

SCHEDULES

SCHEDULE 1

Section 30

RISK MANAGEMENT: DESIGNATION OF FEATURES

“Designating authority”

- 1 In this Schedule “designating authority” means—
- (a) the Environment Agency,
 - (b) a lead local flood authority,
 - (c) a district council (whether or not it is a lead local flood authority), and
 - (d) an internal drainage board.

“Responsible authority”

- 2 (1) The responsible authority in relation to a structure or feature designated under this Schedule is the authority which made the designation, unless sub-paragraph (2) applies.
- (2) If an authority has adopted a designation in accordance with sub-paragraph (3), the responsible authority in relation to the designated structure or feature is the adopting authority.
- (3) A designating authority may adopt a designation if—
- (a) the authority which made the designation no longer has relevant functions,
 - (b) the authority proposing to adopt the designation has relevant functions, and
 - (c) the designation has not already been adopted by another authority.
- (4) In sub-paragraph (3) “relevant functions” means flood or coastal erosion risk management functions which may be affected by the existence or location of the designated structure or feature.

“Owner”

- 3 In this Schedule “owner” in relation to anything which is or may be designated means—
- (a) the owner of the land on or in which the structure or feature is situated, or
 - (b) if different, the person responsible for managing or controlling the structure or feature.

Designation

- 4 (1) If the following conditions are satisfied, a designating authority may designate for the purposes of this Schedule—
- (a) a structure, or
 - (b) a natural or man-made feature of the environment.

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- (2) Condition 1 is that the designating authority thinks the existence or location of the structure or feature affects—
 - (a) a flood risk, or
 - (b) a coastal erosion risk.
- (3) Condition 2 is that the designating authority has flood or coastal erosion risk management functions in respect of the risk which is affected.
- (4) Condition 3 is that the structure or feature is not designated by another authority for the purposes of this Schedule.
- (5) Condition 4 is that the owner of the structure or feature is not a designating authority.

Effect of designation

- 5 (1) A person may not alter, remove or replace a designated structure or feature without the consent of the responsible authority.
- (2) A designation is a local land charge.

Consent to alteration, removal or replacement

- 6 (1) The responsible authority may by notice given to the owner—
 - (a) consent to specified alterations, or alterations of a specified kind, to a designated structure or feature;
 - (b) vary or withdraw consent under paragraph (a) (but not retrospectively).
- (2) The responsible authority may by notice given to the owner consent to the removal or replacement of a designated structure or feature.
- (3) The authority may give notice under sub-paragraph (1) or (2)—
 - (a) on the application of the owner, or
 - (b) if it otherwise thinks it appropriate.
- (4) Consent may be—
 - (a) general or specific;
 - (b) absolute or conditional.
- (5) The responsible authority may refuse to give consent applied for under sub-paragraph (3)(a) only on the ground that, in the authority's opinion, the proposed alteration, removal or replacement would affect a flood risk or a coastal erosion risk.

Provisional designation notice: procedure

- 7 (1) A designating authority may make a provisional designation by giving notice to the owner.
- (2) The notice must specify—
 - (a) the structure or feature to be provisionally designated,
 - (b) the date on which the provisional designation takes effect,
 - (c) the reasons for the provisional designation,
 - (d) how representations to the responsible authority may be made, and
 - (e) the period within which representations may be made.

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- (3) The period specified in the notice under sub-paragraph (2)(e) must be a period of at least 28 days beginning with the date of the notice.
- (4) A provisional designation ceases to have effect at the end of the period of 60 days beginning with the date of the notice, unless it is confirmed under paragraph 8.
- (5) The following paragraphs apply in relation to a provisional designation as they apply in relation to a designation: paragraphs 5(1), 6 and 9 to 14.

Designation notice: procedure

- 8 (1) A designating authority may make a designation by giving notice confirming a provisional designation to the owner.
- (2) In deciding whether to confirm a provisional designation the authority must have regard to any representations made in accordance with paragraph 7.
- (3) A notice under sub-paragraph (1) may not be given—
 - (a) before the end of the period specified in the provisional notice under paragraph 7(2)(e) within which representations may be made;
 - (b) after the end of the period of 60 days beginning with the date of the provisional notice.
- (4) The notice must—
 - (a) specify the provisional notice to which it relates,
 - (b) specify the structure or feature to be designated,
 - (c) specify the reasons for the designation,
 - (d) give information about the procedure for bringing an appeal under regulations under paragraph 15, and
 - (e) specify the period within which an appeal may be brought.

Cancellation

- 9 (1) The responsible authority may cancel a designation by giving notice to that effect to the owner.
- (2) The authority may give notice under sub-paragraph (1)—
 - (a) on the application of the owner, or
 - (b) if it otherwise thinks cancellation appropriate.
- (3) The notice must specify—
 - (a) the designated structure or feature,
 - (b) the date on which the cancellation takes effect, and
 - (c) the reasons for the cancellation.

