

2010 No. 426

ENVIRONMENTAL PROTECTION

FLOOD RISK MANAGEMENT

**The Flood Risk Management (Flood Protection Schemes,
Potentially Vulnerable Areas and Local Plan Districts)
(Scotland) Regulations 2010**

Made - - - - - *30th November 2010*
Laid before the Scottish Parliament *2nd December 2010*
Coming into force - - - *24th December 2010*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15 and 60(2)(b) of, and paragraphs 13 and 14 of schedule 2 to, the Flood Risk Management (Scotland) Act 2009^(a) and of all other powers enabling them to do so.

PART I

GENERAL

Citation and commencement

1. These Regulations—
- (a) may be cited as the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010; and
 - (b) come into force on 24th December 2010.

Interpretation

2. In these Regulations—
- “the Act” means the Flood Risk Management (Scotland) Act 2009;
 - “the consultative bodies” means—
 - (a) SEPA;
 - (b) Scottish Natural Heritage;
 - (c) Scottish Water;
 - (d) any planning authority whose district is likely to be affected by the proposed flood protection scheme (other than the local authority proposing the scheme); and

^(a) 2009 asp 6.

- (e) any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme;

“environmental statement” means a statement prepared in respect of a flood protection scheme pursuant to regulation 6; and

“screening opinion” means a written statement of opinion as to whether the proposed flood protection scheme in question is likely to have a significant effect on the environment.

PART II

ENVIRONMENTAL IMPACT ASSESSMENT

Restriction on confirmation of flood protection schemes

3. A proposed flood protection scheme may not be confirmed under paragraph 4, 7 or 9 of schedule 2 to the Act unless the local authority proposing the scheme and, where relevant, the Scottish Ministers, have complied with the relevant requirements of these Regulations in relation to that scheme.

Duty to consider environmental impact of a proposed flood protection scheme

4.—(1) Prior to—

- (a) giving notice of a proposed flood protection scheme under paragraph 1 of schedule 2 to the Act;
- (b) confirming a proposed flood protection scheme with modifications under paragraph 9(1)(b) of schedule 2 to the Act; and
- (c) submitting further details of scheme operations for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997(a),

a local authority must, at each stage, consider whether the scheme as proposed at that stage is likely to have a significant effect on the environment.

(2) In considering whether a scheme is likely to have a significant effect on the environment, it shall take account of the criteria in Schedule 1.

Screening opinions

5.—(1) Where, at any of the stages referred to in regulation 4(1), a local authority considers that a proposed flood protection scheme is not likely to have a significant effect on the environment, it shall request a screening opinion from each of the consultative bodies.

(2) A request for a screening opinion must be accompanied by—

- (a) a plan sufficient to identify the site which is the subject of the proposed scheme and any land that may be affected by it or over which access may be required;
- (b) a brief description of the nature and purpose of the proposed scheme and of its possible effects on the environment;
- (c) where it is proposed that the scheme be confirmed with modifications, a summary of the modifications; and
- (d) where further details of scheme operations are to be submitted for approval in compliance with a condition of deemed planning permission, a summary of the further details.

(a) 1997 c.8.

(3) A request for a screening opinion may be accompanied by such further information or representations as the local authority may wish to provide or make.

(4) Within three weeks of receiving a request for a screening opinion, a consultative body must, if it considers that it has not been provided with sufficient information to give an opinion, give notice to the local authority of the particular points on which it requires further information, and the local authority must provide such further information as it is reasonably able to provide.

(5) When a consultative body considers that it has sufficient information it must give a screening opinion within three weeks of whichever is the later of—

- (a) the date of receipt of the request for a screening opinion; and
- (b) the date by which it has received the further information referred to in paragraph (4).

(6) Where a consultative body concludes that the proposed scheme is likely to have a significant effect on the environment, it must provide with its screening opinion a written statement giving full reasons for its conclusion.

