

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT AGENCY (LEVIES) (ENGLAND AND WALES) REGULATIONS
2011

2011 No. 696

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 Section 17 of the Flood and Water Management Act 2010 (“the 2010 Act”) allows the Environment Agency to issue levies to the Lead Local Flood Authorities as defined in section 6 of that Act to pay for flood and coastal erosion risk management.
 - 2.2 It does so by establishing the Environment Agency as a levying body within the meaning of section 74 of the Local Government Finance Act 1988.
 - 2.3 Levies must be issued in accordance with regulations made under that section.
 - 2.4 These regulations are made under that section.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Regulations do not impose fee increases, nor is there a breach of the 21 day rule, retrospectivity, introduction of novel or complex powers.
 - 3.2 The Regulations relate to the Regional Flood and Coastal Committees (England and Wales) Regulations 2011.
4. **Legislative Context**
 - 4.1 The Environment Agency is already a levying body within the meaning of section 74 of the Local Government Finance Act 1988. It was established as a levying body under section 133 of the Water Resources Act 1991 (“the 1991 Act”). Levies are issued under the Environment Agency (Levies) Regulations 1993 (“the 1993 Regulations”). The 1993 Regulations are to be read with provisions in the Land Drainage Act 1976 (“the 1976 Act”) and Directions under section 40 of the Environment Act 1995 (“the 1995 Act”); the most recent was made in 2005 (“the 2005 Direction”).
 - 4.2 The introduction of the Flood and Water Management Act 2010 has created a new role for Lead Local Flood Authorities and broadens the Environment Agency’s

permissive powers to give proper consideration to all forms of flood and coastal erosion risk (for example, adequately introducing surface water to the legislation).

- 4.3 It has also created new Regional Flood and Coastal Committees that supersede the former Regional Flood Defence Committees.
- 4.4 These Regulations, along with the 2010 Act and the Regional Flood and Coastal Committees (England and Wales) Regulations 2011 (coming into force on the same day), will supersede the provisions in the 1976 Act, 1991 Act, 1993 Regulations and 2005 Direction both unifying the provisions and bringing them up to date. Under these Regulations, subject to the consent of the lead local flood authority members of a Regional Flood and Coastal Committee, levies can be issued to those authorities within the area of that Committee for the purposes of the Environment Agency's flood and coastal erosion risk management functions. In accordance with section 118 of the Water Resources Act 1991, as amended by Schedule 2 to the 2010 Act, levy revenue may be spent for these purposes. Levy revenue raised in the financial year beginning with 1st April 2011 can be used for these purposes.

5. Territorial Extent and Application

- 5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 These Regulations (the "2011 Regulations") are about levies that Lead Local Flood Authorities (LLFAs) can consent to pay to the Environment Agency ("the Agency") for flood and coastal erosion risk management activity.
- 7.2 The Flood and Water Management Act 2010 sets out a new framework for flood and coastal erosion risk management in England and Wales.
- 7.3 For the purposes of flood and coastal erosion risk management, the Agency divides England and Wales into a number of Regions. Each Region has a Regional Flood and Coastal Committee (RFCC). The membership includes representatives from LLFAs whose areas are in the Region.
- 7.4 Before it may undertake any flood and coastal erosion risk management in an RFCC's Region, the Agency must consult the RFCC about the way the Agency plans to carry out its risk and consider representations made by the RFCC. There

are certain consents that must be given by the RFCC before the Agency can undertake its activities.

- 7.5 Of interest for the 2011 Regulations, the Agency must seek the RFCC's consent to the issue of levies to LLFAs, and the spending of revenue income. The consenting process is set out under the Regional Flood and Coastal Committees (England and Wales) Regulations 2011. Revenue income includes levies as well as any income from general drainage charges, special drainage charges and precept from Internal Drainage Boards (these are raised under the Water Resources Act 1991).
- 7.6 The use of levies enables the LLFAs in a Region to contribute funding to the Agency to carry out additional schemes in a Region which otherwise would not go ahead in that year. LLFAs are provided funding support through Formula Grant arrangements. Formula Grant is the name for a large part of the grant from central government that is distributed to local authorities to be spent on the services they provide.
- 7.7 These Regulations set out the procedures that the Agency must follow in issuing levies to LLFAs.
- 7.8 Part 1 deals with preliminary matters including the name of the Regulations and legal definitions used.
- 7.9 Part 2 requires the Agency to inform each LLFA to which it is issuing a levy as to what part of the LLFA's area the levy applies and how the levy has been calculated. It sets out when levy should be issued and when it should be paid.
- 7.10 Part 3 sets out the calculations that the Agency must follow in working out the share of its expenses that each LLFA is paying through levy. The expenses are those that the LLFAs have agreed to fund, which will have been discussed and voted upon at meetings of the relevant RFCC in accordance with the Flood and Water Management Act 2010 and the Regional Flood and Coastal Committees (England and Wales) Regulations 2011.
- 7.11 Part 4 allows each LLFA to 'anticipate' levies; that is, to plan for a levy that it will pay in the following financial year. It also explains what information the LLFA should provide to the Agency so it can carry out the necessary calculations.
- 7.12 Part 5 revokes the old system of levies under the Environment Agency (Levies) Regulations 1993. It also 'saves' the 1993 Regulations for any levy to be issued for the financial year beginning with 1st April 2011.
- 7.13 These regulations do not amend other instruments. The regulations are intended to replace a number of existing instruments, as explained at paragraph 4 (above).

8. Consultation outcome

8.1 The policy was consulted on as part of the consultation on the Flood and Water Management Act 2010. No formal consultation has been carried out on the Regulations; however aspects were the subject of informal consultations by the Environment Agency with interested parties which, with discussions with Regional Flood Defence Committee chairs, informed the development of these Regulations.

9. Guidance

9.1 No formal guidance is considered necessary. The Environment Agency has a detailed understanding and experience of the operation of levies as do the Lead Local Flood Authorities.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 Through the extended remit of the new committees, the public sector will be able to deliver its flood and coastal erosion risk management responsibilities more effectively.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No additional monitoring of the committees is planned. Current arrangements for periodic meetings to report progress and problems will be maintained.

12.2 There is no provision for a statutory review process; however a review of the effectiveness of the regulations with respect to the committees will be carried out in 2016.

13. Contact

13.1 Tristan Crago at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 2014 or email: tristan.crago@defra.gsi.gov.uk, can answer any queries regarding the instrument with respect to England.

13.2 Nicola Edwards at the Welsh Assembly Government, Tel: 029 2082 3568 or email: nicola.edwards@wales.gsi.gov.uk, can answer any queries regarding the instrument with respect to Wales.