
STATUTORY INSTRUMENTS

2011 No. 2855

**COAST PROTECTION, ENGLAND
ENVIRONMENTAL PROTECTION, ENGLAND
FLOOD RISK MANAGEMENT, ENGLAND**

The Incidental Flooding and Coastal
Erosion (England) Order 2011

Made - - - - 28th November 2011

Coming into force - - 1st December 2011

The Secretary of State, in exercise of the powers conferred by sections 38(8) and 39(12) of the Flood and Water Management Act 2010⁽¹⁾ makes the following Order.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament pursuant to sections 38(9)(a) and 39(13)(a) of that Act.

Citation, application, and commencement

1. This Order—
 - (a) may be cited as the Incidental Flooding and Coastal Erosion (England) Order 2011;
 - (b) applies in relation to England; and
 - (c) comes into force on 1st December 2011.

Interpretation

2. In this Order—
 - (a) “the 1991 Act” means the Water Resources Act 1991⁽²⁾; and
 - (b) “the 2010 Act” means the Flood and Water Management Act 2010.

⁽¹⁾ 2010 c. 29; the power is conferred by sections 38(8) and 39(12) of the Flood and Water Management Act 2010 on “the Minister”, and sections 38(10) and 39(14) of that Act define “the Minister” for the purposes of those sections.

⁽²⁾ 1991 c. 57.

Application of compulsory purchase provisions to section 38 of the 2010 Act

3.—(1) Subject to paragraphs (3) and (4), section 154 of the 1991 Act⁽³⁾ applies for the purposes of section 38 of the 2010 Act as if the functions referred to in section 154(1) of the 1991 Act included functions under section 38 of the 2010 Act.

(2) Section 157 of the 1991 Act⁽⁴⁾ applies for the purposes of section 38 of the 2010 Act as if—

- (a) section 157(2)(b) were omitted;
- (b) the ^[F1]references in section 157(6)(a) and (7)(a) to an order under section 168 were omitted; and
- (c) section 157(6)(c) to (e) ^[F2]and (7)(c) were omitted.

(3) An authorisation to the Environment Agency ^[F3]or the Natural Resources Body for Wales] under section 154 of the 1991 Act as applied by paragraph (1) may be given only for the purposes of enabling ^[F4]compliance with the retained EU law which implemented] —

- (a) the Habitats Directive in relation to any necessary steps and measures under Article 6 of that Directive or policies under Article 10 of that Directive;
- (b) the Water Framework Directive in relation to any environmental objectives ; or
- (c) the Wild Birds Directive in relation to any necessary measures under Articles 2, 3 or 4 of that Directive.

(4) In this article—

^[F5](a) “environmental objectives”—

- (i) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
- (ii) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
- (iii) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those Regulations;]

- (b) “the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora⁽⁵⁾^[F6], as last amended by Council Directive 2013/17/EU];
- (c) “the Water Framework Directive” means Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy⁽⁶⁾^[F7], as last amended by Commission Directive 2014/101/EU; ^{F8}...
- (d) “the Wild Birds Directive” means Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds⁽⁷⁾^[F9], as amended by Council Directive 2013/17/EU].

^[F10](e) “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.]

(3) Section 154 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraphs 128 and 157.

(4) Section 157 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 159.

(5) OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive [2006/105/EC](#) (OJ No L 363, 20.12.2006, p. 368).

(6) OJ No L 327, 22.12.2000, p. 1, last amended by Directive [2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p. 114).

(7) OJ No L 20, 26.1.2010, p. 7.

Textual Amendments

- F1** Words in art. 3(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 414(2)(a)** (with Sch. 7)
- F2** Words in art. 3(2)(c) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 414(2)(b)** (with Sch. 7)
- F3** Words in art. 3(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 414(3)** (with Sch. 7)
- F4** Words in art. 3(3) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **14(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Art. 3(4)(a) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **14(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in art. 3(4)(b) inserted (1.6.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **8(a)**
- F7** Words in art. 3(4)(c) inserted (1.6.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **8(b)**
- F8** Word in art. 3(4) omitted (1.6.2018) by virtue of The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **8(c)**
- F9** Words in art. 3(4)(d) inserted (1.6.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **8(d)**
- F10** Art. 3(4)(e) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **14(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Application of compulsory purchase provisions to section 39 of the 2010 Act

