
STATUTORY INSTRUMENTS

2011 No. 696

**LOCAL GOVERNMENT, ENGLAND AND WALES
COAST PROTECTION, ENGLAND AND WALES
ENVIRONMENTAL PROTECTION,
ENGLAND AND WALES
FLOOD RISK MANAGEMENT,
ENGLAND AND WALES
WATER INDUSTRY, ENGLAND AND WALES**

The Environment Agency (Levies)
(England and Wales) Regulations 2011

<i>Made</i>	- - - -	<i>7th March 2011</i>
<i>Laid before Parliament</i>		<i>10th March 2011</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>10th March 2011</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations in exercise of the powers conferred by sections 74 and 143(1) and (2) of the Local Government Finance Act 1988(1).

(1) 1988 c. 41; section 74 was amended by the Local Government Finance Act 1992 (c. 14), section 117(1) and Schedule 13, paragraph 72(1) and (2). The functions of the Secretary of State under section 74 of the Local Government Finance Act 1988 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 17 of the Flood and Water Management Act 2010 (c. 29) allows the Environment Agency to issue levies to lead local flood authorities and provides that the Environment Agency shall be treated as a levying body within the meaning of section 74 of the Local Government Finance Act 1988.

PART 1

General

Citation, commencement and application

1.—(1) These Regulations—

(a) may be cited as the Environment Agency (Levies) (England and Wales) Regulations 2011; and

(b) come into force on 1st April 2011.

(2) These Regulations apply in relation to levies issued for any financial year beginning on or after 1st April 2012.

Interpretation

2. In these Regulations—

“actual expenditure”, in relation to the area of a Regional Flood and Coastal Committee for a financial year, means the sum of the amount of levy revenue spent in that area in that financial year by the Agency in connection with the Agency’s—

(a) flood and coastal erosion risk management functions in that area, and

(b) administrative expenses, and research or related activities, for that financial year;

“the Agency” means the Environment Agency;

“area”, in relation to a Regional Flood and Coastal Committee, means the region for which the Regional Flood and Coastal Committee is established under section 22(1) of the Flood and Water Management Act 2010;

“constituent authority”, in relation to a Regional Flood and Coastal Committee, means a lead local flood authority (within the meaning given in section 6(7) and (9) of the Flood and Water Management Act 2010) any part of whose area is in the area of the Committee;

“flood and coastal erosion risk management functions”, in relation to the Agency, means the following functions exercisable by the Agency—

(a) flood risk management functions within the meaning given in section 4 of the Flood and Water Management Act 2010, and

(b) coastal erosion risk management functions within the meaning given in section 5 of that Act;

“levy” means a levy issued by the Agency to a constituent authority of a Regional Flood and Coastal Committee for a financial year in respect of the Agency’s flood and coastal erosion risk management functions in the area of the Committee;

“levy revenue” means revenue raised in the area of a Regional Flood and Coastal Committee for a financial year by a levy issued to constituent authorities in that area for that financial year;

“qualifying expenses” means the Agency’s expenses for the area of a Regional Flood and Coastal Committee for a financial year ascertained in accordance with regulation 8;

“Regional Flood and Coastal Committee” means a Regional Flood and Coastal Committee established under section 22(1) of the Flood and Water Management Act 2010; and

“relevant council tax base” has the meaning given in regulation 7.

PART 2

Issue and payment of levies

Issue of levies

3.—(1) When issuing a levy to a constituent authority for a financial year, the Agency must specify—

- (a) that part of the constituent authority's area to which the levy relates; and
- (b) the basis on which the levy is calculated.

(2) A levy (other than a levy issued under regulation 4) must be issued before 15th February in the financial year preceding that for which the levy is issued, but it is not invalid merely because it is issued on or after that date.

Substituted levies

4.—(1) If the Agency has issued a levy to a constituent authority for a financial year, originally or by way of substitute ("old levy"), the Agency may issue a levy in substitution for that levy ("new levy").

