

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

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 3 – Flood Risk Assessment, Maps and Plans**

##### ***Section 7 – General purpose of Part 3***

27. *Section 7* sets out the purpose of Part 3. Article 17.1 of the Directive requires legislation implementing the Directive to contain an express reference to it. This section achieves that and in a way that is consistent with the reference in section 1(1) of the Water Environment and Water Services (Scotland) Act 2003 (“the 2003 Act”) to the Directive that Act implements.

##### ***Section 8 – Flood risk management districts***

28. This section provides for the creation of flood risk management districts. These districts will provide the geographical basis for the flood risk assessments, flood maps and flood risk management plans to be produced under the rest of Part 3. The districts will either be the same as the river basin districts designated under the 2003 Act, or they will be other areas as designated by the Scottish Ministers. The districts designated under the 2003 Act were identified for the purposes of protecting the water environment and preparing river basin management plans.
29. If the Scottish Ministers choose to designate a flood risk management district, that district must comprise one or more coastal areas or river basins and it must be identified by reference to a map prepared for the purpose of the order and laid before the Scottish Parliament.
30. Subsection (4) requires SEPA to make copies of the order defining the flood risk management district and the maps of the district available for public inspection. Where a flood risk management district is a river basin district, what must be made available for public inspection are the order under the 2003 Act designating it as a river basin district and the related map.
31. The provisions in this section enable the Scottish Ministers to implement Article 3.2(b) of the Directive.

##### ***Section 9 – SEPA to prepare flood risk assessments***

32. This section requires SEPA to prepare a flood risk assessment for each flood risk management district identified under section 8. It implements Article 4 of the Directive. The deadline for preparation of these flood risk assessments is 22<sup>nd</sup> December 2011, which is the deadline set by the Directive.
33. A flood risk assessment is to be based on available and readily derivable information (subsection (3)). Information on the maps that must be produced to accompany this work is set out in subsection (4)(a).

34. Subsection (4)(b) requires each flood risk assessment to include a description of any past floods that had a significant adverse impact where similar future floods are still probable and would have a significant adverse impact. The description must also include information on the extent and conveyance route of flood waters.
35. Subsection (4)(c) requires each flood risk assessment to include a description of past floods which would have significant adverse consequences if similar floods were to occur now. The past floods mentioned under this paragraph may not have had significant adverse impacts or there may be no information available about their impacts. This allows consideration to be given to things like changes in land use, for example, a flood in the past may have had little impact if the area affected was undeveloped; however, if that area is now developed, it may be that a similar flood event could have adverse consequences.
36. Each flood risk assessment also must include an assessment of the potential adverse consequences of future floods. Subsection (4)(d) contains a list of issues which should be taken into account when carrying out this assessment. This is based on the list in Article 4(2)(d) of the Directive and also includes reference to natural features and characteristics of any river basin or coastal area.
37. Subsection (5) allows SEPA to include other information in a flood risk assessment where it considers appropriate.

#### ***Section 10 – Flood risk assessment: review***

38. This section requires SEPA to review and, where appropriate, update the flood risk assessment by 22<sup>nd</sup> December 2018, or by an earlier date specified by the Scottish Ministers, and then every 6 years thereafter. The 22<sup>nd</sup> December deadline and the requirement to review every 6 years come from Article 14 of the Directive. Subsection (2) provides that a revised flood risk assessment must comply with the same requirements as an original flood risk assessment prepared under section 9.

#### ***Section 11 – Flood risk assessments: regulations***

39. **Section 11** enables the Scottish Ministers to make more detailed provision, by regulations, as to the preparation, review or updating of flood risk assessments, including the methods and procedures to be followed.

#### ***Section 12 – Flood risk assessments: availability for public inspection***

40. **Section 12** requires SEPA to make copies of the current flood risk assessment available for public inspection. This section should be read with sections 53 and 54, which require the arrangements for making copies available to be publicised and set detailed requirements publishing this and other matters.

#### ***Section 13 – SEPA to identify potentially vulnerable areas and local plan districts***

41. This section provides for the identification of areas within flood risk management districts where significant flood risks exist or are likely to occur. These areas are referred to as “potentially vulnerable areas”. Flood risk and flood hazard maps must then be produced for such areas under section 21 and flood risk management plans produced under section 27 will set objectives to manage flood risks for the areas.
42. The section also provides for the identification of geographic areas around potentially vulnerable areas for the purpose of preparing local flood risk management plans under section 34. These areas are referred to as “local plan districts” and they must consist of one or more river basins, sub-basins or coastal areas. “River basin” has the same meaning as in the 2003 Act and “sub-basin” is defined in section 55(1). The Scottish Ministers may specify the boundaries of coastal areas under section 55(2).

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Act (asp 6) which received Royal Assent on 16 June 2009*

43. Subsections (1) to (3) require SEPA to prepare and submit to the Scottish Ministers a document identifying potentially vulnerable areas and local plan districts. Subsection (4) sets out the information on which SEPA must base its identification of potentially vulnerable areas and local plan districts. It also requires the areas to be identified with reference to maps.
44. The document must be submitted by SEPA by a date set by the Scottish Ministers under subsection (2), and after any consultation required by regulations made under section 15.
45. The Scottish Ministers may then approve the document (as submitted or with modifications) or reject it and direct SEPA to resubmit it. Subsections (6) to (8) set out arrangements in connection with the consideration, approval or rejection of the document by the Scottish Ministers.
46. This section enables the Scottish Ministers to implement Article 5 of the Directive.

***Section 14 – Potentially vulnerable areas and local plan districts: review***

47. This section requires SEPA to review and, where appropriate, update the document which identifies potentially vulnerable areas and local plan districts. This review must be carried out by a date specified by the Scottish Ministers and then every 6 years or such lesser period as the Scottish Ministers direct. Subsections (2) to (4) provide that an updated document must comply with the same requirements and that it will be subject to the same approval process as the original document prepared under section 13.

