

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 4

Flood Insurance

The Flood Reinsurance Scheme

Section 64: The Flood Reinsurance Scheme

230. Subsection (1)(a) introduces the Flood Reinsurance Scheme (“FR Scheme”) as a scheme established for the purpose set out in subsection (2). Subsection (1)(b) states that the FR Scheme will be designated by regulations made by the Secretary of State.
231. Subsection (2) specifies the purpose of the FR Scheme which is to promote the availability and affordability of flood insurance for household premises, while limiting the costs of doing so. The FR Scheme will do this by making reinsurance for flood risk available to all insurers that underwrite household insurance policies in the UK. Reinsurance is routinely purchased by insurers to limit their exposure to risk. The FR Scheme will cover the risks that are directly attributable to flooding but will not cover other risks, such as theft or subsidence, which tend to be covered under standard household policies. The provision of reinsurance shall be done in a way as to manage the transition to risk reflective pricing.
232. Subsection (3) gives the Secretary of State power to make regulations to set the level of those reinsurance premiums which will be payable by relevant insurers should they choose to reinsure flood risk relating to an insurance policy with the FR Scheme. Subsection (4) provides that those regulations may make different provision for different purposes by reference to the value of the property insured which is likely to be by reference to Council Tax bands (or an equivalent where Council Tax bands are not in place). Subsection (5) provides a definition of flood insurance for the purpose of the FR Scheme.

Section 65: Scheme administrator

233. This section sets out who will administer the FR Scheme. Subsection (1) gives the Secretary of the State the power to designate a body as the administrator of the FR Scheme by regulations. Subsection (2) specifies that the FR Scheme administrator may be a company registered under the Companies Act 2006 or other body.

Section 66: Scheme funding

234. This section covers measures needed to fund the FR Scheme. Subsection (1) provides a power for the Secretary of State to make regulations with the consent of the Treasury, requiring relevant insurers to pay a levy in accordance with the regulations (see subsection (1)(a)) or such further amounts as may be requested by the FR Scheme administrator in accordance with the FR Scheme (see subsection(1)(b)). It is intended that all insurers underwriting household buildings and/or contents insurance policies

in the UK would be required to pay a levy and ad hoc payments to the FR Scheme administrator.

235. The levy that may be imposed under subsection (1)(a) is designed to replace the current, informal cross-subsidy in the market between those at low and high risk of flooding that has historically subsidised the flood cover that is made available to those at high risk.
236. Ad hoc payments could be required from relevant insurers under subsection (1)(b) from time to time, should the FR Scheme have insufficient income from the premium incomes and the levy payments to meet its outgoings. Subsection (2) specifies that the regulations under subsection (1)(b) may set out the circumstances under which a request for ad hoc payments may be requested, and set out limits on what amount could be requested for that top up funding.
237. Subsection (3) provides for the FR Scheme administrator to pursue non-payment of the required levies and payments from individual insurers as a civil debt. Subsection (4) provides for regulations regarding the use of the levy and ad hoc payments, for instance to allow the FR Scheme administrator to cover its administrative costs. Subsection (5) gives the Secretary of State the power to make regulations requiring that, where conditions set out in the regulations are met as regards the reserves of the FR Scheme, the FR Scheme administrator must pay an amount of the reserves to the Secretary of State. These regulations will require the consent of the FR Scheme administrator, which may not be unreasonably withheld.

Section 67: Scheme administration

238. Subsection (1) provides a power for the Secretary of State to make regulations about the administration of the FR Scheme. Subsection (2) provides that the regulations may require the FR Scheme administrator to have regard to certain matters in discharging its functions – as set out in subsections (2)(a) to (d). Subsection (3) also allows for the regulations under subsection (1) to require the FR Scheme administrator to produce and publish a plan for achieving the transition to risk-reflective pricing over the life of the scheme.
239. Subsection (4) provides a power to place a requirement on the FR Scheme administrator to provide information to relevant insurers to pass on to their policyholders whose policies are reinsured under the FR Scheme. The information is intended to help households understand the flood risk in their area, how it can be managed and understand the transitional nature of the FR scheme.
240. Subsection (5) sets out a number of matters relating to finance and accounting which the regulations may provide for. These include: limiting the company’s ability to borrow and incur debt; limiting the financial losses that may be incurred; restricting draw downs and transfers and making provisions about any reserves Flood Re builds up; specifying the form and contents of Flood Re’s accounts; and requiring that Flood Re’s accounts be laid in Parliament.
241. Those regulations may also provide for the National Audit Office (NAO) to examine how the FR Scheme administrator has delivered value for money in the discharge of its duties and if the FR Scheme has been operated with propriety and regularity. The regulations may require the provision of access to documents and any assistance required by the NAO.
242. Subsection (6) provides that the regulations under subsection (1) may require the FR Scheme administrator to appoint a “responsible officer” and may set out the responsibilities of the responsible officer. These may include responsibility in respect of the Scheme’s finances and the Scheme’s accounts; accountability to Parliament for value for money, propriety and regularity; and examination and reports by the National Audit Office.