(2) A new levy must not be greater than the old levy.

(3) But if the old levy is quashed because of a failure to comply with any of the requirements of Part 3, the new levy may be greater than the old levy by so much as is necessary to comply with those requirements.

(4) The Agency must treat anything paid towards an old levy as having been paid towards the new levy.

(5) If a constituent authority has paid more towards an old levy than the amount of the new levy, the Agency must—

- (a) credit the excess against any future liability of the constituent authority to pay a levy to the Agency; or
- (b) repay the excess.

Payment of levies

5.—(1) This regulation applies if the Agency has issued a levy to a constituent authority for a financial year in accordance with regulation 3 or 4.

(2) The constituent authority must pay the levy to the Agency at such time and in such manner during the financial year as may be agreed between the Agency and the constituent authority.

(3) In default of such an agreement, the constituent authority must pay the levy to the Agency—

- (a) if the levy is issued on or before 30th April in the financial year, by four equal instalments due on 1st May, 1st July, 1st October and 1st January in the financial year;
- (b) if the levy is issued after 30th April and on or before 31st December in the financial year, by equal instalments or (as the case may be) by a single payment due on as many of the dates referred to in sub-paragraph (a) as remain after the date of issue; or
- (c) if the levy is issued after 31st December in the financial year, 30 days after the date of issue.

PART 3

Calculation of levies

Calculation of levies

6.—(1) The Agency must calculate the levy to be issued to a constituent authority for a financial year in accordance with this regulation.

(2) Where there is one constituent authority of a Regional Flood and Coastal Committee, the levy to be issued to the constituent authority is the amount of the Agency's qualifying expenses for the area of the Committee for the financial year.

(3) Where there is more than one constituent authority of a Regional Flood and Coastal Committee, the levy to be issued to each constituent authority is calculated in accordance with the following formula—

$$A \times (BC)$$

where—

A is the constituent authority's relevant council tax base for the financial year,

B is the Agency's qualifying expenses for the area of the Committee for the financial year, and

C is the sum of the relevant council tax bases for the financial year for all the constituent authorities of the Committee.

Relevant council tax base

7.—(1) The relevant council tax base for a financial year for a constituent authority of a Regional Flood and Coastal Committee is—

- (a) if the constituent authority is a billing authority(2) in England, the council tax base for the financial year for its levy area calculated in accordance with the 1992 Regulations;
- (b) if the constituent authority is a billing authority in Wales, the council tax base for the financial year for its levy area calculated in accordance with the Local Authorities (Calculation of Council Tax Base) (Wales) Regulations 1995(3);
- (c) if the constituent authority is a precepting authority(4), the council tax base for the financial year for its levy area determined by—
 - (i) calculating, in accordance with the 1992 Regulations, the council tax base for the financial year for those parts of each billing authority's area that fall within the levy area of the precepting authority; and
 - (ii) adding those amounts.

(2) In this regulation—

“levy area” means that part of a constituent authority's area that is in the area of the Regional Flood and Coastal Committee; and

“the 1992 Regulations” means the Local Authorities (Calculation of Council Tax Base) Regulations 1992(5).

(2) Section 144 of the Local Government Finance Act 1988 provides that “billing authority” has the same meaning as in Part 1 of the Local Government Finance Act 1992.

(3) [S.I. 1995/2561](#), amended by [S.I. 2004/3094 \(W.268\)](#).

(4) Section 144 of the Local Government Finance Act 1988 provides that “precepting authority” has the same meaning as in Part 1 of the Local Government Finance Act 1992. A lead local flood authority in Wales is not a precepting authority.

(5) [S.I. 1992/612](#).

