

## **Explanatory Memorandum to the Incidental flooding and Coastal Erosion (Wales) Order 2011.**

This Explanatory Memorandum has been prepared by the department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Incidental flooding and Coastal Erosion (Wales) Order 2011.

I am satisfied that the benefits outweigh any costs.

A handwritten signature in black ink, reading "John Griffiths". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

MINISTER FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

DATE 29th October 2011

## **1. Description**

This Order applies certain provisions of Water Resources Act 1991 to the exercise of works powers under Sections 38 and 39 of the Flood and Water Management Act 2010 (“the Act”). The Act requires this order to be made.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None

## **3. Legislative background**

The Act received Royal Assent on 8 April 2010 and was passed in recognition of the need to update the legislation governing flooding and coastal erosion.

The requirement to make this Order is contained in sections 38 and 39 of the Act. These two Sections provide powers to the Environment Agency and local authorities (defined as including lead local flood authorities, district councils and Internal Drainage Boards) to carry out certain works in the interests of nature conservation, the preservation of cultural heritage or people’s enjoyment of the environment or of cultural heritage.

Sections 38 and 39 require this Order to ensure the powers are accompanied by adequate compensation provisions. It also requires the Order to provide powers of entry, and compulsory acquisition (with appropriate safeguards built in). This Order applies relevant provisions of the Water Resources Act 1991, with appropriate modifications to impose additional restrictions on their use.

The instrument is subject to the affirmative procedure.

## **4. Purpose & intended effect of the legislation**

The policy objective of the empowering provisions (Sections 38 and 39 of the Act) is to allow the Environment Agency and local authorities to carry out certain works in the interests of nature conservation, the preservation of cultural heritage or people’s enjoyment of the environment or of cultural heritage. An example of this might be allowing an area of land to flood in order to restore habitat for wetland birds. This will assist in the UK’s compliance with certain EU Directives<sup>1</sup>.

The need for specific environmental powers arose due to the definition of flood and coastal erosion risk management in the Act, which otherwise limits powers to measures necessary to reduce the harmful effects of flooding or erosion. Much of the work that is needed to meet environmental objectives and requirements involves managing flooding and erosion to gain the beneficial effects of those processes.

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<sup>1</sup> Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”), Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (“the Water Framework Directive”), and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (“the Wild Birds Directive”).

Coastal areas, wetlands and river corridors are particularly important areas for the natural environment and these areas depend on the processes of flooding and erosion to maintain their special interest and value. Many of these areas are also designated under the EU Habitats, Birds and Water Framework Directives. Works for the benefit of the environment will sometimes need to be undertaken by flood and erosion risk management authorities in order to comply with requirements under those Directives.

Voluntary approaches were considered but would not have empowered authorities to take the necessary action in light of the definition of flood and coastal erosion risk management in the Part 1 of the Act or have secured the policy objectives.

There was widespread support for powers to enable authorities to manage flooding and erosion for the benefit of the environment in response the public consultation on the draft Flood and Water Management Bill. However, concerns were raised by some that compensatory measures should be put in place to support these powers. This is part of the purpose of this Order.

The provisions are legally important because they establish that authorities have powers to carry out work which is needed to maintain and enhance the natural environment and cultural heritage. The protective provisions in the Orders ensure that the rights of property owners are protected. Voluntary approaches would not be sufficient to secure these outcomes.

## **5. Consultation**

The details of consultation undertaken are included in the Regulatory Impact Assessment (RIA) overleaf.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **What is the problem under consideration (and previous impact assessment of sections 38 and 39 of the Flood and Water Management Bill)**

Important features of the natural and cultural environment depend on the processes of flooding and erosion in order to maintain their value in terms of providing ecosystem services. However, the definition of flood and coastal erosion risk management in part 1 of the Flood and Water Management Act 2010, does not permit authorities to continue managing or causing flooding or erosion specifically for purposes of conserving or improving the natural environment or cultural heritage

It was therefore necessary to include Sections 38 and 39 (incidental flooding or coastal erosion) in the Act to ensure that flood and erosion risk management authorities (the Environment Agency, local authorities and internal drainage boards) have powers to undertake this kind of work thus allowing ecosystem service benefits and environmental objectives to be realised in an integrated approach to the management of flooding, water levels and erosion.

