in Parliament or the National Assembly for Wales (new section 76C(2)).

373. New section 76A(2) and (3) allows the Minister, by order, to narrow the scope of any of the listed uses. This power would allow the Minister, for example, to exempt from the listed uses, the use of water on the grounds of health and safety. It also allows for the terms used in section 76(2), such as “private motor vehicle”, to be defined further.

374. Before a prohibition can take effect, the water undertaker must publish a notice of the prohibition in local newspapers and also on its website (new section 76B(2)). New section 76B(4) requires the water undertaker to give notice this way each time the scope of a prohibition is varied in any way. The lifting of any such prohibition may take effect as soon as one form of notice has been given (new section 76B(5) and (6)). New section 76B(3) requires a notice of a prohibition to explain how representations about a proposed prohibition may be made.

375. The notice of the prohibition must set out clearly the terms and extent of the prohibition. In particular, it must specify the date on which the prohibition will commence and the part of the water undertaker's area to which the ban will apply (new section 76(4)).

376. New section 76(5), which replaces existing section 76(3), makes it an offence to contravene a prohibition. A person guilty of the offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. New section 76(6) requires a water undertaker that has made a specific charge in its tariff for a use that is subsequently banned, such as the use of a hosepipe or sprinkler, to make arrangements for a reasonable reduction or refund in respect of the charge for the use it has prohibited. These provisions replace existing section 76(4) and reflect the uses of water listed in new section 76(2), which are not all limited to the use of water drawn through a hosepipe or similar apparatus.

377. New section 76C applies section 213 of the Water Industry Act 1991 (powers to make regulations) to orders made by the Minister under section 76(3) or 76A(2) and makes provision in relation to Parliamentary and Assembly procedure.

Section 37: Civil sanctions

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

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

380. This section ensures that existing offences in legislation that is amended by the Act remain eligible for orders granting the ability for civil sanction alternatives to be available. In this respect it aims to preserve the status quo. Hence where an offence is currently not able to be the subject of an order to make civil sanctions available, this situation will continue. It also allows for some offences which are inserted into existing legislation to be the subject of civil sanction orders.

Section 38: Incidental flooding or coastal erosion: Environment Agency
381. This section allows the Environment Agency to carry out works, under certain conditions, that may or will cause flooding, an increase in the amount of water below the ground, or coastal erosion.

382. The conditions are that the Environment Agency:
   • considers that the works are either in the interest of nature conservation, the enhancement or conservation of the landscape, the preservation of cultural heritage, or peoples’ enjoyment of the environment or cultural heritage;
   • considers that the benefits of the works outweigh the harmful consequences as described in section 2(4)(a) to (d);
   • has consulted the lead local flood authority, the district council (if any) and the internal drainage board (if any) for the area in which the work is to be carried out in; and any persons who own or occupy land that, in the opinion of the Environment Agency, is likely to be directly affected by the work.

383. Subsection (5) requires the Environment Agency to have regard to the national flood and coastal erosion risk management strategies issued under sections 7 and 8 and any relevant guidance, and the local flood risk management strategies issued under section 9 or 10 for the area concerned, as well as any relevant guidance issued by the lead local flood authority for that area.

384. Subsection (6) allows the Environment Agency to arrange for works under this section to be done on its behalf by a lead local flood authority, district council or internal drainage board.

385. Subsection (7) states that the power in subsection (1) may be relied upon in combination with any existing powers under other legislation, but the conditions on the use of power under subsection (1) do not restrict, limit or relate to what the Environment Agency may do under other enactments.

386. Subsection (8) requires the Minister to make an order applying compulsory purchase, powers of entry and compensation provisions of the Water Resources Act 1991 to this section. Subsection (9) requires that such an order must be made subject to the affirmative resolution procedure.

387. Subsection (10) defines “the Minister” for the purpose of this section as meaning the Secretary of State in England and the Welsh Ministers in Wales.

