



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## 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
  - (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,
    - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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,
    - (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
  - (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 an 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
    - (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.