



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## PART 3

### FLOOD RISK ASSESSMENT, MAPS AND PLANS

#### *Flood risk management plans*

#### **27 SEPA to prepare flood risk management plans**

- (1) SEPA must, for each flood risk management district, prepare and submit to the Scottish Ministers a flood risk management plan for the potentially vulnerable areas in the district.
- (2) A flood risk management plan must be submitted by such date as the Scottish Ministers may direct.
- (3) The date by which SEPA is directed to submit the plan must be a date that the Scottish Ministers consider allows them sufficient time to approve the plan by 22nd December 2015.
- (4) For the purposes of preparing a flood risk management plan, SEPA must—
  - (a) set objectives for the management of flood risks for the potentially vulnerable areas, and
  - (b) identify measures to achieve those objectives in a way which it considers is most sustainable.
- (5) A flood risk management plan must include—
  - (a) the matters specified in Part 1 of schedule 1, and
  - (b) such other matters as the Scottish Ministers may specify by regulations.
- (6) A flood risk management plan may contain or be accompanied by such other maps, diagrams, illustrations and descriptive matter as SEPA considers appropriate for the purpose of explaining or illustrating any matter in the plan.

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- (7) Any such maps, diagrams, illustrations and descriptive matter are to be treated as forming part of the plan; and references to such a plan are to be construed accordingly.

## **28 Flood risk management plans: objectives and measures**

- (1) In setting objectives and identifying measures under section 27(4), SEPA—
- (a) must take account of, so far as relevant—
    - (i) any impact of climate change on the occurrence of floods within the flood risk management district to which the plan relates (“the district”),
    - (ii) the flood risk assessment prepared under section 9 for the district,
    - (iii) any assessment done under section 20 in relation to the district,
    - (iv) the flood hazard maps and the flood risk maps prepared under section 21 for the district,
    - (v) the costs of implementing proposed measures including social, environmental and economic costs,
    - (vi) the benefits that are likely to be derived from implementing proposed measures, including—
      - (A) the benefits in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and
      - (B) any other environmental, social, and economic benefits,
    - (vii) land and water management including the management of surface run-off water and urban drainage,
    - (viii) any development plan relating to the district and anything else done under or in pursuance of the planning Acts which affects development or the use of land within the district,
    - (ix) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c. 36) relating to the district,
    - (x) the environmental objectives within the meaning of section 9 of the 2003 Act,
    - (xi) the conservation of nature in the district and elsewhere, and
    - (xii) navigation and port infrastructure,
  - (b) must consider, so far as is appropriate, both structural and non-structural measures as means of achieving objectives, and
  - (c) may take into account such other matters as it considers relevant.
- (2) For the purposes of subsection (1)(b)—
- (a) a measure is structural if it involves flood protection work, and
  - (b) non-structural measures include—
    - (i) flood warning,
    - (ii) awareness raising,
    - (iii) the preparation and review of development plans, and
    - (iv) the carrying out of research, monitoring and other methods of gathering information relevant to managing flood risk.
- (3) In considering structural measures under subsection (1)(b), SEPA must consider measures that seek to reduce, slow or otherwise manage flood water by altering (including enhancing) or restoring natural features and characteristics.

- (4) The measures considered in pursuance of subsection (3) must include measures that 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 in relation to the district.
- (5) In subsections (1)(a)(viii) and (2)(b)—
  - “development plan” has the meaning given in section 24 of the Town and Country Planning (Scotland) Act 1997 (c. 8),
  - “the planning Acts” has the meaning given in section 277(1) of that Act.

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

- (1) The Scottish Ministers must give guidance to SEPA on the setting of objectives and identification of measures under sections 27 and 28.
- (2) The guidance must, in particular, address the consideration of measures that consist of carrying out any alteration (including enhancement) or restoration of a natural feature or characteristic.
- (3) The guidance must be given no later than 22nd December 2012.
- (4) The Scottish Ministers must review and where appropriate update the guidance not later than—
  - (a) 6 years after it was given, or
  - (b) where the guidance has been reviewed under this subsection, 6 years after the last such review.
- (5) Before giving the guidance or updating it under subsection (4), the Scottish Ministers must consult—
  - (a) SEPA,
  - (b) every responsible authority, and
  - (c) such other persons as they consider appropriate.
- (6) SEPA must have regard to any guidance given under this section.

