



# Water Act 2014

## 2014 CHAPTER 21

### PART 4

#### FLOOD INSURANCE

##### *Flood insurance obligations*

#### **70 Flood insurance obligations**

- (1) The Secretary of State may by regulations require a relevant insurer to issue in a prescribed period insurance policies that provide cover against a prescribed description of risk for a prescribed number of registered premises.
- (2) The regulations may prescribe different numbers of registered premises for different descriptions of risk.
- (3) The descriptions of risks that may be prescribed are those arising from a flood.
- (4) The regulations may provide for a prescribed number relating to a relevant insurer to be determined by reference to factors that include in particular—
  - (a) a target number (see section 71);
  - (b) the relevant insurer's share of insurance business of a prescribed description.
- (5) The regulations may—
  - (a) make provision about determining the size of a relevant insurer's share of insurance business of a prescribed description;
  - (b) provide for a relevant insurer to be exempt from the obligation described in subsection (1) in prescribed circumstances, whether wholly or so far as regards a particular description of risk, including circumstances relating to the amount of insurance business done by the relevant insurer;
  - (c) make provision about the circumstances in which a relevant insurer ceases to be subject to the obligation described in subsection (1), whether wholly or so far as regards a particular description of risk;

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- (d) make provision about the cases in which issuing an insurance policy is not to count towards discharging an obligation imposed on a relevant insurer by the regulations, including cases in which an insurance policy is not to count because of the content of its terms;
  - (e) make provision for allowing an insurance policy issued by another insurer to count towards the discharge of an obligation to issue a number of insurance policies imposed on a relevant insurer by the regulations;
  - (f) make provision about determining the number of registered premises for which a relevant insurer has issued insurance policies, including provision for varying, by reference to the risk band applicable to the particular registered premises, the extent to which insuring those premises counts in determining that number.
- (6) Provision under subsection (5)(a) may require an insurer, in determining the insurer’s share of insurance business of a prescribed description, to use information about that insurance business held by—
- (a) the Secretary of State,
  - (b) a person acting on behalf of the Secretary of State, or
  - (c) the FCA.
- (7) Subsection (5)(e) is not to be taken as requiring a change in the person who is the insurer in relation to an insurance policy.
- (8) Regulations under this section may include provision in respect of cases where an insurer has not provided such information as is required by regulations under section 72 including—
- (a) provision for determining whether the insurer is a relevant insurer,
  - (b) provision for determining whether an exemption applies, and
  - (c) provision for determining what share of insurance business of a prescribed description the insurer is to be treated as having.
- (9) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **71 Target number**

- (1) The Secretary of State may, from time to time, by regulations prescribe a number to be a target number for the purposes of regulations under section 70.
- (2) A target number is the number of registered premises to be covered against a prescribed description of risk by insurance policies issued in a prescribed period by those relevant insurers upon whom obligations are imposed by regulations under section 70.
- (3) The regulations may prescribe different target numbers for different descriptions of risk.
- (4) The regulations may in particular provide for a target number to be expressed as a percentage of the number of registered premises.

- (5) The regulations may, at any one time, prescribe target numbers for two or more consecutive prescribed periods.
- (6) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **72 Information**

- (1) The Secretary of State may by regulations make provision about—
  - (a) the provision of information, and
  - (b) the production of documents,by insurers for the purposes of regulations under section 70.
- (2) The regulations may in particular require an insurer to provide information of a prescribed description or produce documents of a prescribed description for the purpose of showing, in relation to a prescribed period—
  - (a) whether or not an insurer is a relevant insurer;
  - (b) whether or not an exemption applies (see section 70(5)(b)).
- (3) The regulations may in particular require an insurer to provide information or produce documents about—
  - (a) the insurance policies issued by it in a prescribed period that provide cover against prescribed descriptions of risk;
  - (b) the value of the insurance policies so issued;
  - (c) insurance policies so issued that do not remain in force to the end of the period of cover;
  - (d) the value of such insurance policies.
- (4) The regulations may provide for information to be provided or documents to be produced to the Secretary of State or a person acting on behalf of the Secretary of State.
- (5) The regulations may make provision—
  - (a) about the time within which information must be provided or documents produced;
  - (b) about the form in which information is to be provided;
  - (c) about the place where documents are to be produced;
  - (d) requiring information to be verified in a prescribed manner;
  - (e) requiring documents to be authenticated in a prescribed manner.
- (6) The regulations may make provision about—
  - (a) the persons to whom, and the purposes for which, information supplied by an insurer may be disclosed;
  - (b) the publication of information by the Secretary of State about the amount of insurance business of a prescribed description done by insurers, taken together.
- (7) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

