

# Flood and Water Management Act 2010

## The Designation of Features – Section 30/Schedule 1

### 1. Background

- a. About two thirds (62,400) of the physical assets, such as walls, embankments and other raised features, that are relied upon for flood and coastal erosion risk management in England and Wales are neither owned nor operated by public risk management authorities. In the 2007 floods, some of these privately owned assets failed, and flooding resulted.
- b. The Pitt Review of the 2007 floods made recommendations to protect these assets.

### 2. Provisions to designate third party structures

- a. Section 30 of, and Schedule 1 to, the Flood and Water Management Act 2010 (the Act), make provision to designate third party structures or features which contribute to the flood and coastal erosion risk management system supporting people and property at a particular location.
- b. The structures or features that are subject to designation include any natural or man-made structure or feature of the environment if it is considered to affect a flood or coastal erosion risk. Examples include, but are not limited to, walls (standalone or the side of a building); earth embankments; shingle banks; and isolated pieces of naturally high ground
- c. The Authorities that have the power to designate are the Environment Agency, lead local flood authorities, district councils, and internal drainage boards.
- d. Designation is at the discretion of the relevant authority, should be risk based and should reflect the strategic direction set in the local (and national) flood risk management strategies.
- e. Designated structures or features will be registered in the Local Land Charges Register.

### 3. Owners of structures or features

- a. will be consulted prior to designation;
- b. should be able to continue to maintain and use the structure or feature following designation and may alter, remove or replace it with the prior consent of the responsible authority;
- c. have the right of appeal against initial designation, refusal to cancel a designation, a decision in connection with a consent application; and the issue of an enforcement notice.

### 4. Legislation and Regulations

The substantive provisions under Schedule 1 were commenced on 1<sup>st</sup> August 2012 in England and Wales. The following Regulations that support these provisions are also in force:

#### **The Designation of Features (Appeals) (England) Regulations 2012 and The Designation of Features (Appeals) (Wales) Regulations 2012**

The Minister is obliged, under paragraph 15 of Schedule 1 to the Act, to provide, by Regulations, the right of appeal for landowners affected by decisions taken by operating authorities to designate. These Regulations provide protection for the rights of affected owners.

#### **The Designation of Features (Notices) (England) Regulations 2012 and The Designation of Features (Notices) (Wales) Regulations 2012**

The Notice Regulations provide a requirement for all 'proactive consent decision' notices issued under paragraph 6(3)(b) of Schedule 1 to the Flood and Water Management Act 2010 to specify a minimum notice period of 28 days before they have effect. This will provide owners with sufficient time to engage with an authority and make representations in relation to proactive consent decisions prior to them taking effect.

### 5. Publications

Two publications have been produced for Designating/Responsible Authorities and asset owners.

- **Designation of structures and features for FCERM purposes - Information note**  
<http://www.defra.gov.uk/publications/2012/07/20/pb13804-fcerm-info/>
- **Information for asset owners – your questions answered**  
<http://www.defra.gov.uk/publications/2012/06/21/pb13746-flood-and-coastal-erosion/>

**We recommend that Designation Authorities provide a copy of 'Information for asset owners' in their initial correspondence with landowners.**



Llywodraeth Cymru  
Welsh Government

#### Further Information

Defra – Flood & Water Management Act -

<http://www.defra.gov.uk/environment/flooding/legislation/>

Welsh Government -

<http://wales.gov.uk/topics/environmentcountryside/epg/waterflooding/flooding/nationalstrategy/guidance/?lang=en>

*Designation of Features – Section 30/Schedule 1 Published 24/07/2012*

