Passage of the

Flood Risk Management (Scotland) Bill 2008

SPPB 131
Passage of the

Flood Risk Management (Scotland) Bill 2008

SP Bill 15 (Session 3), subsequently 2009 asp 6

SPPB 131
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

In May 2008, the Rural Affairs and Environment Committee completed an inquiry on Flooding and Flood Management. The report on the inquiry included a number of recommendations for the Scottish Government's consideration in advance of the introduction of the Bill. The Report is not included in this volume, but is available on the Scottish Parliament’s web-site at: http://archive.scottish.parliament.uk/s3/committees/rae/reports-08/rur08-02-01.htm

The report of the Finance Committee on the Financial Memorandum was included in the Rural Affairs and Environment Committee’s Stage 1 Report. The relevant extracts from the Finance Committee’s minutes and Official Report of the evidence taken by it are included in this volume after the Stage 1 Report.

The Scottish Government made a written response to the Subordinate Legislation Committee on its Stage 1 Report. That response is included in this volume in the
‘After Stage 1’ section. The Committee noted the response without comment or debate at its meeting on 24 February 2009.
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[AS INTRODUCED]


PART 1
GENERAL DUTY, DIRECTIONS AND GUIDANCE

1 General duty

(1) The Scottish Ministers, SEPA and responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, must exercise their functions under Part 3 so as to secure compliance with the Directive.

(2) In exercising their functions in pursuance of subsection (1), the Scottish Ministers, SEPA and responsible authorities must—

(a) have regard to the social and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the flood risk related function concerned—

(i) promote sustainable flood risk management,

(ii) act with a view to raising public awareness of flood risk, and

(iii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, co-operate with each other so as to co-ordinate the exercise of their respective functions.

(3) In this Act, “flood risk related functions” means—

(a) in relation to the Scottish Ministers—

(i) their functions under Part 2 (responsible authorities), Part 3 (flood risk assessment, maps and plans), Part 4 (flood risk management: local authority functions), and Part 5 (SEPA: other flood risk management functions), and
(ii) their functions under such other enactments as the Scottish Ministers may specify by order,

(b) in relation to SEPA—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 5 (SEPA: other flood risk management functions), and

(ii) its functions under such other enactments as the Scottish Ministers may specify by order,

(c) in relation to a responsible authority which is a local authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 4 (flood risk management: local authority functions), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers, and

(d) in relation to any other responsible authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers (whether or not in an order under section 5(c) designating it as a responsible authority).

2 Directions and guidance

(1) The Scottish Ministers may give directions (whether general or specific) and guidance to—

(a) SEPA, in relation to the exercise of its flood risk related functions, and

(b) any responsible authority, in relation to the exercise of its flood risk related functions.

(2) SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(3) Directions under subsection (1) may include provision for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

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

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.

6 “The Directive”


PART 3
FLOOD RISK ASSESSMENT, MAPS AND PLANS

Purpose of Part

The purpose of this Part is to make provision for or in connection with establishing a framework for the assessment and mapping of flood risks and the planning in relation to the management of such risks, including making provision, and enabling provision to be made, for or in connection with implementing the Directive.

Flood risk management districts

8 Flood risk management districts

(1) A flood risk management district for the purposes of this Part is—
(a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or
(b) such other area as the Scottish Ministers may designate by order, being such area as they consider appropriate and to which they assign one or more coastal areas or river basins.
(2) An order under subsection (1)(b) must identify the flood risk management district by reference to a map prepared for the purposes of the order and laid before the Parliament.
(3) The Scottish Ministers must send SEPA a copy of any order under subsection (1)(b) and any map referred to in the order.
(4) SEPA must, whether a flood risk management district is—
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(b) an area designated by order under subsection (1)(b),

make copies of the order concerned and the map to which the order refers available for public inspection.

Flood risk assessment

9 SEPA to prepare flood risk assessments

(1) SEPA must prepare a flood risk assessment for each flood risk management district providing an assessment of any flood risk for the district.

(2) A flood risk assessment must be prepared by 22nd December 2011 or such earlier date as the Scottish Ministers may direct.

(3) A flood risk assessment is to be based on available and readily derivable information (including in particular information on any impact of climate change on the occurrence of floods).

(4) A flood risk assessment must include—

(a) maps at the appropriate scale of the flood risk management district which show—

(i) borders of any river basin, sub-basin and coastal area in the district,

(ii) topography and land use, and

(iii) such other information as the Scottish Ministers may specify by regulations,

(b) where—

(i) SEPA considers there is reliable information that any flood has occurred in the flood risk management district which had significant adverse consequences for human health, the environment, cultural heritage or economic activity there, and

(ii) a similar future flood in the district with significant adverse consequences for such matters there is still probable,

a description of the flood which has occurred (including its extent and conveyance routes and an assessment of the adverse consequences mentioned in sub-paragraph (i) that the flood entailed),

(c) where—

(i) SEPA considers there is reliable information that a significant flood has occurred in the flood risk management district, and

(ii) significant adverse consequences for the district of any similar future flood there might be envisaged,

a description of the flood which has occurred, and

(d) an assessment of the potential adverse consequences of any future flood for human health, the environment, cultural heritage and economic activity in the flood risk management district taking into account as far as possible issues such as—

(i) the topography,
(ii) the position, and the general hydrological and geomorphological characteristics, of any body of surface water,

(iii) natural features of the district (for example flood plains, wetlands or woodlands) which can assist in retention of flood water (whether on a permanent or temporary basis),

(iv) the effectiveness of any existing artificial flood protection structure,

(v) the position of any populated area and area of economic activity, and

(vi) long-term developments, including any impact of climate change on the occurrence of floods.

(5) A flood risk assessment, and any map included in it by virtue of subsection (4)(a), may also include such other information as SEPA considers appropriate.

(6) In this section—

“body of surface water” has the same meaning as in section 28(1) of the 2003 Act,

“sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers and, as the case may be, lakes to a particular point in a watercourse.

10 **Flood risk assessments: review**

(1) SEPA must—

(a) by 22nd December 2018 or such earlier date as the Scottish Ministers may direct (“the operative date”), review and where appropriate update each flood risk assessment prepared under section 9, and

(b) by the end of the period of 6 years beginning with the operative date, and of each subsequent period of 6 years, review and where appropriate update the latest flood risk assessment updated after review under this section.

(2) Section 9(3) to (6) applies in relation to the review and updating of a flood risk assessment.

11 **Flood risk assessments: regulations**

The Scottish Ministers may by regulations make further provision as to the preparation of a flood risk assessment under section 9, or the review or updating of such an assessment under section 10, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

12 **Flood risk assessments: availability for public inspection**

SEPA must make available for public inspection copies of the flood risk assessment for the time being applicable to each flood risk management district.

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

(1) SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk—
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(a) exists, or
(b) is likely to occur.

(2) The document must be submitted to the Scottish Ministers by such date as they may direct, and after carrying out such consultation as may be required by regulations under section 15.

(3) The document must also identify geographical areas around the areas in the flood risk management district identified under subsection (1) for the purpose of preparing local flood risk management plans (see section 29).

(4) SEPA’s identification—

(a) of any area under subsection (1) is to be based on the flood risk assessment prepared by it under section 9 for the district in which the area is situated,

(b) of any area under subsection (3) is to be based on—

(i) that assessment, and

(ii) such other information as SEPA considers appropriate, and

(c) of any area under subsection (1) or (3) is to identify the area by reference to a map at the appropriate scale prepared for the purposes of and included in the document.

(5) After considering the document, the Scottish Ministers may—

(a) approve it (in whole or in part and with or without modifications), or

(b) reject it.

(6) Before determining whether or not to approve the document, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.

(7) The Scottish Ministers must advise SEPA in writing of the reasons for their determination under subsection (5).

(8) Where the Scottish Ministers reject the document, they must return it to SEPA and direct SEPA to resubmit it by such date as the direction may specify with—

(a) such modifications (if any) as the direction may specify, and

(b) any further modification which SEPA considers appropriate.

(9) An area referred to in subsection (1) and identified in a document approved under this section or section 14 is referred to in this Part as a “potentially vulnerable area”.

(10) An area referred to in subsection (3) and identified in such a document is referred to in this Part and Part 4 as a “local plan district”.

14 Potentially vulnerable areas and local plan districts: review

(1) SEPA must, after carrying out such consultation as may be required by regulations under section 15—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update the document approved under section 13, and
Part 3—Flood risk assessment, maps and plans

7

(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) review and where appropriate update the latest document approved under this section.

(2) SEPA must submit to the Scottish Ministers each updated document.

(3) Any review by SEPA under subsection (1) is to be based—

(a) on the flood risk assessment for the time being applicable to the flood risk management district concerned, and

(b) insofar as the review is of the identification of any local plan district, on such other information as SEPA considers appropriate.

(4) Section 13(4)(c) and (5) to (8) applies in relation to an updated document submitted to the Scottish Ministers under this section.

15 Potentially vulnerable areas and local plan districts: regulations

The Scottish Ministers may by regulations make provision as to—

(a) the form and content of a document submitted to them under section 13 or 14,

(b) consultation by SEPA in relation to its preparation of any such document,

(c) SEPA making available to the public—

(i) any such document,

(ii) information relating to matters included in it,

(iii) a summary of any consultation carried out by SEPA in relation to the document, and

(iv) a document as approved by the Scottish Ministers under section 13 or 14,

(d) SEPA publicising its making available to the public any of the things referred to in paragraph (c)(i) to (iv),

(e) the process to be followed in connection with preparation, submission, approval or modification of a document under section 13 or 14 or review or updating of a document approved under either of those sections, and

(f) such other matters in relation to any such document (including submission, approval, modification, review or updating) as the Scottish Ministers may consider appropriate.

16 SEPA to assess possible contribution of alteration etc. of natural features

(1) SEPA must, by such date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district.

