

# **FLOOD RISK MANAGEMENT (SCOTLAND) ACT**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 6 – Powers of Entry and Compensation**

##### ***Section 79 – Powers of entry***

219. This section creates powers for SEPA and local authorities to enter land for the purposes of carrying out some of their functions under the Act. It also gives local authorities power to enter land for the purposes of maintaining flood prevention schemes confirmed under the 1961 Act. The power to enter land includes a power to enter buildings because “land” is defined in the Interpretation Order<sup>1</sup> to include buildings and other structures.
220. Subsection (1) allows any person authorised by SEPA to enter any land for the purposes of carrying out some of SEPA’s flood risk management functions under Part 3 of the Act (sections 9, 10, 13, 14, 19, 20, 21, 24, 27 and 33). This allows SEPA to survey land in order to check the accuracy of information which it is using to prepare flood risk management documents. The section also allows SEPA to enter land in order to assess flood risk (section 73) and to provide, alter and maintain flood warning systems (section 76).
221. Subsection (2) allows any person authorised by a local authority to enter any land for the purpose of preparing maps of bodies of water under section 17 or assessing those bodies of water under section 18. Where the local authority is a lead authority within the meaning of section 34 they may also enter land for the purpose of preparing a local flood risk management plan under section 34 or a report under section 37 or 38. Subsection (2) also allows them to enter land on which scheme operations, temporary works, emergency flood protection work, maintenance operations or clearance and repair works are to be carried out under Part 4 of the Act. Land may also be entered for the purposes of determining whether any function conferred by or under that Part is to be exercised.

##### ***Section 80 – Warrants authorising entry***

222. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 79 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).
223. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant

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<sup>1</sup> The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379)

*These notes relate to the Flood Risk Management (Scotland)  
Act (asp 6) which received Royal Assent on 16 June 2009*

(either SEPA or the local authority) must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 81(3).

224. Subsection (5) makes it an offence to prevent or obstruct a person from exercising a power of entry under a warrant unless the person obstructing or preventing access has a reasonable excuse for doing so. The standard scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. Level 3 is currently £1,000.

***Section 81 – Powers of entry: supplementary***

225. This section supplements sections 79 and 80. Subsection (1) provides that a right to enter land under section 79 (with or without a warrant under section 80) includes a right to enter adjacent land and a right to survey or examine the land.
226. Subsection (2) entitles those entering land under section 79 (with or without a warrant) to take other persons, materials and equipment onto the land. This includes vehicles. The subsection also enables them to do anything else reasonably required to fulfil the purpose of entering the land.
227. Subsection (3) sets notice periods which must be complied with except in the urgent cases defined in subsection (5). A seven day notice period applies where the power under section 79 is to be exercised without a warrant in order to enter a house or to take heavy equipment onto land (subsection (3)(a)). “Heavy equipment” and “house” are defined in subsection (7).
228. A twenty four hour notice period applies where the power under section 79 is to be exercised without a warrant, without entering a house and without taking heavy equipment onto the land (subsection (3)(b)). A twenty four hour notice period also applies to all cases where the power under section 79 is to be exercised with a warrant (subsection (3)(b)).
229. Subsection (4) requires that, except in the urgent cases set out in subsection (5), people entering land under section 79 (with or without a warrant) may only do so at a reasonable time.
230. In all cases, subsection (6) requires those entering land to be able to produce written evidence that they have been authorised to enter.

***Section 82 – Compensation***

231. Subsection (1) obliges SEPA to compensate anyone sustaining damage as a result of SEPA using its powers to install, provide, alter or maintain flood warning systems or its powers to enter land. “Damage” is defined in section 83(1).
232. Subsection (2) obliges local authorities to compensate anyone who has sustained damage as a result of scheme operations, subsequent maintenance by or on behalf of the local authority, clearance and repair works, the variation or revocation of an improvement order or the exercise of a right of entry.

***Section 83 – Compensation: supplementary***

233. Subsection (1) defines damage as the depreciation of the value of a person’s interest in land or the disturbance of a person’s enjoyment of land.
234. Subsection (2) places certain limits on the right to compensation and requires notice of any claim to be given to SEPA or the local authority within a specified period. It should be read with subsection (3).
235. Subsection (4) provides that any disputes over compensation under section 82 are to be determined by the Lands Tribunal for Scotland.