Section 39: **Incidental flooding or coastal erosion: local authorities**

388. This section allows a lead local flood authority, district council or internal drainage board to carry out works, under certain conditions that may or will cause flooding, an increase in the amount of water below the ground, or coastal erosion. These bodies are collectively defined as “local authorities” for the purpose of this section (subsection (6)) and that terminology is used in describing this section.

389. The conditions are that the local authority:
   • considers that the works are either in the interest of nature conservation, the conservation or enhancement of the landscape, the preservation of cultural heritage or peoples’ enjoyment of the environment or cultural heritage;
   • considers that the benefits of the works outweigh the harmful consequences as described in section 2(4)(a) to (d);
   • has consulted the Environment Agency and, if the works affects a main river, gained its consent;
   • has consulted any other local authority who may be affected and any other persons who own or occupy land that, in the opinion of the authority, is likely to be directly affected by the work.
390. Subsection (7) requires the local authority to have regard to the national flood and coastal erosion risk management strategies issued under sections 7 and 8 and any relevant guidance, and the local flood risk management strategy issued under section 9 or 10 for the area concerned as well as any guidance issued by the lead local flood authority for that area.

391. Subsection (8) allows the local authority to arrange for works carried out under this section to be done on its behalf by the Environment Agency or another local authority.

392. Subsection (9) states that the power in subsection (1) may be relied upon in combination with any existing powers under other legislation but the conditions on the use of power under subsection (1) do not restrict, limit or relate to what a local authority may do under other enactments.

393. Subsection (10) allows the Environment Agency to make grants to local authorities in England in respect of work under this section. Subsection (11) similarly allows Welsh Ministers to make grants to local authorities in Wales for works under this section. No such power is required in respect of giving grants to the Environment Agency in respect of works which it might undertake section 38 because the Secretary of State and the Welsh Ministers are already empowered under section 47 of the Environment Act 1995 to make grants to the Environment Agency of such amounts, and on such terms, as they think fit.

394. Subsection (12) requires the Minister to make an order applying compulsory purchase, powers of entry and compensation provisions of the Water Resources Act 1991 to this section. Subsection (13) requires that such an order must be made subject to the affirmative resolution procedure.

395. Subsection (14) defines “the Minister” for the purpose of this section as meaning the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

Section 40: Building regulations: flood resistance

396. This section amends Schedule 1 to the Building Act 1984. Schedule 1 supplements section 1 of that Act, which contains the power to make building regulations, by setting out in detail matters in relation to which such regulations may be made.

397. Subsection (1) inserts into Schedule 1 new paragraph 8(5A), which provides that building regulations can be made for any type of work to a building, or with respect to any service, fitting or equipment provided in connection with a building, in relation to flood resilience and resistance.

398. Subsection (2) makes a consequential amendment to paragraph 8(6) of Schedule 1 to the Building Act 1984.

Section 41: Compulsory works orders

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

Section 42: Agreements on new drainage systems

400. Subsection (1) inserts a new section into the Water Industry Act 1991. It qualifies the right, under section 106 of that Act, for owners of premises and sewers to communicate with the public sewer. It provides that after this new section comes into force, that right to communicate with the public sewer via a lateral drain or private sewer may only be exercised where two conditions are satisfied.
401. The first condition is that the person constructing the sewer or drain has entered into an adoption agreement between the owner of the drain or sewer and the sewerage undertaker for the area under section 104 of the 1991 Act. The second condition is that the agreement must include provision about the standards to which the sewer or drain must be constructed, and about the adoption of the drain or sewer by the undertaker.

402. In order to satisfy the condition about construction standards, the provision in the agreement about construction standards must incorporate, or be in accordance with standards which the relevant Minister publishes, or depart from them only with the express agreement of both parties.

403. In order to satisfy the condition about adoption, the provision in the agreement about adoption must require adoption to occur automatically when certain events occur, and must comply with regulations made by the relevant Minister. These regulations will be subject to the negative resolution procedure.

404. Where an agreement which satisfies all of these conditions is in place, the sewerage undertaker may not refuse connection on the basis that the sewer or drain's mode of construction does not meet the standards that it requires (as is currently allowed by section 106(4) of the 1991 Act) or on grounds that the terms of the agreement have not been complied with.

