

Partial Business and Regulatory Impact Assessment

Title of Proposal

Flood Risk Management (Scotland) Act 2009 – Designation of Responsible Authorities Order

Purpose and intended effect

- **Background**

The Flood Risk Management (Scotland) Act 2009 (“the FRM Act”) was enacted in 2009. The FRM Act sets out a number of general duties on Scottish Ministers, SEPA and responsible authorities. This includes a duty to exercise their flood risk related functions with a view to reducing overall flood risk and to exercise their functions under Part 3 of the Act so as to secure compliance with the EC Floods Directive.

In addition the Act requires Scottish Ministers, SEPA and responsible authorities, when exercising their functions in pursuit of these overarching objectives, to act with a view to achieving the objectives set out in the flood risk management plans and to have regard to the social, environmental and economic impact of exercising those functions.

The Act also requires the Scottish Ministers, SEPA and responsible authorities when exercising their functions in pursuit of these overarching duties to so far as is compliant with the purposes of the function concerned, act in the way best calculated to manage flood risk in a sustainable way, promote sustainable flood risk management, act with a view to raising public awareness of flood risk and act in the way best calculated to contribute to the achievement of sustainable development.

Finally, there is a requirement on Scottish Ministers, SEPA, and responsible authorities to adopt an integrated approach by cooperating with each other as far as is practicable so as to coordinate the exercise of their respective functions.

Local authorities and Scottish Water have already been designated as responsible authorities under the FRM Act by the Act itself. Section 5 of the FRM Act enables Scottish Ministers to designate further public bodies or office holders as responsible authorities by order.

Section 1(4) specifies the functions under the FRM Act which are “flood risk related functions” and enables Scottish Ministers to designate further functions of SEPA , local authorities and other responsible authorities as “flood risk related functions”.

- **Objective**

The objective of the proposed order is to ensure that public bodies and office holders that could (and already do) make a significant contribution to managing flood risk are designated as ‘responsible authorities’ under the FRM Act.

Designation as a responsible authority will ensure that the body or office holder is fully involved in the flood risk management planning process (which already includes Scottish Ministers, SEPA, Scottish Water and the local authorities).

Designation will also place an obligation on the responsible authority to carry out its flood risk related functions, with a view to reducing overall flood risk. Flood risk related functions include those functions listed in Part 3 of the FRM Act, and any other functions designated by order in future by Scottish Ministers.

Those bodies identified for designation will already be contributing to reducing flood risk and reinforcing the Scottish Government's commitment to reduce flood risk in Scotland. The proposed order will help to clarify the Scottish Government's intention for how these organisations should be involved in flood risk management in the future.

- **Rationale for Government intervention**

The FRM Act transposes the EC Floods Directive into Scots Law and sets out the framework for a new regime for managing flood risk in Scotland with a clear focus on sustainable flood risk management. The designation order is required to ensure that responsible authorities exercise their functions in a way that secures compliance with the Directive and prevents them from carrying out their functions in a way that is contrary to the objectives of the Directive. It will place a legal duty on the public bodies to exercise their flood risk related functions with a view to reducing overall flood risk.

The designation order will assist the achievement of the National Performance Framework outcomes:

1. We live in well-designed, sustainable places where we are able to access the amenities and services we need. – by reducing the risk of flooding to homes and businesses
2. We reduce the local and global environmental impact of our consumption and production. – by taking the risk of flooding into consideration when for example constructing homes, businesses, schools and hospitals etc or homing vulnerable people in houses in flood risk areas so that they are resilient to the affects of flooding or located in areas with a lower risk of flooding.
3. Our public services are high quality, continually improving, efficient and responsive to local people's needs. – by ensuring public bodies execute their functions with a view to reducing flood risk and take into account the impact of their decisions on people affected by the risk of flooding.

Consultation

- **Within Government**

Consultation has been undertaken internally with Legal Directorate, planning colleagues, water industry colleagues, transport and other policy areas which may be affected by the designation order. This has enabled the appropriate public bodies that should be considered for designation as responsible authorities under the Order to be identified and set out in the consultation.

- **Public Consultation**

Informal consultation with the existing and potential responsible authorities themselves has been undertaken..

The formal consultation paper is designed to obtain the views of those with an interest in flood risk management. We have invited a number of organisations, practitioners, professionals and academics with a direct interest in flood management for their views. In addition, anyone who wished to comment on the proposals have been given an opportunity to respond as this is a public consultation.

- **Business**

We are seeking to identify those bodies who should be designated as responsible authorities under the FRM Act. At this stage there is no impact on business however we are committed to engaging with business if it becomes clear they may be affected further down the line.

Options

Option 1 – don't designate

Option 2 – designate National Park Authorities and Forestry Commission Scotland as responsible authorities

Option 3 – as Option 2 and including British Waterways Board as a responsible authority.

