

Preface

The third edition of *Land drainage and flood defence responsibilities* appeared in 1996, and was reprinted in 2001. Since this update, statutory bodies and legislation have changed significantly, making a revision long overdue.

The format of the new guide follows that of the third edition, but includes updates on a range of primary and secondary case law, such as the Civil Contingencies Act in 2004, the Water Act 2003 and a number of EU Directives such as the EU Floods Directive 2007/60/EC on the assessment and management of flood risks. In addition, environmental management and the planning process have changed significantly. Planning Policy Statement 25: Development and Flood Risk has meant that a risk-based approach is now taken for flood risk and management for all forms of flooding. Greater control of development in flood plains has resulted, with flood risk management now being considered as part of the planning process. Coastal erosion is seen as an integral part of managing flood risk.

It is likely that a further review will be required within the next year or two, following implementation of further new legislation. The draft Flood and Water Management Bill is under consultation, and a lot of work is being done to implement the recommendations of the independent review by Sir Michael Pitt following flooding in 2007. The Scottish Government is also consulting on a draft flooding Bill. In addition, the Agency has moved from a position of flood defence to flood risk management.

I would like to thank Greg Lutton (Parsons Brinckerhoff) and Ian Cansfield (Cundall), who edited chapters on environmental legislation and planning law. In addition, assistance with the text was given by David Balmforth (MWH) and Caroline McGahey (HR Wallingford). Thanks also to Ann Webster, who deciphered my handwriting and turned this into a first draft.

Finally, although every care has been taken in the revision of this publication, neither its authors nor their organisations can accept any legal liability for its contents, which do not necessarily represent the views of the sponsoring organisations.

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Abbreviations and definitions

Abbreviations

Agency	Environment Agency (for England and Wales)
CA	Coal Authority
CCA 2004	Civil Contingencies Act 2004
CCW	Countryside Council for Wales
CFMP	Catchment Flood Management Plans
CIA 1994	Coal Industry Act 1994
CMP	Catchment Management Planning
CMSA	Coal Mining Subsidence Act 1991
COW	Critical ordinary watercourse
CPA 1949	Coast Protection Act 1949
DCLG	Department of Communities and Local Government
Defra	Department of Environment Food and Rural Affairs
DoE	Department of Environment
EA 1995	Environment Act 1995
EIA	Environmental Impact Assessment
ES	Environmental Statement
EU	European Union
GDPO	Town and Country Planning (General Development Procedure) Order 1995
HA 1980	Highways Act 1980
IDB	Internal Drainage Board
LDA 1991	Land Drainage Act 1991
LDA 1994	Land Drainage Act 1994
LDD	Local Development Document
LFDC	Local Flood Defence Committee
MCAB	Marine and Coastal Access Bill 2008–9
NRA	National Rivers Authority
PCPA 2004	Planning and Compulsory Purchase Act 2004

PHA 1936	Public Health Act 1936
PPS25	Planning Policy Statement 25: <i>Development and Flood Risk</i>
RFDC	Regional Flood Defence Committee
RFRA	Regional Flood Risk Appraisal
S.	Section number of an Act of Parliament
SFRA	Strategic Flood Risk Assessment
SMP	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	National Assembly for Wales ('Welsh Assembly')
WA 2003	Water Act 2003
WAG	Welsh Assembly Government
WCA 1981	Wildlife and Countryside Act 1981
WIA 1991	Water Industry Act 1991
WRA 1991	Water Resources Act 1991

Statutory definitions

Critical ordinary watercourse (COW). Means a subdivision of an ordinary watercourse identified as most likely to flood properties. The Agency is taking over responsibility for COWs.

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

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 Agency to be relevant to providing warning of any danger of flooding.

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 and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which: (a) is a structure or appliance situated in the channel or in any part of the banks of the channel and (b) is 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).

