



Isle of Man

Ellan Vannin

AT 12 of 2013

FLOOD RISK MANAGEMENT ACT 2013



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FLOOD RISK MANAGEMENT ACT 2013

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AN ACT to make provision about flood risk management and land drainage; to repeal certain Acts about those matters; to amend certain Acts about water and sewerage; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – OPENING PROVISIONS

DIVISION 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Flood Risk Management Act 2013.

2 Commencement

- (1) This Act, other than this section and section 1, commences on the day the Authority by order appoints and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may make transitional and saving provisions the Authority considers necessary or expedient.

DIVISION 2 – INTERPRETATION

SUBDIVISION 1 – BASIC DEFINITIONS

3 “Authority”

The “**Authority**” is the Isle of Man Water and Sewerage Authority established under the *Water Act 1991*.

4 “Flood” and “emergency flooding event”

- (1) A “**flood**” includes a situation in which land not normally covered by water becomes covered by water.
- (2) It does not matter what caused the coverage or whether there were a combination of causes.

Examples of possible flood causes:

Heavy rainfall, inland water overflowing, the banks of a watercourse being breached, a dam overflowing or being breached, the sea or tidal water, groundwater and surface run-off and the capacity of a sewer being exceeded.

- (3) An “**emergency flooding event**” means an actual flood or an event or situation that causes or creates –
 - (a) an immediate flood risk with a potential harmful consequence mentioned in section 5(2); or
 - (b) an immediate and material increase in flood risk.

5 “Risk”, “flood risk” and “serious flood risk”

- (1) A “**risk**” is a risk relating to an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence and its potential harmful consequences.
- (2) The potential harmful consequences to be considered in assessing risk include, in particular, consequences for –
 - (a) human health;
 - (b) the social and economic welfare of individuals and communities;
 - (c) land;
 - (d) infrastructure; and
 - (e) the environment (including cultural heritage).
- (3) A “**flood risk**” is the risk of a flood.
- (4) A “**serious flood risk**” is a flood risk with a potential harmful consequence that the Authority considers sufficiently serious to warrant performing its functions.

6 “Risk management”, “FRM” and “flood warning systems”

- (1) “Risk management” is taking —
- (a) action to do any or all of the following —
 - (i) analyse, assess or reduce a risk;
 - (ii) reduce a component in assessing a risk; or
 - (iii) alter the balance of factors combined in assessing a risk; or
 - (b) any other action relating to a risk or a factor relevant to assessing a risk.
- (2) In particular, risk management includes doing anything that increases the probability of an event, but —
- (a) reduces or alters its potential consequences; or
 - (b) increases the probability of an event occurring at one time or in one place but reduces the probability of its occurrence at another time or in another place.
- (3) “FRM” (an abbreviation of flood risk management) is risk management in the context of flood risk.

Examples:

Land drainage, defending land against flooding (from any source and relating to any flood risk) and providing flood warning systems.

- (4) “Flood warning systems” are systems to warn of a danger of flooding under which information concerning any or all of the following is obtained and transmitted —
- (a) rainfall, as measured at a particular place within a particular period;
 - (b) the level or flow of tidal water or inland water at a particular time; or
 - (c) any other matter that the Authority considers relevant.
- (5) For subsection (4), the systems may be manual or automatic and with or without providing for calculations based on the information or for the transmission of the results of any calculations.

7 “FRM works”

- (1) “FRM works” are —
- (a) an action for FRM, of any nature or description (a “relevant action”);

Examples of a relevant action:

1. *Providing new or improved flood protection.*
2. *Maintaining or restoring an area for FRM because of the effects of erosion or a natural process relating to water.*
3. *Increasing or reducing an area’s water level for FRM.*

- (b) a thing resulting from a relevant action taken or that will result from a relevant action if it is taken; and

Examples of things that may result from taking a relevant action:

Sea walls, pumping stations, embankments, flood walls and sluice gates.

- (c) land proposed to be used for a flood storage area.
- (2) To remove any doubt, FRM works do not include an action or thing concerning the functions of the sewerage authority.
 - (3) In this section, an “action” includes a proposed action.

8 “Watercourse”

- (1) A “**watercourse**” is —
 - (a) a river, stream, brook, ditch, cut, culvert, dyke, sluice or a land drain or passage through which water flows (a “primary watercourse”); and
 - (b) a lake, pond or other area of water flowing into a primary watercourse.
- (2) However, the sewerage authority’s sewerage system under the *Sewerage Act 1999* is not a watercourse.
- (3) To avoid any doubt, a reference to a watercourse generally is a reference to both a designated and a non-designated watercourse.

SUBDIVISION 2 — MISCELLANEOUS

9 Definitions generally

The Schedule contains definitions for this Act.

10 Other interpretative provisions

- (1) In this Act, unless the context otherwise requires —
 - (a) a reference to a function includes a power;
 - (b) a reference to performing a function includes a reference to exercising a power;
 - (c) a reference to the performance of a function by the Authority or any other person or body is a reference to the performance of their functions under this Act;
 - (d) a provision about a function of the Authority or any other person or body does not limit their other functions; and
 - (e) a reference to the Authority performing a function includes a reference to any authorised person performing the function for the Authority.

- (2) An example or note in or to a provision of this Act is part of this Act and of the provision.
- (3) An example of the operation of a provision is not exhaustive and may extend, but does not limit, the provision's meaning.

PART 2 – AUTHORITY'S FRM FUNCTIONS

11 Core FRM functions

- (1) The Authority—
 - (a) must administer this Act and monitor and enforce compliance with it; and
 - (b) is responsible for, and must generally supervise, all matters relating to FRM.
- (2) To perform those functions, the Authority may do any or all of the following —
 - (a) prepare and publish FRM strategies;
 - (b) carry out surveys to identify what FRM works are required;
 - (c) prepare and publish FRM plans stating FRM works that the Authority proposes to carry out;
 - (d) provide and operate flood warning systems;
 - (e) protect the Island from flood risks by providing, maintaining, improving or extending FRM works and watercourses;
 - (f) monitor both FRM works and watercourses and systems for them;
 - (g) provide, install, operate and maintain apparatus required for the monitoring of systems;
 - (h) prepare, gather and publish other information it considers relevant concerning FRM; or
 - (i) carry out research and provide education and guidance concerning FRM.

12 Requirement to consider costs and benefits for works power

- (1) This section applies if the Authority is deciding whether or not to exercise, or the way in which to exercise, a works power (the “proposed action”), other than the carrying out of maintenance.
- (2) The Authority must consider the likely costs and benefits of the proposed action, unless doing so would be unreasonable in view of the nature or purpose of the proposed action or the circumstances.
- (3) The Authority may, but need not, perform a cost-benefit analysis in considering the likely costs and benefits.

13 Duty to consider protection, conservation and recreation

- (1) In performing its functions, the Authority has the duty (the “general duty”) to consider the desirability of –
 - (a) protecting and conserving land, buildings, sites and objects of national, architectural, archaeological or historic interest;
 - (b) conserving and enhancing the Island’s natural beauty and amenity;
 - (c) conserving wildlife, flora and fauna; and
 - (d) preserving the use of land and water in the Island for recreational purposes (the “recreation duty”).
- (2) However, the general duty does not apply to the extent it is unreasonable, in view of the nature or purpose of the functions or the circumstances, for the Authority to comply with it.
- (3) In deciding what steps to take to perform the recreation duty, the Authority must have regard to the needs of persons who are chronically sick or disabled.

PART 3 – GENERAL PROVISIONS ABOUT FRM WORKS AND ABOUT WATERCOURSES

DIVISION 1 – DESIGNATION

14 Designation power

- (1) The Authority may, by order, designate existing or proposed FRM works or a watercourse as one of general significance for FRM.
- (2) However, before making the order, the Authority must consult the persons and bodies it considers are likely to be affected by the order.
- (3) In this section, “proposed” means proposed to be carried out or made by the Authority.

15 Maps or records for designation

- (1) The Authority must make, and have available for inspection, a map or record (a “designation record”) showing each designated FRM works or designated watercourse and the subject land.
- (2) The Authority may keep designation records in any form that allows legible evidence of their contents to be produced.
- (3) A copy of a designation record certified by the Authority as a true copy is sufficient evidence that the FRM works or watercourse shown has been designated, unless the contrary is proved.

