

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 1 **E+W**

Section 30

RISK MANAGEMENT: DESIGNATION OF FEATURES

Modifications etc. (not altering text)

- C1** Sch. 1 excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), art. 1, **Sch. 19 Pt. 1 para. 11**

“Designating authority”

- 1 In this Schedule “designating authority” means—
- (a) the Environment Agency,
 - [^{F1}(aa) the Natural Resources Body for Wales,]
 - (b) a lead local flood authority,
 - (c) a district council (whether or not it is a lead local flood authority), and
 - (d) an internal drainage board.

Textual Amendments

- F1** Sch. 1 para. 1(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 466(2)** (with Sch. 7)

Commencement Information

- II** Sch. 1 para. 1 in force at 1.8.2012 by [S.I. 2012/2000](#), art. 2(b)

“Responsible authority”

- 2
- (1) The responsible authority in relation to a structure or feature designated under this Schedule is the authority which made the designation, unless sub-paragraph (2) applies.
 - (2) If an authority has adopted a designation in accordance with sub-paragraph (3), the responsible authority in relation to the designated structure or feature is the adopting authority.
 - (3) A designating authority may adopt a designation if—
 - (a) the authority which made the designation no longer has relevant functions,
 - (b) the authority proposing to adopt the designation has relevant functions, and
 - (c) the designation has not already been adopted by another authority.
 - (4) In sub-paragraph (3) “relevant functions” means flood or coastal erosion risk management functions which may be affected by the existence or location of the designated structure or feature.

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Commencement Information

I2 Sch. 1 para. 2 in force at 1.8.2012 by [S.I. 2012/2000](#), **art. 2(b)**

“Owner”

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

Commencement Information

I3 Sch. 1 para. 3 in force at 1.8.2012 by [S.I. 2012/2000](#), **art. 2(b)**

Designation

- 4 (1) If the following conditions are satisfied, a designating authority may designate for the purposes of this Schedule—
- (a) a structure, or
 - (b) a natural or man-made feature of the environment.
- (2) Condition 1 is that the designating authority thinks the existence or location of the structure or feature affects—
- (a) a flood risk, or
 - (b) a coastal erosion risk.
- (3) Condition 2 is that the designating authority has flood or coastal erosion risk management functions in respect of the risk which is affected.
- (4) Condition 3 is that the structure or feature is not designated by another authority for the purposes of this Schedule.
- (5) Condition 4 is that the owner of the structure or feature is not a designating authority.

Commencement Information

I4 Sch. 1 para. 4 in force at 1.8.2012 by [S.I. 2012/2000](#), **art. 2(b)**

Effect of designation

- 5 (1) A person may not alter, remove or replace a designated structure or feature without the consent of the responsible authority.
- (2) A designation is a local land charge.

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Modifications etc. (not altering text)

- C2** Sch. 1 para. 5 excluded (23.2.2017) by High Speed Rail (London - West Midlands) Act 2017 (c. 7), s. 70(1), **Sch. 21 para. 5**
- C3** Sch. 1 para. 5 excluded (25.2.2020) by The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020/114), arts. 1, **5(1)(c)** (with art. 37(2))
- C4** Sch. 1 para. 5 excluded (11.2.2021) by High Speed Rail (West Midlands - Crewe) Act 2021 (c. 2), s. 64(1), **Sch. 21 para. 5**
- C5** Sch. 1 para. 5 excluded (3.11.2022) by The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022/1067), arts. 1, **5(1)(c)**
- C6** Sch. 1 para. 5 excluded (11.1.2023) by The Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 (S.I. 2022/1406), arts. 1, **5** (with art. 34(2), Sch. 12 paras. 5, 47, 79)
- C7** Sch. 1 para. 5 excluded (25.4.2024) by The Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024/526), arts. 1, **5(1)**

Commencement Information

- I5** Sch. 1 para. 5 in force at 1.8.2012 by S.I. 2012/2000, **art. 2(b)**

Consent to alteration, removal or replacement

- 6 (1) The responsible authority may by notice given to the owner—
- (a) consent to specified alterations, or alterations of a specified kind, to a designated structure or feature;
 - (b) vary or withdraw consent under paragraph (a) (but not retrospectively).
- (2) The responsible authority may by notice given to the owner consent to the removal or replacement of a designated structure or feature.
- (3) The authority may give notice under sub-paragraph (1) or (2)—
- (a) on the application of the owner, or
 - (b) if it otherwise thinks it appropriate.
- (4) Consent may be—
- (a) general or specific;
 - (b) absolute or conditional.
- [^{F2}(4A) Before exercising a function under this paragraph in relation to an alteration, removal or replacement which may affect a flood or coastal erosion risk in Wales, the Environment Agency must consult the Natural Resources Body for Wales.
- (4B) Before exercising a function under this paragraph in relation to an alteration, removal or replacement which may affect a flood or coastal erosion risk in England, the Natural Resources Body for Wales must consult the Environment Agency.]
- (5) The responsible authority may refuse to give consent applied for under sub-paragraph (3)(a) only on the ground that, in the authority's opinion, the proposed alteration, removal or replacement would affect a flood risk or a coastal erosion risk.

Textual Amendments

- F2** Sch. 1 para. 6(4A)(4B) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 466(3)** (with Sch. 7)

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Commencement Information

I6 Sch. 1 para. 6 in force at 1.8.2012 by [S.I. 2012/2000](#), **art. 2(b)**

Provisional designation notice: procedure

- 7 (1) A designating authority may make a provisional designation by giving notice to the owner.
- (2) The notice must specify—
- (a) the structure or feature to be provisionally designated,
 - (b) the date on which the provisional designation takes effect,
 - (c) the reasons for the provisional designation,
 - (d) how representations to the responsible authority may be made, and
 - (e) the period within which representations may be made.
- (3) The period specified in the notice under sub-paragraph (2)(e) must be a period of at least 28 days beginning with the date of the notice.
- (4) A provisional designation ceases to have effect at the end of the period of 60 days beginning with the date of the notice, unless it is confirmed under paragraph 8.
- (5) The following paragraphs apply in relation to a provisional designation as they apply in relation to a designation: paragraphs 5(1), 6 and 9 to 14.

Commencement Information

I7 Sch. 1 para. 7 in force at 1.8.2012 by [S.I. 2012/2000](#), **art. 2(b)**

Designation notice: procedure

- 8 (1) A designating authority may make a designation by giving notice confirming a provisional designation to the owner.
- (2) In deciding whether to confirm a provisional designation the authority must have regard to any representations made in accordance with paragraph 7.
- (3) A notice under sub-paragraph (1) may not be given—
- (a) before the end of the period specified in the provisional notice under paragraph 7(2)(e) within which representations may be made;
 - (b) after the end of the period of 60 days beginning with the date of the provisional notice.
- (4) The notice must—
- (a) specify the provisional notice to which it relates,
 - (b) specify the structure or feature to be designated,
 - (c) specify the reasons for the designation,
 - (d) give information about the procedure for bringing an appeal under regulations under paragraph 15, and
 - (e) specify the period within which an appeal may be brought.

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Commencement Information

I8 Sch. 1 para. 8 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Cancellation

- 9 (1) The responsible authority may cancel a designation by giving notice to that effect to the owner.
- (2) The authority may give notice under sub-paragraph (1)—
- (a) on the application of the owner, or
 - (b) if it otherwise thinks cancellation appropriate.
- (3) The notice must specify—
- (a) the designated structure or feature,
 - (b) the date on which the cancellation takes effect, and
 - (c) the reasons for the cancellation.

Commencement Information

I9 Sch. 1 para. 9 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Notice to other authorities

- 10 (1) This paragraph applies where an authority—
- (a) makes a designation, or
 - (b) cancels a designation.
- (2) The authority must notify any other designating authority which it thinks may have an interest in the designation or cancellation.

Commencement Information

I10 Sch. 1 para. 10 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Enforcement notice

- 11 (1) If a person contravenes paragraph 5(1) the responsible authority may give an enforcement notice.
- (2) The notice may be given to—
- (a) the person who contravened paragraph 5(1), or
 - (b) the owner of the designated structure or feature.
- (3) The notice must direct the recipient to take specified steps, within a specified period, to remedy the contravention.
- (4) If a person (P) fails to comply with an enforcement notice—
- (a) P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

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- (b) the responsible authority may authorise a person to take the steps specified in the notice,
- (c) the responsible authority may require P to pay expenses incurred under paragraph (b), and
- (d) payment required under paragraph (c) is recoverable as a debt.

Commencement Information

I11 Sch. 1 para. 11 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Emergency powers

- 12 (1) This paragraph applies if—
- (a) a person has contravened paragraph 5(1), and
 - (b) the responsible authority thinks the contravention may immediately and materially increase or alter a flood risk or coastal erosion risk.
- (2) The authority may—
- (a) act to remedy the contravention without giving an enforcement notice,
 - (b) require the owner to pay the expenses of that action, and
 - (c) recover the expenses as a debt.

Commencement Information

I12 Sch. 1 para. 12 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Powers of entry

- 13 (1) A person authorised by the responsible authority may at any reasonable time enter land—
- (a) to determine whether a person has contravened paragraph 5(1),
 - (b) to determine whether a person has complied with an enforcement notice,
 - (c) to take steps specified in accordance with paragraph 11(4), or
 - (d) to act in accordance with paragraph 12(2).
- (2) A person authorised by a designating authority may at any reasonable time enter land for the purpose of determining whether a structure or feature may be designated by the authority under paragraph 4.
- (3) A person may not demand entry to land which is occupied unless—
- (a) at least 7 days' notice has been given to the occupier, specifying the purpose for which entry is required, or
 - (b) the entry is for the purpose mentioned in sub-paragraph (1)(d).
- (4) A person seeking to enter land under this paragraph must on request produce evidence of authorisation.
- (5) It is an offence to obstruct a person entitled to enter land under this paragraph.
- (6) A person guilty of an offence under sub-paragraph (5) is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Commencement Information

I13 Sch. 1 para. 13 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Compensation for owners and third parties

- 14 (1) The relevant authority must pay compensation if, as a result of the exercise of the powers conferred by paragraph 13, a person (P)—
- (a) incurs loss as a result of anything done on P's land, or
 - (b) is disturbed in the enjoyment of P's land.
- (2) But compensation is not payable to P if Condition 1 or 2 is satisfied.
- (3) Condition 1 is that—
- (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(a) or (d), and
 - (b) P has contravened paragraph 5(1).
- (4) Condition 2 is that—
- (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(b) or (c), and
 - (b) P has failed to comply with an enforcement notice under paragraph 11.
- (5) Compensation paid by an authority is to be treated as an expense incurred under paragraph 11(4)(b) or 12(2)(a) (if it is paid in respect of loss or disturbance resulting from the exercise of powers under paragraph 13(1)(c) or (d)).
- (6) Disputes about compensation are to be determined by the Upper Tribunal.
- (7) In this paragraph “relevant authority” means the authority that authorised the entry to land under paragraph 13(1) or (2).

