



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 13th May 2009 and received Royal Assent on 16th June 2009**

An Act of the Scottish Parliament to make provision about the assessment and sustainable management of flood risks, including provision for implementing European Parliament and Council Directive [2007/60/EC](#); to make provision about local authorities' and the Scottish Environment Protection Agency's functions in relation to flood risk management; to amend the Reservoirs Act 1975; and for connected purposes.

## PART 1

### GENERAL DUTY, DIRECTIONS AND GUIDANCE

#### 1 General duty

- (1) The Scottish Ministers, SEPA and responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, must exercise their functions under Part 3 so as to secure compliance with the Directive.
- (2) In exercising their functions in pursuance of subsection (1), the Scottish Ministers, SEPA and responsible authorities must—
  - (a) so far as such exercise affects a flood risk management district, act with a view to achieving the objectives set out in the flood risk management plan for that district as approved under section 32,
  - (b) have regard to the social, environmental and economic impact of such exercise of those functions,
  - (c) so far as is consistent with the purposes of the flood risk related function concerned—
    - (i) act in the way best calculated to manage flood risk in a sustainable way,
    - (ii) promote sustainable flood risk management,
    - (iii) act with a view to raising public awareness of flood risk, and

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- (iv) act in the way best calculated to contribute to the achievement of sustainable development, and
  - (d) so far as practicable, adopt an integrated approach by co-operating with each other so as to co-ordinate the exercise of their respective functions.
- (3) For the purposes of co-operating with each other under subsection (2)(d), the Scottish Ministers, SEPA and responsible authorities may enter into agreements with each other.
- (4) In this Act, “flood risk related functions” means—
- (a) in relation to the Scottish Ministers—
    - (i) their functions under this Part (other than subsections (1) and (2) of this section), Part 2 (responsible authorities), Part 3 (flood risk assessment, maps and plans), Part 4 (flood risk management: local authority functions), and Part 5 (SEPA: other flood risk management functions), and
    - (ii) their functions under such other enactments as the Scottish Ministers may specify by order,
  - (b) in relation to SEPA—
    - (i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 5 (SEPA: other flood risk management functions), and
    - (ii) its functions under such other enactments as the Scottish Ministers may specify by order,
  - (c) in relation to a responsible authority which is a local authority—
    - (i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 4 (flood risk management: local authority functions), and
    - (ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers, and
  - (d) in relation to any other responsible authority—
    - (i) its functions under Part 3 (flood risk assessment, maps and plans), and
    - (ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers (whether or not in an order under section 5(1)(c) designating it as a responsible authority).

## **2        Directions and guidance**

- (1) The Scottish Ministers may give directions (whether general or specific) and guidance to—
- (a) SEPA, in relation to the exercise of its flood risk related functions, and
  - (b) any responsible authority, in relation to the exercise of its flood risk related functions.
- (2) SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.
- (3) Directions under subsection (1) may include provision for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.
- (4) Before giving a direction under subsection (1), the Scottish Ministers must consult—

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- (a) the person to whom the direction is to be given, and
  - (b) such of the following persons as they consider appropriate—
    - (i) SEPA, and
    - (ii) responsible authorities.
- (5) The Scottish Ministers must give guidance under subsection (1) to SEPA and all responsible authorities on their duties under—
- (a) subsection (2)(b) of section 1, and
  - (b) subsection (2)(c)(i) of that section.
- (6) The guidance given in pursuance of subsection (5) must be given not later than 18 months after the provision to which the guidance relates is commenced.
- (7) The Scottish Ministers must review and where appropriate update the guidance given in pursuance of subsection (5) not later than 6 years after it was first given or, as the case may be, last reviewed under this subsection.
- (8) Before giving guidance in pursuance of subsection (5) or updating the guidance under subsection (7), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) every responsible authority, and
  - (c) such other persons as they consider appropriate.

## PART 2

### PRINCIPAL EXPRESSIONS

#### 3 “Flood” and “flood risk”

In this Act—

“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 (and related expressions such as “flooding” are to be construed accordingly),

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

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

#### 4 SEPA

In this Act, “SEPA” means the Scottish Environment Protection Agency.

#### 5 Responsible authorities

- (1) For the purposes of this Act, responsible authorities are—
- (a) local authorities,

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- (b) Scottish Water, and
  - (c) such other public bodies and office-holders (or public bodies or office-holders of such descriptions) as the Scottish Ministers may designate by order.
- (2) Before making an order under subsection (1)(c), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) every responsible authority,
  - (c) the public bodies and office-holders who will be responsible authorities by virtue of the order being made, and
  - (d) such other persons as they consider appropriate.
- 6 “The Directive”**
- In this Act, “the Directive” means Directive [2007/60/EC](#) of the European Parliament and of the Council on the assessment and management of flood risks.

### PART 3

#### FLOOD RISK ASSESSMENT, MAPS AND PLANS

##### *Purpose of Part*

**7 General purpose of Part 3**

The purpose of this Part is to make provision for or in connection with establishing a framework for the assessment and mapping of flood risks and the planning in relation to the management of such risks, including making provision, and enabling provision to be made, for or in connection with implementing the Directive.

##### *Flood risk management districts*

**8 Flood risk management districts**

- (1) A flood risk management district for the purposes of this Part is—
- (a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or
  - (b) such other area as the Scottish Ministers may designate by order, being such area as they consider appropriate and to which they assign one or more coastal areas or river basins.
- (2) An order under subsection (1)(b) must identify the flood risk management district by reference to a map prepared for the purposes of the order and laid before the Parliament.
- (3) The Scottish Ministers must send SEPA a copy of any order under subsection (1)(b) and any map referred to in the order.
- (4) SEPA must, whether a flood risk management district is—
- (a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or

(b) an area designated by order under subsection (1)(b),  
make copies of the order concerned and the map to which the order refers available  
for public inspection.

### *Flood risk assessment*

## **9 SEPA to prepare flood risk assessments**

- (1) SEPA must prepare a flood risk assessment for each flood risk management district providing an assessment of any flood risk for the district.
- (2) A flood risk assessment must be prepared by 22nd December 2011.
- (3) A flood risk assessment is to be based on available and readily derivable information (including in particular information on any impact of climate change on the occurrence of floods).
- (4) A flood risk assessment must include—
  - (a) maps at the appropriate scale of the flood risk management district which show—
    - (i) borders of any river basin, sub-basin and coastal area in the district,
    - (ii) topography and land use, and
    - (iii) such other information as the Scottish Ministers may specify by regulations,
  - (b) where—
    - (i) SEPA considers there is reliable information that any flood has occurred in the flood risk management district which had significant adverse consequences for human health, the environment, cultural heritage or economic activity there, and
    - (ii) a similar future flood in the district with significant adverse consequences for such matters there is still probable,a description of the flood which has occurred (including its extent and conveyance routes and an assessment of the adverse consequences mentioned in sub-paragraph (i) that the flood entailed),
  - (c) where—
    - (i) SEPA considers there is reliable information that a significant flood has occurred in the flood risk management district, and
    - (ii) significant adverse consequences for the district of any similar future flood there might be envisaged,a description of the flood which has occurred, and
  - (d) an assessment of the potential adverse consequences of any future flood for human health, the environment, cultural heritage and economic activity in the flood risk management district taking into account as far as possible issues such as—
    - (i) the topography,
    - (ii) the position, and the general hydrological and geomorphological characteristics, of any body of surface water,
    - (iii) natural features and characteristics of any river basin or coastal area in the district,
    - (iv) the effectiveness of any existing artificial flood protection structure,

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- (v) the position of any populated area and area of economic activity, and
- (vi) long-term developments, including any impact of climate change on the occurrence of floods.

(5) A flood risk assessment, and any map included in it by virtue of subsection (4)(a), may also include such other information as SEPA considers appropriate.

## **10 Flood risk assessments: review**

(1) SEPA must—

- (a) by 22nd December 2018 or such earlier date as the Scottish Ministers may direct (“the operative date”), review and where appropriate update each flood risk assessment prepared under section 9, and
- (b) by the end of the period of 6 years beginning with the operative date, and of each subsequent period of 6 years, review and where appropriate update the latest flood risk assessment updated after review under this section.

(2) Section 9(3) to (5) applies in relation to the review and updating of a flood risk assessment.

## **11 Flood risk assessments: regulations**

The Scottish Ministers may by regulations make further provision as to the preparation of a flood risk assessment under section 9, or the review or updating of such an assessment under section 10, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

## **12 Flood risk assessments: availability for public inspection**

SEPA must make available for public inspection copies of the flood risk assessment for the time being applicable to each flood risk management district.

*Identification of potentially vulnerable areas and local plan districts*

## **13 SEPA to identify potentially vulnerable areas and local plan districts**

(1) SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk—

- (a) exists, or
- (b) is likely to occur.

(2) The document must be submitted to the Scottish Ministers by such date as they may direct, and after carrying out such consultation as may be required by regulations under section 15.

(3) The document must also identify areas (consisting of one or more river basins, sub-basins or coastal areas) around the areas in the flood risk management district identified under subsection (1) for the purpose of preparing local flood risk management plans (see section 34).

(4) SEPA’s identification—

- (a) of any area under subsection (1) is to be based on the flood risk assessment prepared by it under section 9 for the district in which the area is situated,
  - (b) of any area under subsection (3) is to be based on—
    - (i) that assessment, and
    - (ii) such other information as SEPA considers appropriate, and
  - (c) of any area under subsection (1) or (3) is to identify the area by reference to a map at the appropriate scale prepared for the purposes of and included in the document.
- (5) After considering the document, the Scottish Ministers may—
- (a) approve it (in whole or in part and with or without modifications), or
  - (b) reject it.
- (6) Before determining whether or not to approve the document, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.
- (7) The Scottish Ministers must advise SEPA in writing of the reasons for their determination under subsection (5).
- (8) Where the Scottish Ministers reject the document, they must return it to SEPA and direct SEPA to resubmit it by such date as the direction may specify with—
- (a) such modifications (if any) as the direction may specify, and
  - (b) any further modification which SEPA considers appropriate.
- (9) An area referred to in subsection (1) and identified in a document approved under this section or section 14 is referred to in this Part as a “potentially vulnerable area”.
- (10) An area referred to in subsection (3) and identified in such a document is referred to in this Part and Part 4 as a “local plan district”.

#### **14 Potentially vulnerable areas and local plan districts: review**

- (1) SEPA must, after carrying out such consultation as may be required by regulations under section 15—
- (a) by such date as the Scottish Ministers may direct, review and where appropriate update the document approved under section 13, and
  - (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct) review and where appropriate update the latest document approved under this section.
- (2) SEPA must submit to the Scottish Ministers each updated document.
- (3) Any review by SEPA under subsection (1) is to be based—
- (a) on the flood risk assessment for the time being applicable to the flood risk management district concerned, and
  - (b) insofar as the review is of the identification of any local plan district, on such other information as SEPA considers appropriate.
- (4) Section 13(4)(c) and (5) to (8) applies in relation to an updated document submitted to the Scottish Ministers under this section.

## **15 Potentially vulnerable areas and local plan districts: regulations**

The Scottish Ministers may by regulations make provision as to—

- (a) the form and content of a document submitted to them under section 13 or 14,
- (b) consultation by SEPA in relation to its preparation of any such document,
- (c) SEPA making available to the public—
  - (i) any such document,
  - (ii) information relating to matters included in it,
  - (iii) a summary of any consultation carried out by SEPA in relation to the document, and
  - (iv) a document as approved by the Scottish Ministers under section 13 or 14,
- (d) SEPA publicising its making available to the public any of the things referred to in paragraph (c)(i) to (iv),
- (e) the process to be followed in connection with preparation, submission, approval or modification of a document under section 13 or 14 or review or updating of a document approved under either of those sections, and
- (f) such other matters in relation to any such document (including submission, approval, modification, review or updating) as the Scottish Ministers may consider appropriate.

### *Assessment of flood risk from sewerage systems*

## **16 Scottish Water to assess flood risk from sewerage systems**

- (1) Scottish Water must, for each potentially vulnerable area and any other area identified by SEPA, prepare an assessment—
  - (a) identifying where in the area it considers that a flood is likely to originate from a sewerage system,
  - (b) estimating the volume of sewage which is likely to be released in the event of such a flood, and
  - (c) containing such other information as the Scottish Ministers may specify in regulations.
- (2) An assessment under subsection (1) must be prepared by such date as the Scottish Ministers may direct.
- (3) Before identifying an area for the purposes of subsection (1), SEPA must consult—
  - (a) Scottish Water, and
  - (b) any other responsible authority which has functions exercisable in or in relation to the area.
- (4) An assessment prepared under subsection (1) must be in such form as SEPA may determine.
- (5) In determining the form of an assessment under subsection (4), SEPA must seek to ensure that the assessment will integrate with information relating to flood risk held by—
  - (a) itself, and
  - (b) any responsible authority which has functions exercisable in or in relation to the area for which the assessment is prepared.



