

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 5 – Sepa: Other Flood Risk Management Functions

Section 72 – Advice to planning authorities and others as to flood risk

203. This section requires SEPA to provide advice to planning authorities and National Park authorities as to flood risk. Flood risk is defined in section 3 as the combination of the probability of a flood and of the potential adverse consequences. This duty replaces SEPA's duty to advise planning authorities under section 25(2) of the Environment Act 1995, which is repealed by paragraph 7 of schedule 3.
204. Subsection (1), like section 25(2) of the 1995 Act, requires SEPA to provide advice on flood risk in a planning authority's district when requested by the authority. Section 1 of the Town and Country Planning (Scotland) Act 1997 provides that local authorities are planning authorities and that a planning authority's district is the local authority area. Where any part of the district/local authority area is a National Park, it is possible for a National Park authority¹ to be made the planning authority for the Park for the purposes of the planning acts² – in that case SEPA must, when requested by the National Park authority, give it advice as to flood risk in the National Park.
205. Subsection (2) requires SEPA to provide advice to a National Park authority about their park where they are not made planning authorities but are to be treated as planning authorities for the National Park for certain purposes³. This is a new requirement.
206. Subsection (3), like section 25(2) of the 1995 Act, requires the advice SEPA provides to be based on information SEPA holds. The advice must take into account, but is not limited to, information produced under Part 3 of the Act (flood risk assessments, flood hazard and flood risk maps, flood risk management plans and local flood risk management plans), and any information provided to SEPA by the planning authority or National Park authority.

¹ National Parks and National Park authorities are established under the National Parks (Scotland) Act 2000 - an order under section 10(1)(a) of that Act may provide for a National Park authority to be the planning authority for the National Park.

² The Town and Country Planning (Scotland) Act 1997; the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Planning (Hazardous Substances) (Scotland) Act 1997; the Planning (Consequential Provisions) (Scotland) Act 1997.

³ A designation order under section 10(1)(b) of the 2000 Act can provide that a National Park authority is to be treated as the planning authority for the National Park for such purposes of Part II (development plans) of the Town and Country Planning (Scotland) Act 1997, as are specified in the order.