405. This new limitation on the right to communicate with the public sewer does not apply to drainage systems which require approval under Schedule 3 of this Act (which is about sustainable drainage systems).

406. The relevant Minister may also make regulations making further exemptions from this new limitation. They will be subject to the negative resolution procedure.

407. Subsection (2) replaces section 105(2) of the 1991 Act, and allows a person who has entered into an agreement under section 104, or wishes to do so, to appeal to the Water Services Regulation Authority (Ofwat) about anything concerning the agreement.

408. Subsection (3) inserts a new subsection into section 104 of the 1991 Act which provides that undertakers must have regard to any guidance issued by the Secretary of State or Welsh Ministers concerning adoption agreements under section 104.

409. Subsection (4) makes a consequential amendment to section 112 of the 1991 Act. Section 112 allows the sewerage undertaker to require a drain or sewer to be built in a certain way in certain circumstances. This amendment provides that where that section applies, the undertaker cannot require the drain or sewer to be built in a way which is inconsistent with or more onerous than the standards published by the relevant Minister.

410. For the purpose of this section, the relevant Minister is the Welsh Ministers in relation to sewerage undertakers whose areas are wholly or mainly in Wales, and the Secretary of State in relation to sewerage undertakers whose areas are wholly or mainly in England.

Section 43: Drainage: concessionary charges for community groups

411. Subsection (1) allows water and sewerage undertakers to operate concessionary schemes for community groups for surface water drainage charges. Subsection (2) allows undertakers to decide whether to bring forward a concessionary scheme, to decide which community groups to include and what constitutes a community group, what reduction in charges to allow, and for different reductions to be granted to different classes of community group.
412. Subsection (3) prohibits charges under a concessionary scheme from being reduced to nothing. Subsection (4) provides a non-exhaustive list of what can count as a community group in terms of benefitting the local community. Subsection (5) requires the Water Services Regulation Authority (Ofwat) and undertakers to have regard to any guidance issued by the Minister around the need for concessionary schemes, which community groups should benefit and what reductions in charges to allow. Subsection (6) defines “the Minister” for the purposes of this section as being the Secretary of State for an undertaker whose area is wholly or mainly in England and the Welsh Ministers for an undertaker whose area is wholly or mainly in Wales.

Section 44: Social tariffs

413. Water and sewerage undertakers have the power to make charges schemes under section 143 of the Water Industry Act 1991. Such a scheme must be approved by the Water Services Regulation Authority (Ofwat) before it can take effect. This section allows for a water or sewerage undertaker to include in its charges scheme provision for a social tariff which is designed to reduce charges for individuals who would otherwise have difficulty paying in full (subsection (1)). Such a scheme may have the effect of introducing a subsidy to such individuals by other persons (subsection (2)). “Persons” includes any legal person.

414. Subsection (3) states that Ofwat's powers in connection with the approval of a charges scheme (including any powers under the Water Industry Act 1991 which may be used to that effect) are subject to subsections (1) and (2). A charges scheme cannot be rejected on the grounds that it contains a social tariff, whether or not this includes a cross subsidy.

415. Subsection (4) requires the Minister to issue guidance in respect of subsections (1) and (2). The guidance must in particular include factors to be taken into account in deciding whether one group of customers should subsidise another. In formulating this particular aspect of the guidance the Minister must have regard to the need to balance the desirability of helping individuals who would have difficulty paying in full with the interests of other customers.

416. Both undertakers and Ofwat must have regard to the guidance issued by the Minister (subsection (5)). Subsection (6) defines “the Minister” for the purposes of this section as being the Secretary of State for an undertaker whose area is wholly or mainly in England and the Welsh Ministers for an undertaker whose area is wholly or mainly in Wales.

Section 45: Water and sewerage charges: non owner occupiers

417. This section inserts a new section 144C into the Water Industry Act 1991 regarding liability of payment for water and sewerage charges.

418. Subsection (1) of new section 144C provides that the new section applies to residential premises which are occupied by someone other than the owner of the property, i.e. tenants of a property, but also people who live in the property without paying rent.

