



Water Resources Act 1991

1991 CHAPTER 57

PART VII

LAND AND WORKS POWERS

CHAPTER I

POWERS OF THE [F¹APPROPRIATE AGENCY]

Flood defence and drainage works

165 [F¹General powers to carry out works]

[F²(1) The [F³appropriate agency] may—

- (a) carry out flood risk management work within subsection (1D)(a) to (f) if Conditions 1 and 2 are satisfied;
- (b) carry out flood risk management work within subsection (1D)(g) or (h) if Condition 1 is satisfied.

(1A) Condition 1 is that the [F⁴appropriate agency] considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.

(1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—

- (a) the sea, or
- (b) a main river.

(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—

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- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
 - (b) to operate existing works (such as sluiceways or pumps);
 - (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
 - (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
 - (e) for the purpose of maintaining or restoring natural processes;
 - (f) to monitor, investigate or survey a location or a natural process;
 - (g) to reduce or increase the level of water in a place;
 - (h) to alter or remove works.]
- (2) The [^{F5}appropriate agency] shall also have power^{F6}... to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
- (3) The [^{F7}appropriate agency] may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.
- [^{F8}(4) The Agency [^{F9}or the NRBW] may by agreement with any person carry out, improve or maintain, at that person's expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) [^{F10}or article 12 of the Natural Resources Body for Wales (Establishment) Order 2012 (grants to the NRBW) (S.I.2012/1903)] as the Agency [^{F9}or the NRBW] decides (subject to any terms on which the grant is made) to allocate for the works in question.]
- (5) The Agency [^{F11}or the NRBW] may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work ^{F12}... which the Agency [^{F11}or the NRBW] is authorised to carry out [^{F13}under this section].
- (6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (7) In this section “watercourse” has the same meaning as in Part IV of this Act ^{F14}...

Textual Amendments

- F1** S. 165 heading substituted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 2 para. 47\(6\)](#) (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F2** S. 165(1)-(1D) substituted for s. 165(1) (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 2 para. 47\(2\)](#) (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F3** Words in s. 165(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 284\(2\)](#) (with Sch. 7)

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- F4** Words in s. 165(1A) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F5** Words in s. 165(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F6** Words in s. 165(2) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(3)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F7** Words in s. 165(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F8** S. 165(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(2)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F9** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(a)** (with Sch. 7)
- F10** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(b)** (with Sch. 7)
- F11** Words in s. 165(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(4)** (with Sch. 7)
- F12** Words in s. 165(5) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(a)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F13** Words in s. 165(5) added (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(b)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F14** Words in s. 165(7) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(5)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

Modifications etc. (not altering text)

- C1** S. 165 excluded (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 11(2)**, 76(2).

166 Power to carry out works for purpose of providing flood warning system.

- (1) Without prejudice to its other powers by virtue of section 37 of the 1995 Act (incidental general powers of the Agency), [^{F15}or (as the case may be) article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),] Part IV of this Act and this Part, the [^{F16}appropriate agency] shall have power—
- to provide and operate flood warning systems;
 - to provide, install and maintain apparatus required for the purposes of such systems;
 - to carry out any other engineering or building operations so required.
- (2) Subsection (1) above shall not be construed as authorising, on the part of the [^{F17}appropriate agency], any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the [^{F17}appropriate agency] by virtue of its constitution.
- (3) The [^{F18}Agency] may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—
- its functions in relation to [^{F19}the flood risk management regions adjacent to Scotland] were functions in relation to that area in Scotland; and

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(b) that area in Scotland were included in [^{F20}those flood risk management regions];

but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the ^{M1}Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

[^{F21}(4) In this section—

[^{F22}“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;]

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the [^{F23}appropriate agency] to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]

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Textual Amendments

- F15** Words in s. 166(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(a)** (with Sch. 7)
- F16** Words in s. 166(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(b)** (with Sch. 7)
- F17** Words in s. 166(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(3)** (with Sch. 7)
- F18** Words in s. 166 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F19** Words in s. 166(3)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(a)**
- F20** Words in s. 166(3)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(b)**
- F21** S. 166(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), **ss. 69(3)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F22** Words in s. 166(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(3)**
- F23** Words in s. 166(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(4)** (with Sch. 7)

Marginal Citations

- M1** 1961 c. 41.

167 Power to dispose of spoil in connection with flood defence works.

- (1) Subject to subsection (2) below, the [^{F24}appropriate agency] may—
- without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and
 - deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.
- (2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the ^{M2}Environmental Protection Act 1990.
- (3) The [^{F25}appropriate agency] and the council of any district or London borough [^{F26} or Welsh county or county borough] may enter into an agreement providing—
- for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
 - for the payment by the [^{F25}appropriate agency] to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.
- (4) In this section “banks” and “watercourse” have the same meanings as in Part IV of this Act.

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Textual Amendments

- F24** Words in s. 167(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(2)** (with Sch. 7)
- F25** Words in s. 167(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(3)** (with Sch. 7)
- F26** Words in s. 167(3) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 para. 3(4)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

Marginal Citations

- M2** 1990 c. 43.

[^{F27}**167A** Consultation in relation to works affecting flood and coastal erosion risks

- (1) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010) in Wales, the Agency must consult the NRBW.
- (2) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within that meaning) in England, the NRBW must consult the Agency.
- (3) This section applies to any function under—
 - ^{F28}(a)
 - (b) the flood risk management work provisions;
 - (c) byelaws made under paragraph 5 of Schedule 25.]

Textual Amendments

- F27** S. 167A inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 287** (with Sch. 7)
- F28** S. 167A(3)(a) repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-33)

Changes to legislation:

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