Land Drainage and Flood Defence Responsibilities

Fifth edition

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Institution of Civil Engineers

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Contents

	Acknowledgements	ix
	Preface	xi
	Abbreviations and definitions	xiii
01	Outline of responsibilities and statutes	1
	Scope of land drainage	1
	General principles	2
	Statutory functions	3
	Principal statutes	6
02	Devolved government and departments	11
	England	11
	Wales	15
	Scotland	15
	Northern Ireland	17
03	Environment Agency	19
	Supervisory duty	19
	Surveying duty	21
	Principal powers – main rivers and ordinary watercourses	22
	Designation of main rivers	23
	Powers to ensure maintenance of flow in watercourses	24
	Powers to require repairs to watercourses, bridges and other infrastructure	25
	Incidental powers	25
	Directions to IDBs	25
	Power to carry out schemes for small areas	25
	Power to make byelaws	26
	Flood warning systems	26
	Tidal flooding and coastal erosion	26
	Financing of land drainage functions	26
	General aims and environmental duties	27
04	Internal drainage boards	29
	Functions and constitution	29
	Land Drainage Act 1991	29
	Water Resources Act 1991	31
	Financial arrangements for IDBs	31
	Drainage rates and special levies	31
	Differential rates	32
	Higher land water contribution (HLWC) from the Environment Agency to the IDB	33
	Additional funding	33
	Environment Agency precept (from IDB to Environment Agency)	33

05	Local authorities	35
	Outline of powers – England and Wales	35
	English district councils	36
	English and Welsh county councils and unitary authorities	39
	The London authorities	42
	Scottish local authorities	44
	Northern Ireland local authorities	45
06	Riparian owners	47
	Riparian rights and duties	47
	Nuisance	51
	Obstruction to flow – consent procedure	52
	Disputes regarding ditches	52
	Disputes between neighbours	52
	Powers of entry	52
	Problems regarding grant aid	52
	Flooding emergencies	53
	Artificial watercourses	53
	Obstruction and flooding	54
07	Differentiation between land drainage and sewerage	55
	Difference between a public sewer and a watercourse	55
	Guidelines for differentiation	57
	Definition of a public sewer	57
	Tests to check the status of a public sewer	61
	Transfer of Private Sewers Regulations 2011	61
	Supplementary transfer scheme	62
08	Development either side of a watercourse	63
09	Extension of the ‘main river’ designation of watercourses	69
10	Development planning and management	73
	Introduction	73
	England	73
	Wales	73
	Scotland	73
	Northern Ireland	74
	Planning procedures	74
	Consideration of land drainage matters	78
	Conditions for consent	78
	Planning obligations	80
	Requirement for information and advice	80

	Requirements for works, agreements etc.	81
	Further practical considerations	82
11	Development in flood plains	85
	National Planning Policy Framework	86
	Risk-based approach	87
	Sequential test	88
	Exception test	88
	Responsibilities for developments in a flood plain	88
	Planning policy – Northern Ireland	89
12	Roadside ditches	91
	Ownership problems	91
	Filling in or culverting	93
	Powers of diversion	94
	Culverts under highways	94
	Acceptance of other flows	94
	Drainage to existing sewers	95
	Runoff onto highways	95
	Right of statutory undertakers to discharge into a ditch or watercourse	95
	Ditches maintained by the highway authority	95
13	Culverted watercourses	97
	Summary of problems	97
	Control over culverting	97
	Practical problems associated with culverting	99
	Legal problems associated with culverting	100
14	Grants and contributions	103
	Policy framework	103
	Environment Agency funding	103
	Lead local flood authority expenditure	103
	Internal drainage boards	103
	Legislation	105
	Administration	105
	Useful publications	106
	Contributions	106
	Devolved governments	107
15	Mining subsidence and land drainage	109
	Principal statutes	109
	Coal Mining Subsidence Act 1991	110
	Mining codes	112
	Pollution of watercourses	112
16	Sea defence and coast protection	113

17	Land drainage and the environment	117
	Introduction	117
	Environmental obligations	117
	Environmental impact assessment	122
18	Bibliography	129
	Websites	129
	Books, updated loose-leaf volumes, reports and articles	129
Appendix 1	Relevant statutes, Statutory Instruments, EC legislation and current Government policy guidance to which reference is made	133
Appendix 2	List of cases to which reference is made	137
Appendix 3	Useful addresses	139
	Index	143

Acknowledgements

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Preface

The fourth edition of this guide was published in 2009, at a time when the responsibility for managing flood risk was under scrutiny following major floods in Carlisle, Hull and the River Severn valley.