The need for these specific powers at this time was created by the new definition of flood and coastal erosion risk management in Part 1 of the FWMA Act.

This definition confines risk management to work done to reduce the harmful effects of flooding or erosion. However, much of the work that is needed to conserve, preserve or improve the environment requires action to be taken to manage flooding and erosion to gain the beneficial effects of those processes. For example, allowing wetlands to flood, raising water levels or maintaining erosion processes all of which are needed in some places to maintain the physical and biological diversity of the landscape. Sections 38 and 39 were therefore included in the Act to empower authorities to carry out such work where appropriate, subject to safeguards.

The Act is drafted in such a way that Sections 38 and 39 cannot be commenced until orders are made which apply the compulsory purchase, powers of entry and compensation provisions in the Water Resources Act 1991 to these sections of the FWM Act.

Due to the connection with the core definition of flood and coastal erosion risk management, an Impact Assessment was made of the change in definition together with sections 38 and 39 as part of the Bill work. That IA effectively made the case for a package of inseparable changes. However, the part of the assessment which specifically addressed the impacts of and case for the Section 38 and 39 powers stated:

#### “3.4 Integration of coastal erosion into flood management

Coastal erosion risk and coastal flood risk are closely interrelated. There is therefore a strong rationale for considering the two issues together when decisions are taken about the management of flooding and erosion. For example, sediment released by erosion processes can be essential to the maintenance of natural flood defences such as beaches, mud flats and salt marshes. Slowing or preventing erosion in one area can increase flood or erosion risk in another area. At the same time, cliffs sometimes form a natural barrier against coastal flooding, sheltering hinterlands from high tides that might otherwise cause them to flood. In such cases, allowing cliff erosion to continue unchallenged can add to the exposure of inland areas to coastal floods. While, the legislation and institutional responsibilities are currently different, Government policy promotes an integrated approach to the management of flood and coastal erosion risk. Option 2 brings legislation into line with policy by establishing a common legal and management framework. The integration of coastal erosion and flood risk management is expected to reduce the administrative cost by allowing joint schemes to be taken forward by a single lead authority and the development of common knowledge and skills bases.

### 3.5 Sustainability duties and Environmental Works Powers

Flood and coastal erosion risk management has a profound impact on biological and geological diversity and hence also on amenity value. It follows that there are key dependencies between the management of flood and erosion risk and the health and sustainability of certain features of the natural environment – especially wetlands and coastal landscapes. Indeed, many nationally important wildlife sites are currently in an unfavourable condition due to inappropriate drainage or flood management and some of the Government's key targets and objectives for the natural environment can only be met through flood and erosion management. There is therefore a strong case for managing flooding and erosion in an integrated way to gain desirable social and environmental outcomes at the same time as reducing the risk to people and property. The change in definition, together with the powers to manage flooding and erosion for the beneficial effects upon the environment and a comprehensive duty to contribute to the achievement of sustainable development, are required to achieve this.

Broader sustainability duties and environmental works powers would encourage an integrated approach to management of flood risk and coastal erosion risk ensuring social, economic and environmental policy goals are considered together. The benefits of a clear sustainable development duty on all operating authorities would mean that other environmental, biodiversity and social benefits need to be considered and are likely to be realised including reducing climate change impact.

It is expected that the provision of environmental works powers, will enable flood and erosion risk management authorities to realise such benefits. These benefits are more likely to be gained cost-effectively by giving powers to the same authorities who have the powers to manage flooding and erosion to reduce the harmful effects because they have the necessary technical

expertise and administrative competencies. They are thus best placed to make sure that no conflicts arise between different objectives and that any synergies are realised.

### **Why does the Government need to intervene?**

The rationale for intervention was covered in the Impact Assessment for the new definition of Flood and Erosion Risk Management and the strategic overview at the Bill stage.

