

Flood and Water Management Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Environment, Food and Rural Affairs, are published separately as Bill 9 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Hilary Benn has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Flood and Water Management Bill are compatible with the Convention rights.

Flood and Water Management Bill

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Make provision about water, including provision about the management of risks in connection with flooding and coastal erosion.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

FLOOD AND COASTAL EROSION RISK MANAGEMENT

1. Key concepts and definitions

1 “Flood” and “coastal erosion”

- | | | |
|-----|--|----|
| (1) | “Flood” includes any case where land not normally covered by water becomes covered by water. | 5 |
| (2) | It does not matter for the purpose of subsection (1) whether a flood is caused by— | |
| | (a) heavy rainfall, | |
| | (b) a river overflowing or its banks being breached, | 10 |
| | (c) a dam overflowing or being breached, | |
| | (d) tidal waters, or | |
| | (e) any other event (or combination of events). | |
| (3) | But “flood” does not include— | |
| | (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system, or | 15 |
| | (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991). | |
| (4) | “Coastal erosion” means the erosion of the coast of any part of England or Wales. | 20 |

2 “Risk”

- (1) “Risk” means a risk in respect of an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.
- (2) “Flood risk” means a risk in respect of flood. 5
- (3) “Coastal erosion risk” means a risk in respect of coastal erosion.
- (4) In each case the potential harmful consequences to be considered in assessing risk include, in particular, consequences for – 10
- (a) human health,
 - (b) the social and economic welfare of individuals and communities,
 - (c) infrastructure, and
 - (d) the environment (including cultural heritage).

3 “Risk management”

- (1) “Risk management” means anything done for the purpose of – 15
- (a) analysing a risk,
 - (b) assessing a risk,
 - (c) reducing a risk,
 - (d) reducing a component in the assessment of a risk,
 - (e) altering the balance of factors combined in assessing a risk, or
 - (f) otherwise taking action in respect of a risk or a factor relevant to the assessment of a risk (including action for the purpose of flood defence). 20
- (2) In particular, risk management includes things done –
- (a) that increase the probability of an event but reduce or alter its potential consequences, or
 - (b) that increase the probability of an event occurring at one time or in one place but reduce the probability of it occurring at another time or in another place. 25
- (3) The following are examples of things that might be done in the course of flood or coastal erosion risk management –
- (a) planning, erecting, maintaining, altering or removing buildings or other structures (including structures built or used for flood defence purposes), 30
 - (b) maintaining or restoring natural processes,
 - (c) reducing or increasing the level of water in a place (whether or not it results in a change to the water level in another place), 35
 - (d) carrying out work in respect of a river or other watercourse (such as taking things out of it or supporting or diverting the banks),
 - (e) moving things onto, off or around a beach, or carrying out other works in respect of the shoreline,
 - (f) using statutory or other powers to permit, require, restrict or prevent activities, 40
 - (g) making arrangements for financial or other support for action taken by persons in respect of a risk of, or in preparing to manage the consequences of, flooding or coastal erosion,
 - (h) making arrangements for forecasting and warning, 45

- (i) preparing, gathering and disseminating maps, plans, surveys and other information, and
 - (j) providing education and giving guidance (including, for example, guidance on changes to land management).
- 4 “Flood risk management function” 5**
- (1) “Flood risk management function” means a function listed in subsection (2) which may be exercised by a risk management authority for a purpose connected with flood risk management.
 - (2) The functions are –
 - (a) a function under this Part, 10
 - (b) a function under section 159 or 160 of the Water Resources Act 1991,
 - (c) a flood defence function within the meaning of section 221 of that Act,
 - (d) a function under the Land Drainage Act 1991,
 - (e) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and 15
 - (f) any other function specified for the purposes of this section by order made by the Minister.
 - (3) In this section and section 5 “the Minister” means –
 - (a) the Secretary of State in relation to flood and coastal erosion risk management in England, and 20
 - (b) the Welsh Ministers in relation to flood and coastal erosion risk management in Wales.
- 5 “Coastal erosion risk management function”**
- (1) “Coastal erosion risk management function” means a function listed in subsection (2) which may be exercised by a risk management authority for a purpose connected with coastal erosion. 25
 - (2) The functions are –
 - (a) a function under this Part,
 - (b) a function under the Coast Protection Act 1949, and
 - (c) any other function specified for the purposes of this section by order made by the Minister. 30
- 6 Other definitions**
- (1) “Main river” has the meaning given by section 113 of the Water Resources Act 1991.
 - (2) “Watercourse” has the meaning given by section 72(1) of the Land Drainage Act 1991. 35
 - (3) “Ordinary watercourse” means a watercourse that does not form part of a main river.
 - (4) “Groundwater” means all water which is below the surface of the ground and in direct contact with the ground or subsoil. 40
 - (5) “Surface runoff” means rainwater (including snow and other precipitation) which –

- (a) is on the surface of the ground (whether or not it is moving), and
(b) has not entered a watercourse, drainage system or public sewer.
- (6) In subsection (5)(b) –
(a) the reference to a watercourse includes a reference to a lake, pond or other area of water which flows into a watercourse, and 5
(b) “drainage system” has the meaning given by paragraph 1 of Schedule 3.
- (7) “Lead local flood authority” in relation to an area in England means –
(a) the unitary authority for the area, or
(b) if there is no unitary authority, the county council for the area.
- (8) “Unitary authority” means – 10
(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) the council of a London borough;
(d) the Common Council of the City of London;
(e) the Council of the Isles of Scilly. 15
- (9) “Lead local flood authority” in relation to an area in Wales means –
(a) the county council for the area;
(b) the county borough council for the area.
- (10) “Internal drainage board” has the same meaning as in section 1 of the Land Drainage Act 1991. 20
- (11) “Water company” means a company which holds –
(a) an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991, or
(b) a licence under Chapter 1A of Part 2 of that Act.
- (12) “Highway authority” has the meaning given by section 1 of the Highways Act 1980. 25
- (13) “Risk management authority” means –
(a) the Environment Agency,
(b) a lead local flood authority,
(c) a district council for an area for which there is no unitary authority, 30
(d) an internal drainage board,
(e) a water company, and
(f) a highway authority.

2. Strategies, co-operation and funding

- 7 National flood and coastal erosion risk management strategy: England** 35
- (1) The Environment Agency must develop, maintain, apply and monitor a strategy for flood and coastal erosion risk management in England (a “national flood and coastal erosion risk management strategy”).
- (2) The strategy must specify – 40
(a) the risk management authorities in England,
(b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to England,

- (c) the objectives for managing flood and coastal erosion risk,
 - (d) the measures proposed to achieve those objectives,
 - (e) how and when the measures are to be implemented,
 - (f) the costs and benefits of those measures, and how they are to be paid for, 5
 - (g) the assessment of flood and coastal erosion risk for the purpose of the strategy,
 - (h) how and when the strategy is to be reviewed,
 - (i) the current and predicted impact of climate change on flood and coastal erosion risk management, and 10
 - (j) how the strategy contributes towards the achievement of wider environmental objectives.
- (3) The Agency must consult the following about the national flood and coastal erosion risk management strategy –
- (a) risk management authorities in England, 15
 - (b) the public,
 - (c) so far as the strategy may affect flood and coastal erosion risk management in Wales, the Welsh Ministers, and
 - (d) so far as the strategy may affect flood and coastal erosion risk management in Scotland, the Scottish Ministers. 20
- (4) The Agency must publish a summary of the strategy.
- (5) The Agency may issue guidance about the application of the strategy.
- (6) The Agency may, in particular, issue guidance about how risk management authorities in England are to comply with the duties under sections 13 and 14.
- (7) The Agency must submit a draft of the strategy and any guidance under this section to the Secretary of State for review. 25
- (8) On a review, the Secretary of State may –
- (a) approve the draft strategy or guidance, with or without modification, or
 - (b) reject it. 30
- (9) The Secretary of State must lay any approved strategy or guidance before Parliament.
- 8 National flood and coastal erosion risk management strategy: Wales**
- (1) The Welsh Ministers must develop, maintain and apply a strategy for flood and coastal erosion risk management in Wales (a “national flood and coastal erosion risk management strategy”). 35
- (2) The strategy must specify –
- (a) the risk management authorities in Wales,
 - (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to Wales, 40
 - (c) the objectives for managing flood and coastal erosion risk,
 - (d) the measures proposed to achieve those objectives,
 - (e) how and when the measures are to be implemented,

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- (f) the costs and benefits of those measures, and how they are to be paid for,
 - (g) the assessment of flood and coastal erosion risk for the purpose of the strategy,
 - (h) how and when the strategy is to be reviewed, 5
 - (i) the current and predicted impact of climate change on flood and coastal erosion risk management, and
 - (j) how the strategy contributes towards the achievement of wider environmental objectives.
- (3) The Welsh Ministers must consult the Secretary of State about the national flood and coastal erosion risk management strategy, so far as the strategy may affect flood and coastal erosion risk management in England. 10
- (4) The Welsh Ministers must publish a summary of the strategy.
- (5) The Welsh Ministers may issue guidance about the application of the strategy.
- (6) The Welsh Ministers may, in particular, issue guidance about how risk management authorities in Wales are to comply with the duties under sections 13(1) and 14. 15
- (7) The Welsh Ministers must lay the strategy before the National Assembly for Wales.
- 9 Local flood risk management strategies: England 20**
- (1) A lead local flood authority for an area in England must develop, maintain, apply and monitor a strategy for local flood risk management in its area (a “local flood risk management strategy”).
- (2) In subsection (1) “local flood risk” means flood risk from— 25
- (a) surface runoff,
 - (b) groundwater, and
 - (c) ordinary watercourses.
- (3) In subsection (2)(c) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse. 30
- (4) The strategy must specify—
- (a) the risk management authorities in the authority’s area,
 - (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area,
 - (c) the objectives for managing local flood risk (including any objectives included in the authority’s flood risk management plan prepared in accordance with the Flood Risk Regulations 2009), 35
 - (d) the measures proposed to achieve those objectives,
 - (e) how and when the measures are expected to be implemented,
 - (f) the costs and benefits of those measures, and how they are to be paid for, 40
 - (g) the assessment of local flood risk for the purpose of the strategy,
 - (h) how and when the strategy is to be reviewed, and
 - (i) how the strategy contributes to the achievement of wider environmental objectives. 45