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- (6) Before determining the form of an assessment in accordance with subsections (4) and (5), SEPA must consult the persons mentioned in subsection (5)(b).
- (7) Scottish Water must, if requested, provide a copy of an assessment to SEPA or a responsible authority.
- (8) Scottish Water must, for each potentially vulnerable area and each area for the time being identified by SEPA—
  - (a) by such date as the Scottish Ministers may direct, review and where appropriate update the assessment prepared under subsection (1) for that area,
  - (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct) review and where appropriate update the latest assessment reviewed under this subsection for that area.
- (9) Subsections (4) to (7) apply to the updating of assessments as they apply to their preparation.
- (10) Before making regulations under subsection (1)(c), the Scottish Ministers must consult—
  - (a) SEPA,
  - (b) Scottish Water, and
  - (c) such other responsible authorities as they consider appropriate.

*Bodies of water etc.: mapping and assessment*

**17 Local authorities to prepare maps of bodies of water etc.**

- (1) Every local authority must prepare a map which shows (or more than one map which, taken together, show) relevant bodies of water and sustainable urban drainage systems in its area.
- (2) Each map must—
  - (a) be prepared by such date as the Scottish Ministers may direct,
  - (b) be prepared at a scale that the authority considers most appropriate, and
  - (c) contain such information and be in such form as the Scottish Ministers may specify in regulations.
- (3) A local authority must, from time to time, review and where appropriate update the map (or maps) prepared for its area under subsection (1).
- (4) A local authority must make available for public inspection the map (or maps) prepared under this section for the time being applicable to its area.
- (5) In this section and section 18—

“relevant body of water”—

  - (a) means—
    - (i) a body of surface water other than a stretch of coastal water, or
    - (ii) a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but
  - (b) does not include sewers and drains which drain into sewers,

“sustainable urban drainage system” has the meaning given in section 59(1) of the Sewerage (Scotland) Act 1968 (c. 47).

## **18 Local authorities to assess bodies of water**

- (1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—
  - (a) assess the relevant bodies of water (other than canals) in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or outwith its area, and
  - (b) where—
    - (i) a body of water gives rise to such a risk, and
    - (ii) the authority considers that clearance and repair works would substantially reduce that risk,
 prepare a schedule of those clearance and repair works.
- (2) In subsection (1)(b), clearance and repair works are works that consist of any or all of the following—
  - (a) removing obstructions from a body of water,
  - (b) removing things that are at significant risk of becoming such obstructions,
  - (c) repairing artificial structures which form part of the bed or banks of a body of water.
- (3) A schedule prepared under subsection (1)(b) must—
  - (a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,
  - (b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.
- (4) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(b) for the time being applicable to its area.
- (5) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any relevant body of water in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.
- (6) Subsection (5) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

*Artificial structures and natural features: mapping and assessment*

## **19 SEPA to prepare maps of artificial structures and natural features**

- (1) SEPA must, for each flood risk management district, prepare a map—
  - (a) showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water,
  - (b) indicating, in relation to each structure or feature, whether it was constructed or altered under section 56 of this Act or section 2 of the 1961 Act, and

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- (c) containing such other information as the Scottish Ministers may specify in regulations.
- (2) Each map must be prepared—
  - (a) by such date as the Scottish Ministers may direct,
  - (b) at the appropriate scale, and
  - (c) in such form as the Scottish Ministers may specify in regulations.
- (3) SEPA must, from time to time, review and where appropriate update the map prepared under this section for each flood risk management district.
- (4) Before preparing or updating a map under this section, SEPA must consult every local authority whose area (or part of whose area) is in the flood risk management district to which the map relates.
- (5) SEPA must make available for public inspection the map prepared or updated under this section for the time being applicable to each flood risk management district.

*Assessment of possible contribution of alteration etc. of natural features and characteristics*

## **20 SEPA to assess possible contribution of alteration etc. of natural features and characteristics**

- (1) SEPA must, by 22nd December 2013 or such other date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in a flood risk management district could contribute to the management of flood risk for the district.
- (2) For the purposes of this Act, natural features and characteristics include such features and characteristics which can assist in the retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation), those which contribute to the transporting and depositing of sediment, and the shape of rivers and coastal areas.
- (3) SEPA must—
  - (a) by such date as the Scottish Ministers may direct, review and where appropriate update its assessment under subsection (1), and
  - (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct) review and where appropriate update the latest assessment reviewed under this subsection.
- (4) Each assessment under subsection (1), and each assessment updated after review under subsection (3) must—
  - (a) take into account the flood risk assessment, any flood hazard maps and flood risk maps and any flood risk management plan for the time being applicable to the flood risk management district, and
  - (b) refer to a map showing where alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in the district could contribute to management of flood risk in the district.

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- (5) The map referred to in subsection (4)(b) must be prepared at a scale which SEPA considers will assist in—
- (a) the identification of measures under section 27(4)(b), and
  - (b) the inclusion of information in local flood risk management plans under section 34(3)(b)(ii) and (4)(c)(i).
- (6) SEPA must make available for public inspection copies of—
- (a) any assessment under this section for the time being applicable to each flood risk management district, and
  - (b) the map to which the assessment refers.

*Flood hazard maps and flood risk maps*

**21 SEPA to prepare flood hazard maps and flood risk maps**

- (1) SEPA must prepare flood hazard maps and flood risk maps in accordance with this section and sections 22 and 23.
- (2) Flood hazard maps and flood risk maps must be prepared—
- (a) by 22nd December 2013,
  - (b) for the potentially vulnerable areas in each flood risk management district,
  - (c) at the appropriate scale, and
  - (d) so as to secure that the maps for the district (taken together) cover all such areas.

**22 Flood hazard maps**

- (1) A flood hazard map (or more than one such map taken together) must (except to the extent subsections (2) to (6) provide otherwise), show—
- (a) the geographical areas which could be flooded by each of the following types of flood—
    - (i) floods with a low probability (or which would be an extreme event),
    - (ii) floods with a medium probability, and
    - (iii) floods with a high probability, and
  - (b) the following elements for each of those types of flood—
    - (i) the flood extent,
    - (ii) water depths or water level, whichever is appropriate,
    - (iii) where appropriate, the flow velocity or the relevant water flow, and
    - (iv) such other elements as the Scottish Ministers may specify by regulations.
- (2) But a flood hazard map need not show information referred to in subsection (1) as respects a flood with a high probability where SEPA considers such a flood would be unlikely to have significant adverse consequences for the area which could be flooded by it.
- (3) And—
- (a) where a geographical area shown in a flood hazard map is or includes a coastal area which SEPA considers is adequately protected from coastal floods,

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- subsection (4) applies instead of subsection (1) as respects any coastal flood (of the coastal area) with a medium or high probability,
- (b) where a geographical area shown in a flood hazard map is or includes an area at risk of flooding from groundwater, subsection (5) applies instead of subsection (1) as respects any flood (of the area at such risk) with a medium or high probability and which would be from groundwater, and
  - (c) subsection (6) applies instead of subsection (1) as respects any flood from a sewerage system which is not a flood solely from a sewerage system.
- (4) Where subsection (3)(a) applies, the map—
- (a) may, where SEPA considers it appropriate, and
  - (b) must, to the extent that the Scottish Ministers direct,
- show for any such coastal area information referred to in subsection (1) as respects any such flood of that area.
- (5) Where subsection (3)(b) applies, the map—
- (a) may where SEPA considers it appropriate, and
  - (b) must, to the extent that the Scottish Ministers direct,
- show for the area at such risk information referred to in subsection (1) as respects any such flood of that area.
- (6) Where subsection (3)(c) applies, the map—
- (a) may where SEPA considers it practicable, and
  - (b) must to the extent that the Scottish Ministers direct,
- show information referred to in subsection (1) as respects any flood in the area from a sewerage system which is not a flood solely from a sewerage system.
- (7) To the extent (if any) that, in pursuance of subsections (2) to (6), a flood hazard map does not show information referred to in those subsections, the map must include a statement explaining that the information is not shown in it.
- (8) Before giving a direction under subsection (4)(b), (5)(b) or (6)(b), the Scottish Ministers must consult SEPA.
- (9) In this section—
- (a) as respects a flood—
    - “low probability” (or “extreme event”) means such probability as may be specified as such by the Scottish Ministers by order,
    - “medium probability” means such probability involving a return period of 100 years or more (or an annual probability of occurrence of not more than 1%) as may be specified as such by the Scottish Ministers by order,
    - “high probability” means such probability as may be specified as such by the Scottish Ministers by order,
  - (b) “groundwater” has the same meaning as in section 3(4) of the 2003 Act.

## 23 Flood risk maps

- (1) The potential adverse consequences associated with each type of flood for which any information referred to in section 22(1) is shown in a flood hazard map must be shown in a flood risk map (or more than one flood risk map taken together) by reference to the matters mentioned in subsection (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 Annex 1 to Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control, which might cause accidental pollution if any type of flood referred to in subsection (1) occurred,
  - (d) any of the following protected areas or bodies of water which potentially could be affected, if any type of flood referred to in subsection (1) occurred—
    - (i) areas for the abstraction of water intended for human consumption identified by order under section 6(1) of the 2003 Act,
    - (ii) areas referred to in section 7(4)(a) of that Act (areas designated for the protection of economically significant aquatic species),
    - (iii) bodies of water referred to in section 7(4)(b) of that Act (bodies of water designated as recreational waters),
    - (iv) areas referred to in section 7(4)(c) of that Act (nutrient-sensitive areas),
    - (v) areas referred to in section 7(4)(d) of that Act (areas designated for the protection of habitats or species where the maintenance or improvement of the status of the water is an important factor in such protection),
    - (vi) areas classified pursuant to Article 4 of Council Directive [79/409/EEC](#) on the conservation of wild birds,
    - (vii) special areas of conservation designated under regulation 8(1) of the [Conservation \(Natural Habitats, &c.\) Regulations 1994 \(SI 1994/2716\)](#), and
    - (viii) sites of special scientific interest which have been notified in terms of section 3 of the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#),
  - (e) any area which is within a protected area or body of water referred to in paragraph (d)(i) to (viii) and could be affected by pollution from any installation referred to in paragraph (c), and
  - (f) such other information as the Scottish Ministers may specify by regulations.
- (3) Where SEPA considers it appropriate, a flood risk map may also show the potential adverse consequences associated with any type of flood referred to in subsection (1) by reference to any of the following—
- (a) information indicating any areas where floods with a high content of transported sediments or debris floods (or a combination of such floods) can occur,
  - (b) such other sources of pollution as SEPA consider may be significant,
  - (c) such other available and readily derivable information as SEPA considers appropriate.

## 24 Flood hazard maps and flood risk maps: review

- (1) SEPA must—
- (a) by 22nd December 2019, review and where appropriate update each flood hazard map and each flood risk map prepared under section 21, and

- (b) by the end of each subsequent period of 6 years, review and where appropriate update the latest flood hazard map and flood risk map updated after review under this section.
- (2) SEPA must take into account in any review under this section the likely impact of climate change on the occurrence of floods.
- (3) Sections 21(2)(b) to (d), 22 and 23 apply in relation to the review and updating of a flood hazard map and a flood risk map.

## **25 Flood hazard maps and flood risk maps: availability for public inspection**

SEPA must make available for public inspection copies of each flood hazard map and each flood risk map for the time being applicable to each flood risk management district.

## **26 Flood hazard maps and flood risk maps: regulations**

The Scottish Ministers may by regulations make further provision as to the preparation of flood hazard maps and flood risk maps under section 21, or the review or updating of such maps under section 24, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

### *Flood risk management plans*

## **27 SEPA to prepare flood risk management plans**

- (1) SEPA must, for each flood risk management district, prepare and submit to the Scottish Ministers a flood risk management plan for the potentially vulnerable areas in the district.
- (2) A flood risk management plan must be submitted by such date as the Scottish Ministers may direct.
- (3) The date by which SEPA is directed to submit the plan must be a date that the Scottish Ministers consider allows them sufficient time to approve the plan by 22nd December 2015.
- (4) For the purposes of preparing a flood risk management plan, SEPA must—
  - (a) set objectives for the management of flood risks for the potentially vulnerable areas, and
  - (b) identify measures to achieve those objectives in a way which it considers is most sustainable.
- (5) A flood risk management plan must include—
  - (a) the matters specified in Part 1 of schedule 1, and
  - (b) such other matters as the Scottish Ministers may specify by regulations.
- (6) A flood risk management plan may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as SEPA considers appropriate for the purpose of explaining or illustrating any matter in the plan.
- (7) 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.

