

FLOOD AND WATER MANAGEMENT ACT 2010

EXPLANATORY NOTES

COMMENTARY

Part 1: Flood and Coastal Erosion Risk Management

Key concepts and definitions

Section 1: “Flood” and “coastal erosion”

18. Subsection (1) defines a “flood” as including cases where land not normally covered by water becomes covered by water. Subsection (2) indicates some of the sources from which a flood could occur. This list is not exhaustive or limiting.
19. Subsection (3) excludes certain forms of flooding from the definition of “flood”. The first exclusion is flooding from any part of a sewerage system, unless caused by increases in volume from rainfall (including snow or other precipitation). Flooding from a sewerage system is covered under section 94(1)(a) of the Water Industry Act 1991. The second exclusion is flooding from a burst water main (as defined in section 219 of the Water Industry Act 1991). Flooding from a water main is covered by section 37(1)(b) of that Act.
20. Subsection (4) defines “coastal erosion” as erosion of the coast of England and Wales.

Section 2: “Risk”

21. Subsection (1) defines “risk”. This is a component of the concept of flood and coastal erosion risk management. Risk is defined so that it relates to both the probability of an occurrence and the seriousness of its consequences.
22. Subsection (2) and (3) define “flood risk” and “coastal erosion risk”.
23. Subsection (4) sets out examples (not an exhaustive list) of potential harmful consequences that should be considered when assessing risk.

Section 3: “Risk management”

24. This section sets out what “risk management” means in relation to flooding and coastal erosion. Subsection (1) sets out the range of purposes for which actions may be undertaken in order to address risk.
25. Subsection (2) lists two examples of what is included within the definition of risk management to illustrate the scope of the concept. Risk management can include practices that increase the likelihood of flooding or coastal erosion in a specific area, either to achieve particular outcomes in that location or to manage the effect of flooding or coastal erosion elsewhere. Subsection (3) lists examples of things which might be done to manage flood risk or coastal erosion risk. Neither list is exhaustive or limiting.

Section 4: “Flood risk management function”

26. This section defines a “flood risk management function” as including existing functions from specified Acts as well as functions under Part 1 of the Act. The effect of defining a function as a flood risk management function is to bring it within the scope of certain provisions in the Act which require such functions to be performed in specified ways. For instance, under sections 11 and 12 such functions must be carried out in a manner which is consistent with the strategies provided for in sections 7 to 10, and by virtue of section 13 bodies exercising those functions must co-operate with one another. The Secretary of State in England and Welsh Ministers in Wales may by order specify further statutory functions to be within the definition of a flood risk management function, but they cannot create new statutory functions under this section. The functions of water companies are not included within the list of flood risk management functions listed in the Act but these may be included by order.

Section 5: “Coastal erosion risk management function”

27. This section defines a “coastal erosion risk management function” as a function under the Coast Protection Act 1949 as well as functions under Part 1 of the Act. The effect of this definition is the same as in section 4. The Secretary of State in England and Welsh Ministers in Wales may, by order, specify further statutory functions to be within the definition of a coastal erosion risk management function, but they cannot create new statutory functions under this section.

Section 6: “Other definitions”

28. Subsections (1) to (5) define terms that relate to the various sources of flood risk. The definition of groundwater is different from that in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (known as the Water Framework Directive). In the Act it is defined in a way that is relevant to flood risk management so as to include any water which is below the surface of the ground and in contact with the ground or subsoil. This does not include water in buried pipes or other containers.
29. “Surface run-off” means precipitation on the surface of the ground, but if such precipitation drains to a watercourse, drainage system or the sewerage system, and water overflows from there to be on the surface of the ground, this water is not within the definition of surface run-off. Subsection (6) brings lakes, ponds, or other areas of water that flow into a watercourse within the meaning of a watercourse for the purpose of the definition of surface run-off. Drainage system has the same meaning as in paragraph 1 of Schedule 3 to the Act.
30. Subsections (7) to (12) define various bodies which are “risk management authorities” (subsection (13)). Subsections (7) and (9) introduce the concept of a “lead local flood authority”, which is the unitary authority or, where there is no unitary authority, the county council for an area in England, and the county council or the county borough council in Wales. These bodies lead on the local flood risk management strategy. The bodies which exercise flood or coastal erosion risk management functions or related functions are collectively defined as “risk management authorities” under subsection (13).
31. Subsections (14), (15) and (16) define English and Welsh risk management authorities (which include some cross-border authorities) as well as cross-border internal drainage boards.

Strategies, co-operation and funding

Section 7: National flood and coastal erosion risk management strategy: England

32. This section requires the Environment Agency to develop a national strategy (“the strategy”) for flood and coastal erosion risk management in England, to maintain it (which includes reviewing and updating it), and monitor its application (see subsection (1)).
33. Subsection (2) requires that the strategy must set out at least:
 - the English risk management authorities;
 - their functions;
 - the objectives of the strategy;
 - the measures proposed to achieve those objectives;
 - how and when the measures are to be implemented and the strategy reviewed;
 - the approximate costs and benefits of these measures and how they will be paid for;
 - the assessment of risk that is relied on in preparing the strategy as well as the current and predicted impact of climate change on managing these risks; and
 - how the strategy will contribute to wider environmental objectives. This relates to the sustainable development duty at section 27 and the environmental works powers at sections 38 and 39.
34. The Environment Agency must also publish a summary of this strategy (see subsection (4)).
35. The Environment Agency must consult the general public as well as the other English risk management authorities, and the Scottish Executive and Welsh Ministers where their territory may be affected, in drawing up the strategy (see subsection (3)).
36. Subsections (5) and (6) provide for the Environment Agency to issue guidance about the application of the strategy, which may in particular include guidance about the exercise of the duties to co-operate and the powers to enter into arrangements and to require information.
37. The strategy and any guidance must be reviewed and approved by the Secretary of State (subsections (7) and (8)). The approved strategy and any guidance must be laid before Parliament by the Secretary of State and may not be issued if, during the period specified in subsection (9), either House of Parliament resolves that it should not be issued in that form.