419. Subsection (2) provides that the owner of such properties must arrange for water and sewerage companies to be given information about the occupiers of their property.

420. Under subsection (3) the occupiers’ liability for payment of water and sewerage charges becomes shared (jointly and severally) with the owner if the required information is not provided to the water and sewerage company. In this case the company may choose to pursue either the occupier or owner of the property or both.

421. Subsection (4) enables Ministers to make regulations about: (a) the information that the water and sewerage company may ask for (such as name or address); and (b) the timescale within which
the information must be provided, and the procedure. Subsection (8) defines the Minister as the Welsh Ministers in relation to services provided by an undertaker whose area is wholly or mainly in Wales and the Secretary of State in relation to services provided by an undertaker whose area is wholly or mainly in England.

422. Subsection (5) allows for the Minister to make further regulations exempting owners from assuming liability for water and sewerage charges, where the owner has provided information that is either inaccurate or incomplete but the owner has taken necessary steps identified in regulations to ensure that those details are accurate and complete.

423. Subsection (6) provides that within this section, “residential premises” means premises that are: (a) occupied by one or more people as a home but not necessarily as their only or main home (for example, a second home); and (b) a “dwelling”, a “house in multiple occupation” or “accommodation for the elderly” in Schedule 4A to the Water Industry Act 1991.

424. Subsection (7) provides that a person who is “the “owner” of a premises by virtue of being an agent or a trustee in terms of section 219(1) of the Water Industry Act 1991 (for example someone to whom the management of a property has been assigned, such as a lettings agent) is not the owner for the purposes of this section and cannot be liable for an occupier's water bills.

Section 46: Abolition of Fisheries Committee (Scotland)

425. Subsection (1) of this section abolishes the Fisheries Committee as regards Scotland, originally appointed under section 5(2) of the Electricity (Scotland) Act 1979 and now governed by paragraph 5 of Schedule 9 to the Electricity Act 1989 (“the Committee”). There is no equivalent for England or Wales. Abolition is in response to the current functions of the Scottish Environment Protection Agency (SEPA) under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and the obligation on SEPA to consider the impact on the water environment, including the effect on fisheries and fish stocks, of proposals for, and the ongoing operation of, hydro-electric generation in Scotland, which activity is subject to an authorisation under those Regulations. SEPA's function in relation to hydro-electric generation is also a responsibility of the Committee, which has led to duplication in regulation.

426. Subsections (2) to (5) make consequential amendments to remove references to the Committee from the Race Relations Act 1976, the Electricity Act 1989, the Public Appointments and Public Bodies etc. (Scotland) Act 2003 and the Freedom of Information (Scotland) Act 2002.

Part 3: General

Section 47: Pre-consolidation amendments

427. One of the recommendations of the Pitt review was to consolidate the legislation applying to all sources of flood risk. This section is intended to allow for this consolidation. It enables the Secretary of State to amend the Act, along with the Water Industry Act 1991, the Water Resources Act 1991, the Land Drainage Act 1991, the Reservoirs Act 1975, the Highways Act 1980 (so far as relevant to water), the Environment Act 1995 (so far as relevant to water), the Public Health Act 1936 (so far as relevant to water) and the Coast Protection Act 1949. These amendments must be for the purposes of standardising provisions, simplifying procedures or correcting errors. Amendments are to be made by order, subject to the affirmative resolution procedure. No order may be made without the consent of the Welsh Ministers, and unless a consolidation Bill has been presented to either House of Parliament.

Section 48: Subordinate legislation
428. This section defines what is meant by “subordinate legislation” and sets out the sort of provision which can be contained within subordinate legislation made under the Act as well as applicable procedures.

Section 49: Technical provision

429. Subsection (1) of this section provides that the resulting Act will bind the Crown, but will contain exemptions for the Queen and Prince of Wales. These exemptions mirror the exemptions in section 221(2) to (8) of the Water Industry Act 1991.

430. Subsection (2) provides for money to be provided by Parliament to pay for expenditure under the Act or increases in expenditure incurred by virtue of the Act.