Qualifying expenses

8.—(1) The Agency may ascertain its expenses for the area of a Regional Flood and Coastal Committee for a financial year (“qualifying expenses”) by—

- (a) estimating the amount of relevant expenditure for that area for the financial year;
- (b) subtracting from that amount any amount that will be funded by means other than a levy;
- (c) if regulation 9 applies—
 - (i) adding to the remainder any amount calculated under paragraph (3) of that regulation that is to be carried forward to that financial year; and
 - (ii) subtracting from the remainder any amount calculated under paragraph (4) of that regulation that is to be carried forward to that financial year;
- (d) if regulation 10 applies—
 - (i) adding to the remainder the sum of any amounts apportioned to constituent authorities in that area under paragraph (3) of that regulation that, under paragraph (4) of that regulation, are to be carried forward to that financial year; and
 - (ii) subtracting from the remainder the sum of any amounts apportioned to constituent authorities in that area under paragraph (3) of that regulation that, under paragraph (5) of that regulation, are to be carried forward to that financial year.

(2) In this regulation—

“the remainder” means the amount calculated under paragraph (1)(b); and

“relevant expenditure”, in relation to the area of a Regional Flood and Coastal Committee for a financial year, means—

- (a) any expenditure expected to be incurred by the Agency in that financial year in connection with its flood and coastal erosion risk management functions in that area, and
- (b) an amount determined by the Agency as representing a fair proportion of—
 - (i) the Agency’s administrative expenses for that financial year, and
 - (ii) the amount to be spent by the Agency for that financial year for research or related activities.

Carrying forward of balances for purpose of ascertaining qualifying expenses for an area

9.—(1) This regulation applies in relation to the area of a Regional Flood and Coastal Committee unless, before 1st December in a financial year, the Agency revises the boundaries of the area in accordance with regulations made under section 22(2)(a) of the Flood and Water Management Act 2010.

(2) As soon as is reasonably practicable after the end of the financial year, the Agency must—

- (a) calculate the difference (if any) between the actual expenditure in an area for a financial year and the sum of—
 - (i) the amount of levy revenue raised for that financial year, and
 - (ii) any amount carried forward to that financial year under paragraph (3) or (4); and
- (b) provide the following information to the Regional Flood and Coastal Committee for the area and its constituent authorities—
 - (i) the actual expenditure of levy revenue in the area for that financial year,
 - (ii) the purposes for which the levy revenue was spent,
 - (iii) the sum of the amounts in sub-paragraph (a)(i) and (ii) for that financial year, and

(iv) any difference calculated under sub-paragraph (a).

(3) If the actual expenditure in an area for any financial year is greater than the sum of the amounts in paragraph (2)(a)(i) and (ii) for that financial year, the Agency may carry forward the amount of the difference to—

- (a) the next financial year, if a levy for the next financial year has not yet been issued; or
- (b) the financial year after the next financial year, if a levy for the next financial year has already been issued.

(4) If the actual expenditure in an area for any financial year is less than the sum of the amounts in paragraph (2)(a)(i) and (ii) for that financial year, the Agency must—

- (a) carry forward the amount of the difference to—
 - (i) the next financial year, or
 - (ii) the financial year after the next financial year; or
- (b) apportion the amount of the difference between each constituent authority in that area based on the proportion that the relevant council tax base for the financial year for each constituent authority bears to the sum of the relevant council tax bases for the financial year for all constituent authorities in that area, and pay those apportioned amounts to the constituent authorities.

Carrying forward of balances following revision of boundaries

10.—(1) This regulation applies if, before 1st December in a financial year, the Agency revises the boundaries of the area of a Regional Flood and Coastal Committee (“old area”) in accordance with regulations made under section 22(2)(a) of the Flood and Water Management Act 2010 to create new areas.