Notice to other authorities

- 10 (1) This paragraph applies where an authority—
 - (a) makes a designation, or
 - (b) cancels a designation.

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- (2) The authority must notify any other designating authority which it thinks may have an interest in the designation or cancellation.

Enforcement notice

- 11 (1) If a person contravenes paragraph 5(1) the responsible authority may give an enforcement notice.
- (2) The notice may be given to—
- (a) the person who contravened paragraph 5(1), or
 - (b) the owner of the designated structure or feature.
- (3) The notice must direct the recipient to take specified steps, within a specified period, to remedy the contravention.
- (4) If a person (P) fails to comply with an enforcement notice—
- (a) P commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) the responsible authority may authorise a person to take the steps specified in the notice,
 - (c) the responsible authority may require P to pay expenses incurred under paragraph (b), and
 - (d) payment required under paragraph (c) is recoverable as a debt.

Emergency powers

- 12 (1) This paragraph applies if—
- (a) a person has contravened paragraph 5(1), and
 - (b) the responsible authority thinks the contravention may immediately and materially increase or alter a flood risk or coastal erosion risk.
- (2) The authority may—
- (a) act to remedy the contravention without giving an enforcement notice,
 - (b) require the owner to pay the expenses of that action, and
 - (c) recover the expenses as a debt.

Powers of entry

- 13 (1) A person authorised by the responsible authority may at any reasonable time enter land—
- (a) to determine whether a person has contravened paragraph 5(1),
 - (b) to determine whether a person has complied with an enforcement notice,
 - (c) to take steps specified in accordance with paragraph 11(4), or
 - (d) to act in accordance with paragraph 12(2).
- (2) A person authorised by a designating authority may at any reasonable time enter land for the purpose of determining whether a structure or feature may be designated by the authority under paragraph 4.
- (3) A person may not demand entry to land which is occupied unless—

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- (a) at least 7 days' notice has been given to the occupier, specifying the purpose for which entry is required, or
 - (b) the entry is for the purpose mentioned in sub-paragraph (1)(d).
- (4) A person seeking to enter land under this paragraph must on request produce evidence of authorisation.
- (5) It is an offence to obstruct a person entitled to enter land under this paragraph.
- (6) A person guilty of an offence under sub-paragraph (5) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both, or
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Compensation for owners and third parties

- 14 (1) The relevant authority must pay compensation if, as a result of the exercise of the powers conferred by paragraph 13, a person (P)—
- (a) incurs loss as a result of anything done on P's land, or
 - (b) is disturbed in the enjoyment of P's land.
- (2) But compensation is not payable to P if Condition 1 or 2 is satisfied.
- (3) Condition 1 is that—
- (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(a) or (d), and
 - (b) P has contravened paragraph 5(1).
- (4) Condition 2 is that—
- (a) the loss or disturbance is the result of the reasonable exercise of powers conferred by paragraph 13(1)(b) or (c), and
 - (b) P has failed to comply with an enforcement notice under paragraph 11.
- (5) Compensation paid by an authority is to be treated as an expense incurred under paragraph 11(4)(b) or 12(2)(a) (if it is paid in respect of loss or disturbance resulting from the exercise of powers under paragraph 13(1)(c) or (d)).
- (6) Disputes about compensation are to be determined by the Upper Tribunal.
- (7) In this paragraph “relevant authority” means the authority that authorised the entry to land under paragraph 13(1) or (2).

Appeals

- 15 (1) The Minister must by regulations provide a right of appeal against—
- (a) designations,
 - (b) a decision in connection with consent on an application under paragraph 6,
 - (c) a refusal to cancel a designation on an application under paragraph 9, and
 - (d) enforcement notices.
- (2) The regulations must—
- (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.

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- (3) Where an appeal against a designation is brought—
 - (a) the designation continues to have effect while the appeal is pending;
 - (b) the person hearing the appeal may cancel the designation.
- (4) Where an appeal against an enforcement notice is brought—
 - (a) the effect of the notice is suspended while the appeal is pending;
 - (b) the person hearing the appeal may determine that the notice is to cease to have effect.
- (5) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
 - (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and
 - (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

Notices and applications

- 16 The Minister may by regulations make provision about—
- (a) the form, content and method of service of a notice under this Schedule,
 - (b) the form and content of an application under this Schedule, and
 - (c) the procedure for determining an application.

“The Minister”

- 17 (1) This paragraph defines “the Minister” in this Schedule.
- (2) In relation to designations of structures or features in England, “the Minister” means the Secretary of State.
- (3) In relation to designations of structures or features in Wales, “the Minister” means the Welsh Ministers.