



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART IV

#### FLOOD DEFENCE

##### **Modifications etc. (not altering text)**

- C1** Pt. IV (ss. 105-113): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(iii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

#### *General*

##### **105 General functions with respect to flood defence.**

<sup>F1</sup>(1) .....

- (2) For the purpose of carrying out its flood defence functions the [<sup>F2</sup>Agency] shall from time to time carry out surveys of the areas in relation to which it carries out those functions.
- (3) In the exercise of the powers conferred by the following provisions of this Part and the other flood defence provisions of this Act due regard shall be had to the interests of fisheries, including sea fisheries.
- (4) Nothing in the following provisions of this Part or the other flood defence provisions of this Act shall prejudice or affect the provisions of Part V of this Act or the <sup>M1</sup>Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by that Part or that Act.

*Status: Point in time view as at 22/11/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Part IV. (See end of Document for details)*

#### Textual Amendments

- F1** S. 105(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 146, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F2** Word in s. 105 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

#### Modifications etc. (not altering text)

- C2** S. 105 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), Sch. 23 Pt. II para. 23 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Marginal Citations

- M1** 1975 c. 51.

### 106 Obligation to carry out flood defence functions through committees.

- (1) Without prejudice to any scheme for the appointment of local flood defence committees and subject to subsection (2) below, the [F<sup>3</sup>Agency] shall arrange for all its functions relating to flood defence under the following provisions of this Act and the <sup>M2</sup>Land Drainage Act 1991 to be carried out by regional flood defence committees, so that those functions of the [F<sup>3</sup>Agency] are carried out—
- (a) in relation to the area of each regional flood defence committee, by the committee for that area; and
  - (b) in cases involving the areas of more than one regional flood defence committee, by such committee, or jointly by such committees, as may be determined in accordance with arrangements made by the [F<sup>3</sup>Agency].
- (2) The [F<sup>3</sup>Agency] shall not make arrangements for the carrying out by any other body, or by any committee, of any of its functions with respect to—
- (a) the issuing of levies (within the meaning of the <sup>M3</sup>Local Government Finance Act 1988); or
  - (b) the making of drainage charges under Chapter II of Part VI of this Act; and nothing in this section shall enable the [F<sup>3</sup>Agency] to authorise any such other body or any committee to borrow money for purposes connected with the [F<sup>3</sup>Agency's] functions relating to flood defence.
- (3) The [F<sup>3</sup>Agency] may give a regional flood defence committee a direction of a general or specific character as to the carrying out of any function relating to flood defence, other than one of its internal drainage functions, so far as the carrying out of that function appears to the [F<sup>3</sup>Agency] likely to affect materially the [F<sup>3</sup>Agency's] management of water for purposes other than flood defence.
- (4) It shall be the duty of a regional flood defence committee to comply with any direction under subsection (3) above.
- (5) In subsection (3) above “internal drainage functions” means the functions of the [F<sup>3</sup>Agency] under sections 108, 139 and 140 below and the following provisions of the <sup>M4</sup>Land Drainage Act 1991, that is to say—
- (a) sections 2 to 9 (transfer to the [F<sup>3</sup>Agency] and supervision by the [F<sup>3</sup>Agency] of the functions of internal drainage boards);

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- (b) sections 38, 39 and 47 (differential drainage rates and exemptions from such rates);
- (c) sections 57 and 58(1) (provisions with respect to contributions by the [<sup>F3</sup>Agency] to the expenses of internal drainage boards and the expenses of the [<sup>F3</sup>Agency] as such a board).

#### Textual Amendments

**F3** Words in s. 106 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C3** S. 106 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), **Sch. 5 Pt. II para. 13(2), Sch. 23 Pt. II para. 23** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M2** 1991 c. 59.