Commencement Information

I14 Sch. 1 para. 14 in force at 1.8.2012 by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Appeals

- 15 (1) The Minister must by regulations provide a right of appeal against—
- (a) designations,
 - (b) a decision in connection with consent on an application under paragraph 6,
 - (c) a refusal to cancel a designation on an application under paragraph 9, and
 - (d) enforcement notices.
- (2) The regulations must—
- (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.

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- (3) Where an appeal against a designation is brought—
 - (a) the designation continues to have effect while the appeal is pending;
 - (b) the person hearing the appeal may cancel the designation.
- (4) Where an appeal against an enforcement notice is brought—
 - (a) the effect of the notice is suspended while the appeal is pending;
 - (b) the person hearing the appeal may determine that the notice is to cease to have effect.
- (5) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
 - (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and
 - (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

Commencement Information

I15 Sch. 1 para. 15 in force at 6.4.2011 for specified purposes by [S.I. 2011/694](#), [art. 4\(1\)\(g\)](#)

I16 Sch. 1 para. 15 in force at 1.8.2012 in so far as not already in force by [S.I. 2012/2000](#), [art. 2\(b\)](#)

Notices and applications

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

Commencement Information

I17 Sch. 1 para. 16 in force at 6.4.2011 for specified purposes by [S.I. 2011/694](#), [art. 4\(1\)\(g\)](#)

I18 Sch. 1 para. 16 in force at 1.8.2012 in so far as not already in force by [S.I. 2012/2000](#), [art. 2\(b\)](#)

“The Minister”

- 17 (1) This paragraph defines “the Minister” in this Schedule.
- (2) In relation to designations of structures or features in England, “the Minister” means the Secretary of State.
- (3) In relation to designations of structures or features in Wales, “the Minister” means the Welsh Ministers.

Commencement Information

I19 Sch. 1 para. 17 in force at 6.4.2011 by [S.I. 2011/694](#), [art. 4\(1\)\(h\)](#)

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SCHEDULE 2 **E+W**

Section 31

RISK MANAGEMENT: AMENDMENT OF OTHER ACTS

Coast Protection Act 1949

1 The Coast Protection Act 1949 is amended as follows.

Commencement Information

- I20** Sch. 2 para. 1 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))
I21 Sch. 2 para. 1 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

- I22** Sch. 2 para. 2 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))
I23 Sch. 2 para. 2 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

3 After section 2 insert—

“2A Coastal erosion risk management authorities

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

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

Commencement Information

- I24** Sch. 2 para. 3 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))
I25 Sch. 2 para. 3 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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.

(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.”

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- (3) Omit subsection (2).
- (4) In subsection (3) for “coast protection authority” substitute “ coastal erosion risk management authority ”.

Commencement Information

I26 Sch. 2 para. 4 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I27 Sch. 2 para. 4 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

- 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 ”,

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- (c) in paragraph (a) for “where it is not represented on the coast protection authority” substitute “(in the case of work carried out by a coast protection authority)”, and
- (d) in paragraph (b) omit “which are not so represented and”.

Commencement Information

I28 Sch. 2 para. 5 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I29 Sch. 2 para. 5 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I30 Sch. 2 para. 6 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I31 Sch. 2 para. 6 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

- 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”.

Commencement Information

I32 Sch. 2 para. 7 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I33 Sch. 2 para. 7 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I34 Sch. 2 para. 8 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I35 Sch. 2 para. 8 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

- 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”.

Commencement Information

I36 Sch. 2 para. 9 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

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I37 Sch. 2 para. 9 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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

Commencement Information

I38 Sch. 2 para. 10 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))

I39 Sch. 2 para. 10 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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 ”.

Commencement Information

I40 Sch. 2 para. 11 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))

I41 Sch. 2 para. 11 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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

(2) In subsection (1)—

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

(b) omit from “Provided that” to the end.

(3) Omit subsection (2).

Commencement Information

I42 Sch. 2 para. 12 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))

I43 Sch. 2 para. 12 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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

Commencement Information

I44 Sch. 2 para. 13 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))

I45 Sch. 2 para. 13 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

14 Section 20 (contributions towards expenses) is repealed.

Commencement Information

I46 Sch. 2 para. 14 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))

I47 Sch. 2 para. 14 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

15 Section 21 (grants to coast protection authorities) is repealed.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I48 Sch. 2 para. 15 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I49 Sch. 2 para. 15 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I50 Sch. 2 para. 16 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I51 Sch. 2 para. 16 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I52 Sch. 2 para. 17 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I53 Sch. 2 para. 17 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

- 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”.

Commencement Information

I54 Sch. 2 para. 18 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I55 Sch. 2 para. 18 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I56 Sch. 2 para. 19 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I57 Sch. 2 para. 19 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

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

Commencement Information

I58 Sch. 2 para. 20 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(d) (with art. 4(1))

I59 Sch. 2 para. 20 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(b) (with art. 5(1))

- 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”.

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Commencement Information

- I60** Sch. 2 para. 21 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))
I61 Sch. 2 para. 21 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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

Commencement Information

- I62** Sch. 2 para. 22 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))
I63 Sch. 2 para. 22 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

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

Commencement Information

- I64** Sch. 2 para. 23 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))
I65 Sch. 2 para. 23 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

- 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.”

Commencement Information

- I66** Sch. 2 para. 24 in force at 19.7.2011 for E. by S.I. 2011/1770, **art. 3(d)** (with art. 4(1))
I67 Sch. 2 para. 24 in force at 1.10.2011 for W. by S.I. 2011/2204, **art. 3(2)(b)** (with art. 5(1))

Land Drainage Act 1991

- 25 The Land Drainage Act 1991 is amended as follows.

Commencement Information

- I68** 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.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I69 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

I70 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

I71 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
 - (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.

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- (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.
- (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

I72 Sch. 2 para. 29 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

I73 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

I74 Sch. 2 para. 30 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e) (with art. 4(2))

I75 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

I76 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

(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 ”.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(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

I77 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

I78 [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.

Commencement Information

I79 [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

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(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

I80 Sch. 2 para. 35 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I81 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)—
- (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

I82 Sch. 2 para. 36 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(e)

I83 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

I84 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.

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(1A) A local authority, except an English county council, may make byelaws for Purpose 1, 2, 3 or 4.

(1B) An English county council which is a lead local flood authority may make byelaws for Purpose 3 or 4.

(1C) Purpose 1 is to secure the efficient working of a drainage system in the authority's district or area.

(1D) Purpose 2 is to regulate the effects on the environment in the authority's district or area of a drainage system.

(1E) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 14A.

(1F) Purpose 4 is to secure the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).”

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

(4) For subsection (3) substitute—

“(3) An internal drainage board may not rely on this section to do anything in connection with a main river, the banks of a main river or any drainage works in connection with a main river.”

Commencement Information

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

186 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

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

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

Water Resources Act 1991

40 The Water Resources Act 1991 is amended as follows.

Commencement Information

189 Sch. 2 para. 40 in force at 1.4.2011 by S.I. 2011/694, art. 3(g)

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- 41 Section 106 (obligation to carry out flood defence functions through committees) is repealed.

Commencement Information

I90 Sch. 2 para. 41 in force at 1.4.2011 by S.I. 2011/694, art. 3(g)

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—

“(7) In this section “flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010.”

Commencement Information

I91 Sch. 2 para. 43 in force at 1.4.2011 by S.I. 2011/694, art. 3(g)

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

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Commencement Information

I92 Sch. 2 para. 44 in force at 1.4.2011 by S.I. 2011/694, art. 3(g) (with art. 5(1))

- 45 In section 159 (powers to lay pipes in streets) after subsection (1) insert—
- “(1A) The Agency may carry out work within subsection (1)(a) to (c) if—
- (a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
 - (b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.”

Commencement Information

I93 Sch. 2 para. 45 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(f)

I94 Sch. 2 para. 45 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(d)

- 46 In section 160 (power to lay pipes in other land) after subsection (1) insert—
- “(1A) The Agency may carry out work within subsection (1)(a) to (c) if—
- (a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
 - (b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.”

Commencement Information

I95 Sch. 2 para. 46 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(f)

I96 Sch. 2 para. 46 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(d)

- 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.

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

(1D) In this section “flood risk management work” means anything done—

- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
- (b) to operate existing works (such as 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”.

Commencement Information

I97 Sch. 2 para. 47 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(f)

I98 Sch. 2 para. 47 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(d)

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

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

Commencement Information

I99 Sch. 2 para. 48 in force at 1.4.2011 by S.I. 2011/694, art. 3(g)

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.

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(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).”

Commencement Information

I100 Sch. 2 para. 49 in force at 19.7.2011 for E. by S.I. 2011/1770, art. 3(f)

I101 Sch. 2 para. 49 in force at 1.10.2011 for W. by S.I. 2011/2204, art. 3(2)(d)

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;”.

