



Flood and Water Management Act 2010

2010 CHAPTER 29

PART 2

MISCELLANEOUS

38 Incidental flooding or coastal erosion: [F¹ appropriate agency]

- (1) If Conditions 1, 2 and 3 are satisfied [F²the appropriate agency] may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause—
- flooding,
 - an increase in the amount of water below the ground, or
 - coastal erosion.
- (2) Condition 1 is that [F²the appropriate agency] considers the work in the interests of—
- nature conservation (including conservation of the landscape),
 - preservation of cultural heritage, or
 - people's enjoyment of the environment or of cultural heritage.
- (3) Condition 2 is that [F²the appropriate agency] considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d).
- (4) Condition 3 is that [F²the appropriate agency] has consulted—
- [F³(za) the other appropriate agency, if—
- the work is carried out in its area, or
 - consequences of the kinds listed in subsection (1) are likely to occur in its area,]
- the lead local flood authority for the area in which the work is to be carried out,
 - the district council (if any) for that area,
 - the internal drainage board (if any) for that area, and
 - persons who own or occupy land that, in the opinion of [F²the appropriate agency], is likely to be directly affected by the work.

Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Section 38. (See end of Document for details)

- (5) In carrying out work in reliance on this section, [^{F2}the appropriate agency] must have regard to—
- (a) the national flood and coastal erosion risk management strategies under sections 7 and 8,
 - (b) any guidance issued under those sections,
 - (c) the local flood risk management strategy under section 9 or 10 for the area concerned, and
 - (d) any guidance issued under those sections by the lead local flood authority for the area concerned.
- (6) The Agency may arrange for work to be carried out in reliance on this section on the [^{F4}appropriate agency's] behalf by—
- (a) a lead local flood authority,
 - (b) a district council, or
 - (c) an internal drainage board.
- (7) Subsection (1) may be relied on to carry out work whether or not it forms part of the exercise of other powers; but nothing in subsection (1) restricts the powers of [^{F2}the appropriate agency] under another enactment.
- (8) The Minister must by order apply to this section (with or without modifications) provisions of the Water Resources Act 1991 about—
- (a) compulsory purchase,
 - (b) powers of entry, and
 - (c) compensation.
- (9) An order under subsection (8) 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 an order made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.
- (10) In this section “the Minister” means—
- (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales.
- [^{F5}(10A) In this section—
- “the appropriate agency” means—
- (a) the Environment Agency, in relation to work for the benefit of England, and
 - (b) the Natural Resources Body for Wales, in relation to work for the benefit of Wales;
- “area”, in relation to an appropriate agency, means—
- (a) in the case of the Environment Agency, England, and
 - (b) in the case of the Natural Resources Body for Wales, Wales.]

(11) Other expressions in this section have the same meaning as in Part 1.

Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Section 38. (See end of Document for details)

Textual Amendments

- F1** Words in s. 38 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 464(6)** (with Sch. 7)
- F2** Words in s. 38 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 464(2)** (with Sch. 7)
- F3** S. 38(4)(za) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 464(3)** (with Sch. 7)
- F4** Words in s. 38(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 464(4)** (with Sch. 7)
- F5** S. 38(10A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 2 para. 464(5)** (with Sch. 7)

Commencement Information

- I1** S. 38 in force at 18.1.2011 for specified purposes by S.I. 2011/95, **art. 2(b)**
- I2** S. 38 in force at 1.12.2011 in so far as not already in force by S.I. 2011/2856, **art. 3(a)** (with art. 4(1))

Changes to legislation:

There are currently no known outstanding effects for the Flood and Water Management Act 2010, Section 38.