243. Subsection (7) states that regulations under subsection (1) may make provision about the disclosure of information required for the purpose of the FR Scheme. In particular the regulations may require relevant insurers to provide information on insurance policies to the FR Scheme administrator.
244. Subsection (8) provides that regulations under subsection (1) may require the FR Scheme administrator to provide information (for example the number of claims for flooding made) to the Environment Agency, Scottish Environment Protection Agency, the Natural Resources Body for Wales (which is commonly known as Natural Resources Wales), the Department of Agriculture and Rural Development in Northern Ireland, or another body as may be specified.
245. Under subsection (9) the FR Scheme administrator may also be required to provide information to the Secretary of State as may be needed for the purposes of government accounting.
246. The subsections in this section set out particular provision which may be made in regulations under subsection (1). Subsection (10) states that subsections (2) to (9) are not exhaustive as to the provision which the regulations may make. Subsection (11) specifies that the definition of “flood insurance” has the meaning given in section 64 and sets out the definition of “the FR Scheme’s accounts”.

Section 68: Replacement of the scheme or administrator

247. This section makes provision for the situation where either of the designations for the FR Scheme administrator or the FR Scheme is revoked. Subsections (1) and (2) set out provisions which regulations made under section 64 and 65 may include.
248. Subsection (1) operates in the circumstances where the FR Scheme is replaced with a new FR Scheme. Replacement of the FR Scheme would be achieved by revoking the designation of the existing scheme using the power under section 64 and making a new designation for a replacement scheme.
249. Subsection (2) operates in the circumstances where the existing Scheme administrator is replaced. It makes provision for the transfer of property, rights and liabilities, including pension liabilities in respect of staff in such circumstances. The replacement of the Scheme administrator itself would be achieved by revoking the designation of the existing scheme administrator using the power under section 64 and making a new designation.

Section 69: Disclosure of HMRC council tax information

250. Subsection (1) allows the Commissioners for Her Majesty’s Revenue and Customs to disclose “relevant HMRC council tax information” for use for preparatory purposes in relation to the setting up of the FR scheme and for the purposes of the FR Scheme once it has been designated. “Relevant HMRC council tax information” is defined in subsection (3), as is “HMRC council tax information”. Subsection (2) provides for how the information, once disclosed, may be used and that it may not be further disclosed except with the consent of the Commissioners.
251. Subsection (4) provides powers to amend the definition of “relevant HMRC council tax information”. If any such amendment is made, subsection (5) allows further regulations to be made, in accordance with subsection (6). Subsection (6) sets out that regulations may create a criminal offence by applying section 19 of the Commissioners for Revenue and Customs Act 2005 to the disclosure of the items of “relevant HMRC council tax information” which have been added to the definition under regulations made under subsection (4). The regulations may provide for section 19 to apply if disclosure is in contravention of subsection (2)(b) and if the information disclosed relates to a person who can be identified from the disclosure. Subsection (7) sets out that the Secretary

of State must consult the Commissioners before amending the definition of “relevant HMRC council tax information”.

