

2010 No. 1102

ENVIRONMENTAL PROTECTION

The Flood Risk (Cross Border Areas) Regulations 2010

Made - - - - *29th March 2010*

Laid before Parliament *31st March 2010*

Coming into force - - *30th April 2010*

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

The Secretary of State makes the following regulations under the powers conferred by that section.

Citation, commencement and extent

1.—(1) These regulations may be cited as the Flood Risk (Cross Border Areas) Regulations 2010.

(2) They come into force on 30th April 2010.

(3) They extend to Great Britain.

Amendment of the Flood Risk Regulations 2009

2. The Flood Risk Regulations 2009^(c) are amended in accordance with the following provisions of these Regulations.

3. In paragraph (5) of regulation 1 (Citation, commencement and extent) substitute “regulations 14A, 17A, 37, 38 and 39” for “regulation 37”.

4. For regulation 5 (“River basin district”) substitute—

““River basin district”

5. “River basin district” means—

- (a) a river basin district (within the meaning of regulation 2 of the Water Environment Regulations) which is entirely within England and Wales,
- (b) the Northumbria River Basin District referred to in regulation 37, and
- (c) an area so identified on the Cross Border Map consisting of either—

(a) See the European Communities (Designation) Order 2008 (S.I. 2008/301).

(b) 1972 c. 68. Section 57(1) of the Scotland Act 1998 (c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law by virtue of that Act, any function of a Minister of the Crown continues to be exercisable as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(c) S.I. 2009/3042.

- (i) a river basin in England, or
- (ii) an English cross border area.

“Cross border areas”

5A.—(1) “English cross border area” means an area so identified on the Cross Border Map consisting, in relation to a river basin which is partly in England and partly in Scotland, of the part of that basin which is in England.

(2) “Scottish cross border area” has the same meaning as in the Scottish Act.

“Cross Border Map”

5B. “Cross Border Map” means the map which is—

- (a) recorded electronically,
- (b) entitled “Cross Border River Basins Map (England and Scotland) 2010”, and
- (c) deposited in the principal library of the Department for Environment, Food and Rural Affairs.”.

5. After regulation 8 (“Water Environment Regulations”) insert—

““River basin management plan”

8A. “River basin management plan” means a river basin management plan prepared under regulation 11 of the Water Environment Regulations.

“Scottish Act”

8B. “The Scottish Act” means the Flood Risk Management (Scotland) Act 2009(a).”.

6. In paragraph (7) of regulation 12 (Preliminary assessment reports) insert “or, in relation to an English cross border area the Environment Agency and the Scottish Environment Protection Agency acting jointly,” after “Environment Agency”.

7. In regulation 13 (Duty to identify flood risk areas: Environment Agency) insert after paragraph (3)—

“(4) This regulation does not apply in relation to an English cross border area.”.

8. In regulation 14 (Duty to identify flood risk areas: lead local flood authorities) insert after paragraph (9)—

“(10) This regulation does not apply in relation to an English cross border area.”.

9. After regulation 14 insert—

“Duty to identify flood risk areas: English cross border areas

14A. The Secretary of State and the Scottish Ministers acting jointly must—

- (a) determine in relation to each English cross border area whether, in their opinion, there is a significant flood risk, and
- (b) identify the part of the English cross border area affected by that risk (the “flood risk area”).”.

10. In regulation 15 (Publication) insert after paragraph (2)—

(a) 2009 asp 6.

“(3) In relation to an English cross border area, this regulation applies as if the reference to preliminary assessment maps and preliminary assessment reports includes the flood risk assessment prepared by SEPA under section 9 of the Scottish Act for an adjacent Scottish cross border area.”.

11. After regulation 17 (Review: lead local flood authorities) insert—

“Review: Secretary of State and Scottish Ministers

17A.—(1) The Secretary of State and Scottish Ministers acting jointly must review the determination and identification of flood risk areas under regulation 14A.

(2) The first review must be completed before 22nd December 2017.

(3) Subsequent reviews must be carried out at intervals of not more than 6 years.”.

12. Regulation 18 (Duty to prepare flood hazard maps and flood risk maps: Environment Agency) is renumbered as regulation 18(1) and in that paragraph—

(a) substitute “each relevant flood risk area” for “each flood risk area identified by it under regulation 13”, and

(b) insert after paragraph (1)—

“(2) “Relevant flood risk area” means—

(a) a flood risk area identified by the Environment Agency under regulation 13, and

(b) a flood risk area in an English cross border area in which the Secretary of State and Scottish Ministers have identified (under regulation 14A) that there is a significant flood risk from—

(i) the sea,

(ii) main rivers, or

(iii) reservoirs.”.