***Section 15 – Potentially vulnerable areas and local plan districts: regulations***

48. **Section 15** enables the Scottish Ministers to make more detailed provision, by regulations, as to the form and content of documents about potentially vulnerable areas and local plan districts, consultation by SEPA in relation to the preparation of such documents, arrangements for making documents available to the public, the process to be followed in preparing, reviewing or updating documents and any other matters in relation to these documents.

***Section 16 – Scottish Water to assess flood risk from sewerage systems***

49. This section requires Scottish Water to prepare assessments about sewerage flooding for the potentially vulnerable areas identified under section 13 and for other areas identified by SEPA. SEPA must consult Scottish Water and other responsible authorities before identifying other areas for which assessments are required.
50. Each assessment must identify where floods are likely to originate from sewerage systems in the area and must estimate the volume of sewage which is likely to be released in the event of such floods. It must also include any other information specified by the Scottish Ministers in regulations. Before making such regulations, the Scottish Ministers must consult SEPA, Scottish Water and any responsible authority they consider appropriate.
51. Subsections (4) to (6) provide for SEPA to determine the form of the assessment so as to ensure that the data can be integrated with other information on flood risk. SEPA must consult Scottish Water and other responsible authorities before making this determination.
52. Subsections (2) and (8) enable the Scottish Ministers to set the dates by which assessments must be prepared, reviewed, and, where appropriate, updated. Assessments must then be reviewed and, where appropriate, updated every 6 years.

***Section 17 - Local authorities to prepare maps of bodies of water etc***

53. This section requires local authorities to map relevant bodies of water and sustainable urban drainage systems in their areas. Subsection (2) provides for local authorities to choose the scale of these maps and it also enables the Scottish Ministers to specify the form and content of maps in regulations.
54. “Relevant body of water” is defined in subsection (5). The definition includes most bodies of surface water as well as underground stretches of watercourses. It excludes stretches of coastal water, sewers and drains which drain into sewers, and watercourses which are wholly underground. Section 55 applies the definitions of “body of surface water” and “watercourse” from the 2003 Act. “Sustainable urban drainage system” is defined in section 59(1) of the Sewerage (Scotland) Act 1968.
55. The first maps must be prepared by a date set by the Scottish Ministers. They must then be reviewed by local authorities from time to time and updated where appropriate.
56. Subsection (4) provides that the maps must be made available for public inspection. This requirement should be read with section 53, which contains detailed provisions about making documents publicly available.

***Section 18 – Local authorities to assess bodies of water***

57. This section requires local authorities to assess relevant bodies of water (other than canals) in their areas, in order to find out whether any of them are in a condition which gives rise to a risk of flooding. They must carry out this assessment from time to time, or when directed to do so by Scottish Ministers.
58. Where a local authority identifies that there is a risk of flooding and it considers that clearance and repair works would reduce that risk it must prepare a schedule of those works. This requirement should be read with section 59, which imposes a duty on local authorities to carry out works described in schedules of clearance and repair works.
59. Subsection (2) defines “clearance and repair works”. Subsection (3) requires schedules of clearance and repair works to indicate when the next assessment is to take place. It also enables the Scottish Ministers to specify the form and contents of schedules in regulations. Subsection (4) requires schedules of clearance and repair works to be made available for public inspection. This requirement should be read with section 53.
60. Subsection (5), as read with subsection (6), requires a local authority to warn another local authority where a body of water in the area of the first authority is likely to flood land in the area of the second, unless it appears that the second authority is already aware of that risk.

***Section 19 - SEPA to prepare maps of artificial structures and natural features***

61. This section requires SEPA to prepare maps showing artificial structures and natural features that, if removed, would significantly increase the risk of flooding from a body of surface water. Section 55 applies the definition of “body of surface water” from the 2003 Act, which includes rivers, canals, lochs and the sea. SEPA is responsible for determining whether the removal of a structure or feature could significantly increase flood risk but in doing so it must consult relevant local authorities.
62. Maps have to show whether structures or features were constructed by local authorities under the 1961 Act or under Part 4 of the Act. They must also include other information specified by the Scottish Ministers in regulations. Maps must be prepared at the appropriate scale (as defined in section 55) and in a form specified in regulations made by the Scottish Ministers.

63. The first maps must be prepared by a date set by the Scottish Ministers and must then be reviewed by SEPA from time to time and updated where appropriate. They must also be made available for public inspection. This requirement should be read with section 53.

***Section 20 – SEPA to assess possible contribution of alteration etc. of natural features and characteristics***

64. This section requires SEPA to assess whether alteration or restoration of natural features and characteristics of any river basin or coastal area could contribute to managing flood risks within a flood risk management district. Subsection (2) contains examples of “natural features and characteristics” for the purposes of the Act.
65. When carrying out this assessment, subsection (4) requires SEPA to consider the flood risk assessment prepared under section 9, any relevant flood hazard or flood risk maps prepared under section 21 and any relevant flood risk management plan prepared under section 27. Subsection (4)(b) requires that the assessments refer to maps which show where the alteration (including enhancement) or the restoration of natural features and characteristics could contribute to the management of flood risk in the district. Subsection (5) requires this map to be prepared at a scale which SEPA considers will assist in the identification of measures for inclusion in flood risk management plans (under section 27(4)(b)) and the inclusion of information in local flood risk management plans.
66. The first assessment must be carried out by 22<sup>nd</sup> December 2013, or by another date set by the Scottish Ministers. The assessment must be reviewed and, where appropriate, updated by a date set by the Scottish Ministers and then every six years after that. This assessment is not required by the Directive but the section allows the review dates to be set so as to coincide with the other work required under Part 3 to assess and manage flood risks. Current assessments and maps are to be made available for public inspection; sections 53 and 54 again apply in relation to the detail of doing that.