**M3** 1988 c. 41.

**M4** 1991 c. 59.

### *Main river functions*

#### **107 Main river functions under the Land Drainage Act 1991.**

- (1) This section has effect for conferring functions in relation to main rivers on the [<sup>F4</sup>Agency] which are functions of drainage boards in relation to other watercourses.
- (2) Notwithstanding subsection (3) of section 21 of the Land Drainage Act 1991 (power to secure compliance with drainage obligations), the powers of the [<sup>F4</sup>Agency] in relation to a main river shall, by virtue of this section, include the powers which under that section are exercisable otherwise than in relation to a main river by the drainage board concerned; and the provisions of that section shall have effect accordingly.
- (3) The powers of the [<sup>F4</sup>Agency] in relation to a main river shall, by virtue of this section, include the powers which under section 25 of the Land Drainage Act 1991 (powers for securing the maintenance of flow of watercourses) are exercisable in relation to an ordinary watercourse by the drainage board concerned; and the provisions of that section and section 27 of that Act shall have effect accordingly.
- (4) Sections 33 and 34 of the Land Drainage Act 1991 (commutation of obligations) shall have effect where—
  - (a) any person is under an obligation imposed on him by reason of tenure, custom, prescription or otherwise to do any work in connection with the drainage of land (whether by way of repairing banks or walls, maintaining watercourses or otherwise); and
  - (b) that work is in connection with a main river,as they have effect in relation to an obligation to do work otherwise than in connection with a main river but as if the [<sup>F4</sup>Agency] were under a duty to take steps to commute the obligation and the references in those sections to the drainage board for the internal drainage district where the works fall to be done were omitted.
- (5) In this section—

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- (a) references to the exercise of a power in relation to a main river shall include a reference to its exercise in connection with a main river or in relation to the banks of such a river or any drainage works in connection with such a river; and
  - (b) expressions used both in this section and in a provision applied by this section have the same meanings in this section as in that provision.
- (6) The functions of the [F4Agency] by virtue of this section are in addition to the functions of the [F4Agency] which by virtue of the provisions of the M5Land Drainage Act 1991 are exercisable by the [F4Agency] concurrently with an internal drainage board.

#### Textual Amendments

**F4** Words in s. 107 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

**M5** 1991 c. 59.

### 108 Schemes for transfer to the [F5Agency] of functions in relation to main river.

- (1) The [F5Agency] may at any time prepare and submit to either of the Ministers for confirmation a scheme making provision for the transfer to the [F5Agency] from any drainage body of—
- (a) all rights, powers, duties, obligations and liabilities (including liabilities incurred in connection with works) over or in connection with a main river; and
  - (b) any property held by the drainage body for the purpose of, or in connection with, any functions so transferred;
- and the [F5Agency] shall prepare such a scheme and submit it to one of the Ministers if it is directed to do so by that Minister.
- (2) A scheme prepared and submitted under subsection (1) above may make provisions for any matter supplemental to or consequential on the transfers for which the scheme provides.
- (3) The Minister to whom a scheme is submitted under this section may by order made by statutory instrument confirm that scheme; and Schedule 14 to this Act shall have effect with respect to the procedure to be followed in connection with the making of such an order and with respect to challenges to such orders.
- (4) An order under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the Ministers or other persons in connection with the making or confirmation of the order, or with the making of the scheme confirmed by the order, are to be borne.
- (5) Where, under a scheme made by the [F5Agency] under this section, liabilities incurred in connection with drainage works are transferred to the [F5Agency] from a local authority, the [F5Agency] may require the local authority to make contributions to the [F5Agency] towards the discharge of the liabilities.

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- (6) If the amount to be paid by a local authority by way of contributions required under subsection (5) above is not agreed between the [<sup>F5</sup>Agency] and the local authority, it shall be referred to the arbitration of a single arbitrator appointed—
- (a) by agreement between them; or
  - (b) in default of agreement, by the Ministers.
- (7) The relevant Minister shall by regulations provide for the payment, subject to such exceptions or conditions as may be specified in the regulations, of compensation by the [<sup>F5</sup>Agency] to any officer or other employee of a drainage body who suffers loss of employment or loss or diminution of emoluments which is attributable to a scheme under this section or anything done in pursuance of such a scheme.
- (8) Regulations under subsection (7) above may include provision—
- (a) as to the manner in which and the persons to whom any claim for compensation by virtue of the regulations is to be made; and
  - (b) for the determination of all questions arising under the regulations.
- (9) In this section—
- “drainage body” means an internal drainage board or any other body having power to make or maintain works for the drainage of land;
- “the relevant Minister”—
- (a) in relation to employees of a drainage body wholly in Wales, means the Secretary of State;
  - (b) in relation to employees of a drainage body partly in Wales, means the Ministers; and
  - (c) in any other case, means the Minister.