- 4. Section 154 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—
 - (a) the words “A local authority” were substituted for the words “The Agency [^{F11}or the NRBW] ” where they first appear in section 154(1);
 - (b) the functions referred to in section 154(1) included functions under section 39 of the 2010 Act;
 - (c) the words “the local authority” were substituted for ^{F12}...—
 - (i) [^{F13}the words “the Agency or the NRBW” in] the second place they appear in section 154(1);
 - [^{F14}(ia) the words “the Agency or, as the case may be, by the NRBW” in section 154(2);]
 - (ii) [^{F15}the words “the Agency or the NRBW”] in section 154(2), (3) and (4); and
 - (iii) [^{F16}the words “the Agency or the NRBW” and “the Agency or, as the case may be, the NRBW”] in section 154(6); and
 - (d) “local authority” had the same meaning as in section 39(6) of the 2010 Act.
- [^{F17}(e) section 154(7) were omitted.]
- (2) Section 157 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—
 - (a) the words “A local authority” were substituted for the words “The Agency [^{F18}and the NRBW] ” where they appear in section 157(1);
 - (b) the words “the local authority” were substituted for the words “the Agency [^{F19}or, as the case may be, the NRBW] ” where they appear in section 157(2)(a) ^{F20}...;
 - (c) section 157(2)(b) were omitted;

- [^{F21}(ca) the words “the local authority” were substituted for the words “the Agency” where they appear in section 157(6);]
- (d) the reference in section 157(6)(a) to an order under section 168 were omitted;
- (e) section 157(6)(c) to (e) were omitted; and
- [^{F22}(ea) section 157(7) were omitted;]
- (f) “local authority” had the same meaning as in section 39(6) of the 2010 Act.

Textual Amendments

- F11** Words in art. 4(1)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(a)** (with Sch. 7)
- F12** Words in art. 4(1)(c) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(b)(i)** (with Sch. 7)
- F13** Words in art. 4(1)(c)(i) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(b)(ii)** (with Sch. 7)
- F14** Art. 4(1)(c)(ia) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(b)(iii)** (with Sch. 7)
- F15** Words in art. 4(1)(c)(ii) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(b)(iv)** (with Sch. 7)
- F16** Words in art. 4(1)(c)(iii) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(b)(v)** (with Sch. 7)
- F17** Art. 4(1)(e) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(2)(c)** (with Sch. 7)
- F18** Words in art. 4(2)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(3)(a)** (with Sch. 7)
- F19** Words in art. 4(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(3)(b)(i)** (with Sch. 7)
- F20** Words in art. 4(2)(b) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(3)(b)(ii)** (with Sch. 7)
- F21** Art. 4(2)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(3)(c)** (with Sch. 7)
- F22** Art. 4(2)(ea) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 415(3)(d)** (with Sch. 7)

Application of power of entry provisions to section 38 of the 2010 Act

5.—(1) Section 170 of the 1991 Act(**8**) applies for the purposes of section 38 of the 2010 Act as if the reference in subsection (4) to any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 of the 1991 Act were a reference to any power conferred by section 38 of the 2010 Act.

- (2) Section 171 of the 1991 Act(**9**) applies for the purposes of section 38 of the 2010 Act as if—
- (a) the functions referred to in section 171(2)(a) included functions under section 38 of the 2010 Act; and
- (b) section 171(2)(b) were omitted.
- (3) Schedule 20 to the 1991 Act(**10**) applies for the purposes of section 38 of the 2010 Act as if—

(**8**) Section 170 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 128.

(**9**) Section 171 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 128.

(**10**) Schedule 20 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 188, and [S.I. 2009/1307](#).

- (a) the references in paragraphs 1 and 2(1)(a) to powers conferred by sections 169 to 172 of the 1991 Act were references to powers conferred by section 170 or 171 of the 1991 Act as applied by this article;
- (b) the words “the premises in question are on agricultural land,” were inserted after “where” in paragraph 1(2);
- (c) the reference in paragraph 1(3) to the power conferred by section 170 of the 1991 Act were a reference to that power as applied by this article;
- (d) the reference in paragraph 2(4) to the power conferred by section 171 of the 1991 Act were a reference to that power as applied by this article;
- (e) references to a power to which Schedule 20 applies were references to any power conferred by section 170 or 171 of the 1991 Act as applied by this article, including a power exercisable by virtue of a warrant under Schedule 20;
- (f) paragraph 8(2) were omitted; and
- (g) “agricultural land” had the same meaning as in section 145 of the 1991 Act.

Application of power of entry provisions to section 39 of the 2010 Act

- 6.—(1) Section 170 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—
- (a) the words “a local authority” were substituted for the words “the Agency [^{F23}or by the NRBW]”—
 - (i) where they appear in section 170(1); and
 - (ii) where they^{F24}...appear in section 170(3);
 - (b) the words “the local authority” were substituted for the words “the Agency [^{F25}or the NRBW]”—
 - (i) where they appear in section 170(2); and
 - (ii) [^{F26}where] they appear in section 170(3);
 - (c) the reference in subsection (4) to any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 of the 1991 Act were a reference to any power conferred by section 39 of the 2010 Act; and
 - (d) “local authority” had the same meaning as in section 39(6) of the 2010 Act.
- (2) Section 171 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—
- (a) the words “a local authority” were substituted for the words “the Agency [^{F27}or by the NRBW]” where they appear in section 171(1);
 - (b) the words “the local authority” were substituted for the words “the Agency [^{F28}or the NRBW]” where they appear in section 171(2)(a) and (3)(c);
 - (c) the functions referred to in section 171(2)(a) included functions under section 39 of the 2010 Act;
 - (d) section 171(2)(b) [^{F29}and (6)] were omitted; and
 - (e) “local authority” had the same meaning as in section 39(6) of the 2010 Act.
- (3) Schedule 20 to the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—
- (a) the references in paragraphs 1 and 2(1)(a) to powers conferred by sections 169 to 172 of the 1991 Act were references to powers conferred by section 170 or 171 of the 1991 Act as applied by this article;