- (5) The strategy must be consistent with the national flood and coastal erosion risk management strategy for England under section 7.
- (6) A lead local flood authority must consult the following about its local flood risk management strategy –
 - (a) risk management authorities that may be affected by the strategy (including risk management authorities in Wales), and
 - (b) the public.5
- (7) A lead local flood authority must publish a summary of its local flood risk management strategy (including guidance about the availability of relevant information). 10
- (8) A lead local flood authority may issue guidance about the application of the local flood risk management strategy in its area.
- (9) A lead local flood authority must have regard to any guidance issued by the Secretary of State about –
 - (a) the local flood risk management strategy, and
 - (b) guidance under subsection (8).15

10 Local flood risk management strategies: Wales

- (1) A lead local flood authority for an area in Wales must develop, maintain, apply and monitor a strategy for local flood risk management its area (a “local flood risk management strategy”). 20
- (2) In subsection (1) “local flood risk” means flood risk from –
 - (a) surface runoff,
 - (b) groundwater, and
 - (c) ordinary watercourses.
- (3) In subsection (2)(c) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse. 25
- (4) The strategy must specify –
 - (a) the risk management authorities in the authority’s area,
 - (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area,
 - (c) the objectives for managing local flood risk (including any objectives included in the authority’s flood risk management plan prepared in accordance with the Flood Risk Regulations 2009),
 - (d) the measures proposed to achieve those objectives,
 - (e) how and when the measures are expected to be implemented,
 - (f) the costs and benefits of those measures, and how they are to be paid for,
 - (g) the assessment of local flood risk for the purpose of the strategy,
 - (h) how and when the strategy is to be reviewed, and
 - (i) how the strategy contributes to the achievement of wider environmental objectives.35 40
- (5) The strategy must be consistent with the national flood and coastal erosion risk management strategy for Wales under section 8.

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- (6) A lead local flood authority must consult the following about its local flood risk management strategy –
- (a) risk management authorities that may be affected by the strategy (including risk management authorities in England), and
 - (b) the public. 5
- (7) A lead local flood authority must publish a summary of its local flood risk management strategy (including guidance about the availability of relevant information).
- (8) A lead local flood authority may issue guidance about the application of the local flood risk management strategy in its area. 10
- (9) A lead local flood authority must submit a draft of the strategy and any guidance under this section to the Welsh Ministers for review.
- (10) On a review, the Welsh Ministers may –
- (a) approve the draft strategy or guidance, with or without modification, or
 - (b) reject it. 15
- 11 Effect of national and local strategies: England**
- (1) In exercising its flood and coastal erosion risk management functions, a risk management authority, other than a water company, for an area in England must act in a manner which is consistent with the national and local strategies and guidance. 20
- (2) But –
- (a) subsection (1) does not apply in relation to the function of the Environment Agency under section 7(1);
 - (b) the Agency must have regard to the national and local strategies and guidance in exercising that function. 25
- (3) In exercising its flood and coastal erosion risk management functions a water company for an area in England must –
- (a) act in a manner which is consistent with the national strategy and guidance, and
 - (b) have regard to the local strategies and guidance. 30
- (4) In exercising any other function in a manner which may affect a flood risk or coastal erosion risk, a risk management authority for an area in England must have regard to the national and local strategies and guidance.
- (5) The Secretary of State may by order require a specified person to have regard to the national and local strategies and guidance in exercising a statutory function which may affect a flood risk or coastal erosion risk in England. 35
- (6) In this section –
- (a) references to the national strategy and guidance are references to (i) the national flood and coastal erosion risk management strategy under section 7, and (ii) any guidance on the national strategy issued by the Environment Agency, and
 - (b) references to the local strategies and guidance are references to (i) any local flood risk management strategy under section 9 for the relevant 40

area, and (ii) any guidance on a local strategy issued by a lead local flood authority.

- (7) In subsection (5) “statutory function” means a function conferred by or under an enactment.

12 Effect of national and local strategies: Wales 5

- (1) In exercising its flood and coastal erosion risk management functions a risk management authority, other than a water company, for an area in Wales must act in a manner which is consistent with the national and local strategies and guidance.

- (2) In exercising its flood and coastal erosion risk management functions a water company for an area in Wales must – 10
- (a) act in a manner which is consistent with the national strategy and guidance, and
 - (b) have regard to the local strategies and guidance.

- (3) In exercising any other function in a manner which may affect a flood risk or coastal erosion risk, a risk management authority for an area in Wales must have regard to the national and local strategies and guidance. 15

- (4) The Welsh Ministers may by order require a specified person to have regard to the national and local strategies and guidance in exercising a statutory function which may affect a flood risk or coastal erosion risk in Wales. 20

- (5) In this section – 25
- (a) references to the national strategy and guidance are references to (i) the national flood and coastal erosion risk management strategy under section 8, and (ii) any guidance on the national strategy issued by the Welsh Ministers, and
 - (b) references to the local strategies and guidance are references to (i) any local flood risk management strategy under section 10 for the relevant area, and (ii) any guidance on a local strategy issued by a lead local flood authority.

- (6) In subsection (4) “statutory function” means a function conferred by or under an enactment. 30

13 Co-operation and arrangements

- (1) A relevant authority must co-operate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions.

- (2) A relevant authority may share information with another relevant authority for the purpose of discharging its duty under subsection (1). 35

- (3) In subsections (1) and (2) “relevant authority” means –
- (a) a risk management authority, and
 - (b) the Welsh Ministers.

- (4) A risk management authority may arrange for a flood risk management function to be exercised on its behalf by – 40
- (a) another risk management authority, or

- (b) a navigation authority (within the meaning given by section 219 of the Water Industry Act 1991).
- (5) But subsection (4) does not apply in relation to –
- (a) the function of the Environment Agency under section 7(1), or
 - (b) the function of a lead local flood authority under section 9(1) or 10(1). 5
- (6) A coast protection authority may, with the appropriate consent, arrange for a person to exercise a coastal erosion risk management function on its behalf.
- (7) In subsection (6) the “appropriate consent” means –
- (a) in relation to a coast protection authority in England, the consent of the Environment Agency, and 10
 - (b) in relation to a coast protection authority in Wales, the consent of the Welsh Ministers.
- (8) The Environment Agency may arrange for a coastal erosion risk management function to be exercised on its behalf by –
- (a) a coast protection authority, 15
 - (b) a lead local flood authority, or
 - (c) an internal drainage board.
- (9) In subsections (4), (6) and (8) a reference to a flood risk management function or a coastal erosion risk management function includes a reference to anything that may be done by a risk management authority for a purpose connected with the exercise of that function. 20
- (10) In this section “coast protection authority” has the meaning given by section 1 of the Coast Protection Act 1949.

14 Power to request information

- (1) An authority listed in subsection (2) may request a person to provide information in connection with the authority’s flood and coastal erosion risk management functions. 25
- (2) The authorities are –
- (a) the Environment Agency, and
 - (b) lead local flood authorities. 30
- (3) The Welsh Ministers may request a person to provide information in connection with the function under section 8.
- (4) Information requested under subsection (1) or (3) must be provided –
- (a) in the form or manner specified in the request, and
 - (b) within the period specified in the request. 35

15 Civil sanctions

- (1) An authority that requests a person (P) to provide information under section 14(1) or (3) may give P an enforcement notice if P fails to comply with the request.
- (2) An enforcement notice must – 40
- (a) specify the information requested,

- (b) state that the authority may impose a penalty if P fails to provide the information within a specified period, which must be at least 28 days beginning with the date of issue of the notice, and
 - (c) state that P may make representations to the authority about the notice within that period. 5
- (3) The authority may by penalty notice impose a penalty on P if P fails to provide the specified information in the specified period.
- (4) The amount of the penalty –
 - (a) is to be determined by the authority, but
 - (b) must not exceed £1000. 10
- (5) In deciding whether to impose a penalty and in determining the amount of a penalty the authority must have regard to –
 - (a) any representations under subsection (2)(c), and
 - (b) any partial compliance with the initial request under section 14.
- (6) The penalty notice must – 15
 - (a) specify the reasons for the decision to impose a penalty,
 - (b) state a period within which payment must be made, which must be at least 14 days beginning with the date of issue of the notice, and
 - (c) notify P of the right of appeal under subsection (8).
- (7) A penalty is recoverable as a debt. 20
- (8) The Minister must by regulations provide a right of appeal against penalties; and the regulations must –
 - (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.
- (9) The Minister may by order substitute a different amount for the amount specified in subsection (4)(b). 25
- (10) In this section “the Minister” means –
 - (a) the Secretary of State in relation to penalties issued by authorities in England, and
 - (b) the Welsh Ministers in relation to penalties issued by authorities in Wales. 30