In summary: There are key dependencies between the state of the natural environment and the management of flooding and erosion. Many features at the coast, in river corridors and wetlands depend on the processes of flooding or erosion to maintain their value and function. Without the intervention of flood and erosion risk management authorities in the management of these processes, habitats and historical features would be lost or degraded; legal requirements associated with the Habitats, Birds and Water Framework Directives would not be met and key government objectives for the natural and historic environment, which require flood and coastal erosion management work, would not be achieved. However, while the powers in Section 38 and 39 will help flood and erosion risk management authorities meet the requirements of these EU Directives, the principal case for them is to secure desirable environmental outcomes where appropriate and an integrated approach to the management of flooding and coastal erosion which both reduces the risks to people and property and improves the environment.

Government intervention is needed to give flood risk management authorities (the Environment Agency, local authorities and internal drainage boards) powers to manage flooding and coastal erosion for these purposes. The alternatives would be a situation where no authority was empowered to carry out works to manage flooding or erosion for the benefit of the environment, or to give the powers to other organisations. However, no other organisations have the relevant competencies and this would lead to a disintegrated approach to the management of flood and erosion processes.

### **Policy Objective**

Sections 38 and 39 of the FWMA cannot be commenced unless this Order is made. Sections 38 and 39 are needed to allow flood risk management authorities to carry out work to meet the requirements of obligations under various existing European Directives, including the Water Framework Directive, Habitats Directive and the Birds Directive, as well as to meet domestic objectives to conserve or improve the environment and people's enjoyment of it as described above.

### **Policy Options considered**

1. Option 0: Do nothing: i.e. not making the orders (the baseline option and counterfactual)
2. Option 1: Making orders that apply the relevant provisions without modifications

3. Option 2: Making orders that apply the relevant provisions with modifications

**Option 0: Do nothing: i.e. not making the orders and not commencing section 38 and 39 of the FWMA. This is the counterfactual.**

Not making orders would mean that Sections 38 and 39 could not be commenced because the Act states that the Minister “must” apply the aforementioned provisions of the Water Resources Act to sections 38 and 39 either with or without modifications.

If section 38 and 39 are not commenced, flood risk management authorities will lack the powers that they need to manage local flooding and coastal erosion for the purpose of improving the environment and people’s enjoyment of the environment or cultural heritage. This would, in turn, lead to a degradation of nationally important wildlife, heritage and landscape features, severely limit authorities’ capacity to manage flooding and erosion for the benefit of the environment.

Such work includes projects that internal drainage boards, local authorities and the Environment Agency undertake to facilitate water level management in support of landowners’ agreements under Environmental Stewardship and similar schemes. It would also threaten UK’s capacity to meet obligations under the Habitats Directive, Birds Directive and Water Framework Directive.

**Option 1: Make orders that apply the relevant provisions without modifications**

Making orders applying the relevant provisions of the Water Resources Act 1991 without modifications is the simplest option and has the benefit of consistency.

The flood and coastal erosion management work that authorities would be empowered to do by Sections 38 and 39 for the benefit of the environment and people’s enjoyment of the environment is identical to that which would need to be done to reduce the risks of flooding and coastal erosion. That is to say: erecting, maintain and managing defence structures; maintaining or restoring natural processes; managing water levels; and carrying out other such works in rivers or on the coast.

It would therefore be simplest if authorities had identical compulsory purchase, powers of entry and compensation provisions when carrying out those work regardless of the purpose for which they are being done.

However, landowners’ representatives (NFU & CLA) expressed concerns during the passage of the Flood and Water Management Bill through parliament about this. It was argued that there should be additional protections when works were being carried out for environmental purposes to protect the interests of landowners. The actual net impact on those affected is considered to be small. However, option 2 is intended to mitigate and minimise any potential residual impacts as far as practicable.

## **Option 2: Make orders that apply the relevant provisions with modifications**

Making orders applying the relevant provisions of the Water Resources Act 1991 with modifications adds a little complexity to the legal framework but has the potential to answer concerns of landowners. The modifications proposed are a) restricting the Environment Agency's powers for compulsory purchase to works that are needed to meet legal requirements and b) adding a requirement to give at least 7 days notice before powers of entry can be exercised on farmed land. The 7 day notice period is in the existing provisions (for work carried out under the Water Resources Act 1991) only relates to residential property.

This is the preferred approach and lawyers in both Wales and England have drafted orders to meet this. We know the legislation is workable insofar as the provisions that we are seeking to apply to Sections 38 and 39 have been used by the Environment Agency (and its predecessors) when carrying similar works under the Water Resources Act since 1991. The modifications that are proposed are modest and will not need any new procedures. They are intended to minimise any residual impacts on any agricultural land owners as far as practicable.