Commencement Information

I102 Sch. 2 para. 50 in force at 1.4.2011 by S.I. 2011/694, art. 3(h)

Environment Act 1995

51 The Environment Act 1995 is amended as follows.

Commencement Information

I103 Sch. 2 para. 51 in force at 1.4.2011 by S.I. 2011/694, art. 3(i)

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.”

Commencement Information

I104 Sch. 2 para. 52 in force at 1.4.2011 by S.I. 2011/694, art. 3(i)

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

Commencement Information

I105 Sch. 2 para. 53 in force at 1.4.2011 by S.I. 2011/694, art. 3(i) (with art. 5(2))

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F3 ...

Textual Amendments

F3 Sch. 2 para. 54 and preceding italic heading repealed (4.5.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\)](#), [Sch. 25 Pt. 4](#); [S.I. 2012/1008, art. 4\(c\)](#)

F354

SCHEDULE 3 **E+W**

Section 32

SUSTAINABLE DRAINAGE

“Drainage system”

- 1 (1) In this Schedule “drainage system” means a structure designed to receive rainwater except—
- (a) a public sewer, or
 - (b) a natural watercourse.
- (2) The reference to a structure includes a reference to—
- (a) any part of an existing or proposed structure, and
 - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater.
- (3) “Public sewer” has the meaning given by section 219(1) of the Water Industry Act 1991.
- (4) “Natural watercourse” means a river or stream.

Commencement Information

I106 [Sch. 3 para. 1](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557, art. 2\(b\)](#)

I107 [Sch. 3 para. 1](#) in force at 7.1.2019 for W. in so far as not already in force by [S.I. 2018/557, art. 3\(b\)](#)

“Sustainable drainage”

- 2 “Sustainable drainage” means managing rainwater (including snow and other precipitation) with the aim of—
- (a) reducing damage from flooding,
 - (b) improving water quality,
 - (c) protecting and improving the environment,
 - (d) protecting health and safety, and
 - (e) ensuring the stability and durability of drainage systems.

Commencement Information

I108 [Sch. 3 para. 2](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557, art. 2\(b\)](#)

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

I109 Sch. 3 para. 2 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Cross-border systems

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

Commencement Information

- I110** Sch. 3 para. 3 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I111 Sch. 3 para. 3 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

“The Minister”

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

Commencement Information

- I112** Sch. 3 para. 4 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I113 Sch. 3 para. 4 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

National standards

- 5 (1) The Minister shall publish national standards for the implementation of sustainable drainage.
- (2) Standards must address the way in which drainage systems—
- (a) are designed,
 - (b) are constructed,
 - (c) are maintained, and
 - (d) operate.
- (3) Standards may—
- (a) permit or require approving bodies to form judgments by reference to specified criteria;
 - (b) require approving bodies to have regard to guidance to be issued by the Minister.
- (4) The Minister must consult before publishing standards.

Commencement Information

- I114** Sch. 3 para. 5 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I115 Sch. 3 para. 5 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

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Approving body

- 6 (1) The approving body for a drainage system is—
- (a) the unitary authority for the area in which it is, or in which it is to be constructed, or
 - (b) if there is no unitary authority, the county council for the area.
- (2) “Unitary authority” means—
- (a) the council of a county for which there are no district councils;
 - (b) the council of a district in an area for which there is no county council;
 - (c) a county borough council;
 - (d) the council of a London borough;
 - (e) the Common Council of the City of London;
 - (f) the Council of the Isles of Scilly.
- (3) The Minister may by order appoint a body as approving body for drainage systems in all areas or in one or more specified areas (instead of the body that would be the approving body under sub-paragraph (1)).
- (4) An order under sub-paragraph (3) may—
- (a) appoint a body as approving body for specified purposes only;
 - (b) appoint different bodies as approving body for different purposes.
- (5) An order under sub-paragraph (3) may confer on the approving body a power of a kind exercisable by the body that would be the approving body under sub-paragraph (1).
- (6) An order under sub-paragraph (3)—
- (a) if it includes provision under sub-paragraph (4) or (5)—
 - (i) may not be made by the Secretary of State unless a draft has been laid before and approved by resolution of each House of Parliament, and
 - (ii) may not be made by the Welsh Ministers unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
 - (b) otherwise, shall be subject to annulment in pursuance of a resolution of—
 - (i) either House of Parliament, in the case of an order of the Secretary of State, or
 - (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.

Commencement Information

I116 Sch. 3 para. 6 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I117 Sch. 3 para. 6 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Requirement for approval

- 7 (1) Construction work which has drainage implications may not be commenced unless a drainage system for the work has been approved by the approving body.
- (2) For the purposes of sub-paragraph (1)—

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- (a) construction work means anything done by way of, in connection with or in preparation for the creation of a building or other structure, and
 - (b) construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater.
- (3) Sub-paragraph (1) does not apply to work requiring development consent under section 31 of the Planning Act 2008 (nationally significant infrastructure projects).
- (4) The Minister may by order—
- (a) provide that a specified class of work is to be or not to be treated as construction work;
 - (b) provide for work to be or not to be treated as having drainage implications in specified circumstances;
 - (c) provide exceptions to sub-paragraph (1).
- (5) For the avoidance of doubt, anything that covers land (such as a patio or other surface) is a structure for the purposes of sub-paragraph (2)(a).

Modifications etc. (not altering text)

- C8** Sch. 3 para. 7 excluded (23.2.2017) by High Speed Rail (London - West Midlands) Act 2017 (c. 7), s. 70(1), **Sch. 21 para. 6**
- C9** Sch. 3 para. 7 excluded (25.2.2020) by The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020/114), arts. 1, **5(1)(d)** (with art. 37(2))
- C10** Sch. 3 para. 7 excluded (11.2.2021) by High Speed Rail (West Midlands - Crewe) Act 2021 (c. 2), s. 64(1), **Sch. 21 para. 6**
- C11** Sch. 3 para. 7 excluded (3.11.2022) by The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022/1067), arts. 1, **5(1)(d)**
- C12** Sch. 3 para. 7 excluded (11.1.2023) by The Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 (S.I. 2022/1406), arts. 1, **5** (with art. 34(2), Sch. 12 paras. 5, 47, 79)
- C13** Sch. 3 para. 7 excluded (25.4.2024) by The Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024/526), arts. 1, **5(1)**

Commencement Information

- I118** Sch. 3 para. 7 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, **art. 2(b)**
- I119** Sch. 3 para. 7 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, **art. 3(b)**

Applications for approval

- 8 (1) This paragraph provides two approaches for applying for approval required by paragraph 7.
- (2) If the construction work does not require planning permission, the application for approval under paragraph 7 must be made in accordance with paragraph 9.
- (3) If the construction work requires planning permission, the application for approval under paragraph 7 may be—
- (a) made in accordance with paragraph 9, or
 - (b) combined with the application for planning permission in accordance with paragraph 10.
- (4) “Planning permission” means planning permission under the Town and Country Planning Act 1990.

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Commencement Information

- I120** Sch. 3 para. 8 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I121 Sch. 3 para. 8 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Free-standing application for approval

- 9 (1) This paragraph provides for free-standing applications for approval under paragraph 7.
- (2) An application must—
- be in any form required by the approving body,
 - contain or be accompanied by any information required by the approving body, and
 - be accompanied by any fee chargeable in accordance with paragraph 13.

Commencement Information

- I122** Sch. 3 para. 9 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I123 Sch. 3 para. 9 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Combined applications

- 10 (1) This paragraph provides for the combination of an application for approval under paragraph 7 with an application for planning permission.
- (2) Paragraph 9(2) applies to that part of the combined application that seeks approval under paragraph 7.
- (3) The planning authority must—
- consult the approving body (if different) in determining the application for planning permission, and
 - inform the approving body (if different) of its determination of the application for planning permission.
- (4) When informing the applicant of the determination of the application for planning permission the planning authority must also inform the applicant of the approving body's determination of the application for approval.

Commencement Information

- I124** Sch. 3 para. 10 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I125 Sch. 3 para. 10 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Determination of application for approval

- 11 (1) On considering an application for approval the approving body must—
- grant it, if satisfied that the drainage system if constructed as proposed will comply with national standards for sustainable drainage, or
 - refuse it, if not satisfied.

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- (2) Approval granted under sub-paragraph (1)(a) may be subject to conditions; in particular, a condition may—
- (a) relate to the construction of the drainage system (which may involve modification of the proposal for construction),
 - (b) provide that approval takes effect only if and when the applicant provides a non-performance bond in accordance with paragraph 12,
 - (c) relate to inspection, or
 - (d) require the payment of fees chargeable under paragraph 13 by reference to work undertaken in connection with approval.
- (3) Before determining an application the approving body must consult—
- (a) any sewerage undertaker with whose public sewer the drainage system is proposed to communicate;
 - (b) the Environment Agency, if the drainage system directly or indirectly involves the discharge of water into a watercourse [^{F4}in England];
 - [^{F5}(ba) the Natural Resources Body for Wales, if the drainage system directly or indirectly involves the discharge of water into a watercourse in Wales;]
 - (c) the relevant highway authority for a road which the approving body thinks may be affected;
 - (d) [^{F6}Canal & River Trust], if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them;
 - (e) an internal drainage board, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse (within the meaning of section 72 of the Land Drainage Act 1991) within the board's district.
- (4) As soon as is reasonably practicable after determining an application for approval the approving body must notify—
- (a) the applicant or, in the case of a combined application, the planning authority, and
 - (b) any person consulted under sub-paragraph (3).
- (5) The Minister may make regulations about timing and procedure for determination of applications for approval; and the regulations may, in particular, specify the consequences of failure to comply with them.

