Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Incidental Flooding and Coastal Erosion (Wales) Order 2011. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2011 No. 2829 (W.302)

COAST PROTECTION, WALES
ENVIRONMENTAL PROTECTION, WALES
FLOOD RISK MANAGEMENT, WALES

The Incidental Flooding and Coastal Erosion (Wales) Order 2011

Made - - - -	*22 November 2011*
Coming into force - -	*1 December 2011*

The Welsh Ministers, in exercise of the powers conferred by sections 38(8) and 39(12) of the Flood and Water Management Act 2010(**1**) make the following Order.

A draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales pursuant to sections 38(9)(b) and 39(13)(b) of that Act.

Title, application and commencement

1. The title of this Order is the Incidental Flooding and Coastal Erosion (Wales) Order 2011; it applies in relation to Wales and comes into force on 1 December 2011.

Commencement Information
I1 Art. 1 in force at 1.12.2011, see **art. 1**

Interpretation

2. In this Order—

(a) "the 1991 Act" ("*Deddf 1991*") means the Water Resources Act 1991(**2**); and

(b) "the 2010 Act" ("*Deddf 2010*") means the Flood and Water Management Act 2010.

(**1**) 2010 c. 29; the power is conferred by sections 38(8) and 39(12) of the Flood and Water Management Act 2010 on "the Minister", and sections 38(10) and 39(14) of that Act define "the Minister" for the purposes of these sections.
(**2**) 1991 c. 57.

Commencement Information

I2 Art. 2 in force at 1.12.2011, see **art. 1**

Application of compulsory purchase provisions to section 38 of the 2010 Act

3.—(1) Subject to paragraphs (3) and (4), section 154 of the 1991 Act(**3**) applies for the purposes of section 38 of the 2010 Act as if the functions referred to in section 154(1) of the 1991 Act included functions under section 38 of the 2010 Act.

(2) Section 157 of the 1991 Act(**4**) applies for the purposes of section 38 of the 2010 Act as if—

(a) section 157(2)(b) were omitted;

(b) the reference in section 157(6)(a) to an order under section 168 were omitted; and

(c) section 157(6)(c) to (e) were omitted.

(3) An authorisation to the Environment Agency under section 154 of the 1991 Act as applied by paragraph (1) may be given only for the purposes of enabling the United Kingdom to comply with its obligations under—

(a) the Habitats Directive in relation to any steps and measures under Article 6 of that Directive or policies under Article 10 of that Directive;

(b) the Water Framework Directive in relation to any environmental objectives; or

(c) the Wild Birds Directive in relation to any steps and measures under Articles 2, 3 or 4 of that Directive.

(4) In this article—

(a) "environmental objectives" has the same meaning as in the Water Framework Directive;

(b) "the Habitats Directive" ("*y Gyfarwyddeb Cynefinoedd*") means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**5**);

(c) "the Water Framework Directive" ("*y Gyfarwyddeb Fframwaith Dŵr*") means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(**6**); and

(d) "the Wild Birds Directive" (" *y Gyfarwyddeb Adar Gwyllt*") means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**7**).

(**3**) Section 154 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraphs 128 and 157. The functions are conferred on the Ministers which is defined in section 222(1) of the Water Resources Act 1991 as the Secretary of State and the Minister. The relevant functions of the Secretary of State were transferred to the National Assembly for Wales by virtue of article 2 to, and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**4**) Section 157 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 159. The functions are conferred on the Ministers which is defined in section 222(1) of the Water Resources Act 1991 as the Secretary of State and the Minister. The relevant functions of the Secretary of State were transferred to the National Assembly for Wales by virtue of article 2 to, and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(**5**) OJ No L 206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p.368).

(**6**) OJ No L 327, 22.12.2000, p.1, last amended by Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p.114).

(**7**) OJ No L 20, 26.1.2010, p.7.