Environmental statements

6.—(1) Where—

- (a) a local authority considers under regulation 4 that a proposed flood protection scheme is likely to have a significant effect on the environment; or
- (b) a consultative body has concluded in a screening opinion under regulation 5 that a proposed flood protection scheme is likely to have a significant effect on the environment,

the local authority must prepare an environmental statement in accordance with paragraph (2).

(2) An environmental statement must identify, describe and assess the direct and indirect effects of the proposed scheme on the following factors—

- (a) human beings, flora and fauna;
- (b) soil, water, air, climate and the landscape;
- (c) material assets, including architectural and archaeological heritage; and
- (d) the interaction between the factors mentioned in sub-paragraphs (a) to (c).

(3) An environmental statement must include—

- (a) the information referred to in Part I of Schedule 2; and
- (b) such of the information referred to in Part II of Schedule 2 as is reasonably required to assess the environmental effects of the proposed scheme and which, having regard in particular to current knowledge and methods of assessment, the local authority can reasonably be required to compile.

(4) Where a local authority is obliged by paragraph (1) to prepare an environmental statement in respect of—

- (a) a flood protection scheme that it proposes to confirm with modifications under paragraph 9(1)(b) of schedule 2 to the Act; or
- (b) a flood protection scheme for which it has been requested to submit further details as a condition of deemed planning permission under section 57(2B) of the Town and Country Planning (Scotland) Act 1997,

and an environmental statement has already been prepared in respect of the scheme, it may comply with paragraph (1) by updating the existing environmental statement to take account of the modifications to, or further details of, the scheme.

Notification of a scheme with an environmental statement

- 7.—(1) This regulation applies where—
- (a) a local authority has prepared an environmental statement relating to a proposed flood protection scheme, and
 - (b) it has not previously given notice of the proposed scheme.
- (2) The local authority must—
- (a) give notice of the proposed scheme in accordance with paragraphs 1(1), (2) and (4) of schedule 2 to the Act; and
 - (b) make a copy of the environmental statement available for public inspection alongside the scheme documents that are made available in accordance with paragraph 2 of schedule 2 to the Act.
- (3) A notice under paragraph (2)(a) must, in addition to the information required by paragraph 1(3) of schedule 2 to the Act, include a statement—
- (a) that the scheme is likely to have a significant effect on the environment;
 - (b) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (c) describing the circumstances under the Act in which the Scottish Ministers may cause a public inquiry into the application; and
 - (d) setting out the nature of possible decisions that may be taken in relation to the scheme.
- (4) The local authority must supply a copy of the scheme documents and the environmental statement to the consultative bodies no later than the date that the notice referred to in paragraph (2)(a) is given.

Confirmation of modifications to a scheme with an environmental statement

- 8.—(1) This regulation applies where—
- (a) a local authority or the Scottish Ministers intend to confirm a proposed flood protection scheme with modifications under paragraph 7(4)(b) or 9(1)(b) of schedule 2 to the Act; and
 - (b) an environmental statement has been prepared in respect of the modified scheme.
- (2) The local authority must—
- (a) give notice of the modified scheme in accordance with paragraphs 1(1), (2) and (4) of schedule 2 to the Act; and
 - (b) make a copy of the scheme documents and the environmental statement available for public inspection in accordance with paragraph 2 of schedule 2 to the Act.
- (3) A notice under paragraph (2)(a) must—
- (a) comply with paragraph 1(3) of schedule 2 to the Act; and
 - (b) contain a statement—
 - (i) that the proposed scheme has been modified;
 - (ii) describing the modifications;
 - (iii) explaining the reasons for the modifications;
 - (iv) that the modified scheme is likely to have a significant effect on the environment;
 - (v) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (vi) describing the circumstances under the Act in which the Scottish Ministers may cause a public inquiry into the application; and

(vii) setting out the nature of possible decisions that may be taken in relation to the modified scheme.

(4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to a modified scheme as it applies to objections to a proposed flood protection scheme.

