



# Flood and Water Management Act 2010

## 2010 CHAPTER 29

### PART 2

#### MISCELLANEOUS

#### 32 Sustainable drainage

Schedule 3 (sustainable drainage) shall have effect.

.....  
**Commencement Information**

- I1** [S. 32](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557, art. 2\(a\)](#)  
**I2** [S. 32](#) in force at 7.1.2019 for W. in so far as not already in force by [S.I. 2018/557, art. 3\(a\)](#)

#### 33 Reservoirs

Schedule 4 (reservoirs) shall have effect.

.....  
**Commencement Information**

- I3** [S. 33](#) in force at 1.10.2011 for specified purposes by [S.I. 2011/2204, art. 3\(1\)\(b\)](#)  
**I4** [S. 33](#) in force at 30.7.2013 for specified purposes for E. by [S.I. 2013/1590, art. 3\(a\)](#)  
**I5** [S. 33](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79, art. 2\(a\)](#)

#### 34 Special administration

Schedule 5 (special administration) shall have effect.

.....  
**Commencement Information**

- I6** [S. 34](#) in force at 1.10.2010 for specified purposes by [S.I. 2010/2169, art. 4, Sch.](#)

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

**I7** S. 34 in force at 1.4.2011 for specified purposes by S.I. 2011/694, art. 3(f)

## **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.

---

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

---

- (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,

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (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 undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England, and
  - (b) “a Welsh undertaker” means a water undertaker or sewerage undertaker 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.

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

### **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 ”.

#### **Commencement Information**

**I8** [S. 35](#) in force at 1.10.2010 for specified purposes by [S.I. 2010/2169](#), art. 4, [Sch.](#)

### **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.

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (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—

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (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 Information**

**19** S. 36 in force at 1.9.2010 for specified purposes by S.I. 2010/2169, art. 3(3) (with art. 5)

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

**110** S. 36 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2169, art. 4, Sch.

### 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 Information

**111** S. 37 in force at 6.4.2011 by S.I. 2011/694, art. 4(1)(f)

### 38 Incidental flooding or coastal erosion: [<sup>F1</sup>appropriate agency]

- (1) If Conditions 1, 2 and 3 are satisfied [<sup>F2</sup>the appropriate agency] 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 [<sup>F2</sup>the appropriate agency] 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 [<sup>F2</sup>the appropriate agency] 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 [<sup>F2</sup>the appropriate agency] has consulted—
  - [<sup>F3</sup>(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,]
  - (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 [<sup>F2</sup>the appropriate agency], is likely to be directly affected by the work.
- (5) In carrying out work in reliance on this section, [<sup>F2</sup>the appropriate agency] must have regard to—



*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (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 Agency may arrange for work to be carried out in reliance on this section on the [<sup>F4</sup>appropriate agency's] 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 [<sup>F2</sup>the appropriate agency] 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.
- [<sup>F5</sup>(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.

#### Textual Amendments

**F1** Words in s. 38 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 464\(6\)](#) (with Sch. 7)

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- F2** Words in s. 38 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 464(2)** (with Sch. 7)
- F3** S. 38(4)(za) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 464(3)** (with Sch. 7)
- F4** Words in s. 38(6) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 464(4)** (with Sch. 7)
- F5** S. 38(10A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 464(5)** (with Sch. 7)

#### **Commencement Information**

- I12** S. 38 in force at 18.1.2011 for specified purposes by [S.I. 2011/95](#), **art. 2(b)**
- I13** S. 38 in force at 1.12.2011 in so far as not already in force by [S.I. 2011/2856](#), **art. 3(a)** (with art. 4(1))

### **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 [<sup>F6</sup>appropriate agency], and
  - (b) if the work affects a main river, the [<sup>F6</sup>appropriate agency] 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.

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (8) An authority may arrange for work to be carried out in reliance on this section on its behalf by—
- (a) the [<sup>F7</sup>appropriate agency], 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.
- [<sup>F8</sup>(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.]
- (15) Other expressions in this section have the same meaning as in Part 1.

#### Textual Amendments

- F6** Words in s. 39(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 465\(2\)](#) (with Sch. 7)
- F7** Words in s. 39(8) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 465\(2\)](#) (with Sch. 7)
- F8** S. 39(14A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 465\(3\)](#) (with Sch. 7)

#### Commencement Information

- I14** S. 39 in force at 18.1.2011 for specified purposes by [S.I. 2011/95](#), art. 2(c)
- I15** S. 39 in force at 1.12.2011 in so far as not already in force by [S.I. 2011/2856](#), art. 3(b) (with art. 4(2))

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

#### 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 Information

**I16** S. 40 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

#### 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 Information

**I17** S. 41 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

#### 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—

---

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

---

- (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) substitute—
  - “(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.”

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

#### Commencement Information

- I18** S. 42 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.  
**I19** S. 42 in force at 1.10.2012 for specified purposes by S.I. 2012/2048, art. 2 (with art. 3)

### 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 Information

- I20** S. 43 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

### 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.

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (2) Subsection (1) includes schemes which have the effect of subsidisation by other persons.
- (3) The Water Services Regulation Authority's powers [F9 under the Water Industry Act 1991 in connection with undertakers' charges schemes under section 143 of that Act] 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.

#### Textual Amendments

**F9** Words in s. 44(3) substituted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 147](#); [S.I. 2015/1938](#), art. 2(g)(iii)

#### Commencement Information

**I21** S. 44 in force at 1.10.2011 by [S.I. 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—

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

- (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 Information**

**I22** S. 45 in force at 1.10.2010 for specified purposes by [S.I. 2010/2169](#), art. 4, [Sch.](#)

**I23** S. 45 in force at 1.1.2015 for W. in so far as not already in force by [S.I. 2014/3155](#), art. 2

## **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.



---

*Status: Point in time view as at 07/01/2019.*

*Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2. (See end of Document for details)*

---

---

**Commencement Information**

**I24** S. 46 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

**Status:**

Point in time view as at 07/01/2019.

**Changes to legislation:**

There are currently no known outstanding effects for the Flood and Water Management Act 2010, Part 2.