13. In paragraph (2) of regulation 19 (Duty to prepare flood hazard maps and flood risk maps: lead local flood authorities)—

(a) omit “or” at the end of sub-paragraph (a),

(b) insert “, or” at the end of sub-paragraph (b), and

(c) insert after sub-paragraph (b)—

“(c) the flood risk area identified by the Secretary of State and the Scottish Ministers under regulation 14A, other than any mentioned in regulation 18(2)(b)”.

14. In regulation 20 (Flood hazard maps)—

(a) omit paragraph (7), and

(b) insert in paragraph (8) “or, in relation to an English cross border area the Environment Agency and the Scottish Environment Protection Agency acting jointly,” after “Environment Agency”.

15. In paragraph (4) of regulation 21 (Flood risk maps) insert “or, in relation to an English cross border area the Environment Agency and the Scottish Environment Protection Agency acting jointly,” after “Environment Agency”.

16. In regulation 22 (Publication) insert after paragraph (2)—

“(3) In relation to an English cross border area, this regulation applies as if the reference to flood hazard maps and flood risk maps includes the maps prepared by the Scottish Environment Protection Agency under section 21 of the Scottish Act for an adjacent Scottish cross border area.”.

17. Regulation 25 (Duty to prepare flood risk management plans: Environment Agency) is renumbered as regulation 25(1) and in that paragraph—

- (a) substitute “each relevant flood risk area” for “each flood risk area identified by it under regulation 13”, and
- (b) insert after paragraph (1)—
 - “(2) “Relevant flood risk area” means—
 - (a) a flood risk area identified by the Environment Agency under regulation 13, and
 - (b) a flood risk area in an English cross border area in which the Secretary of State and Scottish Ministers have identified (under regulation 14A) that there is a significant flood risk from—
 - (i) the sea,
 - (ii) main rivers, or
 - (iii) reservoirs.”.

18. In paragraph (2) of regulation 26 (Duty to prepare flood risk management plans: lead local flood authorities)—

- (a) omit “or” at the end of sub-paragraph (a),
- (b) insert “, or” at the end of sub-paragraph (b), and
- (c) insert after sub-paragraph (b)—
 - “(c) the flood risk area identified by the Secretary of State and the Scottish Ministers under regulation 14A, other than any mentioned in regulation 25(2)(b)”.

19. For paragraph (9) of regulation 27 (Flood risk management plans) substitute—

- “(9) In relation to an English cross border area—
 - (a) paragraph (7) applies as if the reference to the Environment Agency is a reference to the Environment Agency and the Scottish Environment Protection Agency acting jointly, and
 - (b) paragraph (8) applies as if the reference to guidance issued by the Environment Agency is a reference to guidance issued by the Environment Agency and the Scottish Environment Protection Agency acting jointly.”.

20. In regulation 28 (Publication) insert after paragraph (2)—

“(3) In relation to an English cross border area, this regulation applies as if the reference to flood risk management plans includes the plans produced by the Scottish Environment Protection Agency under section 27 of the Scottish Act for an adjacent Scottish cross border area.”.

21. In regulation 32 (Part 2: Environment Agency)—

- (a) substitute for paragraph (1)—
 - “(1) If the Environment Agency determines before 22nd December 2010 that it will prepare a flood hazard map, a flood risk map and a flood risk management plan for the whole of the river basin district then, in relation to that district—
 - (a) regulations 9(1)(b), 13 and 16 do not apply to the Environment Agency, and
 - (b) regulation 14A does not apply insofar as it relates to the risk of flooding from sources mentioned in regulation 13(1)(a) (although the Secretary of State and Scottish Ministers may take those risks into account if they consider that such flooding may affect flooding from a source not mentioned in regulation 13(1)(a)).”
- (b) omit “and” at the end of paragraph (6)(a),
- (c) insert after paragraph (6)(a)—
 - “(b) if the district is an English cross border area, regulation 14A applies (to the extent that it was previously disapplied in relation to the district by paragraph (1)(b)), and”, and

(d) renumber paragraph (6)(b) as paragraph (6)(c).

22. In regulation 34 (Part 2: lead local flood authorities)—

(a) substitute for paragraph (1)—

“(1) If a lead local authority determines before 22nd December 2010 that it will prepare a flood hazard map, a flood risk map and a flood risk management plan for the whole of its area then, in relation to that area—

(a) Part 2 does not apply to the authority, and

(b) regulation 14A does not apply in relation to the authority’s area, except insofar as it relates to the risk of flooding from—

(i) the sea,

(ii) main rivers, and

(iii) reservoirs.”,

(b) insert after paragraph (6)(a)—

“(b) if the authority’s area is wholly or partly within an English cross border area, regulation 14A applies in relation to that part of the authority’s area (to the extent that it was previously disappplied in relation to the area by paragraph (1)(b)), and”, and

(c) renumber paragraph (6)(b) as paragraph (6)(c).