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### **73 Section 72: further provision**

- (1) The Secretary of State may by regulations make provision for and in connection with enforcing compliance with obligations imposed by regulations under section 72.
- (2) The regulations may in particular include—
  - (a) provision about the sanctions, including civil penalties, that may be imposed by the Secretary of State or a person acting on behalf of the Secretary of State for non-compliance with the obligations;
  - (b) provision about the procedure to be followed when imposing a sanction;
  - (c) provision about the recovery of costs incurred in connection with imposing a sanction up to the time of its imposition;
  - (d) provision enabling an appeal to the First-tier Tribunal against the imposition of a sanction or a requirement to pay costs.
- (3) Provision under subsection (2)(a) may in particular include—
  - (a) provision for civil penalties of a fixed amount;
  - (b) provision for further amounts to be payable by way of civil penalty where an insurer continues to fail to comply with the obligation in question;
  - (c) provision about how a civil penalty or an amount of costs may be recovered.
- (4) Provision under subsection (2)(d) may include provision as to the grounds on which an appeal may be made.

### **74 Register of premises subject to greater flood risk**

- (1) The Secretary of State may by regulations provide for the creation and maintenance of a register of household premises in the United Kingdom that are subject to greater flood risk for the purposes of regulations under section 70.
- (2) The regulations may provide for the levels of flood risk to which premises are subject to be divided into two or more bands (“risk bands”), and may prescribe the upper and lower limits of each band.
- (3) The regulations may provide for the register to specify the level of flood risk to which particular household premises are subject by specifying the risk band applicable to the premises.
- (4) The regulations may provide for premises of a description specified in the regulations to be excluded from the register, and the premises excluded may include in particular premises where construction is completed on or after a date specified in the regulations.
- (5) The regulations may—
  - (a) specify the information to be contained in the register;
  - (b) make provision about access to the information contained in the register;
  - (c) provide for the publication of the register in whole or in part;
  - (d) provide for the disclosure of information contained in the register;
  - (e) provide for notification if premises are entered in, or omitted from, the register.
- (6) Regulations made under subsection (5)(d) may provide for—
  - (a) the persons to whom information or any description of information contained in the register may be disclosed;

- (b) the imposition of conditions on persons to whom information contained in the register is disclosed, including conditions limiting further disclosure;
  - (c) penalties for non-compliance with conditions imposed under paragraph (b).
- (7) The regulations may require applications for premises to be entered in the register to be made by or on behalf of a person who has the qualifying interest in the premises.
- (8) The regulations may provide for premises to be omitted from the register at the request of a person who has the qualifying interest in the premises.
- (9) Before making regulations under this section the Secretary of State must consult—
- (a) the Welsh Ministers;
  - (b) the Scottish Ministers;
  - (c) the Department of Agriculture and Rural Development in Northern Ireland.

## **75 Functions of relevant bodies**

- (1) Regulations under section 74 may provide for a relevant body to carry out functions in connection with—
- (a) the creation and maintenance of the register;
  - (b) giving access to information contained in the register;
  - (c) publication of the register;
  - (d) disclosure of information contained in the register;
  - (e) notification when premises are entered in, or omitted from, the register.
- (2) The following are relevant bodies for the purposes of this Part—
- (a) the Environment Agency;
  - (b) the Scottish Environment Protection Agency, in relation to Scotland;
  - (c) the Natural Resources Body for Wales, in relation to Wales;
  - (d) the Department of Agriculture and Rural Development in Northern Ireland, in relation to Northern Ireland.
- (3) The regulations may provide for the Environment Agency—
- (a) to coordinate the carrying out of functions conferred or imposed under subsection (1);
  - (b) to promote consistency in the carrying out of those functions.
- (4) The regulations may—
- (a) require the relevant bodies to cooperate with each other as regards the functions conferred or imposed on any of them under subsection (1);
  - (b) require the relevant bodies (other than the Environment Agency) to cooperate with the Environment Agency as regards the carrying out of functions conferred or imposed on the Environment Agency under subsection (3).
- (5) Regulations under section 74 may provide for the Commissioners for Her Majesty's Revenue and Customs, or a person authorised by them, to disclose information held for council tax purposes by the Valuation Office to—
- (a) the Environment Agency, or
  - (b) the Natural Resources Body for Wales,
- for use in identifying premises to be excluded from the register by reference to the date of completion of construction (see section 74(4)).