431. Subsection (3) provides for the provisions of the Act to be brought into force by order of the Secretary of State or the Welsh Ministers consistent with the division of responsibility provided for in this Act. This will allow different parts of the Act to be brought into force at different times, and, by virtue of section 48(2), to make appropriate transitional provisions.

432. Subsection (4) allows for such an order to provide for experimental staged commencement by reference to specified areas or other criteria.

433. Subsection (5) provides that the Act extends only to England and Wales, except as provided for in paragraphs (a) to (d) which extend certain provisions to Scotland.

434. Subsection (6) confirms that an amendment made by this Act of another Act does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 or 2006. This subsection applies irrespective of whether the amendment amends an existing devolved function or confers a new function. New functions which replace or are similar to existing devolved functions are to be treated as having been transferred in the same way as the old function. Provisions made by the Government of Wales Act 1998 or 2006 in respect of functions amended or replaced by this Act continue to apply to the amended or replaced provision.

435. Subsection (7) gives the short title of the legislation as the Flood and Water Management Act 2010.

Commencement

436. Section 49 of the Act makes provision for commencement. Sections 48 and 49 came into force on Royal Assent. The remaining sections of the Act will come into force in accordance with provision made by order of the Secretary of State or, in the case of certain provisions to the extent they relate to Wales, the Welsh Ministers.

Hansard References

The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Date</th>
<th>Hansard reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>19 November 2009</td>
<td>Vol. 501 Col 141</td>
</tr>
<tr>
<td>Second Reading</td>
<td>15 December 2009</td>
<td>Vol. 502 Cols 835–906</td>
</tr>
<tr>
<td>Committee</td>
<td>7 January 2010</td>
<td>Public Bill Committee</td>
</tr>
<tr>
<td></td>
<td>12 January 2010</td>
<td>Public Bill Committee</td>
</tr>
<tr>
<td></td>
<td>14 January 2010</td>
<td>Public Bill Committee</td>
</tr>
<tr>
<td>Stage</td>
<td>Date</td>
<td>Hansard reference</td>
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<tr>
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<td>---------------------------</td>
</tr>
<tr>
<td>19 January 2010</td>
<td>Public Bill Committee</td>
<td></td>
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<tr>
<td>21 January 2010</td>
<td>Public Bill Committee</td>
<td></td>
</tr>
<tr>
<td>Report and Third Reading</td>
<td>2 February 2010</td>
<td>Vol. 505 Cols 174–272</td>
</tr>
<tr>
<td>Consideration of Lords amendments</td>
<td>8 April 2010</td>
<td>Vol. 508 Cols 1252–1255</td>
</tr>
<tr>
<td><strong>House of Lords</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>3 February 2010</td>
<td>Vol. 717 Col 214</td>
</tr>
<tr>
<td>Second Reading</td>
<td>24 February 2010</td>
<td>Vol. 717 Cols 1025–1073</td>
</tr>
<tr>
<td>Committee</td>
<td>17 March 2010</td>
<td>Vol. 718 Cols 229–280</td>
</tr>
<tr>
<td></td>
<td>24 March 2010</td>
<td>Vol. 718 Cols 361–428</td>
</tr>
<tr>
<td></td>
<td>6 April 2010</td>
<td>Vol. 718 Cols 561–598</td>
</tr>
<tr>
<td>Report and Third Reading</td>
<td>8 April 2010</td>
<td>Vol. 718 Cols 1664–1667</td>
</tr>
</tbody>
</table>

**Royal Assent — 8 April 2010**

**House of Lords Hansard — Vol. 718 Col 1738**

**House of Commons Hansard — Vol. 508 Col 1256**
Table of Contents

Flood and Water Management Act 2010 c. 29. ............................................................. 1
Preamble ................................................................. 1