23. In regulation 35 (Duty to co-operate) insert after paragraph (2)—

“(3) The Environment Agency and a lead local authority must—

(a) co-operate with any Scottish flood authority for the purpose of assisting that authority to exercise its functions under the Scottish Act in relation to a Scottish cross border area, and

(b) co-ordinate the exercise of its functions which relate to an English cross border area with a Scottish flood authority so as to take into account the risk of flooding in an adjacent Scottish cross border area.

(4) “Scottish flood authority” means—

(a) the Scottish Environment Protection Agency, and

(b) a lead authority within the meaning of section 34 of the Scottish Act whose area falls wholly or partly in a Scottish cross border area.”.

24. For paragraph (2) of regulation 36 (Power to require information) substitute—

“(2) The Environment Agency and an authority listed in paragraph (3) must comply with a request of a lead local authority or the Secretary of State to provide information reasonably required in connection with the exercise of functions under these regulations.”.

25. For regulation 38 (Solway Tweed River Basin District) substitute—

“Cross Border Advisory Group

38.—(1) The Secretary of State and Scottish Ministers must convene a Cross Border Advisory Group.

(2) The Group is to consist of at least one individual nominated by each of the following—

(a) the Environment Agency,

- (b) each Regional Flood Defence Committee (established under section 14 of the Environment Act 1995(a)) whose area includes all or part of an English cross border area,
- (c) the lead local flood authority for each area which includes all or part of an English cross border area,
- (d) the Scottish Environment Protection Agency,
- (e) the district advisory group (established under section 49 of the Scottish Act) for each Scottish cross border area,
- (f) the sub-district advisory group (established under section 50 of the Scottish Act) for each part of a Scottish cross border area,
- (g) any other responsible authority within the meaning of the Scottish Act which has functions under that Act that relate to a Scottish cross border area, and
- (h) any other organisation that the Secretary of State and Scottish Ministers acting jointly invite to make a nomination.

Advice from the Cross Border Advisory Group

39.—(1) The Cross Border Advisory Group must advise the relevant authority on the manner in which it should exercise the functions contained in the following regulations insofar as they relate to an English cross border area—

- (a) regulation 9(1),
- (b) regulation 10,
- (c) regulation 14A,
- (d) regulation 16,
- (e) regulation 17,
- (f) regulation 17A,
- (g) regulation 18(1),
- (h) regulation 19,
- (i) regulation 23,
- (j) regulation 24,
- (k) regulation 25(1),
- (l) regulation 26,
- (m) regulation 29, and
- (n) regulation 30.

(2) The Cross Border Advisory Group must advise the relevant authority on the manner in which it should exercise the functions contained in the following provisions of the Scottish Act insofar they relate to a Scottish cross border area—

- (a) section 9(1),
- (b) section 10(1),
- (c) section 13(1),
- (d) section 14(1),
- (e) section 21(1),
- (f) section 24(1),
- (g) section 27(1),
- (h) section 33(1), and

(a) 1995 c. 25.

- (i) section 34(1).

(3) The advice provided by the Cross Border Advisory Group must address the manner in which the relevant authorities should co-ordinate the exercise of their functions in relation to English cross border areas and Scottish cross border areas in order to ensure that the following are taken into account—

- (a) the impact on flood risk in an English cross border area of actions and inactions in an adjacent Scottish cross border area, and
- (b) the impact on flood risk in a Scottish cross border area of actions and inactions in an adjacent English cross border area.

Cross border areas: exercise of functions

40. When exercising the functions listed in regulation 39(1) in relation to an English cross border area, the authority exercising the function must have regard to—

- (a) the impact on flood risk in the English cross border area of actions and inactions in an adjacent Scottish cross border area,
- (b) the impact on flood risk in an adjacent Scottish cross border area of actions and inactions in the English cross border area,
- (c) documents produced under Part 3 of the Scottish Act in relation to an adjacent Scottish cross border area, and
- (d) the advice given by the Cross Border Advisory Group under regulation 39.”.

Amendment of the Flood Risk Management (Scotland) Act 2009

26. The Flood Risk Management (Scotland) Act 2009(a) is amended in accordance with the following provisions of these Regulations.

27. Section 12 (Flood risk assessments: availability for public inspection) is renumbered as section 12(1) and after that subsection insert—

“(2) In relation to a Scottish cross border area subsection (1) applies as if the reference to the flood risk assessment includes the preliminary assessment map and preliminary assessment reports prepared by the Environment Agency and the lead local flood authority under regulations 9 and 10 of the Flood Risk Regulations for an adjacent English cross border area.”.

28. In section 13 (SEPA to identify potentially vulnerable areas and local plan districts) insert after subsection (10)—

“(11) In relation to a Scottish cross border area, this section has effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State acting jointly.”.