(2) SEPA must—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update its assessment under subsection (1), and
(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) review and where appropriate update the latest assessment
reviewed under this subsection.

(3) Each assessment under subsection (1), and each assessment updated after review under
subsection (2), must—
(a) take into account the flood risk assessment, the flood hazard maps and flood risk
maps and the flood risk management plan for the time being applicable to the
flood risk management district, and
(b) refer to a map—
(i) at the appropriate scale prepared for the purposes of the assessment, and
(ii) showing where alteration (including enhancement) or restoration of natural
features in the district could contribute to management of flood risk there.

(4) SEPA must make available for public inspection copies of—
(a) any assessment under this section for the time being applicable to each flood risk
management district, and
(b) the map to which the assessment refers.

Flood hazard maps and flood risk maps

17 SEPA to prepare flood hazard maps and flood risk maps

(1) SEPA must prepare flood hazard maps and flood risk maps in accordance with this
section and sections 18 and 19.

(2) Flood hazard maps and flood risk maps must be prepared—
(a) by 22nd December 2013,
(b) for the potentially vulnerable areas in each flood risk management district,
(c) at the appropriate scale, and
(d) so as to secure that the maps for the district (taken together) cover all such areas.

18 Flood hazard maps

(1) A flood hazard map (or more than one such map taken together) must (except to the
extent subsections (2) to (6) provide otherwise), show—
(a) the geographical areas which could be flooded by each of the following types of
flood—
(i) floods with a low probability (or which would be an extreme event),
(ii) floods with a medium probability, and
(iii) floods with a high probability, and
(b) the following elements for each of those types of flood—
(i) the flood extent,
(ii) water depths or water level, whichever is appropriate,
(iii) where appropriate, the flow velocity or the relevant water flow, and
(iv) such other elements as the Scottish Ministers may specify by regulations.

(2) But a flood hazard map need not show information referred to in subsection (1) as respects a flood with a high probability where SEPA considers such a flood would be unlikely to have significant adverse consequences for the area which could be flooded by it.

(3) And—

(a) where a geographical area shown in a flood hazard map is or includes a coastal area which SEPA considers is adequately protected from coastal floods, subsection (4) applies instead of subsection (1) as respects any coastal flood (of the coastal area) with a medium or high probability,

(b) where a geographical area shown in a flood hazard map is or includes an area at risk of flooding from groundwater, subsection (5) applies instead of subsection (1) as respects any flood (of the area at such risk) with a medium or high probability and which would be from groundwater, and

(c) subsection (6) applies instead of subsection (1) as respects any flood from a sewerage system which is not a flood solely from a sewerage system.

(4) Where subsection (3)(a) applies, the map—

(a) may, where SEPA considers it appropriate, and

(b) must, to the extent that the Scottish Ministers direct,

show for any such coastal area information referred to in subsection (1) as respects any such flood of that area.

(5) Where subsection (3)(b) applies, the map—

(a) may where SEPA considers it appropriate, and

(b) must, to the extent that the Scottish Ministers direct,

show for the area at such risk information referred to in subsection (1) as respects any such flood of that area.

(6) Where subsection (3)(c) applies, the map—

(a) may where SEPA considers it practicable, and

(b) must to the extent that the Scottish Ministers direct,

show information referred to in subsection (1) as respects any flood in the area from a sewerage system which is not a flood solely from a sewerage system.

(7) To the extent (if any) that, in pursuance of subsections (2) to (6), a flood hazard map does not show information referred to in those subsections, the map must include a statement explaining that the information is not shown in it.

(8) In this section—

(a) as respects a flood—

“low probability” (or “extreme event”) means such probability as may be specified as such by the Scottish Ministers by order,

“medium probability” means such probability (involving a return period of 100 years or more) as may be specified as such by the Scottish Ministers by order,
“high probability” means such probability as may be specified as such by the Scottish Ministers by order,

(b) “groundwater” has the same meaning as in section 3(4) of the 2003 Act.

19 Flood risk maps

(1) The potential adverse consequences associated with each type of flood for which any information referred to in section 18(1) is shown in a flood hazard map must be shown in a flood risk map (or more than one flood risk map taken together) by reference to the matters mentioned in subsection (2).

(2) The matters are—

(a) the indicative number of inhabitants who potentially could be affected,

(b) the type of economic activity in the area which could be flooded,

(c) installations referred to in Annex 1 to Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control, which might cause accidental pollution if any type of flood referred to in subsection (1) occurred,

(d) any of the following protected areas or bodies of water which potentially could be affected, if any type of flood referred to in subsection (1) occurred—

(i) areas for the abstraction of water intended for human consumption identified by order under section 6(1) of the 2003 Act,

(ii) areas referred to in section 7(4)(a) of that Act (areas designated for the protection of economically significant aquatic species),

(iii) bodies of water referred to in section 7(4)(b) of that Act (bodies of water designated as recreational waters),

(iv) areas referred to in section 7(4)(c) of that Act (nutrient-sensitive areas), and

(v) areas referred to in section 7(4)(d) of that Act (areas designated for the protection of habitats or species where the maintenance or improvement of the status of the water is an important factor in such protection),

(e) any area which is within a protected area or body of water referred to in paragraph (d)(i) to (v) and could be affected by pollution from any installation referred to in paragraph (c), and

(f) such other information as the Scottish Ministers may specify by regulations.

(3) Where SEPA considers it appropriate, a flood risk map may also show the potential adverse consequences associated with any type of flood referred to in subsection (1) by reference to any of the following—

(a) information indicating any areas where floods with a high content of transported sediments or debris floods (or a combination of such floods) can occur,

(b) such other sources of pollution as SEPA consider may be significant,

(c) such other available and readily derivable information as SEPA considers appropriate.
Part 3—Flood risk assessment, maps and plans

20 Flood hazard maps and flood risk maps: review

(1) SEPA must—
(a) by 22nd December 2019, review and where appropriate update each flood hazard map and each flood risk map prepared under section 17, and
(b) by the end of each subsequent period of 6 years, review and where appropriate update the latest flood hazard map and flood risk map updated after review under this section.

(2) SEPA must take into account in any review under this section the likely impact of climate change on the occurrence of floods.

(3) Sections 17(2)(b) to (d), 18 and 19 apply in relation to the review and updating of a flood hazard map and a flood risk map.

21 Flood hazard maps and flood risk maps: availability for public inspection

SEPA must make available for public inspection copies of each flood hazard map and each flood risk map for the time being applicable to each flood risk management district.

22 Flood hazard maps and flood risk maps: regulations

The Scottish Ministers may by regulations make further provision as to the preparation of flood hazard maps and flood risk maps under section 17, or the review or updating of such maps under section 20, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

23 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.

(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.
(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.

24 Flood risk management plans: objectives and measures

(1) In setting objectives and identifying measures under section 23(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 16 in relation to the district,

(iv) the flood hazard maps and the flood risk maps prepared under section 17 for the district,

(v) the cost of implementing proposed measures,

(vi) the benefits (in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity or otherwise) that are likely to be derived from implementing proposed measures,

(vii) land and water management,

(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) the environmental objectives within the meaning of section 9 of the 2003 Act,

(x) the conservation of nature in the district and elsewhere, and

(xi) 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) In subsection (1)(a)(viii)—

“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.

(3) For the purposes of subsection (1)(b), a measure is structural if it involves the carrying out of any operation on land.

25 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
      (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) Scottish Natural Heritage,
   (c) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and
   (d) 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).

26 Flood risk management plans: submission for approval

(1) As soon as a flood risk management plan is submitted to the Scottish Ministers under section 23 or 28, 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 25,

(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 action should be taken by SEPA in relation to the plan under subsections (2) to (5) of section 25, they may return the plan to SEPA and direct it—

(a) to 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.

27 Flood risk management plans: approval and publication

(1) After considering a flood risk management plan submitted to them under section 23(1) or in pursuance of section 26(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
Part 3—Flood risk assessment, maps and plans

28 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,

(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 23(5)) the matters specified in Part 2 of schedule 1.

(4) Sections 23(4) to (7) and 24 to 27 apply in relation to the preparation, submission and approval of an updated flood risk management plan.

Local flood risk management plans

29 Local authorities to prepare local flood risk management plans

(1) The lead authority for each local plan district must prepare a local flood risk management plan to supplement the relevant flood risk management plan.

(2) A local flood risk management plan is to consist of—

(a) a supplementary part, and

(b) an implementation part.

(3) The supplementary part must include—

(a) a summary of the objectives, measures and other information included in the relevant flood risk management plan under paragraphs 1 to 3 of schedule 1 so far as relevant to the local plan district,

(b) such information supplemental to that plan as the lead authority considers relevant to flood risk management within the local plan district, and

(c) a summary of—

(i) the steps taken under subsections (1) to (6) of section 30 in relation to the local flood risk management plan,

(ii) any other consultation measures taken in connection with the preparation of the plan, and
(iii) changes made to the plan in light of the views and representations received on it.

(4) The implementation part must include a description of how the current measures are to be implemented including—

(a) a detailed timetable for—

(i) the completion of measures currently being implemented, and

(ii) the implementation of measures yet to be commenced,

(b) in relation to each measure, a description of—

(i) who is, or is to be, responsible for implementing the measure, and

(ii) the arrangements for funding the measure, and

(c) such other information as the lead authority considers relevant to the implementation of the measures.

(5) The implementation part may also include a description of how other measures summarised in the supplementary part under subsection (3)(a) are to be implemented.

(6) A local flood risk management plan must also include such other matters as the Scottish Ministers may specify by regulations.

(7) A local flood risk management plan must not be inconsistent with anything in the relevant flood risk management plan.

(8) For the purposes of this Part, the lead authority—

(a) for a local plan district is—

(i) where a local authority’s area includes all of the local plan district, that authority,

(ii) in any other case, one of the local authorities whose area includes part of the local plan district as may be agreed between those authorities or, in default of agreement, as may be determined by the Scottish Ministers, and

(b) in relation to a local flood risk management plan, is the local authority responsible for preparing the plan by virtue of subsection (1) and paragraph (a) of this subsection.