Section 8: National flood and coastal erosion risk management strategy: Wales

38. This section requires the Welsh Ministers to develop, maintain and apply a national strategy for flood and coastal erosion risk management in Wales. They are not required to monitor the strategy as in England. As with the strategy for England, the strategy for Wales will cover all sources of flooding except those from sewerage systems or caused by burst water mains.
39. Subsection (2) lists the matters that should be included in the strategy as a minimum requirement. These are the same as required for the national flood and coastal erosion risk management strategy for England.
40. Subsection (3) requires the Welsh Ministers to consult the Secretary of State in England about matters which may affect flood and coastal erosion risk management in England. Subsections (5) and (6) also allow Welsh Ministers to issue guidance in particular in

relation to the duties to co-operate, and the powers to enter into arrangements and to require information. Subsection (4) requires the Welsh Ministers to publish a summary of the strategy.

41. The Welsh Ministers are required to lay the strategy before the National Assembly for Wales (subsection (7)). They are also required to lay any guidance issued under this section before the National Assembly and the guidance may not be issued if, during the period specified in subsection (8), the National Assembly resolves that it should not be issued in that form.

Section 9: Local flood risk management strategies: England

42. This section requires all lead local flood authorities in England to develop, maintain (which includes updating and reviewing), apply, and monitor the application of, a strategy for local flood risk in their area. They must also prepare a summary of the strategy (see subsections (1) and (7)).
43. The strategy must at least set out who the risk management authorities are in the area and their relevant functions, the authority's objectives for managing flood risk, as well as proposed measures to deliver the objectives, and timescales for implementation of the measures; how those measures are to be paid for as well as their costs and benefits, how and when the strategy will be reviewed, and how the strategy contributes to the achievement of wider environmental objectives (see subsection (4)(a)–(i)).
44. Local flood risk is defined as a risk of flood arising from surface run-off, groundwater, or an ordinary watercourse, which for these purposes includes a lake or pond which flows into an ordinary watercourse (see subsections (2) and (3)).
45. A lead local flood authority must consult affected risk management authorities and the public about its strategy (subsection (6)).
46. Subsection (8) provides a power to a lead local flood authority to provide guidance about the application of the strategy in its area and subsection (9) requires the authority to have regard to any guidance issued by the Secretary of State about the strategy and any associated guidance issued by the authority.

Section 10: Local flood risk management strategies: Wales

47. This section requires each lead local flood authority in Wales (county and county borough councils) to develop, maintain, apply and monitor a strategy for local flood risk management and coastal erosion risk management within its area. Local flood risk is defined in subsection (2) in the same way as for England. The minimum content of the strategy is detailed in subsection (4) and is also the same as in England.
48. The lead local flood authority is required to publish a summary of the strategy and may issue guidance on the application of the strategy within its area (subsections (7) and (8)). The strategy must be submitted for review to the Welsh Ministers, who may approve, vary, or reject it (subsection (9) and (10)).
49. Lead local flood authorities are required to consult risk management authorities and the public in developing their strategies (subsection (6)).

Section 11: Effect of national and local strategies: England

50. This section requires English risk management authorities, in exercising their flood and coastal erosion risk management functions, to act in a manner consistent with the national flood and coastal erosion risk management strategy and guidance under section 7. These risk management authorities must also, with the exception of water companies, act consistently with relevant local flood risk management strategies and related guidance issued under section 9.

51. This requirement does not apply to the Environment Agency in the exercise of its functions under section 7(1) (see subsection (2)), although as a public authority it would none the less be required to take into account all relevant considerations in deciding how to exercise those functions.
52. English risk management authorities are required to have regard to the national and local strategies in exercising any other function that may affect a flood risk or coastal erosion risk in England (subsection (4)).
53. Water companies are required to have regard to local strategies and guidance in exercising a flood or coastal erosion risk management function in relation to an area in England (subsection (3)).
54. A cross-border internal drainage board for an internal drainage district that is mainly in Wales but partly in England must act consistently with local strategies and guidance for that part of their district which is in England. However, they need only have regard to the national strategy and guidance for England under section 7. This provision does not affect their duties under section 12 in respect of the national strategy for Wales, which they will have to act consistently with (subsections (5) and (6)).
55. Subsection (7) gives the Secretary of State power, by order, to require a specified person to have regard to the strategies and guidance when exercising a statutory function, as defined in subsection (9), which could impact on flood risk or coastal erosion risk in England. This power will be exercised to require other bodies, whose activities affect flood or coastal erosion risk, to have regard to relevant strategies.

Section 12: Effect of national and local strategies: Wales

56. Subsection (1) requires the Welsh risk management authorities, in exercising their flood and coastal erosion risk management functions, to act in a manner which is consistent with the national strategy and guidance under section 8. These risk management authorities must also, with the exception of water companies, act consistently with the local flood risk strategies and guidance under section 10.
57. Welsh risk management authorities are required to have regard to the national and local strategies in exercising any other function that may affect a flood risk or coastal erosion risk in Wales (subsection (3)).
58. Subsection (2) requires a water company, when exercising a flood and coastal erosion risk management function in relation to an area in Wales, to have regard to the local strategies and guidance.
59. A cross-border internal drainage board for an internal drainage district that is mainly in England but partly in Wales, must act consistently with local strategies and guidance for that part of their district which is in Wales. However, they need only have regard to the national strategy and guidance for Wales under section 8. This provision does not affect their duties under section 11 in respect of the national strategy for England, which they will have to act consistently with (subsections (4) and (5)).
60. Subsection (6) gives the Welsh Ministers power, by order, to require a specified person to have regard to the strategies and guidance when exercising a statutory function, as defined in subsection (8), which could impact on flood risk or coastal erosion risk in Wales.

Section 13: Co-operation and arrangements

61. This section requires a relevant authority to co-operate with any other relevant authority which is exercising flood or coastal erosion risk management functions. Relevant authorities are defined in subsection (3) and include risk management authorities (defined in section 6) and Welsh Ministers.

