

FLOOD AND WATER MANAGEMENT ACT 2010

EXPLANATORY NOTES

COMMENTARY

Part 2: Miscellaneous

Section 38: Incidental flooding or coastal erosion: Environment Agency

381. This section allows the Environment Agency to carry out works, under certain conditions, that may or will cause flooding, an increase in the amount of water below the ground, or coastal erosion.
382. The conditions are that the Environment Agency:
- considers that the works are either in the interest of nature conservation, the enhancement or conservation of the landscape, the preservation of cultural heritage, or peoples' enjoyment of the environment or cultural heritage;
 - considers that the benefits of the works outweigh the harmful consequences as described in section 2(4)(a) to (d);
 - has consulted the lead local flood authority, the district council (if any) and the internal drainage board (if any) for the area in which the work is to be carried out in; and any persons who own or occupy land that, in the opinion of the Environment Agency, is likely to be directly affected by the work.
383. Subsection (5) requires the Environment Agency to have regard to the national flood and coastal erosion risk management strategies issued under sections 7 and 8 and any relevant guidance, and the local flood risk management strategies issued under section 9 or 10 for the area concerned, as well as any relevant guidance issued by the lead local flood authority for that area.
384. Subsection (6) allows the Environment Agency to arrange for works under this section to be done on its behalf by a lead local flood authority, district council or internal drainage board.
385. Subsection (7) states that the power in subsection (1) may be relied upon in combination with any existing powers under other legislation, but the conditions on the use of power under subsection (1) do not restrict, limit or relate to what the Environment Agency may do under other enactments.
386. Subsection (8) requires the Minister to make an order applying compulsory purchase, powers of entry and compensation provisions of the Water Resources Act 1991 to this section. Subsection (9) requires that such an order must be made subject to the affirmative resolution procedure
387. Subsection (10) defines "the Minister" for the purpose of this section as meaning the Secretary of State in England and the Welsh Ministers in Wales.