

Subsidiary Legislation made under s.18(c).

Environment (Assessment and Management of Flood Risks) Regulations 2010

LN.2010/135

Commencement **29.7.2010**

Amending
enactments

Relevant current
provisions

Commencement
date

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EU Legislation/International Agreements involved:
Directive 2007/60/EC

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred upon it by section 18(c) of the Environment Act 2005, and all other enabling powers, and in order to transpose into the law of Gibraltar Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Environment (Assessment and Management of Flood Risks) Regulations 2010 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations—

“flood” means the temporary covering by water from any source of land not normally covered by water, but does not include a flood solely from a sewerage system;

“Floods Directive” means Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks as amended from time to time;

“flood risk” means the combination of the probability of a flood and of the potential adverse consequences for human health, the environment, cultural heritage and economic activity associated with a flood;

“flood solely from a sewerage system” means the temporary covering of land by sewage caused solely by a failure or blockage of a sewerage system or which is not connected with any loading on the system by abnormal external hydraulic factors (for example by heavier than usual rainfall or higher than usual river levels);

“river basin” means an area of land from which all surface run-off water flows through a connected sequence of streams, rivers or other watercourses or lakes into the sea at a single river mouth, estuary or delta and includes any body of transitional water in the vicinity of that river mouth, estuary or delta;

“river basin district” means the area of land and sea together with its associated bodies of water which, taken together, is the unit for the management of the river basin, and in these Regulations, unless otherwise specified, any reference to a river basin district shall be taken to be a reference to the area referred to in regulation 5;

“Minister” means the Minister with responsibility for the environment;

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“Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, as amended from time to time.

(2) Any other word or expression used both in these Regulations and in the Floods Directive or in the Water Framework Directive has the same meaning in these Regulations as it has in those Directives.

Designation of the competent authority.

3.(1) The Department of the Environment of the Government is the competent authority for the purposes of the implementation of the Floods Directive and these Regulations in Gibraltar.

(2) The Minister may designate any person or body to carry out any function or functions vested in the Department of the Environment as the competent authority under these Regulations, and references to the competent authority in these Regulations include a reference to any such person or body.

General duties of the competent authority.

4.(1) The competent authority shall exercise its relevant functions in a manner which secures compliance with the requirements of the Floods Directive.

(2) In exercising its relevant functions, the competent authority shall ensure that—

(a) the implementation of the requirements of the Floods Directive is co-ordinated between all the relevant bodies in Gibraltar; and

(b) the requirement of Article 15 of the Floods Directive is complied with.

(3) In this regulation “relevant functions” means functions under these Regulations.

Designation of river basin districts.

5. The area within the River Basin District Boundary designated as the Gibraltar River Basin District and delineated in the map in Schedule 2 of the Public Health (Water Framework) Rules 2004 is the river basin district for purposes of these Regulations.

Preliminary flood risk assessments.

6.(1) The competent authority shall prepare a preliminary flood risk assessment for the Gibraltar River Basin District.

(2) A preliminary flood risk assessment shall be prepared by 22 December 2011.

(3) A preliminary flood risk assessment—

(a) shall be prepared to provide an assessment of potential risks; and

(b) shall be based on available or readily derivable information such as records and studies on long term developments (including, in particular, information on any impact of climate change on the occurrence of floods).

(4) A preliminary flood risk assessment shall include the matters mentioned in regulation 8.

(5) A preliminary flood risk assessment and any map included in it by virtue of regulation 8(1), may also include such other information as the competent authority considers appropriate.

Preliminary flood risk assessments: review.

7.(1) The competent authority shall—

(a) by 22 December 2018 review and, if necessary, update each preliminary flood risk assessment prepared under regulation 6; and

(b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years, review and, if necessary, update the latest preliminary flood risk assessment updated after review under this regulation.

(2) The competent authority shall take into account in any review under this regulation the likely impact of climate change on the occurrence of floods.

(3) Regulation 6(3) and (4) and regulation 8 apply in relation to the review and updating of a preliminary flood risk assessment.

Matters to be included in a preliminary flood risk assessment.

8.(1) A preliminary flood risk assessment must include maps at the appropriate scale of the river basin district which show—

(a) borders of any river basin, sub-basin and coastal area in the district; and

(b) topography and land use.

(2) Subject to subregulation (3), a preliminary flood risk assessment must include a description of the floods which have occurred in the past in the river basin district and which had significant adverse impacts on human health, the environment, cultural heritage or economic activity (including their extent and conveyance routes and an assessment of the adverse impacts they have entailed).

(3) Subregulation (2) applies only where a similar future flood with significant adverse impacts on the matters mentioned in that subregulation is still probable in the river basin district.

(4) A preliminary flood risk assessment must include a description of the significant floods which have occurred in the past in the river basin district where significant adverse consequences of any similar future flood might be envisaged.