- **Sectors and groups affected**

The following people may be affected by the proposals;

- SEPA
- Local authorities
- Scottish Water
- Scottish Ministers
- National Park Authorities
- Forestry Commission Scotland
- British Waterways Board

Option 1 – don't designate

- **Benefits**

The benefits of not designating any new responsible authorities will mean that it might be easier for the SEPA, local authorities and Scottish Water to agree the contents of flood risk management plans, as fewer organisations will be involved.

- **Costs**

Without designation, other public bodies and office holders in Scotland who could contribute to managing flooding will have much less involvement in development of flood risk management plans. Therefore, decisions about actions to manage

flooding may be taken without the involvement of all relevant parties, and without full appreciation of impacts.

Option 1 could hinder the aim of providing a joined up approach, and reduce the ease of managing flooding in a sustainable way.

Option 2 – designate National Park Authorities and Forestry Commission Scotland as responsible authorities

- **Benefits**

There is some evidence to suggest that forestry can play a significant role in managing flood risk. In particular, the Forest Research Monogram 4 “Woodlands for water” reviews the evidence and concludes that there appears to be significant scope for using woodland to help reduce flood risk.

Given their respective interests in forestry issues, the designation of the national Park Authorities and the Forestry Commission Scotland will help to ensure that all the necessary organisations can work in partnership to help reduce flood risk.

- **Costs**

By designating the National Park Authorities and Forestry Commission Scotland as responsible authorities under the FRM Act, these organisations would need to contribute to the flood risk management planning process and be actively involved in associated meetings and partnerships to agree the content of plans.

The estimated recurring costs due to the designation of the National Park Authorities and Forestry Commissioners could be between £132,000 and £247,000 per annum in total.

Option 3- designate British Waterways Board as a responsible authority

- **Benefits**

The British Waterways Board currently contribute to surface water management as it has the power to enter into agreements to accept surface water from new developments. By including the British Waterways Board to those organisations included in Option 2, we ensure that all organisations with a role in flood risk management are active contributors to the flood risk management planning process.

- **Costs**

The British Waterways Board would need to contribute to the flood risk management planning process and be actively involved in associated meetings and partnership-work to agree the content of plans. Whilst we recognise and encourage the role of British Waterways Board in surface water management (for example, in the involvement in surface water management plans), it is not clear that the duties resulting from designation would be proportionate to the benefits, at the more strategic level of flood risk management planning.

It is estimated that the recurring costs due to the designation of the British Waterways Board could be up to £60,000 per annum.

Scottish Firms Impact Test

The order is not expected to have any impact on the Scottish Firms and businesses. It only affects those public bodies identified as designated authorities and their office holders. We have therefore not completed any face-to-face discussions with business but are committed to engaging with business further down the line if it becomes clear they may be affected.

- **Competition Assessment**

These proposals do not have an impact business therefore there are no impacts on competition at this stage. We will fully investigate Competition issues if it becomes clear further down the line that business may be affected.

- **Test run of business forms**

There are no new business forms proposed.

Legal Aid Impact Test

These proposals have no impact on the legal aid fund at this stage.

Enforcement, sanctions and monitoring

The Flood Risk Management (Scotland) Act 2009 will be delivered through the development and implementation of flood risk management plans. Local authorities must publish a review of the plans and report on progress on implementation, implementing the plans.

The plans will also be delivered through the exercise of flood risk related functions (which are the subject of continuing discussion at this stage). Once the range of designated functions are agreed, any bodies aggrieved that the responsible public bodies have not complied with legislation could bring about legal action against that body.

Implementation and delivery plan

The Flood Risk Management (Scotland) Act 2009 will be delivered through a process of flood risk management planning. The first cycle of the flood risk management plans are due for publication in 2015/2016, and these plans will set out the timescale for implementing different measures.

- **Post-implementation review**

Ongoing monitoring and a formal review of the Act within 10 years will take place to ensure the legislation remains fit for purpose.

Summary and recommendation

We recommend that Option 2 is agreed which will see the most appropriate organisations designated and enable them to work together to mitigate the risk of flood risk.

Whilst the British Waterways Board already contribute to flood risk management in their day to day activity, we do not propose designating the British Waterways Board at this time. However, we recognise that the Board could, in the future, play a greater role in the flood risk management planning process and we propose to revisit the issue of designation once SEPA has assessed the contribution of artificial structures to managing flood risk.

- **Summary costs and benefits table**

	Benefit	Cost
Option 1	Business as usual. Simpler to reach consensus as fewer responsible authorities involved in decision making process.	£0
Option 2	Ensures all the necessary organisations can work together to reduce flood risk.	£132,000 - £247,000
Option 3	Incorporates functions relating to asset management and surface water management which might impact on flood risk.	£60,000

Declaration and publication

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

2nd March 2012

Stewart Stevenson, Minister for Environment and Climate Change

Scottish Government Contact point:

Bob Bridges
1-H (North)
Victoria Quay
Edinburgh
EH6 6QQ

Tel: 0131 244 0159
Flooding@scotland.gsi.gov.uk