Flood insurance obligations

Section 70: Flood insurance obligations

252. **Section 70** gives the Secretary of State the power to require a relevant insurer to issue insurance policies for a prescribed number of registered premises (a “Flood Insurance Obligation”).
253. Subsections (1) to (3) give the Secretary of State the power to make regulations which require a relevant insurer to issue insurance policies that provide cover to a prescribed number of “registered premises”. Registered premises are defined in section 82(8) as properties included in the register of premises subject to greater flood risk. Insurers can be required to issue different numbers of policies for different descriptions of risk; the intention is that insurers may be required to fulfil quotas relating to both buildings and contents insurance.
254. Subsection (4) sets out factors that the regulations can specify are to be taken into account in determining the prescribed number of registered premises in respect of which a relevant insurer must issue insurance. These factors include a target number of registered premises that the Secretary of State determines under section 71(1), and the insurer’s share of insurance business of a prescribed description.
255. Subsection (5) provides for the regulations to specify how a relevant insurer’s share of insurance business should be calculated and the circumstances under which a relevant insurer may be exempt from the Flood Insurance Obligation, including by reference to the amount of business the insurer does. This subsection makes provision for regulations to set out the circumstances in which the Flood Insurance Obligation would cease to apply for a relevant insurer. This subsection also allows the regulations to specify circumstances in which a policy issued by an insurer would not count towards meeting its quota and to specify circumstances in which a relevant insurance policy issued by one insurer can count towards the Flood Insurance Obligation imposed on another relevant insurer. This subsection also makes provision for regulations to provide that properties at greater flood risk count for more, and those at lesser risk count for less, when it is being decided how many registered premises an insurer has insured.
256. Subsection (6) provides that the regulations may require an insurer to use information held by the Secretary of State, a person acting on the Secretary of State’s behalf or the Financial Conduct Authority to determine their share of insurance business.
257. Subsection (7) states that provisions allowing policies issued by one insurer to count for discharging another’s Flood Insurance Obligation should not be construed as requiring a change of insurer. Subsection (8) provides for a case where an insurer has not provided the information required by section 72 for determining whether an insurer is a relevant insurer under this section, whether an exemption applies and what share of business an insurer would be treated as having. Subsection (9) imposes a duty on the Secretary of State to consult with persons he considers appropriate before making regulations under this section. The Secretary of State expects to consult the financial regulators.

Section 71: Target number

258. Subsection (1) gives the Secretary of State the power to periodically set the target number. The target number is the number of registered premises as regards which insurers are collectively required to issue policies under the regulations in section 70. It can be expressed as a percentage of the premises on the register. The regulations can specify different targets for insurance policies relating to different descriptions of risk. Regulations made under this section may set target numbers for two or more consecutive compliance periods so that insurers may plan ahead.

Section 72: Information

259. **Section 72** provides for the Secretary of State to set out in regulations arrangements for the provision of information or production of documents by insurers for the purposes of the requirements on insurers under section 70. Subsection (2) provides for regulations that give the Secretary of State or a person acting on his behalf the power to require certain documents or information that help demonstrate whether or not the insurer is a “relevant insurer” or whether an exemption applies under subsection (5)(b). Subsection (3) provides further detail on the types of information or documents that may be required from insurers in the regulations and subsection (4) provides for the regulations to specify whether the information should be provided to the Secretary of State or a person acting on the Secretary of State’s behalf.
260. Subsection (5) is about how information and documents are to be delivered and how they are to be verified or authenticated. In subsection (6) the regulations may put limits on what persons receiving the information may then do with it. The regulations may also allow the Secretary of State to publish information about the amount of business done by the insurance industry as a whole in relation to prescribed risks. This will enable insurers to calculate their targets in line with the regulations made under section 70.

Section 73: Section 72: further provision

261. **Section 73** provides the Secretary of State with the power to make regulations for enforcement of the regulations made under section 72. Under subsection (2) regulations may in particular make provision for the Secretary of State or a person acting on his behalf to impose sanctions, including civil penalties. The regulations would set out the procedures which the Secretary of State must follow before a sanction can be imposed and provide for costs incurred in connection with imposing a sanction to be recovered. The regulations would provide for appeals against sanctions or requirements to pay costs to be made to the First-tier Tribunal.
262. Subsection (3) states that the regulations would provide in particular for civil penalties of a fixed amount and for further sums to be payable where an insurer continues to not comply with the requirements (that is to continue to fail to provide the required information). The regulations would also include provisions for the process by which a civil penalty and any amount of costs may be recovered.

Section 74: Register of premises subject to greater flood risk

263. **Section 74** provides for the Secretary of State to set out in regulations arrangements for the creation and maintenance of a register of premises in the UK which are subject to greater flood risk. Subsections (2) and (3) allow the regulations to provide for the level of flood risk registered premises face to be recorded in the register. The regulations may do this by setting out flood “risk bands” and requiring that the register record which risk band applies to particular premises.
264. Subsection (4) provides for the regulations to exclude particular types of properties from the register including in particular those constructed after a certain date. Subsection (5) provides for the regulations to specify the information to be contained in the register and to make access, publication, disclosure and notification arrangements for the register and the information contained in it. Subsection (6) provides for conditions to be set on recipients of the information with regard to onward disclosure of the information and arrangements for penalties to be issued if those conditions are not complied with.
265. Subsection (7) provides for the regulations to specify that only applications for the inclusion of a property in the register of premises subject to greater flood risk made by or on behalf of a person with the qualifying interest in the premises may be allowed. The “qualifying interest” is to be defined in regulations under section 82(6).

