



Department
for Environment
Food & Rural Affairs

Water Bill: Commentary on Draft Flood Insurance Clauses

6 September 2013

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1. Introduction

The consultation paper on securing the future availability and affordability of home insurance in areas of flood risk, published on 27th June 2013, sets out our proposed approach to the future of flood insurance and rationale for seeking the necessary legal powers through the Water Bill.

Our aim is to provide the legal framework for new arrangements following the expiry of the current voluntary agreement on flood insurance between Government and the insurance industry. The legal framework aims to establish:

- a) a levy-funded reinsurance pool for high risk households (known as “Flood Re”), and
- b) reserve powers to regulate the insurance industry by requiring insurers to each insure a certain share of a list of high flood risk properties (known as the “Flood Insurance Obligation”).

These fallback powers are needed in case Flood Re proves unworkable and if pricing in a free market proves to be unacceptable. This provision is intended to provide reassurance to households at risk that they will be able to secure affordable flood insurance in future, one way or another.

We intend to replace the current placeholder clause in Part 4 of the Water Bill, with full clauses as a Government amendment, as soon as possible during the first Committee stage of the Bill in the House of Commons.

We are publishing the clauses and accompanying commentary in draft form to inform public debate. The draft clauses reflect our working assumptions at this stage and are subject to further development in light of public consultation and discussion with key stakeholders. In the case of Flood Re, these draft clauses are subject in particular to further discussion with the Association of British Insurers, as the model set out in the Memorandum of Understanding published in June is developed further. The draft clauses are also subject to further discussion with the Devolved Administrations.

Feedback provided via the public consultation that was launched on 27 June 2013 may not have yet been reflected in the draft clauses, but will be considered in due course and before the final clauses are introduced in Parliament.

The commentary provided in section 2 below should be read in conjunction with the consultation paper and the draft clauses. It provides explanation of the anticipated effect of the clauses and, where needed, provides further context on issues that are not described within the clauses but which form part of the overall policy framework. In order to aid understanding, we have provided examples of how the powers in the Bill could be exercised in secondary regulations. The examples given are purely illustrative.

Draft Explanatory Notes have also been provided in section 3 to provide a clause-by-clause explanation. Where a clause or part of a clause does not seem to require any explanation or comment, none has been given. These Explanatory Notes will be updated to reflect any necessary changes made prior to the introduction of the final clauses to Parliament, and published alongside.

Comments on the draft clauses are invited by 20th September 2013 via email to: flood.insurance@defra.gsi.gov.uk. This invitation to comment does not constitute a formal consultation.

2. Commentary on the clauses

The territorial extent of these clauses is UK-wide, as financial services legislation.

The Flood Reinsurance Scheme “Flood Re” (clauses 1 - 4)

The Scheme is referred to throughout as the “*FR Scheme*”. *Clause 1* sets out the legal purpose and scope of the FR Scheme, which is to ensure that domestic property insurance continues to be widely available and affordable in areas of flood risk without placing unsustainable costs on wider policyholders or the taxpayer, by making reinsurance for flood risk available to all insurers that underwrite household buildings and/or contents insurance policies in the UK.

Clause 12(1) provides for regulations to be made that would specify which policies are eligible for the FR Scheme. If a property has a domestic insurance policy, the policy is likely to be eligible for the FR Scheme.

As set out in the Memorandum of Understanding (MOU) between Government and the ABI which was published in June, it is expected that the FR Scheme would be industry-owned and managed. The Government will provide the legal framework to enable the FR Scheme to operate within specified parameters including a framework to limit Flood Re’s impact on the public finances as set out in the MOU. As such, *clause 2* specifies that the scheme will be administered and managed by a body which we envisage will be an industry-run body. We also envisage that the Secretary of State of the Department for Environment, Food and Rural Affairs (Defra) will remain accountable to Parliament concerning general policy matters relating to the FR Scheme, flood insurance and wider flood issues. In line with this ambition, *Clause 2(2)* provides for the Secretary of State to designate that the FR Scheme may administered by a company registered under the Companies Act 2006 or other body, and the intent behind *clause 2(4)* is that, as an industry-owned and managed entity, the FR Scheme administrator is not to be seen as conducting Government business or acting on behalf of the Government.