- (2) As soon as is reasonably practicable after the end of the financial year, the Agency must—
 - (a) calculate the difference (if any) between the actual expenditure in the old area for the financial year and the sum of the amounts in regulation 9(2)(a)(i) and (ii) in relation to the old area for that financial year; and
 - (b) provide the information in regulation 9(2)(b) to—
 - (i) the Regional Flood and Coastal Committees for the new areas, and
 - (ii) any constituent authority in a new area which was a constituent authority in the old area (“the relevant constituent authorities”); and
 - (c) apportion the amount of any difference calculated under sub-paragraph (a) of this regulation between the relevant constituent authorities in each new area based on the proportion that the relevant council tax base for the financial year for each relevant constituent authority bears to the sum of the relevant council tax bases for the financial year for all constituent authorities in the old area (“apportioned amounts”).
- (3) The Agency must—
 - (a) if the actual expenditure in the old area for the financial year is greater than the sum of the amounts in regulation 9(2)(a)(i) and (ii) for that financial year, carry forward the apportioned amounts in accordance with paragraph (4) of this regulation; or
 - (b) if the actual expenditure in the old area for the financial year is less than the sum of the amounts in regulation 9(2)(a)(i) and (ii) for that financial year—
 - (i) credit the apportioned amounts against any future liability of the relevant constituent authorities to pay a levy to the Agency,
 - (ii) pay the apportioned amounts to the relevant constituent authorities, or

(iii) carry forward the apportioned amounts in accordance with paragraph (5) of this regulation.

(4) If the actual expenditure in the old area for the financial year is greater than the sum of the amounts in regulation 9(2)(a)(i) and (ii) for that financial year, the Agency may carry forward the apportioned amounts to—

- (a) the next financial year, if a levy for the next financial year has not yet been issued; or
- (b) the financial year after the next financial year, if a levy for the next financial year has already been issued.

(5) If the actual expenditure in the old area for the financial year is less than the sum of the amounts in regulation 9(2)(a)(i) and (ii) for that financial year, the Agency may carry forward the apportioned amounts to—

- (a) the next financial year; or
- (b) the financial year after the next financial year.

PART 4

Anticipation of levies

Anticipation of levy

11.—(1) A constituent authority may anticipate that the Agency will issue a levy to it for any part of its area for a financial year if—

- (a) the Agency issued a levy to it for that part of its area for the preceding financial year; and
- (b) at the time the constituent authority makes its calculations for a financial year, the Agency has not issued a levy for that part of its area for that financial year.

(2) When making its calculations, a constituent authority must estimate the amount of any levy it anticipates.

(3) If a constituent authority makes any substitute calculations for the financial year, the amount of any levy it anticipates must be its previous estimate under paragraph (2).

(4) References in this regulation to a constituent authority's calculations are references to calculations made under—

- (a) section 32 (calculation of budget requirement) of the Local Government Finance Act 1992(6), if the constituent authority is a billing authority; or
- (b) section 43 (calculation of budget requirement) of that Act(7), if the constituent authority is a precepting authority.

Requirement to notify Agency of relevant council tax base

12. During the period beginning with 1st December and ending on 31st January in a financial year, a billing authority must notify the Agency of its relevant council tax base if—

(6) 1992 c. 14. Section 32 was amended by: the Local Government (Wales) Act 1994 (1994, c. 19), s. 38(11) and Schedule 12, paragraph 4(2); the Police Act 1997 (1997 c. 50), s. 134(1) and Schedule 9, paragraph 67; the Criminal Justice and Police Act 2001 (2001 c. 16), s. 137 and Schedule 7, Pt 5(1); the Local Government Act 2003 (2003 c. 26), s. 127(2) and Schedule 8, Pt 1; S.I. 1994/246; S.I. 1995/234; S.I. 1996/56; S.I. 2002/328; S.I. 2005/190; S.I. 2010/219 and S.I. 2010/317.

(7) 1992 c. 14. Section 43 was amended by: the Police Act 1997 (1997 c. 50), s. 134(1) and Schedule 9, paragraph 68(2) and (3); the Criminal Justice and Police Act 2001 (2001 c. 16), s. 137 and Schedule 7, Pt 5(1); Local Government Act 2003 (2003 c. 26), s. 127(2) and Schedule 8, Pt 1; the Serious Organised Crime and Police Act 2005 (2005 c. 15), s. 174(2) and Schedule 17, Pt 2; S.I. 1994/246; S.I. 1995/234; S.I. 1996/296; S.I. 2000/717; S.I. 2010/219 and S.I. 2010/317.