The reason for restricting the Environment Agency's powers of compulsory purchase to works that are needed to meet legal requirements is to restrict the reach of a national body, in this respect, to things that really need to be done in the national interest. This would not prevent the Environment Agency supporting local authority projects where appropriate because section 39(8) allows local authorities to arrange for works to be carried out by the Environment Agency on the local authority's behalf. However, any such works would need to have the backing of the local authority with its local democratic mandate and would be done on behalf of that authority. In any case, compulsory purchase is a last resort for any authority and is likely to be used rarely and only where absolutely necessary.

The second modification is to require all authorities to give 7 days notice before exercising powers in connection with Section 38 or 39 to enter farmland (except in an emergency). This brings farmland into line with residential property and is considered a reasonable period to allow farmers to secure stock and take any bio-security measures necessary without unduly disrupting their business.

### **Preferred policy option**

Option 2 is preferred as it meets the policy objectives and brings additional provisions when works are being carried out for environmental purposes to protect the interest of landowners and managers.

This goes some way to resolving concerns raised by landowners' representatives (NFU & CLA), during the passage of the Flood and Water

Management Bill through Parliament, that there should be additional protections when works were being carried out for environmental purposes to protect the interests of landowners.

## Cost Benefit Analysis of the Options

It is not possible to give a certain value for the environmental costs and benefits of the schemes that would be brought forward as a result of these changes because each case will be considered and treated on its merits in competition with alternative investment options. It is assumed that only schemes with positive net benefits would be pursued by operating authorities having regard for their value for money obligations.

However, indicative examples of the costs and benefits of creating habitats that could result from these changes illustrate a realistic range values that may be possible. Using a valuation methodology, based on the value of the goods and services provided by habitats towards human welfare<sup>2</sup>, values for the types of coastal and wetland habitats that might typically be created through flood and erosion management range from £200-4500 per hectare per year<sup>3</sup>. These gross benefit values (i.e. before considering costs) include carbon storage, pollution control functions, contribution to fisheries and recreational benefits. Typical whole life cash costs of creating such wetland habitats range from £16,000-135,000 per hectare over 100 years, or £160-1,350 as an annual average<sup>4</sup>. (This includes the costs of any land purchase or compensation necessary). The range of net benefit (gross benefit less creation cost) per hectare of habitat created therefore lies in the range £1 - 3,150 per annum (projects with zero or worse net benefits would not be advanced under operating authority investment appraisal rules).

It should be noted that uptake of the powers provided by the orders is very difficult to forecast and will depend on operating authorities' approaches to a range of individual situations. Note also that benefits may include or be additional to any functional benefit that the habitat provides in terms of reducing flood risk, such as reducing flood peaks in rivers or dissipating wave energy at the coast, which may be the primary objective of some projects. One recent investigation into the economics of coastal habitat recreation concluded that "*There are sites at which habitat creation and realignment of defences is likely to be the most economic option for flood defence, even without taking habitat values into account. Equally, there are some case in which [projects] can be justified purely in terms of the habitat created, without the need to invoke flood protection benefits.*"<sup>5</sup>

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<sup>2</sup> Defra 2007, An introductory guide to valuing ecosystem services.

<sup>3</sup> Eftec 2007 (updated 2010), Flood and Coastal Erosion Risk Management: Economic Valuation of Environmental Effects. The Environment Agency.

<sup>4</sup> Defra 2006, National Assessment of the Cost of meeting environment requirements. R&D Technical Report FD2017/TR

<sup>5</sup> Tinch, R and Ledoux, L;2006 Economics of Manager Realignment in the UK. Final Report to Coastal Futures Project,

## **Risk and assumptions**

There would be a significant reputational risk in not commencing the environmental provisions of the Flood and Water Management Act given the dependency between the state of environment and the management of flooding and erosion.

The assumption that the overall benefits will outweigh the costs is based on:

- a) the premise that the Orders are intended to bring into force powers of compensation which make the use of Sections 38 and 39 as close to cost neutral to business as possible, and
- b) that works taken forward under sections 38 and 39 will either be the minimum necessary to meet legal requirements or have a positive net present value.