(5) An objection to a modified scheme 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 modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

(6) Neither the local authority nor the Scottish Ministers may confirm a modified scheme in respect of which an environmental statement has been prepared unless at least 28 days have elapsed since the date notice of the modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

Submission of further details of a scheme with an environmental statement

9.—(1) This regulation applies where—

- (a) in accordance with section 57(2B) of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers direct that planning permission shall be deemed to be granted in respect of operations to be carried out under a flood protection scheme;
- (b) the Scottish Ministers impose a condition in their direction requiring the local authority to submit further details of the scheme for approval (whether by the Scottish Ministers or a planning authority); and
- (c) an environmental statement has been prepared in respect of the further details of the scheme.

(2) Where this regulation applies, the local authority must—

- (a) give notice of the further details of the scheme in the manner and to the persons referred to in paragraph 1(1), (2) and (4) of schedule 2 to the Act; and
- (b) make a copy of the scheme documents and the environmental statement available for public inspection in accordance with paragraph 2 of schedule 2 to the Act.

(3) A notice under paragraph (2)(a) must—

- (a) comply with paragraph 1(3) of schedule 2 to the Act; and
- (b) contain a statement—
 - (i) that the scheme is likely to have a significant effect on the environment;
 - (ii) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (iii) setting out the nature of possible decisions that may be taken in relation to the scheme;
 - (iv) that further details of the scheme operations have been submitted for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997; and
 - (v) describing the further details so submitted.

(4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to the further details as it applies to objections to a proposed flood protection scheme.

(5) An objection to further details of a proposed flood protection scheme 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 further details of the scheme are first published under paragraph 1(1)(a) of schedule 2 to the Act.

Decisions in relation to flood protection schemes with environmental statements

10.—(1) Neither a local authority nor the Scottish Ministers may confirm—

- (a) a flood protection scheme in respect of which an environmental statement has been prepared; or
- (b) a modified flood protection scheme in respect of which an environmental statement has been prepared,

unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(2) Where—

- (a) it is a condition of a direction granting deemed planning permission for a proposed flood protection scheme that further details must be submitted for approval (whether to the Scottish Ministers or to a planning authority); and
- (b) an environmental statement has been prepared in respect of that scheme,

neither the Scottish Ministers nor a planning authority may approve such further details unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(3) The environmental information is—

- (a) any environmental statement or revised or updated environmental statement prepared in connection with the scheme;
- (b) any representation made by any of the persons referred to in paragraph 1(1)(f) of schedule 2 to the Act;
- (c) any representation made by any of the consultative bodies; and
- (d) any valid objection to the scheme (unless withdrawn).

PART III

SCHEME DOCUMENTS

Maps, plans and specifications

11.—(1) A proposed flood protection scheme must include a description, by reference to maps, plans and specifications, of—

- (a) the extent and scale of the scheme operations;
- (b) the land which the local authority considers may be affected by those operations; and
- (c) any land on which the local authority would require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations.

(2) The maps and plans referred to in paragraph (1) must be at an appropriate scale to enable interested persons to identify whether their land will be affected by the scheme operations.

(3) A proposed flood protection scheme must include an estimate of the cost of the scheme operations proposed to be carried out.

PART IV

FURTHER PROCEDURAL PROVISIONS

Objections

12.—(1) Any objection to a proposed flood protection scheme under paragraph 3 of schedule 2 to the Act must be accompanied by a statement of the reasons for the objection.

(2) Where an objector under paragraph 3 of schedule 2 to the Act has an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the proposed operations, or by any alteration in the flow of water caused by any of the operations, that person's objection must include—

- (a) details of the land in which the objector has an interest;
- (b) disclosure of the nature of the objector's interest in the land; and
- (c) details of which aspects of the proposed operations affect the objector.

Withdrawal of objections

13.—(1) Where a local authority confirms a proposed scheme with modifications under paragraph 5(1)(b) of schedule 2 to the Act it must, when giving notice of that decision in accordance with paragraph 5(3) of that schedule, offer any person who made an objection the opportunity to withdraw that objection in writing.