- (4) The Authority must apply to the Chief Registrar to register a copy of each designation record –
 - (a) in the title register if the subject land is registered; or
 - (b) otherwise, in the deeds registry and, for that purpose, the copy is taken to be a deed affecting the land.
- (5) However, a failure to so register does not affect –
 - (a) the validity of the designation; or
 - (b) if the subject land is registered, the designation from being a **Schedule 5 burden** on the land.
- (6) In this section, “subject land”, for a designation, means the land the subject of the designation.

16 Consequences of designation

- (1) The Authority may provide, maintain, improve or extend designated FRM works or designated watercourses to protect the Island from flood risks.
- (2) The Authority may provide, maintain, improve or extend non-designated FRM works or non-designated watercourses only if –
 - (a) it considers there are circumstances posing a serious flood risk; or
 - (b) to mitigate the consequences of flooding.

DIVISION 2 – CONTROL OF ACTIVITIES RELATING TO FRM WORKS OR TO WATERCOURSES

SUBDIVISION 1 – MAIN OFFENCES

17 Wilful damage: designated FRM works or designated watercourse

A person must not wilfully damage designated FRM works or a designated watercourse.

Maximum penalty (on information) – 2 years’ custody or a fine.

Maximum penalty (summary) – £5,000.

18 Unlawful interference: designated FRM works or designated watercourse

- (1) A person must not unlawfully interfere with designated FRM works or a designated watercourse.

Maximum penalty (on information) – 2 years’ custody or a fine.

Maximum penalty (summary) – £5,000.

- (2) A person unlawfully interferes with designated FRM works or a designated watercourse if the person does any of the following without the Authority's written consent (a "**works consent**") –
- (a) carries out works to the designated FRM works or designated watercourse;
 - (b) constructs, lays, alters, demolishes or removes –
 - (i) a building or other structure on or over, or within 9.1 m of, the designated FRM works or designated watercourse; or
 - (ii) an apparatus on or over, or within 9.1 m of, the designated FRM works or designated watercourse; or
 - (c) creates an obstruction that affects, or may affect, the maintenance of, or access to, the designated FRM works or designated watercourse.
- (3) The Authority may, by order, amend subsection (2)(b) by varying either distance stated in that paragraph.

19 Unlawful interference: any watercourse

- (1) A person must not unlawfully interfere with a watercourse.

Maximum penalty (on information) – a fine.

Maximum penalty (summary) – £5,000.

- (2) A person unlawfully interferes with a watercourse if the person does any of the following without the Authority's written consent (also a "**works consent**")–
- (a) erects a dam, weir or other like obstruction (an "obstruction") to the watercourse's flow (the "flow");
 - (b) raises or otherwise alters an obstruction;
 - (c) erects a bridge, culvert, pipe or diversion sluice likely to affect the flow;
 - (d) alters a bridge, culvert, pipe or diversion sluice in a way likely to affect the flow;
 - (e) otherwise diverts the watercourse; or
 - (f) carries out any other works that materially affect, or may materially affect, the flow, other than works to maintain the watercourse's condition.

SUBDIVISION 2 – WORKS CONSENTS

20 Applying for and obtaining works consent

- (1) A person may apply to the Authority for a works consent.
- (2) The application must be –

- (a) made in the form required under section 43 (if any) and in the way directed by the Authority; and
 - (b) accompanied by the prescribed fee.
- (3) Also, the Authority may require (a “details requirement”) the applicant to give it –
- (a) plans and specifications and other details of any work or matter for which the consent is sought; and
 - (b) any supplemental information the Authority requires.
- (4) The Authority must not unreasonably refuse the consent or delay its deciding of the application.
- (5) For subsection (4), it is reasonable for the Authority to refuse or delay while the applicant continues to contravene a details requirement.
- (6) The Authority may give the consent unconditionally or impose conditions on it as stated in its decision.
- (7) If the Authority decides to refuse the consent or impose a condition to which the applicant has not agreed in writing, it must give the applicant an appeal notice about the decision.

21 Offence: contravention of condition of works consent

The recipient of a works consent must not contravene a condition of the consent.

Maximum penalty (on information) – a fine.

Maximum penalty (summary) – £5,000.

SUBDIVISION 3 – MISCELLANEOUS

22 Emergency defence

- (1) This section applies to a proceeding for an offence against this Division, other than section 17 (wilful damage: designated FRM works or designated watercourse).
- (2) It is a defence for the defendant to prove –
- (a) the act that constituted the offence was reasonably done in an emergency; and
 - (b) the defendant informed the Authority of the doing of the act as soon as practicable after it happened.

PART 4 – AUTHORITY’S POWERS FOR FRM WORKS AND FOR WATERCOURSES

DIVISION 1 – GENERAL POWERS

23 Application of Powers

- (1) The exercise of the Authority’s powers under this Division (other than an emergency power) is subject to Division 2.
- (2) Each of the powers, other than an emergency power, is a “**general power**”.

24 Works powers

- (1) For non-designated FRM works or non-designated watercourses, the powers under this section may be exercised only if –
 - (a) the Authority considers there are circumstances posing a serious flood risk; or
 - (b) to mitigate damage caused by flooding.
- (2) The Authority may –
 - (a) maintain or improve existing FRM works or existing watercourses;
 - (b) make new FRM works or new watercourses; and
 - (c) alter or remove works or do anything else for a purpose connected with FRM.
- (3) The Authority may carry out FRM works (above and below the low-water mark) to defend land or people against the sea or tidal water.
- (4) The Authority may carry out works or do anything else in the sea or in an estuary it considers necessary to secure an adequate outfall for a river.

25 Spoil from works

- (1) Subject to subsections (3) and (4), the Authority may do any or all of the following (each a “spoils power”) –
 - (a) appropriate and dispose of shingle, sand, clay, gravel, stone, rock or other matter removed (“works spoil”) in exercising a works power; or
 - (b) for works to a watercourse, deposit works spoil on –
 - (i) the banks of the watercourse; or
 - (ii) a width of land (of no more than 5 m) adjoining the watercourse.
- (2) The Authority may exercise a spoils power without being required to –

- (a) obtain a lease, licence or permission under the *Minerals Act 1986* or other statutory provision; or
 - (b) pay for the appropriation or disposal or any royalty (or make a similar payment).
- (3) The Authority may sell works spoil only with the approval of the Department of Economic Development.
- (4) The spoils powers do not authorise the depositing of removed matter if doing so would constitute a statutory nuisance within the meaning of section 1 of the *Public Health Act 1990*.
- (5) The Authority may, by order, amend subsection (1)(b)(ii) by varying the width stated in that subparagraph.

26 Powers of entry

- (1) In performing its functions, the Authority may, at any reasonable hour or in an emergency, enter on land (the “entry power”) with heavy equipment if it considers doing so is necessary or expedient to do any or all of the following –
- (a) inspect the land;
 - (b) take or carry out any measurements, surveys, tests, investigations, experimental borings or photographs on the land;
 - (c) construct, maintain, operate or improve any flood warning systems, monitoring equipment or other apparatus on the land;
 - (d) take or remove from the land, for analysis, samples of any substance, article or other thing found there;
 - (e) take or remove from the land, for the purposes of evidence in any civil or criminal proceedings under or connection with this Act, any substance, article or other thing; or
 - (f) obtain access to any other land.
- (2) However, the entry power may be exercised only –
- (a) if there are reasonable grounds for doing so; and
 - (b) in a way that is proportionate and otherwise reasonable.
- (3) Also, if the entry is to unoccupied land, the Authority must ensure the land is left secured as effectually as when it was first entered.

27 Emergency power

- (1) If the Authority considers there is, or will be, an emergency flooding event, it may take any steps (each an “**emergency power**”) it considers appropriate to –
- (a) prevent or control the flood; or

- (b) reduce or mitigate the effects of, or harmful consequences arising because of, the flood.