***Section 21 – SEPA to prepare flood hazard maps and flood risk maps***

67. This section requires SEPA to prepare maps showing flood hazards and flood risk for all potentially vulnerable areas in a flood risk management district. Flood hazard maps will show the areas which could be flooded and information about the flood water, while flood risk maps will show the potential adverse consequences of such floods. Together with sections 22 and 23, this section implements Article 6 of the Directive. Section 22 sets out what flood hazard maps must show and section 23 does the same for flood risk maps.
68. The first maps must be prepared by 22<sup>nd</sup> December 2013, which is the date set by Article 6 of the Directive.

***Section 22 – Flood hazard maps***

69. This section sets out what flood hazard maps must show and what they can exclude. The section also allows information to be presented in a single map or through multiple maps.
70. Subsection (1) sets out what must be shown in flood hazard maps and implements Article 6.3 and 6.4 of the Directive. Paragraph (a) requires maps to show areas which could be flooded by low, medium and high probability floods and subsection (9) enables the Scottish Ministers to define those probabilities in subordinate legislation in terms of a return period (expressed as a number of years) or an annual probability of occurrence (expressed as a percentage). Paragraph (b) requires maps to show flood extent, depths or level and water flow for each of type of flood covered by paragraph (a). These elements largely duplicate Article 6.4 of the Directive. The Scottish Ministers may specify further elements to be shown in regulations.



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71. Subsections (2) to (6) allow information about certain kinds of floods to be excluded in different circumstances. These optional exclusions are permitted under Articles 2 (floods from sewerage systems), 6.3 (high probability floods), 6.6 (floods in coastal areas) and 6.7 (floods from groundwater sources) of the Directive.
72. Subsection (2) allows information about high probability floods to be omitted from flood hazard maps where SEPA considers that the floods concerned would be unlikely to have significant adverse consequences for the area which could be flooded. Areas which may be unlikely to experience significant adverse consequences as a result of flooding may be unpopulated areas which are regularly flooded and where the land affected is of low agricultural value.
73. Subsections (3)(a) and (4) allow information about high and medium probability coastal floods to be omitted from flood hazard maps where SEPA considers that the coastal area concerned is adequately protected from such floods. SEPA can still choose to map high and medium probability coastal floods even if it considers that appropriate flood protection is in place. It can also be directed to do so by the Scottish Ministers. These provisions do not apply to low probability coastal floods so these must be mapped.
74. Subsections (3)(b) and (5) allow information about high and medium probability flooding from groundwater to be omitted from flood hazard maps if SEPA considers it appropriate to do so. SEPA can also be directed by the Scottish Ministers to include information about groundwater flooding. These provisions do not apply to low probability groundwater floods so these must be mapped.
75. Subsections (3)(c) and (6) allow information about floods from sewerage systems to be omitted from flood hazard maps. This information may be included where SEPA considers that it is practicable to map such floods and it must be included if the Scottish Ministers direct SEPA to include it. The opt-out applies to those floods from a sewerage system which otherwise would have to be mapped. Floods that are caused by a sewer being overloaded by higher than usual rainfall are covered by the Act.
76. Where information is omitted from a flood hazard map under subsections (2) to (6), subsection (7) requires SEPA to include a statement in the map, explaining that information has been omitted. This general statement will therefore set out what mapping opt-outs have been exercised and what information is not shown on any particular map.
77. Subsection (8) requires the Scottish Ministers to consult SEPA before giving a direction under subsections (4)(b), (5)(b) or (6)(b) to include information about coastal flooding, flooding from groundwater or flooding from sewerage systems in flood hazard maps.

***Section 23 – Flood risk maps***

78. This section requires flood risk maps to show the potential adverse consequences of the floods shown in flood hazard maps. As with flood hazard maps, information on flood risk may be presented in a single map or through multiple maps.
79. Flood risk maps must show the potential adverse consequences of floods by reference to various matters listed in subsection (2). These matters include those set out in Article 6.5 of the Directive. The list of matters is not exhaustive, and the Scottish Ministers may make subordinate legislation under subsection (2)(f) requiring SEPA to show additional information in flood risk maps.
80. Subsection (3) allows SEPA to decide whether to include additional information in flood risk maps. This can be information on floods containing transported sediments and debris, other sources of pollution or any other available and readily derivable information. Floods that are caused by a sewer being overloaded by higher than usual rainfall are covered by the Act.

***Section 24 – Flood hazard maps and flood risk maps: review***

81. This section requires SEPA to review and, where appropriate, update the flood hazard and risk maps by 22<sup>nd</sup> December 2019 and every 6 years thereafter. The 22<sup>nd</sup> December deadline and the requirement to review every 6 years come from Article 14 of the Directive.
82. Subsection (2) requires SEPA to have regard to the likely impact of climate change on the occurrence of floods when undertaking a review, as required by Article 14.4 of the Directive.
83. Subsection (3) requires updated maps to comply with the same content requirements as the original maps prepared under section 21.

***Section 25 – Flood hazard maps and flood risk maps: availability for public inspection***

84. Section 25 requires SEPA to make copies of the current flood hazard and flood risk maps available for public inspection. This section should be read with sections 53 and 54 which contain detailed requirements for making documents available for inspection and publicising matters.

***Section 26 – Flood hazard maps and flood risk maps: regulations***

85. Section 26 enables the Scottish Ministers to make more detailed provision, by regulations, as to the preparation, review or updating of flood hazard and flood risk maps, including the criteria applied, and the methods and procedures to be followed. Section 94 contains detailed provisions about how regulations are to be made.