Textual Amendments

- F4** Words in Sch. 3 para. 11(3)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 467\(2\)](#) (with Sch. 7)
- F5** Sch. 3 para. 11(3)(ba) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 467\(3\)](#) (with Sch. 7)
- F6** Words in Sch. 3 para. 11(3)(d) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), [Sch. 3 para. 20](#) (with arts. 4-6)

Commencement Information

- I126** [Sch. 3 para. 11](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557](#), [art. 2\(b\)](#)
- I127** [Sch. 3 para. 11](#) in force at 7.1.2019 for W. in so far as not already in force by [S.I. 2018/557](#), [art. 3\(b\)](#)

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Non-performance bonds

- 12 (1) A non-performance bond is a bond of a kind and to a value specified in a condition imposed on the grant of an application for approval.
- (2) The effect of the bond must be that the value of the bond is payable to the approving body if it certifies that the drainage system—
- (a) has been constructed in a manner that is not in accordance with the approved proposals, or
 - (b) is unlikely to be completed.
- (3) Before giving a certificate under sub-paragraph (2) the approving body must consult the applicant for approval (“the developer”).
- (4) Where an approving body gives a certificate under sub-paragraph (2)—
- (a) it must notify the developer,
 - (b) the approving body may undertake any work necessary to ensure that the drainage system is completed in such a manner as to make it likely to operate in compliance with national standards for sustainable drainage, and
 - (c) the sums received under the bond may be applied to the expenses of that work, and any excess is to be paid to the developer.
- (5) In requiring a non-performance bond an approving body must specify a value which does not exceed the best estimate of the maximum likely cost of work required to ensure that the drainage system accords with the approved proposals.
- (6) The Minister may issue guidance about what amounts may be required by way of non-performance bonds; and approving bodies must have regard to the guidance.

Commencement Information

I128 [Sch. 3 para. 12](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557, art. 2\(b\)](#)

I129 [Sch. 3 para. 12](#) in force at 7.1.2019 for W. in so far as not already in force by [S.I. 2018/557, art. 3\(b\)](#)

Fees

- 13 (1) The Minister shall by regulations provide for fees for applications for approval.
- (2) The regulations may—
- (a) provide for fees to be determined by reference to specified criteria (including the extent or nature of construction works);
 - (b) provide for fees to be paid by reference to work done by the approving authority in connection with approval.
- (3) In making regulations the Minister must have regard to the desirability of ensuring that fee income does not significantly exceed the costs (direct and indirect) that approving bodies incur in connection with approval.

Commencement Information

I130 [Sch. 3 para. 13](#) in force at 2.5.2018 for specified purposes for W. by [S.I. 2018/557, art. 2\(b\)](#)

I131 [Sch. 3 para. 13](#) in force at 7.1.2019 for W. in so far as not already in force by [S.I. 2018/557, art. 3\(b\)](#)

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Enforcement

- 14 (1) The Minister shall by order provide for the enforcement of the requirement for approval in paragraph 7(1).
- (2) An order may, in particular, make provision about cases where—
- construction is commenced without a drainage system having been approved,
 - conditions of approval are breached, or
 - construction does not conform to the approved proposals.
- (3) An order may, in particular, provide for—
- notices (including enforcement notices, stop notices, temporary notice and breach of condition notices),
 - applications to a court or tribunal,
 - powers (including (i) discretionary powers conferred on the Minister or specified authorities, (ii) powers of entry, (iii) powers of inspection, and (iv) powers to undertake and charge for remedial work),
 - offences of failure to comply with the regulations or notices under them,
 - financial penalties,
 - rights of appeal, and
 - compensation.
- (4) An order may apply (with or without modification) or make provision similar to a provision of the Town and Country Planning Act 1990.
- (5) An order—
- may not be made by the Secretary of State unless a draft has been laid before and approved by resolution of each House of Parliament, and
 - may not be made by the Welsh Ministers unless a draft has been laid before and approved by resolution of the National Assembly for Wales.

Commencement Information

I132 Sch. 3 para. 14 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I133 Sch. 3 para. 14 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Guidance

- 15 The Minister may issue guidance about the process of seeking and obtaining approval; and approving bodies must have regard to the guidance.

Commencement Information

I134 Sch. 3 para. 15 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I135 Sch. 3 para. 15 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Sewers and roads

- 16 (1) After section 106(1A) of the Water Industry Act 1991 (right to connect to public sewers) insert—

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“(1B) The right under subsection (1) is subject to section 106A.”

(2) After section 106 insert—

“106A Sustainable drainage

(1) This section applies to a drainage system construction of which required approval under Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).

(2) A person may exercise the right under section 106(1) in respect of surface water only if—

- (a) the construction of the drainage system was approved under that Schedule, and
- (b) the proposals for approval included a proposal for the communication with the public sewer.

(3) Where subsection (2) is satisfied, the connection may not be refused—

- (a) under section 106(4), or
- (b) on grounds that the drainage system absorbs water from more than one set of premises or sewer, or from land that is neither premises nor a sewer.”

(3) After section 115(5) of the Water Industry Act 1991 (highway drains and sewers) insert—

“(5A) A sewerage undertaker must accept any use by a highway authority which is in accordance with a drainage system approved under Schedule 3 to the Flood and Water Management Act 2010.”

Commencement Information

I136 Sch. 3 para. 16 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I137 Sch. 3 para. 16 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Duty to adopt

- 17 (1) An approving body must adopt a drainage system which satisfies the following conditions.
- (2) Condition 1 is that the drainage system was constructed in pursuance of proposals approved under paragraph 7.
- (3) Condition 2 is that the approving body is satisfied—
- (a) that the drainage system was constructed, and functions, in accordance with the approved proposals (including any conditions of approval), or
 - (b) that the approving body can issue or has issued a certificate under paragraph 12(2).
- (4) An approving body must have regard to any guidance issued by the Minister about the application of Condition 2.

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- (5) Condition 3 is that the drainage system is a sustainable drainage system, as defined by regulations made by the Minister.
- (6) Where part of a drainage system is exempt from adoption a reference in this Schedule to the adoption of a drainage system includes a reference to adoption of part of a drainage system.

Commencement Information

I138 Sch. 3 para. 17 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I139 Sch. 3 para. 17 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Exception 1: single-property systems

- 18 (1) The adoption duty does not apply to a drainage system which is designed only to provide drainage for a single property.
- (2) The adoption duty does not apply to any part of a drainage system which is designed only to provide drainage for a single property.
- (3) The Minister may by regulations make provision for determining when a drainage system, or part of a drainage system, is to be or not to be treated as designed only to provide drainage for a single property.

Commencement Information

I140 Sch. 3 para. 18 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I141 Sch. 3 para. 18 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Exception 2: roads

- 19 (1) The adoption duty does not apply to any part of a drainage system which is a publicly-maintained road.
- (2) If part of an adopted drainage system becomes a publicly-maintained road, the adoption lapses in respect of that part.
- (3) Sub-paragraphs (4) and (5) apply—
 - (a) where a drainage system is adopted and part of the system is a publicly-maintained road (and that part therefore need not be adopted);
 - (b) where a drainage system is entirely on a publicly-maintained road (and the adoption duty does not therefore apply to it).
- (4) The maintaining authority must exercise its functions in respect of the road—
 - (a) in accordance with the approved proposals for the drainage system (including any conditions of approval), and
 - (b) in accordance with national standards for sustainable drainage.
- (5) The maintaining authority must designate the road under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties).

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- (6) “Publicly-maintained road” means a highway to which the duty under section 41 of the Highways Act 1980 applies (maintenance at public expense); (and a reference to a road includes a reference to part of a road).

Commencement Information

- I142** Sch. 3 para. 19 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I143 Sch. 3 para. 19 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

[^{F7}Exception 3: systems under section 114A Water Industry Act 1991

Textual Amendments

- F7** Sch. 3 para. 19A and cross-heading inserted (14.7.2014) by Water Act 2014 (c. 21), ss. 21(3), 94(2)(d)

- 19A The adoption duty does not apply to a drainage system constructed under section 114A of the Water Industry Act 1991 (drainage systems relieving public sewers).]

Additional exceptions

- 20 The Minister may by order provide additional exceptions to the adoption duty.

Commencement Information

- I144** Sch. 3 para. 20 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I145 Sch. 3 para. 20 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Power to adopt

- 21 An approving body may voluntarily adopt all or part of a sustainable drainage system, as defined by regulations made by the Minister, to which the duty to adopt does not apply.

Commencement Information

- I146** Sch. 3 para. 21 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)
I147 Sch. 3 para. 21 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Effect of adoption

- 22 (1) Where an approving body adopts a drainage system it becomes responsible for maintaining the system.
(2) In maintaining the system the adopting body must comply with national standards for sustainable drainage.

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Commencement Information

1148 Sch. 3 para. 22 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

1149 Sch. 3 para. 22 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Process of adoption in pursuance of duty to adopt

- 23 (1) This paragraph describes the procedure for adoption in pursuance of the duty to adopt.
- (2) An approving body may adopt a drainage system—
- (a) on its own initiative, or
 - (b) at the request of the person who applied for approval under paragraph 7 (“the developer”).
- (3) A request must be made in the form (if any) prescribed by the approving body.
- (4) Where an approving body receives a request it must—
- (a) determine it within such period as the Minister may prescribe by order, and
 - (b) notify the developer as soon as is reasonably practicable of the decision and of any right of appeal.
- (5) Where an approving body adopts a drainage system on its own initiative it must notify the developer as soon as is reasonably practicable.
- (6) Where an approving body gives notice under sub-paragraph (4)(b) or (5) it must—
- (a) ensure that the notice specifies the extent of the drainage system being adopted,
 - (b) copy the notice to the sewerage undertaker in whose area the drainage system is,
 - (c) copy the notice to any person who appears to the approving body to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance),
 - (d) copy the notice to any other person whom the approving body were obliged to consult on the application for approval,
 - (e) copy the notice to any person who appears to the approving body to own or occupy land from which water will be drained by the drainage system,
 - (f) arrange for the inclusion of the drainage system (including any non-adopted part) in the relevant register under section 21,
 - (g) release any bond provided under paragraph 12,
 - (h) arrange for the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body), and
 - (i) designate under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.
- (7) The Minister may make regulations about the timing and manner of compliance with sub-paragraph (6).