Commencement Information
I3 Art. 3 in force at 1.12.2011, see **art. 1**

Application of compulsory purchase provisions to section 39 of the 2010 Act

4.—(1) Section 154 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—

(a) the words "A local authority" were substituted for the words "The Agency" where they first appear in section 154(1);

(b) the functions referred to in section 154(1) included functions under section 39 of the 2010 Act;

(c) the words "the local authority" were substituted for the words "the Agency"—

(i) the second place they appear in section 154(1);

(ii) where they appear in section 154(2), (3) and (4); and

(iii) the second and third places they appear in section 154(6); and

(d) "local authority" has the same meaning as in section 39(6) of the 2010 Act.

(2) Section 157 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—

(a) the words "A local authority" were substituted for the words "The Agency" where they appear in section 157(1);

(b) the words "the local authority" were substituted for the words "the Agency" where they appear in section 157(2)(a) and (6);

(c) section 157(2)(b) were omitted;

(d) the reference in section 157(6)(a) to an order under section 168 were omitted;

(e) section 157(6)(c) to (e) were omitted; and

(f) "local authority" had the same meaning as in section 39(6) of the 2010 Act.

Commencement Information
I4 Art. 4 in force at 1.12.2011, see **art. 1**

Application of power of entry provisions to section 38 of the 2010 Act

5.—(1) Section 170 of the 1991 Ac(**8**)) applies for the purposes of section 38 of the 2010 Act as if the reference in subsection (4) to any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 of the 1991 Act were a reference to any power conferred by section 38 of the 2010 Act.

(2) Section 171 of the 1991 Act(**9**) applies for the purposes of section 38 of the 2010 Act as if—

(a) the functions referred to in section 171(2)(a) included functions under section 38 of the 2010 Act; and

(b) section 171(2)(b) were omitted.

(**8**) Section 170 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 128.
(**9**) Section 171 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 128. The relevant functions of the Secretary of State were transferred to the National Assembly for Wales by virtue of article 2 to, and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(3) Schedule 20 to the 1991 Act(**10**) applies for the purposes of section 38 of the 2010 Act as if—

(a) the references in paragraphs 1 and 2(1)(a) to powers conferred by sections 169 to 172 of the 1991 Act were references to powers conferred by section 170 or 171 of the 1991 Act as applied by this article;

(b) the words "the premises in question are on agricultural land," were inserted after "where" in paragraph 1(2);

(c) the reference in paragraph 1(3) to the power conferred by section 170 of the 1991 Act were a reference to that power as applied by this article;

(d) the reference in paragraph 2(4) to the power conferred by section 171 of the 1991 Act were a reference to that power as applied by this article;

(e) references to a power to which Schedule 20 applies were references to any power conferred by section 170 or 171 of the 1991 Act as applied by this article, including a power exercisable by virtue of a warrant under Schedule 20;

(f) paragraph 8(2) were omitted; and

(g) "agricultural land" had the same meaning as in section 145 of the 1991 Act.

Commencement Information

I5 Art. 5 in force at 1.12.2011, see **art. 1**

Application of power of entry provisions to section 39 of the 2010 Act

6.—(1) Section 170 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—

(a) the words "a local authority" were substituted for the words "the Agency"—

(i) where they appear in section 170(1); and

(ii) where they first appear in section 170(3);

(b) the words "the local authority" were substituted for the words "the Agency"—

(i) where they appear in section 170(2); and

(ii) the second place they appear in section 170(3);

(c) the reference in subsection (4) to any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 of the 1991 Act were a reference to any power conferred by section 39 of the 2010 Act; and

(d) "local authority" had the same meaning as in section 39(6) of the 2010 Act.

(2) Section 171 of the 1991 Act applies for the purposes of section 39 of the 2010 Act as if—

(a) the words "a local authority" were substituted for the words "the Agency" where they appear in section 171(1);

(b) the words "the local authority" were substituted for the words "the Agency" where they appear in section 171(2)(a) and (3)(c);

(c) the functions referred to in section 171(2)(a) included functions under section 39 of the 2010 Act;

(d) section 171(2)(b) were omitted; and

(**10**) Schedule 20 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 188, and S.I. 2009/1307. The relevant functions of the Secretary of State were transferred to the National Assembly for Wales by virtue of article 2 to, and Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.