62. Subsection (2) gives risk management authorities the power to share information, in response to a request or voluntarily, where this is for the purpose of a risk management authority fulfilling its duty to co-operate.
63. Subsection (4) allows a risk management authority to arrange for a flood risk management function to be exercised on its behalf by another risk management authority or a navigation authority. However, subsection (5) specifically excludes the functions relating to a national strategy for England (under section 7) or local strategies (under sections 9 and 10) from being exercised by another body. This does not prevent a lead local flood authority entering into arrangements for another body to prepare its strategy, or carry out any other work that relates to its duties under section 9 in England or 10 in Wales, as long as the lead local flood authority remains the decision-maker.
64. Subsections (6) and (7) allow a coast protection authority, with the consent of the Environment Agency, to make arrangements for any of its coastal erosion risk management functions to be exercised on its behalf by another person. Subsection (8) allows the Environment Agency to make arrangements for any of its coastal erosion risk management functions to be exercised on its behalf by a coast protection authority, a lead local flood authority or an internal drainage board.
65. The effect of this section is to give risk management authorities the flexibility to act on behalf of one another and to form informal partnerships. Guidance provided by the Environment Agency and the Welsh Ministers under sections 7 and 8 is intended to assist this process.

Section 14: Power to request information

66. This section empowers the Environment Agency and lead local flood authorities to request a person to provide information in connection with that body's flood and coastal erosion risk management function (see subsections (1) and (2)). It provides a similar power for the Welsh Ministers (subsection (3)).
67. Subsection (4) provides that the information must be provided in the form, manner and time period specified in the request.

Section 15: Civil Sanctions

68. This section provides a non-criminal sanction to encourage compliance with section 14. It allows an authority to serve an enforcement notice if a request under section 14 to provide information is not complied with. The enforcement notice must restate what information is required and inform the recipient that the authority may impose a penalty if they do not provide the information. It must also state that representations can be made (subsections (1) and (2)).
69. If the information is not received within a period specified in the enforcement notice (which must be at least 28 days) then the authority may impose a penalty of up to £1000. The authority must have regard to any representations and any partial compliance with the information request when determining whether to impose a penalty and how big it should be. The penalty notice must say why the penalty was imposed, and contain information about how to appeal.
70. A right of appeal is to be provided by regulations made by the Minister under this section and the first set of regulations must be made in accordance with the affirmative resolution procedure. The penalty is recoverable as a debt. The Minister has the power to change the maximum penalty, but only in order to reflect the value of money. Subsection (10) defines "the Minister" for the purposes of this section as the Secretary of State for England and the Welsh Ministers for Wales.

Section 16: Funding

71. This section enables the Environment Agency to pay grants to any person in respect of expenditure incurred, or expected to be incurred, in connection with flood or coastal erosion risk management in England and provides the Welsh Ministers with the same power in relation to Wales. Subsection (3) allows such grants to be made subject to conditions, including conditions for repayment and interest.

Section 17: Levies

72. This section enables the Environment Agency to issue a levy to a lead local flood authority, in respect of flood and coastal erosion risk management functions, carried out in that local authority's area by the Environment Agency.
73. Levies must be issued in accordance with regulations made under section 74 of the Local Government Finance Act 1988. The issue of levies is subject to the Environment Agency obtaining the consent of the appropriate Regional Flood and Coastal Committee under section 23.

Supplemental powers and duties

Section 18: Environment Agency: reports

74. This section requires the Environment Agency to report about flood and coastal erosion risk management to the Minister (who may by way of regulations specify reporting times or intervals and the information which a report should contain). The report must include information about the application of the national flood and coastal erosion risk management strategies under sections 7 and 8.

Section 19: Local authorities: investigations

75. This section requires a lead local flood authority to investigate flooding incidents in its area which it becomes aware of, and to the extent that it considers necessary or appropriate. This is in order to: (a) identify which risk management authority has flood risk management functions in respect of the flooding; and (b) establish whether that authority has responded or is proposing to respond to the flood. The lead local flood authority must publish the results of any investigation and notify any relevant risk management authority of those results. While the management responsibility for a flood may be clear in many cases, there may be occasions where this is not so and the purpose of this provision is to require the lead local flood authority to investigate where appropriate, so as to try and ascertain where responsibility for managing the flood risk lies and what is being done about it.

Section 20: Ministerial directions

76. This section allows the Minister (the Secretary of State in England and the Welsh Ministers in Wales) to direct a risk management authority to exercise a flood or coastal erosion risk management function on behalf of another risk management authority (subsection (1)). The Secretary of State and the Welsh Ministers can act separately in respect of risk management authorities in England or Wales, or jointly in respect of a risk management authority that operates in both England and Wales.
77. A direction may only be given where the Minister is satisfied that the defaulting authority has failed to exercise the function either at all, or in a way that accords with national or local strategies issued under sections 7 to 10 (see subsection (2)).
78. The Minister has the power to include a provision in the direction as to the recovery of costs (see subsection (3)).

79. The Minister must send a copy of any direction to the authority concerned, and publish the direction (except where this might be contrary to the interests of national security) (subsections (4) and (5)).

Section 21: Lead local authorities: duty to maintain a register

80. This section requires lead local flood authorities to establish and maintain a register of structures, or features, which may significantly affect a flood risk in their area and also a record of information about such structures and features including ownership and state of repair. The Minister may make regulations about the content of the register and record and also describe information to be excluded from them (subsections (2) and (4)).
81. Subsection (3) provides that the register must be available for public inspection at all reasonable times. This requirement does not apply to the record which may contain personal or other confidential data. The method by which inspection of the register is provided is not specified in the legislation, and so a lead local flood authority will have discretion as to whether the register should, for instance be placed on its website or to provide access by some other means.

Regional Flood and Coastal Committees

Section 22: Establishment

82. This section requires the Environment Agency to establish Regional Flood and Coastal Committees (RFCCs) for regions in England and Wales. To do so, it must divide England and Wales into regions for this purpose. The Environment Agency also has the power to alter these boundaries.
83. The Minister is given the power, to set out in regulations, the procedure that must be followed by the Environment Agency in creating or varying regional boundaries which may include provisions in respect of consultation and appeals (subsection (2)(a)).
84. These committees will replace Regional Flood Defence Committees (RFDCs) and the Minister is given a power, by order, to make transitional provision for this change (subsection (2)(b)).

Section 23: Consultation and consent

85. This section requires the Environment Agency to consult an RFCC about the way in which it intends to exercise its flood and coastal erosion risk management functions in the Committee's region, and to take into account any representations made.
86. Subsection (2) requires the consent of the relevant RFCC to be obtained before the Environment Agency can deliver the regional programme of flood and coastal erosion risk management it determines.
87. Subsection (3) requires the Environment Agency, before it issues any levy under section 17, to first obtain the consent of the relevant RFCC. Under subsection (4) the Environment Agency must also obtain the consent of the relevant RFCC before spending any revenue raised under section 118 of the Water Resources Act 1991.