Examples of steps that may be appropriate:

1. *Entering on any land, with heavy equipment.*
 2. *Diverting water to a nearby watercourse.*
 3. *Liaising with the police for a constable in uniform to exercise powers under section 40 of the Road Traffic Act 1985 (power of police to stop vehicles etc).*
 4. *Issuing sandbags or other items to control or divert water flow.*
 5. *Erecting temporary FRM works.*
 6. *Requiring persons to evacuate properties.*
 7. *Erecting temporary bridges.*
 8. *Giving the public advice or assistance about the flood or the consequences.*
- (2) An emergency power may be exercised with reasonably necessary force and without the consent of the owner or occupier of the land concerned.
- (3) The Authority may make arrangements with a public body (the “empowered body”) for the body to exercise the emergency power for, or jointly with, the authority.
- (4) The arrangements may be made only by a written agreement between the Authority and the empowered body or another public body with power to enter into agreements for the empowered body.
- (5) The empowered body must give the Authority and every other public body exercising an emergency power the help the authority considers reasonably necessary to allow them to perform its functions under this section.
- (6) In this section, “public body” includes —
- (a) the Isle of Man Constabulary;
 - (b) the Isle of Man Fire and Rescue Service;
 - (c) the Isle of Man Ambulance and Paramedic Service;
 - (d) a Department or Statutory Board;
 - (e) a body with a member whose appointment requires Tynwald approval;
 - (f) a local authority; and
 - (g) any person holding a public office.

DIVISION 2 — SAFEGUARDS FOR THE EXERCISE OF GENERAL POWERS

28 Notice of intention to exercise certain general powers

- (1) The Authority must serve a notice of its intention to exercise a general power on each owner or occupier of the land concerned.
- (2) The notice must—

- (a) be served at least 21 days before exercising the power; and
 - (b) include the details of any works the Authority proposes to carry out in connection with the exercise of the power.
- (3) The Authority need not comply with subsection (1) —
- (a) in an emergency;
 - (b) to maintain works if the maintenance does not involve entering land with heavy equipment; or
 - (c) to exercise the entry power under section 26(1) if the Authority proposes to enter land without heavy equipment.

29 Compensation

- (1) The Authority must compensate a person who sustains damage because of the exercise of a general power.
- (2) However —
- (a) compensation is not payable —
 - (i) to the extent that the damage is attributable to the person's fault; or
 - (ii) if the act or omission the subject of the exercise of the power would have been actionable by the person if it had taken place other than in the exercise of statutory powers;
 - (b) for subsection (1), the person sustains damage only if —
 - (i) the value of the person's interest in land is depreciated (the "depreciation"); or
 - (ii) the person's enjoyment of land is disturbed; and
 - (c) the person may claim the compensation only within 3 years after —
 - (i) if the power was exercised during the carrying out of works, their substantial completion; or
 - (ii) otherwise, the exercise of the power.
- (3) A dispute about the person's entitlement to the compensation or its amount must be referred to and decided by an arbitrator (the "appointed arbitrator") appointed —
- (a) by agreement between the Authority and the person; or
 - (b) in default of agreement, under section 3 of the *Acquisition of Land Act 1984*.
- (4) Part III of that Act applies to the deciding of the dispute —
- (a) so far as the Part is capable of being applied in the circumstances; and

- (b) as if a reference in the Part to the arbitrator were a reference to the appointed arbitrator.
- (5) In assessing the depreciation, account must be taken of any enhancement of the land's value because of the exercise of the power.

DIVISION 3 – REMEDIAL POWERS

30 Application of Division

- (1) This Division applies if an authorised person is of the opinion that a person (the “**responsible person**”) has —
 - (a) done any of the following —
 - (i) caused, or knowingly permitted the causing of, damage to designated FRM works or a designated watercourse;
 - (ii) failed to properly maintain the condition of non-designated FRM works or a non-designated watercourse which failure caused, or may cause, a material increase in flood risk;
 - (iii) caused, or knowingly permitted the causing of, a watercourse to be in a condition that impedes, or prevents the improvement of, the drainage of any land;
 - (iv) impeded, or allowed the impeding of, a watercourse's flow and the impediment has caused, or may cause, a material increase in flood risk; or
 - (v) otherwise failed to take reasonable steps to prevent a material increase in flood risk arising from FRM works or a watercourse over which the person has control; or
 - (b) done, or failed to do something that constitutes an offence against Part 3, Division 2 (control of activities relating to FRM works or to watercourses).
- (2) This Division applies whether or not the responsible person has been charged with, or convicted of, an offence relating to any of the matters mentioned in subsection (1) (the “**situation**”).

31 Power to give notice to remedy situation

- (1) The authorised person may give the responsible person a notice (a “**remedial action notice**”) requiring the recipient to remedy or mitigate the effects of the situation (the “**objective**”).

Example:

If the situation is an offence against Part 3, Division 2, the notice may require the recipient to restore the FRM works or watercourse concerned to its condition immediately before the situation arose, if it is practicable to do so.

- (2) The notice must —

- (a) state —
 - (i) its recipient, the FRM works or watercourse concerned and the land to which the notice applies (the “**relevant land**”);
 - (ii) the opinion mentioned in section 30(1);
 - (iii) the reasons for the opinion; and
 - (iv) that the recipient must take steps to achieve the objective within a stated reasonable period; and
 - (b) include, or be accompanied by, an appeal notice about the decision to give the notice.
- (3) The notice may, but need not, state reasonably practicable steps the authorised person believes will achieve the objective.
 - (4) The steps may be stated (and the recipient may take them) even though they are prohibited under bye-laws under section 45.

32 Recording of remedial action notice in title register or deeds registry

- (1) The Authority may apply to the Chief Registrar to register a copy of a remedial action notice —
 - (a) in the title register, if the relevant land is registered; or
 - (b) otherwise, in the deeds registry and, for that purpose, the copy is taken to be a deed affecting the relevant land.
- (2) However, a failure to so register does not affect —
 - (a) the validity of the notice or the giving of the notice; and
 - (b) if the land is registered, the notice being a Schedule 5 burden on the land.

33 Remedial action notice binds all owners and occupiers

- (1) Unless it is withdrawn, a remedial action notice binds any person who from time to time owns or occupies the relevant land.
- (2) A reference in this Act to the recipient of the notice is taken to include a reference to any person bound by it under subsection (1), jointly and severally with its recipient as stated in the notice (its “**original recipient**”).

34 Alternative power to take emergency action

- (1) If the authorised person considers an emergency flooding event has arisen because of the situation, the Authority may take action to achieve the objective without giving any remedial action notice.
- (2) The Authority may give the responsible person a notice (the “cost recovery notice”) requiring the responsible person to pay its reasonable costs incurred in taking the action.

- (3) If the responsible person does not comply with the cost recovery notice, the Authority may recover the costs from the responsible person as a debt.

35 Offence: contravention of remedial action notice

The recipient of a remedial action notice must not contravene the notice.

Maximum penalty (on information) — a fine.

Maximum penalty (summary) — £5,000.

36 Defence other than for original recipient

- (1) This section applies to proceedings for an offence under section 35 against a person other than the original recipient of the remedial action notice in question.
- (2) It is a defence for the defendant to prove that the defendant —
 - (a) did not know of the notice; and
 - (b) took all reasonable steps to find out whether any remedial action notice had been given for the relevant land.
- (3) In this section, “reasonable steps” includes an appropriate search of the land registry if the relevant land is registered, or, if not, the deeds registry.

37 Contravention: further remedies

- (1) This section applies if the Authority considers the recipient of a remedial action notice has contravened the notice (whether or not it considers the defence under section 36 applies to a person other than its original recipient).
- (2) The Authority may —
 - (a) take action it considers appropriate to achieve the objective; and
 - (b) give the recipient a further notice (the “cost recovery notice”) requiring the recipient to pay the costs it reasonably incurred in taking the action.
- (3) If the remedial action notice and the cost recovery notice have both been contravened, the Authority may recover the costs from the recipient as a debt.
- (4) The giving of, or compliance with, the cost recovery notice does not stop a prosecution for an offence for a contravention of the remedial action notice.

