



# 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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- (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.

#### **Commencement Information**

- I1** S. 79(1)(2)(a)-(d)(3) in force at 26.11.2009 by [S.S.I. 2009/393, art. 2, Sch.](#)
- I2** S. 79(2)(e)-(g)(i) in force at 24.12.2010 by [S.S.I. 2010/401, art. 3\(d\)](#)
- I3** S. 79(2)(h) in force at 1.6.2011 by [S.S.I. 2010/401, art. 4\(b\)](#)

## **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

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- (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.

#### Commencement Information

**I4** S. 80 in force at 26.11.2009 by [S.S.I. 2009/393](#), art. 2, [Sch.](#)

### 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).

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- (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.

**Commencement Information**

**I5** S. 81 in force at 26.11.2009 by [S.S.I. 2009/393](#), [art. 2](#), [Sch.](#)

*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)).

**Commencement Information**

**I6** S. 82(1)(2)(f) in force at 26.11.2009 by [S.S.I. 2009/393](#), [art. 2](#), [Sch.](#)

**I7** S. 82(2)(a)-(e) in force at 24.12.2010 by [S.S.I. 2010/401](#), [art. 3\(e\)](#)

**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

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- (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.

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**Commencement Information**

**18** S. 83 in force at 26.11.2009 by [S.S.I. 2009/393](#), art. 2, [Sch.](#)

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