Section 24: Membership

88. This section gives an order making power to the Minister to set out requirements relating to membership of the Regional Flood and Coastal Committees. The order may provide for the number of members of a Committee, conditions of eligibility, their method of selection and appointment (including arrangements for election or other means of selection), and proceedings of a Committee including as to quorum and the extent of the majority needed for different decisions. This power may be used to enable the Minister to provide for a majority of local authority representatives on an RFCC to approve in

order for the RFCC to provide the consent required in section 23 for the Environment Agency to issue a levy or spend revenue.

Section 25: Money

89. This section allows the Minister to direct the Environment Agency to make specified payments to Regional Flood and Coastal Committee Chairs (and former Chairs). The Environment Agency may also pay allowances to members of these committees. The Minister has the power to determine the amounts or maximum amounts that may be paid under this section (see subsections (1) to (3)).

Section 26: “The Minister”

90. This section defines “the Minister” as being the Secretary of State in relation to English Committees and Welsh Ministers in relation to Welsh Committees for the purpose of provisions in this Part relating to Regional Flood and Coastal Committees.

General

Section 27: Sustainable development

91. This section gives lead local flood authorities, district councils, internal drainage boards and highway authorities a duty to aim to make a contribution towards the achievement of sustainable development when discharging their flood or coastal erosion risk management functions (subsection (1)). This duty does not apply to the Environment Agency, which already has such a duty under section 4 of the Environment Act 1995. Nor does it relate to water companies as the water industry regulator, Ofwat, has such a duty which applies to its regulation of the industry.
92. Subsection (2) requires the Minister to issue guidance on how the specified authorities should contribute to the achievement of sustainable development through their flood or erosion risk management functions. It requires the specified authorities to have regard to the Minister’s guidance. The Minister already has a duty, under section 4 of the Environment Act 1995, to provide guidance to the Environment Agency on how it should exercise its functions so as to contribute to sustainable development.
93. For the purpose of this section, subsection (4) defines the term “flood risk management function” and subsection (5) defines “the Minister” as the Secretary of State in relation to English authorities and Welsh Ministers in relation to Welsh authorities. English authorities are lead local flood authorities, district councils and highways authorities for areas in England as well as internal drainage boards for a district which is mainly or wholly in England. Welsh authorities are lead local flood authorities or highways authorities for areas in Wales as well as internal drainage boards for a district which is wholly or mainly in Wales (subsection (6)).

Section 28: Power to make further amendments

94. This section allows the Minister to amend, by order, the Public Health Act 1936 (so far as relevant to water), the Coast Protection Act 1949, The Highways Act 1980 (so far as relevant to water) the Land Drainage Act 1991, the Water Resources Act 1991 and the Environment Act 1995 if the Minister considers this necessary or desirable in consequence of this Part of the Act. The term “the Minister” is defined in subsection (3) for the purposes of these powers. Orders under this section are subject to the affirmative resolution procedure.

Section 29: Restructuring

95. This section gives the Minister the power to amend, by order, this Act or any other enactment, to transfer the responsibilities of lead local flood authorities, district

councils and internal drainage boards for flood risk or coastal erosion risk to other risk management authorities or other bodies (subsections (1) and (3)).

96. In particular, this power may be used to redefine the meaning of “risk management authority” such as by including different authorities within the definition, or to reassign a flood or coastal erosion risk management function such as by reallocating works powers amongst the risk management authorities (subsection (2)).
97. Subsection (4) specifies that the Minister must consult the authorities that would be affected by any changes. Subsection (5) requires that an order made under this section must be subject to the affirmative resolution procedure.
98. Subsection (6) defines the term “the Minister” for the purposes of this section.

Section 30: Designation of features

99. **Section 30** introduces Schedule 1: Risk Management: Designation of Features.
100. This Schedule to the Act provides additional legal powers for certain authorities in England and Wales (as explained below) to formally designate assets or features which affect flood or coastal erosion risk. It increases regulatory control of the significant number of assets or features which form flood and coastal erosion risk management systems, but which are not maintained or operated by those formally responsible for managing the risk.

Schedule 1: Risk Management: Designation of features

“Designating authority”

101. **Paragraph 1** defines the Environment Agency, local authorities and internal drainage boards as “designating authorities” who may designate features under this Schedule. They will be responsible for managing the designation process, which includes issuing the appropriate notices to the owners of features being designated, and considering any representations made about a notice.

“Responsible authority”

102. **Paragraph 2** ensures that once a feature has been designated, the “responsible authority” (beside the owner) has an ongoing and exclusive role in exercising functions in respect of the feature. It is the responsible authority that will monitor and enforce the designation and it is the responsible authority that has the power to consent to the alteration, removal or replacement of a feature.
103. In effect, the designating authority becomes the responsible authority once the designation has been confirmed (by the issue of a designation notice). However, it is possible for an authority to enter into arrangements with other relevant authorities to carry out functions on its behalf. An example of this might be the establishment of a single designating unit for an area in the spirit of co-operation and the interests of efficiency. The relevant provisions can be found at section 13.
104. A designation will be made as part of an authority’s risk management activity; authorities may not transfer their designations to another authority except in exceptional circumstances. Specifically, a designation may be adopted by another authority with relevant functions if the responsible authority ceases to have relevant functions itself: the relevant functions will be in respect of the risk the designated feature affects. There are specific circumstances when this may be the case, for example if a new unitary authority is established for an area which necessitates a transfer of responsibilities from a former district authority to a newly established unitary authority.

“Owner”

105. Paragraph 3 defines the “owner” of a feature that may be designated. The owner is either the owner of the land on which the feature is situated, or if different, the person that manages or controls the feature.

Designation

106. Paragraph 4 defines a feature as “a structure, or a natural or man-made feature of the environment”. It is a broad definition which may include things that affect flood or coastal erosion risk in an area but are unlikely to have protection under existing law. Examples may include (but are not limited to) features and structures such as walls, channels, culverts, sluices, raised ground and embankments.
107. A feature may be designated if:
- the designating authority is of the opinion that the existence or location of the feature affects flood risk or coastal erosion risk;
 - the designating authority has responsibility for the risk that is affected;
 - the feature has not been designated already, including by another authority; and
 - it is not owned by a designating authority.