Clause 3 establishes the funding arrangements for the Scheme. The policy intention is that the Secretary of State will be able to require, via regulations, that all relevant insurers pay a regular levy as well as providing a mechanism for further amounts to be paid if needed to

the FR Scheme administrator to fund a shortfall in the pool once the capped flood risk premiums and the proceeds of the levy have been taken into account. The precise arrangements for the top-up contributions are still being discussed between the Government and the insurance industry, and therefore the current drafting is subject to further change. *Clause 3(2)* allows for regulations to specify the circumstances and amounts that insurers can be required to pay as top-up contributions to Flood Re. *Clause 3(3)* allows the FR Scheme administrator to take legal proceedings against individual insurers to recover any debts payable in relation to these two funding streams. *Clause 3(4)* provides the power to create regulations to enable the FR Scheme administrator to use the income from the levy for a particular purpose. One example of what might be intended by these regulations is to require the levy income to be used to fund its administration costs.

As set out in the MOU, the FR Scheme will be funded primarily through a levy on insurers, and the Government expects that such funding will be classified by the Office for National Statistics as a tax and therefore some or all of its expenditure as public expenditure. Flood Re will therefore need to be established in such a way that it meets standards of accountability which are acceptable to Parliament.

Therefore, the clauses are therefore designed to secure appropriate accountability to Parliament by specifying what the FR Scheme administrator should abide by in managing its funds and discharging its functions. *Clause 4(2)(a)* gives a power for regulations to specify ways that the FR Scheme administrator should have regard to 'the need to ensure economy, efficiency and effectiveness' of its processes and operations. This specifically refers to the effectiveness and value for money of discharging its functions and does not encompass policy decisions. *Clause 4 (2)(c)* specifies the 'need to ensure the propriety and regularity' in this same context. 'Regularity' requires the FR Scheme's ongoing operations to be lawful and 'propriety' means the FR Scheme administrator must, for instance, meet Parliament's expectations in terms of being accountable. *Clause 4 (2)(d)* places an obligation on the FR Scheme administrator to ensure a smooth transition across the lifetime of the scheme to full risk reflective pricing with the current cross-subsidy phased out and to work toward the winding up of the scheme by the end of the 25 years. We are currently considering this further to ensure this clause will achieve this. *Clause 4(3) (d)* specifies that the Comptroller and Auditor General (as head of the National Audit Office) may examine whether the FR Scheme administrator has met these expectations, and may publish the findings before Parliament.

Under provisions in *clauses 4 (4) (a) and (b)*, it is proposed that a senior representative (the "responsible officer") of the FR Scheme administrator will be directly accountable for the operation, accounts and finances of the FR Scheme, including to Parliament. *Clause 4(3)(c)* specifies that the FR Scheme administrator will lay accounts for each financial year in Parliament. Further details on the appropriate operation and treatment of the accounts are being considered. In addition to these arrangements as set out on the face of the Bill, we envisage that Select Committees would be able, through existing powers, to call Flood Re's responsible officer as a witness, and to examine the FR Scheme administrator's accounts, scrutinise value for money and the quality of administration.

Clause 4(3) also includes elements of the framework necessary to limit Flood Re's impact on the public finances. We are continuing to discuss this framework with the insurance industry, and these provisions should therefore be viewed as draft proposals at this time.

Clause 4(5) allows for information to be shared between insurers and the FR Scheme administrator, to enable the Scheme to operate as intended. This could for instance relate to information needed to calculate each insurer's share of the levy payments or ad hoc contributions. The FR Scheme administrator will also need access to the Council Tax database for England: we intend to incorporate suitable provisions into the final version of the clauses when they are introduced in Parliament.

Again, although not explicit within the clauses, the FR Scheme would be regulated by the UK financial regulators, as is consistent with its remit as a reinsurance company. The regulators are the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). Any disputes between an insurer and its customer could be investigated by the Financial Ombudsman Service.