- (a) before the beginning of that period, the Agency informed the billing authority or, if the billing authority is in the area of a precepting authority, the precepting authority in writing that it will issue a levy to the billing authority or precepting authority for the next financial year; or
- (b) the billing authority or, if the billing authority is in the area of a precepting authority, the precepting authority anticipates that the Agency will issue a levy to it for the next financial year.

PART 5

Miscellaneous

Revocation and transitional provisions

13.—(1) The Environment Agency (Levies) Regulations 1993⁽⁸⁾ (“the 1993 Regulations”) are revoked.

(2) Despite their revocation, the 1993 Regulations continue in force in relation to levies issued or anticipated in accordance with those Regulations in relation to a financial year beginning before 1st April 2012.

(3) For the purpose of ascertaining the qualifying expenses of the Agency in an area for the financial year beginning with 1st April 2012, the amount to be carried forward to that financial year under regulation 8(1)(c) or (d) is any excess or deficiency to be brought forward to that financial year in accordance with section 47(2) of the Land Drainage Act 1976⁽⁹⁾.

(4) For the purpose of anticipating a levy for the financial year beginning with 1st April 2012, the reference in regulation 11(1)(a) to a levy is taken to be a reference to a levy issued under the 1993 Regulations.

7th March 2011

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

6th March 2011

Jane Davidson
Minister for Environment, Sustainability and
Housing
one of the Welsh Ministers

⁽⁸⁾ S.I. 1993/61.

⁽⁹⁾ 1976 c. 70. Sections 45 to 47 were repealed by section 3 of, and Part 1 of Schedule 3 to, the Water Consolidation (Consequential Provisions) Act 1991 (1991 c. 60) but, by virtue of paragraph 2(5) of Part 1 of Schedule 2 to that Act, their repeal does not affect the operation of those sections so far as they have effect under any subordinate legislation made under the Local Government Finance Act 1988 (c. 41) and section 149 of the Local Government and Housing Act 1989 (c. 42) for the purpose of or in connection with the issue of levies by the Environment Agency. Sections 46 and 47 of the Land Drainage Act 1976 (c. 70) have effect under the Environment Agency (Levies) Regulations 1993 (S.I. 1993/61).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the issue of levies by the Environment Agency (“the Agency”) to lead local flood authorities under section 17(1) of the Flood and Water Management Act 2010 (“the 2010 Act”) in respect of the Agency’s flood and coastal erosion risk management functions under the 2010 Act. Section 17(3) of the 2010 Act provides that the Agency is a levying body within the meaning of section 74 of the Local Government Finance Act 1974.

Part 2 makes provision for issue and payment of levies. Regulation 3 requires the Agency to inform each constituent authority to which it issues a levy how the levy is calculated, and the area to which the levy relates. Regulation 4 provides for the issue of a substitute levy during a financial year. Regulation 5 provides for arrangements to pay levies.

Part 3 provides for levies to be calculated based on a constituent authority’s council tax base. Regulation 7 sets out how council tax base is calculated. Regulation 8 sets out how the Agency is to ascertain its expenses which are to be met by levy (“qualifying expenses”). Regulations 9 and 10 provide for the Agency to carry forward amounts when ascertaining its qualifying expenses for the next financial year.

Part 4 enables a constituent authority to anticipate the issue of a levy for the next financial year. Regulation 11 requires authorities to notify the Agency of their relevant council tax bases to enable the Agency to calculate levies.

Part 5 revokes the Environment Agency (Levies) Regulations 1993, but saves those Regulations for the purposes of levies issued or anticipated under those Regulations for a financial year beginning before 1st April 2012.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gsi.gov.uk and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.