***Section 27 – SEPA to prepare flood risk management plans***

86. This section requires SEPA to prepare and submit to the Scottish Ministers a flood risk management plan for the potentially vulnerable areas (identified under section 13) in each flood risk management district (established under section 8). There must be one plan per district. Together with section 28 and schedule 1, this section implements Article 7 of the Directive.
87. Subsection (2) requires SEPA to submit the plan by a date set by the Scottish Ministers. Article 7.5 of the Directive requires Member States to complete flood risk management plans by 22<sup>nd</sup> December 2015 so subsection (3) requires the Scottish Ministers to set a submission date which they consider early enough to enable them to approve the plan by that deadline.
88. Subsection (4) requires SEPA to set objectives for managing flood risk and to identify measures to achieve those objectives in a way that it considers most sustainable. This should be read with section 28, which sets out matters which SEPA must take into account when setting objectives and identifying measures for the purpose of flood risk management plans.
89. Subsection (5) and schedule 1 set out what a flood risk management plan must include. The Scottish Ministers can also make regulations specifying any other matters for inclusion in plans.
90. Subsections (6) and (7) allow SEPA to include maps, diagrams and other illustrative information in plans.

***Section 28 – Flood risk management plans: objectives and measures***

91. All flood risk management plans must contain objectives and measures to manage flood risk. This section sets out matters which must be taken into account by SEPA when setting those objectives and identifying those measures.

92. Subsection (1)(a) lists matters which SEPA must take into account so far as is relevant when identifying objectives and measures. Most of these are closely based on matters listed in Article 7.2 and 7.3 of the Directive. Some matters mentioned in those Articles are not mentioned separately in this section because information about them will already be included in the flood risk assessment and maps prepared under sections 9 and 21. Also, some matters are dealt with elsewhere in the Act, for example, in section 1 (general duty).
93. Subsection (1)(b) requires SEPA, when considering the best means of achieving a particular objective, to consider both structural and non-structural flood risk management measures. Subsection (2) defines structural measures as measures that involve flood protection work (as defined in section 95). It also gives a non-exhaustive list of non-structural measures, including flood warning, awareness raising, the preparation and review of development plans and the carrying out of research, monitoring and other methods of gathering information relevant to managing flood risk.
94. Subsection (3) requires SEPA, when considering structural measures, to consider measures that seek to manage flood water by altering natural features and characteristics. Subsection (4) requires SEPA, when considering measures under subsection (3), to consider measures which consist of carrying out any alteration or restoration of natural features and characteristics identified as being capable of contributing to the management of flood risk in an assessment done under section 20.

#### ***Section 29 – Flood risk management plans: guidance***

95. This section requires the Scottish Ministers to issue guidance to SEPA on setting objectives and identifying measures under sections 27 and 28. Subsection (2) requires the guidance to pay particular attention to the consideration of measures to alter (including enhance) or restore natural features and characteristics.
96. Subsection (3) requires the guidance to be issued no later than 22<sup>nd</sup> December 2012. Subsection (4) requires the guidance to be reviewed and where necessary updated no later than every 6 years. Subsection (5) requires Scottish Ministers to consult SEPA and the responsible authorities, and such other persons as they consider appropriate before issuing the guidance.

#### ***Section 30 – Flood risk management plans: publicity of drafts etc. and consultation***

97. **Sections 30 to 32** set out the formalities for consultation, submission and approval of flood risk management plans. They all contain detailed requirements for publicising and making documents available for inspection, which should be read with sections 53 and 54.
98. **Section 30** sets requirements for publishing and consulting on draft flood risk management plans before they are submitted to the Scottish Ministers for approval. The section is very similar to section 11 of the Water Environment and Water Services (Scotland) Act 2003, which deals with publication and consultation on draft river basin management plans. This similarity is relevant because section 48 requires SEPA to co-ordinate the preparation of flood risk plans with river basin management plans.
99. Subsection (1) requires SEPA to publish a statement about its preparation of a flood risk management plan a minimum of 3 years before the plan is to become effective. SEPA can determine the manner in which the statement is to be published (subsection (3)). Subsection (4) requires SEPA to consult on the statement. Subsection (6) allows anyone to make representations to SEPA about a statement under subsection (1) and subsection (7) requires SEPA to take those into account when preparing the draft flood risk management plan.



100. Subsection (2) requires SEPA to publish a draft of the flood risk management plan a minimum of 1 year before the plan is to become effective. SEPA can determine the manner in which the draft plan is to be published (subsection (3)).
101. Subsection (4) requires SEPA to consult specific persons on the statement and a draft plan and publicise the arrangements for making these documents publicly available, and the opportunities to make representations about them. SEPA must make copies of the statement or draft plan available, free of charge, for at least 3 months and must consult the persons set out in subsection (5). These include every responsible authority, including Scottish Water, together with persons and bodies which are category 1 responders under Part 2 of Schedule 1 to the Civil Contingencies Act 2004, Scottish Natural Heritage, National Park Authorities and any other persons SEPA considers appropriate. SEPA is also required to take any steps it considers appropriate to encourage the persons identified under subsection (5) to participate in the production of the plan.
102. Subsection (6) allows anyone to make representations to SEPA about a statement under subsection (1) or a draft plan. Subsection (8) requires SEPA, when preparing a flood risk management plan for submission to the Scottish Ministers, to take into account any views or representations received on the draft flood risk management plan.

### ***Section 31 – Flood risk management plans: submission for approval***

103. This section sets requirements in connection with the submission of a flood risk management plan to the Scottish Ministers. Subsection (1) requires SEPA, when it has submitted a flood risk management plan to the Scottish Ministers, to publicise that fact, to make copies of the plan available for public inspection free of charge, and to publicise arrangements for making such copies available. Some of these requirements are specified in sections 53 and 54.
104. Subsection (2) requires that a flood risk management plan submitted to the Scottish Ministers by SEPA is accompanied by a statement of the action taken by SEPA to publicise and consult on the draft plan to comply with the requirements set out in section 30. The statement must also include a summary of the representations received about the draft plan and of any consequential adjustments made to the plan.
105. If, having considered the statement from SEPA under subsection (2), the Scottish Ministers decide that more consultation or other action is needed under section 30, subsection (3) allows them to return the plan to SEPA. In doing so they may direct SEPA to undertake further consultation and take such further action under section 30 as they may specify and to resubmit the plan with such modifications as SEPA considers appropriate. The Scottish Ministers may specify the timescale in which the plan should be resubmitted. Subsection (4) requires the Scottish Ministers to state their reasons for returning the plan to SEPA.
106. Subsection (5) provides that the requirements in this section – about publicising submission of a plan, making copies available, attaching a statement about consultation and about return of the plan to SEPA – also apply to resubmitted plans.