Effect of a designation

108. Paragraph 5 prohibits a person from altering, removing, or replacing a designated structure or feature without the permission of the responsible authority. If a person contravenes this requirement, the responsible authority may take enforcement action.
109. It also requires that a designation is registered as a local land charge by the designating authority. If the designation is cancelled, the responsible authority will remove the local land charge.
110. It does not provide for cost recovery in registering or cancelling a local land charge in respect of a designated feature.

Consent to alteration, removal or replacement

111. Paragraph 6 sets out that the responsible authority may give consent to alter, remove or replace a designated feature. Any such consent must be given by notice to the owner. Notice may be given following an application by the owner, or if the responsible authority thinks it appropriate for another reason.
112. The responsible authority may, by notice, vary or withdraw consent that it has given; the notice to vary or withdraw consent may not be backdated.
113. The responsible authority may refuse to give consent, but it may only do so if it is of the opinion that the proposed alteration, removal or replacement would affect a flood risk or coastal erosion risk. If a person has been refused consent, they may appeal the decision of the responsible authority in accordance with regulations made under paragraph 15 of this schedule.

Provisional designation notice: procedure

114. Paragraph 7 provides that before a feature may be formally designated, the designating authority must first issue a provisional designation notice to the owner of the feature in question.
115. The provisional designation notice must provide important information about the provisional designation. As a minimum the notice must set out:

- the feature in question;
 - the date from which the feature is provisionally designated;
 - why the feature is being provisionally designated;
 - how the owner of the feature may make representations to the designating authority in respect of the notice; and
 - the period in which representations may be made.
116. During the period of notice, the owner has the right to make representations to the designating authority on the provisional designation, which the authority must consider before confirming a designation by means of a designation notice.
117. However, because the provisions are designed to protect the flood and coastal erosion risk management properties of the feature in question (by preventing changes from being made that could affect its flood or coastal risk management properties), the feature is to be treated as though it has been formally designated for the duration of the period of notice.
118. This means that no alteration, removal or replacement of the feature may be made without the written consent of the designating authority. The designating authority may issue an enforcement notice in respect of a person that contravenes a provisional designation notice and it is an offence to fail to comply with an enforcement notice in respect of a provisional designation as it is for a final designation.
119. The designating authority may also cancel a provisional designation by issuing a notice to that effect.

Designation notice: procedure

120. [Paragraph 8](#) sets out that a designation notice may be issued by the designating authority that confirms indefinitely the status of the provisional designation.
121. A designation notice may not be issued until the period of notice for making representations has expired. The designating authority must have regard to any representations made within the period of notice in deciding whether to confirm the designation.
122. The designation notice must be issued within 60 days of the date of issue of the provisional designation notice. After this time the provisional designation will cease to have effect. If the designating authority still wants to designate the feature after that time, then a new provisional designation notice is required. The designating authority may not confirm a designation or take any enforcement action in respect of a provisional designation once the period of notice has expired.
123. The designation notice must include certain particulars about the feature and designation including what is being designated and why, and give information about the appeals process.
124. The owner of the feature may appeal a designation notice, for example if the authority has not taken account of reasonable representations made in respect of the provisional designation that preceded the designation notice.

Cancellation

125. [Paragraph 9](#) provides that the responsible authority may cancel a designation (including a provisional designation). It may do so at the owner's request or where it thinks it appropriate for another reason, for example if a new flood defence system has come on-line that negates the need for the designation. An owner may appeal if their request for a cancellation is denied.

126. Where the responsible authority intends to cancel a designation it must issue a notice to the owner that must specify the details of the feature to which it refers, the date on which it comes into effect, and the reason for the cancellation.
127. The responsible authority must remove the local land charge. The authority is not empowered to charge for a cancellation.

Notice to other authorities

128. [Paragraph 10](#) requires the responsible authority to notify other authorities about a designation or cancellation where the other authority is likely to have an interest. This is in addition to requirements under section 21 for the lead local flood authority to keep a register of features and a record of information about them, the duty to co-operate, and the power to enter into arrangements under section 13.

Enforcement notice

129. [Paragraph 11](#) provides powers to enable the responsible authority for a designated feature to enforce the designation. It is not an offence in the first instance to contravene paragraph 5(1) (the prohibition on altering, removing or replacing a designated feature without the consent of the responsible authority) but it is an offence not to comply with a subsequent enforcement notice, described in paragraph 133 of these notes below.
130. The responsible authority may issue an enforcement notice to the person that contravened paragraph 5(1), or the owner of the feature.
131. An enforcement notice must give instructions to the person on whom it is served, setting out the corrective measures the person must undertake and by when they should be completed in order to restore the feature to its proper state. If an enforcement notice is ignored the authority may carry out the remedial work and may recover costs incurred from the person on whom the enforcement notice was served.
132. An enforcement notice may be appealed in accordance with regulations made under paragraph 15 of this Schedule.
133. [Paragraph 11\(4\)\(a\)](#) provides that it is an offence to fail to comply with an enforcement notice, and that if found guilty, a person may be fined up to a maximum amount as set out in level 5 of the standard scale.
134. The enforcement powers also apply to a provisional designation notice until such time as it expires.

Emergency powers

135. [Paragraph 12](#) includes specific powers for a responsible authority to act in an emergency.
136. This paragraph only applies if: (a) a person carries out works to alter, remove or replace a designated feature without obtaining consent; and (b) the responsible authority considers that this increases an immediate and serious flood or coastal erosion risk that warrants emergency action. In such an emergency situation the authority may take remedial action without the need to first serve an enforcement notice. Such emergency action includes entry to the land on which the feature is located (see paragraph 13 of Schedule 1).
137. The authority may recover from the owner any costs incurred in carrying out the emergency works.

Powers of entry

138. [Paragraph 13](#) gives powers of entry to land for the following purposes:

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- to establish whether a person has altered, removed or replaced a designated feature without consent of the relevant authority;
 - to determine whether a person has complied with an enforcement notice;
 - to take the steps set out in an enforcement notice if the person on which it was served has not taken them; or
 - to act in an emergency.
139. The authority must give at least 7 days notice to the occupier of the land and state the reason for entry unless an emergency necessitates earlier intervention.
140. Anyone exercising the powers of entry must provide on request written proof of their authorisation to enter the land.
141. [Paragraph 13\(5\)](#) makes it an offence to obstruct a person authorised by the authority from entering land for the purposes of exercising default enforcement powers and emergency powers. Anyone found guilty is liable to up to: (a) two years imprisonment or a fine or both (on indictment); or (b) a fine up to the statutory maximum (on summary conviction).