In August 2007, the Government, in response to the concerns, asked Sir Michael Pitt to lead an independent review into the floods that occurred in June and July of 2007. His final report was published in June 2008 and it contained 92 recommendations, which the Government agreed to implement in full.

Following a period of consultation, the majority of the recommendations were incorporated in the Flood and Water Management Act 2010, enacted on 8 April 2010. This Act made a number of significant changes to the responsibility for managing flood risk, including the introduction of the concept of lead local flood authorities (LLFAs) and risk management authorities (RMAs), a role given to upper-tier local authorities in England and Wales. In Wales, the reorganisation of the Environment Agency, the Countryside Commission for Wales and the Forestry Commission for Wales into Natural Resources Wales has changed flood risk responsibility.

In addition to the changes in England and Wales, the devolved administration in Scotland has also made changes to the way flood risk is managed. These changes were incorporated in the Flood Risk Management (Scotland) Act 2009, with the key responsibilities for flood risk management implemented by the Scottish Environment Protection Agency (SEPA). In Northern Ireland, the Department for Infrastructure is responsible for flood risk management.

The change in responsibility for organisations in all four countries of the UK, and the emphasis in legislation on flood risk management, which deals with all sources of flooding, together with greater autonomy in the devolved administrations, have led to the requirement for this new edition of this book.

Brian Rodgers
ICE Water Expert Panel

Abbreviations and definitions

Abbreviations

ADA	Association of Drainage Authorities
CA	Coal Authority
CIA 1994	Coal Industry Act 1994
CIRIA	Construction Industry Research and Information Association
CMP	Catchment Management Planning
CMSA 1991	Coal Mining Subsidence Act 1991
COW	Critical ordinary watercourse
CPA 1949	Coast Protection Act 1949
DCLG	Department for Communities and Local Government
Defra	Department for Environment, Food and Rural Affairs
DETR	Department of the Environment, Transport and the Regions
DfI	Department for Infrastructure (Northern Ireland)
DO 1973	Drainage (Northern Ireland) Order 1973
DoE	Department of the Environment
EA	Environmental assessment
EA 1995	Environment Act 1995
EC	European Community
EIA	Environmental impact assessment
ES	Environmental statement
FCERM	Flood and coastal erosion risk management
FCERM-AG	Flood and Coastal Erosion Risk Management Appraisal Guidance
FD	Floods Directive 2007/60/EC
FRM(Scot)	Flood Risk Management (Scotland) Act 2009
FRMP	Flood Risk Management Plan
FWMA10	Flood and Water Management Act 2010
GDPO 1995	Town and Country Planning (General Development Procedure) Order 1995
GDPO 2015	Town and Country Planning (General Permitted Development) (England) Order 2015
HA 1980	Highways Act 1980
HLWC	Higher land water contributions
IDB	Internal drainage boards

LDA 1991	Land Drainage Act 1991
LDA 1994	Land Drainage Act 1994
LDD	Local development documents
LFDC	Local flood defence committee
LGA 1992	Local Government Act 1992
LG(W)A 1994	Local Government (Wales) Act 1994
LPA	Local planning authority
LLFA	Lead local flood authority
NAW	National Assembly for Wales
NIEA	Northern Ireland Environment Agency
NPPF	National Planning Policy Framework
NRA	National Rivers Authority
NRW	Natural Resources Wales
PCPA 2004	Planning and Compulsory Purchase Act 2004
PFRA	Preliminary flood risk assessment
PHA 1875	Public Health Act 1875
PHA 1936	Public Health Act 1936
PPS15	Planning Policy Statement 15: <i>Planning and Flood Risk</i>
PPS25	Planning Policy Statement 25: <i>Development and Flood Risk</i>
PSCA	Public Sector Cooperation Agreement
RFCC	Regional flood and coastal committee
RFRA	Regional flood risk appraisal
RMA	Risk management authority (FWMA10)
S.	Section number of an Act of Parliament
SEA	Strategic environmental assessment
SEPA	Scottish Environment Protection Agency
SFRA	Strategic flood risk assessment
SI	Statutory Instrument
SMP	Shoreline management plan
SMP2	Second-generation shoreline management plan
SS.	Section numbers of an Act of Parliament
SSSI	Site of special scientific interest
SuDS	Sustainable drainage system
SWMP	Surface water management plan
TCPA 1990	Town and Country Planning Act 1990
WA 1989	Water Act 1989

