

SCHEDULE 1

(introduced by section 27(5)(a))

MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

PART 1

MATTERS TO BE INCLUDED IN EVERY PLAN

- 1 A description of—
 - (a) the objectives set by SEPA for the management of flood risks for the potentially vulnerable areas,
 - (b) the measures identified for achieving those objectives, and
 - (c) the priority to be given to implementing each measure including an indication of whether the measure is to be implemented—
 - (i) before the plan is next reviewed under section 33,
 - (ii) in the 6 years following that review, or
 - (iii) after the end of the period mentioned in sub-paragraph (ii).
- 2 The conclusions of the flood risk assessment as required by section 9 in the form of a map of the flood risk management district delineating the potentially vulnerable areas which are the subject of the flood risk management plan.
- 3 Flood hazard maps and flood risk maps prepared under section 21 and the conclusions that can be drawn from those maps.
- 4 A summary of flood-related measures taken under—
 - (a) Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment,
 - (b) Council Directive [96/82/EC](#) on the control of major-accident hazards involving dangerous substances,
 - (c) Directive [2001/42/EC](#) of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment,
 - (d) any other Community instrument which SEPA considers relevant to flood risk management, and
 - (e) the 2003 Act.
- 5 A description of—
 - (a) in relation to each measure included in the plan under paragraph 1(b), the reasons for identifying the measure, and
 - (b) in relation to any alteration (including enhancement) or restoration of a natural feature or characteristic in the flood risk management district which—
 - (i) is identified in an assessment under section 20,
 - (ii) could contribute to the management of flood risk, and
 - (iii) is not to be carried out by a measure included in the plan under paragraph 1(b),the reasons why no such measure has been identified.
- 6 A description of—

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- (a) how the priority given to implementing each measure under paragraph 1(c) was determined, and
 - (b) the way in which progress in implementing the plan will be monitored.
- 7 In relation to measures to be implemented before the plan is next reviewed under section 33, an estimate of the cost of implementing the measures.
- 8 A summary of—
- (a) the steps taken under subsections (2) to (5) of section 30 in relation to the plan,
 - (b) any other consultation measures taken in connection with the preparation of the plan (including those taken in connection with the flood risk assessment mentioned in paragraph 2 and the maps mentioned in paragraph 3), and
 - (c) changes made to the plan in light of the views and representations received on it.
- 9 Information as to SEPA.
- 10 A description of the coordination process with the arrangements made under Part 1 of the 2003 Act including, in particular, anything done in pursuance of section 48.

PART 2

COMPONENTS OF THE SUBSEQUENT UPDATE OF FLOOD RISK MANAGEMENT PLANS

- 11 A summary of any changes which have been made as compared to the previous version of the plan.
- 12 An assessment of the progress made towards the achievement of the objectives included in the plan under paragraph 1(a).
- 13 A summary of any measures included in the previous plan under paragraph 1(b) which were not implemented, with reasons for the non-implementation.
- 14 A description of any other measures implemented since the publication of the previous version of the plan which SEPA considers have contributed to the achievement of the objectives included in the plan under paragraph 1(a).

SCHEDULE 2

(introduced by section 60)

FLOOD PROTECTION SCHEMES: PROCEDURE ETC.

Notification

- 1 (1) The local authority must give notice of a proposed flood protection scheme—
- (a) in at least one newspaper circulating in the local authority's area (which must, if practicable, be a local newspaper),
 - (b) where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
 - (c) in the Edinburgh Gazette,
 - (d) to every person known to the local authority—

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- (i) to have an interest in any land on which the proposed operations are to be carried out, or
 - (ii) whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations,
 - (e) where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons,
 - (f) to the following persons—
 - (i) SEPA,
 - (ii) Scottish Natural Heritage,
 - (iii) any local authority in whose area any of the proposed operations are to be carried out,
 - (iv) where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
 - (v) any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
 - (vi) any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
 - (vii) any other person specified by order by the Scottish Ministers, and
 - (g) in such other manner as the authority considers appropriate.
- (2) The local authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out.
- (3) A notice given under sub-paragraph (1) or (2) must—
 - (a) contain a general description of the effect of the proposed scheme including—
 - (i) a summary of the operations to be carried out, and
 - (ii) a summary of the benefits which the local authority considers are likely to be derived from carrying out the operations,
 - (b) state where and at what times the scheme documents can be inspected in pursuance of paragraph 2, and
 - (c) state that objections can be made about the proposed scheme to the local authority before the expiry of the period of 28 days beginning with the date notice is first published under sub-paragraph (1)(a).
- (4) Notices under sub-paragraph (1)(d) and (f) and sub-paragraph (2) must be given or, as the case may be, displayed no later than the date that notice is first published under sub-paragraph (1)(a).
- (5) In sub-paragraph 1(1)(e), “improvement order” and “authorised persons” have the meanings given in the Land Drainage (Scotland) Act 1958.