PART 5 — OTHER POWERS

38 Entry on land with warrant

- (1) A justice of the peace may, on the Authority's application, issue a warrant to enter stated land if satisfied on oath that there are reasonable grounds for the Authority to exercise a power for the land.
- (2) The warrant authorises the Authority, by any authorised person to —
 - (a) enter the land;
 - (b) be accompanied by any person stated in the warrant;
 - (c) exercise the power there; and
 - (d) use force that is reasonably necessary to exercise the power.
- (3) The warrant continues in force until the earlier of the following —
 - (a) the power is exercised; or
 - (b) the end of any period stated in the warrant for it to expire.

39 Acquisition of land

- (1) If it appears to the Authority that any land should be acquired to give effect to this Act, it may acquire the land by —
 - (a) agreement with the land's owner; or
 - (b) compulsory acquisition, for the public (the "compulsory power").
- (2) The *Acquisition of Land Act 1984* applies to the compulsory power and the Authority is an acquiring authority under that Act for the acquisition.
- (3) However, subsection (4) applies if the arbitrator appointed under that Act is satisfied that the land's value has been, or will be, increased because of the spending, or proposed spending, of public money in connection with the purpose of the acquisition ("the expense").
- (4) The arbitrator must set-off against the value used to assess the compensation any increase in the value attributable to the expense.
- (5) The compulsory power includes the power to —
 - (a) acquire any interest in land or a right on or over land by the creation of a new interest or right; or
 - (b) extinguish or modify any interest in land or right on or over land.

40 Works and other services for others

- (1) To perform its functions, the Authority may —
 - (a) by agreement —
 - (i) provide services to other persons;
 - (ii) fix the amount payable for the services; and

- (iii) recover from those receiving the services an amount so fixed, when it becomes payable; and
 - (b) engage a person as a contractor, on terms that the Authority thinks fit to perform a function or service for it.
- (2) If, under this Act, the Authority is required to give a person data or information, it may recover from the person as a debt its costs reasonably incurred in so doing.
- (3) In this section, “provide” services means carrying out or providing works, facilities or materials and giving data or information.

41 Adoption of private FRM works

- (1) The Authority may make an agreement as follows (a “designation agreement”) —
 - (a) an agreement with a person carrying out, or proposing to carry out, private FRM works (the “agreed works”), to designate the agreed works —
 - (i) when the agreed works have been carried out;
 - (ii) when some future event happens; or
 - (iii) on a stated day; or
 - (b) an agreement with the owner of private FRM works already constructed (also the “agreed works”) to designate them.
- (2) A designation agreement is enforceable against the Authority by the owner or occupier of any land served by the agreed works (even though the owner or occupier may not be a party to the agreement).
- (3) A designation agreement may provide that the Authority may —
 - (a) if the agreed works have not been satisfactorily constructed, carry out works (“remedial works”) to remedy any failure to construct the agreed works under the agreement;
 - (b) carry out works (“on-going works”) to maintain or improve the agreed works;
 - (c) recover from another party to the agreement —
 - (i) if paragraph (a) applies, costs it reasonably incurs in carrying out remedial works; or
 - (ii) an agreed amount for the anticipated costs it reasonably expects to incur in carrying out on-going works.
- (4) A designation agreement may also provide for security for the costs or for an amount mentioned in subsection (3)(c).

42 Injunctions

- (1) The High Court may grant an injunction to —

- (a) compel compliance with this Act or a remedial action notice; or
 - (b) restrain an apprehended contravention of this Act.
- (2) However, the injunction may be granted only on the application of —
- (a) the Authority; or
 - (b) a person who is, or is likely to be, adversely affected by the contravention or apprehended contravention in question.
- (3) Subsection (1) does not relieve a person from criminal liability incurred because of an act or omission or limit any of the Authority's other remedies relating to acts or omissions.

43 Approval of documents required under Act

The Authority may publish a notice approving any form, statement or other document required for a purpose under this Act.

44 Authorised persons

- (1) The Authority may, by notice, appoint a person as follows as an authorised person to perform its functions —
- (a) a person employed by it or a Department or Statutory Board;
 - (b) a person engaged by it to carry out work or perform another function for it (a “contractor”); or
 - (c) a director, partner or manager or other responsible employee of a contractor.
- (2) An authorised person holds that office subject to any prescribed conditions stated in the person's notice of appointment or in a notice from the Authority to the person.
- (3) An authorised person who exercises, or proposes to exercise, a power in relation to another person must do any or all of the following if the other person asks —
- (a) state the authorised person's name;
 - (b) state the power in question; or
 - (c) produce evidence of the authorised person's authority to exercise the power.
- (4) In performing a function (including a power under a warrant under section 38), an authorised person may be accompanied by any of the following that are reasonably necessary or expedient to perform the function —
- (a) an assistant, adviser or other person; or
 - (b) vehicles, equipment and materials.

- (5) A person mentioned in subsection (4)(a) may perform any of the authorised person's functions, but only under the authorised person's supervision.

45 General bye-law making power

- (1) The Authority may make bye-laws providing for any matter it considers necessary or expedient —
- (a) to secure the efficient working of the Island's FRM system; or
 - (b) otherwise to give effect to this Act.
- (2) Also, bye-laws may make provision —
- (a) about the performance of any of the Authority's functions;
 - (b) about the operation of any provision of this Act;
 - (c) that a contravention of the bye-laws is an offence with a maximum penalty (summary) of £5,000 or less;
 - (d) that a person may exercise a discretion about a matter provided for under the bye-laws;
 - (e) requiring compliance with standards;
 - (f) adopting practices recommended or stated from time to time (whether before or after the making of the bye-laws) by a stated person; or
 - (g) about consequential, incidental, supplementary and transitional matters the Authority considers to be necessary or expedient.
- (3) If bye-laws do not fix a penalty for an offence, the maximum penalty (summary) for the offence is £5,000.

PART 6 — LANDOWNERS: DRAINAGE ON OTHER LAND

DIVISION 1 — APPROVAL FOR DRAINAGE

46 Application of Division

- (1) This Division applies if —
- (a) a person ("**the proposer**") with an interest in land (the "**dominant land**") wishes to drain the land; and
 - (b) for that purpose, the proposer intends to make or improve a drain on other land (the "**servient land**") owned by another person ("**the servient landowner**").
- (2) However, this Division does not apply to the making or improvement of a drain by the sewerage authority.
- (3) The proposed drainage or improvement is the "**drainage**".

47 Request for approval

- (1) The proposer may, by notice, ask the servient landowner for approval (a “**drainage approval**”) to make or improve the drain on the servient land.
- (2) The notice must state —
 - (a) the proposer’s name and address;
 - (b) a description, by reference to a map, of all parts of —
 - (i) the dominant land that the proposer wishes to drain; and
 - (ii) the servient land affected by the drainage;
 - (c) the nature of the proposer’s interest in the dominant land;
 - (d) the use, or proposed use, of the dominant land;
 - (e) details of the drainage, by reference to the map;
 - (f) whether the drainage is to be a ditch or pipe, and its depth, route, size and outfall;
 - (g) if the drainage is a pipe, its composition;
 - (h) when works for the drainage are proposed to start and end;
 - (i) the proposed means of access for the works;
 - (j) the type of any machinery proposed to be used for the works;
 - (k) proposals to protect or remedy any damage to the servient land and any person on it while the works are being carried out;

Examples:

Temporary fencing and accommodation works, details of soil disposal and details of how damage to fences, hedges and walls will be fixed.

- (l) the name and address of any contractor that the proposer proposes to engage to carry out the works;
 - (m) the amount or other details of compensation (if any) that the proposer offers the following for the drainage —
 - (i) the servient landowner; and
 - (ii) any other person with an interest in, or who occupies, the servient land (an “**interested person**”); and
 - (n) any other prescribed matter.
- (3) The scale of the map must be at least 1:10,000.

48 Considering request and giving drainage approval

- (1) The servient landowner must consider and decide whether to —
 - (a) give, by notice to the proposer (an “approval notice”), the drainage approval and agree to particular terms (“**compensation terms**”) about any compensation for the servient landowner and any interested person; or
 - (b) refuse to give the drainage approval.

- (2) However, if there is any interested person, the servient landowner may give an approval notice only if –
 - (a) the interested person has been given a copy of the request; and
 - (b) the interested person has given the proposer and the servient landowner a notice agreeing to the compensation terms or agreeing not to be compensated.
- (3) If the decision is to refuse to give the drainage approval or to agree to compensation terms, the servient landowner must give the proposer an appeal notice about the decision.