(2) Where all relevant objectors (within the meaning of paragraph 5(4) of Schedule 2 to the Act) withdraw their objections following notification, in accordance with paragraph (1), of a local authority's decision, the duty of the local authority to give the Scottish Ministers notice of its decision under paragraph 5(5) of schedule 2 to the Act does not apply.

(3) A withdrawal of 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.

Deemed planning permission

14.—(1) Where a local authority confirms a proposed scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, it must request that the Scottish Ministers direct that planning permission for any development described in the scheme is to be deemed to be granted.

(2) A request under paragraph (1) must be made to the Scottish Ministers in writing and must be accompanied by—

- (a) a brief description of the nature and purpose of the confirmed scheme;
- (b) a copy of the confirmed scheme;
- (c) a summary of the scheme documents; and
- (d) a summary of the environmental statement (if any).

(3) A request under paragraph (1) may be accompanied by any other material which the local authority considers relevant to the grant of deemed planning permission.

Service of notices

15.—(1) Any notice or other document to be sent, served or given under these Regulations or under schedule 2 to the Act may be sent, served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given;
- (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address;

- (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at their usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address;
 - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office; or
 - (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address.
- (2) The condition mentioned in paragraph (1)(e) is that the notice or other document must be—
- (a) capable of being accessed by the person mentioned in that provision;
 - (b) legible in all material respects; and
 - (c) in a form sufficiently permanent to be used for subsequent reference,
- and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

PART V

POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS

Publicity and consultation for documents identifying potentially vulnerable areas and local plan districts

16.—(1) SEPA must comply with paragraphs (2) to (6) before submitting to the Scottish Ministers—

- (a) a document identifying, in accordance with section 13 of the Act—
 - (i) areas in a flood risk management district for which it considers that significant flood risk exists or is likely to occur; and
 - (ii) areas around such an area for the purpose of preparing local flood risk management plans; or
 - (b) an updated document in accordance with section 14 of the Act.
- (2) When preparing a document referred to in paragraph (1), SEPA must consult—
- (a) every responsible authority which has functions exercisable in or in relation to the areas identified by the draft document;
 - (b) every category 1 responder (other than a responder which is a responsible authority) which has functions in relation to the areas identified by the draft document;
 - (c) Scottish Natural Heritage;
 - (d) where any part of the areas identified by the draft document has been designated as a National Park, the National Park authority for the National Park; and
 - (e) such other persons as SEPA considers appropriate.
- (3) SEPA must prepare a draft of the document referred to in paragraph (1) and publish details of the draft document—
- (a) in at least one newspaper circulating within the areas identified by the draft document; and
 - (b) in such other media as SEPA considers appropriate for the purpose of bringing the draft document to the attention of individuals or bodies likely to be affected or to have an interest.

- (4) The details published under paragraph (3) must include—
- (a) a summary of the nature and purpose of the draft document;
 - (b) the areas identified by the draft document;
 - (c) the location where a copy of the draft document may be inspected by the public;
 - (d) the period, being a period of not less than 2 months from the date on which the details are first published in accordance with paragraph (3)(a), within which representations about the draft document can be made to SEPA; and
 - (e) information about how representations may be made to SEPA.
- (5) SEPA must make a copy of the draft document referred to in paragraph (3) available to the public at all reasonable times during the period specified by SEPA in accordance with paragraph (4)(d).
- (6) In finalising the document referred to in paragraph (1) for submission to the Scottish Ministers, SEPA must take into account—
- (a) any views on the draft of the document expressed by those consulted under paragraph (2); and
 - (b) any representations made about the draft document which are received by SEPA before the expiry of the period specified under paragraph (4)(d).
- (7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation has effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

Submission of documents identifying potentially vulnerable areas and local plan districts

17.—(1) SEPA must prepare and submit the documents referred to in section 13 of the Act to the Scottish Ministers by 22nd September 2011.