Ordinary watercourse. Means a watercourse that does not form part of a main river (S.72(1) LDA 1991, and see the definitions of ‘main river’ and ‘critical ordinary watercourse’ 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 or Schedule 2 to the WIA 1991 or otherwise (S.221(1) WRA 1991, and S.219(1) WIA 1991).

Sewer. Includes all sewers and drains which 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). 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 (S.72(1) LDA 1991, and see the definition of ‘public sewer’ above; similarly, see S.113(1) WRA 1991 but contrast S.221(1) WRA 1991).

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Outline of responsibilities and statutes

Scope of land drainage

1. Land drainage and flood defence are generally understood to include the alleviation or control of flooding of urban and agricultural land, whether by fresh water or salt water, including the improvement and maintenance of natural and artificial channels used for these purposes.
2. Historically, land drainage was concerned particularly with the protection of arable land and the improvement of agricultural productivity by ensuring the optimum level of moisture in the soil. More recently, it has become increasingly directed by concerns that drainage activities should be conducted in accordance with environmental and conservation objectives.
3. In S.72 of the Land Drainage Act 1991 (LDA 1991), drainage was defined as including 'defence against water (including sea water), irrigation, other than spray irrigation, and warping'. An identical definition was given in S.113 of the Water Resources Act 1991 (WRA 1991) which also defines 'flood defence' as the 'drainage of land and the provision of flood warning systems'. The general emphasis on defence is somewhat typical of most land drainage legislation, but the definition has been extended by wording which makes clear that flood defence functions also include the management of water levels (S.100 of the Environment Act 1995 (EA 1995)).
4. Land drainage deals with natural flow, and therefore excludes both the drainage of water from artificial surfaces by means of pipes and culverts (i.e. surface water sewerage) and the protection of the coastline from erosion (i.e. where, unlike flooding, the coast is backed by high land). The Coast Protection Act 1949 (CPA 1949) deals with the problem of coastal erosion, soon to be updated by the MCAB. The WRA 1991 and LDA 1991 deal with flooding, updated by the WA 2003.

General principles

5. Land drainage activities provide no absolute guarantee against flooding. The level of protection provided will depend in each case on the extent and cost of the measures undertaken. While other service industries may strive to supply the full requirements of consumers, land drainage work is generally limited to the degree of protection agreed between those concerned.
6. Legislation dealing with land drainage has existed in England and Wales for at least five and a half centuries. There is even evidence that the Romans set up quite complex organisations to deal with land drainage. The statutes and common law have developed out of the need to resolve practical problems, and to provide a workable allocation of responsibilities, so that the law embodies lessons from longstanding practical experience.
7. Land drainage legislation was uncertain and fragmented prior to the important Land Drainage Act 1930, which consolidated and greatly clarified it. Further consolidations were effected by the Land Drainage Acts of 1976 and 1991, the latter following the changes (including establishment of the National Rivers Authority (NRA)) made by the Water Act 1989, further amended by the WA 2003. The LDA 1991 re-enacts most of the previous land drainage provisions, but those relating to the Environment Agency (see below) and main rivers appear in the WRA 1991. The Land Drainage Act 1994 (LDA 1994) adds new environmental duties to the LDA 1991.
8. Under the EA 1995, provision was made for the establishment of an Environment Agency (the 'Agency') for England and Wales to which the functions of the NRA were transferred on 1 April 1996. The Agency also took over the functions of Her Majesty's Inspectorate of Pollution and the waste regulation functions of local authorities. The main powers and duties of the Agency are detailed in Chapter 3 below.
9. A general distinction is to be made between a main river and an ordinary watercourse. These terms are defined at the front of this book in the section on statutory definitions. Under the WRA 1991, the Agency has responsibilities for main rivers. These are exercised largely through Regional Flood Defence Committees (RFDCs). Local authorities and Internal Drainage Boards (IDBs) have responsibilities for all other watercourses, termed ordinary watercourses, largely under the LDA 1991. Critical ordinary watercourses (COWs) are a subdivision of ordinary watercourses, and these were identified by the Government following widespread flooding in 1998. They are the