Lastly, through *clause 13* we intend that the Secretary of State should have the power through regulations to de-designate the scheme or the administrator. This would be needed in the event that the scheme no longer delivers the policy aims or if the administrator was not delivering the scheme as designed.

Flood Insurance Obligation (clauses 5 - 11)

Draft *clauses 5 to 11* relate exclusively to the Flood Insurance Obligation policy. The draft clauses give the Secretary of State the ability to set a 'target' for the number of homes on a register of properties in high flood risk areas to whom insurers could be required to issue policies in a given time period (see *clause 6*). Since not every household whose property is on the register will choose to purchase insurance cover, the target that the Secretary of State sets would be less than 100 percent of the properties on the register.

With reference to the overall target, the Secretary of State can then provide in regulations for the setting of quotas for the number of properties that should be insured by each individual insurer (see *clause 5*). Different quotas can be set for insurance policies that provide different types of flood cover, for example policies that provide cover against flood damage to the *structure* of a property and those that provide cover for flood damage to the *contents* of a property.

The clauses allow an insurer's quota to be determined on a number of factors including their share of a particular type of insurance business (for example their share of the domestic contents or buildings insurance business in the UK). The regulations can also enable certain insurers to be exempt from complying with the obligation for example because of their share of the market. The rationale for being able to exempt insurers with a very small share of the market is to prevent compliance with these regulations becoming a barrier to entry or establishment in the UK domestic insurance market.

The clauses give the Secretary of State the ability to prescribe circumstances in which an issued policy should not count towards an insurer's target (see *clause 5*). Such circumstances might include where an insurance policy provides grossly inadequate cover and this was not made clear to the purchaser.

The clauses also give the Secretary of State the ability to set circumstances in which an insurance policy issued by one insurer, might count towards the obligation target of a different insurer, for example if insurers were permitted to trade 'credits' for insurance policies amongst themselves as a way of optimising the efficiency with which insurers meet their quotas and avoid non-compliance (see *clause 5*).

The Treasury can make regulations which provide for the Financial Conduct Authority to monitor and enforce insurers' compliance with the requirements imposed on insurers by regulations made under *clause 5* (see *clause 11*).

To enable targets to be set and subsequent quotas for individual insurers to be set and enforced, information is likely to be needed from insurers about the amount, value and type of business they do. *Clause 7* provides powers for this.

The clauses provide for a register of properties in the UK subject to high flood risk to be developed (see *clauses 8 and 9*). Regulations can specify what information is contained in the register. They also allow for properties at very high flood risk or where construction was completed after a certain date to be excluded.

The clauses allow for the regulations to specify what is done with the information contained in the register (whether it is published or certain parts of it are made available to certain people) and to set conditions on what people can do with the information. Penalties could apply if the conditions were broken.

The clauses allow the Secretary of State to limit the persons who can apply for a property to be added to the register or request its removal to the person with the 'qualifying interest' in the property. The qualifying interest will be defined in regulations and we anticipate that this is likely to be the person with the greatest financial interest in the property. Requests to remove a property from the register will be automatically granted, so long as the person requesting it can demonstrate they have the qualifying interest in the property.

If a decision is taken that a property is not eligible for inclusion on the register, the person with the qualifying interest can request an internal review of that decision, and if they are still dissatisfied with the outcome they can appeal to the First-tier Tribunal. The First-tier Tribunal is an independent body that listens to appeals against decisions of public bodies (see *clause 8*).

Potential changes and additions that we envisage to the clauses include:

- Making provision for the interaction between financial regulation requirements under the Financial Services and Markets Act 2000 and under the Flood Insurance Obligation.

- Making provision for enforcement of other requirements imposed on individuals or bodies by these clauses, aside from those requirements in *clause 3*.
- Making alternative provision regarding the division of responsibilities between, the Financial Conduct Authority, the Secretary of State (or a person acting on his behalf) and insurers in relation to *clause 5*.
- Making alternative provision in *clause 10* for appeal procedures regarding properties in Scotland and Northern Ireland.

