



Flood and Water Management Act 2010

2010 CHAPTER 29

An Act to make provision about water, including provision about the management of risks in connection with flooding and coastal erosion.

[8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

FLOOD AND COASTAL EROSION RISK MANAGEMENT

1. Key concepts and definitions

1 “Flood” and “coastal erosion”

- (1) “Flood” includes any case where land not normally covered by water becomes covered by water.
- (2) It does not matter for the purpose of subsection (1) whether a flood is caused by—
 - (a) heavy rainfall,
 - (b) a river overflowing or its banks being breached,
 - (c) a dam overflowing or being breached,
 - (d) tidal waters,
 - (e) groundwater, or
 - (e) anything else (including any combination of factors).
- (3) But “flood” does not include—

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Flood and Water Management Act 2010 (c. 29)
Part 1 – Flood and Coastal Erosion Risk Management

- (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system, or
- (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991).

- (4) “Coastal erosion” means the erosion of the coast of any part of England or Wales.

Salient extracts from the ‘Flood and Water Management Act 2010’, as it refers to the LPA’s powers and responsibilities as the ‘Lead Local Flood Authority’.

This Act was previously discussed in our Statement of Case (Para. 60)

Although the extracts are accompanied by notes below from the appellant, they are primarily provided here for the Inspectors convenience.

The full Act is of course publicly available from:
www.legislation.gov.uk/ukpga/2010/29

This is the Act of Parliament that confers upon the LPA its powers and responsibilities as the ‘Lead Local Flood Authority’; along with the limits of those powers.

It begins by defining very specifically, its terms; beginning with its definition of the terms ‘flood’ and ‘coastal erosion’.

It is specific about when sewer surcharge can be regarded as ‘flooding’ and excludes burst water mains.

2 “Risk”

- (1) “Risk” means a risk in respect of an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.
- (2) “Flood risk” means a risk in respect of flood.
- (3) “Coastal erosion risk” means a risk in respect of coastal erosion.
- (4) In each case the potential harmful consequences to be considered in assessing risk include, in particular, consequences for –
 - (a) human health,
 - (b) the social and economic welfare of individuals and communities,
 - (c) infrastructure, and
 - (d) the environment (including cultural heritage).

9 Local flood risk management strategies: England

- (1) A lead local flood authority for an area in England must develop, maintain, apply and monitor a strategy for local flood risk management in its area (a “local flood risk management strategy”).
- (2) In subsection (1) “local flood risk” means flood risk from –
 - (a) surface runoff,
 - (b) groundwater, and
 - (c) ordinary watercourses.
- (3) In subsection (2)(c) the reference to an ordinary watercourse includes a reference to a lake, pond or other area of water which flows into an ordinary watercourse.
- (4) The strategy must specify –
 - (a) the risk management authorities in the authority’s area,
 - (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area,
 - (c) the objectives for managing local flood risk (including any objectives included in the authority’s flood risk management plan prepared in accordance with the Flood Risk Regulations 2009),
 - (d) the measures proposed to achieve those objectives,
 - (e) how and when the measures are expected to be implemented,
 - (f) the costs and benefits of those measures, and how they are to be paid for,
 - (g) the assessment of local flood risk for the purpose of the strategy,
 - (h) how and when the strategy is to be reviewed, and
 - (i) how the strategy contributes to the achievement of wider environmental objectives.
- (5) The strategy must be consistent with the national flood and coastal erosion risk management strategy for England under section 7.
- (6) A lead local flood authority must consult the following about its local flood risk management strategy –
 - (a) risk management authorities that may be affected by the strategy (including risk management authorities in Wales), and
 - (b) the public.
- (9) A lead local flood authority must have regard to any guidance issued by the Secretary of State about –
 - (a) the local flood risk management strategy, and
 - (b) guidance under subsection (8).

11 Effect of national and local strategies: England

- (1) In exercising its flood and coastal erosion risk management functions, an English risk management authority must –
 - (a) act in a manner which is consistent with the national strategy and guidance, and

The Act is also very specific about what the term ‘Risk’ means in the Act, and that it is to be ‘*assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.*’

The appellant maintains that the Act is clear that flood risk and any degree of flood risk, are to be determined in an objective and scientific manner. This can only be undertaken by qualified individuals, studying all the available evidence and publishing their findings in a manner open peer review. In short, ‘Risk’ is to be determined as a matter of scientific fact, not opinion.

The Act clearly requires the Lead Local Flood Authority to develop, maintain, apply and monitor a strategy for ‘local flood risk’ management; including surface runoff.

However...

... the Act requires the Lead Local Flood Authority to do so in a manner that ‘*must be consistent with the national flood and coastal erosion risk management strategy*’

At (9): the ‘*lead local flood authority must have regard to any guidance issued by the Secretary of State the local flood risk management strategy.*’

At 11 (1):: [the LLFA] ‘*..must – (a) act in a manner which is consistent with the national strategy and guidance..*’

(4) In exercising any other function in a manner which may affect a flood risk or coastal erosion risk, an English risk management authority must have regard to the national and local strategies and guidance.

At finally at 11 (4): [the LLFA] 'an English risk management authority must have regard to the national and local strategies and guidance.'

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.

It is clear that an LPA acting in its capacity as Lead Local Flood Authority must do so in a manner consistent with national guidance; not one of its own choosing.

Schedule 1.1 “, lists the Environment Agency as the principal designating authority; a Lead Local Flood Authorities, District Councils and Drainage Boards are all subordinate to it.

Environment Act 1995

- 51 The Environment Act 1995 is amended as follows.
- 52 For section 6(4) (general supervision by the Environment Agency) substitute –
- “(4) The Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood and coastal erosion risk management, in accordance with Part 1 of the Flood and Water Management Act 2010.”
- 53 Sections 14 to 19 and Schedules 4 and 5 (flood defence committees) are repealed.

Environment Act 1995 also emphasises the primacy of the Environment Agency, stipulating that: “The [Environment] Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood and coastal erosion risk management..”

Local Government Act 2000

- 54 After section 21E of the Local Government Act 2000 (overview and scrutiny committees: partner authorities) insert –
- “21F Overview and scrutiny committees: flood risk management**
- (1) This section applies to a local authority which is a lead local flood authority for an area in England.
 - (2) The arrangements required under section 21(2) include arrangements to review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority’s area.
 - (3) A risk management authority must comply with a request made by an overview and scrutiny committee, in the course of arrangements under subsection (2), for –
 - (a) information;
 - (b) a response to a report.

Local Government Act 2000 makes provision for the oversight of Lead Local Flood Authorities and provides arrangements for ‘scrutiny committees’ to review how Lead Local Flood Authorities are exercising their flood risk management functions.