

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.