3. Draft Explanatory Notes

The proposed draft of Part 4 of the Water Bill consists of fourteen clauses in total. Clauses one to four relate only to the FR Scheme, clauses five to ten relate only to the Flood Insurance Obligation, and clauses eleven to fourteen relate to both the FR Scheme and the Flood Insurance Obligation. The territorial extent of the clauses is UK-wide.

Clause 1: The Flood Reinsurance Scheme: introduction

This clause specifies the main purpose and scope of the Flood Re scheme, which is referred to throughout these clauses as the “*Flood Reinsurance Scheme*” or “*FR Scheme*”.

- Subsection (1) (a) specifies the purpose of the FR Scheme. Reinsurance is routinely purchased by insurers to limit their exposure to risk. The FR Scheme will cover the risks that are directly attributable to flooding but will not cover other risks, such as theft or subsidence, which tend to be covered under standard household policies.
- Subsection (1) (b) states that the FR Scheme will be designated through regulations made by the Secretary of State. The Secretary of State would therefore also have the power to revoke the designation of the scheme through regulations.

Clause 2: Scheme administrator

This clause sets out who will administer the FR scheme.

- Subsection (1) gives the Secretary of the State powers to designate a body as the administrator of the FR Scheme by regulations. The Secretary of State would therefore also have the power to revoke the designation of the FR Scheme administrator through regulations.
- Subsection (2) specifies that the FR Scheme administrator may be registered as a company registered under the Companies Act 2006 or other body.
- Subsection (4) provides that the FR Scheme administrator should not legally seem to be conducting Government business or acting on behalf of the Government.

Clause 3: Scheme funding

This clause covers measures needed to fund the Flood Reinsurance Scheme.

- Subsection (1) provides for the Secretary of State to make regulations in connection with the administration of the FR Scheme. The Secretary of State, with the consent of HM Treasury, may make regulations concerning paragraphs (a) and (b). All insurers underwriting household buildings and/or contents insurance policies in the UK would be required to pay a levy and ad hoc payments to the FR Scheme administrator.
 - Paragraph (a) refers to the internal industry levy that is designed to mirror the existing cross-subsidy in the market between those at low and high risk of flooding that has historically allowed affordable flood cover to be made available to those at high risk.
 - Paragraph (b) refers to ad hoc payments that could be required from individual insurers from time to time, should the FR Scheme have insufficient income from the capped premium incomes and the levy payments to meet its outgoings.
- Subsection (2) specifies that the regulations under subsection (1)(b) may (a) set out the circumstances under which a request for top up funding may be requested, (b) set out limits on what amount could be requested for top up funding.
- Subsection (3) provides for the FR Scheme administrator to pursue non-payment of the required levies from individual insurers as a civil debt.
- Subsection (4) provides for regulations regarding the use of the levy and ad hoc payments, for instance to allow the FR Scheme administrator to cover its administrative costs.

Clause 4: Scheme administration

- Subsection (1) provides for powers that may be taken through regulations to specify controls on how the Flood Reinsurance Scheme administrator may run the scheme.
- Subsection (2) provides for regulations to be brought forward to require the administrator of the Flood Reinsurance Scheme to consider how to operate on a day to day basis in a way which ensures value for money, that the Scheme is acting in the public interest, that the Scheme is undertaken in a way which is both proper and lawful and how to manage the transition to risk reflective pricing over the lifetime of the scheme.
 - Subsection (3)(a) provides for regulations to specify the limits of the FR Scheme's power to borrow money.