(9) In this Act, the “current measures”, in relation to a local flood risk management plan, are those of the measures summarised in the plan under subsection (3)(a) which are identified in the relevant flood risk management plan as to be implemented before the plan is next reviewed under section 28.

(10) In this section, “relevant flood risk management plan”, in relation to a local plan district (or the local flood risk management plan for that district), means the flood risk management plan prepared under section 23 or updated under section 28 for the flood risk management district which includes the local plan district.

30 Local flood risk management plans: publicity and consultation

(1) Not less than one year before the beginning of the period to which a local flood risk management plan is to relate or by such date as the Scottish Ministers may direct, the lead authority must publish a draft of the supplementary part of the plan (“the draft supplementary part”).
(2) Publication of a draft under subsection (1) is to be in such manner as the lead authority considers appropriate.

(3) On publishing the draft supplementary part, the lead authority must—
   (a) publicise—
      (i) that fact, and
      (ii) the opportunity to make representations about the draft supplementary part under subsection (4), and
   (b) make copies of the draft supplementary part available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as the lead authority may determine.

(4) Any person who wishes to make representations to a lead authority about the draft supplementary part may do so before the expiry of the period determined under subsection (3)(b).

(5) On publishing the draft supplementary part, the lead authority must also—
   (a) consult the persons specified in subsection (6) on—
      (i) the draft supplementary part, and
      (ii) a draft of the implementation part of the plan, and
   (b) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(a) are—
   (a) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district to which the plan relates (“the district”),
   (b) SEPA,
   (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 the lead authority considers appropriate.

(7) The lead authority must co-ordinate the steps it takes under subsections (1) to (6) with those taken by SEPA in relation to the relevant flood risk management plan under section 25(2) to (4).

(8) Before finalising the local flood risk management plan, the lead authority must take into account—
   (a) any representations about the draft supplementary part made under subsection (4), and
   (b) any views on the draft local flood risk management plan expressed by those consulted under subsection (5)(a), which are received by the lead authority before the expiry of the period determined under subsection (3)(b).

(9) Not later than 2 months after receiving them, the lead authority must inform SEPA of any views expressed by those consulted under subsection (5)(a) which the lead authority considers relevant to the relevant flood risk management plan.
31 Local flood risk management plans: completion and publication

(1) A local flood risk management plan for a local plan district is finalised when—

(a) the flood risk management plan which it supplements is approved under section 27, and

(b) either—

(i) the lead authority, every other responsible authority which has flood risk related functions exercisable in or in relation to the local plan district and SEPA agrees to its content, or

(ii) the Scottish Ministers determine its content under subsection (3).

(2) If—

(a) the lead authority considers that the local flood risk management plan will not be finalised by the local plan deadline, or

(b) the plan is not finalised by that deadline,

the lead authority must notify the Scottish Ministers of that fact.

(3) Where the Scottish Ministers receive notice under subsection (2), they must determine the content of the local flood risk management plan.

(4) Before determining the content of a plan under subsection (3), the Scottish Ministers must take into account any representations made by SEPA and any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.

(5) When a local flood risk management plan is finalised, the lead authority must—

(a) publish the final plan in such manner as it considers appropriate,

(b) make copies of it available for public inspection,

(c) provide a copy of it to SEPA and the Scottish Ministers,

(d) make copies of it available to the public, and

(e) publicise the publication of the final plan.

(6) In making copies of the plan available to the public under subsection (5)(d), the lead authority may charge a reasonable price for each copy.

(7) In subsection (2), the “local plan deadline” is the date 6 months after the date the flood risk management plan mentioned in subsection (1)(a) is approved or such other date as the Scottish Ministers may direct.

32 Local flood risk management plans: interim report

(1) Not earlier than 2 years and not later than 3 years after a local flood risk management plan is finalised, the lead authority must—

(a) review the plan, and
(b) publish a report on the conclusions of the review including information on the progress that has been made towards implementing the measures identified in the implementation part of the plan.

(2) The lead authority must make copies of the report available for public inspection.

33 Local flood risk management plans: final report

(1) Not earlier than 5 years, and not later than 6 years, after a local flood risk management plan is finalised, or by such other date as the Scottish Ministers may direct, the lead authority must publish a report on the plan containing—

(a) an assessment of the progress made towards implementing the current measures,

(b) a summary of the current measures which were not implemented, with reasons for their non-implementation, and

(c) a description of any other measures implemented since the plan was finalised which the lead authority considers have contributed to the achievement of the objectives summarised in the supplementary part of the plan.

(2) The lead authority must make copies of the report available for public inspection.

34 Local flood risk management plans: joint working

Where a local plan district covers more than one local authority’s area, the lead authority and the other authorities must, so far as practicable, co-operate with each other with a view to assisting in—

(a) the preparation of the local flood risk management plan for the district,

(b) the review of that plan under section 32,

(c) the preparation of the report published under that section, and

(d) the preparation of the report published under section 33.

Regulations about plans

35 Regulations relating to flood risk management plans and local flood risk management plans

(1) The Scottish Ministers may by regulations make further provision as to—

(a) the form of flood risk management plans and local flood risk management plans,

(b) the matters to be taken into account in preparing such plans,

(c) the procedures to be followed in connection with the preparation, submission, approval, review and modification of such plans,

(d) consultation by SEPA in relation to its preparation of flood risk management plans,

(e) consultation by lead authorities in relation to their preparation of local flood risk management plans, and

(f) the form, content, preparation and publication of reports under sections 32 and 33.

(2) Such regulations may, in particular, do any of the following—

(a) provide for the notice to be given of, or the publicity to be given to—
(i) matters to be included or proposed to be included in any such plan,
(ii) the approval of any such plan, and
(iii) any other procedural step,
(b) provide for the publicity to be given to the procedures referred to in subsection (1)(c),
(c) make provision for documents and information relating to matters included in the plan to be made available to the public,
(d) make provision as to the making and consideration of representations with respect to any such plan,
(e) require or authorise—
   (i) in relation to a flood risk management plan, SEPA,
   (ii) in relation to a local flood risk management plan, the lead authority,
to consult, or consider the views of, other persons before taking any particular procedural step.

Duty to have regard to plans

Duty to have regard to flood risk management plans and local flood risk management plans

The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a flood risk management district, have regard to—
(a) the flood risk management plan for that district as approved under section 27,
(b) so far as the exercise of the functions affects a local plan district, the local flood risk management plan for that district as finalised under section 31.

Provision of information and assistance

Power of SEPA to obtain information, documents and assistance

(1) The Scottish Ministers and any responsible authority must, on being requested by SEPA, provide SEPA with—
   (a) such information in their or, as the case may be, its possession or under their or its control, and
   (b) such assistance,
as SEPA may reasonably seek in connection with the exercise of any of SEPA’s functions under sections 9, 10, 17, 20, 23, 24 and 28.
(2) Any responsible authority must, on being requested by SEPA—
   (a) gather and provide SEPA with such information—
      (i) as respects flood risk, and
      (ii) which SEPA considers could contribute to improving understanding of flood risk, and
   (b) prepare and provide SEPA with such assessments or maps which SEPA considers could contribute to such understanding,
as SEPA may reasonably seek in connection with the exercise of any of those functions.

(3) Information requested by SEPA in pursuance of subsection (2) may include in particular information about, or as the case may be assessments or maps of, urban drainage and flooding caused by surface run-off water or a sewerage system.

(4) Information and assistance which a responsible authority is required to provide to SEPA in pursuance of subsection (1) or (2) must be provided in such form and manner as SEPA may reasonably seek.

(5) SEPA may serve a notice on any person (but not the Scottish Ministers or a responsible authority) requiring the person to—

(a) provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or

(b) produce to SEPA, or to a person authorised by it, such documents, as it may reasonably require in connection with the exercise of any of the functions referred to in subsection (1).

(6) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (5) cannot agree with SEPA on whether information or assistance is, or assessments, maps or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

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### Power of lead authorities to obtain information, documents and assistance

(1) A person mentioned in subsection (2) must, on being requested by a lead authority, provide the authority with—

(a) such information in its possession or under its control, and

(b) such assistance,

as the authority may reasonably seek in connection with its functions under sections 29 to 33.

(2) Those persons are—

(a) SEPA, and

(b) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.

(3) A lead authority may serve a notice on any other person (but not the Scottish Ministers) requiring the person to—

(a) provide the authority, or a person authorised by it, in the form and manner specified in the notice, with such information, or

(b) produce to the authority, or to a person authorised by it, such documents, as it may reasonably require in connection with the exercise of any of the functions under sections 29 to 33.

(4) Where a responsible authority, SEPA or, as the case may be, a person on whom a notice is served under subsection (3) cannot agree with the lead authority on whether information or assistance is, or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.
39 Power to obtain information, documents and assistance: supplementary

(1) The information or documents required to be provided or produced in pursuance of a notice under section 37(5) or section 38(3) (an “information notice”) must be specified or described in the notice.

(2) An information notice may require information to be provided or documents to be produced—
   (a) at or by a time and at a place specified in the notice,
   (b) in circumstances specified in the notice, or
   (c) from time to time, in accordance with criteria specified in the notice.

(3) Nothing in this section or section 37 or 38 authorises SEPA or, as the case may be, a lead authority to require disclosure of anything which a person would be entitled to refuse to disclose in proceedings in the Court of Session on grounds of confidentiality in proceedings in that court.

(4) Where by virtue of an information notice documents are produced to any person, that person may take copies of or make extracts from them.

(5) References in this section or section 37 or 38 to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

40 Power to obtain information, documents and assistance: offence

(1) A person who—
   (a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under section 37(5) or 38(3), or
   (b) intentionally alters, suppresses or destroys a document which that person has been required by such notice to produce,

   commits an offence.

