



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## PART 2

### PRINCIPAL EXPRESSIONS

#### **3 “Flood” and “flood risk”**

In this Act—

“flood” means the temporary covering by water from any source of land not normally covered by water, but does not include a flood solely from a sewerage system (and related expressions such as “flooding” are to be construed accordingly),

“flood risk” means the combination of the probability of a flood and of the potential adverse consequences, associated with a flood, for human health, the environment, cultural heritage and economic activity,

“flood solely from a sewerage system” means the temporary covering of land by sewage caused solely by a failure in or blockage of a sewerage system which is not connected with any loading on the system by external hydraulic factors (for example by heavier than usual rainfall or higher than usual river levels).

#### **4 SEPA**

In this Act, “SEPA” means the Scottish Environment Protection Agency.

#### **5 Responsible authorities**

(1) For the purposes of this Act, responsible authorities are—

- (a) local authorities,
- (b) Scottish Water, and
- (c) such other public bodies and office-holders (or public bodies or office-holders of such descriptions) as the Scottish Ministers may designate by order.

(2) Before making an order under subsection (1)(c), the Scottish Ministers must consult—

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- (a) SEPA,
- (b) every responsible authority,
- (c) the public bodies and office-holders who will be responsible authorities by virtue of the order being made, and
- (d) such other persons as they consider appropriate.

## 6 “The Directive”

In this Act, [<sup>F1</sup>subject to section 6A,] “the Directive” means Directive [2007/60/EC](#) of the European Parliament and of the Council on the assessment and management of flood risks.

### Textual Amendments

- F1** Words in s. 6 inserted (1.6.2022) by [The Environment and Trade in Animals and Related Products \(EU Exit\) \(Scotland\) \(Miscellaneous Amendment\) Regulations 2022 \(S.S.I. 2022/138\)](#), regs. 1, **6(2)**

### [<sup>F2</sup>6A. Interpretation of the Directive

- (1) The Directive is to be interpreted in accordance with this section.
- (2) When interpreting the Directive for the purposes this Act—
  - (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the Scottish Ministers,
  - (b) a reference to Community legislation is to be read as a reference to [<sup>F3</sup>assimilated] law,
  - (c) a reference to [Directive 2000/60/EC](#) is to be read as a reference to that Directive as interpreted in accordance with Part 1 of schedule 5 of the Water Environment and Water Services (Scotland) Act 2003,
  - (d) the Directive is to be read subject to the following rules.
- (3) The final paragraph of Article 3(2) is to be ignored.
- (4) Articles 4(3), 5(2) and 6(2) are to be ignored.
- (5) In Article 6(5)(c) the reference to “Annex I to Council [Directive 96/61/EC](#) of 24 September 1996 concerning integrated pollution and prevention control” is to be read as a reference to “Annex 1 of [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)”.
- (6) Articles 7(4), 8(2) to (5), 11 to 13, 15, 16 and 17(2) are to be ignored.
- (7) Section 1 of Part A of the Annex is to be read as if—
  - (a) in paragraph 4, for “other Community acts, including Council Directives [85/337/EEC](#) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and [96/82/EC](#) of 9 December 1996 on the control of major accident hazards involving dangerous substances” there were substituted “ [<sup>F4</sup>assimilated] law which implemented [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects

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on the environment, [Directive 2012/18/EU](#) of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council [Directive 96/82/EC](#),

- (b) in paragraph 5, for “Member States concerned” there were substituted “Scottish Ministers”.]

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#### Textual Amendments

- F2** S. 6A inserted (1.6.2022) by [The Environment and Trade in Animals and Related Products \(EU Exit\) \(Scotland\) \(Miscellaneous Amendment\) Regulations 2022 \(S.S.I. 2022/138\)](#), regs. 1, **6(3)**
- F3** Word in s. 6A(2)(b) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), **sch. 1 para. 7(2)**
- F4** Word in s. 6A(7)(a) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), **sch. 1 para. 7(3)**

**Changes to legislation:**

There are currently no known outstanding effects for the Flood Risk Management (Scotland) Act 2009, Part 2.