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Commencement Information

I150 Sch. 3 para. 23 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I151 Sch. 3 para. 23 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Process of voluntary adoption

- 24 (1) This paragraph applies where an approving body decides to exercise its power to adopt a drainage system to which the duty to adopt does not apply.
- (2) The approving body must notify—
- (a) the sewerage undertaker in whose area the drainage system is,
 - (b) any person who appears to the approving body to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance), and
 - (c) any person who appears to the approving body to own or occupy land from which water will be drained by the drainage system.
- (3) The approving body must arrange for—
- (a) the inclusion of the drainage system (including any non-adopted part) in the relevant register under section 21, and
 - (b) the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body).
- (4) The notification under sub-paragraph (2) must specify the extent of the drainage system being adopted.
- (5) The Minister may make regulations about the timing and manner of compliance with sub-paragraphs (2) and (3).

Commencement Information

I152 Sch. 3 para. 24 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I153 Sch. 3 para. 24 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Appeals

- 25 (1) The Minister must by regulations provide a right of appeal against—
- (a) decisions under this Schedule about applications for approval (including decisions about conditions), and
 - (b) decisions under this Schedule about the duty to adopt.
- (2) The regulations must—
- (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.
- (3) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and

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

Commencement Information

I154 Sch. 3 para. 25 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I155 Sch. 3 para. 25 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Building Act 1984

- 26 (1) At the end of section 21 of the Building Act 1984 (provision of drainage) add—
- “(7) This section does not apply to works in connection with which approval is required in accordance with Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).”
- (2) The power in section 59(1)(c) of the Building Act 1984 (power to give notice about unsatisfactory condition of drains) applies to sustainable drainage systems, as defined by regulations under paragraph 17(5) above, as to works mentioned in that section; and for that purpose—
- (a) it does not matter whether the drainage system, or any part of it, is adopted under this Schedule, and
- (b) a reference to a local authority is to be treated as a reference to the relevant approving body.
- (3) At the end of section 59 add—
- “(7) Schedule 3 to the Flood and Water Management Act 2010 extends the power under subsection (1)(c) of this section to sustainable drainage systems as defined in regulations under that Schedule.”
- (4) In section 84(1) of the Building Act 1984 (paving and drainage of yards and passages) for the words “to a proper outfall” substitute “(having regard both to the need to remove water from the court, yard or passage and also to the need to dispose of it satisfactorily in the course of or after its removal) ”.

Commencement Information

I156 Sch. 3 para. 26 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I157 Sch. 3 para. 26 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

New Roads and Street Works Act 1991

- 27 At the end of section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) insert—
- “(5) In addition to criteria for designation prescribed under subsection (2) (a), Schedule 3 to the Flood and Water Management Act 2010 requires designation in certain circumstances (relating to sustainable drainage systems).”

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Commencement Information

I158 Sch. 3 para. 27 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I159 Sch. 3 para. 27 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

Works on public land

- 28 (1) The Minister may make regulations requiring a statutory undertaker to notify the approving body before commencing statutory works on public land where the works will or may affect the operation of a drainage system on that land.
- (2) “Public land” means land owned or occupied by a designating authority for the purposes of Schedule 1.
- (3) The regulations shall define—
- (a) “statutory undertaker”, and
 - (b) “statutory works”.
- (4) The regulations may specify criteria for determining what works are to be treated as works that will or may affect the operation of a drainage system.
- (5) The regulations may include provision about—
- (a) timing, and
 - (b) procedure.
- (6) The regulations may—
- (a) specify consequences of failure to comply with a provision of the regulations;
 - (b) include provision requiring, or enabling an approving body to require, a statutory undertaker who is carrying out or has carried out works affecting a drainage system to carry out further work in relation to the system (which may include, in particular, a requirement to leave the system in a state approved by the approving body, having regard to national standards on sustainable drainage);
 - (c) give approving bodies default powers to undertake work and recover costs.
- (7) The regulations may amend an enactment so as to introduce a cross-reference to the regulations.

Commencement Information

I160 Sch. 3 para. 28 in force at 2.5.2018 for specified purposes for W. by S.I. 2018/557, art. 2(b)

I161 Sch. 3 para. 28 in force at 7.1.2019 for W. in so far as not already in force by S.I. 2018/557, art. 3(b)

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SCHEDULE 4 **E+W+S**

Section 33

RESERVOIRS

Introduction

1 The Reservoirs Act 1975 is amended as follows.

Commencement Information

I162 Sch. 4 para. 1 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(d)

“Large raised reservoir”

2 Before section 1 insert—

Large raised reservoir”: England and Wales

“A1 (1) In this Act “large raised reservoir” means—

- (a) a large, raised structure designed or used for collecting and storing water, and
 - (b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.
- (2) A structure or area is “raised” if it is capable of holding water above the natural level of any part of the surrounding land.
 - (3) A raised structure or area is “large” if it is capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.
 - (4) The Minister must make regulations about how to calculate capacity for the purpose of subsection (3) (and “natural level” and “surrounding land” are to be construed in accordance with the regulations).
 - (5) The Minister may by regulations provide for a structure or area to be treated as “large” by reason of proximity to, or actual or potential communication with, another structure or area.
 - (6) In making regulations under subsection (5) the Minister shall aim to ensure that a structure or area is treated as large under the regulations only if 10,000 or more cubic metres of water might be released as a result of the proximity or communication mentioned in that subsection.
 - (7) The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6).
 - (8) The Minister may by regulations provide for specified things not to be treated as large raised reservoirs for the purposes of this Act.
 - (9) A reference to a large raised reservoir includes a reference to anything used or designed to contain the water or control its flow.”

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Commencement Information

- I163** Sch. 4 para. 2 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)
I164 Sch. 4 para. 2 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)
I165 Sch. 4 para. 2 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 3 (1) Omit section 1(1) to (3) (meaning of “reservoir”).
- (2) In section 6 (construction and alteration) in subsection (1) for “existing reservoir” substitute “ existing structure or area ”.
- (3) In section 6(3) for “existing reservoir” substitute “ existing structure or area ”.
- (4) In section 8 (failure to comply with construction or alteration requirements) in subsection (1) for “existing reservoir” substitute “ existing structure or area ”.
- (5) In section 12B (flood plans and national security) in subsection (2) for “a large raised reservoir” substitute “ large or raised ”.

Commencement Information

- I166** Sch. 4 para. 3 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)
I167 Sch. 4 para. 3 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

Registration

- 4 After section 2(2A) (registration) insert—
- “(2B) The undertaker must register a large raised reservoir with the relevant authority.
- (2C) The Minister may make regulations about registration under this section.
- (2D) Regulations under subsection (2C) may, in particular, include provision about—
- (a) the information to be registered, and
- (b) the time by which information, or changes to information, must be registered.
- (2E) The regulations may require an undertaker to notify the relevant authority about—
- (a) proposed alterations to which section 6 applies;
- (b) a proposal to abandon a large raised reservoir under section 14;
- (c) the appointment, or termination of appointment, of an engineer for a purpose of this Act.”

Commencement Information

- I168** Sch. 4 para. 4 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)
I169 Sch. 4 para. 4 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)
I170 Sch. 4 para. 4 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 5 In section 21 (duty to provide information)—

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- (a) in subsection (1)(a) omit the words from “(whether” to “capacity”, and
- (b) omit subsections (2) to (4).

Commencement Information

I171 Sch. 4 para. 5 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I172 Sch. 4 para. 5 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

- 6 In section 22 (criminal liability) before subsection (1) insert—
- “(A1) It is an offence for an undertaker to fail to comply with either of the following—
- (a) the requirement to register a large raised reservoir imposed by section 2(2B);
 - (b) a requirement of regulations made under section 2(2C).
- (A2) A person guilty of an offence under subsection (A1) is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.”

Commencement Information

I173 Sch. 4 para. 6 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I174 Sch. 4 para. 6 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

High-risk reservoirs

- 7 After section 2 (registration) insert—
- “2A Consideration of risk and provisional designation: England and Wales**
- (1) As soon as is reasonably practicable after the registration of a large raised reservoir under section 2 [^{F8}the appropriate agency] shall consider whether the reservoir is to be designated as a high-risk reservoir (applying the criteria set out in section 2C).
 - (2) [^{F8}The appropriate agency] may—
 - (a) make a provisional designation by giving notice to the undertaker, or
 - (b) notify the undertaker that the reservoir is not designated as a high-risk reservoir.
 - (3) A provisional designation notice must specify—
 - (a) the reasons for the provisional designation,
 - (b) how representations to [^{F8}the appropriate agency] may be made, and
 - (c) the period within which those representations may be made.
 - (4) The Minister may by order specify a minimum period within which representations may be made under subsection (3)(c).

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2B Designation

- (1) [^{F8}The appropriate agency] may designate a large raised reservoir as a high-risk reservoir by giving notice confirming a provisional designation to the undertaker.
- (2) In deciding whether to confirm a provisional designation [^{F8}the appropriate agency] must have regard to the representations made in accordance with section 2A.
- (3) A notice under subsection (1) may not be given before the end of the period within which representations may be made under section 2A(3)(c).
- (4) The notice must—
 - (a) specify the provisional notice to which it relates,
 - (b) specify the reasons for the designation,
 - (c) give information about the procedure for bringing an appeal under regulations under section 2E,
 - (d) specify the period within which an appeal may be brought, and
 - (e) specify the date on which the designation takes effect, which must be after the end of the period specified under paragraph (d).

2C Meaning of “high-risk reservoir”

- (1) [^{F8}The appropriate agency] may designate a large raised reservoir as a high-risk reservoir if—
 - (a) [^{F8}the appropriate agency] thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered, and
 - (b) the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.
- (2) The conditions specified in regulations under subsection (1)(b) may, in particular, include conditions as to—
 - (a) the purpose for which the reservoir is used,
 - (b) the materials used to construct the reservoir,
 - (c) the way in which the reservoir is constructed, and
 - (d) the maintenance of the reservoir.
- (3) Sections 10 to 12 make provision about requirements for inspection, monitoring and supervision of high-risk reservoirs.
- (4) References in this Act to a “high-risk reservoir” are references to a large raised reservoir that has been designated under section 2B as a high-risk reservoir.

