

## **EXECUTIVE NOTE**

### **THE FLOOD RISK MANAGEMENT (FLOOD PROTECTION SCHEMES, POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS) (SCOTLAND) REGULATIONS 2010 SSI 2010/426**

The above instrument was made 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 (“the 2009 Act”). The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

The 2009 Act establishes a framework for new statutory procedures which local authorities must apply when considering a proposed flood protection scheme. This instrument makes more detailed provision for particular aspects of those procedures.

The purpose of the instrument is to:

- establish the procedures for assessing the environmental impact of flood protection schemes,
- prescribe the documents that must form part of a flood protection scheme,
- make further provision about the procedures to be followed for the approval of flood protection schemes,
- make provision for consultation upon, and Ministerial approval of, documents identifying potentially vulnerable areas and local flood risk management districts.

#### **Provisions**

Council Directive 85/337/EEC (“the EIA Directive”) requires that, before consent for certain public and private projects is given, an assessment is made of their effects on the environment. Flood protection works are one such project. Prior to the 2009 Act, the necessary environmental assessment for flood prevention works was carried out as part of the planning permission application process. Under the 2009 Act, however, confirmation of flood protection scheme carries deemed planning consent. New statutory procedures accordingly require to be put in place to ensure compliance with the EIA Directive.

The instrument ensures that the environmental impact of a proposed flood protection scheme is considered at the appropriate junctures (including after modification of a scheme), that an environmental statement is prepared for schemes that are likely to have a significant effect on the environment, and that the public are notified of the existence of any environmental statement and have the opportunity to make representations. The instrument requires the competent authority to consider any such representations before making decisions to confirm a scheme.

The instrument specifies the maps, plans, and specifications that a proposed flood protection scheme must, as a minimum, include, to ensure that the public will have sufficient

information to be able to ascertain the extent to which their land may be affected by a proposed scheme.

The instrument also requires that any objection to a proposed flood protection scheme be accompanied by a statement of the reasons for the objection. This is to ensure that the local authority has sufficient information about the substance of any objections and can properly identify “relevant objectors”, who have certain rights under the Act.

The instrument allows for the withdrawal of objections following confirmation of a scheme with modifications, so that, if the modifications address all objectors’ concerns to their satisfaction, the Scottish Ministers need not be notified. Provision is made for the procedure to be followed when a local authority asks the Scottish Ministers to make a direction about deemed planning permission for a confirmed scheme, and provision is also made about the service of notices to give certainty about what constitutes proper service. These procedures refine the provisions that existed under the Flood Prevention (Scotland) Act 1961 with the aim of ensuring the procedures can continue to be followed by local authorities and the public in a fair and consistent manner across Scotland.

The instrument stipulates the dates of submission of documents identifying potentially vulnerable areas (areas where SEPA considers that significant flood risk exists or is likely to occur) and local plan districts (areas around potentially vulnerable areas identified for the purpose of preparing local flood risk management plans) to be prepared by SEPA under section 13 of the Act. It requires SEPA to consult widely and publish draft documents and take into account any views submitted before finalising the documents for submission to Ministers. These procedural requirements are intended to ensure that there is adequate publicity for and consultation about these documents so that anyone wishing to make representations may do so and can be sure that their views will be considered.

## **Consultation**

Although a full consultation was not required by the Flood Risk Management (Scotland) Act 2009, informal consultation was carried out with SEPA and with experienced flood management practitioners through the local authority SCOTS (Society of Chief Officers of Transportation in Scotland) group.

## **Impact Assessment**

There are no equality impact assessment issues arising in connection with this instrument.

## **Financial Effects**

The Regulations will not have any direct impact on businesses, charities or the voluntary sector. There could be minor indirect costs incurred by businesses through engagement in the flood protection scheme approval process. However, such engagement would be on a voluntary basis, and costs would be proportionate to the degree of engagement sought by individuals or organisations.

The main impacts would be on those local authorities promoting flood protection schemes, and on SEPA. The impacts on the local authorities are likely to be minor, as the provisions are broadly similar to the existing requirements for the promotion of schemes under the Flood

Prevention (Scotland) Act 1961. The impacts on SEPA are minor and will only apply every 6 years when the documents are reviewed.

A Regulatory Impact Assessment (RIA) was prepared in connection with the Flood Risk Management (Scotland) Act 2009, under which this instrument is made. A Better Regulation Impact Assessment is not required in connection with this instrument on proportionality grounds.

Scottish Government Environmental Quality Directorate