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

- (1) Not less than 3 years before the beginning of the period to which a flood risk management plan is to relate, SEPA must publish a statement setting out—
  - (a) the steps under this section, and any other consultation measures, which it is to take in connection with the preparation of the plan, and
  - (b) the dates on or by which those steps and measures are to be taken.
- (2) Not less than one year before the beginning of the period to which a flood risk management plan is to relate, SEPA must publish a draft of the plan.
- (3) Publication of a statement under subsection (1) and a draft under subsection (2) is to be in such manner as SEPA considers appropriate.
- (4) On publishing a statement or draft plan SEPA must—
  - (a) publicise—
    - (i) that fact, and

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- (ii) the opportunity to make representations about the statement or draft plan under subsection (6),
  - (b) make copies of the statement or draft plan available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as SEPA may determine,
  - (c) consult the persons specified in subsection (5), and
  - (d) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.
- (5) The persons referred to in subsection (4)(c) are—
- (a) every responsible authority which has functions exercisable in or in relation to the flood risk management district to which the plan relates (“the district”),
  - (b) every category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district,
  - (c) Scottish Natural Heritage,
  - (d) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and
  - (e) such other persons as SEPA considers appropriate.
- (6) Any person who wishes to make representations to SEPA about a statement or draft plan may do so before the expiry of the period determined under subsection (4)(b).
- (7) In preparing the draft flood risk management plan SEPA must take into account—
- (a) any views on the statement relating to the plan expressed by those consulted under subsection (4)(c), and
  - (b) any representations about the statement,
- which are received by SEPA before the expiry of the period determined under subsection (4)(b).
- (8) In preparing the flood risk management plan for submission to the Scottish Ministers SEPA must take into account—
- (a) any views on the draft plan expressed by those consulted under subsection (4)(c), and
  - (b) any representations about the draft plan,
- which are received by SEPA before the expiry of the period determined under subsection (4)(b).

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

- (1) As soon as a flood risk management plan is submitted to the Scottish Ministers under section 27 or 33, SEPA must—
- (a) publicise that fact, and
  - (b) make copies of the plan available for public inspection.
- (2) A flood risk management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement—
- (a) of the action taken by SEPA to comply with subsections (2) and (so far as relating to the draft plan) (3) to (5) of section 30,
  - (b) containing a summary of the views and representations referred to in subsection (8) of that section and of any adjustments made to the plan in light of those views and representations.

- (3) If the Scottish Ministers, having considered the statement, are of the opinion that further consultation should be undertaken or other action taken by SEPA in relation to the plan under subsections (2) to (5) of section 30, they may return the plan to SEPA and direct it—
  - (a) to undertake such further consultation and take such further action under those subsections as they may specify, and
  - (b) to resubmit the plan with such modifications, if any, as SEPA considers appropriate by such date as the direction may specify.
- (4) Where the Scottish Ministers return the plan to SEPA under subsection (3), they must state their reasons for doing so.
- (5) This section applies, with the necessary modifications, in relation to a flood risk management plan resubmitted to the Scottish Ministers in pursuance of subsection (3)
  - (b) as it applies to the plan as originally submitted.

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

- (1) After considering a flood risk management plan submitted to them under section 27(1) or in pursuance of section 31(3)(b) or subsection (4) of this section, the Scottish Ministers may—
  - (a) approve it (in whole or in part and with or without modifications), or
  - (b) reject it.
- (2) Before determining whether or not to approve a plan, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.
- (3) The Scottish Ministers must advise SEPA in writing of their reasons for their determination under subsection (1) in relation to a plan.
- (4) Where the Scottish Ministers reject a plan, they must return the plan to SEPA and direct it to resubmit the plan with—
  - (a) such modifications as the direction may specify, and
  - (b) any further modifications which SEPA considers appropriate,by such date as the direction may specify.
- (5) Where the Scottish Ministers approve a plan, SEPA must—
  - (a) publish the approved plan in such manner as it considers appropriate,
  - (b) make copies of it available for public inspection,
  - (c) make copies of it available to the public, and
  - (d) publicise the publication of the approved plan.
- (6) In making copies of the plan available to the public under subsection (5)(c), SEPA may charge a reasonable price for each copy.

### **33 Flood risk management plans: review**

- (1) SEPA must—
  - (a) by such date as the Scottish Ministers may direct—
    - (i) review and update each flood risk management plan, and
    - (ii) submit each updated plan to the Scottish Ministers,

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- (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct)—
  - (i) review and update each flood risk management plan updated under this section, and
  - (ii) submit each updated plan to the Scottish Ministers.
- (2) The date by which SEPA is directed under subsection (1)(a) to submit each updated plan must be a date that the Scottish Ministers consider allows them sufficient time to approve the updated plan before 22nd December 2021.
- (3) An updated plan must include (in addition to the matters required to be included by section 27(5)) the matters specified in Part 2 of schedule 1.
- (4) Sections 27(4) to (7) and 28 to 32 apply in relation to the preparation, submission and approval of an updated flood risk management plan.