29. In section 14 (Potentially vulnerable areas and local plan districts: review) insert after subsection (4)—

“(5) In relation to a Scottish cross border area, this section has effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State acting jointly.”.

30. Section 25 (Flood hazard maps and flood risk maps: availability for public inspection) is renumbered as section 25(1) and after that subsection insert—

“(2) In relation to a Scottish cross border area subsection (1) applies as if the reference to the flood hazard map and flood risk map includes the maps prepared by the Environment

(a) 2009 asp 6.

Agency and the lead local flood authority under regulation 18 and 19 of the Flood Risk Regulations for an adjacent English cross border area.”.

31. In section 30 (Flood risk management plans: publicity of drafts etc. and consultation) insert after subsection (8)—

“(9) In relation to a Scottish cross border area, a statement under subsection (1) and a draft under subsection (2) is to be published by SEPA and the Environment Agency acting jointly.”.

32. In section 32 (Flood risk management plans: approval and publication) insert after subsection (6)—

“(7) In relation to a Scottish cross border area, subsection (5) applies as if the duties on SEPA in relation to the plan in paragraphs (a), (b), (c) and (d) included similar duties in relation to the flood risk management plans prepared by the Environment Agency and the lead local flood authority under regulations 25 and 26 of the Flood Risk Regulations for an adjacent English cross border area.”.

33. After section 50 (Sub-district flood risk advisory groups) insert—

“Cross border areas

50A.—(1) When exercising the functions listed in subsection (2) in relation to a Scottish cross border area, the authority exercising the function must have regard to—

- (a) the impact on flood risk in an adjacent English cross border area of actions and inactions in the Scottish cross border area,
- (b) the impact on flood risk in the Scottish cross border area of actions and inactions in an adjacent English cross border area,
- (c) documents produced under Parts 2, 3 and 4 of the Flood Risk Regulations in relation to an adjacent English cross border area, and
- (d) the advice given by the Cross Border Advisory Group under regulation 39 of the Flood Risk Regulations.

(2) The functions are those contained in—

- (a) section 9(1),
- (b) section 10(1),
- (c) section 13(1),
- (d) section 14(1),
- (e) section 21(1),
- (f) section 24(1),
- (g) section 27(1),
- (h) section 33(1), and
- (i) section 34(1).

(3) SEPA and each lead authority must—

- (a) co-operate with any English flood authority for the purpose of assisting that authority to exercise its functions under the Flood Risk Regulations in relation to an English cross border area, and
- (b) co-ordinate the exercise of its functions which relate to a Scottish cross border area with an English flood authority so as to take into account the risk of flooding in an adjacent English cross border area.

(4) In this section “English flood authority” means—

- (a) the Environment Agency,

(b) a lead local flood authority within the meaning of the Flood Risk Regulations whose area falls wholly or partly in an English cross border area.”.

34. In section 55 (Interpretation of Part 3)—

(a) omit “, river basin”, and

(b) insert the following definitions at the appropriate place—

““English cross border area” has the same meaning as in regulation 5A of the Flood Risk Regulations,”,

““Flood Risk Regulations” means the Flood Risk Regulations 2009(a),”,

““river basin” has the same meaning as in section 28(1) of the 2003 Act except that, in the case of a river basin which is partly in Scotland and partly in England, it means the part of that basin which is in Scotland,”; and

““Scottish cross border area” means a flood risk management district which comprises of, or includes, the Scottish part of a river basin (within the meaning of section 28(1) of the 2003 Act) which is partly in Scotland and partly in England,”.

29th March 2010

Huw Irranca-Davies
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) S.I. 2009/3042.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Flood Risk Regulations 2009 and the Flood Risk Management (Scotland) Act 2009, both of which transpose Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks^(a).

Regulations 2 to 25 make a series of amendments to the Flood Risk Regulations to make special provision for the English part of river basins which are partly in England and partly in Scotland, and which are defined as “English cross border areas” in new regulation 5A of the 2009 regulations. They also establish a Cross Border Advisory Group to provide advice on how functions should be exercised in relation to cross border areas.

Regulations 26 to 34 make a series of amendments to the Flood Risk Management (Scotland) Act 2009 to make special provision for the Scottish part of river basins which are partly in England and partly in Scotland, and which are defined as “Scottish cross border areas” in the amended section 55 of the Flood Risk Management (Scotland) Act 2009.

An impact assessment and transposition note have been prepared and are available on the Defra website at www.defra.gov.uk.

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^(a) OJ No. L288, 6.11.2007, p. 27.

STATUTORY INSTRUMENTS

2010 No. 1102

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The Flood Risk (Cross Border Areas) Regulations 2010

£5.50