- (6) The regulations may include provision restricting the use or further disclosure of information disclosed under subsection (5).

## **76 Reviews and appeals**

- (1) Regulations under section 74 may make provision for a person with the qualifying interest in particular premises—
- (a) to request a review of a decision by a relevant body that the premises are not eligible to be entered in the register;
  - (b) to appeal against a decision by a relevant body that the premises are not eligible to be entered in the register to—
    - (i) the sheriff, in relation to Scotland,
    - (ii) the Water Appeals Commission for Northern Ireland, in relation to Northern Ireland, or
    - (iii) the First-tier Tribunal, in any other case.
- (2) For “relevant body”, see section 75(2).

## **77 Expenses of relevant bodies**

- (1) The Secretary of State may, with the consent of the Treasury, by regulations provide for a levy to be payable to the Secretary of State by insurers of a description specified in the regulations.
- (2) The regulations may—
- (a) specify the rate of the levy or the method by which it is to be calculated;
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (3) The regulations may in particular make provision for determining the amount of the levy by reference to the qualifying expenses of the relevant bodies and the Secretary of State.
- (4) The regulations may make provision for amounts payable by way of levy under the regulations to be recoverable summarily (or in Scotland recoverable) as a civil debt.
- (5) Before making regulations under this section the Secretary of State must consult—
- (a) the Welsh Ministers;
  - (b) the Scottish Ministers;
  - (c) the Department of Agriculture and Rural Development in Northern Ireland.
- (6) In this section “qualifying expenses” means—
- (a) in relation to a relevant body, such proportion of the expenses of the relevant body as the Secretary of State considers reasonable having regard to the functions exercisable by that body under regulations under section 74;
  - (b) in relation to the Secretary of State, the expenses of the Secretary of State attributable to the exercise of functions conferred by or under this section.
- (7) For “relevant body”, see section 75(2).

## **78 Compliance reports**

- (1) The Secretary of State may by regulations make provision about reporting compliance with obligations imposed by regulations under section 70.
- (2) The regulations may require a relevant insurer to make a report—
  - (a) stating the extent to which it has complied with obligations imposed on it by regulations under section 70 in relation to a prescribed period;
  - (b) providing prescribed details about the basis on which it considers that it has complied with those obligations to that extent.
- (3) The regulations may provide for reports to be given to the FCA.
- (4) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **79 Functions of the FCA**

- (1) The Treasury may by regulations provide for the FCA to take action for monitoring and enforcing compliance with—
  - (a) such of the obligations imposed on relevant insurers by regulations under section 70 or 78 as may be specified in the regulations;
  - (b) such description of those obligations as may be specified in the regulations.
- (2) The regulations may provide for the FCA to take action for enforcing compliance with—
  - (a) such of the obligations imposed on insurers by regulations under section 72 as may be specified in the regulations;
  - (b) such description of those obligations as may be specified in the regulations.
- (3) Regulations under subsection (2) may only provide for the FCA to take action as regards cases where—
  - (a) the failure to comply, if proved, would consist in or involve providing information that is not true or producing a document that is not correct, or
  - (b) measures available under section 73 have been taken without securing compliance.
- (4) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012, with or without modification.
- (5) The provisions of the Financial Services and Markets Act 2000 and the Financial Services Act 2012 referred to in subsection (4) include in particular—
  - (a) provisions about gathering information and investigating, including provisions as to powers of entry and search;
  - (b) provisions as to criminal offences and disciplinary measures;
  - (c) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
  - (d) provisions giving the Treasury or the FCA powers to make subordinate legislation;
  - (e) provisions for the FCA to charge fees;
  - (f) provisions restricting liability in damages in relation to the discharge of functions of the FCA.