It is important to emphasise that the costs and benefits used above are only indicative. Each project would need to be considered on its merits and the nature of the actual costs and benefits of works that could be taken forward under Section 38 and 39 powers will vary enormously. Furthermore, the figures above are drawn from meta-analysis valuation studies from various parts of the world. While the value of habitat created in Wales is likely to be in these ranges, in some cases it could be higher or lower.

Similarly assumptions made on the impacts of in the specific impacts tests are generic and may vary from project to project, which will all need to be assessed on a case by case basis. However, controls exist in planning, permitting and funding regimes to ensure that projects which do not have a positive cost benefit ratio or are otherwise unacceptable in economic, environmental or planning terms are not funded or permitted.

### **Administrative burdens and policy savings calculations and impacts on landowners. (Based on Environment Agency advice and cases.)**

#### **Powers of Entry**

When the Environment Agency used its powers of entry it would serve a statutory 7 day notice on the landowner notifying him or her that it would be entering the land to carry out works. The notice would entitle the landowner to compensation for any loss or damage to his or her property as a result of the works.

Typically the landowner might be involved in pre-start stakeholder engagement/public liaison meetings (depending on complexity of the scheme). They might also get involved in one-to-one meetings, maybe on site, with the Agency's project manager or consultant. In most cases an Environment Agency project manager would serve the notice. If there is no damage caused then the impact on the landowner would be minimal or cost

neutral. The Environment Agency has advised that the time cost for the landowner would be extremely small.

The Environment Agency suggested its Lincshire flood alleviation scheme as an example of the time that might typically be involved for a landowner. In that case, the Agency was carrying out large beach nourishment project. It served notices on the District Council and other landowners. Notice was served on the Council but the Agency estimated it was only involved in a few hours time checking their records and liaising with colleagues. They did not need to go on site and it is therefore unlikely that any compensation will be claimed.

However, if a project was more complex or contentious compensation may be payable. This may arise if, for example, damage was done whilst the Environment Agency was on the land. In that case the Agency's Estates Team would carry out the negotiations with the landowner. The landowner may instruct an agent to act on his behalf and that cost could be covered by the compensation claim. Such a case may have more of a cost to the landowner in terms of time and form filling. However, in addition to compensation for any damage done the landowner would be reimbursed agent's costs (if he employed one) or for his own time. Thus the impacts on the landowner should be close to cost-neutral. Time costs paid to a farmer would tend to be in the hundreds of pounds whereas costs paid to a land agent are more likely to be in the thousands.

### **Compensation**

Compensation is paid where damage is done in the course of carrying out a permitted activity. If the Environment Agency pays compensation to a landowner, it would normally cover any loss of their land, disturbance and any other losses in addition to reasonable land agent's fees & legal costs.

The intention is to put the landowner in the same position as he would have been before the intervention. In complex or contentious cases negotiations can be lengthy but generally landowners use an agent to act on their behalf. In which case, those costs would be covered by the compensation claim and the impact on the landowner would be close to cost neutral.

The Agency gave an example where it had paid compensation in respect of a flood alleviation scheme for St Ives and Hemingfords. In that situation, the Environment Agency built a flood bank across agricultural land, affecting a number of landowners. On one plot, the Environment Agency's agents negotiated with the agents acting for the landowner. The heads of terms agreed with the landowner were:

- a) Compensation for the land taken for the bank, based on an amount per hectare.
- b) Compensation for injurious affection for loss in value of the land between the new & old embankments.
- c) A payment for disturbance to the landowner during the works.
- d) Reimbursement of the landowner's reasonable surveyors fees & legal costs.

Several meetings were held and negotiations went on for a number of years, incurring more time for the landowner than usually expected. However, costs were compensated.

### **Compulsory Purchase:**

There are very few examples of where authorities have used compulsory purchase powers. Generally speaking, operating authorities prefer to negotiate terms with sellers and Compulsory Purchase is only used in exceptional cases as a last resort. However, if it were used, the impacts on the landowner should be cost-neutral, covering time spent by the landowner, as well as the value of the land.

## **Specific Impact Assessments**

The impacts are summarised in the following section:

Equality Duties: The orders are not considered likely to have any direct effect on equality duties or issues.