Public inspection of scheme proposal

- 2 (1) The local authority must make a copy of the scheme documents available for public inspection in a place in the authority’s area.

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- (2) Where the proposed operations are to be carried out in another local authority's area, the authority must also make the scheme documents available for public inspection in a place in the other authority's area.
- (3) The scheme documents must be available for inspection at all reasonable times during the period from the date notice is given under paragraph 1(1)(a) until the date a decision is made under paragraph 4(1), 7(4) or, as the case may be, 9(1).

Objections

- 3 (1) Any person may object to a proposed flood protection scheme.
- (2) An objection is valid if it—
 - (a) is made in writing,
 - (b) sets out the name and address of the objector, and
 - (c) is made before the expiry of the period of 28 days beginning with the date notice of the scheme is first published under paragraph 1(1)(a).
- (3) An objection which is made by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) In this schedule, a “late objection” is an objection that would be a valid objection but for the fact that it was made after the end of the period specified in sub-paragraph (2) (c).

Decision where no valid objections received

- 4 (1) Where, in relation to a proposed flood protection scheme, the local authority receives no valid objections the local authority must, after the expiry of the period referred to in paragraph 3(2)(c), either—
 - (a) confirm the proposed scheme, or
 - (b) reject the proposed scheme.
- (2) But if, before the local authority makes its decision under sub-paragraph (1), it receives a late objection it must treat that objection as a valid objection for the purposes of sub-paragraph (1) and paragraph 5 if satisfied that it was reasonable for the objector to make the objection after the deadline for doing so.

Preliminary decision following objections

- 5 (1) Where, in relation to a proposed flood protection scheme, the local authority receives a valid objection, it must make a preliminary decision to—
 - (a) confirm the proposed scheme without modification,
 - (b) confirm the proposed scheme with modifications, or
 - (c) reject the proposed scheme.
- (2) Before making the decision under sub-paragraph (1), the local authority—
 - (a) must consider—
 - (i) any valid objections (unless withdrawn), and

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- (ii) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
 - (b) may also consider any other matters it considers appropriate.
- (3) The local authority must give notice of its decision under sub-paragraph (1) to every person who made an objection which it considered.
- (4) A person who made such an objection is referred to in this schedule as a “relevant objector”.
- (5) Where any relevant objector is a person to whom sub-paragraph (6) applies, the local authority must also give to the Scottish Ministers notice of its decision together with—
 - (a) the scheme documents,
 - (b) a summary of the objections received by the local authority,
 - (c) copies of those objections, and
 - (d) copies of any other material considered by the local authority.
- (6) This sub-paragraph applies to any person—
 - (a) having any interest in any land on which the proposed operations are to be carried out,
 - (b) whose interest in any other land may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations, or
 - (c) referred to in paragraph 1(1)(e) or (f).

Ministerial call-in

- 6 (1) Where the Scottish Ministers receive a notice under paragraph 5(5) and any relevant objector is a local authority or a National Park authority, the Scottish Ministers must consider the proposed flood protection scheme.
- (2) Otherwise, the Scottish Ministers must, within 28 days of receipt, advise the local authority proposing the scheme either—
 - (a) that they will not consider the proposed scheme, or
 - (b) that they will consider the proposed scheme.
- (3) In making their decision under sub-paragraph (2), the Scottish Ministers must have regard to—
 - (a) the extent of the proposed operations,
 - (b) the likely reduction in flood risk that will result from the completion of those operations,
 - (c) the nature of the objections made,
 - (d) the likely effect on the objectors of the scheme being confirmed, and
 - (e) the extent to which the objections appear to raise issues of disputed fact.
- (4) The Scottish Ministers may extend the period mentioned in sub-paragraph (2) by up to 28 days if—
 - (a) they require more time to consider their decision under that sub-paragraph, and
 - (b) the period has not expired.

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- (5) The Scottish Ministers must notify the local authority proposing the scheme of any decision under sub-paragraph (4) to extend the period as soon as reasonably practicable after making that decision.
- (6) The local authority proposing the scheme must provide such further information as the Scottish Ministers request for the purpose of making their decision under sub-paragraph (2).