16 Funding

- (1) The Environment Agency may make grants in respect of expenditure incurred or expected to be incurred in connection with flood or coastal erosion risk management in England. 35
- (2) The Welsh Ministers may make grants in respect of expenditure incurred or expected to be incurred in connection with flood or coastal erosion risk management in Wales.
- (3) A grant may be subject to conditions (including conditions as to repayment and interest). 40

17 Levies

- (1) The Environment Agency may issue levies to the lead local flood authority for an area in respect of the Agency’s flood and coastal erosion risk management functions in that area.
- (2) A levy issued under this section shall be issued in accordance with regulations under section 74 of the Local Government Finance Act 1988. 5
- (3) The Agency shall be treated as a levying body within the meaning of that section.
- (4) This section is subject to the requirement in section 23(2) to obtain the consent of the appropriate Regional Flood and Coastal Committee. 10

*3. Supplemental powers and duties***18 Environment Agency: reports**

- (1) The Environment Agency must report to the Minister about flood and coastal erosion risk management.
- (2) In particular, the report must include information about the application of the national flood and coastal erosion risk management strategies under sections 7 and 8. 15
- (3) The Minister may make regulations about—
 - (a) the times or intervals at which a report must be made, and
 - (b) the content of a report. 20
- (4) In this section “the Minister” means—
 - (a) the Secretary of State in relation to flood and coastal erosion risk management in England, and
 - (b) the Welsh Ministers in relation to flood and coastal erosion risk management in Wales. 25

19 Local authorities: investigations

- (1) In the event of a flood in its area, a lead local flood authority must investigate—
 - (a) which risk management authorities have relevant flood risk management functions, and
 - (b) whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood. 30
- (2) An authority must—
 - (a) publish the results of its investigation under subsection (1), and
 - (b) notify any relevant risk management authorities.

20 Ministerial directions

- (1) The Minister may direct a risk management authority to exercise a flood or coastal erosion risk management function on behalf of another risk management authority (the “defaulting authority”). 35
- (2) The Minister may give a direction under subsection (1) only if satisfied that the defaulting authority— 40

- (a) has failed to exercise the function, or
 - (b) has failed to exercise the function in accordance with the national strategies under sections 7 and 8 or the local strategies under sections 9 and 10.
 - (3) A direction under subsection (1) may include provision about the recovery of costs of compliance from the defaulting authority. 5
 - (4) The Minister must –
 - (a) send a copy of the direction to the defaulting authority, and
 - (b) publish the direction.
 - (5) But the Minister may decide not to publish a direction if it appears that to do so would be contrary to the interests of national security. 10
 - (6) In this section “the Minister” means –
 - (a) the Secretary of State in relation to risk management authorities that exercise functions only in England,
 - (b) the Welsh Ministers in relation to risk management authorities that exercise functions only in Wales, and 15
 - (c) the Secretary of State and the Welsh Ministers acting jointly in relation to risk management authorities that exercise functions in both England and Wales.
- 21 Lead local authorities: duty to maintain a register** 20
- (1) A lead local flood authority must establish and maintain –
 - (a) a register of structures or features which, in the opinion of the authority, are likely to have a significant effect on a flood risk in its area, and
 - (b) a record of information about each of those structures or features, including information about ownership and state of repair. 25
 - (2) The Minister may by regulations make provision about the content of the register and record.
 - (3) The lead local flood authority must arrange for the register to be available for inspection at all reasonable times. 30
 - (4) The Minister may by regulations provide for information of a specified description to be excluded from the register or record.
 - (5) In this section, “the Minister” means –
 - (a) the Secretary of State in relation to authorities in England, and
 - (b) the Welsh Ministers in relation to authorities in Wales. 35

4. Regional Flood and Coastal Committees

22 Establishment

- (1) The Environment Agency –
 - (a) must divide England and Wales into regions for the purposes of this section, 40
 - (b) must establish a Regional Flood and Coastal Committee for each region that is wholly or mainly in England (an “English Committee”), and

- (c) must establish a Regional Flood and Coastal Committee for each region that is wholly or mainly in Wales (a “Welsh Committee”).
- (2) The Minister may by regulations –
- (a) specify the procedure to be followed by the Agency in exercising its functions under subsection (1)(a) (which may include provision about revision, consultation and appeals); 5
- (b) make transitional provision with respect to the establishment of Regional Flood and Coastal Committees in place of regional flood defence committees.
- 23 Consultation and consent** 10
- (1) The Environment Agency must –
- (a) consult each Regional Flood and Coastal Committee about the way in which the Agency proposes to carry out its flood and coastal erosion risk management functions in relation to the Committee’s region, and
- (b) take into account any representations (whether made in response to a consultation or otherwise) made by the Committee about the exercise of the Agency’s flood and coastal erosion risk management functions in that region. 15
- (2) The Agency may not issue a levy under section 17 to a lead local flood authority without the consent of the Regional Flood and Coastal Committee for the region concerned. 20
- (3) The Agency may not spend revenue under section 118 of the Water Resources Act 1991 without the consent of the Regional Flood and Coastal Committee for the region in which the revenue is raised.
- 24 Membership** 25
- The Minister may by regulations make provision about –
- (a) the number of members of a Regional Flood and Coastal Committee,
- (b) conditions of eligibility for appointment,
- (c) the method of selection and appointment of the members (including who is to appoint them), and 30
- (d) the proceedings of a Committee (including provision about (i) quorum, and (ii) the nature and extent of a majority required for specified purposes).
- 25 Money**
- (1) The Minister may direct the Environment Agency to pay to or in respect of persons who chair or have chaired Regional Flood and Coastal Committees – 35
- (a) remuneration,
- (b) allowances,
- (c) sums by way of or in respect of pension, and
- (d) compensation, if the Minister thinks that a person who ceases to chair a Committee should, because of special circumstances, receive compensation. 40
- (2) The Agency may pay allowances to members of Committees.

- (3) The Minister may determine amounts or maximum amounts to be paid under this section.

26 “The Minister”

In this group of sections “the Minister” means –

- (a) the Secretary of State in relation to English Committees, and 5
(b) the Welsh Ministers in relation to Welsh Committees.

5. General

27 Sustainable development

- (1) In exercising a flood or coastal erosion risk management function, an authority listed in subsection (3) must aim to make a contribution towards the achievement of sustainable development. 10
- (2) The Minister must issue guidance about how authorities are to discharge the duty under subsection (1) (including guidance about the meaning of sustainable development); and the authorities must have regard to the guidance. 15
- (3) The authorities are –
(a) lead local flood authorities,
(b) district councils,
(c) internal drainage boards, and
(d) highway authorities. 20
- (4) In this section “flood risk management function” means (in place of the definition in section 4) any of the following functions which may be exercised by an authority listed in subsection (3), in so far as it is or may be exercised for a purpose connected with flood risk management –
(a) a function under this Part, 25
(b) a function under the Land Drainage Act 1991,
(c) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and
(d) any other function specified for the purposes of this section by order made by the Minister. 30
- (5) In this section “Minister” means –
(a) the Secretary of State, in relation to flood and coastal erosion risk management in England, and
(b) the Welsh Ministers, in relation to flood and coastal erosion risk management in Wales. 35

28 Power to make further amendments

- (1) The Minister may by order amend an Act listed in subsection (2) if the Minister thinks the amendment necessary or desirable in consequence of this Part.
- (2) The Acts are –
(a) the Public Health Act 1936 (so far as relevant to water), 40
(b) the Coast Protection Act 1949,

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- (c) the Highways Act 1980 (so far as relevant to water),
 - (d) the Land Drainage Act 1991,
 - (e) the Water Resources Act 1991, and
 - (f) the Environment Act 1995.
- (3) In this section “the Minister” means – 5
- (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales.
- (4) An order under this section may not be made unless a draft has been laid before and approved by resolution of – 10
- (a) each House of Parliament, in the case of an order made by the Secretary of State, and
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.
- 29 Restructuring**
- (1) The Minister may by order reassign responsibilities of lead local flood authorities, district councils and internal drainage boards in respect of flood risk and coastal erosion risk. 15
- (2) An order may in particular – 20
- (a) amend the definition of risk management authority in section 6;
 - (b) reassign a flood risk management function;
 - (c) reassign a coastal erosion risk management function.
- (3) An order may amend this Act or another enactment.
- (4) Before making an order the Minister must consult the authorities that would be affected by it.
- (5) An order under this section may not be made unless a draft has been laid before and approved by resolution of – 25
- (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. 30
- (6) In this section “the Minister” means – 35
- (a) the Secretary of State in relation to risk management authorities in England, and
 - (b) the Welsh Ministers in relation to risk management authorities in Wales.
- 30 Designation of features**
- Schedule 1 (designation of features) shall have effect.
- 31 Amendment of other Acts**
- Schedule 2 (which amends other Acts in connection with this Part) shall have effect. 40

PART 2

MISCELLANEOUS

- 32 Sustainable drainage**
Schedule 3 (sustainable drainage) shall have effect.
- 33 Reservoirs** 5
Schedule 4 (reservoirs) shall have effect.
- 34 Special administration**
Schedule 5 (special administration) shall have effect.
- 35 Provision of infrastructure**
(1) After section 36 of the Water Industry Act 1991 insert – 10

“PART 2A

REGULATION OF PROVISION OF INFRASTRUCTURE

- 36A Regulations**
- (1) The Minister may make regulations about the provision of infrastructure for the use of water undertakers or sewerage undertakers. 15
- (2) The regulations may in particular –
(a) confer regulatory functions on the Authority;
(b) apply provisions of Part 2 with or without modification;
(c) make provision similar to a provision of Part 2. 20
- (3) The regulations must specify the activities to which they apply; in particular, the regulations may –
(a) apply to designing, constructing, owning and operating infrastructure, and
(b) define “infrastructure”. 25
- (4) Sections 36B to 36D and 36F specify other kinds of provision that the regulations may make; and in those sections “infrastructure project” means a project in connection with any of the things specified in subsection (3)(a).
- 36B Tendering** 30
- (1) Regulations under section 36A may –
(a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;
(b) allow the Authority to specify one or more infrastructure projects which must be put out to tender; 35
(c) allow the Minister to delegate the power under paragraph (a) to the Authority.