## 28 Flood risk management plans: objectives and measures

- (1) In setting objectives and identifying measures under section 27(4), SEPA—
- (a) must take account of, so far as relevant—
    - (i) any impact of climate change on the occurrence of floods within the flood risk management district to which the plan relates (“the district”),
    - (ii) the flood risk assessment prepared under section 9 for the district,
    - (iii) any assessment done under section 20 in relation to the district,
    - (iv) the flood hazard maps and the flood risk maps prepared under section 21 for the district,
    - (v) the costs of implementing proposed measures including social, environmental and economic costs,
    - (vi) the benefits that are likely to be derived from implementing proposed measures, including—
      - (A) the benefits in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and
      - (B) any other environmental, social, and economic benefits,
    - (vii) land and water management including the management of surface run-off water and urban drainage,
    - (viii) any development plan relating to the district and anything else done under or in pursuance of the planning Acts which affects development or the use of land within the district,
    - (ix) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c. 36) relating to the district,
    - (x) the environmental objectives within the meaning of section 9 of the 2003 Act,
    - (xi) the conservation of nature in the district and elsewhere, and
    - (xii) navigation and port infrastructure,
  - (b) must consider, so far as is appropriate, both structural and non-structural measures as means of achieving objectives, and
  - (c) may take into account such other matters as it considers relevant.
- (2) For the purposes of subsection (1)(b)—
- (a) a measure is structural if it involves flood protection work, and
  - (b) non-structural measures include—
    - (i) flood warning,
    - (ii) awareness raising,
    - (iii) the preparation and review of development plans, and
    - (iv) the carrying out of research, monitoring and other methods of gathering information relevant to managing flood risk.
- (3) In considering structural measures under subsection (1)(b), SEPA must consider measures that seek to reduce, slow or otherwise manage flood water by altering (including enhancing) or restoring natural features and characteristics.
- (4) The measures considered in pursuance of subsection (3) must include measures that consist of carrying out any alteration or restoration of natural features and



characteristics identified as being capable of contributing to the management of flood risk in an assessment done under section 20 in relation to the district.

- (5) In subsections (1)(a)(viii) and (2)(b)—
- “development plan” has the meaning given in section 24 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - “the planning Acts” has the meaning given in section 277(1) of that Act.

## **29 Flood risk management plans: guidance**

- (1) The Scottish Ministers must give guidance to SEPA on the setting of objectives and identification of measures under sections 27 and 28.
- (2) The guidance must, in particular, address the consideration of measures that consist of carrying out any alteration (including enhancement) or restoration of a natural feature or characteristic.
- (3) The guidance must be given no later than 22nd December 2012.
- (4) The Scottish Ministers must review and where appropriate update the guidance not later than—
  - (a) 6 years after it was given, or
  - (b) where the guidance has been reviewed under this subsection, 6 years after the last such review.
- (5) Before giving the guidance or updating it under subsection (4), the Scottish Ministers must consult—
  - (a) SEPA,
  - (b) every responsible authority, and
  - (c) such other persons as they consider appropriate.
- (6) SEPA must have regard to any guidance given under this section.

## **30 Flood risk management plans: publicity of drafts etc. and consultation**

- (1) Not less than 3 years before the beginning of the period to which a flood risk management plan is to relate, SEPA must publish a statement setting out—
  - (a) the steps under this section, and any other consultation measures, which it is to take in connection with the preparation of the plan, and
  - (b) the dates on or by which those steps and measures are to be taken.
- (2) Not less than one year before the beginning of the period to which a flood risk management plan is to relate, SEPA must publish a draft of the plan.
- (3) Publication of a statement under subsection (1) and a draft under subsection (2) is to be in such manner as SEPA considers appropriate.
- (4) On publishing a statement or draft plan SEPA must—
  - (a) publicise—
    - (i) that fact, and
    - (ii) the opportunity to make representations about the statement or draft plan under subsection (6),

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- (b) make copies of the statement or draft plan available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as SEPA may determine,
  - (c) consult the persons specified in subsection (5), and
  - (d) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.
- (5) The persons referred to in subsection (4)(c) are—
- (a) every responsible authority which has functions exercisable in or in relation to the flood risk management district to which the plan relates (“the district”),
  - (b) every category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district,
  - (c) Scottish Natural Heritage,
  - (d) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and
  - (e) such other persons as SEPA considers appropriate.
- (6) Any person who wishes to make representations to SEPA about a statement or draft plan may do so before the expiry of the period determined under subsection (4)(b).
- (7) In preparing the draft flood risk management plan SEPA must take into account—
- (a) any views on the statement relating to the plan expressed by those consulted under subsection (4)(c), and
  - (b) any representations about the statement,
- which are received by SEPA before the expiry of the period determined under subsection (4)(b).
- (8) In preparing the flood risk management plan for submission to the Scottish Ministers SEPA must take into account—
- (a) any views on the draft plan expressed by those consulted under subsection (4)(c), and
  - (b) any representations about the draft plan,
- which are received by SEPA before the expiry of the period determined under subsection (4)(b).

### **31 Flood risk management plans: submission for approval**

- (1) As soon as a flood risk management plan is submitted to the Scottish Ministers under section 27 or 33, SEPA must—
- (a) publicise that fact, and
  - (b) make copies of the plan available for public inspection.
- (2) A flood risk management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement—
- (a) of the action taken by SEPA to comply with subsections (2) and (so far as relating to the draft plan) (3) to (5) of section 30,
  - (b) containing a summary of the views and representations referred to in subsection (8) of that section and of any adjustments made to the plan in light of those views and representations.

- (3) If the Scottish Ministers, having considered the statement, are of the opinion that further consultation should be undertaken or other action taken by SEPA in relation to the plan under subsections (2) to (5) of section 30, they may return the plan to SEPA and direct it—
  - (a) to undertake such further consultation and take such further action under those subsections as they may specify, and
  - (b) to resubmit the plan with such modifications, if any, as SEPA considers appropriate by such date as the direction may specify.
- (4) Where the Scottish Ministers return the plan to SEPA under subsection (3), they must state their reasons for doing so.
- (5) This section applies, with the necessary modifications, in relation to a flood risk management plan resubmitted to the Scottish Ministers in pursuance of subsection (3)
  - (b) as it applies to the plan as originally submitted.

### **32 Flood risk management plans: approval and publication**

- (1) After considering a flood risk management plan submitted to them under section 27(1) or in pursuance of section 31(3)(b) or subsection (4) of this section, the Scottish Ministers may—
  - (a) approve it (in whole or in part and with or without modifications), or
  - (b) reject it.
- (2) Before determining whether or not to approve a plan, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.
- (3) The Scottish Ministers must advise SEPA in writing of their reasons for their determination under subsection (1) in relation to a plan.
- (4) Where the Scottish Ministers reject a plan, they must return the plan to SEPA and direct it to resubmit the plan with—
  - (a) such modifications as the direction may specify, and
  - (b) any further modifications which SEPA considers appropriate,by such date as the direction may specify.
- (5) Where the Scottish Ministers approve a plan, SEPA must—
  - (a) publish the approved 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 approved plan.
- (6) In making copies of the plan available to the public under subsection (5)(c), SEPA may charge a reasonable price for each copy.

### **33 Flood risk management plans: review**

- (1) SEPA must—
  - (a) by such date as the Scottish Ministers may direct—
    - (i) review and update each flood risk management plan, and
    - (ii) submit each updated plan to the Scottish Ministers,

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- (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct)—
  - (i) review and update each flood risk management plan updated under this section, and
  - (ii) submit each updated plan to the Scottish Ministers.
- (2) The date by which SEPA is directed under subsection (1)(a) to submit each updated plan must be a date that the Scottish Ministers consider allows them sufficient time to approve the updated plan before 22nd December 2021.
- (3) An updated plan must include (in addition to the matters required to be included by section 27(5)) the matters specified in Part 2 of schedule 1.
- (4) Sections 27(4) to (7) and 28 to 32 apply in relation to the preparation, submission and approval of an updated flood risk management plan.

#### *Local flood risk management plans*

### **34 Local authorities to prepare local flood risk management plans**

- (1) The lead authority for each local plan district must prepare a local flood risk management plan to supplement the relevant flood risk management plan.
- (2) A local flood risk management plan is to consist of—
  - (a) a supplementary part, and
  - (b) an implementation part.
- (3) The supplementary part must include—
  - (a) a summary of the objectives, measures and other information included in the relevant flood risk management plan under paragraphs 1 to 3 of schedule 1 so far as relevant to the local plan district,
  - (b) such information supplemental to that plan including such—
    - (i) maps,
    - (ii) information about how implementing the measures summarised under paragraph (a) may alter (including enhance) or restore natural features and characteristics, and
    - (iii) further information about those measures,
 as the lead authority considers relevant to flood risk management within the local plan district, and
  - (c) a summary of—
    - (i) the steps taken under subsections (1) to (6) of section 35 in relation to the local flood risk management plan,
    - (ii) any other consultation measures taken in connection with the preparation of the plan, and
    - (iii) changes made to the plan in light of the views and representations received on it.
- (4) The implementation part must include a description of how the current measures are to be implemented including—
  - (a) a detailed timetable for—

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- (i) the completion of measures currently being implemented, and
    - (ii) the implementation of measures yet to be commenced,
  - (b) in relation to each measure, a description of—
    - (i) who is, or is to be, responsible for implementing the measure, and
    - (ii) the arrangements for funding the measure,
  - (c) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to—
    - (i) the alteration (including enhancement) or restoration of natural features and characteristics, and
    - (ii) surface run-off water or urban drainage, and
  - (d) such other information as the lead authority considers relevant to the implementation of the measures.
- (5) The implementation part may also include a description of how other measures summarised in the supplementary part under subsection (3)(a) are to be implemented.
- (6) A local flood risk management plan must also include such other matters as the Scottish Ministers may specify by regulations.
- (7) Before making regulations under subsection (6), the Scottish Ministers must consult—
  - (a) SEPA,
  - (b) every responsible authority, and
  - (c) such other persons as they consider appropriate.
- (8) A local flood risk management plan must not be inconsistent with anything in the relevant flood risk management plan.
- (9) For the purposes of this Part, the lead authority—
  - (a) for a local plan district is—
    - (i) where a local authority’s area includes all of the local plan district, that authority,
    - (ii) in any other case, one of the local authorities whose area includes part of the local plan district as may be agreed between those authorities or, in default of agreement, as may be determined by the Scottish Ministers, and
  - (b) in relation to a local flood risk management plan, is the local authority responsible for preparing the plan by virtue of subsection (1) and paragraph (a) of this subsection.
- (10) In this Act, the “current measures”, in relation to a local flood risk management plan, are those of the measures summarised in the plan under subsection (3)(a) which are identified in the relevant flood risk management plan as to be implemented before the plan is next reviewed under section 33.
- (11) In this section, “relevant flood risk management plan”, in relation to a local plan district (or the local flood risk management plan for that district), means the flood risk management plan prepared under section 27 or updated under section 33 for the flood risk management district which includes the local plan district.

### **35 Local flood risk management plans: publicity and consultation**

- (1) Not less than one year before the beginning of the period to which the relevant flood risk management plan is to relate or by such date as the Scottish Ministers may direct, the lead authority must publish a draft of the supplementary part of the local flood risk management plan (“the draft supplementary part”).
- (2) Publication of a draft under subsection (1) is to be in such manner as the lead authority considers appropriate.
- (3) On publishing the draft supplementary part, the lead authority must—
  - (a) publicise—
    - (i) that fact, and
    - (ii) the opportunity to make representations about the draft supplementary part under subsection (4), and
  - (b) make copies of the draft supplementary part available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as the lead authority may determine.
- (4) Any person who wishes to make representations to a lead authority about the draft supplementary part may do so before the expiry of the period determined under subsection (3)(b).
- (5) On publishing the draft supplementary part, the lead authority must also—
  - (a) consult the persons specified in subsection (6) on—
    - (i) the draft supplementary part, and
    - (ii) a draft of the implementation part of the plan, and
  - (b) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.
- (6) The persons referred to in subsection (5)(a) are—
  - (a) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district to which the plan relates (“the district”),
  - (b) any category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district,
  - (c) SEPA,
  - (d) Scottish Natural Heritage,
  - (e) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and
  - (f) such other persons as the lead authority considers appropriate.
- (7) The lead authority must co-ordinate the steps it takes under subsections (1) to (6) with those taken by SEPA in relation to the relevant flood risk management plan under section 30(2) to (4).
- (8) Before finalising the local flood risk management plan, the lead authority must take into account—
  - (a) any representations about the draft supplementary part made under subsection (4), and
  - (b) any views on the draft local flood risk management plan expressed by those consulted under subsection (5)(a),
 which are received by the lead authority before the expiry of the period determined under subsection (3)(b).

- (9) Not later than 2 months after receiving them, the lead authority must inform SEPA of any views expressed by those consulted under subsection (5)(a) which the lead authority considers relevant to the relevant flood risk management plan.
- (10) In subsections (7) and (9), “relevant flood risk management plan” means the flood risk management plan prepared under section 27 or updated under section 33 for the flood risk management district which includes the local plan district.