2D Review

- (1) [^{F8}The appropriate agency] must carry out a review if it thinks that—
 - (a) the designation of a large raised reservoir as a high-risk reservoir may have ceased to be appropriate, or

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- (b) it may be appropriate to designate a large raised reservoir as a high-risk reservoir.
- (2) Sections 2A to 2C apply following a review as they apply following the registration of a reservoir.

2E Appeals

- (1) The Minister must by regulations provide a right of appeal against designations under section 2B.
- (2) The regulations must—
 - (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.
- (3) Where an appeal against a designation is brought—
 - (a) the designation is suspended while the appeal is pending;
 - (b) the person or body hearing the appeal may cancel the designation.”

Textual Amendments

- F8** Words in Sch. 4 para. 7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(a\)](#) (with Sch. 7)

Commencement Information

- I175** Sch. 4 para. 7 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), [art. 3\(1\)\(e\)](#)
I176 Sch. 4 para. 7 in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), [art. 3\(b\)](#)
I177 [Sch. 4 para. 7](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), [art. 2\(b\)](#)

- 8 In section 7 (certificates of construction engineers) in subsection (5) after “a reservoir” insert “ which is designated, or in the opinion of the engineer is likely to be designated, as a high-risk reservoir ”.

Commencement Information

- I178** [Sch. 4 para. 8](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)
I179 [Sch. 4 para. 8](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), [art. 2\(b\)](#)

Panels of engineers

- 9 At the end of section 4 (panel of civil engineers) add—
- “(10) The Secretary of State and the Welsh Ministers acting jointly may establish one or more panels of engineers under this section (“joint panels”).
 - (11) For the purposes of anything done in relation to a joint panel, a reference in this section to the Secretary of State is a reference to the Secretary of State and the Welsh Ministers acting jointly.”

Commencement Information

- I180** [Sch. 4 para. 9](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)

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I181 Sch. 4 para. 9 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

Construction and alteration

- 10 (1) Section 6 (construction and alteration) is amended as follows.
- (2) In subsection (1) after “increase”, in both places, insert “ or decrease ”.
- (3) In subsection (3) omit “addition to the”.
- (4) In subsection (4) after “increase” insert “ or decrease ”.
- (5) Omit subsection (6).
- (6) At the end add—
- “(6A) This section and sections 7 and 8 do not apply in relation to alterations, or proposed alterations, to decrease the capacity of a large raised reservoir so that it is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (in which case section 13 applies instead).
- (6B) The Minister may by order substitute a different volume of water for the volume specified in subsection (6A).”

Commencement Information

- I182** Sch. 4 para. 10 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)
I183 Sch. 4 para. 10 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)
I184 Sch. 4 para. 10 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 11 (1) In section 7 (certificates of construction engineers) in subsection (1)—
- (a) for “addition”, in the first and second places it occurs, substitute “ alteration ”, and
- (b) omit “or addition” in the last place it occurs.
- (2) In section 7(2) for “addition” substitute “ alteration ”.
- (3) In section 7(3)—
- (a) for “addition”, in the first place it occurs, substitute “ alteration ”, and
- (b) omit “or, as the case may be, the reservoir with the addition”.
- (4) In section 7(4) and (6) for “addition” substitute “ alteration ”.
- (5) In section 8 (failure to comply with construction or alteration requirements) in subsection (1)—
- (a) in paragraph (a) after “increase” insert “ or decrease ”, and
- (b) for “addition” substitute “ alteration ”.
- (6) At the end of section 8(3) add “ within the period which the report must specify in respect of each recommendation. ”
- (7) In section 8(4) for “addition” substitute “ alteration ”.
- (8) In section 8(5)—

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- (a) omit “or addition”, and
 - (b) omit “or, as the case may be, the reservoir with the addition”.
- (9) In section 8(6) omit “or, as the case may be, the reservoir with the addition”.
- (10) In section 10 (inspections) in subsection (9)(b) for “addition” substitute “alteration”.

Commencement Information

I185 Sch. 4 para. 11 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I186 Sch. 4 para. 11 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

High-risk reservoirs: inspections

- 12 (1) Section 10 (inspections) is amended as follows.
- (2) In subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.
- (3) In subsection (2) for the words from “large raised reservoir” to the end substitute “high-risk reservoir must be inspected under this section at the times specified by regulations made by the Minister.”
- (4) In subsection (3) for the words from “the time” to the end substitute—
- “(a) the time of the next inspection;
 - (b) the maintenance of the reservoir;
 - (c) any measures required in the interests of safety and the period within which those measures must be taken.”
- (5) After subsection (3) insert—
- “(3A) If the inspecting engineer has not provided a report before the end of the period of 6 months beginning with the date of completion of the inspection, the engineer must—
- (a) notify [^{F9}the appropriate agency], and
 - (b) provide a written statement of the reasons.”
- (6) In subsection (5) after “safety” insert “ or as to the maintenance of the reservoir ”.
- (7) After subsection (5) insert—
- “(5A) The undertaker must comply with a recommendation made under subsection (3)(b), unless the recommendation is the subject of a reference under section 19 and the reference has not been determined.”
- (8) In subsection (6) for “as soon as practicable” substitute “ , within the period specified in the report, ”.
- (9) After subsection (6) insert—
- “(6A) The inspecting engineer must include in the report of the inspection—
- (a) a statement as to whether all of the safety measures recommended in the previous report under subsection (3)(c) have been taken, and
 - (b) either (i) recommendations to take any safety measure that has not yet been taken or (ii) an explanation of why it is no longer required.”

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(10) In subsection (7) for “large raised reservoir” substitute “ high-risk reservoir ”.

Textual Amendments

F9 Words in Sch. 4 para. 12(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), Sch. 2 para. 468(2)(b) (with Sch. 7)

Commencement Information

I187 Sch. 4 para. 12 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

I188 Sch. 4 para. 12 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)

I189 Sch. 4 para. 12 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

13 In section 17 (powers of entry) in subsection (1)(b) after “safety” insert “ , or as to the maintenance of the reservoir, ”.

Commencement Information

I190 Sch. 4 para. 13 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I191 Sch. 4 para. 13 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

14 In section 19(1)(a) after “safety” insert “ , or as to the maintenance of the reservoir ”.

Commencement Information

I192 Sch. 4 para. 14 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I193 Sch. 4 para. 14 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

15 In section 22 (criminal liability) after subsection (1) insert—
“(1AA) An undertaker who fails to comply with section 10(5A) is guilty of an offence.
(1AB) A person guilty of an offence under subsection (1A) is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.”

Commencement Information

I194 Sch. 4 para. 15 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I195 Sch. 4 para. 15 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

High-risk reservoirs: monitoring and supervision

16 In section 11 (records) in subsection (1) for “large raised reservoir” substitute “ high-risk reservoir ”.

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Commencement Information

I196 Sch. 4 para. 16 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))

I197 Sch. 4 para. 16 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

- 17 (1) Section 12 (supervision) is amended as follows.
- (2) In subsection (1) for “large raised reservoir” substitute “ high-risk reservoir ”.
- (3) After subsection (2) insert—
- “(2A) The supervising engineer must provide the undertaker with a written statement of any steps taken to maintain the reservoir in accordance with the recommendations of the inspecting engineer under section 10(3)(b).
- (2B) The engineer must provide a statement under subsection (2A) at least once every 12 months.”
- (4) In subsection (4) for “large raised reservoir” substitute “ high-risk reservoir ”.
- (5) At the end add—
- “(6) The supervising engineer may direct the undertaker to carry out a visual inspection of the reservoir at specified intervals for the purpose of identifying anything that might affect the safety of the reservoir.
- (7) The undertaker must notify the supervising engineer of—
- (a) each visual inspection that is carried out, and
- (b) anything noticed in the course of it.
- (8) The Minister may issue guidance about supervision in accordance with this section (and may take compliance into account when making decisions under section 4).”
- (6) In section 20(4) (reports, certificates etc.) after paragraph (e) add—
- “(f) any written statement given under section 12(2) or (2A);
- (g) any direction given under section 12(6);”

Commencement Information

I198 Sch. 4 para. 17 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))

I199 Sch. 4 para. 17 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

- 18 In section 21(5) (information) for “large raised reservoir” substitute “ high-risk reservoir ”.

Commencement Information

I200 Sch. 4 para. 18 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))

I201 Sch. 4 para. 18 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

19 In section 22 (criminal liability) after subsection (1AB) (inserted by paragraph 15) insert—

“(1AC) An undertaker who, without reasonable excuse, fails to comply with a direction to carry out a visual inspection under section 12(6) or with the notification requirement under section 12(7) is guilty of an offence.

(1AD) A person guilty of an offence under subsection (1AC) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”

Commencement Information

I202 Sch. 4 para. 19 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I203 Sch. 4 para. 19 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

Flood plans

20 (1) Section 12A (flood plans) is amended as follows.

(2) In subsection (1) omit the words from “setting” to the end.

(3) After section 12A(1) insert—

“(1A) A flood plan is a document—

- (a) giving information about the areas that may be flooded in the event of an uncontrolled escape of water from the large raised reservoir,
- (b) specifying the action that the undertaker would take in order to prevent an uncontrolled escape of water, and
- (c) specifying the action that the undertaker would take in order to control or mitigate the effects of a flood.”

Commencement Information

I204 Sch. 4 para. 20 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I205 Sch. 4 para. 20 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

21 After section 12A insert—

“12AA Flood plans: preparation

- (1) This section applies where an undertaker is directed to prepare a flood plan under section 12A.
- (2) The undertaker must prepare a flood plan in consultation with the appointed engineer.
- (3) The undertaker may not provide a copy of, or publish, a flood plan in accordance with a direction under section 12A(2)(d) or (e) unless the appointed engineer has certified that the requirements of a direction under section 12A(2)(a) and (b) are satisfied.