-
- (2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.
- (3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose. 5
- (4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.
- (5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations – 10
- (a) may require the undertaker to consult the Authority or the Minister about the terms on which an infrastructure project is put out to tender;
 - (b) may specify factors to be taken into account in considering bids; 15
 - (c) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept.
- 36C Criteria for tendering**
- (1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1). 20
- (2) The regulations may –
- (a) provide that the Authority must consult the Minister before exercising a power by virtue of section 36B(1);
 - (b) require the Authority to publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1). 25
- 36D Designation as an infrastructure provider**
- (1) Regulations under section 36A may enable the Minister or the Authority to designate as an “infrastructure provider” a person who appears to the Minister or Authority to be wholly or partly responsible for an infrastructure project that was put out to tender in accordance with regulations by virtue of section 36B. 30
- (2) The regulations may –
- (a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers), 35
 - (b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers), 40
 - (c) relieve water or sewerage undertakers of specified duties to a specified extent, 45
 - (d) provide for designation to be conditional,

- (e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a)),
- (f) include provision about enforcement of powers, duties, conditions and limitations, and 5
- (g) include provision for variation or revocation of designation.

36E Ministerial responsibility

- (1) In this Part “the Minister” means –
 - (a) the Secretary of State, in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers, 10
 - (b) the Welsh Ministers, in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers, and
 - (c) the Secretary of State and the Welsh Ministers acting jointly in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers and one or more Welsh undertakers. 15
- (2) In this section and section 36F –
 - (a) “an English undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England, and 20
 - (b) “a Welsh undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in Wales.

36F Cross-border infrastructure projects

- (1) Regulations under section 36A may make provision about cross-border infrastructure projects. 25
- (2) In this section “cross-border infrastructure project” means an infrastructure project which –
 - (a) relates to infrastructure in Wales which is for the use of an English undertaker, or 30
 - (b) relates to infrastructure in England which is for the use of a Welsh undertaker.
- (3) Regulations made by the Secretary of State about cross-border infrastructure projects –
 - (a) may confer functions on the Welsh Ministers, and 35
 - (b) must require the Secretary of State or the Authority to consult the Welsh Ministers before exercising any power under section 36B(1) to specify projects which must be put out to tender.
- (4) Regulations made by the Welsh Ministers about cross-border infrastructure projects – 40
 - (a) may confer functions on the Secretary of State, and
 - (b) must require the Welsh Ministers or the Authority to consult the Secretary of State before exercising any power under section 36B(1) to specify projects which must be put out to tender.

36G Regulations: procedure

- (1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of –
- (a) each House of Parliament, in the case of regulations made by the Secretary of State, 5
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers, or
 - (c) each House of Parliament and the National Assembly for Wales, in the case of regulations made by the Secretary of State and the Welsh Ministers acting jointly. 10
- (2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister’s opinion represent interests likely to be affected by the regulations.
- (3) Section 213 applies to regulations made by the Welsh Ministers under section 36A as it applies to regulations made by the Secretary of State.” 15
- (2) In section 213(1) of the Water Industry Act 1991 (regulations) for “or 17D(8)” substitute “, 17D(8), 36A”.

36 Water use: temporary bans

For section 76 of the Water Industry Act 1991 (temporary hosepipe bans) substitute – 20

“76 Temporary bans on use

- (1) A water undertaker may prohibit one or more specified uses of water supplied by it if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution.
- (2) Only the following uses of water may be prohibited – 25
- (a) watering a private garden using a hosepipe;
 - (b) cleaning a private motor-vehicle using a hosepipe.
- (3) The Minister may by order add a non-domestic purpose to the list in subsection (2).
- (4) A prohibition must specify – 30
- (a) the date from which it applies, and
 - (b) the area to which it applies (which may be all or part of the undertaker’s area).
- (5) A person who contravenes a prohibition – 35
- (a) is guilty of an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges which are made in respect of prohibited uses (including arrangements for repayment or credit where charges are paid in advance). 40
- (7) A water undertaker may vary or revoke a prohibition.

76A Temporary bans: supplemental

- (1) A prohibition may –
 - (a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way); 5
 - (b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).
- (2) The Minister may by order –
 - (a) provide for exceptions to a category of use in section 76(2) (whether or not added under section 76(3)); 10
 - (b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in section 76(2) (whether or not added under section 76(3)); 15
 - (c) define a word or phrase used in section 76(2) (whether or not added under section 76(3)).
- (3) In particular, an order may –
 - (a) restrict a category of use by reference to how water is drawn;
 - (b) frame an exception by reference to ownership of land by a specified person or class of person; 20
 - (c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;
 - (d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer). 25
- (4) In this section and section 76 “the Minister” means –
 - (a) the Secretary of State in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in England, and 30
 - (b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in Wales.
- (5) Subject to provision under subsection (2), a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe. 35

76B Temporary bans: procedure

- (1) A prohibition takes effect only if this section is complied with.
- (2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms – 40
 - (a) in at least two newspapers circulating in the area to which it is to apply, and
 - (b) on the water undertaker’s internet website.
- (3) The notice must give details of how to make representations about the proposed prohibition. 45

-
- (4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.
- (5) A water undertaker must give notice of a revocation of a prohibition –
- (a) in at least two newspapers circulating in the area to which it is to apply, and 5
 - (b) on the water undertaker’s internet website.
- (6) The revocation may not take effect until at least one notice under subsection (5) has been given.
- 76C Orders under sections 76 and 76A**
- (1) Section 213 applies to orders under section 76(3) or 76A(2) as it applies to regulations. 10
- (2) But –
- (a) an order made by the Secretary of State under section 76(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, 15
 - (b) an order made by the Welsh Ministers under section 76(3) may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
 - (c) an order made by the Welsh Ministers under section 76A(2) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.” 20
- 37 Civil sanctions**
- (1) An order under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) which makes provision about offences under the Acts listed in subsection (2) may include provision about offences inserted, amended or affected by this Act. 25
- (2) Those Acts are –
- (a) the Coast Protection Act 1949,
 - (b) the Reservoirs Act 1975,
 - (c) the Land Drainage Act 1991, 30
 - (d) the Water Industry Act 1991, and
 - (e) the Water Resources Act 1991.
- 38 Incidental flooding or coastal erosion: Environment Agency**
- (1) If Conditions 1, 2 and 3 are satisfied the Environment Agency may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause – 35
- (a) flooding,
 - (b) an increase in the amount of water below the ground, or
 - (c) coastal erosion.
- (2) Condition 1 is that the Agency considers the work in the interests of – 40
- (a) nature conservation (including conservation of the landscape),
 - (b) preservation of cultural heritage, or
 - (c) people’s enjoyment of the environment or of cultural heritage.

-
- (3) Condition 2 is that the Agency considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d).
- (4) Condition 3 is that the Agency has consulted –
- (a) the lead local flood authority for the area in which the work is to be carried out, 5
 - (b) the district council (if any) for that area, and
 - (c) the internal drainage board (if any) for that area.
- (5) In carrying out work in reliance on this section, the Agency must have regard to –
- (a) the national flood and coastal erosion risk management strategies under sections 7 and 8, 10
 - (b) any guidance issued under those sections,
 - (c) the local flood risk management strategy under section 9 or 10 for the area concerned, and
 - (d) any guidance issued under those sections by the lead local flood authority for the area concerned. 15
- (6) The Agency may arrange for work to be carried out in reliance on this section on the Agency’s behalf by –
- (a) a lead local flood authority,
 - (b) a district council, or 20
 - (c) an internal drainage board.
- (7) Subsection (1) may be relied on to carry out work whether or not it forms part of the exercise of other powers; but nothing in subsection (1) restricts the powers of the Environment Agency under another enactment.
- (8) The Minister must by order apply to this section (with or without modifications) provisions of the Water Resources Act 1991 about – 25
- (a) compulsory purchase,
 - (b) powers of entry, and
 - (c) compensation.
- (9) An order under subsection (8) may not be made unless a draft has been laid before and approved by resolution of – 30
- (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. 35
- (10) In this section “the Minister” means –
- (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales.
- (11) Other expressions in this section have the same meaning as in Part 1.
- 39 Incidental flooding or coastal erosion: local authorities 40**
- (1) If Conditions 1 to 4 are satisfied a local authority may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause –
- (a) flooding,
 - (b) an increase in the amount of water below the ground, or

- (c) coastal erosion.
- (2) Condition 1 is that the authority considers the work in the interests of –
- (a) nature conservation (including conservation of the landscape),
 - (b) preservation of cultural heritage, or
 - (c) people’s enjoyment of the environment or of cultural heritage. 5
- (3) Condition 2 is that the authority considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d).
- (4) Condition 3 is that –
- (a) the authority has consulted the Environment Agency, and
 - (b) if the work affects a main river, the Environment Agency has consented to it. 10
- (5) Condition 4 is that the authority has consulted any other local authority whose area may be affected by the work.
- (6) In this section “local authority” means –
- (a) a lead local flood authority, 15
 - (b) a district council for an area for which there is no unitary authority, and
 - (c) an internal drainage board.
- (7) In carrying out work in reliance on this section, an authority must have regard to –
- (a) the national flood and coastal erosion risk management strategies under sections 7 and 8, 20
 - (b) any guidance issued under those sections,
 - (c) the local flood risk management strategy under section 9 or 10 for the area concerned, and
 - (d) any guidance issued under those sections by the lead local flood authority for the area concerned. 25
- (8) An authority may arrange for work to be carried out in reliance on this section on its behalf by –
- (a) the Environment Agency, or
 - (b) another local authority. 30
- (9) Subsection (1) may be relied on to carry out work whether or not it forms part of the exercise of other powers; but nothing in subsection (1) restricts the powers of an authority under another enactment.
- (10) The Environment Agency may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in England in respect of work carried out in reliance on this section. 35
- (11) The Welsh Ministers may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in Wales in respect of work under this section.
- (12) The Minister must by order apply to this section (with or without modifications) provisions of the Water Resources Act 1991 about – 40
- (a) compulsory purchase,
 - (b) powers of entry, and
 - (c) compensation.