### **36 Local flood risk management plans: completion and publication**

- (1) A local flood risk management plan for a local plan district is finalised when—
- (a) the flood risk management plan which it supplements is approved under section 32, and
  - (b) either—
    - (i) the lead authority, every other responsible authority which has flood risk related functions exercisable in or in relation to the local plan district and SEPA agrees to its content, or
    - (ii) the Scottish Ministers determine its content under subsection (3).
- (2) If—
- (a) the lead authority considers that the local flood risk management plan will not be finalised by the local plan deadline, or
  - (b) the plan is not finalised by that deadline,
- the lead authority must notify the Scottish Ministers of that fact.
- (3) Where the Scottish Ministers receive notice under subsection (2), they must determine the content of the local flood risk management plan.
- (4) Before determining the content of a plan under subsection (3), the Scottish Ministers must take into account any representations made by SEPA and any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.
- (5) When a local flood risk management plan is finalised, the lead authority must—
- (a) publish the final plan in such manner as it considers appropriate,
  - (b) make copies of it available for public inspection,
  - (c) provide a copy of it to SEPA and the Scottish Ministers,
  - (d) make copies of it available to the public, and
  - (e) publicise the publication of the final plan.
- (6) In making copies of the plan available to the public under subsection (5)(d), the lead authority may charge a reasonable price for each copy.
- (7) In subsection (2), the “local plan deadline” is the date 6 months after the date the flood risk management plan mentioned in subsection (1)(a) is approved or such other date as the Scottish Ministers may direct.

### **37 Local flood risk management plans: interim report**

- (1) Not earlier than 2 years and not later than 3 years after a local flood risk management plan is finalised, the lead authority must—
- (a) review the plan, and

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- (b) publish a report on the conclusions of the review including information on the progress that has been made towards implementing the measures identified in the implementation part of the plan.
- (2) The lead authority must make copies of the report available for public inspection.

### **38 Local flood risk management plans: final report**

- (1) Not earlier than 5 years, and not later than 6 years, after a local flood risk management plan is finalised, or by such other date as the Scottish Ministers may direct, the lead authority must publish a report on the plan containing—
- (a) an assessment of the progress made towards implementing the current measures,
  - (b) a summary of the current measures which were not implemented, with reasons for their non-implementation, and
  - (c) a description of any other measures implemented since the plan was finalised which the lead authority considers have contributed to the achievement of the objectives summarised in the supplementary part of the plan.
- (2) The lead authority must make copies of the report available for public inspection.

### **39 Local flood risk management plans: joint working**

Where a local plan district covers more than one local authority's area, the lead authority and the other authorities must, so far as practicable, co-operate with each other with a view to assisting in—

- (a) the preparation of the local flood risk management plan for the district,
- (b) the review of that plan under section 37,
- (c) the preparation of the report published under that section, and
- (d) the preparation of the report published under section 38.

### *Regulations about plans*

### **40 Regulations relating to flood risk management plans and local flood risk management plans**

- (1) The Scottish Ministers may by regulations make further provision as to—
- (a) the form of flood risk management plans and local flood risk management plans,
  - (b) the matters to be taken into account in preparing such plans,
  - (c) the procedures to be followed in connection with the preparation, submission, approval, review and modification of such plans,
  - (d) consultation by SEPA in relation to its preparation of flood risk management plans,
  - (e) consultation by lead authorities in relation to their preparation of local flood risk management plans, and
  - (f) the form, content, preparation and publication of reports under sections 37 and 38.
- (2) Such regulations may, in particular, do any of the following—



- (a) provide for the notice to be given of, or the publicity to be given to—
  - (i) matters to be included or proposed to be included in any such plan,
  - (ii) the approval of any such plan, and
  - (iii) any other procedural step,
- (b) provide for the publicity to be given to the procedures referred to in subsection (1)(c),
- (c) make provision for documents and information relating to matters included in the plan to be made available to the public,
- (d) make provision as to the making and consideration of representations with respect to any such plan,
- (e) require or authorise—
  - (i) in relation to a flood risk management plan, SEPA,
  - (ii) in relation to a local flood risk management plan, the lead authority,to consult, or consider the views of, other persons before taking any particular procedural step.

*Duty to have regard to plans*

**41 Duty to have regard to flood risk management plans and local flood risk management plans**

- (1) The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a flood risk management district, have regard to—
  - (a) the flood risk management plan for that district as approved under section 32,
  - (b) so far as the exercise of the functions affects a local plan district, the local flood risk management plan for that district as finalised under section 36.
- (2) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for the purpose of flood risk management for any period, have regard to flood risk management plans (as approved under section 32) and local flood risk management plans (as finalised under section 36).

**42 Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008**

In regulation 24 (further information) of the [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2008 \(SSI 2008/432\)](#)—

- (a) the words from “may” to the end become paragraph (a), and
- (b) at the end there is inserted—
  - “(b) must, where the application relates to a development that is likely to result in a material increase in the number of buildings at risk of being damaged by flooding, require from the applicant an assessment of flood risk in respect of the development.”.

*Provision of information and assistance***43 Power of SEPA to obtain information, documents and assistance**

- (1) The Scottish Ministers and any responsible authority must, on being requested by SEPA, provide SEPA with—
- (a) such information in their or, as the case may be, its possession or under their or its control, and
  - (b) such assistance,
- as SEPA may reasonably seek in connection with the exercise of any of SEPA's functions under sections 9, 10, 19, 20, 21, 24, 27, 28 and 33.
- (2) Any responsible authority must, on being requested by SEPA—
- (a) gather and provide SEPA with such information—
    - (i) as respects flood risk, and
    - (ii) which SEPA considers could contribute to improving understanding of flood risk, and
  - (b) prepare and provide SEPA with such assessments or maps which SEPA considers could contribute to such understanding,
- as SEPA may reasonably seek in connection with the exercise of any of those functions.
- (3) Information requested by SEPA in pursuance of subsection (2) may include in particular information about, or as the case may be assessments or maps relating to—
- (a) the contribution that altering (including enhancing) or restoring natural features and characteristics could make to managing flood risk, and
  - (b) urban drainage and flooding caused by surface run-off water or a sewerage system.
- (4) Information and assistance which a responsible authority is required to provide to SEPA in pursuance of subsection (1) or (2) must be provided in such form and manner as SEPA may reasonably seek.
- (5) SEPA may serve a notice on any person (but not the Scottish Ministers or a responsible authority) requiring the person to—
- (a) provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or
  - (b) produce to SEPA, or to a person authorised by it, such documents,
- as it may reasonably require in connection with the exercise of any of the functions referred to in subsection (1).
- (6) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (5) cannot agree with SEPA on whether information or assistance is, or assessments, maps or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

**44 Power of lead authorities to obtain information, documents and assistance**

- (1) A person mentioned in subsection (2) must, on being requested by a lead authority, provide the authority with—
- (a) such information in its possession or under its control, and

- (b) such assistance,  
as the authority may reasonably seek in connection with its functions under sections 34 to 38.
- (2) Those persons are—
  - (a) SEPA, and
  - (b) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.
- (3) A lead authority may serve a notice on any person (but not SEPA, a responsible authority or the Scottish Ministers) requiring the person to—
  - (a) provide the authority, or a person authorised by it, in the form and manner specified in the notice, with such information, or
  - (b) produce to the authority, or to a person authorised by it, such documents,  
as it may reasonably require in connection with the exercise of any of the functions under sections 34 to 38.
- (4) Where a responsible authority, SEPA or, as the case may be, a person on whom a notice is served under subsection (3) cannot agree with the lead authority on whether information or assistance is, or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

#### **45 Power of local authorities to obtain information**

- (1) A person mentioned in subsection (2) must, on being requested by a local authority, provide the authority with such information in its possession or under its control as the authority may reasonably seek in connection with its functions under sections 17 and 18.
- (2) Those persons are—
  - (a) SEPA, and
  - (b) any other responsible authority which has flood risk related functions exercisable in or in relation to the local authority's area.
- (3) Where SEPA or, as the case may be, a responsible authority cannot agree with the local authority on whether information is being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

#### **46 Power to obtain information, documents and assistance: supplementary**

- (1) The information or documents required to be provided or produced in pursuance of a notice under section 43(5) or section 44(3) (an “information notice”) must be specified or described in the notice.
- (2) An information notice may require information to be provided or documents to be produced—
  - (a) at or by a time and at a place specified in the notice,
  - (b) in circumstances specified in the notice, or
  - (c) from time to time, in accordance with criteria specified in the notice.
- (3) Nothing in this section or section 43 or 44 authorises SEPA or, as the case may be, a lead authority to require disclosure of anything which a person would be entitled to

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refuse to disclose in proceedings in the Court of Session on grounds of confidentiality in proceedings in that court.

- (4) Where by virtue of an information notice documents are produced to any person, that person may take copies of or make extracts from them.
- (5) References in this section or section 43 or 44 to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

#### **47 Power to obtain information, documents and assistance: offence**

- (1) A person who—
  - (a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under section 43(5) or 44(3), or
  - (b) intentionally alters, suppresses or destroys a document which that person has been required by such notice to produce,
 commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

*Consistency and co-ordination with river basin management planning under the 2003 Act*

#### **48 Consistency and co-ordination with characterisations and plans under the 2003 Act**

- (1) SEPA—
  - (a) must secure appropriate consistency in the information in flood risk assessments, flood hazard maps, flood risk maps and flood risk management plans prepared under this Part with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act,
  - (b) must co-ordinate—
    - (i) preparation and review of flood hazard maps, flood risk maps and flood risk management plans under this Part with preparation and review of information mentioned in subsection (2), and
    - (ii) making available such maps and plans for public inspection with making available such information for such inspection, and
  - (c) may, where it considers it appropriate, integrate any such flood hazard map, flood risk map or flood risk management plan with the information mentioned in subsection (2).
- (2) The information referred to in subsection (1)(b)(i) and (c) is—
  - (a) as respects flood risk maps and flood hazard maps, characterisations of river basin districts prepared under Chapter 2 of Part 1 of the 2003 Act, and
  - (b) as respects flood risk management plans, river basin management plans prepared under that Chapter.

- (3) A lead authority responsible for preparing a local flood risk management plan must secure appropriate consistency in the information contained in the plan with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act.

#### *Advisory groups*

### **49 District flood risk advisory groups**

- (1) Each flood risk management district is to have one or more district flood risk advisory groups (“district advisory groups”).
- (2) The function of each district advisory group is to advise SEPA on any matter which—
- (a) relates to—
    - (i) the preparation of any of the documents mentioned in subsection (3),
    - (ii) the review and updating of any such document,
    - (iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 20, and
    - (iv) the review and updating of any such assessment, and
  - (b) is within the remit of the group.
- (3) The documents mentioned in subsection (2)(a)(i) are—
- (a) the flood risk assessment for the district,
  - (b) the document (under section 13) identifying—
    - (i) potentially vulnerable areas in the district, and
    - (ii) local plan districts,
  - (c) each flood hazard map and flood risk map for the district,
  - (d) the flood risk management plan for the district.
- (4) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (3) and in carrying out or reviewing any assessment under section 20, have regard to any advice given by a district advisory group for the district.
- (5) The number of district advisory groups, and their remits, membership and procedure are to be such as SEPA may determine.
- (6) SEPA may determine the remit of a district advisory group for any flood risk management district by reference to one or more of the following—
- (a) a particular geographical area,
  - (b) any other particular aspect of flood risk management within the district.
- (7) In determining the number of district advisory groups for any flood risk management district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of—
- (a) the persons specified or referred to in section 30(5)(a) to (d), and
  - (b) such other persons as appear to SEPA to have an interest in flood risk management for the district.
- (8) SEPA may pay to members of a district advisory group such expenses and allowances as it may determine.

## **50 Sub-district flood risk advisory groups**

- (1) For the purpose of setting up sub-district flood risk advisory groups, SEPA must divide each flood risk management district into such geographical areas (“sub-districts”) as it considers appropriate.
- (2) Each sub-district is to have a sub-district flood risk advisory group (“sub-district advisory group”).
- (3) The function of each sub-district advisory group is to advise—
  - (a) SEPA, on any matter which relates to—
    - (i) the preparation of the documents mentioned in subsection (4),
    - (ii) the review and updating of those documents,
    - (iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 20, and
    - (iv) the review and updating of any such assessment, and
  - (b) lead authorities for local plan districts, all or part of which form part of the sub-district, on any matter which relates to the preparation of—
    - (i) a local flood risk management plan,
    - (ii) a report under section 37 or 38,
 so far as those matters are within the remit of the group.
- (4) The documents referred to in subsection (3)(a)(i) are—
  - (a) the flood risk assessment for the flood risk management district of which the sub-district forms part,
  - (b) the document (under section 13) identifying—
    - (i) potentially vulnerable areas in the district, and
    - (ii) local plan districts in the district,
  - (c) each flood hazard map and flood risk map for the district,
  - (d) the flood risk management plan for the district.
- (5) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (4) and in carrying out or reviewing any assessment under section 20, have regard to any advice given by a sub-district advisory group.
- (6) A lead authority must, in preparing a local flood risk management plan or a report under section 37 or 38, have regard to any advice given by a sub-district advisory group.
- (7) The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.
- (8) In determining the remit and membership of a sub-district advisory group, SEPA must seek to ensure appropriate representation of the interests of—
  - (a) every responsible authority which has functions exercisable in or in relation to the sub-district,
  - (b) any category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the sub-district,
  - (c) Scottish Natural Heritage,
  - (d) where any part of the sub-district has been designated as a National Park, the National Park authority for the National Park, and

- (e) such other persons as appear to SEPA to have an interest in flood risk management for the sub-district.
- (9) SEPA may pay to members of a sub-district advisory group such expenses and allowances as it may determine.