Note:

For appeals against the refusal, see Part 7 and section 60 (additional provisions for appeals about drainage approvals).

- (4) The servient landowner is taken to have refused to give the approval if –
 - (a) a month has passed since the servient landowner received the request; and
 - (b) the landowner has not given the proposer an approval notice.
- (5) The approval and the compensation terms bind the proposer and the servient landowner.

49 Deed for drainage approval

- (1) If the servient landowner gives the drainage approval and agrees to particular compensation terms, the proposer and the servient landowner may enter into a deed evidencing those matters (a “**drainage approval deed**”).
- (2) The deed must include a map showing the position of the drainage.

50 Registration and effect of drainage approval deeds

- (1) All parties to a drainage approval deed must ensure an application is made to the Chief Registrar to register the deed –
 - (a) if the servient land is registered, in the title register; or
 - (b) otherwise, in the deeds registry and, for that purpose, the deed is taken to be a deed affecting the servient land.
- (2) Despite the land registration Act and the deeds registration Act, on the registration, the deed binds any person who from time to time owns, has an interest in, leases or otherwise occupies the servient land.

DIVISION 2 — MAINTENANCE OR REPLACEMENT

51 Application of Division

- (1) This Division applies to a person (a “**responsible person**”) if —
 - (a) the person owns, has an interest in, leases or otherwise occupies the dominant land;
 - (b) under Division 1, the owner of the servient land is bound by a drainage approval or a drainage approval deed; and
 - (c) the drain or improvement for which the approval was given has been made on the servient land.
- (2) The drain, or the drain as improved, is the “**approved drain**”.

52 Maintenance obligation of responsible persons

Each responsible person must maintain the approved drain so that it functions efficiently (the “**maintenance obligation**”).

53 Entry power for maintenance obligation

- (1) A responsible person may enter the servient land to comply with the maintenance obligation.
- (2) However, before doing so, the responsible person must give the servient landowner and any other person who occupies it reasonable notice of the intended entry and its purpose.

54 Remedy for contravention of maintenance obligation

- (1) If the owner or occupier of the servient land thinks that the maintenance obligation has been contravened he or she may notify a responsible person of the fact and require the obligation to be complied with within a reasonable period after the notification.
- (2) If the maintenance obligation has been contravened and the requirement is not complied with, the owner or occupier may —
 - (a) take any necessary action to ensure the maintenance obligation is complied with; and
 - (b) recover costs reasonably incurred in taking the action from any responsible person, or all responsible persons jointly or severally, as a debt.
- (3) However, this section does not apply —
 - (a) if the failure of the approved drain to function efficiently was caused by interference to it by, or with the consent of, the owner or occupier; or

- (b) while the owner or occupier prevents a responsible person from entering the servient land to comply with the maintenance obligation.

55 When servient land owner may deal with approved drain

- (1) The servient landowner may move, replace, fill up, divert or otherwise deal with an approved drain (other than under section 54) only if —
 - (a) the owner of the dominant land (“**the dominant landowner**”) has agreed to a proposed replacement drain for the approved drain; and
 - (b) the agreed replacement drain has been made and laid down.
- (2) The dominant landowner may refuse to so agree only on the ground that the proposed replacement drain will not function as efficiently as the approved drain.
- (3) If the dominant landowner refuses to so agree, the dominant landowner must give the servient landowner an appeal notice about the decision.
- (4) The dominant landowner is taken to have refused to give the approval if —
 - (a) the servient landowner has, by notice, asked for the dominant landowner’s agreement to the proposed replacement drain;
 - (b) a month has passed since the dominant landowner received the request; and
 - (c) the dominant landowner has not agreed to the request or given the servient landowner an appeal notice about a decision to refuse it.

DIVISION 3 – MISCELLANEOUS

56 Offence: obstruction of certain drains or improvements

A person must not wilfully —

- (a) obstruct another person from making or replacing a drain or improvements approved under Division 1;
- (b) dam up, obstruct or in any way damage an approved drain; or
- (c) obstruct a responsible person from complying with the maintenance obligation.

Maximum penalty (summary) — £5,000.

PART 7 — APPEALS

57 Constitution of tribunal

- (1) The Flood Risk Management Tribunal is established.
- (2) The tribunal is to consist of —
 - (a) a chair appointed under the *Tribunals Act 2006*; and
 - (b) two other members selected from a panel in accordance with regulations made under section 9(b) of that Act.

58 Appeal right

The recipient of, or a person who is entitled under this Act to be given, an appeal notice about a decision under this Act may, under the appeal rules, appeal to the tribunal against the decision.

59 Appeal nature and procedure

- (1) An appeal is to be by way of rehearing and conducted in accordance with the appeal rules.
- (2) Unless the tribunal otherwise orders, an appeal does not operate to stay the effect of the original decision pending the deciding of the appeal.
- (3) On hearing the appeal the tribunal may —
 - (a) confirm, vary or reverse the original decision, and, for that purpose, has the same powers as the person who made the original decision; and
 - (b) make an order as to the costs of the appeal.
- (4) A variation or reversal of the original decision —
 - (a) is taken for this Act, other than this Part, to be and to have always been the original decision; but
 - (b) does not affect its previous operation or anything done or suffered under it.

60 Additional provisions for appeals about drainage approvals

- (1) This section applies for an appeal about a request for a drainage approval.
- (2) The proposer must give any interested person of whom the proposer is aware a copy of the notice starting the appeal.
- (3) Any interested person may become a party to the appeal.
- (4) If the decision on the appeal is to give the drainage approval —
 - (a) the tribunal must decide —

- (i) whether there is to be any compensation for the servient landowner and any interested person; and
- (ii) if it decides there is to be any such compensation, the compensation terms and when the drainage may start;
- (b) the tribunal's order on the appeal must include or refer to a map showing the position of the drainage the subject of the approval; and
- (c) the order has effect for Part 6 as if it were a drainage approval deed.

61 Further High Court appeal

A further appeal from a decision of the tribunal lies to the Staff of Government Division, under rules of the court, on a question of law.

PART 8 — GENERAL OFFENCES

62 Obstructing those performing functions

- (1) A person must not unlawfully obstruct —
 - (a) the carrying out of works under or for the purposes of this Act by the Authority or its officers, employees or agents, or an authorised person;
 - (b) the carrying out of any works by a person required by the Authority, under this Act, to carry out the works;
 - (c) the inspection of any works; or
 - (d) a person lawfully accompanying, or performing a function under the supervision of, an authorised person.

Maximum penalty (on information) — 2 years' custody or a fine.

Maximum penalty (summary) — £5,000.

- (2) If a person has contravened subsection (1) and the person performing any functions there described ("the official") decides to continue to perform the function in question, the official must warn the person that —
 - (a) it is an offence to obstruct the official; and
 - (b) the official considers the person's conduct to be an obstruction.
- (3) In this section, "obstruct" includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

63 Wilfully interfering with apparatus installed under Act

- (1) A person must not wilfully interfere with an apparatus installed under this Act on land by the Authority or another person.

Maximum penalty (on information) — 2 years' custody or a fine.

Maximum penalty (summary) — £5,000.

(2) In this section, “apparatus” means a device, gauge, instrument or meter.

64 Giving false information

A person must not, for a purpose under this Act, wilfully give the Authority a document or information that is false or misleading in a material particular.

Maximum penalty (on information) — a fine.

Maximum penalty (summary) — £5,000.

65 Liability of officers of body corporate

(1) This section applies if —

- (a) an offence against this Act is committed by a body corporate; and
- (b) it is proved an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of the offence.

(2) The officer, as well as the body, commits the offence.

Maximum penalty (on information) or (summary) as the case may be — the maximum penalty for the offence by the body.

(3) In this section, “officer” means any or all of the following of or for the body —

- (a) a director, secretary or other similar officer;
- (b) a person purporting to act as a director, secretary or other similar officer;
- (c) if the affairs of the body are managed by its members, a member; and
- (d) if, under the Act under which the body corporate is incorporated, the body has a registered agent, the registered agent.

