

FLOOD AND WATER MANAGEMENT ACT 2010

EXPLANATORY NOTES

COMMENTARY

Part 2: Miscellaneous

Section 36: Water use: temporary bans

370. This section replaces section 76 of the Water Industry Act 1991 with a similar power to allow a water undertaker, in relation to water which it supplies, to temporarily prohibit or restrict specific uses of water. New section 76(1) allows a water undertaker to ban specified uses of water if the undertaker thinks that it is experiencing, or it may experience, a serious shortage of water for distribution.
371. A water undertaker may only ban one or more of the uses of water which appear in section 76(2). Most of the uses which appear in this list only apply to the use of water which is drawn through a hosepipe or similar apparatus (see further section 76A(5)). However, in the case of filling or maintaining a domestic swimming pool or paddling pool, or filling or maintaining an ornamental fountain, the use of water which may be prohibited extends to all means of filling and would also cover filling by means of fixed or permanent plumbing. A water undertaker need not ban a specified use of water entirely (new section 76A(1)). It may limit the scope of a ban by, for example, excluding specified groups of customers and apparatus and restricting the use of water at specified times only.
372. New section 76(3) enables the Minister (defined in new section 76A(4) as the Secretary of State in relation to prohibitions which may be issued by undertakers whose areas are wholly or mainly in England, and the Welsh Ministers in relation to prohibitions which may be issued by undertakers whose areas are wholly or mainly in Wales) to add other uses of water to the list in section 76(2) and to remove a purpose from the list. Under section 76(3), a use of water may only be added to the list if it is for a non-domestic purpose – that is a purpose which does not fall within the meaning of “domestic purposes” in section 218 of the Water Industry Act 1991. An order adding another use of water to, or removing a use of water from, the list in section 76(2) will be subject to the affirmative resolution procedure in Parliament or the National Assembly for Wales (new section 76C(2)).
373. New section 76A(2) and (3) allows the Minister, by order, to narrow the scope of any of the listed uses. This power would allow the Minister, for example, to exempt from the listed uses, the use of water on the grounds of health and safety. It also allows for the terms used in section 76(2), such as “private motor vehicle”, to be defined further.
374. Before a prohibition can take effect, the water undertaker must publish a notice of the prohibition in local newspapers and also on its website (new section 76B(2)). New section 76B(4) requires the water undertaker to give notice this way each time the scope of a prohibition is varied in any way. The lifting of any such prohibition may take effect as soon as one form of notice has been given (new section 76B(5) and (6)). New section 76B(3) requires a notice of a prohibition to explain how representations about a proposed prohibition may be made.

*These notes refer to the Flood and Water Management Act
2010 (c.29) which received Royal Assent on 8 April 2010*

375. The notice of the prohibition must set out clearly the terms and extent of the prohibition. In particular, it must specify the date on which the prohibition will commence and the part of the water undertaker's area to which the ban will apply (new section 76(4)).
376. New section 76(5), which replaces existing section 76(3), makes it an offence to contravene a prohibition. A person guilty of the offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. New section 76(6) requires a water undertaker that has made a specific charge in its tariff for a use that is subsequently banned, such as the use of a hosepipe or sprinkler, to make arrangements for a reasonable reduction or refund in respect of the charge for the use it has prohibited. These provisions replace existing section 76(4) and reflect the uses of water listed in new section 76(2), which are not all limited to the use of water drawn through a hosepipe or similar apparatus.
377. New section 76C applies section 213 of the Water Industry Act 1991 (powers to make regulations) to orders made by the Minister under section 76(3) or 76A(2) and makes provision in relation to Parliamentary and Assembly procedure.