#### Textual Amendments

- F5** Words in s. 108 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### 109 Structures in, over or under a main river.

- (1) No person shall erect any structure in, over or under a watercourse which is part of a main river except with the consent of and in accordance with plans and sections approved by the [<sup>F6</sup>Agency].
- (2) No person shall, without the consent of the [<sup>F6</sup>Agency], carry out any work of alteration or repair on any structure in, over or under a watercourse which is part of a main river if the work is likely to affect the flow of water in the watercourse or to impede any drainage work.
- (3) No person shall erect or alter any structure designed to contain or divert the floodwaters of any part of a main river except with the consent of and in accordance with plans and sections approved by the [<sup>F6</sup>Agency].
- (4) If any person carries out any work in contravention of this section the [<sup>F6</sup>Agency] may—
- (a) remove, alter, or pull down the work; and
  - (b) recover from that person the expenses incurred in doing so.

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- (5) Subsections (1) and (2) above shall not apply to any work carried out in an emergency; but a person carrying out any work excepted from those subsections by this subsection shall inform the [<sup>F6</sup>Agency] in writing as soon as practicable—
- (a) of the carrying out of the work; and
  - (b) of the circumstances in which it was carried out.
- (6) Nothing in this section shall be taken to affect any enactment requiring the consent of any government department for the erection of a bridge or any powers exercisable by any government department in relation to a bridge.

#### Textual Amendments

- F6** Words in s. 109 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

- C4** S. 109 modified (16.3.1992) by London Government Act 1992 (c. iii), **s. 32(9)(10)**  
S. 109 modified (18.12.1996) by 1996 c. 61, s. 52, **Sch. 15 Pt. III para. 11**
- C5** S. 109 amended (16.3.1992) by Aire and Calder Navigation Act 1992 (c. iv), **s. 33(12)**
- C6** S. 109 amended (18.6.1992) by British Railways (No. 2) Act 1992 (c. xi), **s. 42(8)**
- C7** S. 109 amended (16.3.1992) by Midland Metro Act 1992 (c. vii), **s. 21(9)**
- C8** S. 109 excluded (5.11.1993) by 1993 c. 42, **s. 25(1)** (with s. 30(1), Sch. 2 para. 9).
- C9** S. 109 applied (21.7.1994) by 1994 c. xv, **s. 43(11)**
- C10** S. 109 applied (with modifications) (7.3.1995) by S.I. 1995/519, **arts. 3(9)**, 57-64
- C11** S. 109 excluded (2.4.2004) by Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), **arts. 1, 4(8)(b)**
- C12** S. 109 excluded (11.2.2005) by Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), **arts. 1, 5(9)** (with arts. 65, 66)
- C13** S. 109 modified (22.3.2005) by Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005/927), **Sch. 11 para. 11** (with art. 51)
- C14** S. 109 modified (26.8.2005) by River Tyne (Tunnels) Order 2005 (S.I. 2005/2222), **art. 1, Sch. 10 para. 14** (with arts. 45(1), 48, Sch. 10 paras. 21, 29)
- C15** S. 109 excluded (25.11.2005) by Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **arts. 1, 5(7)(a)** (with arts. 3(5), 15(3))
- C16** S. 109 modified (11.1.2006) by The Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523), **art. 1, Sch. 11 para. 10** (with art. 52)
- C17** S. 109 excluded (22.11.2006) by Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), **arts. 1, 4(8)** (with art. 43)

## 110 Applications for consents and approvals under section 109.

- (1) The [<sup>F7</sup>Agency] may require the payment of an application fee by a person who applies to it for its consent under section 109 above; and the amount of that fee shall be £50 or such other sum as may be [<sup>F8</sup>prescribed].
- (2) A consent or approval required under section 109 above—
- (a) shall not be unreasonably withheld;
  - (b) shall be deemed to have been given if it is neither given nor refused within the relevant period; and
  - (c) in the case of a consent, may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out.