- Subsection (3)(b) provides for regulations to specify the required form and contents of FR Scheme accounts, if needed.
- Subsection (3)(c) provides for regulations to be made to require the FR Scheme administrator to lay accounts for each financial year before Parliament.
- Subsection (3)(d) provides for regulations to allow the Comptroller and Auditor General to conduct value for money studies of the FR Scheme, and to publish the resulting report.
- Subsection (4) concerns the FR Scheme's accountability to Parliament.
 - Parts (a) and (b) provides for regulations to specify that the FR Scheme administrator will nominate a senior employee to be responsible for the financial accountability of the FR Scheme, in particular the accounts and finances, and how the Scheme is acting in a way that is proper and legal. It sets out that this responsible officer would be accountable to Parliament with respect to any value for money studies as conducted by the National Audit Office.
- Subsection (5) provides for regulations to require insurers to provide the FR Scheme administrator with data needed for the Scheme's operation, for instance on insurance premiums and claims.
- Subsection (7) specifies the definition of 'the FR scheme accounts'.

Clause 5: Flood Insurance Obligations

- Clause 5 gives the Secretary of State the power to require a relevant insurance company to issue a prescribed number of relevant insurance policies.
- Subsections 5(1) to 5(3) give the Secretary of State the power to make regulations which require a relevant insurance company to issue insurance policies that provide cover to a prescribed number of 'registered premises'. The regulations can specify the risks (perils) that the insurance policies issued must cover; though those risks must relate to flooding. Insurers can be required to insure different descriptions of risk, pertaining to flooding, to a prescribed number of registered premises. Registered premises are defined in clause 12 as properties included in the register of household premises subject to high flood risk.
- Subsection 5(4) sets out factors that the regulations can specify are to be taken into account to determine the prescribed number of registered premises that a relevant insurer must issue with insurance. These factors include the target number of premises that the Secretary of State determines under clause 6(1), and the insurer's share of insurance business of a prescribed description.

- Subsection 5(5) provides for the regulations to specify how a relevant insurer's share of insurance business should be calculated and the circumstances under which a relevant insurer may be exempt from the Obligation including by reference to the amount of business the insurer does. This clause also allows the regulations to specify circumstances in which a policy issued by an insurer would not count towards meeting their obligation target and to specify circumstances in which a relevant insurance policy issued by one insurer can count towards the obligation imposed on another relevant insurer.
- Subsection 5(6) provides that the regulations may require an insurer to use information held by the Secretary of State, a person acting on the Secretary of State's behalf or the Financial Conduct Authority to determine their share of insurance business.

Clause 6: Flood Insurance Obligations: target number

- Clause 6 gives the Secretary of State the power to periodically set the target number. The target number is the sum of policies which relevant insurers are collectively required to issue under the regulations in clause 5, and can be expressed as a percentage. The regulations can specify different targets for insurance policies with different descriptions of risk. Revising the target number from time to time is intended to support a managed transition to a free market, by gradually reducing the number of properties eligible for support under the obligation.

Clause 7: Flood Insurance obligations: information

- Clause 7 provides for the Secretary of State to set out in regulations arrangements for the provision of information or production of documents by insurers to particular persons for the purposes of the requirements on insurers under clause 5.
- Subsection 7(2) gives the Secretary of State the power to require documents or information that help demonstrate whether or not the insurer is a 'relevant insurer' and/or whether an exemption applies under subsection 5(5)(b) such that though an insurer is a relevant insurer they have no obligation under subsection 5(1).
- Subsection 7(3) provides further detail on the types of information or documents that may be required from insurers in the regulations and subsection 7(4) provides for the regulations to specify whether the information should be provided to the Secretary of State, a person acting on the Secretary of State's behalf or the Financial Conduct Authority.
- In subsection 7(5) the regulations may specify the time and place information must be produced or provided to persons, the form the information must be produced in and whether it needs to be verified or authenticated in a particular manner.

- In subsection 7(6) the regulations may put limits on what persons receiving the information may then do with it.
- Subsection 7(7) provides for the Treasury to exercise certain powers in relation to the Financial Conduct Authority.