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- (4) The undertaker must test a flood plan at such times and in such manner as may be directed by the appointed engineer.
- (5) In the event of flooding, or if flooding is reasonably expected to occur, the undertaker must implement the flood plan without delay.
- (6) The undertaker—
 - (a) must keep a flood plan under review, and
 - (b) may revise a flood plan.
- (7) The undertaker must revise the flood plan in accordance with the directions of the appointed engineer.
- (8) The following apply to a revision of a flood plan as they apply to a flood plan—
 - (a) subsections (2) to (7), and
 - (b) any requirements of a direction under section 12A.
- (9) In this section “appointed engineer” means—
 - (a) in the case of a high-risk reservoir, the supervising engineer, and
 - (b) in any other case, the engineer appointed for the purposes of this section.”

Commencement Information

I206 Sch. 4 para. 21 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I207 Sch. 4 para. 21 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

22 (1) Section 19 (references) is amended as follows.

(2) After subsection (1) insert—

“(1A) If an engineer determines that the requirements of a direction under section 12A(2)(a) and (b) are not satisfied for the purposes of section 12AA(3), the undertaker may refer the matter to a referee in accordance with rules under this section.”

(3) In subsection (2) after “recommendation” insert “ or determination ”.

(4) In subsections (3) and (4) for “this section” substitute “ subsection (1) ”.

(5) After subsection (4) insert—

“(4A) A referee under subsection (1A) may direct the engineer to issue a certificate for the purposes of section 12AA(3).”

Commencement Information

I208 Sch. 4 para. 22 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(f)

I209 Sch. 4 para. 22 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)

I210 Sch. 4 para. 22 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(d)

23 (1) Section 20 (reports, certificates etc.) is amended as follows.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(2) In subsection (4)(c) omit “modifying any such report as is mentioned in paragraph (b) above”.

(3) After subsection (4)(g) (inserted by paragraph 17(6)) add—
“(h) any direction given under section 12AA(4) or (7).”

Commencement Information

I211 Sch. 4 para. 23 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I212 Sch. 4 para. 23 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

24 In section 22 (criminal liability) after subsection (1AD) (inserted by paragraph 19) insert—

“(1AE) An undertaker who fails to comply with section 12AA(4), (6)(a) or (7) is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(1AF) An undertaker who fails to comply with section 12AA(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

Commencement Information

I213 Sch. 4 para. 24 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I214 Sch. 4 para. 24 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

Discontinuance

25 (1) Section 13 (discontinuance) is amended as follows.

(2) In subsection (1) for the words from “more than 25,000” to “adjoining the reservoir” substitute “ 10,000 cubic metres of water above the natural level of any part of the surrounding land ”.

(3) After subsection (1) insert—

“(1A) An engineer employed for the purposes of subsection (1) may issue a certificate (the “interim certificate”) if the engineer thinks that the level of water in the reservoir should be reduced before the alteration is completed.

(1B) The interim certificate must specify—

- (a) the reduced water level,
- (b) the time by which it must be reduced, and
- (c) the conditions (if any) on which the reservoir may be filled to the reduced level.

(1C) The undertaker must ensure that the reservoir does not contain water except in accordance with the interim certificate.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (1D) The engineer employed for the purposes of subsection (1) may vary an interim certificate by giving written notice to the undertaker.
- (1E) An interim certificate ceases to have effect on the issue of a certificate under subsection (2).”
- (4) In subsection (3) for the words from “more than 25,000” to “adjoining the reservoir” substitute “ 10,000 cubic metres of water above the natural level of any part of the surrounding land ”.
- (5) At the end add—
- “(4) The Minister may by order substitute a different volume of water for the volume specified in subsection (1) or (3).
- (5) Where it appears to [^{F10}the appropriate agency] that a qualified civil engineer has not been employed as required by subsection (1) the Agency may by notice require the undertaker—
- (a) to appoint a qualified civil engineer for the purposes of this section before the end of the period of 28 days beginning with the day on which the notice is given, unless the appointment has already been made, and
- (b) to notify [^{F10}the appropriate agency] of the appointment (whether it was made before or after the notice was given).”

Textual Amendments

F10 Words in Sch. 4 para. 25(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(c\)](#) (with Sch. 7)

Commencement Information

I215 Sch. 4 para. 25 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), art. 3(1)(e)

I216 [Sch. 4 para. 25](#) in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), art. 3(b)

I217 [Sch. 4 para. 25](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), art. 2(d)

- 26 (1) In section 15 (reserve powers) in subsection (1) after “12” insert “ , 13 ”.
- (2) In section 21 (duty to provide information) in subsection (5) after “10(6)” insert “ , 13 ”.
- (3) In section 22 (criminal liability) in subsection (1)(b) after “12” insert “ , 13 ”.

Commencement Information

I218 [Sch. 4 para. 26](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), art. 3(b)

I219 [Sch. 4 para. 26](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), art. 2(d)

Abandonment

- 27 (1) Section 14 (abandonment) is amended as follows.
- (2) In subsection (2) for the words from “before” to “afterwards” substitute “ within the period specified in the report ”.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(3) At the end add—

“(6) The Minister may by regulations make provision about what is and is not to be treated for the purposes of this Act as—

- (a) abandonment of use of a large raised reservoir as a reservoir, and
- (b) bringing a large raised reservoir back into use as a reservoir.”

Commencement Information

I220 Sch. 4 para. 27 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

I221 Sch. 4 para. 27 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)

I222 Sch. 4 para. 27 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(d)

28 In section 20 (reports, certificates etc.) in subsection (4)(b) omit from “and stated” to “safety”.

Commencement Information

I223 Sch. 4 para. 28 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I224 Sch. 4 para. 28 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

Powers of entry

29 In section 17 (powers of entry) for subsection (1)(a) substitute—

“(a) for the purpose of carrying out an inspection, survey or other operation to determine whether any provision of this Act applies;”.

Commencement Information

I225 Sch. 4 para. 29 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I226 Sch. 4 para. 29 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

Appeals

30 After section 19 (references) insert—

“19A Appeals

(1) The Minister must by regulations provide a right of appeal against—

- (a) a requirement to appoint an engineer under sections 8(1), 9(7), 10(7), 12(4), 13(5) and 14(4), and
- (b) a requirement to carry a recommendation of an engineer into effect under sections 8(3A), 9(7), 10(7) and 14(4).

(2) The regulations must—

- (a) confer jurisdiction on the Minister, a court or a tribunal, and
- (b) make provision about procedure (including the effect of pending appeals).”

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I227 Sch. 4 para. 30 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

Directions of engineers

- 31 In section 20(1) (general provision about documents: prescribed form) for “or certificate” substitute “ , certificate or directions ”.

Commencement Information

I228 Sch. 4 para. 31 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(f)

Assessment of reports and statements

- 32 After section 20 insert—

“20A Assessment of reports and statements

- (1) The Minister may by regulations make provision for the assessment of the quality of reports and written statements prepared by—
- (a) inspecting engineers, and
 - (b) supervising engineers.
- (2) The regulations may make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers; and the regulations may specify the conditions for membership of the committee.
- (3) The regulations may, in particular, make provision about—
- (a) the criteria for assessment,
 - (b) the documents, or categories of documents, that are to be assessed,
 - (c) the assessment procedure, which may include provision about oral or written representations, and
 - (d) timing.”

Commencement Information

I229 Sch. 4 para. 32 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

Information and reports

- 33 After section 21 (duty to provide information) insert—

“21A Power to require information

- (1) For the purposes of carrying out its functions under this Act, [F11the appropriate agency] may by notice require an undertaker to provide information specified in the notice.
- (2) The notice may require the information to be provided—

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- (a) within a specified period;
 - (b) in a specified manner or form.
- (3) The period specified under subsection (2)(a) must be a period of at least 28 days beginning with the day on which the notice is issued.

21B Reports

- (1) The Minister may by regulations require a specified person to make a report to the Environment Agency about any incident of a specified kind which affected, or could have affected, the safety of a large raised reservoir.
- (2) The regulations may, in particular, provide that the duty to report applies to—
 - (a) an undertaker, and
 - (b) an engineer appointed for any purpose of this Act.
- (3) The regulations may make provision about—
 - (a) the form and manner of a report,
 - (b) the timing of a report.”

Textual Amendments

F11 Words in Sch. 4 para. 33 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(d\)](#) (with Sch. 7)

Commencement Information

I230 Sch. 4 para. 33 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), art. 3(1)(e)

I231 Sch. 4 para. 33 in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), art. 3(b)

I232 Sch. 4 para. 33 in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), art. 2(d)

- 34 In section 22 (criminal liability) after subsection (4) insert—
- “(4A) An undertaker who fails to comply with a requirement of a notice given under section 21A is guilty of an offence.
 - (4B) An undertaker who fails to comply with a requirement to make a report under regulations made under section 21B is guilty of an offence.
 - (4C) A person guilty of an offence under subsection (4A) or (4B) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

Commencement Information

I233 Sch. 4 para. 34 in force at 30.7.2013 for E. by [S.I. 2013/1590](#), art. 3(b)

I234 Sch. 4 para. 34 in force at 1.4.2016 for W. by [S.I. 2016/79](#), art. 2(d)

Enforcement: supplementary

- 35 In section 22 (criminal liability) in subsection (1)—
- (a) omit “by the wilful default of the undertakers”, and
 - (b) omit “unless there is reasonable excuse for the default or failure”.

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Commencement Information

I235 Sch. 4 para. 35 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I236 Sch. 4 para. 35 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

36 After section 22B insert—

“22C Expenses

The undertaker must pay to [^{F12}the appropriate agency] the amount of expenses reasonably incurred by the Agency in connection with the consultation of an engineer under—

- (a) section 8(3B),
- (b) section 9(8),
- (c) section 10(8), and
- (d) section 14(5).”