### *Supplementary*

## **51 Power to give effect to Community obligations etc.**

- (1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.
- (2) In this section “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

## **52 Annual report on implementation of Directive**

- (1) The Scottish Ministers must either—
  - (a) as soon as practicable after the end of each calendar year lay before the Parliament a report summarising the action referred to in subsection (2) taken during the year by—
    - (i) the Scottish Ministers,
    - (ii) SEPA, and
    - (iii) the responsible authorities, or
  - (b) incorporate into their report under section 26 of the 2003 Act for the calendar year concerned a report summarising such action.
- (2) The action is—
  - (a) action taken in accordance with this Part (including, in particular, action taken for securing compliance with the requirements of the Directive), and
  - (b) action taken to implement measures identified in a flood risk management plan approved under section 32.

## **53 Availability of documents for public inspection**

- (1) Where, under this Part, any order, assessment, map, plan, or report is to be made available for public inspection, it—
  - (a) must be made available—
    - (i) free of charge,
    - (ii) at all reasonable times, and
  - (b) may be made available by such means, or in such formats, as the person required to make it available considers appropriate for the purpose of encouraging the inspection of it by members of the public.
- (2) The person required to make available the document referred to in subsection (1) must publicise the arrangements for making it available unless the document is—
  - (a) a map prepared under section 17, or
  - (b) a schedule prepared under section 18(1)(b).

## **54 Publicity of matters**

- (1) Where, under this Part, a person (“the publisher”) is required to publicise any matter, the publisher—
- (a) must do so by means of a notice published in the appropriate newspapers, and
  - (b) may further publicise the matter by such electronic or other means as the publisher considers appropriate.
- (2) In subsection (1), the appropriate newspapers are—
- (a) in relation to a local flood risk management plan, such newspapers circulating in the local plan district, or any part of the district, as the publisher considers appropriate,
  - (b) in relation to any other matter—
    - (i) at least one newspaper circulating throughout Scotland, and
    - (ii) such local newspapers circulating in any part of the flood risk management district to which the matter relates as the publisher considers appropriate.

## **55 Interpretation of Part 3**

- (1) In this Part—
- “appropriate scale” means such scale as SEPA considers most appropriate,
  - “body of surface water”, “loch”, “river basin” and “watercourse” have the same meanings as in section 28(1) of the 2003 Act,
  - “sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers, other watercourses and, as the case may be, lochs to a particular point in a watercourse or loch,
  - “wetland” means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water.
- (2) The Scottish Ministers may by order specify boundaries of any coastal area for the purposes of this Part.

## **PART 4**

### FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

#### *General power*

## **56 General power to manage flood risk**

- (1) A local authority may do anything which it considers—
- (a) will contribute to the implementation of current measures described in any relevant local flood risk management plan,
  - (b) is necessary to reduce the risk of a flood in its area which is likely to—
    - (i) occur imminently, and
    - (ii) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or



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- (c) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).
- (2) Without prejudice to the generality of subsection (1), a local authority may in particular
- (a) carry out any operations to which a flood protection scheme relates (see section 60),
  - (b) carry out any other flood protection work,
  - (c) carry out any temporary works required for the purposes of a flood protection scheme or any other flood protection work,
  - (d) enter into agreements or arrangements with any other person—
    - (i) for the carrying out by that person or by the authority of any work which could be done by the authority under this Part, or
    - (ii) relating to the management by that person of land in a way which can assist in the retention of flood water or slowing the flow of such water,
  - (e) make contributions towards expenditure incurred by any other person doing something which could be done by the authority under this Part,
  - (f) (make payments to any other person in compensation for income lost as a result of entering into agreements or arrangements of the type mentioned in paragraph (d)(ii), and
  - (g) receive from any other person contributions towards expenditure incurred by the authority in exercising any of its functions under this Part.
- (3) Work carried out under this section may be carried out within or outwith the local authority's area.

## **57 Limits of general power**

- (1) The power under section 56 does not enable a local authority to do anything which it is, by virtue of a limiting provision, unable to do.
- (2) In subsection (1), a “limiting provision” is one which—
  - (a) prohibits or prevents the local authority from doing anything or limits its powers in that respect, and
  - (b) is expressed in an enactment (whenever passed or made).
- (3) The absence from an enactment of provision conferring any power does not of itself make that enactment a limiting provision.

## **58 Limits of general power: statutory undertakings**

- (1) A local authority may not exercise the power under section 56 in a way which—
  - (a) damages any works or property belonging to a statutory undertaker, or
  - (b) interferes with the carrying on of its statutory undertaking,unless the undertaker consents.
- (2) But consent is not required if it is withheld unreasonably.
- (3) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably, and their decision is final.

*Clearance and repair works*

**59 Duty to carry out clearance and repair works**

A local authority must carry out the works described in a schedule prepared by it under section 18 if it considers carrying out the works—

- (a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
- (b) will not affect the implementation of the measures mentioned in paragraph (a).

*Flood protection schemes*

**60 Flood protection schemes**

- (1) A flood protection scheme is a scheme by a local authority for the management of flood risk within the authority's area.
- (2) A proposed flood protection scheme must—
  - (a) contain a description of the operations the local authority proposes to carry out,
  - (b) include such maps, plans and specifications as may be specified by regulations by the Scottish Ministers,
  - (c) state how the operations will contribute to the implementation of current measures described in any relevant local flood risk management plan, and
  - (d) inasmuch as they will not so contribute, state the reasons why the local authority considers carrying them out will not affect the implementation of those measures.
- (3) Schedule 2 makes further provision about the making of flood protection schemes.
- (4) The Scottish Ministers may by order amend schedule 2 so as to modify the procedure for making flood protection schemes.
- (5) Before making an order under subsection (4), the Scottish Ministers must consult—
  - (a) every local authority,
  - (b) such bodies appearing to them to be representative of the interests of local authorities as they consider appropriate,
  - (c) SEPA,
  - (d) Scottish Natural Heritage,
  - (e) Scottish Water,
  - (f) the National Park authority for each National Park, and
  - (g) such other persons as they consider appropriate.

**61 Orders under the Land Drainage (Scotland) Act 1958**

- (1) This section applies where an improvement order affects any land on which operations are proposed to be carried out under a flood protection scheme.
- (2) The flood protection scheme may include proposals to—
  - (a) vary the improvement order by—
    - (i) removing land from the improvement area,

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- (ii) removing or rendering ineffective all or any part of the drainage or protective works specified in the improvement order, or
  - (iii) amending, reappportioning or removing any obligations of maintenance imposed on the authorised persons under the improvement order, or
- (b) revoke the improvement order.
- (3) But the scheme may not include proposals to vary the improvement order so as to impose any new obligations on the authorised persons in respect of operations described in the scheme.
- (4) Where the proposed operations will materially alter drainage works or protective works, the scheme must include proposals to vary the improvement order so as to remove the obligation of maintenance in respect of the part of the drainage works or protective works so altered.
- (5) On commencement of the flood protection scheme, the improvement order is varied or, as the case may be, revoked to the extent specified in the scheme.
- (6) Where an improvement order has been varied or revoked by a flood protection scheme, the local authority must cause a notice of the variation or revocation to be registered in the Land Register of Scotland or recorded in the Register of Sasines (as applicable).
- (7) The Scottish Ministers may by order specify the form and content of a notice under subsection (6).
- (8) In this section—
  - “authorised persons” has the meaning given in section 2(2) of the Land Drainage (Scotland) Act 1958 (c. 24),
  - “drainage works” has the meaning given in section 18(1) of that Act,
  - “improvement area” has the meaning given in section 1(3) of that Act,
  - “improvement order” has the meaning given in section 1(1) of that Act,
  - “protective works” has the meaning given in section 2(1)(d) of that Act.

## **62 Registers of flood protection schemes**

- (1) Every local authority must keep a register of flood protection schemes.
- (2) A local authority must enter into its register—
  - (a) details of each relevant scheme including—
    - (i) a summary of the operations described in the scheme,
    - (ii) a description (by reference to a map) of the land affected by those operations, and
    - (iii) a note of the date on which notice of the scheme is first published under paragraph 1(1)(a) of schedule 2,
  - (b) a note of the following in relation to each such scheme—
    - (i) any decision made under paragraph 4(1), 5(1), 7(4), or 9(1) of schedule 2,
    - (ii) the fact that notice has been given to the Scottish Ministers under paragraph 5(5) of that schedule including whether any relevant objector is a local authority or a National Park authority,

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- (iii) the fact that notice has been given of proposed modifications under paragraph 7(5)(a) or 9(3)(a) of that schedule,
  - (c) where such a scheme is confirmed with modifications, the information specified in paragraph (a)(i) and (ii) in relation to the modified scheme, and
  - (d) a note of any suspension of the operation of such a scheme under paragraph 12(6) of schedule 2.
- (3) For the purposes of subsection (2)(a), a relevant scheme is a scheme—
- (a) proposed by the local authority, or
  - (b) in relation to which it is notified under paragraph 1(1)(f)(iii) of schedule 2.
- (4) A local authority may remove information from its register relating to a scheme if the scheme is rejected under paragraph 4(1)(b), 7(4)(c) or 9(1)(c) of schedule 2.
- (5) A local authority must amend its register to reflect any decision of a sheriff under paragraph 12(7) of schedule 2 to quash a scheme recorded in its register in whole or in part.
- (6) Where a local authority enters information in its register about a scheme in relation to which it notified another local authority under paragraph 1(1)(f)(iii) of schedule 2, it must notify that authority of the information entered.
- (7) A local authority must make available its register for public inspection and may charge a reasonable fee for doing so.

**63 Registers of flood protection schemes: information about schemes under 1961 Act**

A local authority must enter into its register details of every flood prevention scheme made by it under the 1961 Act including—

- (a) a summary of the operations to which the scheme relates, and
- (b) a description (by reference to a map) of the land affected by those operations.

**64 Registers of flood protection schemes: regulations etc.**

- (1) The Scottish Ministers may by regulations make further provision about the keeping of registers under section 62(1) including, in particular, provision as to—
- (a) the content of a register,
  - (b) the time by which information must be entered into a register,
  - (c) the circumstances in which information may or must be removed from a register, and
  - (d) the time by which notice must be given under section 62(6).
- (2) Regulations under subsection (1) may also—
- (a) make further provision about the availability of registers under section 62(7) including, in particular, provision as to the form and manner in which registers are to be made available,
  - (b) make provision—
    - (i) requiring local authorities to make available their registers to a person specified in the regulations,
    - (ii) as to the form and manner in which the registers are made available to the person,

- (iii) requiring local authorities to inform the person of any change to their registers as soon as reasonably practicable or within a period specified in the regulations, and
  - (iv) requiring the person to make available information from local authorities' registers for public inspection.
- (3) References in this section and sections 62 and 63 to a local authority's register are references to the register of flood protection schemes kept by the authority.

#### *Deemed planning permission*

### **65 Deemed planning permission for scheme work**

In section 57 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (deemed planning permission), after subsection (2A) insert—

“(2B) On—

- (a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#) in respect of any operation which would constitute development, or
- (b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,

the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”.

#### *Acquisition of land*

### **66 Acquisition of land**

- (1) A local authority may—
- (a) by agreement, acquire land which it requires for the exercise of its functions under this Part,
  - (b) with the authorisation of the Scottish Ministers, compulsorily acquire land (other than Crown land within the meaning of section 91(7)(a)) which it requires for the purpose of carrying out scheme operations.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act.

#### *General*

### **67 Recovery of expenses**

A local authority may recover any expense it incurs in carrying out—

- (a) any repairs or re-instatement to flood protection work done—
  - (i) under section 56, or

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(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act, or

(b) any work required under section 59,

from the owner or, as the case may be, occupier of the land on which the work was carried out if such expense is as a result of the actions of that person.