### ***Section 32 – Flood risk management plans: approval and publication***

107. This section sets requirements in connection with the consideration and approval of flood risk management plans, by the Scottish Ministers. Subsection (1) provides that once a flood risk management plan has been submitted to them, the Scottish Ministers may approve the plan or reject it. They may approve the whole of the plan or part of it and may do so with or without modifications. Subsection (3) requires the Scottish Ministers to state their reasons for such a decision.

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108. Subsection (2) allows the Scottish Ministers to seek further information or undertake such other investigations and consultation as they consider appropriate before determining whether to approve or reject a plan.
109. Subsection (4) provides for the circumstances in which the Scottish Ministers reject a plan. Where a plan is rejected, they must return the plan to SEPA and direct it to resubmit the plan with any modifications they may specify, together with any further changes that SEPA considers appropriate. The Scottish Ministers may direct the timescale in which a plan must be resubmitted.
110. Subsection (5) requires SEPA, when a flood risk management plan has been approved, to publicise the approved plan as it thinks fit. It must also make copies of it available to the public and for public inspection. SEPA must also publicise the publication of the approved plan and the arrangements for making copies of it available for public inspection. These requirements should be read with sections 53 and 54. Subsection (6) allows SEPA to charge a reasonable price for copies of the plan.

***Section 33 – Flood risk management plans: review***

111. Subsection (1) requires SEPA to review and update each flood risk management plan and to submit the updated plan to the Scottish Ministers by a date set by the Ministers. Article 14.3 of the Directive requires plans to be updated by 22<sup>nd</sup> December 2021 so subsection (2) requires the Scottish Ministers to set a submission date which they consider allows enough time for plans to be considered and approved in time to meet that deadline. Plans must then be reviewed and updated every 6 years, or earlier if the Scottish Ministers so direct.
112. Subsection (3) provides that a revised plan must contain the matters set out in Part 2 of schedule 1, in addition to the matters included in Part 1 of that schedule. The terms of Part 2 of schedule 1 largely mirror the terms of Part B of Annex 1 of the Directive.
113. Subsection (4) provides that objectives and measures must be set in the same way when plans are reviewed and updated as they were set for the original plan. It also provides for the same requirements on publication, consultation, submission and approval to apply to a revised plan in the same way as they do to an original plan. This gives Ministers the same control of the review process as they have for the original plan.

***Section 34 – Local authorities to prepare local flood risk management plans***

114. This section requires local authorities to prepare local flood risk management plans that will supplement the flood risk management plans produced by SEPA for the flood risk management district. The local plans are to cover the local plan districts identified by SEPA under section 13.
115. Subsection (1) requires the lead authority for each local plan district to prepare a local flood risk management plan for the purposes of supplementing the relevant flood risk management plan prepared by SEPA under section 27. “Lead authorities” are local authorities identified in accordance with subsection (9).
116. Subsection (2) sets out that a local flood risk management plan must comprise two parts: a supplementary part and an implementation part.
117. Subsection (3) sets out what the supplementary part must include. It must include a summary of the objectives, measures and other information included in the flood risk management plan that is relevant to the local plan district, and such maps, information about how implementing the measures may alter or restore natural features and characteristics and further information about measures as the lead authority considers relevant to flood risk management with the local plan district. The plan must also include information on the publicity and consultation steps undertaken in relation to the plan, and any changes made to the plan in light of views and representations received.

118. Subsection (4) states that the implementation part must include a description of how the current measures are to be implemented, and then goes on to set out further details of what must be included. “Current measures” are measures that are identified in the flood risk management plan for implementation in the 6 year planning cycle to which the local plan relates. Subsection (4)(a) requires the implementation part to include a detailed timetable setting out when measures currently being implemented will be completed and a timetable for the implementation of measures that are yet to be commenced. Subsection (4)(b) requires it to include a description of who is, or is to be responsible for implementing each measure and the arrangements for funding the measure. Subsection (4)(c) also requires it to include a description of how the bodies responsible for implementing measures will co-ordinate their functions. This must pay particular attention to how those functions will be coordinated to implement measures which relate to the alteration or restoration of natural features and characteristics and to surface water run-off or urban drainage. Subsection (4)(d) allows the lead authority to include any other information they consider relevant to the implementation of the measures.
119. Subsection (5) also allows the implementation part to include information about how other measures identified in the district plan, which are not current measures, are to be implemented. This allows for inclusion of measures that would be implemented outside of the current plan, for instance in a subsequent 6 year plan.
120. Subsection (6) allows the Scottish Ministers to specify, in regulations, further matters to be included in local flood risk management plans. Subsection (7) requires the Scottish Ministers to consult SEPA, responsible authorities and such other persons as they consider appropriate before making such regulations.
121. Subsection (8) requires that a local flood risk management plan which is prepared by a lead local authority must not be inconsistent with anything in the relevant flood risk management plan prepared by SEPA.
122. Subsection (9) makes provision for identification of a lead authority for each local plan. Where a local plan district falls entirely within a local authority’s area, subsection (9) (a)(i) provides for that local authority to be the lead authority for that local plan. Where a local plan district falls within two or more local authority areas, subsection (9)(a) (ii) provides for one of the authorities whose area is within the local plan district to be identified as the lead authority. This lead authority should be agreed between the local authorities whose areas lie partly within the local plan district but where agreement cannot be reached, the Scottish Ministers may determine the lead authority.

