

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 3

Environmental Regulation

Section 61: Regulation of the water environment

219. This section enables the Secretary of State (in relation to England and in relation to such parts of the River Esk as are situated in Scotland) and the Welsh Ministers (in relation to Wales) to make regulations about water abstraction and impounding licences, flood defence consents and requirements for fish passes and screens. The regulation making power is modelled upon the power in the single environmental permitting regime created under the Pollution Prevention and Control Act 1999 (the PPC Act). Regulations under this section may be combined with regulations made under that regime to create a common system of environmental regulation.
220. Under the PPC Act, Ministers have powers to regulate polluting activities under a single regime. However, they do not have a power to place abstraction and impoundment licensing, flood defence consents or fish passage within that regime, as these do not relate to pollution as defined.
221. Integrating the permitting and regulatory regimes for abstraction, impounding, flood defence and fish passage will allow regulators to use one common process and compliance framework. The framework allows different levels of control to be applied to a particular activity, according to risk: bespoke permits; standard permits; exemptions from the requirement to hold a permit if specified conditions are satisfied.
222. Subsection (1) empowers the Secretary of State and the Welsh Ministers to make regulations for the purposes set out in Part 1 of Schedule 8. Under subsection (2), any provision made by such regulations must be made for or in connection with regulating: the use of water resources; securing the drainage of land or the management of flood risk; or safeguarding the movement of freshwater and migratory fish through regulated waters. Under subsection (3), Ministers must have regard to reducing burdens by combining regulations made under this section with systems for regulating activities causing pollution. Subsection (4) is a power to make consequential amendments to legislation, including primary legislation. Subsection (5) requires consultation before any regulations are made. Under subsection (11), regulations in relation to the passage of fish may apply to so much of the Border Esk River with its banks and tributary streams up to their source as situated in Scotland, and will not apply in the lower reaches of the River Tweed in England on the assumption that they will be regulated under law made by the Scottish Ministers. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed.

Section 62: Environmental regulation: procedure

223. This section sets out the parliamentary process to be followed by the Secretary of State and the Welsh Ministers when making regulations under section 61. Subsection (4) ensures that the first sets of regulations made by the Secretary of State and by the Welsh Ministers will be subject to the affirmative resolution procedure. Any subsequent regulations which create an offence or increase a penalty for an existing offence or which amend or repeal any provision of primary legislation, will also be subject to the affirmative procedure. Other than in these circumstances, regulations will be subject to the negative resolution procedure unless subsections (5) and (6) are relevant.
224. Subsections (5) and (6) make provision about the procedure that will apply if regulations made under section 61 are combined with regulations made under section 2 of the PPC Act. Subsection (13) inserts a provision in the PPC Act referring to section 61 of this Act to ensure that this requirement is referenced in that Act.
225. Subsections (9) to (12) set out the relevant procedures for statutory instruments which combine regulations made by the Secretary of State under section 61 with regulations made by the Welsh Ministers under that section.

Section 63: Repeal of certain provisions about culverts

226. This section repeals sections 262 and 263 of the Public Health Act 1936.
227. Section 262 of the Public Health Act 1936 gives local authorities power to require the culverting of watercourses and ditches where building operations are proposed. Section 262 was introduced to allow watercourses to be covered so that they did not cause health problems. The approach now is to address the pollution and not cover up the watercourse. In addition the Environment Agency and Natural Resources Body for Wales discourage culverting as it is not consistent with good surface run-off.
228. Under section 263 watercourses in urban districts may not be culverted except in accordance with plans approved by the local authority.
229. Section 23 of the Land Drainage Act 1991 and section 109 of the WRA require that owners/occupiers who wish to erect or alter any mill dam, weir or other like obstruction to a watercourse, or erect or alter any culvert must seek the prior consent from either the Lead Local Flood Authority, the relevant internal drainage board, the Environment Agency or the Natural Resources Body for Wales depending on the location of the proposed works. In combination with section 263 of the Public Health Act 1936 these provisions require that owner/occupiers apply for parallel consents from a number of bodies. Section 263 of the Public Health Act 1936 is being repealed in order to remove the requirement for parallel consents.