(5) In addition, every preliminary flood risk assessment shall include an assessment of the potential adverse consequences of any future flood for human health, the environment, cultural heritage and economic activity in the river basin district taking into account, as far as possible, issues such as—

- (a) the topography;
- (b) the position, and the general hydrological and geomorphological characteristics of watercourses;
- (c) natural features (for example flood plains, wetlands or woodlands) which can assist in the retention of water (whether on a permanent or temporary basis);
- (d) the effectiveness of any existing artificial flood protection structure;
- (e) the position of any populated area and area of economic activity; and
- (f) long-term developments including impacts of climate change on the occurrence of floods.

Preliminary flood risk assessments: availability for public inspection.

9. The competent authority shall make available for public inspection copies of the preliminary flood risk assessment for the time being applicable for the river basin district in Gibraltar.

Areas of significant flood risk.

10. On the basis of a preliminary flood risk assessment, the competent authority shall for the river basin district identify any area for which it concludes that potential significant flood risks exist or might be considered likely to occur.

Area of significant flood risk: reviews.

11. Where the competent authority updates a preliminary flood risk assessment for the river basin district, it shall review and, if necessary, update the identification of areas within that district or part for which it has concluded that potential significant flood risks exist or might be considered likely to occur.

Preparation of flood hazard maps and flood risk maps.

12.(1) The competent authority shall prepare, in relation to the river basin district, flood hazard maps and flood risk maps in accordance with this regulation and regulations 13 and 14.

(2) Flood hazard maps and flood risk maps shall be prepared—

- (a) by 22 December 2013;
- (b) for the areas identified under regulation 10; and
- (c) at such scale as the competent authority considers appropriate.

Flood hazard maps.

13.(1) Subject to subregulations (2) and (3), a flood hazard map shall show—

- (a) the geographical areas which could be flooded according to the following scenarios—
 - (i) floods with a low probability (or extreme event scenarios);
 - (ii) floods with a medium probability (likely return period of 100 years or more); and
 - (iii) floods with a high probability; and
- (b) the following elements for each of those scenarios—

- (i) the flood extent;
- (ii) water depths or water level, whichever is appropriate; and
- (iii) where appropriate, the flow velocity or the relevant water flow.

(2) A flood hazard map need not show information referred to in subregulation (1) as respects a flood with a high probability where the competent authority considers such a flood would be unlikely to have significant adverse consequences for the area which could be flooded by it.

(3) The competent authority may decide that—

- (a) for a coastal area which, in its opinion, is adequately protected from coastal floods, the preparation of a flood hazard map (or more than one such map taken together) may be limited to the scenario referred to in subregulation (1)(a)(i);
- (b) for areas where flooding is from groundwater sources, the preparation of flood hazard maps shall be limited to the scenario referred to in subregulation (1)(a)(i).

Flood risk maps.

14.(1) The potential adverse consequences associated with each flood scenario for which any information referred to in regulation 13(1) is shown in a flood hazard map shall be shown in a flood risk map or more than one flood risk map taken together by reference to the matters mentioned in subregulation (2).

(2) The matters are—

- (a) the indicative number of inhabitants who potentially could be affected;
- (b) the type of economic activity in the area which could be flooded;
- (c) installations referred to in Schedule 1 of the Pollution Prevention and Control Act 2001 which might cause accidental pollution in case of flooding and potentially affected protected areas identified in subparagraphs 1(i), (iii) and (v) of Schedule 5 to the Public Health (Water Framework) Rules 2004;
- (d) protected areas which potentially could be affected if any flood scenario referred to in subregulation (1) occurred;

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- (e) any area which is within a protected area and could be affected by pollution from any installation referred to in paragraph (c); and
- (f) such other information as the competent authority considers useful including the indication of areas where floods with a high content of transported sediments or debris floods can occur and information on other significant sources of pollution.

(3) In this regulation “protected area” has the meaning assigned to it by rule 8(2) of the Public Health (Water Framework) Rules 2004.

Flood hazard maps and flood risk maps: review.

15.(1) The competent authority shall—

- (a) by 22 December 2019 review and, if necessary, update each flood hazard map and each flood risk map prepared under regulation 12; and
- (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years, review and, if necessary, update the latest flood hazard map and flood risk map updated after review under this regulation.

(2) Regulations 12(2)(b) and (c), 13 and 14 apply in relation to the review and updating of a flood hazard map and a flood risk map.

Flood hazard maps and flood risk maps: availability for public inspection.

16. The competent authority shall make available for public inspection copies of the flood hazard map and the flood risk maps for the time being applicable for the river basin district in Gibraltar.

Flood hazard maps and flood risk maps: co-ordination with the Public Health (Water Framework) Rules 2004.