- (b) the words “the premises in question are on agricultural land,” were inserted after “where” in paragraph 1(2);
- (c) the reference in paragraph 1(3) to the power conferred by section 170 of the 1991 Act were a reference to that power as applied by this article;
- (d) the reference in paragraph 2(4) to the power conferred by section 171 of the 1991 Act were a reference to that power as applied by this article;
- (e) references to a power to which Schedule 20 applies were references to any power conferred by section 170 or 171 of the 1991 Act as applied by this article, including a power exercisable by virtue of a warrant under Schedule 20;
- (f) the words “a local authority” were substituted for “the Agency [^{F30}or the NRBW] ” in paragraphs 6(3)(b) ^{F31}...;
- [^{F32}(fa) the words “or a local authority” were substituted for “, the Agency or the NRBW” in paragraph 8(1);]
- (g) paragraph 8(2) were omitted;
- (h) “agricultural land” had the same meaning as in section 145 of the 1991 Act; and
- (i) “local authority” had the same meaning as in section 39(6) of the 2010 Act.

Textual Amendments

- F23** Words in art. 6(1)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(2)(a)(i)** (with Sch. 7)
- F24** Word in art. 6(1)(a)(ii) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(2)(a)(ii)** (with Sch. 7)
- F25** Words in art. 6(1)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(2)(b)(i)** (with Sch. 7)
- F26** Word in art. 6(1)(b)(ii) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(2)(b)(ii)** (with Sch. 7)
- F27** Words in art. 6(2)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(3)(a)** (with Sch. 7)
- F28** Words in art. 6(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(3)(b)** (with Sch. 7)
- F29** Words in art. 6(2)(d) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(3)(c)** (with Sch. 7)
- F30** Words in art. 6(3)(f) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(4)(a)(i)** (with Sch. 7)
- F31** Words in art. 6(3)(f) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(4)(a)(ii)** (with Sch. 7)
- F32** Art. 6(3)(fa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 416(4)(b)** (with Sch. 7)

Application of compensation provisions to section 38 of the 2010 Act

7. Subparagraphs (1) and (2) of paragraph 5 of Schedule 21 to the 1991 Act⁽¹¹⁾ apply for the purposes of section 38 of the 2010 Act as if the reference to powers under section 165(1) to (3) of the 1991 Act were a reference to powers under section 38 of the 2010 Act.

⁽¹¹⁾ Subparagraphs (1) and (2) of paragraph 5 of Schedule 21 were amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 128, and [S.I. 2009/1307](#).

Application of compensation provisions to section 39 of the 2010 Act

8. Subparagraphs (1) and (2) of paragraph 5 of Schedule 21 to the 1991 Act apply for the purposes of section 39 of the 2010 Act as if—

- (a) the words “a local authority” were substituted for the words “the [^{F33}appropriate agency]” where they first appear;
- (b) the words “the local authority” were substituted for the words “the [^{F33}appropriate agency]” the second place they appear;
- (c) the reference to powers under section 165(1) to (3) of the 1991 Act were a reference to powers under section 39 of the 2010 Act; and
- (d) “local authority” had the same meaning as in section 39(6) of the 2010 Act.

Textual Amendments

F33 Words in art. 8 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 417** (with Sch. 7)

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order relates to the incidental flooding and coastal erosion works powers of the Environment Agency and local authorities under sections 38 and 39 respectively of the Flood and Water Management Act 2010 (c. 29). Those sections empower the Environment Agency and local authorities to carry out certain works in the interests of nature conservation, the preservation of cultural heritage or people's enjoyment of the environment or of cultural heritage.

This Order applies the relevant provisions of the Water Resources Act 1991 (c. 57) relating to compulsory purchase, powers of entry, and compensation to the exercise of the powers under sections 38 and 39.

It also modifies the application of those provisions for the purposes of section 38 so that—

- (a) the Environment Agency may not exercise the powers of compulsory purchase except for the purpose of enabling the United Kingdom to comply with its obligations under certain named EU Directives;
- (b) the Environment Agency and local authorities must give 7 days' notice before exercising the powers of entry in relation to agricultural land (except in an emergency).

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk.

Changes to legislation:

There are currently no known outstanding effects for the The Incidental Flooding and Coastal Erosion (England) Order 2011.