Compensation for owners and third parties

142. [Paragraph 14](#) provides that an authority must pay compensation to a person in respect of damage to their land resulting from the exercise of the powers of entry.
143. However, compensation is not payable to a person who has altered, removed or replaced the feature without the relevant authority's consent, or has failed to comply with an enforcement notice.
144. There is an exception: if an authority has exercised its powers unreasonably then compensation should be paid in respect of any damage suffered as a result of the unreasonable use of powers irrespective of whether a notice has been contravened. This is in addition to any civil remedies that are available to someone who has suffered damage.

Appeals

145. The owners of designated features will have a right of appeal in accordance with regulations made under paragraph 15 against:
- a designation notice (but not a provisional designation notice, in respect of which representations may be made);
 - a decision in connection with a consent to alter, remove or replace a designated feature;
 - refusal to cancel a designation; and
 - receipt of an enforcement notice.
146. Sub-paragraph (2) makes provision about the regulations.
147. Sub-paragraph (3) stipulates that where an appeal is made: a) the designation remains in place until the appeal has been determined; and b) the person or legal body who hears and determines the appeal may cancel the designation.
148. Sub-paragraph (4) specifies that if someone appeals against an enforcement notice: a) the timescale for completion of the specified remedial action is temporarily suspended until the appeal has been determined; and b) the person or legal body who hears and determines the appeal may cancel the notice if appropriate. Sub-paragraph (5)

specifies that the first set of regulations under paragraph 15 are subject to the affirmative resolution procedure.

Notices and applications

149. [Paragraph 16](#) provides that the Minister (as defined in paragraph 17 of this Schedule) may make regulations (by statutory instrument) about the serving of notices, and the form and procedure for applications under this Schedule.

“The Minister”

150. [Paragraph 17](#) defines the “Minister” for the purposes of Schedule 1 as meaning the Secretary of State in England and Welsh Ministers in Wales.

Section 31: Amendments of other Acts

151. [Section 31](#) introduces Schedule 2, Risk Management: Amendments of other Acts. The Schedule provides for various amendments to the Coast Protection Act 1949, the Land Drainage Act 1991, the Water Resources Act 1991, and the Environment Act 1995. These amendments have the effect of introducing flood and coastal erosion risk management provisions into those Acts.
152. Currently between them, those Acts provide the legislative framework for flood defence and coast protection. Part 1 of the Act establishes a risk management approach to flood and coastal erosion and that Part and the amended Acts taken together allocate responsibility for sources of flood and coastal erosion risk to certain bodies and provide powers to do works, which go wider than “defence” and “protection”, in order to manage the risks.
153. The amendments also apply existing provisions in the Acts to the flood and coastal erosion risk management regime. In particular these amendments apply existing consenting and enforcement provisions and also appeal, compensation, rights of entry and compulsory purchase provisions to the new powers. The Schedule also amends the Local Government Act 2000 so as to apply provisions of that Act to the actions of risk management authorities.

Schedule 2: Amendment of other Acts

Coast Protection Act 1949 (CPA)

154. [Paragraphs 1 to 24](#) concern amendments to the CPA.
155. Under the CPA, the district council of each maritime district is the “coast protection authority” for that area unless a “coast protection board” has been constituted for the area under section 2 of the CPA. In practice no coast protection boards have been created and paragraph 2 repeals section 2 of the CPA removing this option.
156. The effect of paragraphs 3 and 4 of the Schedule is to insert section 2A into, and amend section 4 of the CPA so as to grant the Environment Agency the same powers to do coast protection work that are held by coast protection authorities. In conjunction with the definition of coast protection work inserted by paragraph 24 (see below) the new provisions also widen the scope of works which can be done under the Act by both the Environment Agency and coast protection authorities, to include anything done for the purpose of maintaining or restoring natural processes. This enables coastal erosion risk management works to be undertaken. However, there are additional conditions that apply before the wider power can be used. These are that the Environment Agency or authority must think the work is desirable, having regard to the national flood and coastal risk management strategies under sections 7 and 8, and that, in relation to a coast protection authority, the purpose of the work must be to manage a coastal erosion risk in its area.

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157. Paragraphs 5(5) and 5(6) provide for the Environment Agency to approve coast protection works under section 5 of the CPA rather than the Minister. Paragraph 5 also contains consequential amendments needed to ensure that the powers which are being extended to the Environment Agency are accompanied by an extension of the notification and objection provisions and protections. It also ensures that the extra works powers that coast protection authorities are acquiring are similarly accompanied by these protections.
158. Paragraphs 6 to 9 make consequential amendments to sections 6, 8, 9 and 10 of the CPA to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the powers of coast protection authorities to make works schemes.
159. Paragraphs 10 and 11 make consequential amendments to sections 12 and 13 of the CPA, to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the general powers of coast protection authorities to maintain and repair works, and to allow them the same cost recovery provisions with the same inbuilt protections.
160. Paragraph 12 makes consequential amendments to section 14 of the CPA to extend to the Environment Agency (and coast protection authorities in respect of their wider powers) the existing powers of coast protection authorities to compulsorily acquire land, and with the same inbuilt protections (such as the requirement for ministerial consent and dispute, appeal and compensation provisions).
161. Paragraph 13 makes consequential amendments to section 19 of the CPA to ensure that the Environment Agency (and coast protection authorities in respect of their wider powers) are subject to the compensation provisions which apply to people affected by the exercise of the powers being acquired.
162. Paragraphs 14 and 15 repeal sections 20 and 21 of the CPA, which provide for funding to coast protection authorities in respect of coast protection work, from exchequer grants and contributions from certain county councils. These sections are no longer needed by virtue of the funding power in section 16 of this Act, which allows the Environment Agency and Welsh Ministers to make grants in respect of coastal erosion risk management expenditure.
163. Paragraphs 16 to 21 make further consequential amendments to sections 23 to 28 of the CPA to apply to the Environment Agency (and coast protection authorities in respect of their wider powers) the provisions made by those sections (such as power of entry provisions).
164. Paragraphs 22 and 23 make consequential amendments to the technical provisions in sections 44 and 45 of the CPA to extend their effect to the Environment Agency (and coast protection authorities in respect of their wider powers).
165. Paragraph 24 inserts a definition of “coast protection work” into section 49 of the CPA. This has the effect of widening the scope of works which can be done under the Act, by both the Environment Agency and coast protection authorities to include anything done for the purpose of maintaining or restoring natural processes.