Ministerial consideration of proposed scheme

- 7
- (1) This paragraph applies where the Scottish Ministers are required under paragraph 6(1), or decide under paragraph 6(2), to consider the proposed scheme.
 - (2) The Scottish Ministers must cause a public local inquiry to be held unless all objections made by relevant objectors have been withdrawn.
 - (3) Subsections (2) to (9) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (which relate to the holding of local inquiries) apply in relation to a public local inquiry held under sub-paragraph (2) as they apply in relation to local inquiries held under that section.
 - (4) After considering the material received under paragraph 5(5) and the report of the person who held the public local inquiry (if one was held), the Scottish Ministers must—
 - (a) confirm the scheme without modification,
 - (b) confirm the scheme with modifications, or
 - (c) reject the scheme.
 - (5) The Scottish Ministers may not confirm a scheme with modifications unless they have—
 - (a) given notice of the proposed modification to the relevant objectors and anyone else the Scottish Ministers consider is affected by them at least 28 days before confirming the scheme,
 - (b) given those persons an opportunity to make objections about the proposed modifications, and
 - (c) considered any objections so made.
 - (6) The Scottish Ministers must notify the local authority of their decision as soon as reasonably practicable after making it.

Local authority hearing to consider proposed scheme

- 8
- (1) This paragraph applies where—
 - (a) the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5, and
 - (b) paragraph 7 does not apply.
 - (2) Before making a final decision under paragraph 9, the local authority—
 - (a) must, if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the proposed scheme,
 - (b) may, in any other case,
 hold a hearing to consider the proposed scheme.

- (3) The local authority must—
 - (a) invite to the hearing each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, and
 - (b) give notice of the hearing in the manner set out in paragraphs 1(1)(a) and (b).
- (4) An invitation under sub-paragraph (3)(a) must be given not less than 28 days before the proposed hearing.
- (5) Notices given under sub-paragraph (3)(b) must be published at least 21 days before the proposed hearing.

Final decision following preliminary decision

- 9
- (1) Unless paragraph 7 applies, the local authority must make a final decision in relation to the proposed scheme by—
 - (a) confirming the proposed scheme without modifications,
 - (b) confirming the proposed scheme with modifications, or
 - (c) rejecting the proposed scheme.
 - (2) Before making a final decision, a local authority must consider—
 - (a) any valid objections (unless withdrawn),
 - (b) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
 - (c) any representations made at a hearing held under paragraph 8.
 - (3) A local authority may not confirm a scheme with modifications unless it has—
 - (a) given notice of the proposed modifications to the relevant objectors and anyone else who the local authority considers is affected by them at least 28 days before confirming the scheme,
 - (b) given those persons an opportunity to make objections about the proposed modifications, and
 - (c) considered any objections so made.

Notice of final decision

- 10
- (1) Where—
 - (a) a local authority makes a decision under paragraph 4(1) or 9(1), or
 - (b) the Scottish Ministers make a decision under paragraph 7(4),the local authority must give notice of the decision in accordance with sub-paragraph (2).
 - (2) Notice must be given—
 - (a) to every person given notice in relation to the proposed scheme under paragraph 1(1)(d) to (f),
 - (b) to every relevant objector,
 - (c) to anyone else who was notified under paragraph 7(5)(a) or 9(3)(a), and
 - (d) where the decision is to confirm the proposed scheme (with or without modifications), in the manner set out in paragraph 1(1)(a) to (c).

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Commencement of scheme

- 11 A scheme becomes operative 6 weeks after notice of its confirmation is published in a newspaper circulating in the local authority's area under paragraph 10(2)(d).

Appeals

- 12 (1) A decision to confirm a proposed scheme made by a local authority or the Scottish Ministers (other than a decision under paragraph 5(1)) may be appealed by any person affected by the confirmed scheme.
- (2) An appeal must be made before the expiry of the period of 6 weeks beginning with the day notice is published under paragraph 10(2)(d) in a newspaper circulating in the local authority's area.
- (3) An appeal under this paragraph is to be made by way of summary application to the sheriff of an appropriate sheriffdom.
- (4) An "appropriate sheriffdom" is a sheriffdom in which some or all of the proposed operations are to be carried out.
- (5) The grounds on which a decision can be appealed are—
- (a) that the confirmed scheme breaches the restriction in subsection (3) of section 61 or does not comply with the requirement in subsection (4) of that section,
 - (b) that, in reaching the decision, the local authority or, as the case may be, the Scottish Ministers erred in law, or
 - (c) that there was a failure to comply with a procedural requirement contained in this schedule or regulations made under it.
- (6) The sheriff may, on the application of the appellant, suspend the operation of the scheme, or of any part of it, either generally or insofar as it affects any interest in land which the appellant has, pending determination of the appeal.
- (7) If the sheriff is satisfied that the interests of the applicant have been substantially prejudiced by—
- (a) the confirmed scheme breaching the restriction in subsection (3) of section 61 or not complying with the requirement in subsection (4) of that section,
 - (b) an error of law, or
 - (c) a failure to comply with a procedural requirement contained in this schedule or regulations made under it,
- then the sheriff may uphold the appeal and quash the scheme, or any part of it, either generally or insofar as it affects any interest in land which the appellant has.