Part 1 FLOOD AND COASTAL EROSION RISK MANAGEMENT. ................................. 1

1. Key concepts and definitions. ......................................................................................... 1
   ☑ s. 1 "Flood" and "coastal erosion". ................................................................. 1
   ☑ s. 2 "Risk". ........................................................................................................ 2
   ☑ s. 3 "Risk management". .................................................................................... 2
   ☑ s. 4 "Flood risk management function". ............................................................ 3
   ☑ s. 5 "Coastal erosion risk management function". ........................................... 4
   ☑ s. 6 Other definitions. ....................................................................................... 5

2. Strategies, co-operation and funding. ............................................................................ 7
   ☑ s. 7 National flood and coastal erosion risk management strategy: England. ........ 7
   ☑ s. 8 National flood and coastal erosion risk management strategy: Wales. ........... 8
   ☑ s. 9 Local flood risk management strategies: England. ........................................ 9
   ☑ s. 10 Local flood risk management strategies: Wales. ......................................... 10
   ☑ s. 11 Effect of national and local strategies: England. .......................................... 11
   ☑ s. 12 Effect of national and local strategies: Wales. ........................................... 12
   ☑ s. 13 Co-operation and arrangements. .................................................................. 13
   ☑ s. 14 Power to request information. .................................................................... 14
   ☑ s. 15 Civil sanctions. ........................................................................................... 15
   ☑ s. 16 Funding. .................................................................................................... 16
   ☑ s. 17 Levies. ......................................................................................................... 17

3. Supplemental powers and duties. ................................................................................... 18
   ☑ s. 18 Reports about flood and coastal erosion risk management. ....................... 18
   ☑ s. 19 Local authorities: investigations. ............................................................. 18
   ☑ s. 20 Ministerial directions. .............................................................................. 19
   ☑ s. 21 Lead local authorities: duty to maintain a register. .................................... 20

4. Regional Flood and Coastal Committees. .................................................................... 20
   ☑ s. 22 Establishment. ......................................................................................... 20
   ☑ s. 23 Consultation and consent. .......................................................... 22
   ☑ s. 24 Membership. ......................................................................................... 23
   ☑ s. 25 Money. .................................................................................................... 23
   ☑ s. 26 "The Minister" ......................................................................................... 24
   ☑ s. 26A “The appropriate agency” ....................................................................... 24

4A. Flood and Coastal Erosion Committee for Wales. .................................................... 25
   ☑ s. 26B Establishment and functions. ............................................................... 25
   ☑ s. 26C Constitution. ......................................................................................... 25
   ☑ s. 26D Payments relating to members. .............................................................. 26
5. General. ................................................................. 27
  s. 27 Sustainable development. ........................................... 27
  s. 28 Power to make further amendments. ............................... 28
  s. 29 Restructuring ......................................................... 29
  s. 30 Designation of features ............................................ 29
  s. 31 Amendment of other Acts ......................................... 30

Part 2 MISCELLANEOUS. ................................................... 30
  s. 32 Sustainable drainage .................................................. 30
  s. 33 Reservoirs ............................................................. 30
  s. 34 Special administration .............................................. 31
  s. 35 Provision of infrastructure ....................................... 31
  s. 36 Water use: temporary bans ....................................... 35
  s. 37 Civil sanctions ....................................................... 37
  s. 38 Incidental flooding or coastal erosion: appropriate agency ..... 37
  s. 39 Incidental flooding or coastal erosion: local authorities ....... 39
  s. 40 Building regulations: flood resistance ......... .......................... 41
  s. 41 Compulsory works orders ........................................ 42
  s. 42 Agreements on new drainage systems ............................ 42
  s. 43 Drainage: concessionary charges for community groups ....... 44
  s. 44 Social tariffs .......................................................... 45
  s. 45 Water and sewerage charges: non-owner occupiers .......... 46
  s. 46 Abolition of Fisheries Committee (Scotland) ................. 47

Part 3 GENERAL ............................................................. 47
  s. 47 Pre-consolidation amendments .................................... 47
  s. 48 Subordinate legislation ........................................... 48
  s. 49 Technical provision ................................................ 49

