



# Flood Risk Management (Scotland) Act 2009 2009 asp 6

## 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—
- (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,

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*Status: This is the original version (as it was originally enacted).*

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- (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—
    - (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—
  - (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.