Clause 8: Register of premises subject to high flood risk

- Clause 8 provides for the Secretary of State to set out in regulations, arrangements for the creation and maintenance of a register of premises in the UK which are subject to high flood risk (the 'registered premises').
- Subsection 8(2) provides for the regulations to exclude particular types of properties from the register including those at very high flood risk.
- Subsection 8(3) provides for the regulations to specify the information to be contained in the register and make access, publication, disclosure and notification arrangements for the register and the information contained in it.
- Subsection 8(4) provides for conditions to be set on recipients of the information with regards onward disclosure of the information and arrangements for penalties to be issued if those conditions are not complied with.
- Subsection 8(5) provides for the regulations to specify that only applications made by or on behalf of persons with the qualifying interest in the premises may apply for its inclusion on the register.
- Subsection 8(6) provides for the regulations to permit the removal of premises from the register if the person with a 'qualifying interest' in the property requests its removal.

Clause 9: The register: further provision

- Clause 9 provides for the regulations to set out which bodies will carry out which functions in connection with the register of premises subject to high flood risk.
- Subsection 9(1) specifies which functions may be carried out by the 'relevant bodies' as those that are connected with the creation and ongoing maintenance of the register, access to or disclosure of information contained within the register, publication of the register and notifying people whether particular premises are included in the register or not.
- Subsection 9(2) names the bodies that are to be the relevant bodies in each of England, Wales, Scotland and Northern Ireland.
- Subsection 9(3) enables the regulations to require other public bodies to provide information about premises that are subject to high flood risk.

- Subsection 9(4) enables the regulations to specify an additional role for the Environment Agency (the relevant body for England). The additional role would involve the Environment Agency coordinating the work carried out by relevant bodies under subsection 9(1) and promoting the consistency of this work.
- Subsection 9(5) enables the regulations to require relevant bodies to cooperate with each other in this work and for relevant bodies other than the Environment Agency to cooperate with the Environment Agency in the carrying out of its additional duties under subsection 9(4).

Clause 10: Reviews and appeals

Clause 10 enables the regulations made under clause 8 to provide for a person with the qualifying interest in a property to seek a review of a decision by a relevant body that the property does not qualify to be included on the register of premises subject to high flood risk. It also enables the regulations to provide for that person to appeal to the First-tier Tribunal, if upon review the relevant body has decided that the property does not qualify for inclusion on the register.

Clause 11: Functions of the Financial Conduct Authority

Clause 11 confers on the Treasury enabling powers to provide for the Financial Conduct Authority's role in monitoring and enforcing compliance with requirements imposed under clause 5. It provides for the Treasury to apply provisions of the Financial Services and Markets Act 2000 (including with modifications and including in relation to the types of provision set out in subsection (3)). The regulations may allow the Financial Conduct Authority to provide for the performance of functions on its behalf. See also the commentary at section 2 above regarding envisaged changes to this clause.

Clause 12: Interpretation

- Subsection 12(1) enables the Secretary of State to make certain definitions in regulations which apply to the whole Part of this Bill.
- Subsection 12(2) enables the Secretary of State to make certain further definitions in regulations, including 'flood'. Subsection 12(3) gives the Secretary of State the ability to define in regulations particular descriptions of water (for example the source of the water) that are or are not to be included when the meaning of "flood" is defined. These definitions only apply to clauses 5 to 11.
- Subsection 12(4) defines the terms 'prescribed' and 'registered premises'

Clause 13: Period of operation

- Subsection 13(1) acts as a sun-setting clause, giving an expiry date to section 1 to 11 which is twenty-five years from the day the Act is passed into law, unless the

Secretary of State (or the Treasury in the case of clause 11) makes an order bringing forward the date particular sections shall expire (subsection 13(6) prohibits the Secretary of State or the Treasury from extending the period beyond twenty-five years).

- Subsection 13(3) allows the Secretary of State, by order, to make provision required as a consequence of repealing either clause 1 to 4 or clauses 5 to 10. This includes the ability to amend or repeal an enactment (removal of the granting of royal assent). Subsection 13(5) gives the Treasury the same power in respect of clause 11.

