Draft Order laid before Parliament under sections 38(9)(a) and 39(13)(a) of the Flood and Water Management Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

COAST PROTECTION, ENGLAND
ENVIRONMENTAL PROTECTION, ENGLAND
FLOOD RISK MANAGEMENT, ENGLAND

The Incidental Flooding and Coastal Erosion (England) Order 2011

Made - - - - ***

Coming into force - - *1st December 2011*

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

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament pursuant to sections 38(9)(a) and 39(13)(a) of that Act.

Citation, application, and commencement

1. This Order—

(a) may be cited as the Incidental Flooding and Coastal Erosion (England) Order 2011;

(b) applies in relation to England; and

(c) comes into force on 1st December 2011.

Interpretation

2. In this Order—

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

(b) "the 2010 Act" 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 those sections.

(**2**) 1991 c. 57.

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 necessary 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 necessary 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" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**5**);

(c) "the Water Framework Directive" 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" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**7**).

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

4. 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" had 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—

(**3**) Section 154 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraphs 128 and 157.
(**4**) Section 157 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 159.
(**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.

(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.

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

5.—(1) Section 170 of the 1991 Act(**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.

(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.

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"—

(**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.
(**10**) Schedule 20 was amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 128 and 188, and S.I. 2009/1307.