### ***Section 35 – Local flood risk management plans: publicity and consultation***

123. Subsection (1) requires the lead authority to publish a draft of the supplementary part of the local flood risk management plan at least one year before the beginning of the period covered by the relevant flood risk management plan, or by such other date as the Scottish Ministers may direct. This is the same as the deadline for publication of draft flood risk management plans under section 30(2). Subsection (2) gives the lead authority discretion to determine the manner in which the draft plan is to be published.
124. Subsection (3) requires the lead authority to publicise the arrangements for making the draft publicly available, and the opportunities to make representations about it. The lead authority is also required to make copies of the supplementary part available for inspection for at least 3 months. These requirements should be read with sections 53 and 54. Subsection (4) allows any person to make representations to the lead authority about the draft supplementary part.
125. Subsection (5) requires the lead authority to consult specific persons on the draft of the supplementary part and the implementation part of the plan and to take steps to encourage those persons to participate in preparing the plan. Subsection (6) lists the persons who must be consulted. The list includes every responsible authority with

functions exercisable in the local plan district, Scottish Natural Heritage, National Park Authorities, category 1 responders which have functions exercisable in or in relation to the district and any other persons the lead authority consider appropriate. Responsible authorities are defined in section 5 and include Scottish Water and local authorities. Category 1 responders are defined in section 95 by reference to the Civil Contingencies Act 2004.

126. Subsections (7) and (9) make provision for the coordination of the consultation exercises for local flood risk management plans and flood risk management plans prepared by SEPA under section 27. Subsection (7) requires the lead authority to co-ordinate its consultation exercise, as set out in subsections (1) to (6) with the consultation undertaken by SEPA in relation to the flood risk management plan, as set out in section 30(2) to (4). Subsection (9) requires the lead authority to inform SEPA of any views received on the local plan which it considers relevant to the flood risk management plan.
127. Subsection (8) requires the lead authority to take into account any views or representations received on both the supplementary part and on the implementation part before finalising a local flood risk management plan.

### ***Section 36 – Local flood risk management plans: completion and publication***

128. **Section 36** makes provision for the completion and publication of local flood risk management plans.
129. Subsection (1) provides that a local flood risk management is finalised once the relevant flood risk management plan has been approved by the Scottish Ministers and the lead authority, SEPA and every responsible authority with flood risk related functions for the local plan district have agreed to the content of the local plan. If these bodies fail to reach agreement it is for the Scottish Ministers to determine the content of the local plan.
130. Subsections (2) to (4) set out arrangements for the Scottish Ministers to determine the content of local plans. Subsection (2) requires the lead authority to notify the Scottish Ministers where the local plan is not agreed by the “local plan deadline” or the lead authority does not believe that it will be agreed by that deadline. Subsection (7) provides for the “local plan deadline” to be 6 months after the relevant flood risk management plan is approved under section 32 or another date set by the Scottish Ministers.
131. Where the Scottish Ministers are notified that a local plan has not been, or will not be, agreed by the local plan deadline, subsection (3) requires them to determine the content of that plan. Subsection (4) requires them to take into account any representations made by SEPA or any of the responsible authorities with flood risk related functions for the local plan district. This will include the lead authority.
132. Subsections (5) and (6) set out arrangements for publicising the finalised local flood risk management plan. These require the lead authority to publish the plan, to publicise the publication, to make copies available to the public and for public inspection and to provide copies to SEPA and the Scottish Ministers. The requirements to publicise matters and make plans available for inspection should be read with sections 53 and 54.

### ***Section 37 – Local flood risk management plans: interim report***

133. This section requires the lead authority to review progress towards implementing the local flood risk management plan. This interim review must be undertaken between two and three years after the local flood risk management plan has been finalised under section 36 and the lead authority must produce and publish a report on the conclusions of the review.

***Section 38 – Local flood risk management plans: final report***

134. This section requires the lead authority to prepare and publish a final report on progress made towards implementing measures in the local flood risk management plan. This report must be produced between 5 and 6 years after the local flood risk management plan has been finalised or by a date set by the Scottish Ministers. This allows for continued coordination between local and district flood risk management plans.
135. Reports under this section will assess progress in the previous 6 years but will not plan how to implement measures for the next 6 years. It is possible that the boundaries of local plan districts could change when these and potentially vulnerable areas are reviewed under section 14 so, rather than reviewing and updating existing local flood risk management plans, new local flood risk management plans will be produced under section 34 to supplement the updated flood risk management plan produced for each 6 year period under section 33. This allows for any changes in local plan districts to be taken into account when planning for the next 6 years.

***Section 39 – Local flood risk management plans: joint working***

136. This section requires local authorities to co-operate with each other to assist in preparing the relevant local flood risk management plan, and interim and final reports where a local plan district covers more than one local authority area. This should be read with section 34(9), which provides for the identification of lead authorities, and section 44, which allows lead authorities to seek information and assistance in preparing and reviewing local plans.

***Section 40 – Regulations relating to flood risk management plans and local flood risk management plans***

137. This section enables the Scottish Ministers to make regulations that make further provision on most aspects of the preparation of flood risk management plans, local flood risk management plans and interim and final reports on local plans. This includes provision on consultation, submission and approval of plans. Section 94 sets procedural requirements for making such regulations.

***Section 41 – Duty to have regard to flood risk management plans and local flood risk management plans***

138. Subsection (1) requires the Scottish Ministers and every public body and office holder to have regard to the flood risk management plan approved by the Scottish Ministers when exercising any functions that could affect the flood risk management district, and to have similar regard to a local flood risk management plan, so far as the exercise of any functions affects a local plan district (for example, to have regard to flood risk management plans when exercising planning functions). Subsection (2) requires the Scottish Ministers to have regard to flood risk management plans and local flood risk management plans when determining any funding to be allocated to SEPA or any responsible authorities for the purpose of flood risk management.