(2) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to a fine.

Consistency and co-ordination with river basin management planning under the 2003 Act

41 Consistency and co-ordination with characterisations and plans under the 2003 Act

(1) SEPA—
   (a) must secure appropriate consistency in the information in flood risk assessments, flood hazard maps, flood risk maps and flood risk management plans prepared under this Part with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act,
   (b) must co-ordinate—
Part 3—Flood risk assessment, maps and plans

(i) preparation and review of flood hazard maps, flood risk maps and flood risk management plans under this Part with preparation and review of information mentioned in subsection (2), and

(ii) making available such maps and plans for public inspection with making available such information for such inspection, and

(c) may, where it considers it appropriate, integrate any such flood hazard map, flood risk map or flood risk management plan with the information mentioned in subsection (2).

(2) The information referred to in subsection (1)(b)(i) and (c) is—

(a) as respects flood risk maps and flood hazard maps, characterisations of river basin districts prepared under Chapter 2 of Part 1 of the 2003 Act, and

(b) as respects flood risk management plans, river basin management plans prepared under that Chapter.

(3) A lead authority responsible for preparing a local flood risk management plan must secure appropriate consistency in the information contained in the plan with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act.

Advisory groups

42 District flood risk advisory groups

(1) Each flood risk management district is to have one or more district flood risk advisory groups (“district advisory groups”).

(2) The function of each district advisory group is to advise SEPA on any matter which—

(a) relates to—

(i) the preparation of any of the documents mentioned in subsection (3),

(ii) the review and updating of any such document,

(iii) any assessment (of possible contribution of alteration etc. of natural features) under section 16, and

(iv) the review and updating of any such assessment, and

(b) is within the remit of the group.

(3) The documents mentioned in subsection (2)(a)(i) are—

(a) the flood risk assessment for the district,

(b) the document (under section 13) identifying—

(i) potentially vulnerable areas in the district, and

(ii) local plan districts,

(c) each flood hazard map and flood risk map for the district,

(d) the flood risk management plan for the district.

(4) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (3) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a district advisory group for the district.
(5) The number of district advisory groups, and their remits, membership and procedure are to be such as SEPA may determine.

(6) SEPA may determine the remit of a district advisory group for any flood risk management district by reference to one or more of the following—

(a) a particular geographical area,

(b) any other particular aspect of flood risk management within the district.

(7) In determining the number of district advisory groups for any flood risk management district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of—

(a) the persons specified or referred to in section 25(5)(a) to (c), and

(b) such other persons as appear to SEPA to have an interest in flood risk management for the district.

(8) SEPA may pay to members of a district advisory group such expenses and allowances as it may determine.

43 Sub-district flood risk advisory groups

(1) For the purpose of setting up sub-district flood risk advisory groups, SEPA must divide each flood risk management district into such geographical areas (“sub-districts”) as it considers appropriate.

(2) Each sub-district is to have a sub-district flood risk advisory group (“sub-district advisory group”).

(3) The function of each sub-district advisory group is to advise—

(a) SEPA, on any matter which relates to—

(i) the preparation of the documents mentioned in subsection (4),

(ii) the review and updating of those documents,

(iii) any assessment (of possible contribution of alteration etc. of natural features) under section 16, and

(iv) the review and updating of any such assessment, and

(b) lead authorities for local plan districts, all or part of which form part of the sub-district, on any matter which relates to the preparation of—

(i) a local flood risk management plan,

(ii) a report under section 32 or 33,

so far as those matters are within the remit of the group.

(4) The documents referred to in subsection (3)(a)(i) are—

(a) the flood risk assessment for the flood risk management district of which the sub-district forms part,

(b) the document (under section 13) identifying—

(i) potentially vulnerable areas in the district, and

(ii) local plan districts in the district,

(c) each flood hazard map and flood risk map for the district,
(d) the flood risk management plan for the district.

(5) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (4) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a sub-district advisory group.

(6) A lead authority must, in preparing a local flood risk management plan or a report under section 32 or 33, have regard to any advice given by a sub-district advisory group.

(7) The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.

(8) SEPA may pay to members of a sub-district advisory group such expenses and allowances as it may determine.

**Supplementary**

### 44 Power to give effect to Community obligations etc.

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

### 45 Annual report on implementation of Directive

The Scottish Ministers must either—

(a) as soon as practicable after the end of each calendar year lay before the Parliament a report summarising action taken during the year for securing compliance with the requirements of the Directive in accordance with this Part by—

(i) the Scottish Ministers,
(ii) SEPA, and
(iii) the responsible authorities, or

(b) incorporate into their report under section 26 of the 2003 Act for the calendar year concerned a report summarising such action.

### 46 Availability of documents for public inspection

(1) Where, under this Part, any order, assessment, map, plan, or report is to be made available for public inspection, it—

(a) must be made available—

(i) free of charge,
(ii) at all reasonable times, and

(b) may be made available by such means, or in such formats, as the person required to make it available considers appropriate for the purpose of encouraging the inspection of it by members of the public.
(2) The person required to make available the document referred to in subsection (1) must publicise the arrangements for making it available.

47 Publicity of matters

(1) Where, under this Part, a person (“the publisher”) is required to publicise any matter, the publisher—

(a) must do so by means of a notice published in the appropriate newspapers, and

(b) may further publicise the matter by such electronic or other means as the publisher considers appropriate.

(2) In subsection (1), the appropriate newspapers are—

(a) in relation to a local flood risk management plan, such newspapers circulating in the local plan district, or any part of the district, as the publisher considers appropriate,

(b) in relation to any other matter—

(i) at least one newspaper circulating throughout Scotland, and

(ii) such local newspapers circulating in any part of the flood risk management district to which the matter relates as the publisher considers appropriate.

48 Interpretation of Part 3

(1) In this Part—

“appropriate scale” means such scale as SEPA considers most appropriate,

“river basin” has the same meaning as in section 28(1) of the 2003 Act,

“wetland” has the same meaning as in section 3(5) of that Act.

(2) The Scottish Ministers may by order specify boundaries of any coastal area for the purposes of this Part.

PART 4

FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

General power

49 General power to manage flood risk

(1) A local authority may do anything which it considers—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan,

(b) is necessary to reduce the risk of a flood in its area which is likely to—

(i) occur imminently, and

(ii) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or

(c) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).
(2) Without prejudice to the generality of subsection (1), a local authority may in particular—

(a) carry out any operations to which a flood protection scheme relates (see section 52),

(b) carry out any other flood protection work,

(c) carry out any temporary works required for the purposes of a flood protection scheme or any other flood protection work,

(d) enter into agreements or arrangements with any other person for the carrying out by that person or by the authority of any work which could be done by the authority under this Part,

(e) acquire land in accordance with section 55,

(f) make contributions towards expenditure incurred by any other person doing something which could be done by the authority under this Part, and

(g) receive from any other person contributions towards expenditure incurred by the authority in exercising any of its functions under this Part.

(3) Work carried out under this section may be carried out within or outwith the local authority’s area.

50 Limits of general power

(1) The power under section 49 does not enable a local authority to do anything which it is, by virtue of a limiting provision, unable to do.

(2) In subsection (1), a “limiting provision” is one which—

(a) prohibits or prevents the local authority from doing anything or limits its powers in that respect, and

(b) is expressed in an enactment (whenever passed or made).

(3) The absence from an enactment of provision conferring any power does not of itself make that enactment a limiting provision.

51 Limits of general power: statutory undertakings

(1) A local authority may not exercise the power under section 49 in a way which—

(a) damages any works or property belonging to a statutory undertaker, or

(b) interferes with the carrying on of its statutory undertaking, unless the undertaker consents.

(2) But consent is not required if it is withheld unreasonably.

(3) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably, and their decision is final.

Flood protection schemes

52 Flood protection schemes

(1) A flood protection scheme is a scheme by a local authority for the management of flood risk within the authority’s area.
(2) A proposed flood protection scheme must—
   (a) contain a description of the operations the local authority proposes to carry out,
   (b) include such maps, plans and specifications as may be specified by regulations by
       the Scottish Ministers,
   (c) state how the operations will contribute to the implementation of current measures
       described in any relevant local flood risk management plan, and
   (d) inasmuch as they will not so contribute, state the reasons why the local authority
       considers carrying them out will not affect the implementation of those measures.

(3) Schedule 2 makes further provision about the making of flood protection schemes.

(4) The Scottish Ministers may by order amend schedule 2 so as to modify the procedure
    for making flood protection schemes.

53 Orders under the Land Drainage (Scotland) Act 1958

(1) This section applies where an improvement order affects any land on which operations
    are proposed to be carried out under a flood protection scheme.

(2) The flood protection scheme may include proposals to—
   (a) vary the improvement order by—
       (i) removing land from the improvement area,
       (ii) removing or rendering ineffective all or any part of the drainage or
           protective works specified in the improvement order, or
       (iii) amending, reapportioning or removing any obligations of maintenance
           imposed on the authorised persons under the improvement order, or
   (b) revoke the improvement order.

(3) But the scheme may not include proposals to vary the improvement order so as to
    impose any new obligations on the authorised persons in respect of operations described
    in the scheme.

(4) Where the proposed operations will materially alter drainage works or protective works,
    the scheme must include proposals to vary the improvement order so as to remove the
    obligation of maintenance in respect of the part of the drainage works or protective
    works so altered.

(5) On commencement of the flood protection scheme, the improvement order is varied or,
    as the case may be, revoked to the extent specified in the scheme.

(6) Where an improvement order has been varied or revoked by a flood protection scheme,
    the local authority must cause a notice of the variation or revocation to be registered in
    the Land Register of Scotland or recorded in the Register of Sasines (as applicable).

(7) The Scottish Ministers may by order specify the form and content of a notice under
    subsection (6).