- (13) An order under subsection (12) may not be made unless a draft has been laid before and approved by resolution of –
- (a) each House of Parliament, in the case of an order made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers. 5
- (14) In this section “the Minister” means –
- (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales.
- (15) Other expressions in this section have the same meaning as in Part 1. 10

40 Compulsory works orders

- (1) The amendments made to section 167(1) of the Water Industry Act 1991 (compulsory works orders) by paragraph 50 of Schedule 2 to the Planning Act 2008 (amendments consequential on the development consent regime) shall cease to have effect. 15
- (2) Instead, after section 167(2) insert –
- “(2A) The Secretary of State may not exercise the power under subsection (2) in respect of anything to be done in England.”
- (3) The amendment made by subsection (2) does not prevent anything being done by the Welsh Ministers (as a result of a transfer of functions under or by virtue of the Government of Wales Act 1998 or 2006). 20

41 Agreements on new drainage systems

- (1) After section 106A of the Water Industry Act 1991 (sustainable drainage - inserted by Schedule 3 of this Act) insert –
- “106B Requirement to enter into agreement before construction 25**
- (1) A person may exercise the right under section 106(1) in respect of a lateral drain or sewer constructed after the commencement of this section only if Conditions 1 and 2 are satisfied.
- (2) Condition 1 is that an agreement was entered into under section 104 in respect of the drain or sewer. 30
- (3) Condition 2 is that the agreement included –
- (a) provision about the standards according to which the drain or sewer was to be constructed, and
 - (b) provision about adoption of the drain or sewer by the sewerage undertaker. 35
- (4) Provision for the purposes of Condition 2(a) must either –
- (a) incorporate or accord with standards published by the Minister, or
 - (b) depart from those standards by express consent of the parties to the agreement. 40
- (5) Provision for the purposes of Condition 2(b) must –

-
- (a) include provision for adoption to occur automatically upon the occurrence of specified events, and
- (b) comply with any regulations made by the Minister (which may concern the provision required by paragraph (a) of this subsection). 5
- (6) Subsection (1) does not apply –
- (a) to drainage systems required to be approved in accordance with Schedule 3, or
- (b) in other circumstances specified by the Minister in regulations.
- (7) Where a person seeks to exercise the right under section 106(1) in reliance on satisfying Conditions 1 and 2, an undertaker may not refuse connection – 10
- (a) whether or not in reliance on section 106(4), and
- (b) whether or not the terms of the agreement under section 104 (including terms required by this section) have been complied with. 15
- (8) In this section “the Minister” means –
- (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
- (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.” 20
- (2) For section 105(2) of the Water Industry Act 1991 (appeals: s.104 agreements) substitute –
- “(2) A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).” 25
- (3) At the end of section 104 of that Act (agreement to adopt) add –
- “(9) Undertakers shall have regard to any guidance about agreements under this section issued by – 30
- (a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or
- (b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.”
- (4) At the end of section 112 (requirement that proposed drain or sewer be constructed so as to form part of general system) add – 35
- “(8) A requirement imposed under this section may not be inconsistent with, or more onerous than, standards published for the purposes of section 106B.”
- 42 Drainage: concessionary charges for community groups 40**
- (1) An undertaker’s charges scheme under section 143 of the Water Industry Act 1991 may include provision designed to reduce charges to community groups in respect of surface water drainage from their property.
- (2) Each undertaker may determine –
- (a) whether to include provision in reliance on subsection (1); 45

- (b) which classes of community group to benefit;
 - (c) what constitutes a community group (provided that the class is restricted to bodies that in the undertaker’s opinion provide benefit to the local community);
 - (d) what reduction to allow (subject to subsection (3)); 5
 - (e) different reductions for different classes of community group.
- (3) A reduction may not reduce a charge to nil, and must result in the application of a band or charge used for general purposes of the section 143 scheme.
- (4) For the purpose of subsection (2)(c) a benefit to the local community may –
- (a) be provided voluntarily, in the exercise of statutory functions or otherwise; 10
 - (b) be provided exclusively to the local community or to the local community as well as to a wider class or area;
 - (c) consist of or relate to the provision of (i) youth groups or community centres, (ii) places of worship or other religious facilities, (iii) recreational, cultural, social or sporting facilities, or (iv) a benefit of any other kind. 15
- (5) Undertakers shall have regard to any guidance issued by the Minister in respect of any aspect of subsections (2) to (4).
- (6) “The Minister” means – 20
- (a) in the case of an undertaker whose area is wholly or mainly in England, the Secretary of State, and
 - (b) in the case of an undertaker whose area is wholly or mainly in Wales, the Welsh Ministers.
- 43 Abolition of Fisheries Committee (Scotland) 25**
- (1) The Fisheries Committee appointed under section 5(2) of the Electricity (Scotland) Act 1979 (and continued in existence by paragraph 5 of Schedule 9 to the Electricity Act 1989) is abolished.
- (2) In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty) omit the entry relating to the Fisheries (Electricity) Committee. 30
- (3) In Schedule 9 to the Electricity Act 1989 (preservation of amenity and fisheries) omit paragraph 5.
- (4) In Schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities) omit the entry relating to the Fisheries (Electricity) Committee. 35
- (5) In Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (other Scottish public authorities) omit paragraph 65.
- PART 3**
- GENERAL 40
- 44 Pre-consolidation amendments**
- (1) The Secretary of State may by order amend a water Act–

- (a) to eliminate differences between two or more provisions (whether or not of the same Act);
 - (b) to simplify procedure;
 - (c) to correct errors or resolve obscurity.
- (2) The Secretary of State may make an order only if satisfied that – 5
- (a) it will make it easier to consolidate one or more water Acts, and
 - (b) the substantive effect of the change (if any) is proportionate to the advantage to be gained by consolidating the legislation and does not remove any protection.
- (3) The water Acts are – 10
- (a) this Act,
 - (b) the Public Health Act 1936 (so far as relevant to water),
 - (c) the Coast Protection Act 1949,
 - (d) the Reservoirs Act 1975,
 - (e) the Highways Act 1980 (so far as relevant to water), 15
 - (f) the Land Drainage Act 1991,
 - (g) the Water Industry Act 1991,
 - (h) the Water Resources Act 1991, and
 - (i) the Environment Act 1995 (so far as relevant to water).
- (4) An order may, in particular, aim to standardise provisions relating to – 20
- (a) appeals;
 - (b) compulsory purchase;
 - (c) rights of entry;
 - (d) compensation.
- (5) An order under this section may not be made unless – 25
- (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.
- (6) A draft laid under subsection (5) must be accompanied by an explanation of – 30
- (a) the effect of any changes made, and
 - (b) how they will make consolidation easier.

45 Subordinate legislation

- (1) In this section “subordinate legislation” means regulations and orders under this Act.
- (2) Subordinate legislation – 35
- (a) may apply generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include incidental, consequential or transitional provision.
- (3) Subordinate legislation shall be made by statutory instrument.
- (4) Subordinate legislation made by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (5) Subordinate legislation made by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

- (6) But subsections (4) and (5) do not apply –
 - (a) where an alternative procedure is expressly provided, or
 - (b) to orders under section 46.