WA 2014	Water Act 2014
WAG	Welsh Assembly Government
WCA 1981	Wildlife and Countryside Act 1981
WIA 1991	Water Industry Act 1991
WRA 1991	Water Resources Act 1991
WSS 2006	Water and Sewerage Service (Northern Ireland) Order 2006

Statutory definitions

Designated watercourse: Means a watercourse in Northern Ireland that has been designated by the Drainage Council. (DO 1973)

Drainage: Includes defence against water (including sea water), irrigation other than spray irrigation, warping and the carrying on, for any purpose, of any other practice which involves management of the level of the water in a watercourse (S.72(1) LDA 1991 and S.113(1) WRA 1991 as amended by S.100 EA 1995). References in the LDA 1991 to the carrying out of drainage works include references to the improvement of drainage works. (S.72(5) LDA 1991)

Drainage authority: Means the Department of Agriculture and Rural Development in Northern Ireland. (DO 1973 para. (6))

Drainage body: Means the Environment Agency, an internal drainage board or any other body having the power to make or maintain works for the drainage of land. (S.72(1) LDA 1991)

Flood:

- (1) 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
 - (f) surface water
 - (g) pluvial and sewerage
 - (e) anything else (including any combination of factors).
- (3) But ‘flood’ does not include—
 - (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 S.219 of the WIA 1991). (S.1 FWMA10)

Flood defence: Means the drainage of land and the provision of flood warning systems. (S.113(1) WRA 1991)

Flood risk management function: Means a function listed in subsection (2) which may be exercised by a risk management authority for a purpose connected with flood risk management.

- (2) The functions are—
- (a) a function under this Part,
 - (b) a function under section 159 or 160 of the Water Resources Act 1991,
 - (c) a flood defence function within the meaning of section 221 of that Act,
 - (d) a function under the Land Drainage Act 1991,
 - (e) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and
 - (f) any other function, under an enactment, specified for the purposes of this section by order made by the Minister.
- (3) In this section and section 5 ‘the Minister’ means—
- (a) the Secretary of State in relation to flood and coastal erosion risk management in England, and
 - (b) the Welsh Ministers in relation to flood and coastal erosion risk management in Wales. (S.4 FWMA10)

Flood warning system: Means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to specified matters is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations. The specified information is with respect to: (a) rainfall, as measured at a particular place within a particular period; (b) the level or flow of any inland water, or any part of an inland water, at a particular time; and (c) other matters appearing to the Environment Agency to be relevant to providing warning of any danger of flooding. (S.148(5) WRA 1991)

Lead local flood authority: Means the unitary authority or county council for that area within England and Wales.

Local authority: Means the council of a county, county borough, district or London borough, or the Common Council of the City of London (S.72(1) LDA 1991 and S.221(1) WRA 1991)

Main river: Means a watercourse shown as such on a main river map (S.193/4 WRA 1991), and includes any structure or appliance for controlling or regulating the flow of water into, in or out of, the channel which is: (a) a structure or appliance situated in the channel or in any part of the banks of the channel; and (b) not a structure or appliance vested in or controlled by an internal drainage board (S.113(1) WRA 1991, and see S.137(4) WRA 1991 as amended by S.59 WA 2014).

Ordinary watercourse: Means a watercourse that does not form part of a main river (S.72(1) LDA 1991, and see the definition of ‘main river’ above).

Public sewer: Means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the WA 1989, S.179 of Schedule 2 to the WIA 1991 or otherwise (S.221(1) WRA 1991, and S.219(1) WIA 1991). (WSS 2006)

Sewer: Includes all sewers and drains that are used for the drainage of buildings and yards appurtenant to buildings, excluding a drain used for the drainage of one building or of buildings or yards appurtenant to buildings within the same curtilage (S.219(1) WIA 1991 and S.221(1) WRA 1991) (WSS 2006). References to a 'sewer' are to include references to a tunnel or conduit which serves similarly or to any accessories thereof (S.219(2) WIA 1991 and S.221(2) WRA 1991).

Watercourse: Includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the WIA 1991) and passages through which water flows (see S.72(1) LDA 1991, and above on the meaning of 'public sewer'; similarly, see S.I13(1) WRA 1991, but contrast with S.221(1) WRA 1991). See also DO 1973.