

FLOOD AND WATER MANAGEMENT ACT 2010

EXPLANATORY NOTES

COMMENTARY

Part 3: General

Section 47: Pre-consolidation amendments

427. One of the recommendations of the Pitt review was to consolidate the legislation applying to all sources of flood risk. This section is intended to allow for this consolidation. It enables the Secretary of State to amend the Act, along with the Water Industry Act 1991, the Water Resources Act 1991, the Land Drainage Act 1991, the Reservoirs Act 1975, the Highways Act 1980 (so far as relevant to water), the Environment Act 1995 (so far as relevant to water), the Public Health Act 1936 (so far as relevant to water) and the Coast Protection Act 1949. These amendments must be for the purposes of standardising provisions, simplifying procedures or correcting errors. Amendments are to be made by order, subject to the affirmative resolution procedure. No order may be made without the consent of the Welsh Ministers, and unless a consolidation Bill has been presented to either House of Parliament.

Section 48: Subordinate legislation

428. This section defines what is meant by “subordinate legislation” and sets out the sort of provision which can be contained within subordinate legislation made under the Act as well as applicable procedures.

Section 49: Technical provision

429. Subsection (1) of this section provides that the resulting Act will bind the Crown, but will contain exemptions for the Queen and Prince of Wales. These exemptions mirror the exemptions in section 221(2) to (8) of the Water Industry Act 1991.
430. Subsection (2) provides for money to be provided by Parliament to pay for expenditure under the Act or increases in expenditure incurred by virtue of the Act.
431. Subsection (3) provides for the provisions of the Act to be brought into force by order of the Secretary of State or the Welsh Ministers consistent with the division of responsibility provided for in this Act. This will allow different parts of the Act to be brought in to force at different times, and, by virtue of section 48(2), to make appropriate transitional provisions.
432. Subsection (4) allows for such an order to provide for experimental staged commencement by reference to specified areas or other criteria.
433. Subsection (5) provides that the Act extends only to England and Wales, except as provided for in paragraphs (a) to (d) which extend certain provisions to Scotland.
434. Subsection (6) confirms that an amendment made by this Act of another Act does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 or 2006. This subsection applies irrespective of whether

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

the amendment amends an existing devolved function or confers a new function. New functions which replace or are similar to existing devolved functions are to be treated as having been transferred in the same way as the old function. Provisions made by the Government of Wales Act 1998 or 2006 in respect of functions amended or replaced by this Act continue to apply to the amended or replaced provision.

435. Subsection (7) gives the short title of the legislation as the Flood and Water Management Act 2010.