46 Technical provision

- (1) This Act binds the Crown; but – 5
 - (a) nothing in this Act affects (i) Her Majesty in Her private capacity, or (ii) land in which there is an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, and
 - (b) subject to paragraph (a), section 221(2) to (8) of the Water Industry Act 1991 (Crown application) apply to this Act (for which purpose section 221(6) applies to all powers under this Act). 10
- (2) *There shall be paid out of money provided by Parliament –*
 - (a) *any expenditure incurred under or by virtue of this Act by the Secretary of State, and* 15
 - (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*
- (3) This Act comes into force as follows –
 - (a) section 43 and paragraph 42 of Schedule 4 come into force on a day specified by order of the Secretary of State, 20
 - (b) other provisions of Parts 1 and 2 come into force in relation to England in accordance with provision made by order of the Secretary of State,
 - (c) other provisions of Parts 1 and 2 come into force in relation to Wales in accordance with provision made by order of the Welsh Ministers,
 - (d) section 44 comes into force on a day specified by order of the Secretary of State, and 25
 - (e) section 45 and this section come into force on Royal Assent.
- (4) An order under subsection (3) may, in particular, provide for experimental staged commencement by reference to specified areas or other criteria.
- (5) This Act extends only to England and Wales, except that – 30
 - (a) section 43(1) extends to Scotland only,
 - (b) the amendments in section 43(2) to (5) have the same extent as the provisions amended,
 - (c) paragraph 42 of Schedule 4 extends to England and Wales and Scotland, and 35
 - (d) section 45 and this section extend to Scotland in their application to a provision mentioned in paragraphs (a) to (c).
- (6) An amendment by this Act of another Act does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 or 2006; and – 40
 - (a) this subsection applies irrespective of whether the amendment amends an existing function or confers a new function,
 - (b) if and to the extent that the amendment creates a new function replacing or similar to a function that has been transferred to the Welsh Ministers by or by virtue of those Acts, the new function is to be treated 45
as having been transferred in the same way as the old,

- (c) a provision made by or by virtue of either of those Acts in respect of a function amended or replaced by this Act (such as a provision about laying documents before the National Assembly for Wales instead of before Parliament) continues to apply to the provision as amended or replaced, and
 - (d) a transfer by or by virtue of those Acts in respect of a provision applied by subsection (1)(b) above has effect in relation to the provision as applied.
- (7) This Act may be cited as the Flood and Water Management Act 2010.

SCHEDULES

SCHEDULE 1

Section 30

RISK MANAGEMENT: DESIGNATION OF FEATURES

“Designating authority”

- 1 In this Schedule “designating authority” means – 5
- (a) the Environment Agency,
 - (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. 10

“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. 15
- (3) A designating authority may adopt a designation if –
- (a) the authority which made the designation no longer has relevant functions, 20
 - (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. 25

“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 30
 - (b) if different, the person responsible for managing or controlling the structure or feature.

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. 5
- (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. 10
- (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. 15

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.

Consent to alteration, removal or replacement 20

- 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). 25
- (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. 30
- (4) Consent may be –
- (a) general or specific;
 - (b) absolute or conditional.
- (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. 35

Provisional designation notice: procedure

- 7 (1) A designating authority may make a provisional designation by giving notice to the owner. 40

- (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.5
- (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. 10
- (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.

Designation notice: procedure

- 8 (1) A designating authority may make a designation by giving notice confirming a provisional designation to the owner. 15
- (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.20
- (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.25
30

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.35
- (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.40

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. 5

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 – 10
- (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 – 15
- (a) P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (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 20
 - (d) payment required under paragraph (c) is recoverable as a debt.

Emergency powers

- 12 (1) This paragraph applies if –
- (a) a person has contravened paragraph 5(1), and 25
 - (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, 30
 - (b) require the owner to pay the expenses of that action, and
 - (c) recover the expenses as a debt.

Powers of entry

- 13 (1) A person authorised by the responsible authority may at any reasonable time enter land – 35
- (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). 40

- (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 5
 - (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. 10
- (6) A person guilty of an offence under sub-paragraph (5) is liable –
 - (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. 15

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 20
 - (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 exercise of powers conferred by paragraph 13(1)(a) or (d), and 25
 - (b) P has contravened paragraph 5(1).
- (4) Condition 2 is that –
 - (a) the loss or disturbance is the result of the 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. 30
- (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)). 35
- (6) Disputes about compensation are to be determined by the Lands Tribunal.
- (7) In this paragraph “relevant authority” means the authority that authorised the entry to land under paragraph 13(1) or (2).

Appeals

- 15 (1) The Minister must by regulations provide a right of appeal against – 40
 - (a) designations,
 - (b) a refusal of 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 5
 - (b) make provision about procedure.
- (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 – 10
- (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.

Notices and applications

- 16 The Minister may by regulations make provision about – 15
- (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.

“The Minister” 20

- 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. 25

SCHEDULE 2

Section 31

RISK MANAGEMENT: AMENDMENT OF OTHER ACTS

Coast Protection Act 1949

- 1 The Coast Protection Act 1949 is amended as follows.
- 2 Section 2 (constitution of coast protection boards) is repealed. 30
- 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.” 35

-
- 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. 5
- (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. 10
- (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.” 15
- (3) Omit subsection (2).
- (4) In subsection (3) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 5 (1) Section 5 (coast protection work: objections and approvals) is amended as follows. 20
- (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 25
- (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 – 30
- (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”. 35
- (5) In subsection (5) –
- (a) at the beginning insert “In the case of work proposed by a coast protection authority,” and 40
- (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.” 5
- (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”, 10
- (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”. 15
- 6 In section 6 (power to make schemes for carrying out work) in subsection (1) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 7 (1) In section 8(1) (confirmation of works schemes) –
- (a) for “coast protection authority” substitute “coastal erosion risk management authority”, 20
- (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)”. 25
- (2) In section 8(5) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 8 In section 9 (carrying out of work) in subsection (4) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 9 In section 10 (recovery of coast protection charges) in subsections (2), (5) and (8) for “coast protection authority” substitute “coastal erosion risk management authority”. 30
- 10 In section 12 (maintenance and repair) in subsections (1) and (3) for “coast protection authority” substitute “coastal erosion risk management authority”. 35
- 11 In section 13 (recovery of maintenance cost) in subsections (1), (3)(b), (4) and (6) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 12 (1) Section 14 (compulsory acquisition of land) is amended as follows.
- (2) In subsection (1) – 40
- (a) for “coast protection authority” insert “coastal erosion risk management authority”, and
- (b) omit from “Provided that” to the end.
- (3) Omit subsection (2).

- 13 In section 19 (compensation for depreciation of value of an interest in land) in subsections (1) and (2) for “coast protection authority”, in each place, substitute “coastal erosion risk management authority”.
- 14 Section 20 (contributions towards expenses) is repealed.
- 15 Section 21 (grants to coast protection authorities) is repealed. 5
- 16 In section 23 (power to sell materials) in subsections (1) and (2) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 17 In section 24 (arbitrations) in subsection (3) for “coast protection authority” substitute “coastal erosion risk management authority”. 10
- 18 In section 25 (powers of entry and inspection) in subsections (1) and (9)(b) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 19 In section 26 (power to require information) in subsections (1) and (2) for “coast protection authority” substitute “coastal erosion risk management authority”. 15
- 20 In section 27 (acquisition of right of passage) in subsections (1), (4)(b) and (5) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 21 In section 28 (power of Minister to facilitate coast protection work) in subsections (1) and (2) for “coast protection authority”, in each place, substitute “coastal erosion risk management authority”. 20
- 22 In section 44 (regulations and orders) in subsection (2) for “coast protection authority” substitute “coastal erosion risk management authority”.
- 23 In section 45 (service) in subsection (2) for “coast protection authority” substitute “coastal erosion risk management authority”. 25
- 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.” 30
35

Land Drainage Act 1991

- 25 The Land Drainage Act 1991 is amended as follows.
- 26 Section 8 (concurrent powers of the Environment Agency) is repealed. 40
- 27 In section 9(1) (default powers of the Agency)—
 (a) omit “but without prejudice to section 8 above”, and
 (b) omit “flooding or”.

28 At the end of section 11 (arrangements between drainage authorities) add –

“(5) Two internal drainage boards may agree that one is to provide administrative, professional or technical services for the other.”

29 (1) After section 14 (general drainage powers of boards and local authorities) insert –

5

“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 Conditions 1 and 3 are satisfied.

10

(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.

15

(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 –

20

(a) surface runoff, or

(b) groundwater.

(6) Condition 3 is that the purpose of carrying out the work is to manage a flood risk in the authority’s area from –

(a) the sea, or

(b) an ordinary watercourse.

25

(7) In subsection (6)(b) 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) In this section “flood risk management work” means anything done –

30

(a) to maintain existing works (including buildings and structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;

35

(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;

40

(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;

45

- (g) to reduce or increase the level of water in a place;
 - (h) to alter or remove works.
- (9) Nothing in this section authorises a person to enter land except for the purpose of maintaining existing works.
- (10) Section 14(5) and (6) apply in relation to the exercise by any authority of powers under this section as to the exercise of powers under section 14. 5
- (11) 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. 10
- (12) 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 15
 - (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). 20
- 30 Section 17 (supervision by the Agency: works) is repealed.
- 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.” 25
 - (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.” 30
- 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,”. 35
 - (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. 40

- (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
- (5) In subsection (8) for “section 24” substitute “sections 24 and 25”.
- (6) For subsection (8)(b) substitute –
“(b) in relation to a watercourse in an area outside an internal drainage district, are references to the lead local flood authority for the area.” 10
- (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.”
- 33 (1) Section 25 (powers to require works for maintaining the flow of watercourse) is amended as follows. 15
- (2) In subsection (1) –
(a) omit “Subject to section 26 below”, and
(b) omit “or local authority”.
- (3) Omit subsection (2). 20
- (4) In subsections (6)(a), (7) and (8) omit “or local authority”.
- 34 Section 26 (competing jurisdictions under section 25) is repealed.
- 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”. 25
- (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”. 30
- (5) After subsection (5) insert –
“(5A) In this section and section 34, references to the relevant authority for an area –
(a) in relation to work in an area which forms part of an internal drainage district, are references to the drainage board for the district, and
(b) in relation to work in any other area, are references to the lead local flood authority for the area. 35
- (5B) “Lead local flood authority” has the meaning given by section 6 of the Flood and Water Management Act 2010.” 40

- (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”.
- 5
- 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”.
- 10
- (4) In subsection (5) for “Agency or, as the case may be, the internal drainage board” substitute “relevant authority”.
- 15
- (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”.
- 20
- 37 In section 59 (grants) omit subsection (4)(c).
- 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. 25
 - (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. 30
 - (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. 35
 - (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”.
- 40

(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.”	
39	In section 72 (interpretation) in subsection (1) after the definition of “conservancy authority” insert –	5
	““culvert” means a covered channel or pipe which prevents the obstruction of a watercourse or drainage path by an artificial construction.”	
	<i>Water Resources Act 1991</i>	10
40	The Water Resources Act 1991 is amended as follows.	
41	Section 106 (obligation to carry out flood defence functions through committees) is repealed.	
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”.	15
43	(1) Section 118 (special duties with respect to flood defence revenues) is amended as follows.	
	(2) In subsection (1) –	20
	(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”.	25
	(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”.	30
	(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”.	35
	(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.”	40
44	Section 133 (power to authorise the Agency to issue levies) is repealed.	