## **68 Information about ownership etc. of land**

- (1) For the purposes of enabling it to exercise any of its functions under this Part, a local authority may require any person it believes to be the owner or occupier of any land to state in writing—
- (a) the nature of the person's interest in that land, and
  - (b) the name and address of any other person known to the person as having a interest in that land.
- (2) Any person who—
- (a) fails to comply with a requirement of a local authority under this section, or
  - (b) in answer to any such requirement, intentionally or recklessly makes any statement which is false or misleading in a material particular,
- commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **69 Damage to certain flood protection work**

- (1) Any person who intentionally or recklessly damages any—
- (a) barrier, embankment or other work for defence against flooding constructed or otherwise created by a local authority—
    - (i) in exercise of any of its functions under this Part, or
    - (ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act, or
  - (b) apparatus ancillary to such work,
- commits an offence.
- (2) For the avoidance of doubt, a person carrying out flood protection work under this Part does not commit an offence under subsection (1).
- (3) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction—
- (a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 3 on the standard scale, or to both,
  - (b) in the sheriff court—
    - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c. 46)), or to both, and

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- (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i) above, or to both.

## **70 Repeal of Flood Prevention (Scotland) Act 1961**

The 1961 Act is repealed.

## **71 Interpretation of Part 4**

In this Part—

“relevant local flood risk management plan” means, in relation to a local authority, a local flood risk management plan for a local plan district that includes all or part of the local authority’s area,

“scheme documents” means, in relation to a proposed flood protection scheme, the documents containing the material specified in, or by regulations made under, section 60(2),

“statutory undertaker” means—

- (a) the holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29),
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (c. 44),
- (c) the Civil Aviation Authority,
- (d) a holder of a licence under Chapter 1 of the Transport Act 2000 (c. 38),
- (e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c. 21), and
- (f) any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8),

“statutory undertaking”—

- (a) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,
- (b) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002 (asp 3),
- (c) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997.

## **PART 5**

### **SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS**

#### *Advice to planning authorities and others as to flood risk*

## **72 Advice to planning authorities and others as to flood risk**

- (1) SEPA must, when requested by a planning authority, give the authority advice as to flood risk in the authority’s district.

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- (2) SEPA must, when requested by a National Park authority which, though not a planning authority, is (by virtue of the order designating the National Park for which the authority is established) to be treated as the planning authority for the Park for any purpose, give the authority advice in relation to flood risk in the Park.
- (3) Advice under subsection (1) or (2) is to be based on such information as respects such flood risk as SEPA possesses, taking into account—
  - (a) the flood risk assessment, any flood hazard map and flood risk map, the flood risk management plan and any local flood risk management plan for the time being applicable to the authority’s district, and
  - (b) information provided to it by any planning authority or National Park authority which is not a planning authority.
- (4) In this section—
  - (a) “planning authority” and a planning authority’s “district” (except where paragraph (b) provides otherwise) have the meanings given in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - (b) where—
    - (i) all or part of a planning authority’s district is designated as a National Park, and
    - (ii) the designation order makes provision for the National Park authority to be the planning authority for the Park for the purposes of the planning Acts,
 “planning authority” in relation to the National Park means the National Park authority and a planning authority’s “district” means the National Park for which the National Park authority is established, and
  - (c) “the planning Acts” has the meaning given in section 277(1) of that Act.

*Other assessment and maps of flood risk*

### **73 Other assessment and maps of flood risk**

- (1) SEPA may—
  - (a) (in addition to the flood risk assessment it is required to prepare under section 9 and review under section 10) carry out such other assessment of flood risk as it considers appropriate, and
  - (b) (in addition to the flood hazard maps and flood risk maps it is required to prepare under section 21 and review under section 24) prepare such other maps in relation to flood risk as it considers appropriate.
- (2) In the exercise of its power under subsection (1), SEPA must take into account the flood risk assessment, any flood hazard map and flood risk map and the flood risk management plan for the time being applicable to the area being assessed.
- (3) SEPA may, where it considers it appropriate, integrate any map prepared by it under subsection (1)(b) with any such flood hazard map or flood risk map.



### *Flood warning*

#### **74 Flood warning**

- (1) SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood.
- (2) Any warning under subsection (1)—
  - (a) of a flood which SEPA considers is occurring must be made available as soon as practicable after SEPA considers that is the case,
  - (b) of a flood which SEPA considers is likely to occur in the near future must be made available as soon as SEPA considers appropriate,
  - (c) is to be based on information available to SEPA, and
  - (d) must be made publicly available by SEPA by such means as it considers appropriate.

#### **75 Assessment of whether flood warning system should be provided or altered**

- (1) SEPA may, and must where the Scottish Ministers direct, assess whether in its opinion—
  - (a) provision and operation by it of a flood warning system, or alteration of any flood warning system provided and operated by it, would assist in providing earlier or more accurate flood warning as respects an area, and
  - (b) the earlier or more accurate flood warning so provided would be likely to reduce the potential adverse consequences of flooding of the area for human health, the environment, cultural heritage and economic activity there.
- (2) Any assessment under subsection (1) is to be based on such information as SEPA possesses.
- (3) In carrying out any such assessment SEPA must consult in accordance with section 77(1).
- (4) In this section and section 76, “flood warning system” means a system by which, for the purpose of detecting, forecasting or providing warning of any flood which is occurring or likely to occur in the near future, information as respects any of the following matters is obtained and transmitted—
  - (a) rainfall,
  - (b) the level or flow of any surface water (within the meaning of section 3(3) of the 2003 Act),
  - (c) such other matters as appear to SEPA to be appropriate for that purpose.

#### **76 Provision, alteration etc. of flood warning system**

- (1) SEPA may—
  - (a) provide and operate any flood warning system,
  - (b) alter any flood warning system provided and operated by it,
  - (c) for those purposes provide, install or alter apparatus and carry out any engineering or building operations, and
  - (d) maintain any such apparatus.
- (2) Before—

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- (a) providing a flood warning system in pursuance of paragraph (a) of subsection (1),
- (b) for that purpose doing any of the things referred to in paragraph (c) of that subsection, or
- (c) for either of the purposes in paragraph (a) or (b) carrying out any engineering or building operations,

SEPA must consult in accordance with section 77(2).

- (3) Where SEPA considers—
  - (a) the alteration of any flood warning system in pursuance of paragraph (b) of subsection (1), or
  - (b) for that purpose doing any of the things referred to in paragraph (c) of that subsection (“any related thing”),

would be material, it must consult in accordance with section 77(2) before carrying out the alteration of the system or for that purpose any related thing.

## **77 Consultation required by sections 75 and 76**

- (1) The consultation required by section 75 is consultation with—
  - (a) every local authority whose area includes any part of the area which is the subject of the assessment, and
  - (b) every category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area which is the subject of the assessment.
- (2) The consultation required by section 76 is consultation with—
  - (a) every local authority in whose area the power is to be exercised, and
  - (b) any category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area in which the power is to be exercised.

### *Power to obtain information about land*

## **78 SEPA’s power to obtain information about land**

Section 27 of the Environment Act 1995 (c. 25) (SEPA’s power to obtain information about land for the purposes mentioned in that section) applies where SEPA considers that it requires information relating to any land for the purpose of the exercise of any of its functions under this Part, subject to the modification that the notice served by SEPA under subsection (1) of that section must specify the land, the function and this Act.

## **PART 6**

### **POWERS OF ENTRY AND COMPENSATION**

#### *Powers of entry*

## **79 Powers of entry**

- (1) Any person authorised by SEPA is entitled to enter any land for the purposes of carrying out SEPA’s functions under—

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- (a) section 9 (preparation of flood risk assessments),
  - (b) section 10 (review and updating of flood risk assessments),
  - (c) section 13 (identification of potentially vulnerable areas and local plan districts),
  - (d) section 14 (review of potentially vulnerable areas and local plan districts),
  - (e) section 19 (preparation of maps of artificial structures and natural features),
  - (f) section 20 (assessment of possible contribution of alteration etc. of natural features and characteristics),
  - (g) section 21 (preparation of flood hazard maps and flood risk maps),
  - (h) section 24 (review of flood hazard maps and flood risk maps),
  - (i) section 27 (preparation of flood risk management plans),
  - (j) section 33 (review of flood risk management plans),
  - (k) section 73 (other assessment and maps of flood risk), and
  - (l) section 76 (provision, alteration etc. of flood warning systems).
- (2) Any person authorised by a local authority is entitled to enter—
- (a) any land for the purposes of preparing, reviewing or updating a map under section 17,
  - (b) any land for the purposes of assessing a body of water under section 18,
  - (c) any land for the purposes of preparing a local flood risk management plan under section 34,
  - (d) any land for the purposes of preparing a report under section 37 or 38,
  - (e) any land on which scheme operations are to be carried out, for the purposes of carrying out the operations or of executing any temporary works in relation to them,
  - (f) any land for the purpose of carrying out flood protection work on the ground mentioned in section 56(1)(b),
  - (g) any land for the purposes of maintaining flood protection work carried out—
    - (i) under section 56, or
    - (ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act,
  - (h) any land for the purposes of carrying out works under section 59, and
  - (i) any land for the purposes of determining whether, and if so in what manner, any function conferred by or under Part 4 is to be exercised.
- (3) In subsection (2), paragraphs (c) and (d) apply only where the local authority is a lead authority within the meaning of section 34.

## **80 Warrants authorising entry**

- (1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 79 to do so, if necessary using reasonable force, in accordance with the warrant.
- (2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—
- (a) that there are reasonable grounds for the exercise of the right in relation to the land concerned, and
  - (b) that—

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- (i) the conditions in subsection (3) are satisfied,
  - (ii) the land is unoccupied, or
  - (iii) the case is one of urgency.
- (3) The conditions mentioned in subsection (2)(b)(i) are—
- (a) the person applying for the warrant has given notice under section 81(3) of the person's intention to exercise the right,
  - (b) the notice period has expired,
  - (c) either—
    - (i) permission to exercise the right in relation to the land has been refused, or
    - (ii) such a refusal is reasonably expected.
- (4) A warrant granted under this section—
- (a) does not entitle a person to use force against an individual, and
  - (b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.
- (5) Any person who, without reasonable excuse, prevents or obstructs any other person from doing anything which is authorised by a warrant granted under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **81 Powers of entry: supplementary**

- (1) A right to enter any land conferred by section 79 includes a right to—
- (a) enter for the same purpose any land adjacent to it, and
  - (b) survey and examine the land.
- (2) Any person who enters any land in exercise of a right conferred by section 79 is entitled, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
- (a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person, and
  - (b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
- (3) Before any such person exercises any such right, the occupant of the land concerned must be given—
- (a) where—
    - (i) the person exercising any such right intends to take heavy equipment onto the land concerned or entry is sought to a house, and
    - (ii) the right being exercised is not being exercised in accordance with a warrant,
 at least 7 days' notice,
  - (b) in any other case, at least 24 hours' notice.
- (4) A right to enter any land conferred by section 79 may be exercised only at a reasonable time.
- (5) Subsections (3) and (4) do not apply to the exercise of—

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- (a) a right under section 79(2)(f), or
  - (b) if the situation is urgent, a right under section 79(1)(l).
- (6) A person authorised to exercise any right conferred by section 79 must, if required to do so, produce written evidence of that authorisation.
- (7) In subsection (3)(a)(i)—
- “heavy equipment” does not include vehicles designed solely or mainly for the carriage of passengers,
  - “house” has the meaning given in section 194(1) of the [Housing \(Scotland\) Act 2006 \(asp 1\)](#).
- (8) In this section and section 82, references to a right to enter land conferred by section 79 include references to that right exercised in accordance with a warrant granted under section 80.

### *Compensation*

## **82 Compensation**

- (1) SEPA must compensate any person who has sustained damage in consequence of—
- (a) any exercise of the power in section 76(1)(c) or (d), or
  - (b) the exercise of a right of entry conferred by section 79(1) (including the ancillary rights mentioned in section 81(1) and (2)).
- (2) A local authority must compensate any person who has sustained damage in consequence of—
- (a) scheme operations carried out by or on behalf of the local authority,
  - (b) the subsequent maintenance of any such operations by or on behalf of the local authority,
  - (c) any other exercise of the power in section 56(1),
  - (d) the carrying out of works under section 59,
  - (e) the variation or revocation of an improvement order under section 61, or
  - (f) the exercise of a right of entry conferred by section 79(2) (including the ancillary rights mentioned in section 81(1) and (2)).

## **83 Compensation: supplementary**

- (1) In section 82, a person sustains damage if—
- (a) the value of the person’s interest in land has been depreciated, or
  - (b) the person has been disturbed in the person’s enjoyment of land.
- (2) SEPA or, as the case may be, a local authority must pay compensation under section 82 to a person only if—
- (a) the damage is not attributable to an act or omission of the person,
  - (b) the act or omission causing the damage would have been actionable at the person’s instance if it had been done or omitted otherwise than in exercise of statutory powers,
  - (c) the person gives notice to SEPA or, as the case may be, the local authority of the person’s claim stating the grounds of the claim and the amount claimed, and

- (d) the notice is given no later than the earlier of—
  - (i) 2 years after the depreciation first becomes apparent or, as the case may be, the first occurrence of the disturbance, and
  - (ii) 10 years from the completion of the scheme operations, maintenance, exercise of a right of entry or, as the case may be, exercise of another function mentioned in section 82.
- (3) Subsection (2)(b) does not apply where the damage has been sustained in consequence of circumstances falling within section 82(2)(e).
- (4) Any question of disputed compensation under section 82 is to be determined by the Lands Tribunal for Scotland.