(2) SEPA must review, update where appropriate, and submit to the Scottish Ministers any documents approved under section 13 of the Act by 22nd September 2018 and by the end of every period of six years thereafter.

(3) When submitting any document to the Scottish Ministers in accordance with section 13 or 14 of the Act, SEPA must also submit—

- (a) a summary of the actions taken by SEPA to publicise and consult on a draft of the document in accordance with regulation 16;
- (b) a summary of the views expressed by those consulted and the representations received (if any); and
- (c) a statement of any modifications made to the document in response to such views or representations.

(4) SEPA must make a copy of any document that it submits to the Scottish Ministers in accordance with section 13 or 14 of the Act, and the supporting documents referred to at paragraph (3) above, available to the public at all reasonable times.

(5) SEPA must—

- (a) publish details of the documents that it has submitted to the Scottish Ministers—
 - (i) in at least one newspaper circulating within the areas identified by the draft document; and
 - (ii) in such other media as SEPA considers appropriate for the purpose of bringing the document to the attention of individuals or bodies likely to be affected or to have an interest; and
- (b) give notice of the document that it has submitted to the Scottish Ministers to every local authority whose area falls wholly or partly within the areas identified by the document.

- (6) The details published under paragraph (5)(a) must include—
- (a) a summary of the nature and purpose of the document submitted to the Scottish Ministers;
 - (b) the areas identified by the document;
 - (c) details of any supporting documents submitted with the document; and
 - (d) the location where a copy of the document and any supporting documents may be inspected by the public.

(7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation shall have effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
30th November 2010

MATTERS TO BE TAKEN INTO ACCOUNT UNDER REGULATION 4(2)

1. Characteristics of scheme

The characteristics of the scheme must be considered, having regard, in particular, to—

- (a) the size of the scheme;
- (b) the cumulation with other schemes;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances; and
- (f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of scheme

The environmental sensitivity of geographical areas likely to be affected by the scheme must be considered, having regard, in particular, to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under legislation;
 - (vi) special protection areas designated pursuant to Council Directive 2009/147/EC on the conservation of wild birds^(a) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^(b);
 - (vii) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (viii) densely populated areas; and
 - (ix) landscapes of historical, cultural and archaeological significance.

3. Characteristics of the potential impact

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard, in particular, to—

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;

(a) O.J. L 20, 26.01.10, p.7.

(b) O.J. L 206, 22.7.1992, p.7.

- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 2

Regulation 6(3)

CONTENT OF AN ENVIRONMENTAL STATEMENT

PART I

1. A description of the scheme comprising information on the site, design and size of the scheme.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the scheme is likely to have on the environment.
4. The main alternatives studied by the local authority and the main reasons for its choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

PART II

1. A description of the scheme, including in particular—
 - (a) a description of the physical characteristics of the whole scheme and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, the nature and quality of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, etc.) resulting from the operation of the proposed scheme.
2. A description of the aspects of the environment likely to be significantly affected by the scheme, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
3. A description of the likely significant effects of the scheme on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the scheme, resulting from—
 - (a) the existence of the scheme;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and the description by the local authority of the forecasting methods used to assess the effects on the environment.
4. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.
6. An indication of any difficulties (such as technical deficiencies or lack of know-how) encountered by the local authority in compiling the required information.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to flood protection schemes, potentially vulnerable areas, and local plan districts under the Flood Risk Management (Scotland) Act 2009 (“the Act”).

A flood protection scheme is a scheme prepared by a local authority in accordance with section 60 of the Act for the management of flood risk within the authority’s area.

Potentially vulnerable areas are areas identified by the Scottish Environment Protection Agency (“SEPA”) in accordance with section 13 of the Act where SEPA considers that significant flood risk exists or is likely to occur.

Local Plan Districts are areas around potentially vulnerable areas that SEPA must identify in accordance with section 13 of the Act for the purpose of preparing local flood risk management plans.