Land Drainage Act 1991(LDA)

166. Paragraphs 25 to 39 concern amendments to the LDA.
167. Paragraph 26 repeals section 8 of the LDA, which allows the Environment Agency to exercise powers vested in internal drainage boards under sections 21 and 23 of that Act concurrently with the internal drainage board. Paragraph 27 repeals default powers of the Environment Agency under section 9(1) of the LDA insofar as they relate to flooding.

168. [Paragraph 28](#) amends section 11 of the LDA which makes provision for the Environment Agency and internal drainage boards to enter into arrangements for the purposes of carrying out certain works and, in particular, for internal drainage boards to carry out and maintain drainage works on behalf of one another. This amendment provides for internal drainage boards to provide administrative, professional or technical services to one another by agreement. This would allow internal drainage boards to operate as consortia.
169. [Paragraph 29](#) amends the LDA by adding a new section, 14A, after section 14. Section 14A gives lead local flood authorities powers to carry out flood risk management works provided that the authority considers this work to be desirable, having regard to the local flood risk management strategy for the area and it is for the purpose of managing a flood risk from surface run-off or groundwater (subsection (1)).
170. Subsections (2) and (3) of section 14A give internal drainage boards, district councils and lead local flood authorities (where there is no district council) powers to carry out flood risk management works in respect of ordinary watercourses, and the sea in their area where they consider this work to be desirable, having regard to the local flood risk management strategy for the area. In respect of works for the purpose of managing flood risk from the sea, the consent of the Environment Agency is required where those works are to improve existing works, construct or repair new works, maintain or restore natural processes or features, reduce or increase the level of water in a place, or alter or remove works.
171. These powers are wider than the existing powers in section 14 of the LDA and include anything done to: (a) maintain existing works, including cleansing, repairing or otherwise maintaining the efficiency of any existing watercourse or drainage work; (b) operate existing works; (c) improve existing works, including anything done to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve any drainage work; (d) construct or repair new works, which may include anything done to make any new watercourse or drainage work, improve a beach, dune or salt-marsh or erect machinery; (e) maintain or restore natural processes; (f) monitor, investigate or survey a location or a natural process; (g) reduce or increase the level of water in a place; (h) alter or remove any works.
172. These powers are subject to the same compensation, compulsory acquisition and powers of entry provisions as apply to the powers in section 14 of the LDA. The powers under section 14A are also subject to existing protections provided by the planning regime. This would be the main mechanism through which third parties might appeal against new works which might impact negatively upon them.
173. [Paragraph 30](#), in repealing section 17 of the LDA, removes the direct supervisory capacity that the Environment Agency exercises over local authorities in the carrying out of their drainage works powers. Instead, the authorities are required to exercise their powers in accordance with the local flood risk management strategy.
174. [Paragraph 31](#) amends section 21 of the LDA (which allows the internal drainage board or Environment Agency to take action to enforce obligations to maintain or repair any watercourse, bridge or other drainage work). The Environment Agency will no longer exercise this power in England or Wales. The internal drainage board (within its district) and otherwise the lead local flood authority for the area in question will exercise this power. The Environment Agency will continue to exercise this power in both England and Wales so far as it relates to main rivers under section 107(2) of the Water Resources Act 1991.
175. [Paragraphs 32, 33 and 34](#) make various amendments to sections 23, 25 and 26 of the LDA.

176. Section 23 of the LDA, prior to this amendment, prohibits the construction of certain kinds of obstructions in ordinary watercourses without the prior consent of the drainage board (currently the Environment Agency or internal drainage board (for works within its district)). The structures which are caught by this section include culverts which are likely to affect the flow of water in the watercourse. The wording of this provision implies that it is possible to construct a culvert which does not affect the flow, and that such a culvert would not require consent. The amendment in paragraph 32(2) changes this to require that any new culvert must have consent since any culvert necessarily affects the flow of a watercourse.
177. Sub-paragraph (3) of paragraph 32 amends section 23 of the 1991 Act to remove the Environment Agency as the consenting authority for watercourses outside of an internal drainage district, and replace it with lead local flood authorities. Internal drainage boards will remain the consenting authority for watercourses within an internal drainage district.
178. Sub-paragraph (3) of paragraph 32 also amends section 23 to require lead local flood authorities and internal drainage boards to consult with the Environment Agency when they are consenting work that they are themselves proposing. This is to minimise the potential for conflict of interest. Lead local flood authorities and internal drainage boards must also have regard to any guidance provided by the Environment Agency on consenting.
179. Sub-paragraph (4) of paragraph 32 amends section 23 to change the procedure by which fees may be determined. Instead of fees being changed by Ministerial order, they will be changed in accordance with a charging scheme that is prescribed by order. Sub-paragraph (6) amends the meaning of the reference to “the drainage board concerned” used in sections 23 and 24 so that the Environment Agency’s role as a drainage board for watercourses outside of an internal drainage district is taken over by lead local flood authorities. Sub-paragraph (5) extends this amended meaning of “the drainage board concerned” to section 25. Sub-paragraph (7) applies the definition of “lead local flood authority” in the Act to the use of the term in LDA.
180. [Paragraph 33](#) amends section 25 of the LDA (powers to require works for maintaining flow of watercourse) to give the powers of the Environment Agency to lead local flood authorities. Internal drainage boards retain their powers. Section 26, which deals with competing jurisdictions, is repealed by paragraph 34.
181. [Paragraphs 35](#) and [36](#) amend sections 33 and 34 of the LDA. Section 33 provides for the Environment Agency and drainage boards to commute (with Ministerial consent) land drainage obligations not related to main rivers and section 34 makes provision for the financial consequences of commutation. The amendments to section 33 remove the Environment Agency’s power to commute obligations and provide that: (i) where the obligations relate to an area which forms part of an internal drainage district then the drainage board for the district will have the power; (ii) for any other area, a lead local flood authority will have the power. The amendments to section 34 are consequential to reflect the changes in section 33. Paragraph 37 omits subsection (4)(c), relating to sea flooding, from section 59 of the LDA leaving that section to apply in relation to grants for drainage works.
182. [Paragraph 38](#) amends section 66 of the LDA which provides a power to make byelaws. These amendments extend the byelaw making power to the relevant authorities which are empowered to carry out works under section 14 of the LDA, as a result of other amendments made by this Act. The amendments also extend the purposes for which byelaws can be made from securing the efficient working of a drainage system; and regulating the effect on the environment of a drainage system, to: (a) securing the effectiveness of flood risk management works, with the meaning of section 14A of the LDA as inserted by the Act; and (b) securing the effectiveness of works done under section 38 or 39 of the Act.

