

2009 No. 393 (C. 30)

ENVIRONMENTAL PROTECTION

FLOOD RISK MANAGEMENT

**The Flood Risk Management (Scotland) Act 2009
(Commencement No. 1 and Transitional and Savings
Provisions) Order 2009**

Made - - - - 10th November 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 94(1) and 97(1) of the Flood Risk Management (Scotland) Act 2009(a).

PART I

GENERAL AND COMMENCEMENT

Citation and interpretation

1.—(1) This Order may be cited as the Flood Risk Management (Scotland) Act 2009 (Commencement No. 1 and Transitional and Savings Provisions) Order 2009.

(2) In this Order—

“the Act” means the Flood Risk Management (Scotland) Act 2009;

“the appointed day” means 26th November 2009; and

“the 1970 Act” means the Agriculture Act 1970(b).

Appointed day

2. The provisions of the Act which are specified in column 1 of the Schedule come into force on the appointed day, but where a particular purpose is specified in relation to any provision in column 2 of the Schedule that provision comes into force on the appointed day only for that purpose.

(a) 2009 asp 6.

(b) 1970 c. 40.

PART II

TRANSITIONAL AND SAVINGS PROVISIONS: FLOOD WARNING SYSTEMS

Existing flood warning systems: consultation

3. Where, before the appointed day, SEPA is doing anything under section 92(a) of the 1970 Act it may continue to do it under section 76 of the Act without consulting in accordance with section 77(2).

Consultations under the 1970 Act

4. Where, before the appointed day, SEPA has consulted or is in the process of consulting in relation to doing anything under section 92 of the 1970 Act, that consultation will be treated as if it were a consultation under section 77(2) of the Act.

Arrangements with other persons under the 1970 Act

5. The repeal of section 94(b) of the 1970 Act does not affect the validity of any arrangements entered into by SEPA in exercise of its powers under that section.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew's House,
Edinburgh
10th November 2009

(a) Section 92 was amended by the Local Government and Planning (Scotland) Act 1982 (c.43), section 21; the Telecommunications Act 1984 (c.12), section 109 and Part 1 of Schedule 7; the Local Government etc. (Scotland) Act 1994 (c.39), section 180(1) and paragraph 85(3) of Schedule 13 (as amended by the Environment Act 1995 (c.25) ("the 1995 Act"), section 120(3) and Schedule 24); and the 1995 Act, sections 21 and 120(1) and (3), paragraph 14 of Schedule 22 and Schedule 24.

(b) Section 94 was amended by the 1995 Act, section 120(1) and paragraph 14 of Schedule 22.

SCHEDULE

Article 2

Provisions coming into force on 26th November 2009

<i>Column 1 – provisions</i>	<i>Column 2 - purpose</i>
Sections 1 and 2	
Sections 7 to 41	
Sections 43 to 54	
Sections 72 to 78	
Section 79(1), (2)(a) to (d) and (3)	
Sections 80 and 81	
Section 82(1) and (2)(f)	
Section 83	
Sections 91 to 93	
Section 96	Only for the purpose of giving effect to the paragraphs of schedule 3 which are specified below.
Schedule 1	
Schedule 3, paragraphs 2, 7 and 14	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings all the provisions of the Flood Risk Management (Scotland) Act 2009 into force on 26th November 2009, except section 42 (amendment to planning regulations) and Parts 4 (local authority powers to manage flood risk), 6 (powers of entry and compensation) insofar as it relates to Part 4, and 7 (reservoirs). The Act received Royal Assent on 16th June 2009 and Part 2 (sections 3 to 6) and sections 55, 71, 94, 95 and 97 came into force on that day.

Article 2 and the Schedule bring into force Part 1 (general duties), most of Part 3 (flood risk management planning) and Part 5 (SEPA functions in relation to flood risk assessment and flood warning system) of the Act. Part 6 (powers of entry and compensation) is brought into force insofar as it relates to the functions of SEPA and local authorities under Parts 3 and 5. Part 8 (general provisions) is commenced but section 96 is commenced only for the purposes of giving effect to the repeals and amendments in schedule 3 which are consequential on Parts 1, 3 and 5 of the Act.

Articles 3 to 5 make transitional provision in relation to flood warning systems. Article 3 provides that SEPA does not need to consult in order to continue providing existing flood warning systems.

Article 4 provides that where SEPA has already carried out a consultation under the Agriculture Act 1970 in relation to providing a new flood warning system, it does not have to carry out a further consultation under the Act before providing that system.

Article 5 provides that arrangements in relation to the provision of flood warning systems which were made under the 1970 Act between SEPA and third parties will remain in place. SEPA can make new arrangements in relation to providing flood warning systems under section 76 of the Act and its general powers under Part I of the Environment Act 1995 (c.25) (and in particular section 37 of that Act).

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