(8) In this section—
    “authorised persons” has the meaning given in section 2(2) of the Land Drainage
    (Scotland) Act 1958 (c.24),
    “drainage works” has the meaning given in section 18(1) of that Act,
    “improvement area” has the meaning given in section 1(3) of that Act,
“improvement order” has the meaning given in section 1(1) of that Act,
“protective works” has the meaning given in section 2(1)(d) of that Act.

Deemed planning permission

54 Deemed planning permission for scheme work

In section 57 of the Town and Country Planning (Scotland) Act 1997 (c.8) (deemed planning permission), after subsection (2A) insert—

“(2B) On—
(a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the Flood Risk Management (Scotland) Act 2009 (asp 00) in respect of any operation which would constitute development, or
(b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,
the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”.

Acquisition of land

55 Acquisition of land

(1) A local authority may—
(a) by agreement, acquire land which it requires for the exercise of its functions under this Part,
(b) with the authorisation of the Scottish Ministers, compulsorily acquire land which it requires for the purpose of carrying out scheme operations.

(2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act.

Assessment of watercourses etc.

56 Assessment of watercourses etc.

(1) Every local authority must, from time to time—
(a) assess the watercourses in its area for the purpose of ascertaining whether the condition of any such watercourse gives rise to a risk of flooding of land within or outwith its area, and
(b) where a watercourse gives rise to such a risk, consider whether exercising any of its functions under this Part would substantially reduce that risk taking into account the effect of any such exercise on the implementation of current measures described in any relevant local flood risk management plan.

(2) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any watercourse in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.
(3) Subsection (2) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

**General**

57 **Recovery of expenses**

A local authority may recover any expense it incurs in carrying out any repairs or re-instatement to flood protection work done under section 49 from the owner or, as the case may be, occupier of the land on which the work was carried out if such expense is as a result of the actions of that person.

58 **Information about ownership etc. of land**

(1) For the purposes of enabling it to exercise any of its functions under this Part, a local authority may require any person it believes to be the owner or occupier of any land to state in writing—

(a) the nature of the person’s interest in that land, and  
(b) the name and address of any other person known to the person as having an interest in that land.

(2) Any person who—

(a) fails to comply with a requirement of a local authority under this section, or  
(b) in answer to any such requirement, intentionally or recklessly makes any statement which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

59 **Damage to certain flood protection work**

(1) Any person who intentionally or recklessly damages any—

(a) barrier, embankment or other work for defence against flooding constructed or otherwise created by a local authority in exercise of any of its functions under this Part, or  
(b) apparatus ancillary to such work,

commits an offence.

(2) For the avoidance of doubt, a person carrying out flood protection work under this Part does not commit an offence under subsection (1).

(3) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding.

(4) A person who commits an offence under subsection (1) is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 3 on the standard scale, or to both,  
(b) in the sheriff court—
Part 5—SEPA: other flood risk management functions

60 Repeal of Flood Prevention (Scotland) Act 1961

The Flood Prevention (Scotland) Act 1961 (c.41) is repealed.

61 Interpretation of Part 4

In this Part—

“relevant local flood risk management plan” means, in relation to a local authority, a local flood risk management plan for a local plan district that includes all or part of the local authority’s area,

“scheme documents” means, in relation to a proposed flood protection scheme, the documents containing the material specified in, or by regulations made under, section 52(2),

“statutory undertaker” has the meaning given in the Town and Country Planning (Scotland) Act 1997 (c.8),

“statutory undertaking”—

(a) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002 (asp 3),

(b) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997,

“watercourse”—

(a) includes—

(i) the bed and banks of any river, stream or burn (whether for the time being carrying water or not), and

(ii) any ditch, drain, cut, canal, culvert, sluice or passage carrying or designed to carry water, together with the walls, pipes or other works containing or intended to contain the same, but

(b) does not include any sewer or water-main.

PART 5

SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Advice to planning authorities and others as to flood risk

62 Advice to planning authorities and others as to flood risk

(1) SEPA must, when requested by a planning authority, give the authority advice as to flood risk in the authority’s district.
(2) SEPA must, when requested by a National Park authority which, though not a planning authority, is (by virtue of the order designating the National Park for which the authority is established) to be treated as the planning authority for the Park for any purpose, give the authority advice in relation to flood risk in the Park.

(3) Advice under subsection (1) or (2) is to be based on such information as respects such flood risk as SEPA possesses, taking into account—

(a) the flood risk assessment, any flood hazard map and flood risk map, the flood risk management plan and any local flood risk management plan for the time being applicable to the authority’s district, and

(b) information provided to it by any planning authority or National Park authority which is not a planning authority.

(4) In this section—

(a) “planning authority” and a planning authority’s “district” (except where paragraph (b) provides otherwise) have the meanings given in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

(b) where—

(i) all or part of a planning authority’s district is designated as a National Park, and

(ii) the designation order makes provision for the National Park authority to be the planning authority for the Park for the purposes of the planning Acts,

“planning authority” in relation to the National Park means the National Park authority and a planning authority’s “district” means the National Park for which the National Park authority is established, and

(c) “the planning Acts” has the meaning given in section 277(1) of that Act.

Other assessment and maps of flood risk

(1) SEPA may—

(a) (in addition to the flood risk assessment it is required to prepare under section 9 and review under section 10) carry out such other assessment of flood risk as it considers appropriate, and

(b) (in addition to the flood hazard maps and flood risk maps it is required to prepare under section 17 and review under section 20) prepare such other maps in relation to flood risk as it considers appropriate.

(2) In the exercise of its power under subsection (1), SEPA must take into account the flood risk assessment, any flood hazard map and flood risk map and the flood risk management plan for the time being applicable to the area being assessed.

(3) SEPA may, where it considers it appropriate, integrate any map prepared by it under subsection (1)(b) with any such flood hazard map or flood risk map.
64 **Flood warning**

(1) SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood.

(2) Any warning under subsection (1)—

(a) of a flood which SEPA considers is occurring must be made available as soon as practicable after SEPA considers that is the case,

(b) of a flood which SEPA considers is likely to occur in the near future must be made available as soon as SEPA considers appropriate,

(c) is to be based on information available to SEPA, and

(d) must be made publicly available by SEPA by such means as it considers appropriate.

65 **Assessment of whether flood warning system should be provided or altered**

(1) SEPA may, and must where the Scottish Ministers direct, assess whether in its opinion—

(a) provision and operation by it of a flood warning system, or alteration of any flood warning system provided and operated by it, would assist in providing earlier or more accurate flood warning as respects an area, and

(b) the earlier or more accurate flood warning so provided would be likely to reduce the potential adverse consequences of flooding of the area for human health, the environment, cultural heritage and economic activity there.

(2) Any assessment under subsection (1) is to be based on such information as SEPA possesses.

(3) In carrying out any such assessment SEPA must consult in accordance with section 67(1).

(4) In this section and section 66, “flood warning system” means a system by which, for the purpose of detecting, forecasting or providing warning of any flood which is occurring or likely to occur in the near future, information as respects any of the following matters is obtained and transmitted—

(a) rainfall,

(b) the level or flow of any surface water (within the meaning of section 3(3) of the 2003 Act),

(c) such other matters as appear to SEPA to be appropriate for that purpose.

66 **Provision, alteration etc. of flood warning system**

(1) SEPA may—

(a) provide and operate any flood warning system,

(b) alter any flood warning system provided and operated by it,

(c) for those purposes provide, install or alter apparatus and carry out any engineering or building operations, and
(d) maintain any such apparatus.

(2) Before—
(a) providing a flood warning system in pursuance of paragraph (a) of subsection (1),
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection, or
(c) for either of the purposes in paragraph (a) or (b) carrying out any engineering or building operations,

SEPA must consult in accordance with section 67(2).

(3) Where SEPA considers—
(a) the alteration of any flood warning system in pursuance of paragraph (b) of subsection (1), or
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection (“any related thing”),

would be material, it must consult in accordance with section 67(2) before carrying out the alteration of the system or for that purpose any related thing.

67 Consultation required by sections 65 and 66

(1) The consultation required by section 65 is consultation with—
(a) every local authority whose area includes any part of the area which is the subject of the assessment, and
(b) as regards the police duties mentioned in subsection (3), the chief constable of the police force maintained for the police area which is the subject of the assessment.

(2) The consultation required by section 66 is consultation with—
(a) every local authority in whose area the power is to be exercised, and
(b) as regards the police duties mentioned in subsection (3), the chief constable of the police force maintained for the police area in which the power is to be exercised.

(3) The police duties are such duties under section 17(1)(a)(ii) and (iii) of the Police (Scotland) Act 1967 (c.77) (general duties of guarding, patrolling and watching so as to preserve order and protect life and property) as arise in relation to any flood risk.

(4) In this section, “police area” has the same meaning as in that Act.

PART 6
POWERS OF ENTRY AND COMPENSATION

Powers of entry

(1) Any person authorised by SEPA is entitled to enter any land for the purposes of carrying out SEPA’s functions under—
(a) section 13 (identification of potentially vulnerable areas and local plan districts),
(b) section 14 (review of potentially vulnerable areas and local plan districts),
(c) section 16 (assessment of possible contribution of alteration etc. of natural features),

(d) section 17 (preparation of flood hazard maps and flood risk maps),

(e) section 20 (review of flood hazard maps and flood risk maps),

(f) section 23 (preparation of flood risk management plans),

(g) section 28 (review of flood risk management plans),

(h) section 63 (other assessment and maps of flood risk), and

(i) section 66 (provision, alteration etc. of flood warning systems).

(2) Any person authorised by a local authority is entitled to enter—

(a) any land on which scheme operations are to be carried out, for the purposes of carrying out the operations or of executing any temporary works in relation to them,

(b) any land for the purpose of carrying out flood protection work on the ground mentioned in section 49(1)(b),

(c) any land for the purposes of maintaining flood protection work carried out under section 49, and

(d) any land for the purposes of determining whether, and if so in what manner, any function conferred by or under Part 4 is to be exercised.

Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 68 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned, and

(b) that—

(i) the conditions in subsection (3) are satisfied,

(ii) the land is unoccupied, or

(iii) the case is one of urgency.

(3) The conditions mentioned in subsection (2)(b)(i) are—

(a) the person applying for the warrant has given notice under section 70(3) of the person’s intention to exercise the right,

(b) the notice period has expired,

(c) either—

(i) permission to exercise the right in relation to the land has been refused, or

(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

(a) does not entitle a person to use force against an individual, and
(b) continues in force until the purpose for which the warrant was issued has been
fulfilled or, if earlier, the expiry of such period as the warrant may specify.

(5) Any person who, without reasonable excuse, prevents or obstructs any other person
from doing anything which is authorised by a warrant granted under this section
commits an offence and is liable on summary conviction to a fine not exceeding level 3
on the standard scale.

70 Powers of entry: supplementary

(1) A right to enter any land conferred by section 68 includes a right to—
   (a) enter for the same purpose any land adjacent to it, and
   (b) survey and examine the land.

(2) Any person who enters any land in exercise of a right conferred by section 68 is entitled,
    subject in the case of a right exercisable in accordance with a warrant to the terms of the
    warrant, to—
    (a) take on to the land such other persons and such materials and equipment
        (including vehicles) as may be reasonably required for the purposes of assisting
        the person, and
    (b) do anything else which is reasonably required in order to fulfil the purpose for
        which entry is taken.

(3) Before any such person exercises any such right, the occupant of the land concerned
    must be given—
    (a) where—
        (i) the person exercising any such right intends to take heavy equipment onto
            the land concerned or entry is sought to a house, and
        (ii) the right being exercised is not being exercised in accordance with a
            warrant,
            at least 7 days’ notice,
    (b) in any other case, at least 24 hours’ notice.

(4) A right to enter any land conferred by section 68 may be exercised only at a reasonable
time.

(5) Subsections (3) and (4) do not apply to the exercise of—
    (a) a right under section 68(2)(b), or
    (b) if the situation is urgent, a right under section 68(1)(i).

(6) A person authorised to exercise any right conferred by section 68 must, if required to do
so, produce written evidence of that authorisation.

(7) In subsection (3)(a)(i)—
    “heavy equipment” does not include vehicles designed soley or mainly for the
    carriage of passengers,
    “house” has the meaning given in section 194(1) of the Housing (Scotland) Act
    2006 (asp 1).
(8) In this section and section 71, references to a right to enter land conferred by section 68 include references to that right exercised in accordance with a warrant granted under section 69.

Compensation

71 Compensation

(1) SEPA must compensate any person who has sustained damage in consequence of—
   (a) any exercise of the power in section 66(1)(c) or (d), or
   (b) the exercise of a right of entry conferred by section 68(1) (including the ancillary rights mentioned in section 70(1) and (2)).

(2) A local authority must compensate any person who has sustained damage in consequence of—
   (a) scheme operations carried out by or on behalf of the local authority,
   (b) the subsequent maintenance of any such operations by or on behalf of the local authority,
   (c) any other exercise of the power in section 49(1), or
   (d) the exercise of a right of entry conferred by section 68(2) (including the ancillary rights mentioned in section 70(1) and (2)).

72 Compensation: supplementary

(1) In section 71, a person sustains damage if—
   (a) the value of the person’s interest in land has been depreciated, or
   (b) the person has been disturbed in the person’s enjoyment of land.

(2) SEPA or, as the case may be, a local authority must pay compensation under section 71 to a person only if—
   (a) the damage is not attributable to an act or omission of the person,
   (b) the act or omission causing the damage would have been actionable at the person’s instance if it had been done or omitted otherwise than in exercise of statutory powers,
   (c) the person gives notice to SEPA or, as the case may be, the local authority of the person’s claim stating the grounds of the claim and the amount claimed, and
   (d) the notice is given no later than the earlier of—
      (i) 2 years after the depreciation first becomes apparent or, as the case may be, the first occurrence of the disturbance, and
      (ii) 10 years from the completion of the scheme operations, maintenance or, as the case may be, exercise of a right of entry.

(3) Any question of disputed compensation under section 71 is to be determined by the Lands Tribunal for Scotland.
PART 7
RESERVOIRS

73 SEPA to be enforcement authority under the Reservoirs Act 1975

(1) The Reservoirs Act 1975 (c.23) (referred to in this Part as “the 1975 Act”) is amended as follows.

(2) In section 1 (ambit and interpretation), after subsection (4A) insert—

“(4B) The “area” of the Scottish Environment Protection Agency (referred to in this Act as “SEPA”), in its capacity as a relevant authority for the purposes of this Act, is the whole of Scotland.”.

(3) In section 2(1) (relevant authorities), for the words from “councils” to “1994” substitute “SEPA”.

(4) In Schedule 1 (index of definitions), after the entry for “Area (in relation to the Environment Agency)” insert—

“Area (in relation to SEPA) Section 1(4B)”.

74 Transitional arrangements

(1) An existing relevant authority is a body which, immediately before the date of commencement of section 73 (“the commencement date”), is a relevant authority in Scotland for the purposes of the 1975 Act.

(2) Each existing relevant authority must, as soon as practicable after the commencement date, give to SEPA—

(a) the register maintained by the authority under section 2(2) of that Act, and

(b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).

(3) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(4) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the commencement date.

(5) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the commencement date.

(6) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date has effect as if done by SEPA.
Service of documents

(1) In section 15(4) of the 1975 Act (reserve powers of enforcement authorities)—
   (a) after “section 22A” insert “or 22B”,
   (b) the words “or section 192 of the Local Government (Scotland) Act 1973” are repealed.

(2) After section 22A of that Act insert—

"22B Service of notices by SEPA
   Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by SEPA as if it were authorised or required to be served or given by or under that Act.”.

Enforcement powers and incident reporting

Extension of enforcement authority’s reserve powers

The amendments to the 1975 Act made by section 75 of the Water Act 2003 (c.37) (which enable enforcement authorities to serve and enforce notices requiring undertakers to take measures in the interests of safety) extend to Scotland.

Incident reporting

After section 12 of the 1975 Act, insert—

"12ZA Incident reporting
   (1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at large raised reservoirs.
   (2) The regulations may, in particular—
      (a) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,
      (b) provide for a supervising engineer or other person to determine whether an incident has occurred,
      (c) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,
      (d) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
      (e) make provision for the publishing of reports,
      (f) create offences,
      (g) provide that any offence created is triable—
         (i) only summarily, or
         (ii) either summarily or on indictment,"
(h) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(i) provide for any offence created which is triable either summarily or on indictment to be punishable—

   (i) on summary conviction, by a fine not exceeding the statutory maximum,

   (ii) on conviction on indictment, by a fine,

(j) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.

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

   (a) SEPA,

   (b) all undertakers of large raised reservoirs,

   (c) the Institution of Civil Engineers, and

   (d) any other person as they consider appropriate.

(4) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

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**Crown application**

**Reservoirs Act 1975: Crown application**

After section 27A of the 1975 Act, insert—

“27B Crown application in Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.

(5) The power conferred by section 17 is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5)—

   (a) “Crown land” means land, an interest in which—

      (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

      (ii) belongs to an office-holder in the Scottish Administration or to a government department, or
(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(7) In subsection (6), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(8) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

PART 8
GENERAL

79 SEPA’s power to obtain information about land

Section 27 of the Environment Act 1995 (c.25) (SEPA’s power to obtain information about land for the purposes mentioned in that section) applies where SEPA considers that it requires information relating to any land for the purpose of the exercise of any of its functions under section 16 or Part 5, subject to the modification that the notice served by SEPA under subsection (1) of that section must specify the land, the function and this Act.

80 Crown application

(1) This Act binds the Crown.

(2) The modifications made by schedule 3 bind the Crown to the extent that the enactments modified bind the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
Part 8—General

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 68 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—

(a) “Crown land” means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department, or

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

81 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,
that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—
(a) in relation to a body corporate—
   (i) a director, manager, secretary or other similar officer of the body,
   (ii) where the affairs of the body are managed by its members, the members,
(b) in relation to a Scottish partnership, a partner, and
(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

82 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

(2) An order under this section may modify any enactment, instrument or document.

83 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act—
   (a) must be exercised by statutory instrument,
   (b) may be exercised so as to make different provision for different purposes (including different areas), and
   (c) includes power to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 86(1)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.

(3) A statutory instrument containing—
   (a) an order under section 52(4),
   (b) an order under section 82(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

84 Interpretation: general

(1) In this Act—

“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003 (asp 3),

“flood protection work” means any operation on land for the purpose of protecting any land from flooding including—
(a) any work of construction, alteration, improvement, repair, maintenance, demolition or removal,
(b) the sowing or planting of vegetation or forestry,
(c) any work ancillary to an operation specified in paragraph (a) or (b),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39), and “area” in relation to such an authority is to be construed accordingly,

“scheme operation” means, in relation to a flood protection scheme, an operation described in that scheme in pursuance of section 52(2)(a).

(2) The words and other expressions listed in schedule 4 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

85 Minor and consequential modifications

Schedule 3 makes—

(a) minor modifications, and
(b) modifications consequential on the provisions of this Act.

86 Commencement and short title

(1) The provisions of this Act, except this section and sections 3 to 6, 48, 61, 83 and 84, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Flood Risk Management (Scotland) Act 2009.
SCHEDULE 1
(introduced by section 23(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 before or after the plan is next reviewed under section 28.

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 17 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) 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.

6. A summary of—
   (a) the steps taken under subsections (2) to (5) of section 25 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.

7. Information as to SEPA.
PART 2

COMPONENTS OF THE SUBSEQUENT UPDATE OF FLOOD RISK MANAGEMENT PLANS

9 A summary of any changes which have been made as compared to the previous version of the plan.

10 An assessment of the progress made towards the achievement of the objectives included in the plan under paragraph 1(a).