PART 9 — OTHER PROVISIONS

DIVISION 1 — PROTECTIONS

66 Application of Division

This Division applies to the proposed carrying out of works or the exercise of a power (the “activity”) by the Authority or another person if, other than for this Division, the activity would have been authorised under this Act.

67 Protections

- (1) Nothing in this Act authorises the carrying out of the activity —
 - (a) if doing so would directly or indirectly interfere with the property or works of statutory undertakers in a way that —
 - (i) prejudicially interferes with the property or works; or
 - (ii) the carrying out of the undertaking concerned;
 - (b) in a harbour within the meaning of section 83 of the *Harbours Act 2010*; or
 - (c) in contravention of section 26 of that Act (works detrimental to navigation or use of vessels).
- (2) However, subsection (1) does not apply if the activity is carried out —
 - (a) with the relevant body's consent; or
 - (b) in an emergency and the person carrying out the activity informs the relevant body of the carrying out of the activity as soon as practicable after it happened.
- (3) Reasonable conditions may be imposed on the consent, but it must not be unreasonably withheld or delayed.
- (4) A question as to any of the following must be referred to an arbitrator to be agreed between the parties or, failing agreement, appointed by the Governor in Council —
 - (a) whether the carrying out of the activity contravenes, or will contravene, subsection (1);
 - (b) whether consent is being unreasonably withheld or delayed; or
 - (c) whether a condition imposed on any consent given is reasonable.
- (5) In this section —

“the activity” see section 66;

“property”, of a statutory undertaker, includes property vested in or under the undertaker's control;

“relevant body” means —
 - (a) for works or property of a statutory undertaker, the undertaker; or
 - (b) otherwise, the Department of Infrastructure; and

“statutory undertakers” see section 72 of the *Local Government Act 1985*.

DIVISION 2 — MISCELLANEOUS

68 Control of development

- (1) This section applies whenever the following are dealt with —

- (a) an application for planning approval under the *Town and Country Planning Act 1999*; or
 - (b) an application for variation or discharge of conditions subject to which such approval has been granted under section 10(3) of that Act.
- (2) Where this section applies the following are material considerations to which regard must be had under section 10(4) of that Act —
- (a) the Authority’s published FRM plans and strategies; and
 - (b) the extent to which the proposed development creates an additional flood risk.

69 Mineral rights

- (1) This Act does not affect or restrict —
- (a) the functions or the rights of any of the following (a “specified person”) under the *Minerals Act 1986* —
 - (i) the Department of Economic Development (“DED”); or
 - (ii) a person on whom rights have been conferred by a lease, licence, permission or permit granted by DED under that Act; or
 - (b) a specified person’s right to carry out works on or in the vicinity of FRM works or a watercourse.
- (2) However, in performing the functions or exercising the rights (the “action”) —
- (a) the specified person must have regard to the extent to which taking the action may create an additional flood risk; and
 - (b) if the specified person considers taking the action will create an additional flood risk, the person must consult the Authority before taking it.

70 Other obligations not generally affected

- (1) Nothing in, or done under, this Act affects an obligation existing immediately before, or accruing after, the passing of this Act.

Examples:

1. *This Act does not affect the Authority’s obligations under the Water Act 1991, Sewerage Act 1999 or another Act.*
 2. *A works consent from the Authority does not affect section 7 of the Town and Country Planning Act 1999 (planning approval required for development).*
- (2) However, subsection (1) does not apply to an FRM obligation relating to designated FRM works or a designated watercourse, and any such obligation is abolished.

- (3) In this section, “obligation” means an obligation however arising and includes a statutory or other requirement to obtain authorisation, consent or permission.

71 Meaning of “maximum penalty” followed by a stated penalty etc

- (1) If the words “**maximum penalty**” appear at the end of or after a provision followed by a stated penalty (including the words “a fine”), the words mean that a contravention of the provision is an offence punishable by a penalty not exceeding the stated penalty.
- (2) If the penalty for an offence is a fine and no amount is stated for the fine, there is no limit on the amount of the fine that may be imposed.
- (3) If more than one penalty is stated for an offence joined by the word “and” or “or”, the penalties may be imposed cumulatively or alternatively.

72 Meaning of additional words “(on information)” or “(summary)”

- (1) This section applies if —
 - (a) section 71 applies for a particular provision; and
 - (b) after the words “maximum penalty”, the words “(summary)” or “(on information)” appear after “maximum penalty” (whether or not immediately after those words) but before the stated penalty for the provision.

Examples:

1. “Maximum penalty (on information) — 2 years’ custody or a fine.
 2. “Maximum penalty (summary) — £5,000.
- (2) The words “**(on information)**” mean the penalty refers to a conviction on information for the offence mentioned in section 71.
 - (3) The words “**(summary)**” means the penalty refers to a summary conviction for the offence mentioned in section 71.
 - (4) If “**(summary)**”, but not “**(on information)**”, appear in the provision, or vice versa, a proceeding for an offence against the provision is a summary offence or an offence triable only on information, as the case may be.

73 Tynwald procedures for statutory document other than an ADO

- (1) The negative Tynwald procedure applies for orders under this Act made by the Authority, other than an ADO.
- (2) The affirmative Tynwald procedure applies for the making of bye-laws under section 45.
- (3) In this section —

“ADO” means an order under section 2;

“affirmative Tynwald procedure”, for the making of bye-laws, means that —

- (a) the bye-laws must not be made unless a draft of them has been laid before and approved by Tynwald; and
- (b) purported bye-laws made in contravention of paragraph (a) are of no effect and never have any effect; and

“negative Tynwald procedure”, for an order, means that —

- (a) the Authority must cause it to be laid before Tynwald as soon as practicable after it is made; and
- (b) if Tynwald at the sitting at which it is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.

PART 10 — SAVINGS AND TRANSITIONAL

74 Definitions for Part

In this Part —

“1934 Act” means the repealed *Land Drainage Act 1934*.

“**bridge consent**” means consent under section 35 (restriction on construction of bridges over rivers or works near rivers) of the 1934 Act; and

“**obstruction consent**” means consent under section 34 (obstruction in watercourse) of the 1934 Act.

75 Existing bridge or obstruction consents

- (1) A bridge consent in force when section 18 (unlawful interference: designated FRM works or designated watercourse) commences becomes a works consent for the bridge concerned.
- (2) An obstruction consent in force when section 19 (unlawful interference: any watercourse) commences becomes a works consent for the obstruction concerned.

76 Pending consent requests

- (1) This section applies if the Authority has been requested to give, or is considering whether to give, a bridge consent or obstruction consent, but has not so consented when section 18 or 19 (as the context requires) commences.
- (2) The Authority may give a works consent for the bridge or obstruction as if an application for a works consent had been made under section 20 (applying for and obtaining works consent) when the request was made.

77 Main rivers

- (1) This section applies if a main river is vested in the Authority under section 10 (powers of Authority in relation to main river) of the 1934 Act immediately before section 14 (designation power) commences.
- (2) For this Act, the main river remains vested in the Authority and the river is a designated watercourse.
- (3) The map of the catchment area of the river (showing the part of the channel and banks of the river and its water courses), prepared, published and approved by Tynwald under section 9 of the 1934 Act –
 - (a) continues to have effect as if it were an order under section 14(1) (designation power) for which the negative Tynwald procedure under section 73(3) has been applied; and
 - (b) becomes a designation record under section 15(1) (maps or records for designation).
- (4) In this section, for “main river, “catchment area”, “banks” and “water courses” see section 3 of the 1934 Act.

78 Matters under 1934 Act about making drains or improvements

- (1) This section applies when Part 6, Division 1 (approval for drainage) (the “new provisions”) commences.
- (2) An application under section 37 and Schedule 3 of the 1934 Act (the “old provisions”) made but not decided becomes a request for approval under the new provisions.
- (3) Leave or assent given under the old provisions becomes an approval under the new provisions.
- (4) An assent by the Authority under the old provisions is taken to be a drainage approval deed entered into between all of those with an interest in the dominant land the subject of the assent and the owner of the servient land the subject of the assent.
- (5) A deed made, or registered, under the old provisions becomes a deed made, or registered, under the new provisions.