- 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 5
 - (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.”
- 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 – 10
- (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.” 15
- 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; 20
 - (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. 25
- (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 30
 - (b) a main river.
- (1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.
- (1D) In this section “flood risk management work” means anything done – 35
- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work; 40
 - (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; 45

- (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; 5
- (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) – 10
- (a) omit “in connection with a main river”, and
- (b) at the end add “under this section”.
- (5) In subsection (7) omit from “; and subsections (2)” to the end.
- (6) The heading becomes “General powers to carry out works”.
- 48 After section 204(2)(c) (exceptions to prohibition on disclosure of information) insert – 15
- “(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;”.
- 49 In Schedule 25 (byelaws) for paragraph 5(1)(a) and (b) substitute – 20
- “for any of Purposes 1 to 4.
- (1A) Purpose 1 is to secure the efficient working of a drainage system.
- (1B) Purpose 2 is to regulate the effects on the environment of a drainage system.
- (1C) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 165. 25
- (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).”

Water Industry Act 1991

- 50 After section 206(3)(c) of the Water Industry Act 1991 (exceptions to prohibition on disclosure of information) insert – 30
- “(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;”.

Environment Act 1995

- 51 The Environment Act 1995 is amended as follows. 35
- 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.” 40

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

Local Government Act 2000

- 54 After section 21E of the Local Government Act 2000 (overview and scrutiny committees: partner authorities) insert – 5

“21F Overview and scrutiny committees: flood risk management

- (1) This section applies to a local authority which is a lead local flood authority for an area in England.
- (2) The arrangements required under section 21(2) include arrangements to review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority’s area. 10
- (3) A risk management authority must comply with a request made by an overview and scrutiny committee, in the course of arrangements under subsection (2), for – 15
- (a) information;
- (b) a response to a report.
- (4) The Secretary of State may make regulations about the duty under subsection (3) (which may, in particular, include provision about (i) procedure, (ii) notices, (iii) exemptions, (iv) requirement to attend to give information orally, (v) the nature of information and responses that may be required, and (vi) publication). 20
- (5) A risk management authority must have regard to reports and recommendations of an overview and scrutiny committee in the course of arrangements under subsection (2). 25
- (6) Regulations under section 123 of the Local Government and Public Involvement in Health Act 2007 may make provision about the application of this section in relation to joint overview and scrutiny committees. 30
- (7) Expressions used in this section have the same meaning as in Part 1 of the Flood and Water Management Act 2010.”

SCHEDULE 3

Section 32

SUSTAINABLE DRAINAGE

“*Drainage system*” 35

- 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 – 40

- (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 paragraph 219(1) of the Water Industry Act 1991. 5
- (4) “Natural watercourse” means a river or stream.

“Sustainable drainage”

- 2 “Sustainable drainage” means managing rainwater (including snow and other precipitation) with the aim of –
- (a) reducing damage from flooding, 10
 - (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.

Cross-border systems 15

- 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).

“The Minister” 20

- 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.

National standards

- 5 (1) The Minister shall publish national standards for the implementation of sustainable drainage. 25
- (2) Standards must address the way in which drainage systems –
- (a) are designed,
 - (b) are constructed,
 - (c) are maintained, and 30
 - (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. 35
- (4) The Minister must consult before publishing standards.

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; 5
 - (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; 10
 - (f) the Council of the Isles of Scilly.
- (3) The Minister may by order appoint a body as approving body for drainage systems in a specified area (instead of the body that would be the approving body under sub-paragraph (1)).
- (4) 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). 15
- (5) An order under sub-paragraph (3)—
- (a) if it includes provision under sub-paragraph (4)—
 - (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 20
 - (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 25
 - (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. 30

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. 35
- (2) For the purposes of sub-paragraph (1)—
- (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. 40
- (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— 45

- (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
- (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).

Applications for approval

- 8 (1) This paragraph provides two approaches for applying for approval required by paragraph 7. 10
- (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 – 15
- (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. 20

Free-standing application for approval

- 9 (1) This paragraph provides for free-standing applications for approval under paragraph 7.
- (2) An application must – 25
- (a) be in any form required by the approving body,
 - (b) contain or be accompanied by any information required by the approving body, and
 - (c) be accompanied by any fee chargeable in accordance with paragraph 13.

Combined applications 30

- 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 – 35
- (a) consult the approving body (if different) in determining the application for planning permission, and
 - (b) 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. 40

Determination of application for approval

- 11 (1) On considering an application for approval the approving body must –
- (a) grant it, if satisfied that the drainage system if constructed as proposed will comply with national standards for sustainable drainage, or 5
 - (b) refuse it, if not satisfied.
- (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), 10
 - (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. 15
- (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; 20
 - (c) the relevant highway authority for a road which the approving body thinks may be affected;
 - (d) British Waterways, 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. 25
- (4) As soon as is reasonably practicable after determining an application for approval the approving body must notify –
- (a) the applicant, and
 - (b) any person consulted under sub-paragraph (3).

Non-performance bonds 30

- 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 35
 - (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) – 40
- (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 45

- (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. 5

Fees

- 13 (1) The Minister shall by regulations provide for fees for applications for approval.
- (2) The regulations may – 10
- (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. 15

Enforcement

- 14 (1) The Minister shall by order provide for the enforcement of the requirement for approval in paragraph 7(1). 20
- (2) An order may, in particular, make provision about cases where –
- (a) construction is commenced without a drainage system having been approved,
- (b) conditions of approval are breached, or
- (c) construction does not conform to the approved proposals. 25
- (3) An order may, in particular, provide for –
- (a) notices (including enforcement notices, stop notices, temporary notice and breach of condition notices),
- (b) applications to a court or tribunal,
- (c) 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), 30
- (d) offences of failure to comply with the regulations or notices under them, 35
- (e) financial penalties,
- (f) rights of appeal, and
- (g) 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. 40
- (5) An order –
- (a) 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

- (b) 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.

Sewers and roads

- 15 (1) After section 106(1A) of the Water Industry Act 1991 (right to connect to public sewers) insert – 5

“(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). 10

- (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 15

(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 – 20

(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 – 25

“(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.”

Duty to adopt 30

- 16 (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 – 35

(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). 40

- (4) An approving body must have regard to any guidance issued by the Minister about the application of Condition 2.

- (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. 5

Exception 1: single-property systems

- 17 (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. 10
- (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.

Exception 2: roads

- 18 (1) The adoption duty does not apply to any part of a drainage system which is a publicly-maintained road. 15
- (2) If part of an adopted drainage system becomes a publicly-maintained road, the adoption lapses in respect of that part.
- (3) Where a drainage system is adopted and part of the system is a publicly-maintained road (and that part is therefore not adopted), the maintaining authority must exercise its functions in respect of the road – 20
- (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.
- (4) “Publicly-maintained road” means a highway to which the duty under section 41 of the Highways Act 1980 applies (maintenance at public expense). 25

Additional exceptions

- 19 The Minister may by order provide additional exceptions to the adoption duty. 30

Power to adopt

- 20 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.

Effect of adoption 35

- 21 (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.

Process of adoption in pursuance of duty to adopt

- 22 (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 5
 - (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 – 10
- (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. 15
- (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, 20
 - (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), 25
 - (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, 30
 - (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, and
 - (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). 35
- (7) The Minister may make regulations about the timing and manner of compliance with sub-paragraph (6).

Process of voluntary adoption

40

- 23 (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. 5
- (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). 10
- (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). 15

Appeals

- 24 (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 20
 - (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.

Building Act 1984 25

- 25 (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).” 30
- (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 16(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 35
 - (b) a reference to a local authority is to be treated as a reference to the relevant approving body.
- (3) In section 84(1) of the Building Act 1984 (paving and drainage of yards and passages) omit the words “to a proper outfall”. 40

SCHEDULE 4

Section 33

RESERVOIRS

Introduction

1 The Reservoirs Act 1975 is amended as follows.

“Large raised reservoir” 5

2 Before section 1 insert –

“A1 “Large raised reservoir”: England and Wales

- (1) In this Act “large raised reservoir” means –
- (a) a large, raised structure designed or used for collecting and storing water, and 10
 - (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. 15
- (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). 20
- (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. 25
- (7) The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6). 30
- (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.” 35

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”. 5

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. 10
- (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. 15
- (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; 20
- (c) the appointment, or termination of appointment, of an engineer for a purpose of this Act.”
- 5 In section 21 (duty to provide information)—
- (a) in subsection (1)(a) omit the words from “(whether” to “capacity”, and 25
- (b) omit subsections (2) to (4).
- 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— 30
- (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— 35
- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.”