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- (3) For the purposes of subsection (2)(b) above the relevant period is—
- (a) in the case of a consent, the period of two months after whichever is the later of—
    - (i) the day on which application for the consent is made; and
    - (ii) if at the time when that application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged;
  - and
  - (b) in the case of an approval, the period of two months after application for the approval is made.
- (4) If any question arises under this section whether any consent or approval is unreasonably withheld or whether any condition imposed is reasonable, the question shall—
- (a) if the parties agree to arbitration, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers; and
  - (b) if the parties do not agree to arbitration, be referred to and determined by [<sup>F9</sup>the Minister] or the Secretary of State, according to whether the determination falls to be made in relation to England or Wales.
- (5) The power of the Ministers to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F10</sup>(6) In subsection (1) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]

#### Textual Amendments

- F7** Word in s. 110 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F8** Word in s. 110(1) substituted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F9** Words in s. 110(4)(b) substituted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F10** S. 110(6) inserted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### *Arrangements with certain authorities*

### **111 Arrangements with navigation and conservancy authorities.**

- (1) Subject to subsection (2) below, the [<sup>F11</sup>Agency], with a view to improving the drainage of any land, may enter into an arrangement with a navigation authority or conservancy authority for any of the following purposes, that is to say—
- (a) the transfer to the [<sup>F11</sup>Agency] of—

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- (i) the whole or any part of the undertaking of the navigation authority or conservancy authority or of any of the rights, powers, duties, liabilities and obligations of that authority; or
  - (ii) any property vested in that authority as such;
  - (b) the alteration or improvement by the [F11 Agency] of any of the works of the navigation authority or conservancy authority;
  - (c) the making of payments by the [F11 Agency] to the navigation authority or conservancy authority or by that authority to the [F11 Agency] in respect of any matter for which provision is made by the arrangement.
- (2) The exercise by the [F11 Agency] of its power to enter into an arrangement under this section shall require the approval of the Ministers.
- (3) Where the [F11 Agency] is intending to enter into an arrangement under this section it shall publish a notice of its intention in such manner as may be directed by either of the Ministers.
- (4) Where an arrangement has been made under this section, the [F11 Agency] shall cause a notice under subsection (5) below to be published in the London Gazette in such form as may be prescribed by regulations made by one of the Ministers.
- (5) A notice under this subsection is a notice—
- (a) stating that the arrangement has been made; and
  - (b) specifying the place at which a copy of the arrangement may be inspected by persons interested.

#### Textual Amendments

- F11** Words in s. 111 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### *Supplemental*

#### **112 Flood defence regulations.**

The Ministers shall each have power by regulations to make provision generally for the purpose of carrying into effect the provisions of this Part and the other flood defence provisions of this Act.

#### **113 Interpretation of Part IV.**

- (1) In this Part—

“banks” means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land and water between the bank and low-watermark;

“drainage” includes—

- (a) defence against water, including sea water;
- (b) irrigation other than spray irrigation; <sup>F12</sup> . . .
- (c) warping; <sup>F13</sup> and



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(d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;]

“flood defence” means the drainage of land and the provision of flood warning systems;

“main river” (subject to section 137(4) below) means a watercourse shown as such on a main river map and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which—

- (a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and
- (b) is not a structure or appliance vested in or controlled by an internal drainage board;

“watercourse” shall be construed as if for the words from “except” onwards in the definition in section 221(1) below there were substituted the words “except a public sewer”.

- (2) If any question arises under this Part—
  - (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work,the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.
- (3) Where any question is required under subsection (2) above to be referred to arbitration it shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between the parties; or
  - (b) in default of agreement, by the President of the Institution of Civil Engineers, on the application of either party.
- (4) Nothing in this Part shall affect the powers exercisable by the [F14 Agency] under any local Act, as they existed immediately before the coming into force of this Act.

#### Textual Amendments

- F12** Word in definition in s. 113(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F13** Words in definition in s. 113(1) added (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, **s. 100(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F14** Word in s. 113(4) substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

- C18** S. 113 definitions of “main river” and “banks” applied by [London Docklands Railway Act 1991](#) (c. xxiii), **s. 7(2)(b)**

**Status:**

Point in time view as at 22/11/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the Water Resources Act 1991, Part IV.