PART 11 – REPEALS AND AMENDMENTS

DIVISION 1 – REPEALS

79 Acts repealed

The Land Drainage Act 1934 and the Land Drainage Act 1954 are repealed.

DIVISION 2 — AMENDMENTS

80 Land Drainage and Boundaries Act 1851

For the short title of the Land Drainage and Boundaries Act 1851, substitute the **Boundary Walls Act 1851**.

81 Local Government Consolidation Act 1916

Section 20 of the *Local Government Consolidation Act 1916* is repealed.

82 Rating and Valuation Act 1953

- (1) This section amends the *Rating and Valuation Act 1953*.
- (2) In section 2, definition “Rating authority”, delete from “, other than” to “that Act,”.
- (3) After section 19 insert —

19A Isle of Man Water and Sewerage Authority’s powers of inspection etc

In performing its functions the Isle of Man Water and Sewerage Authority has the same powers to inspect and take copies of and extracts from the valuation lists and documents mentioned in section 19 as a ratepayer has under that section.

- (4) Section 48(2)(a) is deleted.
- (5) Section 61 is repealed.
- (6) In section 63, delete from “(including” to “those Acts)”.

83 Housing Act 1955

In section 92(1) of the *Housing Act 1955*, in the definition of “statutory undertakers”, after “water” insert **, public sewerage**.

84 Short Titles Act 1977

In column 3 of the Schedule to the *Short Titles Act 1977*, for “*Land Drainage and Boundaries Act 1851*” substitute **Boundary Walls Act 1851**.

85 Land Registration Act 1982

- (1) This section amends the land registration Act.
- (2) After Schedule 5, Part I, paragraph 11A insert —
 - 11B.** Designated FRM works or a designated watercourse under the *Flood Risk Management Act 2013* relating to the land, and

the Isle of Man Water and Sewerage Authority's powers under that Act for the works or watercourse. **22**; and

(3) After Schedule 6, Part 1, paragraph 9 insert —

229A. A drainage approval deed under the *Flood Risk Management Act 2013* relating to the land if, under that Act, the land is servient land for the drain the subject of the deed. **22**.

86 Local Government Act 1985

In section 72 of the *Local Government Act 1985*, in the definition of “statutory undertakers”, after paragraph (c) insert —

22(d) a public sewerage system; **22**.

87 Highways Act 1986

In section 119 of the *Highways Act 1986* —

(a) insert alphabetically —

22“sewerage authority” means the Isle of Man Water and Sewerage Authority; **22**;

(b) in the definition of “statutory undertakers”, after paragraph (b) insert —

22(c) an undertaking to provide a system of public sewerage, **22**.

88 Wildlife Act 1990

After section 26 of the *Wildlife Act 1990*, insert —

2226A Exemption for certain flood risk management functions

(1) This section applies for the performance of a function (the “activity”) by the Isle of Man Water and Sewerage Authority (“the Authority”) under the *Flood Risk Management Act 2013*.

(2) The Authority does not commit an offence against, or contravene, this Part if —

(a) the activity is carried out with the Department's consent; or

(b) in an emergency and the Authority informs the Department of the carrying out of the activity as soon as practicable after it happened.

(3) Reasonable conditions may be imposed on the consent, but it must not be unreasonably withheld or delayed.

(4) Any question as to the following must be referred to an arbitrator to be agreed between the parties or, failing agreement, appointed by the Governor in Council —

- (a) whether the carrying out of the activity constitutes, or will constitute, an offence against, or a contravention of, this Part;
- (b) whether consent is being unreasonably withheld or delayed; or
- (c) whether a condition imposed on any consent given is reasonable. **22**.

89 Building Control Act 1991

In section 35(1) of the *Building Control Act 1991*, in the definition of “statutory undertakers”, after “water” insert **23**, public sewerage **22**.

90 Water Act 1991

- (1) This section amends the *Water Act 1991*.
- (2) In section 2(1)(b) (functions of Authority) —
 - (a) for “drainage” substitute **23** flood risk management **22**; and
 - (b) for “*Land Drainage Act 1934*” substitute **23** *Flood Risk Management Act 2013* **22**.
- (3) In section 2(4), for “affecting the supply of water” substitute **23** concerning any of its statutory functions **22**.
- (4) In section 25(1) (power to levy water rate) delete “all”.
- (5) In section 26(1), delete “under section 20”.
- (6) In section 46(1) delete the definition “drainage works” and insert alphabetically —
 - 23** “**drainage works**” means designated FRM works or a designated watercourse within the meaning of the *Flood Risk Management Act 2013*;
 - 23** “**water rate**” means the water rate under section 25; **22**;
- (7) Schedule 6, paragraph 8(2) is deleted.

91 Tree Preservation Act 1993

After section 10 of the *Tree Preservation Act 1993*, insert —

23 10A Modification for certain flood risk management functions

- (1) If the Isle of Man Water and Sewerage Authority (“the Authority”) wishes to perform a function under the *Flood Risk Management Act 2013* relating to land, it is taken as having the interest in the land that will allow it to apply for a licence under section 5 to perform the function.

- (2) However, in performing functions under that Act, the Authority does not require a licence to cut down, uproot, destroy, top, lop or damage a tree (the “activity”), and consequently does not commit an offence under section 3(1) or section 5(9), if —
- (a) the activity is carried out with the Department’s consent; or
 - (b) in an emergency and the Authority informs the Department of the carrying out of the activity as soon as practicable after it happened.
- (3) Reasonable conditions may be imposed on the consent, but it must not be unreasonably withheld or delayed.
- (4) Any question as to the following must be referred to an arbitrator to be agreed between the parties or, failing agreement, appointed by the Governor in Council —
- (a) whether the carrying out of the activity constitutes or will constitute an offence against, or a contravention of, either subsection;
 - (b) whether consent is being unreasonably withheld or delayed; and
 - (c) whether a condition imposed on any consent given is reasonable. **22**.

92 Sewerage Act 1999

- (1) This section amends the *Sewerage Act 1999*.
- (2) For section 4(5)(a) (right to communicate with public sewers), substitute —
- 23**(a) refuse to permit the communication to be made on a ground stated in subsection (5A) (a “refusal ground”); or **22**;
- (3) After section 4(5), insert —
- 24**(5A) The refusal grounds are that the Sewerage Authority considers —
 - (a) the sewerage system’s capacity would be exceeded because of the discharge of foul water and surface water following the communication of the drains or sewer; or
 - (b) the mode of construction or condition of the drain or sewer or the state of any connections is such that the making of the communication would be prejudicial to the Sewerage Authority’s sewerage system.
- (5B) However, the Sewerage Authority cannot refuse to permit a communication to be made on a refusal ground if —
- (a) the communication is for the development of land and, under section 9 of the *Town and Country Planning Act 1999*,

an application for planning approval is required for the development; and

- (b) planning approval has been granted for the development (whether unconditionally or subject to conditions).

- (4) For section 5, substitute —

5 Financial provision

If the Sewerage Authority has given a notice under section 4(5)(c), it need not make the communication the subject of the notice until the person given the notice has paid, or secured to its satisfaction, its cost of doing so.

- (5) For section 11 and the cross-heading immediately before it, substitute —

«Sewerage charges

11 Sewerage charges

- (1) The Sewerage Authority may, by order (a “sewerage charge order”), impose charges on any person (each a “beneficiary”) for whom it performs, or who receives the benefit of the performance of, its functions under this Act.
- (2) However, subsection (1) does not apply to functions for which charges are imposed under Schedule 2 (conditions of trade effluent consent).
- (3) A sewerage charge order may give a discount or rebate for prompt payment of the charges it imposes.
- (4) The discount or rebate cannot be more than 5%.
- (5) The following apply for a sewerage charge order —
- (a) it must be made on or before 31 January in the financial year before the charges imposed under it are to take effect (the “next year”);
- (b) the charges take effect in advance —
- (i) at the time or times during the next year as provided for under the order; or
- (ii) if no time or times are provided, when the next year starts; and
- (c) unless the order otherwise provides, a particular charge becomes owing from when the relevant function is performed for the beneficiary.
- (6) Subsection (5)(c) applies subject to sections 4 and 5.

- (7) In imposing the charges, the Sewerage Authority must consider the amounts it will need to perform the functions to which the charges relate.