Schedule 1 RISK MANAGEMENT: DESIGNATION OF FEATURES .......... 51
  para. 1 “Designating authority” ........................................ 51
  para. 2 "Responsible authority" ........................................ 51
  para. 3 "Owner" ............................................................ 52
  para. 4 Designation ........................................................ 52
  para. 5 Effect of designation ............................................ 53
  para. 6 Consent to alteration, removal or replacement .............. 53
  para. 7 Provisional designation notice: procedure .................... 54
  para. 8 Designation notice: procedure ................................ 55
  para. 9 Cancellation ....................................................... 55
  para. 10 Notice to other authorities ................................... 56
  para. 11 Enforcement notice ............................................ 56
  para. 12 Emergency powers .............................................. 57
Schedule 2 RISK MANAGEMENT: AMENDMENT OF OTHER ACTS. 60

Coast Protection Act 1949. 60
- para. 1 60
- para. 2 61
- para. 3 61
- para. 4 61
- para. 5 62
- para. 6 63
- para. 7 64
- para. 8 64
- para. 9 64
- para. 10 65
- para. 11 65
- para. 12 65
- para. 13 66
- para. 14 66
- para. 15 66
- para. 16 67
- para. 17 67
- para. 18 67
- para. 19 68
- para. 20 68
- para. 21 68
- para. 22 69
- para. 23 69
- para. 24 69

Land Drainage Act 1991. 70
- para. 25 70
- para. 26 70
- para. 27 70
- para. 28 71
- para. 29 71
- para. 30 73
- para. 31 73
para. 32 ................................................................................................................. 73
para. 33 ................................................................................................................. 74
para. 34 ................................................................................................................. 75
para. 35 ................................................................................................................. 75
para. 36 ................................................................................................................. 76
para. 37 ................................................................................................................. 76
para. 38 ................................................................................................................. 77
para. 39 ................................................................................................................. 78

Water Resources Act 1991. ............................................................................... 78
  para. 40 ................................................................................................................. 78
  para. 41 ................................................................................................................. 78
  para. 42 ................................................................................................................. 79
  para. 43 ................................................................................................................. 79
  para. 44 ................................................................................................................. 80
  para. 45 ................................................................................................................. 80
  para. 46 ................................................................................................................. 80
  para. 47 ................................................................................................................. 81
  para. 48 ................................................................................................................. 82
  para. 49 ................................................................................................................. 82

Water Industry Act 1991. ............................................................................... 83
  para. 50 ................................................................................................................. 83

Environment Act 1995. ............................................................................... 83
  para. 51 ................................................................................................................. 83
  para. 52 ................................................................................................................. 84
  para. 53 ................................................................................................................. 84

Local Government Act 2000. ........................................................................ 84
  para. 54 ................................................................................................................. 84

Schedule 3 SUSTAINABLE DRAINAGE. ......................................................... 85
  para. 1 "Drainage system". .................................................................................. 85
  para. 2 "Sustainable drainage" ......................................................................... 85
  para. 3 Cross-border systems. ........................................................................... 86
  para. 4 "The Minister" ...................................................................................... 86
  para. 5 National standards. ................................................................................ 86
  para. 6 Approving body. .................................................................................... 87
  para. 7 Requirement for approval. .................................................................... 88
  para. 8 Applications for approval. ..................................................................... 88
  para. 9 Free-standing application for approval. ............................................. 89
  para. 10 Combined applications. ..................................................................... 89
  para. 11 Determination of application for approval. ...................................... 90
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>para. 12</td>
<td>Non-performance bonds</td>
<td>91</td>
</tr>
<tr>
<td>para. 13</td>
<td>Fees</td>
<td>92</td>
</tr>
<tr>
<td>para. 14</td>
<td>Enforcement</td>
<td>92</td>
</tr>
<tr>
<td>para. 15</td>
<td>Guidance</td>
<td>93</td>
</tr>
<tr>
<td>para. 16</td>
<td>Sewers and roads</td>
<td>93</td>
</tr>
<tr>
<td>para. 17</td>
<td>Duty to adopt</td>
<td>94</td>
</tr>
<tr>
<td>para. 18</td>
<td>Exception 1: single-property systems</td>
<td>95</td>
</tr>
<tr>
<td>para. 19</td>
<td>Exception 2: roads</td>
<td>95</td>
</tr>
<tr>
<td>para. 19A</td>
<td>Exception 3: systems under section 114A Water Industry Act 1991</td>
<td>96</td>
</tr>
<tr>
<td>para. 20</td>
<td>Additional exceptions</td>
<td>96</td>
</tr>
<tr>
<td>para. 21</td>
<td>Power to adopt</td>
<td>96</td>
</tr>
<tr>
<td>para. 22</td>
<td>Effect of adoption</td>
<td>97</td>
</tr>
<tr>
<td>para. 23</td>
<td>Process of adoption in pursuance of duty to adopt</td>
<td>97</td>
</tr>
<tr>
<td>para. 24</td>
<td>Process of voluntary adoption</td>
<td>98</td>
</tr>
<tr>
<td>para. 25</td>
<td>Appeals</td>
<td>99</td>
</tr>
<tr>
<td>para. 26</td>
<td>Building Act 1984</td>
<td>99</td>
</tr>
<tr>
<td>para. 27</td>
<td>New Roads and Street Works Act 1991</td>
<td>100</td>
</tr>
<tr>
<td>para. 28</td>
<td>Works on public land</td>
<td>100</td>
</tr>
</tbody>
</table>