Assessment of environmental effects

- 13 The Scottish Ministers may by regulations make provision about the consideration to be given, before a flood protection scheme is confirmed under paragraph 4, 7 or 9, to the likely environmental effects of the operations proposed in the scheme.

Further provision

- 14 (1) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with flood protection schemes.
- (2) Regulations may, in particular, make provision about—
- (a) the form and manner in which objections are to be made, including specifying circumstances in which objections are to be considered withdrawn,
 - (b) the procedure to be followed at a hearing held under paragraph 8,
 - (c) the form of any notice given under this schedule and the manner in which it is to be given.

SCHEDULE 3

(introduced by section 96)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Land Drainage (Scotland) Act 1958 (c. 24)

- 1 (1) The Land Drainage (Scotland) Act 1958 is amended as follows.
- (2) In section 1(1), (2)(a) and (b) (application for improvement order and making of order by Secretary of State), the words “flooding or” are repealed.
- (3) In section 2(1)(c) (contents of improvement order), the words “flooding or” are repealed.
- (4) In the definition of “drainage works” in section 18(1) (interpretation), the words “flooding or” are repealed.

Agriculture Act 1970 (c. 40)

- 2 In the Agriculture Act 1970, sections 92 (provision of flood warning systems by SEPA in Scotland) and 94 (arrangements by SEPA with others relating to apparatus for flood warning systems in Scotland) are repealed.

Civil Aviation Act 1982 (c. 16)

- 3 In paragraph 4 of Schedule 2 to the Civil Aviation Act 1982 (Civil Aviation Authority deemed to be statutory undertaker), the entry relating to the Flood Prevention (Scotland) Act 1961 is repealed.

Roads (Scotland) Act 1984 (c. 54)

- 4 In section 32 of the Roads (Scotland) Act 1984 (contributions to drainage works and flood prevention operations), for “flood prevention operations under the Flood Prevention (Scotland) Act 1961” substitute “flood protection work under section 56 of the [Flood Risk Management \(Scotland\) Act 2009 \(asp 6\)](#)”.

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Electricity Act 1989 (c. 29)

- 5 Paragraph 1(1)(xi) of Schedule 16 to the Electricity Act 1989 (licence holder deemed to be statutory undertaker) is repealed.

Local Government etc. (Scotland) Act 1994 (c. 39)

- 6 Paragraph 56 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

Environment Act 1995 (c. 25)

- 7 Section 25 of the Environment Act 1995 (assessment by SEPA of flood risk and advice by SEPA to planning authorities about such risk) is repealed.

Gas Act 1995 (c. 45)

- 8 Paragraph 2(1)(ix) of Schedule 4 to the Gas Act 1995 (gas transporter deemed to be statutory undertaker) is repealed.

Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11)

- 9 Paragraph 8 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 is repealed.

Flood Prevention and Land Drainage (Scotland) Act 1997 (c. 36)

- 10 The Flood Prevention and Land Drainage (Scotland) Act 1997 is repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

- 11 Paragraph 24 of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

Transport Act 2000 (c. 38)

- 12 Paragraph 1(2)(h) of Schedule 5 to the Transport Act 2000 (licence holder deemed to be statutory undertaker) is repealed.

Water Industry (Scotland) Act 2002 (asp 3)

- 13 Paragraph 3 of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

Water Environment and Water Services (Scotland) Act 2003 (asp 3)

- 14 In section 2(4)(b)(i) of the Water Environment and Water Services (Scotland) Act 2003 (general duties under that Act), after “flood” insert “risk”.

Status: This is the original version (as it was originally enacted).

SCHEDULE 4

(introduced by section 95(3))

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| <i>Expression</i> | <i>Interpretation provision</i> |
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