



Flood and Water Management Act 2010

2010 CHAPTER 29

PART 2

MISCELLANEOUS

39 Incidental flooding or coastal erosion: local authorities

- (1) If Conditions 1 to 4 are satisfied a local authority may carry out work of a kind listed in section 3(3)(a) to (e) in a way that will or may cause—
 - (a) flooding,
 - (b) an increase in the amount of water below the ground, or
 - (c) coastal erosion.
- (2) Condition 1 is that the authority considers the work in the interests of—
 - (a) nature conservation (including conservation of the landscape),
 - (b) preservation of cultural heritage, or
 - (c) people's enjoyment of the environment or of cultural heritage.
- (3) Condition 2 is that the authority 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—
 - (a) the authority has consulted the [F1 appropriate agency], and
 - (b) if the work affects a main river, the [F1 appropriate agency] has consented to it.
- (5) Condition 4 is that the authority has consulted—
 - (a) any other local authority whose area may be affected by the work, and
 - (b) other persons who own or occupy land that, in the opinion of the authority, is likely to be directly affected by the work.
- (6) In this section “local authority” means—
 - (a) a lead local flood authority,
 - (b) a district council for an area for which there is no unitary authority, and
 - (c) an internal drainage board.

Changes to legislation: There are currently no known outstanding effects for the Flood and Water Management Act 2010, Section 39. (See end of Document for details)

- (7) In carrying out work in reliance on this section, an authority 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.
- (8) An authority may arrange for work to be carried out in reliance on this section on its behalf by—
- (a) the [^{F2}appropriate agency], or
 - (b) another local authority.
- (9) 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 an authority under another enactment.
- (10) The Environment Agency may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in England in respect of work carried out in reliance on this section.
- (11) The Welsh Ministers may make grants (which may be subject to conditions, including conditions as to repayment) to local authorities in Wales in respect of work carried out in reliance on this section.
- (12) 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.
- (13) An order under subsection (12) 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.
- (14) In this section “the Minister” means—
- (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales.
- [^{F3}(14A) In this section, “the appropriate agency” means—
- (a) the Environment Agency, in relation to work in England, and
 - (b) the Natural Resources Body for Wales in relation to work in Wales.]
- (15) 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 39. (See end of Document for details)

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Textual Amendments

- F1** Words in s. 39(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 465\(2\)](#) (with Sch. 7)
- F2** Words in s. 39(8) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 465\(2\)](#) (with Sch. 7)
- F3** S. 39(14A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\), art. 1\(2\), Sch. 2 para. 465\(3\)](#) (with Sch. 7)
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Commencement Information

- I1** S. 39 in force at 18.1.2011 for specified purposes by [S.I. 2011/95, art. 2\(c\)](#)
- I2** S. 39 in force at 1.12.2011 in so far as not already in force by [S.I. 2011/2856, art. 3\(b\)](#) (with art. 4(2))

Changes to legislation:

There are currently no known outstanding effects for the Flood and Water Management Act 2010, Section 39.