Clause 14: Regulations and orders

- Subsections 14(1) to 14(3) provide for regulations or orders made under this part of the Act, to be made by statutory instrument. The regulations or orders can include incidental, supplementary, consequential, transitional, transitory or saving provision.
- Subsection 14(4) sets out that all statutory instruments under this part will be subject to the negative procedure unless they are listed in subsection 14(5). Subsection 14(5) lists the statutory instruments that will be subject to the affirmative parliamentary procedure.

4. Description of Delegated Powers

Clause 1[j5100] The Flood Insurance Scheme

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause sets out the purpose of Flood Insurance Scheme (FRS) and provides the power for the Secretary of State to designate the Scheme for the set purpose.

Clause 2[j5102] Scheme Administrator

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to designate the body which will administer the Scheme. This power provides sufficient flexibility to take that decision once details and requirements have been finalised.

Clause 3[j5103] Scheme Funding

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative resolution 3(1) and 3(2)

Parliamentary procedure: Negative resolution 3(3) and 3(4)

This clause provides the power for the Secretary of State to require all relevant insurers to pay a regular levy ('the pool') to the FRS administrator and for further amounts to be paid to fund a shortfall in the pool. As the circumstances and the amounts of the levy may vary, it is necessary to do this by secondary legislation rather than have this set on the face of the Bill.

Clause 4[j5101] Scheme Administration

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to provide the detail of the scheme in law to provide structure and limits around the administration of the scheme. As the final decisions on the Scheme and its Administrator have not yet been taken, secondary legislation will provide flexibility to ensure the FRS is fit for purpose.

Clause 5[j5041] Flood Insurance Obligation

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to require relevant insurers to provide specified cover against flooding to a prescribed number of households on a register of properties in high flood risk areas. The use of secondary legislation provides flexibility to ensure the Obligation is applied to all those intended to be captured by the scheme.

Clause 6 [j5040] Flood Insurance Obligation: target number

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to periodically set a target number. The target number will be need to be set with reference to the state of the insurance market for example taking account of changing demand for insurance products.

Clause 7[j5051] Flood Insurance Obligations: information

Power conferred on: The Secretary of State (or HM Treasury in respect of 7(4)(c) and 7(5)(c), 7(5)(d), 7(5)(e) or 7(6) in relation to the Financial Conduct Authority)

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State (or HM Treasury in relation to information provided to the Financial Conduct Authority) to set the circumstances and timings for when information might need to be provided by specified persons. The arrangements are to be set out in regulations to ensure that information collection arrangements meet the detailed needs of the scheme.

Clause 8 [j5043] Register of premises subject to high flood risk

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to require the creation and maintenance of a register of UK properties at high flood risk and make related provisions regarding what information the register contains and how information is accessed. The use of secondary legislation will allow detailed criteria to be set out for determining which properties are eligible for the register.

Clause 11[j5047] Functions of the Financial Conduct Authority

Power conferred on: HM Treasury

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative resolution

This clause provides the power for HM Treasury to require the Financial Conduct Authority to take action to monitor and enforce insurers' compliance with the Flood Insurance Obligation. It allows the Financial Services and Market Act 2000 to be applied with modifications, to enable the Financial Conduct Authority to effectively carry out a monitoring and enforcement role with regards the Flood Insurance Obligation.

Clause 12 - Interpretation

Power conferred on: The Secretary of State

Power exercised by: Statutory instrument

Parliamentary procedure: Negative resolution

This clause provides the power for the Secretary of State to make certain definitions in regulations. These technical definitions will be made at the same time as other regulations are made, to ensure the definitions are fit for purpose and complement the detailed design of the scheme.

Clause 13 - Period of operation

Power conferred on: The Secretary of State (or HM Treasury in respect of an order made under 13(4) or 13(5))

Power exercised by: Statutory instrument

Parliamentary procedure: Affirmative resolution

This clause provides for clauses to be repealed, either at the end of the anticipated 25 year lifespan of the measures, or sooner if necessary. This clause provides the power for the Secretary of State to make different provision about the day on which sections 1 to 4 and/or sections 5 to 10 are repealed. It provides the power for HM Treasury to make different provision about the day on which section 11 is repealed.