High-risk reservoirs

- 7 After section 2 (registration) insert—
- “2A Consideration of risk and provisional designation: England and Wales 40**
- (1) As soon as is reasonably practicable after the registration of a large raised reservoir under section 2 the Environment Agency shall

consider whether the reservoir is to be designated as a high-risk reservoir (applying the criteria set out in section 2C).

- (2) The Agency may –
 - (a) make a provisional designation by giving notice to the undertaker, or 5
 - (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 the Agency may be made, and 10
 - (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).

2B Designation

- (1) The Environment Agency may designate a large raised reservoir as a high-risk reservoir by giving notice confirming a provisional designation to the undertaker. 15
- (2) In deciding whether to confirm a provisional designation the Agency must have regard to the representations made in accordance with section 2A. 20
- (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, 25
 - (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 30
 - (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) The Environment Agency may designate a large raised reservoir as a high-risk reservoir if –
 - (a) the 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. 40
- (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, 45

	(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.	5
2D	Review	
	(1) The Environment 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	10
	(b) it may be appropriate to designate a large raised reservoir as a high-risk reservoir.	
	(2) Section 2A to 2C apply following a review as they apply following the registration of a reservoir.	15
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	20
	(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.”	25
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”.	
	<i>Panels of engineers</i>	
9	At the end of section 4 (panel of civil engineers) add –	30
	“(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.”	35
	<i>Construction and alteration</i>	
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”.	40

- (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). 5
- (6B) The Minister may by order substitute a different volume of water for the volume specified in subsection (6A).” 10
- 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) – 15
- (a) for “addition” substitute “alteration”, and
- (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”. 20
- (5) In section 8 (failure to comply with construction or alteration requirements) in subsection (1) –
- (a) in paragraph (a) after “increase” substitute “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.” 25
- (7) In section 8(4) for “addition” substitute “alteration”.
- (8) In section 8(5) –
- (a) omit “or addition”, and
- (b) omit “or, as the case may be, the reservoir with the addition”. 30
- (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”.

High-risk reservoirs: inspections

- 12 (1) Section 10 (inspections) is amended as follows. 35
- (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
- (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 the Environment Agency, and 10
 - (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.” 15
- (8) In subsection (6) for “as soon as practicable” substitute “, within the period specified in the report,”. 20
- (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 25
 - (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.”
- (10) In subsection (7) for “large raised reservoir” substitute “high-risk reservoir”. 30
- 13 In section 17 (powers of entry) in subsection (1)(b) after “safety” insert “, or as to the maintenance of the reservoir,”.
- 14 In section 19(1)(a) after “safety” insert “, or as to the maintenance of the reservoir”.
- 15 In section 22 (criminal liability) after subsection (1) insert – 35
- “(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.” 40

High-risk reservoirs: monitoring and supervision

- 16 In section 11 (records) in subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.
- 17 (1) Section 12 (supervision) is amended as follows.
- (2) In subsection (1) for “large raised reservoir” substitute “high-risk reservoir”. 5
- (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). 10
- (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. 15
- (7) The undertaker must notify the supervising engineer of – 20
- (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 – 25
- “(f) any written statement given under section 12(2) or (2A);
- (g) any direction given under section 12(6);”
- 18 In section 21(5) (information) for “large raised reservoir” substitute “high-risk reservoir”.
- 19 In section 22 (criminal liability) after subsection (1AB) (inserted by paragraph 15) insert – 30
- “(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. 35
- (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.”

Flood plans

40

- 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, 5
 - (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.” 10
- 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. 15
 - (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. 20
 - (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 – 25
 - (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 – 30
 - (a) subsections (2) to (7), and
 - (b) any requirements of a direction under section 12A.
 - (9) In this section “appointed engineer” means – 35
 - (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.”
- 22 (1) Section 19 (references) is amended as follows.
- (2) After subsection (1) insert – 40
- “(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 – 5
- “(4A) A referee under subsection (1A) may direct the engineer to issue a certificate for the purposes of section 12AA(3).”
- 23 (1) Section 20 (reports, certificates etc.) is amended as follows.
- (2) In subsection (4)(c) omit “modifying any such report as is mentioned in paragraph (b) above”. 10
- (3) After subsection (4)(g) (inserted by paragraph 17(6)) add –
- “(h) any direction given under section 12AA(4) or (7).”
- 24 In section 22 (criminal liability) after subsection (1AD) (inserted by section 18(2)) insert –
- “(1AE) An undertaker who fails to comply with section 12AA(4), (6)(a) or (7) is guilty of an offence and liable – 15
- (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.” 20

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”. 25
- (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. 30
- (1B) The interim certificate must specify –
- (a) the reduced water level,
- (b) the time by which it must be reduced, and 35
- (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.
- (1D) The engineer employed for the purposes of subsection (1) may vary an interim certificate by giving written notice to the undertaker. 40

- (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
- (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 the Environment Agency that a qualified civil engineer has not been employed as required by subsection (1) the Agency may by notice require the undertaker – 10
- (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 15
- (b) to notify the Agency of the appointment (whether it was made before or after the notice was given).”
- 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”. 20
- (3) In section 22 (criminal liability) in subsection (1)(b) after “12” insert “, 13”.

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”. 25
- (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 30
- (b) bringing a large raised reservoir back into use as a reservoir.”
- 28 In section 20 (reports, certificates etc.) in subsection (4)(b) omit from “and stated” to “safety”.

Powers of entry

- 29 In section 17 (powers of entry) for subsection (1)(a) substitute – 35
- “(a) for the purpose of carrying out an inspection, survey or other operation to determine whether any provision of this Act applies;”.

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 5
 - (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 10
 - (b) make provision about procedure (including the effect of pending appeals).”

Directions of engineers

31 In section 20(1) (general provision about documents: prescribed form) for “or certificate” substitute “, certificate or directions”. 15

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 20
 - (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. 25
- (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, 30
 - (c) the assessment procedure, which may include provision about oral or written representations, and
 - (d) timing.”

Information and reports

33 After section 21 (duty to provide information) insert – 35

“21A Power to require information

- (1) For the purposes of carrying out its functions under this Act, the Environment Agency may by notice require an undertaker to provide information specified in the notice.
- (2) The notice may require the information to be provided – 40

- (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** 5
- (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 – 10
- (a) an undertaker, and
- (b) an engineer appointed for any purpose of this Act.
- (3) The regulations may make provision about – 15
- (a) the form and manner of a report,
- (b) the timing of a report.”
- 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. 20
- (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.” 25
- 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”.
- 36 After section 22B insert – 30
- “22C Expenses**
- The undertaker must pay to the Environment Agency the amount of expenses reasonably incurred by the Agency in connection with the consultation of an engineer under –
- (a) section 8(3B), 35
- (b) section 9(8),
- (c) section 10(8), and
- (d) section 14(5).”

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. 5
- (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.” 10

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 – 15

“(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. 20

(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 or an order made under any provision listed in subsection (5) – 25

- (a) shall be subject to annulment in pursuance of a resolution of either House of Parliament, in the case of regulations or an order 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 regulations or an order made by the Welsh Ministers. 30

(5) The provisions are –

- (a) section A1(4) and (5),
- (b) section 2(2C),
- (c) section 2A(4), 35
- (d) section 2E(1),
- (e) section 14(6),
- (f) section 19A(1),
- (g) section 20A(1),
- (h) section 21B(1), and 40
- (i) 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 5
 - (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), 10
 - (c) section 6(6B),
 - (d) section 10(2), and
 - (e) section 13(4).”

Charges

- 39 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (b) insert – 15
- “(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;” 20

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 – 25
- (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. 30

Ministerial responsibility

- 41 (1) In the amendments of the Reservoirs Act 1975 made by this Schedule a reference to the Minister is a reference to – 35
- (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 41 of Schedule 4 to the Flood and Water Management Act 2010.” 40

Cross-border England-Scotland reservoirs

- 42 (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 5
 - (d) “the Scottish regime” means the 1975 Act as amended by the Flood Risk Management (Scotland) Act 2009 and regulations made by virtue of the 2009 Act.
- (2) The Secretary of State, with the consent of the Scottish Ministers, may by order provide that in relation to cross-border reservoirs – 10
- (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. 15
- (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 20
 - (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. 25
- (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.

SCHEDULE 5

Section 34

SPECIAL ADMINISTRATION

- Transfer schemes* 30
- 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”. 35
- (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”. 40
- 2 At the end of paragraph 3(2)(b) of Schedule 2 add “(but may not impose new liabilities on any other appointee);”.

Objectives

- 3 After section 23(2A) of the Water Industry Act 1991 (special administration order: effect) insert –
- “(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts – 5
- (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 – 10
- (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). 15
- (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 – 20
- (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 – 25
- (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; 30
- (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). 35
- (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. 40
- (2G) Regulations under subsection (2E) may not be made unless –
- (a) the Welsh Ministers have consented to the making of the regulations, and
- (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).” 45

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.*” 5
- (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,* 10
 (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).*” 15
- (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.*” 20
- (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”.* 25
- (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.*

Hive down 30

- 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* 35
 (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 –* 40
 (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. 5

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)). 10
- (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; 15
- (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). 20
- (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)). 25
- (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 30
- (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. 35
- (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”. 40

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,”.

5

Flood and Water Management Bill

A

B I L L

To make provision about water, including provision about the management of risks in connection with flooding and coastal erosion.

*Presented by Secretary Hilary Benn
supported by
The Prime Minister,
Mr Chancellor of the Exchequer,
Secretary John Denham, Mr Secretary Hain and
Huw Irranca-Davies*

*Ordered, by The House of Commons,
to be Printed, 19 November 2009.*

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