266. Subsection (8) provides for the regulations to permit the removal of premises from the register if a person with the qualifying interest in the property requests its removal. Under subsection (9), before making regulations under these provisions the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland.

Section 75: Functions of relevant bodies

267. **Section 75** provides for the regulations made under section 74 to set out which bodies will carry out which functions in connection with the register of premises subject to greater flood risk.
268. Subsection (1) specifies which functions may be carried out by the “relevant bodies” as those that are connected with the creation and ongoing maintenance of the register, access to or disclosure of information contained within the register, publication of the register and notifying people when particular premises are included in the register. Subsection (2) names the bodies that are to be the relevant bodies in different parts of the United Kingdom.
269. Subsection (3) enables the regulations to specify an additional role for the Environment Agency. The additional role would involve the Environment Agency coordinating the work carried out by relevant bodies under subsection (1) and promoting the consistency of this work. Subsection (4) enables the regulations to require relevant bodies to cooperate with each other in this work and for relevant bodies other than the Environment Agency to cooperate with the Environment Agency in the carrying out of its additional duties under subsection (3).
270. Subsection (5) provides that regulations may provide for information held for council tax purposes by the Valuation Office to be disclosed to the Environment Agency or the Natural Resources Body for Wales. Restrictions can be placed on further disclosure and how the data can be used. This data will enable properties where construction was completed after a certain date to be excluded from the register. Similar provisions are not required to cover the required data in Scotland and Northern Ireland because this is already publicly available.

Section 76: Reviews and appeals

271. **Section 76** enables the regulations made under section 74 to provide for a person with the qualifying interest in a property to seek a review of a decision by a relevant body that the property does not qualify to be included on the register of premises subject to greater flood risk. It also enables the regulations to provide for that person to appeal to the First-tier Tribunal in England and Wales, the sheriff in Scotland, or the Water Appeals Commission for Northern Ireland, if upon review the relevant body has decided that the property does not qualify for inclusion on the register.

Section 77: Expenses of relevant bodies

272. **Section 77** provides the Secretary of State with the power to make regulations to raise a levy from insurers, with the consent of the Treasury. The levy is intended to allow Government to recover its costs in maintaining the register. Regulations could also provide for the recovery of any costs incurred by the Secretary of State in relation to the administration of the levy.
273. Subsection (2) states that regulations may specify the rate of the levy, or the way in which it will be calculated, as well as how often and in what way it will be paid by insurers. Under subsection (3) the regulations may, in particular, make provision for determining the amount of the levy based upon the qualifying expenses incurred by the Environment Agency and its equivalents in the Devolved Administrations.

274. Subsection (4) enables regulations to make provision for the sums payable as a levy to be recoverable as a civil debt. Under subsection (5), before making the regulations, the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland. Subsection (6) defines “qualifying expenses” as the proportion of a relevant body’s expenses that the Secretary of State considers reasonable in regard to its functions under section 74. “Qualifying expenses” also means those expenses of the Secretary of State attributable to carrying out functions conferred by and under this section.

Section 78: Compliance reports

275. Section 78 provides the Secretary of State with the power to make regulations that require insurers to report the extent to which they have complied with their Flood Insurance Obligations. Subsection (2) provides that regulations may require insurers to report the extent of their compliance with the Flood Insurance Obligation in a specified period and may prescribe certain details to be supplied by insurers that support that report. Subsection (3) allows for the Financial Conduct Authority to be the responsible body for accepting reports under this section.

Section 79: Functions of the FCA

276. Subsection (1) of section 79 confers powers on the Treasury to make regulations giving the Financial Conduct Authority a role in monitoring and enforcing compliance with such of the requirements imposed under sections 70 and 78 as are specified.
277. Subsection (2) provides that the regulations may give the Financial Conduct Authority a role in enforcing compliance with such of the information requirements under section 72 as are specified. Subsection (3) specifies when the Financial Conduct Authority can be empowered to take enforcement action in relation to subsection (2). This is in cases where the insurer provides information that is not true or produces a document that is not correct; or in cases where measures available to the Secretary of State under section 73 have been taken without securing compliance.
278. Subsection (4) provides that the regulations may apply provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012 (including with or without modifications) in relation to powers conferred on the Financial Conduct Authority under this section.
279. Subsection (5) makes mention of particular provisions in the Financial Services and Markets Act 2000 or the Financial Services Act 2012, which may be applied under subsection (4) in relation to powers conferred on the Financial Conduct Authority under this section for the purpose of its role in monitoring and enforcing compliance with those requirements imposed under sections 70 and 78 that are specified, and enforcing compliance with those requirements imposed under section 72 that are specified.
280. Subsection (6) provides that the regulations may enable the Financial Conduct Authority to make arrangements for the performance of functions on its behalf to the extent that the regulations prescribe.