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- (6) The regulations may make provision enabling the FCA, to such extent as the regulations may prescribe, to make arrangements for the performance of functions on its behalf.

## **80 Reports by the FCA**

- (1) The Treasury may by regulations provide for the FCA to prepare reports on its discharge of the functions conferred on it under section 79.
- (2) The regulations may—
- (a) make provision about the contents of the reports;
  - (b) make provision about the timing of the reports;
  - (c) provide for copies of the report to be given to the Secretary of State and such other persons as the regulations may specify;
  - (d) provide for publication of the reports.

## **81 Intervention by the FCA or the PRA**

- (1) The Treasury may by regulations confer on a regulator the power to disapply or modify, in relation to a relevant insurer, an obligation imposed by regulations under—
- (a) section 70 (flood insurance obligations),
  - (b) section 72 (information), or
  - (c) section 78 (compliance reports).
- (2) In this section “the intervention power” means the power conferred by regulations under subsection (1).
- (3) The regulations may specify which obligations, or which descriptions of obligations, a regulator may disapply or modify under the intervention power.
- (4) The regulations may specify what modifications, or what descriptions of modifications, may be made by a regulator under the intervention power.
- (5) The regulations may specify the circumstances in which, and the conditions subject to which, a regulator may exercise the intervention power.
- (6) Provision under subsection (5) may in particular provide for a regulator to exercise the intervention power in relation to a relevant insurer—
- (a) where the relevant insurer is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
  - (b) in connection with advancing—
    - (i) if the regulator is the FCA, one or more of the FCA’s operational objectives, or
    - (ii) if the regulator is the PRA, one or more of the PRA’s objectives,
  - (c) in conjunction with the exercise by the regulator, in respect of the relevant insurer, of a power that is conferred on the regulator by or under an enactment and is specified in the regulations, or
  - (d) at the request of, or for the purpose of assisting, an overseas regulator of a kind specified in the regulations.
- (7) The regulations may—



- (a) make provision about the procedure to be followed when exercising the intervention power, including provision about consulting such persons as may be specified in the regulations about a proposed exercise of the power;
  - (b) make provision requiring a regulator to give a relevant insurer notice in writing specifying how the intervention power has been exercised in relation to that relevant insurer;
  - (c) make provision about when an exercise of the intervention power takes effect;
  - (d) make provision about the period for which a provision of regulations may be disapplied or modified under the intervention power, including—
    - (i) provision enabling a regulator to specify the period for which a provision of regulations is disapplied or modified;
    - (ii) provision for disapplying or modifying a provision of regulations until a regulator provides for it to apply again or to apply again without modification;
  - (e) make provision requiring a regulator—
    - (i) to send copies of a notice under paragraph (b) to the Secretary of State and such other persons as may be specified in the regulations;
    - (ii) to notify such persons as may be specified in the regulations of the exercise of the intervention power;
  - (f) make provision requiring a regulator to publish such details about the exercise of the intervention power as may be specified in the regulations;
  - (g) make provision requiring a regulator to keep under review each case in which a provision of regulations is disapplied or modified;
  - (h) make provision about the matters to which a regulator is to have regard in exercising its functions under the regulations.
- (8) Provision under subsection (7)(e) or (f) may allow for the omission of information publication of which would in the opinion of the regulator be against the public interest.
- (9) The intervention power may be exercised in respect of an obligation imposed by regulations under section 70(1) only so as to disapply the obligation (and not so as to modify it).
- (10) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012, with or without modification.
- (11) The provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012 referred to in subsection (10) include in particular—
  - (a) provisions about gathering information and investigating, including provisions as to powers of entry and search;
  - (b) provisions as to criminal offences and disciplinary measures;
  - (c) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
  - (d) provisions giving the Treasury, the FCA or the PRA powers to make subordinate legislation;
  - (e) provisions for the FCA or the PRA to charge fees;
  - (f) provisions restricting liability in damages in relation to the discharge of functions of the FCA or the PRA.

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(12) In this section “regulator” means the FCA or the PRA.

(13) For—

“objective of the PRA”, see section 2F of the Financial Services and Markets Act 2000;

“operational objective of the FCA”, see section 1B(3) of that Act;

“overseas regulator”, see section 55Q of that Act;

“threshold condition”, see section 55B of that Act.