## PART 7

### RESERVOIRS

#### *SEPA to be enforcement authority under the Reservoirs Act 1975*

#### **84 SEPA to be enforcement authority under the Reservoirs Act 1975**

- (1) The Reservoirs Act 1975 (c. 23) (referred to in this Part as “the 1975 Act”) is amended as follows.
- (2) In section 1 (ambit and interpretation), after subsection (4A) insert—
  - “(4B) The “area” of the Scottish Environment Protection Agency (referred to in this Act as “SEPA”), in its capacity as a relevant authority for the purposes of this Act, is the whole of Scotland.”.
- (3) In section 2(1) (relevant authorities), for the words from “councils” to “1994” substitute “SEPA”.
- (4) In Schedule 1 (index of definitions), after the entry for “Area (in relation to the Environment Agency)” insert—

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“Area (in relation to SEPA)

Section 1(4B)”.

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#### **85 Transitional arrangements**

- (1) An existing relevant authority is a body which, immediately before the date of commencement of section 84 (“the commencement date”), is a relevant authority in Scotland for the purposes of the 1975 Act.
- (2) Each existing relevant authority must, no later than 28 days after the commencement date, give to SEPA—
  - (a) the register maintained by the authority under section 2(2) of that Act, and
  - (b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).

- (3) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority's enforcement functions.
- (4) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the commencement date.
- (5) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority's enforcement functions and is in the process of being done by or in relation to the authority immediately before the commencement date.
- (6) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date has effect as if done by SEPA.

## **86 Service of documents**

- (1) In section 15(4) of the 1975 Act (reserve powers of enforcement authorities)—
  - (a) after “section 22A” insert “or 22B”,
  - (b) the words “or section 192 of the Local Government (Scotland) Act 1973” are repealed.
- (2) After section 22A of that Act insert—

### **“22B Service of notices by SEPA**

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by SEPA as if it were authorised or required to be served or given by or under that Act.”.

### *Enforcement powers and incident reporting*

## **87 Extension of enforcement authority's reserve powers**

The amendments to the 1975 Act made by section 75 of the Water Act 2003 (c. 37) (which enable enforcement authorities to serve and enforce notices requiring undertakers to take measures in the interests of safety) extend to Scotland.

## **88 Incident reporting**

After section 12 of the 1975 Act, insert—

### **“12ZA Incident reporting: Scotland**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations.

- (2) The regulations may, in particular—
- (a) provide that the enforcement authority or another person—
    - (i) may specify the criteria, and
    - (ii) is to determine whether a reservoir meets the criteria,
  - (b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,
  - (c) provide for a supervising engineer or other person to determine whether an incident has occurred,
  - (d) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,
  - (e) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
  - (f) make provision for the publishing of reports,
  - (g) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
  - (h) create offences,
  - (i) provide that any offence created is triable—
    - (i) only summarily, or
    - (ii) either summarily or on indictment,
  - (j) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  - (k) provide for any offence created which is triable either summarily or on indictment to be punishable—
    - (i) on summary conviction, by a fine not exceeding the statutory maximum,
    - (ii) on conviction on indictment, by a fine,
  - (l) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) undertakers of reservoirs to which they consider the regulations will apply,
  - (c) the Institution of Civil Engineers, and
  - (d) any other person as they consider appropriate.
- (4) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.



## 89 Flood plans

After section 12B of the 1975 Act, insert—

### “12C Flood plans: Scotland

- (1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.
- (2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
- (3) The regulations may, in particular—
  - (a) provide that the enforcement authority or another person—
    - (i) may specify the criteria, and
    - (ii) is to determine whether a reservoir meets the criteria,
  - (b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,
  - (c) specify the form in which a flood plan is to be prepared,
  - (d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,
  - (e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
  - (f) require the flood plan to be produced or submitted to the enforcement authority by such time as—
    - (i) the regulations specify, or
    - (ii) the authority or Scottish Ministers may direct,
  - (g) make provision about the approval of flood plans,
  - (h) make provision for the review and updating of flood plans,
  - (i) provide for a register of flood plans to be established and maintained,
  - (j) make provision for the publication, or distribution of copies, of—
    - (i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
    - (ii) flood plans, and
    - (iii) reports,
  - (k) make provision in connection with the testing of flood plans,
  - (l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,
  - (m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,
  - (n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
  - (o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,

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- (p) create offences,
  - (q) provide that any offence created is triable—
    - (i) only summarily, or
    - (ii) either summarily or on indictment,
  - (r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  - (s) provide for any offence created which is triable either summarily or on indictment to be punishable—
    - (i) on summary conviction, by a fine not exceeding the statutory maximum,
    - (ii) on conviction on indictment, by a fine.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
  - (c) the Institution of Civil Engineers, and
  - (d) such other persons as they consider appropriate.
- (5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
- (6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

*Crown application*

**90 Reservoirs Act 1975: Crown application**

After section 27A of the 1975 Act, insert—

**“27B Crown application in Scotland**

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.
- (5) The power conferred by section 17 is exercisable in relation to Crown land only with the consent of the appropriate authority.
- (6) In subsection (5)—
  - (a) “Crown land” means land, an interest in which—

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- (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
  - (ii) belongs to an office-holder in the Scottish Administration or to a government department, or
  - (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
- (b) “appropriate authority”, in relation to any land—
- (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
  - (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
  - (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(7) In subsection (6), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).

(8) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

## PART 8

### GENERAL

#### 91 Crown application

- (1) This Act binds the Crown.
- (2) The modifications made by schedule 3 bind the Crown to the extent that the enactments modified bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

- (6) The powers conferred by section 79 (whether those specified in that section or the ancillary powers mentioned in section 81(1) and (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (7) In subsection (6)—
- (a) “Crown land” means land, an interest in which—
    - (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
    - (ii) belongs to an office-holder in the Scottish Administration or to a government department, or
    - (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
  - (b) “appropriate authority”, in relation to any land—
    - (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
    - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
    - (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
    - (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
- (8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).
- (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

## 92 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Act has been committed by—
    - (i) a body corporate,
    - (ii) a Scottish partnership, or
    - (iii) an unincorporated association other than a Scottish partnership, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,

that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, a member,
  - (b) in relation to a Scottish partnership, a partner, and
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### **93 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.
- (2) An order under this section may modify any enactment, instrument or document.

### **94 Orders and regulations**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act—
- (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes (including different areas), and
  - (c) includes power to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 97(1)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
- (3) A statutory instrument containing—
- (a) regulations under section 51(1),
  - (b) an order under section 60(4),
  - (c) an order under section 93(1) containing provisions which add to, replace or omit any part of the text of an Act,
- is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

### **95 Interpretation: general**

- (1) In this Act—
- “the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c. 41),
  - “the 2003 Act” means the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#),
  - “category 1 responder” means a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004 (c. 36),

“flood protection work” means any operation on land for the purpose of protecting any land from flooding including—

- (a) any work of construction, alteration, restoration, enhancement, improvement, repair, maintenance, demolition or removal,
- (b) any work that involves the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area,
- (c) the sowing or planting of vegetation or forestry,
- (d) any work ancillary to an operation specified in paragraphs (a) to (c),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and “area” in relation to such an authority is to be construed accordingly,

“scheme operation” means, in relation to a flood protection scheme, an operation described in that scheme in pursuance of section 60(2)(a).

- (2) In this Act, any reference to a Directive of the European Parliament and of the Council or, as the case may be, a Council Directive includes a reference to the Directive as amended from time to time.
- (3) The words and other expressions listed in schedule 4 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

## **96 Minor and consequential modifications**

Schedule 3 makes—

- (a) minor modifications, and
- (b) modifications consequential on the provisions of this Act.

## **97 Commencement and short title**

- (1) The provisions of this Act, except this section and sections 3 to 6, 55, 71, 94 and 95, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Flood Risk Management (Scotland) Act 2009.

## SCHEDULE 1

*(introduced by section 27(5)(a))*

### MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

#### PART 1

##### MATTERS TO BE INCLUDED IN EVERY PLAN

- 1 A description of—
  - (a) the objectives set by SEPA for the management of flood risks for the potentially vulnerable areas,
  - (b) the measures identified for achieving those objectives, and
  - (c) the priority to be given to implementing each measure including an indication of whether the measure is to be implemented—
    - (i) before the plan is next reviewed under section 33,
    - (ii) in the 6 years following that review, or
    - (iii) after the end of the period mentioned in sub-paragraph (ii).
- 2 The conclusions of the flood risk assessment as required by section 9 in the form of a map of the flood risk management district delineating the potentially vulnerable areas which are the subject of the flood risk management plan.
- 3 Flood hazard maps and flood risk maps prepared under section 21 and the conclusions that can be drawn from those maps.
- 4 A summary of flood-related measures taken under—
  - (a) Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment,
  - (b) Council Directive [96/82/EC](#) on the control of major-accident hazards involving dangerous substances,
  - (c) Directive [2001/42/EC](#) of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment,
  - (d) any other Community instrument which SEPA considers relevant to flood risk management, and
  - (e) the 2003 Act.
- 5 A description of—
  - (a) in relation to each measure included in the plan under paragraph 1(b), the reasons for identifying the measure, and
  - (b) in relation to any alteration (including enhancement) or restoration of a natural feature or characteristic in the flood risk management district which—
    - (i) is identified in an assessment under section 20,
    - (ii) could contribute to the management of flood risk, and
    - (iii) is not to be carried out by a measure included in the plan under paragraph 1(b),the reasons why no such measure has been identified.
- 6 A description of—

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- (a) how the priority given to implementing each measure under paragraph 1(c) was determined, and
  - (b) the way in which progress in implementing the plan will be monitored.
- 7 In relation to measures to be implemented before the plan is next reviewed under section 33, an estimate of the cost of implementing the measures.
- 8 A summary of—
- (a) the steps taken under subsections (2) to (5) of section 30 in relation to the plan,
  - (b) any other consultation measures taken in connection with the preparation of the plan (including those taken in connection with the flood risk assessment mentioned in paragraph 2 and the maps mentioned in paragraph 3), and
  - (c) changes made to the plan in light of the views and representations received on it.
- 9 Information as to SEPA.
- 10 A description of the coordination process with the arrangements made under Part 1 of the 2003 Act including, in particular, anything done in pursuance of section 48.

## PART 2

### COMPONENTS OF THE SUBSEQUENT UPDATE OF FLOOD RISK MANAGEMENT PLANS

- 11 A summary of any changes which have been made as compared to the previous version of the plan.
- 12 An assessment of the progress made towards the achievement of the objectives included in the plan under paragraph 1(a).
- 13 A summary of any measures included in the previous plan under paragraph 1(b) which were not implemented, with reasons for the non-implementation.
- 14 A description of any other measures implemented since the publication of the previous version of the plan which SEPA considers have contributed to the achievement of the objectives included in the plan under paragraph 1(a).

## SCHEDULE 2

*(introduced by section 60)*

### FLOOD PROTECTION SCHEMES: PROCEDURE ETC.

#### *Notification*

- 1 (1) The local authority must give notice of a proposed flood protection scheme—
- (a) in at least one newspaper circulating in the local authority's area (which must, if practicable, be a local newspaper),
  - (b) where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
  - (c) in the Edinburgh Gazette,
  - (d) to every person known to the local authority—



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- (i) to have an interest in any land on which the proposed operations are to be carried out, or
    - (ii) whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations,
  - (e) where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons,
  - (f) to the following persons—
    - (i) SEPA,
    - (ii) Scottish Natural Heritage,
    - (iii) any local authority in whose area any of the proposed operations are to be carried out,
    - (iv) where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
    - (v) any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
    - (vi) any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
    - (vii) any other person specified by order by the Scottish Ministers, and
  - (g) in such other manner as the authority considers appropriate.
- (2) The local authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out.
- (3) A notice given under sub-paragraph (1) or (2) must—
  - (a) contain a general description of the effect of the proposed scheme including—
    - (i) a summary of the operations to be carried out, and
    - (ii) a summary of the benefits which the local authority considers are likely to be derived from carrying out the operations,
  - (b) state where and at what times the scheme documents can be inspected in pursuance of paragraph 2, and
  - (c) state that objections can be made about the proposed scheme to the local authority before the expiry of the period of 28 days beginning with the date notice is first published under sub-paragraph (1)(a).
- (4) Notices under sub-paragraph (1)(d) and (f) and sub-paragraph (2) must be given or, as the case may be, displayed no later than the date that notice is first published under sub-paragraph (1)(a).
- (5) In sub-paragraph 1(1)(e), “improvement order” and “authorised persons” have the meanings given in the Land Drainage (Scotland) Act 1958.

