

POLICY NOTE

THE FLOOD RISK MANAGEMENT (FLOOD PROTECTION SCHEMES, POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS) (SCOTLAND) AMENDMENT REGULATIONS 2017

S.S.I. 2017/112

1. The above instrument was made in exercise of the powers conferred by section 60(2)(b) and paragraphs 13 and 14 of schedule 2 of the Flood Risk Management (Scotland) Act 2009 and section 2(2) of the European Communities Act 1972, and all other powers enabling it to be done. The instrument is subject to negative procedure.

Policy Objectives

2. The purpose of these Regulations is to amend the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (“the 2010 Regulations”) so as to further implement Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) as amended by Directive 2014/52/EU (“the 2014 Directive”) in so far as it applies in relation to flood protection schemes.
3. In broad terms, the EIA Directive requires an assessment of the environmental effects of any project which is likely to have significant effects on the environment. Any such project cannot go ahead without the consent of a competent authority, and the authority must take the assessment into account before deciding whether to give such consent.
4. Section 60 of the Flood Risk Management (Scotland) Act 2009 (“the Act”) makes provision in relation to flood protection schemes. These are schemes prepared by local authorities for the management of flood risk. Any such scheme must, among other things, contain a description of the operations the local authority proposes to carry out. Schedule 2 of the Act makes further provision about the making of these schemes, including provision requiring these schemes to be confirmed (with or without modifications) by the local authority or, in some cases, the Scottish Ministers. On confirmation, any such scheme will be deemed to be granted development consent.
5. These Regulations supplement the provisions in section 60 and schedule 2 of the Act to ensure that, where any such scheme contains a description of operations which constitute a project in Annex I or II of the Directive, the requirements of the Directive are met.
6. In particular, the 2010 Regulations (as amended by these Regulations) ensure that where the operations described in a flood protection scheme constitute a project listed in Annex I or II of the EIA Directive, the local authority which prepared the scheme must, before giving notice of the scheme with a view to confirming it, determine whether the scheme requires to be subject to environmental impact assessment.
7. If the local authority determines that no such assessment is required, then second opinions must be sought from certain consultative bodies. Where the local authority or any such body decides that an assessment is required, then an environmental impact

assessment must be carried (as per the EIA Directive), and this assessment must be taken into account before any decision is made to confirm the scheme.

Consultation

8. A full consultation was carried out on proposals for implementing the EIA Directive (as amended by the 2014 Directive) for projects relating to, for example, agriculture, energy, forestry, land drainage, marine, planning and transport. The consultation ran between 9 August 2016 and 31 October 2016. The provisions in Part II of the 2010 Regulations (as amended by these Regulations) which further implement the EIA Directive are broadly equivalent to those proposed for the transport-related projects.
9. Although a full consultation was not required by the Flood Risk Management (Scotland) Act 2009, engagement was undertaken with SEPA and with local authority experienced flood risk management practitioners.

Impact Assessments

10. There are not considered to be any equality impact issues arising from these Regulations.

Financial Effects

11. No business and regulatory impact assessment was prepared for these Regulations as they will not have any direct impact on businesses, charities or the voluntary sector. The main impacts will be on those local authorities promoting flood protection schemes and on SEPA. Part II of the 2010 Regulations previously imposed obligations on local authorities, SEPA and other public bodies, to comply with the EIA Directive, prior to its amendment by the 2014 Directive. The impacts on local authorities as a result of the amendments made by these Regulations are likely to be minor as the provisions are broadly similar to the obligations previously imposed by the 2010 Regulations.

Scottish Government
April 2017