183. Paragraph 39 introduces a definition of “culvert”, defining it as a covered channel or pipe designed to prevent the obstruction of a watercourse or drainage path by an artificial construction. There is no definition in current legislation.

Water Resources Act 1991 (WRA)

184. Paragraphs 40 to 49 concern amendments to the WRA.
185. Paragraph 41 repeals section 106 of the WRA so that the Environment Agency no longer has to carry out its flood management functions through the Regional Flood Defence Committees. Under section 23 of this Act, those Committees will have an advisory and consenting function instead.
186. Paragraph 42 amends section 110 of the WRA to change the procedure by which fees may be determined. Instead of fees being changed by Ministerial order, they will be changed in accordance with a charging scheme that is prescribed by order.
187. Paragraph 43 amends section 118 of the WRA, which states how revenue raised by the Environment Agency can be spent, to replace the reference to “flood defence functions” with a reference to the broader concept of “flood and coastal erosion risk management functions” which this Act introduces. It also replaces references to “local flood defence district” and “flood defence district” with “flood risk management region” which are the regions created by the Environment Agency, by the exercise of its powers under section 22. It repeals section 118(6), which relates to local flood defence districts which will no longer exist. Paragraph 44 repeals section 133 of the WRA the effect of which is replaced by section 17 of the Act.
188. Paragraphs 45 and 46 amend sections 159 and 160 of the WRA, and allow the pipe laying powers in those sections to be used for flood risk management purposes.
189. Paragraph 47 adds new provisions to the beginning of section 165 of the WRA. The new provisions allow the Environment Agency to carry out flood and coastal erosion risk management works provided that: (a) the Environment Agency thinks that the work is desirable having regard to the national flood and coastal erosion risk management strategy (under sections 7 and 8 of the Act); and (b) that the purpose of the works is to manage a flood risk from the sea, or a main river (although for certain works only the first condition need be satisfied). “Main river” includes a reference to a lake, pond or other area of water which flows into a main river.
190. Flood and coastal erosion risk management works include anything done to: (a) maintain existing works, including cleansing, repairing or otherwise maintaining the efficiency of any existing watercourse or drainage work; (b) operate existing works; (c) improve existing works, including anything done to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve any drainage work; (d) construct or repair new works, which may include anything done to make any new watercourse or drainage work, improve a beach, dune or salt-marsh, or erect machinery; (e) maintain or restore natural processes; (f) monitor, investigate or survey a location or a natural process; (g) reduce or increase the level of water in a place; (h) alter or remove any works.
191. These new powers are subject to the same compensation, compulsory acquisition, and powers of entry provisions as apply to the existing powers in section 165. It should be noted that the new powers are also subject to existing protections provided by the planning regime. This would be the main mechanism through which third parties might appeal against new works which might impact negatively upon them.
192. The new powers are wider than the existing powers in section 165 in the same way that the powers inserted by paragraph 26 into the LDA are wider, in that they may be used to: (i) remove works; (ii) maintain, restore, and monitor natural processes; or (iii) reduce or increase the level of water in a place.

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193. Sub-paragraphs (3) to (6) make consequential amendments to section 165 of the Water Resources Act.
194. [Paragraphs 48 and 50](#) (see under Water Industry Act 1991 below) respectively amend section 204(2) of the WRA and 206(3) of the Water Industry Act 1991. These sections create a number of exceptions to the general prohibition on disclosure of information gained by companies or individuals under those Acts. These amendments to those sections add the provision of information in response to a request under section 14 to those exceptions from that prohibition.
195. [Paragraph 49](#) amends paragraph 5(1) of Schedule 25 to the WRA to extend the powers of the Environment Agency to make byelaws. Byelaws may be made for the purposes of securing the efficient working of a drainage system and regulating the effect on the environment of a drainage system. This amendment provides in addition for byelaws to be made for the purposes of securing the effectiveness of flood risk management works, within the meaning of section 165 of the WRA, as amended by the Act and securing the effectiveness of works done under section 39 or 40 of the Act.

Water Industry Act 1991

196. See under Water Resources Act 1991 in relation to paragraph 48 of Schedule 2 to the Act.

Environment Act 1995

197. [Paragraphs 51 to 53](#) concern amendments to the Environment Act 1995.
198. [Paragraph 52](#) amends section 6 of the Environment Act 1995 to provide the Environment Agency with general supervision over all flood and coastal erosion risk management matters.
199. [Paragraph 53](#) repeals sections 14 to 19 and Schedules 4 and 5. These provisions are no longer needed in the light of provisions for Regional Flood and Coastal Committees under sections 22 to 26 of this Act.

Local Government Act 2000

200. [Paragraph 54](#), by adding a new section 21F to the Local Government Act 2000, extends the powers of overview and scrutiny committees in England under the Local Government Act 2000. It provides powers to lead local flood authorities to allow for the scrutiny of risk management authorities as to the exercise of their flood and coastal erosion risk management functions.
201. It gives risk management authorities a duty to comply with requests for information, or responses to reports, from the overview and scrutiny committees.
202. It provides for the Secretary of State to make regulations about the duties set out above. This can include provisions about procedures, notices, exemptions, requirements to provide information orally, the nature of information and publication.
203. Risk management authorities must have regard to the reports and recommendations of the overview and scrutiny committees.
204. This provision also provides for the Secretary of State's existing powers to make regulations, in respect of joint overview and scrutiny committees, to be used in respect of scrutiny under this new provision.