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## SCHEDULES

VALID FROM 06/04/2011

### SCHEDULE 1

Section 30

#### RISK MANAGEMENT: DESIGNATION OF FEATURES

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### SCHEDULE 2

Section 31

#### RISK MANAGEMENT: AMENDMENT OF OTHER ACTS

VALID FROM 19/07/2011

#### *Coast Protection Act 1949*

1 The Coast Protection Act 1949 is amended as follows.

2 Section 2 (constitution of coast protection boards) is repealed.

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.”

4 (1) Section 4 (general powers) is amended as follows.

(2) 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.

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- (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.”
- (3) Omit subsection (2).
- (4) In subsection (3) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
- 5 (1) Section 5 (coast protection work: objections and approvals) is amended as follows.
- (2) 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). ”
- (3) 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
  - (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

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	(d) in paragraph (b) omit “which are not so represented and”.
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 ”.
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 ”.
8	In section 9 (carrying out of work) in subsection (4) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
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 ”.
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).
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 ”.
14	Section 20 (contributions towards expenses) is repealed.
15	Section 21 (grants to coast protection authorities) is repealed.
16	In section 23 (power to sell materials) in subsections (1) and (2) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
17	In section 24 (arbitrations) in subsection (3) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
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 ”.
19	In section 26 (power to require information) in subsections (1) and (2) for “coast protection authority” substitute “ coastal erosion risk management authority ”.

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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 ”.
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 ”.
22	In section 44 (regulations and orders) in subsection (2) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
23	In section 45 (service) in subsection (2) for “coast protection authority” substitute “ coastal erosion risk management authority ”.
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 Information**

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

VALID FROM 06/04/2012

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

VALID FROM 06/04/2012

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

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.”

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### Commencement Information

**I2** Sch. 2 para. 28 in force at 1.10.2010 by S.I. 2010/2169, art. 4, Sch.

VALID FROM 19/07/2011

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 sluiceways or pumps);
  - (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise

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	<p>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;</p> <p>(d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);</p> <p>(e) for the purpose of maintaining or restoring natural processes;</p> <p>(f) to monitor, investigate or survey a location or a natural process;</p> <p>(g) to reduce or increase the level of water in a place;</p> <p>(h) to alter or remove works.</p> <p>(10) Nothing in this section authorises a person to enter land except for the purpose of maintaining existing works.</p> <p>(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.</p> <p>(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.</p> <p>(13) In this section the following terms have the meaning given by Part 1 of the Flood and Water Management Act 2010—</p> <p style="padding-left: 20px;">(a) flood risk,</p> <p style="padding-left: 20px;">(b) lead local flood authority,</p> <p style="padding-left: 20px;">(c) surface runoff, and</p> <p style="padding-left: 20px;">(d) groundwater.”</p> <p>(2) In section 14(1)(b)—</p> <p style="padding-left: 20px;">(a) omit “either”, and</p> <p style="padding-left: 20px;">(b) omit sub-paragraph (ii) (and the “or” before it).</p> <p>(3) Omit section 14(4)(b) (and the “or” before it).</p>
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VALID FROM 19/07/2011

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

VALID FROM 06/04/2012

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.”

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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
  - (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**

**I3** S. 32(1)(2)(3)(5)(6)(7) in force at 6.4.2012 by [S.I. 2012/879](#), [art. 3\(b\)](#)

VALID FROM 06/04/2012

- 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”.

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VALID FROM 06/04/2012

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

VALID FROM 19/07/2011

- 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”.

VALID FROM 19/07/2011

- 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 ”.



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- (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 ”.

VALID FROM 06/04/2011

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

VALID FROM 19/07/2011

- 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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VALID FROM 19/07/2011

- 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.”

VALID FROM 01/04/2011

*Water Resources Act 1991*

- 40 The Water Resources Act 1991 is amended as follows.
- 41 Section 106 (obligation to carry out flood defence functions through committees) is repealed.

PROSPECTIVE

- 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—

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“(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.”

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

VALID FROM 19/07/2011

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.”

VALID FROM 19/07/2011

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.”

VALID FROM 19/07/2011

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.

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(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 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.”

(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”.

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;”.

VALID FROM 19/07/2011

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).”

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VALID FROM 01/04/2011

*Water Industry Act 1991*

- 50 After section 206(3)(c) of the Water Industry Act 1991 (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;”.

VALID FROM 01/04/2011

*Environment Act 1995*

- 51 The Environment Act 1995 is amended as follows.
- 52 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.”
- 53 Sections 14 to 19 and Schedules 4 and 5 (flood defence committees) are repealed.

*Local Government Act 2000*

- 54 After section 21E of the Local Government Act 2000 (overview and scrutiny committees: partner authorities) insert—

**“21F Overview and scrutiny committees: flood risk management**

- (1) This section applies to a local authority which is a lead local flood authority for an area in England.
- (2) The arrangements required under section 21(2) include arrangements to review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority's area.
- (3) A risk management authority must comply with a request made by an overview and scrutiny committee, in the course of arrangements under subsection (2), for—
  - (a) information;
  - (b) a response to a report.
- (4) The Secretary of State may make regulations about the duty under subsection (3) (which may, in particular, include provision about (i) procedure, (ii) notices, (iii) exemptions, (iv) requirement to attend to give information orally, (v) the nature of information and responses that may be required, and (vi) publication).

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- (5) A risk management authority must have regard to reports and recommendations of an overview and scrutiny committee in the course of arrangements under subsection (2).
- (6) Regulations under section 123 of the Local Government and Public Involvement in Health Act 2007 may make provision about the application of this section in relation to joint overview and scrutiny committees.
- (7) Expressions used in this section have the same meaning as in Part 1 of the Flood and Water Management Act 2010.”

**Commencement Information**

**I4** Sch. 2 para. 54 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

VALID FROM 14/07/2014

SCHEDULE 3

Section 32

SUSTAINABLE DRAINAGE

VALID FROM 01/10/2011

SCHEDULE 4

Section 33

RESERVOIRS

SCHEDULE 5

Section 34

SPECIAL ADMINISTRATION

VALID FROM 01/04/2011

*Transfer schemes*

- 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”.

*Status: Point in time view as at 01/10/2010.*

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- (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 ”.
- 2 At the end of paragraph 3(2)(b) of Schedule 2 add “ (but may not impose new liabilities on any other appointee); ”.

### 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—

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- (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 Information

**I5** Sch. 5 para. 3 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

VALID FROM 01/04/2011

#### *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.



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*Hive down*

- 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 Information**

**I6** [Sch. 5 para. 5](#) in force at 1.10.2010 for specified purposes by [S.I. 2010/2169, art. 4, Sch.](#)

*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

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- (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.
- (4) In section 24(2)(d) of the Water Industry Act 1991 (special administration orders made on special petition) for “section 440 of the Companies Act 1985” substitute “section 124A of the Insolvency Act 1986”.

#### Commencement Information

**I7** [Sch. 5 para. 6](#) in force at 1.10.2010 for specified purposes by [S.I. 2010/2169](#), art. 4, [Sch.](#)

VALID FROM 01/04/2011

#### *Strategic supplies*

- 7 (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, ”.

**Status:**

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**Changes to legislation:**

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