11 A summary of any measures included in the previous plan under paragraph 1(b) which were not implemented, with reasons for the non-implementation.

12 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

(Furnished by section 52)

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—

(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 (in so far 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.

(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
      (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,
Schedule 2—Flood protection schemes: procedure etc.

(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.

(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).

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.

5 (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 53 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 53 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 85)

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.

Roads (Scotland) Act 1984 (c.54)

3 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 49 of the Flood Risk Management (Scotland) Act 2009 (asp 00)”.

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

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

Environment Act 1995 (c.25)

5 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.

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

6 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)

7 The Flood Prevention and Land Drainage (Scotland) Act 1997 is repealed.
Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)

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

Water Industry (Scotland) Act 2002 (asp 3)

5 9 Paragraph 3 of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

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

10 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”.

SCHEDULE 4
(introduced by section 84(2))

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Flood Risk Management (Scotland) Bill
[AS INTRODUCED]


Introduced by: Richard Lochhead
On: 29 September 2008
Bill type: Executive Bill
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

FLOOD RISK MANAGEMENT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Flood Risk Management (Scotland) Bill introduced in the Scottish Parliament on 29 September 2008:

   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 15–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND – EC FLOODS DIRECTIVE

4. The flood risk assessment and management provisions of the Bill (Part 3) make provision and enable provision to be made for or in connection with implementing the EC Floods Directive1 (“the Directive”).

5. The purpose of the Directive (set out in article 1) is to establish a framework for the assessment and management of flood risks, aiming at the reduction of the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods.

6. The Directive applies to all forms of flooding by defining “flood” to include all temporary covering by water of land not normally covered by water. This includes flooding from rivers, lochs, groundwater and the sea as well as flooding from surface water runoff but Article 2 of the Directive allows Member States to choose whether to exclude floods from sewerage systems. The Directive requires Member States to:
   - produce preliminary flood risk assessments (deadline – December 2011)
   - produce flood hazard maps and flood risk maps (deadline – December 2013)
   - produce flood risk management plans (deadline – December 2015)

7. The Directive gives Member States the freedom to set their own objectives for flood risk management, and allows member states to utilise existing tools, information and plans.

BACKGROUND – THE FLOOD PREVENTION (SCOTLAND) ACT 1961

8. The provisions which replace the Flood Prevention (Scotland) Act 1961 (Part 4) make provision for a revised statutory process for flood protection schemes (known as flood prevention schemes under that Act). The Act gave local authorities the power to carry out measures for the prevention or mitigation of flooding of non-agricultural land including:
   - cleansing any watercourse or embankment

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- repairing any watercourse or embankment
- maintenance of any watercourse or embankment
- improvement, alteration or reinstatement of a watercourse, work or apparatus
- construction of a new watercourse, work or apparatus

9. These powers were permissive and discretionary only, i.e. the authority could exercise the powers but did not have to. Additionally, no work other than maintenance could be carried out under the Act without the promotion of a flood prevention scheme by the local authority. Flood prevention schemes were confirmed under the 1961 Act by the Secretary of State and then since devolution by the Scottish Ministers and financially supported by the Scottish Government if they complied with the approved cost/benefit ratio.

10. The Flood Prevention and Land Drainage (Scotland) Act 1997 amended the 1961 Act by placing statutory duties on local authorities including:
- requiring the local authority to assess all watercourses from time to time to ascertain whether or not they are likely to cause flooding of non-agricultural land
- requiring the local authority to carry out works to reduce the likelihood of flooding of non-agricultural land caused by the condition of a watercourse
- requiring local authorities to liaise with adjacent authorities in order to warn them of flood risk from watercourses
- requiring local authorities to prepare biennial reports

THE BILL – OVERVIEW

11. The Bill makes provision in relation to five main areas: (i) coordination and cooperation within the domain of flood risk management; (ii) assessment of flood risk and preparation of flood risk maps and flood risk management plans, including implementing the EC Floods Directive; (iii) amendments to local authority and SEPA functions for flood risk management; (iv) a revised statutory process for flood protection schemes; and (v) amendments to the enforcement regime for the safe operation of reservoirs.

12. The Bill is separated into eight Parts:
- **PART 1** creates general duties which Scottish Ministers, SEPA, and responsible authorities must comply with when exercising their functions in relation to flood risk management. These include a duty to exercise those functions with a view to reducing flood risk and to collaborate when doing so and a duty to take account of guidance and comply with directions in relation to flood risk management.
- **PART 2** defines some of the principal expressions used in the Bill, including “flood” and “flood risk”.
- **PART 3** provides for the preparation and review of the flood risk assessments, flood hazard and flood risk maps and flood risk management plans which are required by the Directive. It also provides for local flood risk management plans to be prepared and reviewed. It requires advisory groups to be created to advise on the preparation
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

of these documents and it imposes a duty on public authorities, including the Scottish Ministers, to have regard to flood risk management plans and local flood risk management plans where relevant.

- **PART 4** sets out provisions to replace the 1961 Act. These provisions will give local authorities broad powers to allow them to take forward a full range of flood risk management measures.

- **PART 5** replaces SEPA’s powers to provide flood warning systems and carry out flood risk assessments under the Agriculture Act 1970 and the Environment Act 1995. The provisions provide SEPA with a new statutory framework for exercising these flood risk management functions.

- **PART 6** sets out new powers of entry and compensation provisions to support local authorities and SEPA in exercising their statutory responsibilities under the Bill.

- **PART 7** amends the Reservoirs Act 1975 to transfer responsibility for enforcement of the Act from local authorities to SEPA. It inserts a new section into the Act to enable provision to be made, by regulations, to introduce a new system for reporting incidents which could affect safety at reservoirs. It also inserts a new section about the application of that Act to the Crown.

- **PART 8** makes general provision for the making of orders and regulations under the Bill. It also makes provision about the application of the Bill to the Crown and commencement of the Bill.

THE BILL – SECTION BY SECTION

PART 1 – GENERAL DUTY, DIRECTIONS AND GUIDANCE

Section 1 – General duty

13. Section 1 places a general duty on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, to do so to secure compliance with the Directive. “Flood risk” is defined in section 3.

14. “Responsible authorities” are defined in section 5 and include local authorities, Scottish Water and any other public bodies and office holders designated by the Scottish Ministers. “Flood risk related functions” are defined in subsection (3) and include functions under the Bill and any other functions relevant to flood risk management which the Scottish Ministers may specify by order.

15. Because the definition of “flood risk related functions” includes functions under the Bill, the general duty to act with a view to reducing overall flood risk will apply to the Scottish Ministers when designating responsible authorities and to SEPA, the Scottish Ministers and responsible authorities when they are involved in the preparation of flood risk assessments, flood maps and flood risk management plans under Part 3 of the Bill. It will also apply to local authorities and to the Scottish Ministers when considering flood protection schemes and to SEPA and the Scottish Ministers when dealing with flood risk assessment and flood warning functions under Part 5 of the Bill.
16. Subsection (2) requires the Scottish Ministers, SEPA and the responsible authorities to take into account social and economic considerations when exercising their flood risk related functions. This would appear to be consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective.

17. Subsection (2) also requires the Scottish Ministers, SEPA and the responsible authorities to promote sustainable flood risk management, so far as is consistent with the purposes of the function in question, to act in the way best calculated to contribute to sustainable development, and to take steps to raise public awareness of flood risk.

18. Subsection (2) also requires the Scottish Ministers, SEPA and the responsible authorities to cooperate so as to coordinate the exercise of their respective functions for flood risk management, so far as is practicable. This provides flexibility for these bodies to take action in isolation where it is sensible to do so, e.g. in emergency situations.

Section 2 – Directions and guidance

19. Subsection (1) enables the Scottish Ministers to direct or issue guidance to SEPA and responsible authorities on how they must exercise their flood risk related functions. Subsection (2) then requires SEPA and responsible authorities to comply with such directions and take account of any such guidance.

20. Subsection (3) would enable the Scottish Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.

PART 2 – PRINCIPAL EXPRESSIONS

Section 3 – “Flood” and “flood risk”

21. In section 3, the definition of “flood” and “flood solely from a sewerage system” determine what types of floods are covered by the Bill. The cumulative effect of these definitions is that all forms of flooding are covered by the Bill except where the source of the flood is solely from a sewerage system. A flood solely from a sewerage system is a flood containing sewage which is caused solely by a blockage or a failure in a sewerage system and which is not connected with external hydraulics. Floods that are caused by a sewer being overloaded by higher than usual rainfall are covered by the Bill. An example of a flood that is not covered by the Bill would be where flooding is caused by a sewer collapsing or becoming blocked, and where that collapse or blockage is not a result of external hydraulics, e.g. higher than usual rainfall or river levels.

22. “Flood” means the temporary covering by water from any source of land not normally covered by water. This reference to land will include buildings because “land” is defined for the
purposes of references in Acts of the Scottish Parliament in the Interpretation Order and this definition includes buildings and other structures.

23. This section also defines the term “flood risk”. The definition mirrors the definition in Article 2 of the Directive and states that flood risk is the combination of the probability of flooding and the potential adverse consequences of flooding to human health, the environment, cultural heritage and economic activity.

Section 5 – Responsible authorities

24. Section 5 identifies local authorities and Scottish Water as “responsible authorities” and allows the Scottish Ministers to designate other public bodies and office holders as responsible authorities by order. Responsible authorities will have to comply with the general duty in Part 1 of the Bill. They will also have duties under Part 3 to assist SEPA in preparing the flood risk assessments, maps and plans required by the Directive and to assist local authorities in the preparation and completion of local flood risk management plans. When designating responsible authorities under this section, the Scottish Ministers must comply with their general duty under Part 1 of the Bill.

PART 3 – FLOOD RISK ASSESSMENT, MAPS AND PLANS

Section 7 – General purpose of Part 3

25. 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

26. 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.

27. 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.