The Regulations comprise five parts and two schedules.

Part I – General

This part defines various terms used in the Regulations.

Part II – Environmental Impact Assessment

Part II makes provision about the assessment of the environmental effects of flood protection schemes.

Regulation 4 requires local authorities, at key stages of the confirmation process, to consider whether a scheme is likely to have a significant effect on the environment. In the event that a local authority considers that a scheme is not likely to have a significant effect on the environment, the local authority is required by Regulation 5 to obtain a second or “screening” opinion from certain specified bodies.

If the local authority or one of the bodies that has given a screening opinion thinks that the scheme is likely to have a significant effect on the environment, regulation 6 requires the local authority to prepare an environmental statement assessing the scheme’s environmental effects.

Regulations 7 and 8 impose certain additional notification requirements where an environmental statement has been prepared that are intended to bring the environmental sensitivity of the scheme to the attention of interested parties and specified public bodies. Where the Scottish Ministers direct that planning permission is deemed to be granted for a flood protection scheme that is likely to have a significant effect on the environment, but require a local authority to submit further details of the scheme for approval, regulation 9 also imposes notification requirements at that stage.

Regulation 10 requires local authorities and, where applicable, the Scottish Ministers to take the environmental statement (and any representations or objections made in response to it) into account when deciding whether or not to confirm a flood protection scheme or a modification of it. Similar requirements apply to the Scottish Ministers and planning authorities when they are approving further details of a scheme that have been submitted in compliance with a condition of deemed planning permission.

Part III – Scheme Documents

This part of the Regulations specifies the information that flood protection schemes must, as a minimum, include by way of maps, plans and specifications.

Part IV – Further Procedural Provisions

Part IV of the Regulations makes further procedural provision regarding flood protection schemes.

Regulation 12 requires that objections to a proposed flood protection scheme, in addition to meeting the requirements of paragraph 3 of schedule 2 to the Act, must be accompanied by a statement of reasons. It also requires objectors to disclose the nature of their interest (if any) in land affected by operations to be carried out under the scheme.

Regulation 13 provides for objectors to be given the opportunity to withdraw their objections following modification of a scheme.

By virtue of section 65 of the Act (which amends the Town and Country Planning (Scotland) Act 1997), where a local authority confirms a flood protection scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, the Scottish Ministers must direct that planning permission be granted for scheme operations that would constitute development under the 1997 Act. Regulation 14 requires local authorities to request such a direction from the Scottish Ministers and makes provision about the form of such a request.

Regulation 15 makes provision about methods of service of notices or other documents under these Regulations or schedule 2 to the Act.

Part V – Potentially Vulnerable Areas and Local Plan Districts

Section 13 of the Act requires SEPA to prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area for which it considers that significant flood risk exists or is likely to occur (a “potentially vulnerable area”). The document must also identify areas around those areas for the purpose of preparing local flood risk management plans “(local plan districts)”. Part V of the Regulations sets out consultation and publicity requirements for this document and requires that a copy be made available to the public.

Regulation 16 obliges SEPA to take account of consultee views and any representations before submitting the document to the Scottish Ministers.

Regulation 17 sets deadlines for submission by SEPA of the document and updates of it, and requires that SEPA provide information about the consultation and publication process. It requires SEPA to publish details of the document that it submits to the Scottish Ministers, so as to bring it to the attention of those persons likely to be affected by it.

Schedule 1

Schedule 1 lists the matters to be taken into account by local authorities when considering under regulation 4 whether a flood protection scheme is likely to have a significant effect on the environment.

Schedule 2

Schedule 2 lists the required content of an environmental statement prepared by a local authority under regulation 6.

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ENVIRONMENTAL PROTECTION

FLOOD RISK MANAGEMENT

The Flood Risk Management (Flood Protection Schemes,
Potentially Vulnerable Areas and Local Plan Districts)
(Scotland) Regulations 2010