***Section 42 – Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008***

139. This section amends regulation 24 of the [Town and Country Planning \(Development Management Procedure\) Regulations 2008 \(S.S.I. 2008/432\)](#) by inserting an obligation on a planning authority to require an applicant for planning permission to provide a flood risk assessment where a development is likely to result in a material increase in the number of buildings at risk from flooding.



***Section 43 – Power of SEPA to obtain information, documents and assistance***

140. This section provides for SEPA to obtain information and assistance from the Scottish Ministers and responsible authorities (identified under section 5) and to obtain information from other persons to enable it to carry out its functions under Part 3 of the Act. It does not require disclosure of information or documents protected by the law on confidentiality (see section 46(3)).
141. Subsection (1) requires the Scottish Ministers and responsible authorities to provide SEPA with information and assistance so that SEPA can prepare and review flood risk assessments (sections 9 and 10), maps of artificial structures and natural features (section 19), assessments of possible contribution of alteration etc. of natural features and characteristics (section 20), flood hazard and flood risk maps (sections 21 and 24) and flood risk management plans (sections 27, 28 and 33). This duty only applies where SEPA's requests for information or assistance are reasonable.
142. Subsections (2) and (3) require responsible authorities to gather and provide SEPA with information which could contribute to improving understanding of flood risk. This may include information about the contribution that altering or restoring natural features and characteristics could make to managing flood risk and information about urban drainage and flooding caused by surface run-off water or a sewerage system. Again, the duty only applies where SEPA's requests for information about flood risk are reasonable.
143. Subsection (5) enables SEPA to serve a notice on any person (other than the Scottish Ministers or the responsible authorities) in order to obtain information or documents from them that it reasonably requires to prepare and review flood risk assessments, flood hazard and flood risk maps and flood risk management plans. Section 46(1), (2) and (4) sets further requirements about the content of information notices. Section 46(5) contains interpretation provisions in relation to "documents".
144. Subsection (6) allows the Scottish Ministers to decide whether requests from SEPA are reasonable where there are differences of opinion between SEPA and a responsible authority or any other person who has been asked to provide information, assistance or documents.

***Section 44 – Power of lead authorities to obtain information, documents and assistance***

145. This section provides for lead authorities to obtain information and assistance from SEPA and the responsible authorities, and to obtain information from other persons to enable them to prepare and review local flood risk management plans (section 34) and interim and final reports (sections 37 and 38). As with section 43, it does not require disclosure of information or documents protected by the law on confidentiality (see section 46(3)).
146. Subsections (1) and (2) require SEPA and the responsible authorities with flood risk related functions exercisable in a local plan district to provide the lead authority with such information and assistance as it may reasonably seek in connection with preparing and reviewing local flood risk management plans and interim and final reports.
147. Subsection (3) enables lead authorities to serve a notice on any person (other than SEPA, a responsible authority or the Scottish Ministers) in order to obtain information or documents from them that it needs to prepare and review local flood risk management plans and interim and final reports. Section 46(1), (2) and (4) provides more detail about the form and content of and procedures in relation to such notices.
148. Subsection (4) allows the Scottish Ministers to decide whether requests from lead authorities are reasonable where there are differences of opinion between lead authorities and SEPA, responsible authorities or any other person who has been asked to provide information, assistance or documents.

***Section 45 – Power of local authorities to obtain information***

149. This section provides for local authorities to obtain information from SEPA and responsible authorities to enable them to prepare and review maps of relevant bodies of water (section 17) and assessments and schedules of clearance and repair works in relation to those bodies of water (section 18).
150. Subsection (3) allows the Scottish Ministers to decide whether a request from a local authority is reasonable where there is a difference of opinion between the local authority and SEPA or the responsible authority who has been asked to provide the information.

***Section 46 – Power to obtain information, documents and assistance: supplementary***

151. Subsections (1), (2) and (4) set further requirements about the content of notices served under sections 43(5) and 44(3) and what may be done with documents produced in response to a notice.
152. Subsection (3) protects from disclosure, information and documents that would be treated as confidential and protected from disclosure in proceedings in the Court of Session.

***Section 47 – Power to obtain information, documents and assistance: offence***

153. This section makes it an offence to refuse or fail to provide information, assistance or documents when requested to do so by notice under section 43(5) or 44(3). It is not an offence if the person has a reasonable excuse for not providing what was requested. The section also makes it an offence to intentionally alter, suppress or destroy a document that has been requested under those provisions.
154. Subsection (2) describes the penalties that are attached to this offence. The statutory maximum referred to in subsection (2)(a) is currently £10,000.

***Section 48 – Consistency and co-ordination with characterisations and plans under the 2003 Act***

155. This section sets out arrangements for coordinating flood risk assessment and management work under Part 3 of the Act, with river basin planning work required under Part 1 of the Water Environment and Water Services (Scotland) Act 2003, as required by Article 9 of the Directive. Subsection (1)(a) requires SEPA to secure appropriate consistency in the information in flood risk assessments, flood hazard and risk maps and flood risk management plans with information in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act. “Appropriate consistency” does not require the information contained in all documents under the Act to be entirely consistent with all documents under the 2003 Act so it will allow SEPA to decide, for example that documents do not need to be entirely consistent with documents from previous 6 year cycles.
156. Subsections (1)(b) and (2) require SEPA to coordinate the preparation and review of flood hazard and risk maps with characterisations of river basin districts prepared under the 2003 Act, and to coordinate preparation of flood risk management plans with river basin management plans prepared under the 2003 Act. SEPA is also required to coordinate the steps it takes to make maps and plans produced available for public inspection.
157. In addition to co-ordination under subsection (1)(b), subsection (1)(c) allows SEPA to choose to integrate flood hazard and flood risk maps with characterisations of river basin districts, and flood risk management plans with river basin management plans prepared under the 2003 Act.

