

Status: Point in time view as at 25/02/2020. This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Cross Heading: Land Drainage Act 1991. (See end of Document for details)

SCHEDULES

SCHEDULE 2

RISK MANAGEMENT: AMENDMENT OF OTHER ACTS

Land Drainage Act 1991

25 The Land Drainage Act 1991 is amended as follows.

Commencement Information

I1 Sch. 2 para. 25 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

26 Section 8 (concurrent powers of the Environment Agency) is repealed.

Commencement Information

I2 Sch. 2 para. 26 in force at 6.4.2012 by S.I. 2012/879, art. 3(b)

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 Information

I3 Sch. 2 para. 27 in force at 6.4.2012 by S.I. 2012/879, art. 3(b)

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 Information

I4 Sch. 2 para. 28 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

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

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- (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 sluiceways 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.

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(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 Information

I5 Sch. 2 para. 29 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I6 Sch. 2 para. 29 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c)

30 Section 17 (supervision by the Agency: works) is repealed.

Commencement Information

I7 Sch. 2 para. 30 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e) (with art. 4(2))

I8 Sch. 2 para. 30 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c) (with art. 5(2))

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 Information

I9 Sch. 2 para. 31 in force at 6.4.2012 by S.I. 2012/879, art. 3(b)

PROSPECTIVE

32 (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

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(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 Information

I10 S. 32(1)(2)(3)(5)(6)(7) in force at 6.4.2012 by [S.I. 2012/879](#), [art. 3\(b\)](#)

33 (1) Section 25 (powers to require works for maintaining the flow of watercourse) is amended as follows.

(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 Information

I11 [Sch. 2 para. 33](#) in force at 6.4.2012 by [S.I. 2012/879](#), [art. 3\(b\)](#) (with [art. 4](#))

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

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I12 Sch. 2 para. 34 in force at 6.4.2012 by S.I. 2012/879, art. 3(b) (with art. 4)

- 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 Information

I13 Sch. 2 para. 35 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I14 Sch. 2 para. 35 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c)

- 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)—

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- (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 Information

I15 Sch. 2 para. 36 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I16 Sch. 2 para. 36 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c)

- 37 In section 59 (grants) omit subsection (4)(c).

Commencement Information

I17 Sch. 2 para. 37 in force at 6.4.2011 by S.I. 2011/694, art. 4(1)(i)

- 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.”

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I18 Sch. 2 para. 38 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I19 Sch. 2 para. 38 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c)

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 Information

I20 Sch. 2 para. 39 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I21 Sch. 2 para. 39 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(c)

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