17. The development of the first flood hazard maps and flood risk maps and their subsequent reviews shall be—

- (a) co-ordinated with, and may be integrated into, the reviews provided for by rules 5(2) and 6(2) of the Public Health (Water Framework) Rules 2004; and
- (b) carried out in such a way that the information they contain is consistent with the information presented under the Public Health (Water Framework) Rules 2004.

Flood risk management plans.

18.(1) The competent authority shall, on the basis of the flood hazard maps and flood risks maps, prepare a flood risk management plan for the river basin district or a set of such plans co-ordinated at the level of that district.

(2) For the purposes of preparing a flood risk management plan, the competent authority shall—

(a) set objectives for the management of flood risks for the areas identified under regulation 10 focusing on the reduction of potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity; and

(b) identify measures to achieve those objectives.

(3) A flood risk management plan shall include the matters specified in regulation 19.

(4) A flood risk management plan may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as the competent authority considers appropriate for the purpose of explaining or illustrating any matter in the plan.

(5) Any such maps, diagrams, illustrations and descriptive matter are to be treated as forming part of the plan and references to such a plan are to be construed accordingly.

(6) A flood risk management plan shall be prepared and published by 22 December 2015.

Matters to be included in every flood risk management plan.

19.(1) Every flood risk management plan shall include a description of—

(a) the objectives set by the competent authority for the management of flood risks for the areas identified under regulation 10 or 11;

(b) the measures identified for achieving those objectives; and

(c) the priority to be given to implementing each measure.

(2) Every flood risk management plan shall also include—

(a) the conclusions of the preliminary flood risk assessment as required by regulation 6 in the form of a summary map of the river basin district delineating the areas

identified under regulation 10 or 11 which are the subject of the flood risk management plan;

- (b) flood hazard maps and flood risk maps prepared under regulation 12 and the conclusions that can be drawn from those maps;
- (c) a summary of flood related measures taken under–
 - (i) regulations 2, 3, 4 and Schedule 2 and 3 of the Town Planning (Applications) Regulations and regulation 2 and 8(4) of the Town Planning (Environmental Impact Assessment) Regulations 2000;
 - (ii) PART IIA and Schedules 6 to 11 of the Public Health Act and sections 2, 5(3), 30(2) and 64 under the Town Planning Act 2018;
 - (iii) the Environment Act 2005;
 - (iv) the Public Health (Water Framework) Rules 2004; and
 - (v) any other European Union instrument which the competent authority considers relevant to flood risk management; and
- (d) a description of–
 - (i) how the priority given to implementing each measure under subregulation (1)(c) was determined; and
 - (ii) the way in which progress in implementing the plan will be monitored.

(3) In addition, every flood risk management plan must include a summary of–

- (a) the public information and consultation measures taken in connection with the preparation of the plan (including those public information measures taken in connection with the preliminary flood risk assessment mentioned in subregulation (2)(a) and the maps mentioned in subregulation (2)(b));
- (b) changes made to the plan in light of the views and representations received on it.

Flood risk management plans: objectives and measures.

20.(1) In setting objectives and identifying measures under regulation 18(2)–

- (a) the competent authority shall take account of, so far as relevant—
- (i) any impact of climate change on the occurrence of floods within the river basin district to which the plan relates;
 - (ii) the preliminary flood risk assessment prepared under regulation 6 for the river basin district to which the plan relates;
 - (iii) the flood hazard maps and the flood risk maps prepared under regulation 12 for the river basin district to which the plan relates;
 - (iv) the cost of implementing proposed measures;
 - (v) the benefits (in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity or otherwise) that are likely to be derived from implementing proposed measures;
 - (vi) flood extent and flood conveyance routes and areas which have the potential to retain flood water such as natural flood plains;
 - (vii) soil and water management;
 - (viii) the environmental objectives of Article 4 of the Water Framework Directive;
 - (ix) the conservation of nature whether within or outside the river basin district to which the plan relates; and
 - (x) navigation and port infrastructure; and
- (b) shall consider, so far as is appropriate, structural and non-structural measures and the reduction of the likelihood of flooding as means of achieving objectives.
- (2) A flood risk management plan—
- (a) shall address all aspects of flood risk management focusing on prevention, protection, preparedness, emergency response, recovery and review including flood forecasts and early warning systems and take into account the characteristics of the particular river basin or sub-basin; and

- (b) may also include the promotion of sustainable land use practices, improvement of water retention as well as the controlled flooding of certain areas in the case of a flood.

(3) For the purposes of subregulation (1)(b), a measure is structural if it involves the carrying out of any operation on land.

Flood risk management plans: co-ordination with the Public Health (Water Framework) Rules 2004.

21.(1) The development of the first flood risk management plans and their subsequent reviews shall be co-ordinated with, and may be integrated into, the reviews of the river basin management plans provided for by rule 11 of the Public Health (Water Framework) Rules 2004.