158. Subsection (3) requires lead authorities to secure appropriate consistency between local flood risk management plans and characterisations of river basin districts and river basin management plans prepared under the 2003 Act.

***Section 49 – District flood risk advisory groups***

159. This section provides for the establishment of district flood risk advisory groups. Subsection (1) requires each flood risk management district to have at least one advisory group.
160. Subsections (2) and (3) provide that the function of these groups is to advise SEPA on the preparation and review of flood risk assessments (sections 9 and 10), documents identifying potentially vulnerable areas and local plan districts (sections 13 and 14), assessments in relation to alteration of natural features and characteristics (section 20), flood risk and flood hazard maps (sections 21 and 24) and flood risk management plans (sections 27 and 33).
161. Subsection (4) requires SEPA to have regard to any advice given by advisory groups on these matters.
162. Subsections (5) and (6) allow SEPA to determine the remit, membership and procedures for each district advisory group. It may determine a group's remit by reference to the geographic area and any other particular aspect of flood risk management.
163. When determining the number, remit and membership of groups, subsection (7) requires SEPA to try and ensure appropriate representation of the persons specified in section 30(5)(a) to (d) (responsible authorities, category 1 responders, Scottish Natural Heritage and National Park authorities) and other persons with an interest in flood risk management.

***Section 50 – Sub-district flood risk advisory groups***

164. This section provides for the establishment of sub-district advisory groups to advise SEPA on the preparation and review of flood risk assessments, documents identifying potentially vulnerable areas and local plan districts, assessments in relation to alteration of natural features and characteristics, flood risk and flood hazard maps and flood risk management plans. These sub-district groups are also to advise lead authorities on the preparation of local flood risk management plans and interim and final reports.
165. Subsection (1) requires SEPA to divide each flood risk management district into geographical “sub-districts” and subsection (2) then requires a sub-district advisory group to be established for each such sub-district.
166. Subsection (3) and (4) set out the functions of sub-district advisory groups. Each sub-district advisory group is to advise SEPA on any matter relating to flood risk assessments, identification of areas at significant flood risk, flood risk hazard/risk maps and flood risk management plans. Each sub-district advisory group must also advise local authorities on any matter which relates to the preparation of a local flood risk management plan.
167. Subsection (5) requires SEPA to have regard to advice from a sub-district advisory group when preparing, reviewing or updating any flood risk assessment (section 9), assessment of vulnerable areas and identification of local plan districts (section 13), flood hazard or risk map (section 21), or flood risk management plan (section 27). Subsection (6) requires lead authorities to have regard to any advice given by a sub-district advisory group when preparing local flood risk management plans and interim and final reports.
168. Subsection (7) makes provision for SEPA to determine the remits, membership and procedures of a sub-district advisory group after consultation with local authorities whose areas form part of the sub-district. When determining the remits and membership

of groups, subsection (8) requires SEPA to try and ensure appropriate representation of responsible authorities, Scottish Natural Heritage and National Park authorities, category 1 responders and other persons with an interest in flood risk management for the sub-district.

### ***Section 51 – Power to give effect to Community obligations etc.***

169. Subsection (1) provides that the Scottish Ministers may by regulations provide that the provisions of Part 1 of the Act are to have effect with such modifications as the regulations may specify but only for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right. A related right includes the right of the UK to derogate from a Community obligation or to make a more onerous provision in respect of an obligation (subsection (2)).

### ***Section 52 – Annual report on implementation of Directive***

170. The Scottish Ministers are required to make an annual report to the Scottish Parliament, as soon as practicable after the end of each calendar year, on the action taken during the year by the Scottish Ministers, SEPA and the responsible authorities under Part 3 of the Act (including action for securing compliance with the requirements of the Directive) and on the action taken to implement measures identified in flood risk management plans approved under section 32.
171. The report may be a freestanding report under the Act or incorporated into the Scottish Ministers' annual report into the report on implementation of the Water Framework Directive under section 26 of the Water Environment and Water Services (Scotland) Act 2003.

### ***Section 53 – Availability of documents for public inspection***

172. This section applies whenever SEPA or a lead authority must make documents available for public inspection under this Part of the Act. The Act requires a number of documents to be made available for public inspection, including flood risk assessments (section 12), local authority maps of bodies of water and schedules of clearance and repair works (sections 17 and 18), SEPA maps of artificial structures and natural features (section 19), assessments and maps about the possible contribution of alteration or restoration of natural features and characteristics (section 20), flood hazard and flood risk maps (section 25), flood risk management plans, drafts of those plans and statements relating to their preparation (sections 30 to 32), local flood risk management plans, drafts of some parts and reports in relation to those plans (sections 35 to 38). This section requires the documents to be made available free of charge and at all reasonable times and it allows SEPA or the lead authority to choose the most appropriate means and formats for encouraging inspection by members of the public. This gives them the choice to provide documents in print or electronic form or both. The arrangements put in place for making a document available for public inspection must also be publicised under section 54, unless the document concerned is a local authority map of bodies of water under section 17 or a schedule of clearance and repair works under section 18.

### ***Section 54 – Publicity of matters***

173. This section applies whenever SEPA or a lead authority is required to publicise something under this Part of the Act, for example in relation to the matters mentioned in paragraph 172. Subsection (1) requires them to publicise information by placing a notice in the "appropriate newspapers" and also allows them to publicise it by any other means they consider appropriate. "Appropriate newspapers" are defined in subsection (2).

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

***Section 55 – Interpretation of Part 3***

174. This section defines the various terms used in Part 3 (and only there). Schedule 4 contains an index of terms used across the Act and a list of provisions where their respective meanings can be found.