#### *Public inspection of scheme proposal*

- 2 (1) The local authority must make a copy of the scheme documents available for public inspection in a place in the authority’s area.

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- (2) Where the proposed operations are to be carried out in another local authority's area, the authority must also make the scheme documents available for public inspection in a place in the other authority's area.
- (3) The scheme documents must be available for inspection at all reasonable times during the period from the date notice is given under paragraph 1(1)(a) until the date a decision is made under paragraph 4(1), 7(4) or, as the case may be, 9(1).

### *Objections*

- 3 (1) Any person may object to a proposed flood protection scheme.
- (2) An objection is valid if it—
  - (a) is made in writing,
  - (b) sets out the name and address of the objector, and
  - (c) is made before the expiry of the period of 28 days beginning with the date notice of the scheme is first published under paragraph 1(1)(a).
- (3) An objection which is made by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) In this schedule, a “late objection” is an objection that would be a valid objection but for the fact that it was made after the end of the period specified in sub-paragraph (2) (c).

### *Decision where no valid objections received*

- 4 (1) Where, in relation to a proposed flood protection scheme, the local authority receives no valid objections the local authority must, after the expiry of the period referred to in paragraph 3(2)(c), either—
  - (a) confirm the proposed scheme, or
  - (b) reject the proposed scheme.
- (2) But if, before the local authority makes its decision under sub-paragraph (1), it receives a late objection it must treat that objection as a valid objection for the purposes of sub-paragraph (1) and paragraph 5 if satisfied that it was reasonable for the objector to make the objection after the deadline for doing so.

### *Preliminary decision following objections*

- 5 (1) Where, in relation to a proposed flood protection scheme, the local authority receives a valid objection, it must make a preliminary decision to—
  - (a) confirm the proposed scheme without modification,
  - (b) confirm the proposed scheme with modifications, or
  - (c) reject the proposed scheme.
- (2) Before making the decision under sub-paragraph (1), the local authority—
  - (a) must consider—
    - (i) any valid objections (unless withdrawn), and

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- (ii) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
  - (b) may also consider any other matters it considers appropriate.
- (3) The local authority must give notice of its decision under sub-paragraph (1) to every person who made an objection which it considered.
- (4) A person who made such an objection is referred to in this schedule as a “relevant objector”.
- (5) Where any relevant objector is a person to whom sub-paragraph (6) applies, the local authority must also give to the Scottish Ministers notice of its decision together with
  - (a) the scheme documents,
  - (b) a summary of the objections received by the local authority,
  - (c) copies of those objections, and
  - (d) copies of any other material considered by the local authority.
- (6) This sub-paragraph applies to any person—
  - (a) having any interest in any land on which the proposed operations are to be carried out,
  - (b) whose interest in any other land may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations, or
  - (c) referred to in paragraph 1(1)(e) or (f).

#### *Ministerial call-in*

- 6 (1) Where the Scottish Ministers receive a notice under paragraph 5(5) and any relevant objector is a local authority or a National Park authority, the Scottish Ministers must consider the proposed flood protection scheme.
- (2) Otherwise, the Scottish Ministers must, within 28 days of receipt, advise the local authority proposing the scheme either—
  - (a) that they will not consider the proposed scheme, or
  - (b) that they will consider the proposed scheme.
- (3) In making their decision under sub-paragraph (2), the Scottish Ministers must have regard to—
  - (a) the extent of the proposed operations,
  - (b) the likely reduction in flood risk that will result from the completion of those operations,
  - (c) the nature of the objections made,
  - (d) the likely effect on the objectors of the scheme being confirmed, and
  - (e) the extent to which the objections appear to raise issues of disputed fact.
- (4) The Scottish Ministers may extend the period mentioned in sub-paragraph (2) by up to 28 days if—
  - (a) they require more time to consider their decision under that sub-paragraph, and
  - (b) the period has not expired.

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- (5) The Scottish Ministers must notify the local authority proposing the scheme of any decision under sub-paragraph (4) to extend the period as soon as reasonably practicable after making that decision.
- (6) The local authority proposing the scheme must provide such further information as the Scottish Ministers request for the purpose of making their decision under sub-paragraph (2).

*Ministerial consideration of proposed scheme*

- 7
- (1) This paragraph applies where the Scottish Ministers are required under paragraph 6(1), or decide under paragraph 6(2), to consider the proposed scheme.
  - (2) The Scottish Ministers must cause a public local inquiry to be held unless all objections made by relevant objectors have been withdrawn.
  - (3) Subsections (2) to (9) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (which relate to the holding of local inquiries) apply in relation to a public local inquiry held under sub-paragraph (2) as they apply in relation to local inquiries held under that section.
  - (4) After considering the material received under paragraph 5(5) and the report of the person who held the public local inquiry (if one was held), the Scottish Ministers must—
    - (a) confirm the scheme without modification,
    - (b) confirm the scheme with modifications, or
    - (c) reject the scheme.
  - (5) The Scottish Ministers may not confirm a scheme with modifications unless they have—
    - (a) given notice of the proposed modification to the relevant objectors and anyone else the Scottish Ministers consider is affected by them at least 28 days before confirming the scheme,
    - (b) given those persons an opportunity to make objections about the proposed modifications, and
    - (c) considered any objections so made.
  - (6) The Scottish Ministers must notify the local authority of their decision as soon as reasonably practicable after making it.

*Local authority hearing to consider proposed scheme*

- 8
- (1) This paragraph applies where—
    - (a) the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5, and
    - (b) paragraph 7 does not apply.
  - (2) Before making a final decision under paragraph 9, the local authority—
    - (a) must, if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the proposed scheme,
    - (b) may, in any other case,
 hold a hearing to consider the proposed scheme.

- (3) The local authority must—
  - (a) invite to the hearing each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, and
  - (b) give notice of the hearing in the manner set out in paragraphs 1(1)(a) and (b).
- (4) An invitation under sub-paragraph (3)(a) must be given not less than 28 days before the proposed hearing.
- (5) Notices given under sub-paragraph (3)(b) must be published at least 21 days before the proposed hearing.

*Final decision following preliminary decision*

- 9
- (1) Unless paragraph 7 applies, the local authority must make a final decision in relation to the proposed scheme by—
    - (a) confirming the proposed scheme without modifications,
    - (b) confirming the proposed scheme with modifications, or
    - (c) rejecting the proposed scheme.
  - (2) Before making a final decision, a local authority must consider—
    - (a) any valid objections (unless withdrawn),
    - (b) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
    - (c) any representations made at a hearing held under paragraph 8.
  - (3) A local authority may not confirm a scheme with modifications unless it has—
    - (a) given notice of the proposed modifications to the relevant objectors and anyone else who the local authority considers is affected by them at least 28 days before confirming the scheme,
    - (b) given those persons an opportunity to make objections about the proposed modifications, and
    - (c) considered any objections so made.

*Notice of final decision*

- 10
- (1) Where—
    - (a) a local authority makes a decision under paragraph 4(1) or 9(1), or
    - (b) the Scottish Ministers make a decision under paragraph 7(4),the local authority must give notice of the decision in accordance with sub-paragraph (2).
  - (2) Notice must be given—
    - (a) to every person given notice in relation to the proposed scheme under paragraph 1(1)(d) to (f),
    - (b) to every relevant objector,
    - (c) to anyone else who was notified under paragraph 7(5)(a) or 9(3)(a), and
    - (d) where the decision is to confirm the proposed scheme (with or without modifications), in the manner set out in paragraph 1(1)(a) to (c).

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### *Commencement of scheme*

- 11 A scheme becomes operative 6 weeks after notice of its confirmation is published in a newspaper circulating in the local authority’s area under paragraph 10(2)(d).

### *Appeals*

- 12 (1) A decision to confirm a proposed scheme made by a local authority or the Scottish Ministers (other than a decision under paragraph 5(1)) may be appealed by any person affected by the confirmed scheme.
- (2) An appeal must be made before the expiry of the period of 6 weeks beginning with the day notice is published under paragraph 10(2)(d) in a newspaper circulating in the local authority’s area.
- (3) An appeal under this paragraph is to be made by way of summary application to the sheriff of an appropriate sheriffdom.
- (4) An “appropriate sheriffdom” is a sheriffdom in which some or all of the proposed operations are to be carried out.
- (5) The grounds on which a decision can be appealed are—
- (a) that the confirmed scheme breaches the restriction in subsection (3) of section 61 or does not comply with the requirement in subsection (4) of that section,
  - (b) that, in reaching the decision, the local authority or, as the case may be, the Scottish Ministers erred in law, or
  - (c) that there was a failure to comply with a procedural requirement contained in this schedule or regulations made under it.
- (6) The sheriff may, on the application of the appellant, suspend the operation of the scheme, or of any part of it, either generally or insofar as it affects any interest in land which the appellant has, pending determination of the appeal.
- (7) If the sheriff is satisfied that the interests of the applicant have been substantially prejudiced by—
- (a) the confirmed scheme breaching the restriction in subsection (3) of section 61 or not complying with the requirement in subsection (4) of that section,
  - (b) an error of law, or
  - (c) a failure to comply with a procedural requirement contained in this schedule or regulations made under it,
- then the sheriff may uphold the appeal and quash the scheme, or any part of it, either generally or insofar as it affects any interest in land which the appellant has.

### *Assessment of environmental effects*

- 13 The Scottish Ministers may by regulations make provision about the consideration to be given, before a flood protection scheme is confirmed under paragraph 4, 7 or 9, to the likely environmental effects of the operations proposed in the scheme.

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*Further provision*

- 14 (1) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with flood protection schemes.
- (2) Regulations may, in particular, make provision about—
- (a) the form and manner in which objections are to be made, including specifying circumstances in which objections are to be considered withdrawn,
  - (b) the procedure to be followed at a hearing held under paragraph 8,
  - (c) the form of any notice given under this schedule and the manner in which it is to be given.

SCHEDULE 3

*(introduced by section 96)*

MINOR AND CONSEQUENTIAL MODIFICATIONS

*Land Drainage (Scotland) Act 1958 (c. 24)*

- 1 (1) The Land Drainage (Scotland) Act 1958 is amended as follows.
- (2) In section 1(1), (2)(a) and (b) (application for improvement order and making of order by Secretary of State), the words “flooding or” are repealed.
- (3) In section 2(1)(c) (contents of improvement order), the words “flooding or” are repealed.
- (4) In the definition of “drainage works” in section 18(1) (interpretation), the words “flooding or” are repealed.

*Agriculture Act 1970 (c. 40)*

- 2 In the Agriculture Act 1970, sections 92 (provision of flood warning systems by SEPA in Scotland) and 94 (arrangements by SEPA with others relating to apparatus for flood warning systems in Scotland) are repealed.

*Civil Aviation Act 1982 (c. 16)*

- 3 In paragraph 4 of Schedule 2 to the Civil Aviation Act 1982 (Civil Aviation Authority deemed to be statutory undertaker), the entry relating to the Flood Prevention (Scotland) Act 1961 is repealed.

*Roads (Scotland) Act 1984 (c. 54)*

- 4 In section 32 of the Roads (Scotland) Act 1984 (contributions to drainage works and flood prevention operations), for “flood prevention operations under the Flood Prevention (Scotland) Act 1961” substitute “flood protection work under section 56 of the [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#)”.

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*Electricity Act 1989 (c. 29)*

- 5 Paragraph 1(1)(xi) of Schedule 16 to the Electricity Act 1989 (licence holder deemed to be statutory undertaker) is repealed.

*Local Government etc. (Scotland) Act 1994 (c. 39)*

- 6 Paragraph 56 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

*Environment Act 1995 (c. 25)*

- 7 Section 25 of the Environment Act 1995 (assessment by SEPA of flood risk and advice by SEPA to planning authorities about such risk) is repealed.

*Gas Act 1995 (c. 45)*

- 8 Paragraph 2(1)(ix) of Schedule 4 to the Gas Act 1995 (gas transporter deemed to be statutory undertaker) is repealed.

*Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11)*

- 9 Paragraph 8 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 is repealed.

*Flood Prevention and Land Drainage (Scotland) Act 1997 (c. 36)*

- 10 The Flood Prevention and Land Drainage (Scotland) Act 1997 is repealed.

*Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)*

- 11 Paragraph 24 of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

*Transport Act 2000 (c. 38)*

- 12 Paragraph 1(2)(h) of Schedule 5 to the Transport Act 2000 (licence holder deemed to be statutory undertaker) is repealed.

*Water Industry (Scotland) Act 2002 (asp 3)*

- 13 Paragraph 3 of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

*Water Environment and Water Services (Scotland) Act 2003 (asp 3)*

- 14 In section 2(4)(b)(i) of the Water Environment and Water Services (Scotland) Act 2003 (general duties under that Act), after “flood” insert “risk”.



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## SCHEDULE 4

(introduced by section 95(3))

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<i>Expression</i>	<i>Interpretation provision</i>
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