(2) The active involvement of all interested parties pursuant to regulation 22 in the development of the first flood risk management plans and their subsequent reviews shall be co-ordinated, as appropriate, with the active involvement of interested parties under rule 12 of the Public Health (Water Framework) Rules 2004.

Flood risk management plans: public participation.

22.(1) The competent authority shall, in respect of the preparation of a flood risk management plan—

- (a) not less than three years before the beginning of the period to which the plan is to relate, publish a timetable and work programme for the preparation of the plan, including a statement of the consultation measures to be taken; and
- (b) not less than one year before the beginning of the period to which the plan is to relate, publish a draft of the plan.

(2) The competent authority shall publish the documents referred to in subregulation (1) in a manner calculated to bring them to the attention of persons and bodies likely to be affected by them and, in particular, shall—

- (a) make copies of each document accessible to the public free of charge;
- (b) publish a notice—
- (i) stating the fact of publication;

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- (ii) specifying the arrangements made for making copies of the documents available for public inspection; and
 - (iii) stating that any person may make representations to the competent authority in relation to the documents published within a period specified in the notice;
 - (c) consult the persons and bodies referred to in subregulation (4);
 - (d) take such steps as it considers appropriate to provide opportunities for the general public and the persons and bodies referred to in subregulation (4) to participate in discussion and the exchange of information or views in relation to the preparation of the plan and, in particular, shall give access to background documents and information used in such preparation; and
 - (e) invite the public and the interested persons and relevant bodies to make representations in relation to the draft plan.
- (3) A notice required by subregulation (2)(b) shall be published—
- (a) in the Gazette;
 - (b) at least once in each of two successive weeks in one or more newspapers circulating in Gibraltar; and
 - (c) on the Government's website.
- (4) The persons and bodies to be consulted are—
- (a) the port authority;
 - (b) the Technical Services Department;
 - (c) such persons or bodies as appear to the competent authority in relation to the river basin district—
 - (i) to be representative of the interests of those carrying on any business which relies upon flood risk management; or
 - (ii) to have an interest in flood risk management; and
 - (d) such other persons or bodies as the competent authority considers appropriate.

(5) The competent authority shall take into account any representations relating to each of the documents referred to in subregulation (1) which it receives within a period of six months beginning with the date of publication of the document or such longer period as the competent authority may allow.

(6) In this regulation, “port authority” means the Authority established by section 3 of the Gibraltar Port Authority Act 2005.

Flood risk management plan: publication.

23.(1) The competent authority shall—

- (a) publish a flood risk management plan in such manner as it considers appropriate;
- (b) make copies of it available for public inspection;
- (c) make copies of it available to the public; and
- (d) publicise the publication of the plan.

(2) In making copies of a plan available to the public under subregulation (1)(c), the competent authority may charge a reasonable fee for each copy.

Flood risk management plans: review.

24.(1) The competent authority shall—

- (a) by 22 December 2021 review and, if necessary, update each flood risk management plan prepared under regulation 18; and
- (b) by the end of the period of 6 years beginning with that date, and each subsequent period of 6 years, review and, if necessary, update the latest flood risk management plan updated under this regulation.

(2) An updated plan shall include (in addition to the matters required to be included by regulation 18(3)) the matters specified in regulation 25.

(3) The competent authority shall take into account in any review under this regulation the likely impact of climate change on the occurrence of floods.

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(4) Regulations 18(2) to (6) and 20 to 23 apply in relation to the preparation of an updated flood risk management plan.

Components of the subsequent update of flood risk management plans.

25. The following shall be the components of the subsequent update of flood risk management plans—

- (a) a summary of any changes which have been made as compared to the previous version of the plan including a summary of the reviews carried out under regulations 7, 11, 15 and 24;
- (b) an assessment of the progress made towards the achievement of the objectives included in the plan under regulation 19(1)(a);
- (c) a summary of any measures included in the previous plan which were not implemented, with reasons for non-implementation;
- (d) a description of any other measures implemented since the publication of the previous version of the plan which the competent authority considers have contributed to the achievement of the objectives included in the plan under regulation 19(1)(a).

Provision of information and assistance by public bodies.

26. A public body shall, on being requested to do so by the competent authority, provide the competent authority with such information in its possession or under its control and such assistance as the competent authority may reasonably seek in connection with the exercise of any of the competent authority's functions under these Regulations.

Guidance to public bodies.

27. The competent authority may give guidance to any public body on the implementation of the Floods Directive and these Regulations, and the body to whom guidance is issued shall have regard to it.

Exchange of information, etc.

28. The competent authority shall be responsible in Gibraltar for any exchange of information, reporting, coordination of measures or any other communications between competent authorities in different Member States required by the Floods Directive and, in particular, Articles 4(3), 6(2), 7(4) and 8(5) thereof.