Greenhouse gas assessment: the creation of wetlands and coastal habitats that will be facilitated by the powers created by sections 38 and 39 could have a benefit in terms of sequestration and storage of Green House Gases. However, the evidence base for impacts of land management change is poor and any benefits are likely to be marginal. This was explored in a recent research project FD2622 - Understanding the Impact of Flood and Coastal Erosion Risk Management on the Causes of Climate Change (in press).

Wider environmental impacts: Flood and coastal erosion risk management has a profound impact on the environment. Furthermore, there are key dependencies between the management of flood and coastal erosion risk and the health and sustainability of certain features of the natural environment – especially wetlands and coastal landscapes. The conservation and enhancement of the natural environment and the preservation of the historic environment is the key objective of sections 38 and 39 of the Act. Without the powers therein, wetlands, rivers, and coastal habitats would be degraded, damaged and lost as a result of ongoing programmes of risk management without being able to offset these impacts. This would make it very difficult to meet requirements under the EU Habitats, Birds and Water Framework Directives to avoid the deterioration of protected sites and secure favourable conservation status of some important habitats and species in the UK. It would also seriously impair capacity to meet the government's policy objective "to enhance the environment and biodiversity to improve quality of life".

Health and well being: Access to good quality environments has been shown to have beneficial effect on health and recovery from illness. The provisions of sections 38 and 39 which allows work to be carried out in the interest of "people's enjoyment of the environment or of cultural heritage" has the potential to make a small contribution to overall health and well-being.

Rural proofing: The compulsory purchase, powers of entry and compensatory provisions are most likely to be used in rural situations to off-set any negative impacts of works carried out under section 38 and 39 powers on rural businesses, particularly farmers. Similarly the benefits of the works are most likely, but not solely, expected to be enjoyed by and most easily accessible to rural communities that live closest to the sites concerned. However, these are very high level generalisations and individual projects proposed under these powers will be assessed on a case-by-case basis to ensure they are rural proofed.

Sustainable development: By ensuring that authorities are empowered to undertake works to manage flooding and coastal erosion to gain environmental benefits, the Order will ensure that the environmental pillar of sustainable development is supported. It will enable authorities to contribute to a programme of works that does not leave a legacy of environmental degradation to future generations and help the current generation to live within environmental limits. By contributing to the conservation of the natural and historic environment, which is largely a common public good, it will make a modest contribution to a strong, healthy and just society.

## Consultation

An initial consultation on the proposals was undertaken within the public consultation on the draft Flood and Water Management Bill, which ran between April and July 2009. The draft Bill was also subjected to Parliamentary pre-legislative scrutiny and was considered by the National Assembly for Wales' Sustainability Committee and the Constitutional Affairs Committee. No specific concerns were raised in relation to the proposals.

The proposals affect England and Wales on an equal basis and in developing the order we worked with the Department for Environment and Rural Affairs. Stakeholders, including representative of those groups most likely to be affected by these provisions, were involved in the development of options. No specific concerns have been raised.

## Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market	No

The competition filter test	
Question	Answer yes or no
structure, changing the number or size of businesses/organisation?	
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

## Post implementation review

### Basis of the review

It is proposed that these provisions should be reviewed 5 years after the commencement date of section 38 and 39. This is considered a reasonable minimum period to make an assessment of its effectiveness given that we expect some of the provisions will be used infrequently.

### Review Objective

The review objectives will be to ensure that the provisions allow policy to be delivered, and that the assessment of impacts and distributions of costs are as expected.

### Review approach and rationale

The review will consist of a proportionate evaluation of case studies together with information on impacts from flood authorities and a scan of stakeholder views.

### Baseline

Prior flood and coastal erosion risk management performance by flood risk management authorities in over the past 5 years.

### Success criteria

Environmental outcomes and the impact on flood risk management authorities, stakeholders and costs.

### Monitoring Information arrangements

Arrangements for monitoring performance are still being considered in the light of proportionality. However, it may be necessary to request that flood risk management authorities (EA, IDBs LAs) provide a brief annual summary of the use of these powers and their effectiveness as part of any annual reporting established for flood and coastal erosion risk management or environmental performance.