11A Recovery of unpaid sewerage charges

- (1) This section applies if a sewerage charge imposed under section 11 becomes owing under that section and all or any part of the amount of the charge is unpaid.
- (2) Interest is payable on any unpaid amount of the charge from time to time at the rate prescribed under section 46(6) (recovery of expenses) of the *Local Government Act 1985*. **22**.
- (6) In section 42 the definition “sewerage rate” is deleted.
- (7) Section 43 (subordinate legislation) is amended as follows —
- (a) in subsection (1)(a) —
- (i) the entry for section 5(1) is deleted; and
- (ii) after the entry for section 7(4), insert —
- 23** section 11(1) (sewerage charges); **22**; and
- (b) for subsection (2), substitute —
- 23**(2) The Sewerage Authority must not make an order under paragraph 3(5) of Schedule 1 without the consent of the Department of Infrastructure. **22**.

93 Tribunals Act 2006

In Part 2 of Schedule 2 to the *Tribunals Act 2006*, insert numerically with the next available number after this section commences —

- 24** [number to be inserted] The Flood Risk Management Tribunal established under section 57(1) of the *Flood Risk Management Act 2013*. **22**.

94 Rules of the High Court of Justice 2009

For paragraph 3(d)(i) and (ii) of Schedule 5.1 (claims for which Chancery procedure is normal procedure) of the *Rules of the High Court of Justice 2009*¹, substitute —

- 25**(i) *Boundary Walls Act 1851*
- (ii) *Flood Risk Management Act 2013* section 42 (injunctions) or Part 7 (appeals) **22**.

¹ SD 352/09

DIVISION 3 – EXPIRY OF PART

95 Expiry

- (1) This Part expires on –
 - (a) if this Part has fully commenced on the day of this Act's promulgation, the day after the promulgation; or
 - (b) otherwise, on the day after the last provision of this Part commences.
- (2) The expiry does not –
 - (a) revive any enactment that this Part amended or repealed as the enactment operated before the amendment or repeal commenced;
 - (b) revive anything not in operation or not existing when the amendment or repeal took effect; or
 - (c) affect the continuing operation of the amendment or repeal.

SCHEDULE

[Section 9]

DEFINITIONS

“**1934 Act**” see section 74.

“**appeal notice**”, about a decision, means a notice stating —

- (a) the decision and the reasons for it; and
- (b) if the decision was made by the Authority —
 - (i) that, under section 58, the recipient of the notice may appeal to the tribunal against the decision; and
 - (ii) how to appeal.

“**appeal rules**”, for a provision about an appeal, means rules relevant to the appeal made under the *Tribunals Act 2006*.

“**approved drain**” see section 51(2).

“**authorised person**” means a person holding appointment under section 44(1).

“**Authority**” see section 3.

“**available for inspection**”, for a provision about a document made by the Authority, means the Authority must —

- (a) keep the document at its principal office;
- (b) ensure any person can, without charge, inspect it there at any reasonable time during office hours; and
- (c) take all reasonable steps to ensure it is made available for inspection at the Tynwald Reference Library.

“**banks**” means banks, walls or embankments adjoining or confining, or constructed for the purpose of or in connection with, a watercourse or the sea front, and includes all land and water between the bank and the low-water mark.

“**bridge consent**” see section 74.

“**carry out**”, for works, includes —

- (a) constructing the works; and
- (b) for FRM works, operating, maintaining or improving them once they have been constructed.

Example of carrying out FRM works:

If the FRM works include a pump or sluice gate, operating the pump or gate.

“**commences**”, for a provision, means when it comes into operation.

“**compensation terms**” see section 48(1)(a).

“**cost**” includes cost to any person or to the environment.

“**culvert**” means an artificial construction covering a channel or pipe that prevents the obstruction of a watercourse or drainage path.

“**deeds registration Act**” means the *Registration of Deeds Act 1961*.

“**deeds registry**” means the Registry of Deeds under section 5 of the deeds registration Act.

“**designate**”, for a provision about FRM works or a watercourse, means to designate it by order under section 14.

“**designated**”, for a provision about FRM works or a watercourse (or land the subject of either), means the FRM works or watercourse has been designated.

“**dominant land**” see section 46(1)(a).

“**dominant landowner**” see section 55(1)(a).

“**drainage**”, for Part 6, Division 1, see section 46(3).

“**drainage approval**” see section 47(1).

“**drainage approval deed**” see section 49(1).

“**emergency flooding event**” see section 4(3).

“**emergency power**” see section 27(1).

“**flood**” see section 4(1).

“**flood risk**” see section 5(3).

“**flood warning systems**” see section 6(4).

“**FRM**” see section 6(3).

“**FRM works**” see section 7(1).

“**general power**” see section 23(2).

“**groundwater**” means all water below the surface of the ground and in direct contact with the ground or subsoil.

“**improve**” includes replace, deepen, widen, straighten, raise, divert and alter and, also, for a drain, to clean or scour it out.

“**inland water**” includes —

- (a) a watercourse, whether natural or artificial and whether tidal or not;
- (b) a lake or pond, whether natural or artificial;
- (c) a reservoir or dock; and
- (d) a channel, creek, bay, estuary or arm of the sea.

“**interested person**” see section 47(2)(m)(ii).

“**the Island**” includes its coastline and watercourses.

“**land**” includes —

- (a) a house, building or other premises;
- (b) land under water; and
- (c) an interest in land.

“**land registration Act**” means the *Land Registration Act 1982*.

“**maintain**” includes inspect, clean, dredge, repair or remove an obstruction.

“**maintenance obligation**” see section 52.

“**maximum penalty**” —

- (a) generally, see section 71; and
- (b) for —
 - (i) “**maximum penalty (on information)**”, see also 72(2) and (4); or
 - (ii) “**maximum penalty (summary)**”, see also section 72(3) and (4).

“**non-designated**”, for a provision about FRM works or a watercourse (or land the subject of either), means the FRM works or watercourse has not been designated.

“**notice**” means a notice in writing.

“**objective**”, for Part 4, Division 3, see section 31(1).

“**obstruction consent**” see section 74.

“**on land**” means on, in or under land.

“**original decision**”, for a provision about an appeal, means the decision appealed against.

“**original recipient**”, for a remedial action notice, see section 33(2).

“**prescribed**” means prescribed by order made by the Authority.

“**proposer**” see section 46(1)(a).

“**publish**” means published by the Authority in a way it considers is likely to bring the matter to the attention of those likely to be affected by it.

“**rainfall**” includes a fall of snow, hail or sleet.

“**recipient**”, for a provision about —

- (a) a notice or works consent, means the person to whom the consent or notice has been given (as affected by section 33(2)); or
- (b) a notice proposed to be given, means the person to whom the notice is proposed to be given.

“**registered**”, for land, means the land is registered under the land registration Act.

“**relevant land**”, for a provision about a remedial action notice, see section 31(2)(a)(i).

“**remedial action notice**” see section 31(1).

“**responsible person**”, for —

(a) Part 4, Division 3, see section 30(1)(a) and (b); or

(b) Part 6, Division 2, see section 51(1).

“**risk**” see section 5(1).

“**risk management**” see section 6(1).

“**Schedule 5 burden**”, on land, means a burden affecting the land under Part I of Schedule 5 to the land registration Act.

“**see**”, followed by a reference to, or to a provision of, an Act, law or document, when used to define a word, entity, thing or matter, means the word, entity, thing or matter has the same meaning as it has in, or assigned to it under, the provision, Act, law or document.

“**sewerage authority**” means the Authority when it is performing functions as the Sewerage Authority under the *Sewerage Act 1999*.

“**serious flood risk**” see section 5(4).

“**servient land**” see section 46(1)(b).

“**servient landowner**” see section 46(1)(b).

“**situation**”, for Part 4, Division 3, see section 30(2).

“**tidal water**” means any part of the sea and any part of a river within the ebb and flow of the tide.

“**title register**” see section 79 of the land registration Act.

“**tribunal**” means the tribunal established under section 57(1).

“**watercourse**” see section 8(1).

“**wilfully**” means knowingly or recklessly.

“**works consent**” see sections 18(2) and 19(2).

“**works power**” means a power under section 24.