Section 80: Reports by the FCA

281. Section 80 gives the Treasury enabling powers to provide by regulations for the Financial Conduct Authority to prepare reports on the discharge of its functions in relation to section 79. Subsection (2) provides for the regulations to specify the contents and timing of the reports, provide for copies of the reports to be given to the Secretary of State and others and provide for publication of the reports.

Section 81: Intervention by the FCA or the PRA

282. **Section 81** confers powers on the Treasury to provide, by regulation, for the regulators (defined as the Financial Conduct Authority and the Prudential Regulation Authority under subsection (12)) to disapply or modify the requirements imposed under sections 70, 72 and 78. Subsection (2) defines the intervention power as the power conferred by regulations under subsection (1).
283. Subsection (6) describes particular situations that might be dealt with using the intervention power. Subsection (7) is mostly about the procedures for exercising the intervention power. Provision under subsection (7)(g) would require a regulator to keep under review cases in which it has used the power. Subsection (8) enables regulations under subsection (7) to except material from publication where publication would be contrary to the public interest. Subsection (9) sets out that the intervention power may be exercised in respect of an obligation imposed under section 70(1) only so as to disapply the requirements of the flood insurance obligation.
284. The Financial Conduct Authority and the Prudential Regulatory Authority have existing powers under the Financial Services and Markets Act 2000 and the Financial Services Act 2012 to supervise, monitor and enforce regulatory requirements imposed on financial services firms. Subsections (10) and (11) provide for regulations to extend those powers in relation to the intervention power, with or without appropriate modifications.
285. Subsection (12) defines the “regulator” as the Financial Conduct Authority or the Prudential Regulation Authority. Subsection (13) defines certain terms in this section by reference to their definitions in the Financial Services and Markets Act 2000.

General

Section 82: Interpretation

286. Subsection (1) provides a definition of “insurer” for the whole of Part 4 of the Act. Subsection (2) enables the Secretary of State to make regulations to amend that definition.
287. Subsection (3) enables the Secretary of State to define “relevant insurer” in regulations for the purposes of this Part, after consulting with appropriate persons as set out in subsection (4).
288. Subsection (5) enables the Secretary of State to make definitions in regulations for the purposes of the provisions about the FR Scheme for “flood”, “flood risk” and “household premises”.
289. Subsection (6) enables the Secretary of State to make definitions in regulations for the purpose of the provisions about the Flood Insurance Obligation. One of the terms that can be defined in regulations under subsection (6) is “flood”.
290. Subsection (7) enables the regulations to make provision about the meaning of “flood” for both the FR Scheme and the Flood Insurance Obligation that distinguish between the possible causes of flooding.
291. Subsection (8) defines the terms “FCA”, “PRA”, “registered premises” and “risk band”.

Section 83: Period of operation

292. Subsection (1) creates a sunset for sections 64 to 81, which is to happen twenty-five years from the day on which the Act is passed. Subsection (2) allows the Secretary of State to make an order bringing forward the date sections 64 to 69 and 70 to 78 are repealed. Subsection (7) gives the Treasury the same power in respect of sections 79 to 81.

293. Subsection (3) allows the Secretary of State, by order, to make such provision as is required as a consequence of repealing sections 64 to 69 (Flood Reinsurance Scheme) or sections 70 to 78 (Flood Insurance Obligation). It also gives the Secretary of State the power to make orders in connection with the revocation of regulations which relate to the FR Scheme. Such orders can be made at any time before those sections are actually repealed. The order-making power can be used to amend or repeal an enactment. Subsection (4) gives details about the contents of orders which may be made, for example, an order dealing with the transfer of property, rights and liabilities including pension liabilities in respect of staff. Subsection (8) gives the Treasury the power to make consequential provision in connection with the repeal of sections 79 to 81.

Section 84: Regulations and orders

294. Subsection (1) provides for regulations or orders made under this Part of the Act, to be made by statutory instrument. Subsections (2) and (7) are aimed at avoiding any hybridity issues arising where an order under section 83(3) includes provision about the transfer of property, rights and liabilities.
295. Subsection (3) provides that regulations or orders made under this Part of the Act can make different provision for different purposes and different geographical areas. The regulations or orders made under this Part of the Act can include incidental, supplementary, consequential, transitional, transitory or saving provisions (subsection (4)).
296. Subsection (6) sets out when the affirmative resolution procedure will apply to a statutory instrument containing regulations or an order made under Part 4.