Schedule 4 RESERVOIRS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td></td>
<td>101</td>
</tr>
<tr>
<td>para. 1</td>
<td></td>
<td>101</td>
</tr>
<tr>
<td>&quot;Large raised reservoir&quot;</td>
<td></td>
<td>102</td>
</tr>
<tr>
<td>para. 2</td>
<td></td>
<td>102</td>
</tr>
<tr>
<td>para. 3</td>
<td></td>
<td>103</td>
</tr>
<tr>
<td>Registration</td>
<td></td>
<td>103</td>
</tr>
<tr>
<td>para. 4</td>
<td></td>
<td>103</td>
</tr>
<tr>
<td>para. 5</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>para. 6</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>High-risk reservoirs</td>
<td></td>
<td>105</td>
</tr>
<tr>
<td>para. 7</td>
<td></td>
<td>105</td>
</tr>
<tr>
<td>para. 8</td>
<td></td>
<td>107</td>
</tr>
<tr>
<td>Panels of engineers</td>
<td></td>
<td>107</td>
</tr>
<tr>
<td>para. 9</td>
<td></td>
<td>107</td>
</tr>
<tr>
<td>Construction and alteration</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>para. 10</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>para. 11</td>
<td></td>
<td>108</td>
</tr>
<tr>
<td>High-risk reservoirs: inspections</td>
<td></td>
<td>109</td>
</tr>
<tr>
<td>para. 12</td>
<td></td>
<td>109</td>
</tr>
<tr>
<td>para. 13</td>
<td></td>
<td>110</td>
</tr>
</tbody>
</table>
Power to make further provision. ................................................................. 126
  para. 40 ............................................................... 126
Regulatory impact assessment. ................................................................. 126
  para. 41 ............................................................... 126
Ministerial responsibility. ................................................................. 127
  para. 42 ............................................................... 127
Cross-border England-Scotland reservoirs. ............................................. 128
  para. 43 ............................................................... 128
Schedule 5 SPECIAL ADMINISTRATION. .............................................. 128
  Transfer schemes. ............................................................... 129
    para. 1 ............................................................... 129
    para. 2 ............................................................... 129
  Objectives. ............................................................... 129
    para. 3 ............................................................... 129
  Financial assistance. ............................................................... 130
    para. 4 ............................................................... 130
  Hive down. ............................................................... 131
    para. 5 ............................................................... 131
  Application of general administration law. ........................................... 132
    para. 6 ............................................................... 132
  Strategic supplies. ............................................................... 133
    para. 7 ............................................................... 133
Explanatory Note ............................................................... 134
  para. 1 ............................................................... 134
  para. 2 ............................................................... 134
  para. 3 ............................................................... 155
  para. 4 ............................................................... 167
  para. 5 ............................................................... 179
Table of Contents. ............................................................... 184