Textual Amendments

F12 Words in Sch. 4 para. 36 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(e\)](#) (with Sch. 7)

Commencement Information

I237 Sch. 4 para. 36 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I238 Sch. 4 para. 36 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

Arrangements for civil protection: charges

37 After section 22C (inserted by paragraph 36) insert—

“22D Arrangements for civil protection: charges

- (1) A person who is listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (a “Category 1 responder”) may charge an undertaker a fee in accordance with a scheme prescribed by regulations made by the Minister.
- (2) The purpose of the scheme must be to enable Category 1 responders to charge fees to undertakers in respect of costs incurred in carrying out functions under section 2 of the 2004 Act in connection with their reservoirs.”

Commencement Information

I239 Sch. 4 para. 37 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

Regulations and orders

- 38 (1) Section 5 (power to prescribe by regulations) is amended as follows.
- (2) The existing provision becomes subsection (1).
- (3) At the end add—

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- “(2) A statutory instrument under this Act—
- (a) may make provision that applies generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include incidental, consequential or transitional provision.
- (3) Regulations or an order made under any provision listed in subsection (5) or (7) shall be made by statutory instrument.
- (4) A statutory instrument containing regulations, rules or an order made under any provision listed in subsection (5)—
- (a) shall be subject to annulment in pursuance of a resolution of either House of Parliament, in the case of an instrument made by the Secretary of State, or
 - (b) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales, in the case of an instrument made by the Welsh Ministers.
- (5) The provisions are—
- (a) section A1(4) and (5),
 - (b) section 2(2) or (2C),
 - (c) section 2A(4),
 - (d) section 2E(1),
 - (e) section 3(1) or (3),
 - (f) section 4(9),
 - (g) section 11(1),
 - (h) section 14(6),
 - (i) section 19(5),
 - (j) section 19A(1),
 - (k) section 20(1),
 - (l) section 20A(1),
 - (m) section 21(1),
 - (n) section 21B(1), and
 - (o) section 22D(1).
- (6) A statutory instrument containing regulations or an order made under any provision listed in subsection (7) may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of regulations or an order made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of regulations or an order made by the Welsh Ministers.
- (7) The provisions are—
- (a) section A1(7) and (8),
 - (b) section 2C(1)(b),
 - (c) section 6(6B),
 - (d) section 10(2), and
 - (e) section 13(4).

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- (8) The first sets of regulations under section 2E or 19A may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of the first regulations made by the Secretary of State under either section, and
 - (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers under either section.”

Commencement Information

I240 Sch. 4 para. 38 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(g)

Charges

- 39 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (b) insert—
- “(ba) as a means of recovering costs incurred by it in performing functions conferred by the Reservoirs Act 1975 the Agency may require the payment to it of such charges as may from time to time be prescribed;”.

Commencement Information

I241 Sch. 4 para. 39 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(h)

Power to make further provision

- 40 (1) The Minister may by order make such further amendments to the Reservoirs Act 1975 as appear necessary or desirable in consequence of the amendments made by this Schedule.
- (2) An order under sub-paragraph (1) may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of an order made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

Commencement Information

I242 Sch. 4 para. 40 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(i)

Regulatory impact assessment

- 41 (1) The Minister must carry out a review of the burden on undertakers in relation to large raised reservoirs of complying with the Reservoirs Act 1975 as amended by this Schedule.
- (2) The review must be carried out at the end of the period of 12 months beginning with the operative date.

Changes to legislation: Flood and Water Management Act 2010 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) In sub-paragraph (2) the “operative date” means the first date on which all of the following have come into force—
- (a) section A1 of the Reservoirs Act 1975 (inserted by paragraph 2 of this Schedule), and
 - (b) regulations under sections 2(2C), 2C(1)(b) and 10(2) of that Act as amended by this Schedule.
- (4) The Minister must prepare and publish a report of the review.

Commencement Information

I243 Sch. 4 para. 41 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

I244 Sch. 4 para. 41 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

Ministerial responsibility

- 42 (1) In this Schedule, and the amendments of the Reservoirs Act 1975 made by this Schedule, a reference to the Minister is a reference to—
- (a) the Secretary of State, in relation to England, and
 - (b) the Welsh Ministers, in relation to Wales.
- (2) After section 27B of the Reservoirs Act 1975 insert—

“27C Ministerial responsibility

References to “the Minister” in this Act are to be construed in accordance with paragraph 42 of Schedule 4 to the Flood and Water Management Act 2010.”

Commencement Information

I245 Sch. 4 para. 42 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(j)

Cross-border England-Scotland reservoirs

- 43 (1) In this paragraph—
- (a) a “cross-border reservoir” means a large-raised reservoir which is partly in England and partly in Scotland,
 - (b) for that purpose “large-raised reservoir” has the meaning given by section A1 of the Reservoirs Act 1975 as inserted by paragraph 2,
 - (c) “the English regime” means the Reservoirs Act 1975 as amended by this Schedule, and
 - (d) “the Scottish regime” means the [^{F13}Reservoirs (Scotland) Act 2011 and any order or regulations made, guidance issued or directions given under that Act].
- (2) The Secretary of State, with the consent of the Scottish Ministers, may by order provide that in relation to cross-border reservoirs—
- (a) the Scottish regime shall apply and the English regime shall not apply, or
 - (b) the English regime shall apply and the Scottish regime shall not apply.

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- (3) An order may relate to—
- (a) a specified reservoir, or
 - (b) a class of reservoir.
- (4) An order may provide—
- (a) for any modifications of the English regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir, or
 - (b) for any modifications of the Scottish regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir.
- (5) An order under this paragraph may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Textual Amendments

F13 Words in Sch. 4 para. 43(1)(d) substituted (1.4.2016) by [The Reservoirs \(Scotland\) Act 2011 \(Restrictions on Disclosure of Information in relation to National Security etc.\) Order 2015 \(S.I. 2015/48\)](#), [arts. 1\(2\), 15](#) (see [S.S.I. 2016/42](#), [art. 2](#), [Sch.](#) (with [art. 3](#)))

Commencement Information

I246 Sch. 4 para. 43 in force at 1.10.2011 by [S.I. 2011/2204](#), [art. 3\(1\)\(k\)](#)

SCHEDULE 5 E+W

Section 34

SPECIAL ADMINISTRATION

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”.
- (3) In sub-paragraph (3) for “, of the existing appointee and, in relation to the matters affecting them, of any other appointees,” substitute “ and the existing appointee ”.
- (4) In sub-paragraph (4) for “, the new appointee and, in relation to the provisions of the order which affect them, any other appointees” substitute “ and the new appointee ”.

Commencement Information

I247 [Sch. 5 para. 1](#) in force at 1.4.2011 by [S.I. 2011/694](#), [art. 3\(j\)](#) (with [art. 5\(3\)](#))

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

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Commencement Information

I248 Sch. 5 para. 2 in force at 1.4.2011 by S.I. 2011/694, art. 3(j) (with art. 5(3))

Objectives

- 3 After section 23(2A) of the Water Industry Act 1991 (special administration order: effect) insert—
- “(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—
- (a) a purpose of the special administration order is to rescue the company as a going concern, and
 - (b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—
 - (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).
- (2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.
- (2D) For the purpose of rescuing the company as a going concern a special administrator may propose—
- (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
 - (b) a compromise or arrangement in accordance with Part 26 of the Companies Act 2006.
- (2E) The Secretary of State may by regulations made by statutory instrument—
- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
 - (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).
- (2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Authority.
- (2G) Regulations under subsection (2E) may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and

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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).”

Commencement Information

I249 Sch. 5 para. 3 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

I250 Sch. 5 para. 3 in force at 12.1.2024 in so far as not already in force by S.I. 2024/35, art. 2(b)

Financial assistance

- 4 (1) This paragraph amends sections 153 and 154 of the Water Industry Act 1991 (government financial assistance where special administration order made).
- (2) For section 153(1)(b) substitute—
- “(b) offer indemnities in respect of liabilities or loss incurred or sustained in the course of functions under the order.”
- (3) After section 153(1) insert—
- “(1A) An indemnity under subsection (1)(b) may be offered to—
- (a) the special administrator,
- (b) an employee of the special administrator,
- (c) a member or employee of a firm of which the special administrator is or was a member or employee (or a successor of that firm),
- (d) a body corporate of which the special administrator is or was an employee, or
- (e) an officer, employee or member of a body corporate within paragraph (d).”
- (4) In section 153(3) for “by Schedule 3 to this Act” substitute “by or under section 23”.
- (5) After section 153(3) insert—
- “(3A) Arrangements for a grant, loan or indemnity which are made while a special administration order is in force may continue to have effect after the order ceases to have effect.”
- (6) In section 154(2) for “Immediately” substitute “As soon as is reasonably practicable”.
- (7) In section 154(3) for “possible” substitute “is reasonably practicable”.
- (8) In section 154(5) for “by Schedule 3 to this Act” substitute “by or under section 23”.
- (9) This paragraph has effect in respect of special administration orders made whether before or after this section comes into force.

Commencement Information

I251 Sch. 5 para. 4 in force at 1.4.2011 by S.I. 2011/694, art. 3(j)

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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

I252 Sch. 5 para. 5 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

I253 Sch. 5 para. 5 in force at 12.1.2024 in so far as not already in force by S.I. 2024/35, art. 2(b)

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

I254 Sch. 5 para. 6 in force at 1.10.2010 for specified purposes by S.I. 2010/2169, art. 4, Sch.

I255 Sch. 5 para. 6 in force at 15.3.2024 in so far as not already in force by S.I. 2024/363, art. 2(b)

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, ”.

Commencement Information

I256 Sch. 5 para. 7 in force at 1.4.2011 by S.I. 2011/694, art. 3(j)

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Changes and effects yet to be applied to :

- s. 35(2) words repealed by 2014 c. 21 Sch. 7 para. 145
- s. 42(2) repealed by 2014 c. 21 Sch. 7 para. 146(a)
- s. 42(3) repealed by 2014 c. 21 Sch. 7 para. 146(b)
- Sch. 3 para. 12(4)(c) words inserted by 2014 c. 21 s. 88(a)
- Sch. 3 para. 12(4)(c) words substituted by 2014 c. 21 s. 88(b)