28. 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

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inspection are the order under the 2003 Act designating it as a river basin district and the related map.

29. The provisions in this section will enable the Scottish Ministers to implement Article 3(2)(b) of the Directive.

Section 9 – SEPA to prepare flood risk assessments

30. 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 will be 22 December 2011, which is the deadline set by the Directive, unless the Scottish Ministers set an earlier date under subsection (2).

31. 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).

32. 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.

33. 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.

34. 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.

35. Subsection (5) allows SEPA to include other information in a flood risk assessment where it considers appropriate.

36. Subsection (6) defines the terms “body of surface water” and “sub-basin”. It applies the definition of “body of surface water” used in the 2003 Act, which defines it as “a discrete and significant element of surface water such as a loch, a stream, river, canal or other watercourse, part of a loch, stream, river, canal or other watercourse, a body of transitional water or a stretch
of coastal water”. The definition of “sub-basin” is based on the definition in Article 2 of the Water Framework Directive3.

Section 10 – Flood risk assessment: review

37. This section requires SEPA to review and, where appropriate, update the flood risk assessment by 22nd December 2018, or by an earlier date specified by the Scottish Ministers, and then every 6 years thereafter. The 22 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

38. 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

39. Section 12 requires SEPA to make copies of the current flood risk assessment available for public inspection. This section should be read with sections 46 and 47, 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

40. 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 17 and flood risk management plans produced under section 23 will set objectives to manage flood risks for the areas.

41. 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 29. These areas are referred to as “local plan districts”.

42. 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.

43. 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.

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44. 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.

45. This section will enable the Scottish Ministers to implement Article 5 of the Directive.

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

46. 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

47. 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 – SEPA to assess possible contribution of alteration etc. of natural features

48. This section requires SEPA to assess whether alteration or restoration of natural features such as flood plains, woodlands and wetlands could contribute to managing flood risks within a flood risk management district.

49. When carrying out this assessment, subsection (3) requires SEPA to consider the flood risk assessment prepared under section 9, any relevant flood hazard or flood risk maps prepared under section 17 and any relevant flood risk management plan prepared under section 23. It also requires the assessment to refer to maps.

50. The first assessment must be carried out by a 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 46 and 47 again apply in relation to the detail of doing that.
Section 17 – SEPA to prepare flood hazard maps and flood risk maps

51. 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 18 and 19, this section implements Article 6 of the Directive. Section 18 sets out what flood hazard maps must show and section 19 does the same for flood risk maps.

52. The first maps must be prepared by 22 December 2013, which is the date set by Article 6 of the Directive.

Section 18 – Flood hazard maps

53. 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.

54. 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 (8) enables the Scottish Ministers to define those probabilities in subordinate legislation. 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.

55. 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.

56. 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.

57. 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.

58. 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
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

groundwater flooding. These provisions do not apply to low probability groundwater floods so these must be mapped.

59. Subsection (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 Bill.

60. 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.

Section 19 – Flood risk maps

61. 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.

62. Flood risk maps must show the potential adverse consequences of floods by reference to various matters listed in subsection (2). These matters are the same as 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.

63. 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 Bill.

Section 20 – Flood hazard maps and flood risk maps: review

64. This section requires SEPA to review and, where appropriate, update the flood hazard and risk maps by the 22nd of December 2019 and every 6 years thereafter. The 22 December deadline and the requirement to review every 6 years come from Article 14 of the Directive.

65. 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.

66. Subsection (3) requires updated maps to comply with the same content requirements as the original maps prepared under section 17.
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Section 21 – Flood hazard maps and flood risk maps: availability for public inspection

67. Section 21 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 46 and 47 which contain detailed requirements for making documents available for inspection and publicising matters.

Section 22 – Flood hazard maps and flood risk maps: regulations

68. Section 22 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 83 contains detailed provisions about how regulations are to be made.

Section 23 – SEPA to prepare flood risk management plans

69. 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 24 and schedule 1, this section implements Article 7 of the Directive.

70. 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 22nd 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.

71. Subsection (4) requires SEPA to set objectives for managing flood risk and to identify measures to achieve those objectives. This should be read with section 24, which sets out matters which SEPA must take into account when setting objectives and identifying measures for the purpose of flood risk management plans.

72. 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.

73. Subsections (6) and (7) allow SEPA to include maps, diagrams and other illustrative information in plans.

Section 24 – Flood risk management plans: objectives and measures

74. 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.

75. Subsection (1)(a) lists matters which SEPA must take into account so far as is relevant when identifying objectives and measures which is required by Article 14.4 of the Directive. 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 17. Also, some matters are dealt with elsewhere in the Bill, for example, in section 1 (general duty).

76. 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. Structural measures are any measures that involve the carrying out of any operation on land so this would include flood protection works under Part 4. Non-structural measures are therefore all other measures to manage flood risk.

Section 25 – Flood risk management plans: publicity of drafts etc. and consultation

77. Sections 25 to 27 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 46 and 47.

78. Section 25 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 41 requires SEPA to co-ordinate the preparation of flood risk plans with river basin management plans.

79. 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.

80. 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)).

81. 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 Scottish Natural Heritage, National Park Authorities and any other persons SEPA consider 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.

82. 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 26 – Flood risk management plans: submission for approval

83. 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 46 and 47.

84. 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 25. The statement must also include a summary of the representations received about the draft plan and of any consequential adjustments made to the plan.

85. If, having considered the statement from SEPA under subsection (2), the Scottish Ministers decide that more consultation and publicity work is needed under section 25, subsection (3) allows them to return the plan to SEPA. In doing so they may direct SEPA to take such further action under section 25 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.

86. 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 27 – Flood risk management plans: approval and publication

87. 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.

88. 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.

89. 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
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considers appropriate. The Scottish Ministers may direct the timescale in which a plan must be resubmitted.

90. 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 46 and 47. Subsection (6) allows SEPA to charge a reasonable price for copies of the plan.

Section 28 – Flood risk management plans: review

91. 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 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.

92. 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.

93. 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 will give Ministers the same control of the review process as they have for the original plan.

Section 29 – Local authorities to prepare local flood risk management plans

94. 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 plans will cover the local plan districts identified by SEPA under section 13.

95. 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 23. “Lead authority” are local authorities identified in accordance with subsection (8).

96. Subsection (2) sets out that a local flood risk management plan must comprise two parts: a supplementary part and an implementation part.

97. 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 other supplementary
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information 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.

98. 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) allows the lead authority to include any other information they consider relevant to the implementation of the measures.

99. 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.

100. Subsection (6) allows the Scottish Ministers to specify, in regulations, further matters to be included in local flood risk management plans.

101. Subsection (7) 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.

102. Subsection (8) makes provision for identification of a lead authorities for each local plan. Where a local plan falls entirely within a local authority’s area, subsection (8)(a)(i) provides for that local authority to be the lead authority for that local plan. Where a local plan falls within two or more local authority areas, subsection (8)(b)(ii) provides for one of the authorities whose area is within the local plan 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 area but where agreement cannot be reached, the Scottish Ministers may determine the lead authority.

Section 30 – Local flood risk management plans: publicity and consultation

103. Subsection (1) requires the lead authority to publish a draft of the whole of the local flood risk management plan at least one year before the beginning of the period covered by the plan, or by such other date as the Scottish Ministers may direct. Subsection (2) gives the lead authority discretion to determine the manner in which the draft plan is to be published.

104. 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 46 and 47. Subsection (4)
allows any person to make representations to the lead authority about the draft supplementary part.

105. 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 and any other persons the lead authority consider appropriate. Responsible authorities are defined in section 5 and include Scottish Water and local authorities.

106. 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 23. 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 25(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.

107. 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 31 – Local flood risk management plans: completion and publication

108. Section 31 makes provision for the completion and publication of local flood risk management plans.

109. 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.

110. 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 (6) provides for the “local plan deadline” to be 6 months after the relevant flood risk management plan is approved under section 27 or another date set by the Scottish Ministers.

111. 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.
112. 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 46 and 47.

Section 32 – Local flood risk management plans: interim report

113. 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 31 and the lead authority must produce and publish a report on the conclusions of the review.

Section 33 – Local flood risk management plans: final report

114. 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.

115. 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 29 to supplement the updated flood risk management plan produced for each 6 year period under section 28. This allows for any changes in local plan districts to be taken into account when planning for the next 6 years.

Section 34 – Local flood risk management plans: joint working

116. 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 29(8), which provides for the identification of lead authorities, and section 38, which allows lead authorities to seek information and assistance in preparing and reviewing local plans.

Section 35 – Regulations relating to flood risk management plans and local flood risk management plans

117. 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 83 sets procedural requirements for making such regulations.
Section 36 – Duty to have regard to flood risk management plans and local flood risk management plans

118. This section 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).

Section 37 – Power of SEPA to obtain information, documents and assistance

119. 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 Bill. It does not require disclosure of information or documents protected by the law on confidentiality (see section 39(3)).

120. 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), flood hazard and flood risk maps (sections 17 and 20) and flood risk management plans (sections 23, 24 and 28). This duty only applies where SEPA’s requests for information or assistance are reasonable.

121. 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 urban drainage and flooding by surface run-off water. Again, the duty only applies where SEPA’s requests for information about flood risk are reasonable.

122. 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 39(1), (2) and (4) sets further requirements about the content of information notices. Section 39(5) contains interpretation provisions in relation to “documents”.

123. 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 38 – Power of lead authorities to obtain information, documents and assistance

124. 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 29) and interim and final reports (sections 32 and 33). As with section 37, it does not require disclosure of information or documents protected by the law on confidentiality (see section 39(3)).
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125. 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.

126. Subsection (3) enables lead authorities to serve a notice on any person (other than 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 39(1), (2) and (4) provide more detail about the form and content of and procedures in relation to such notices.

127. 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 39 – Power to obtain information, documents and assistance: supplementary

128. Subsections (1), (2) and (4) set further requirements about the content of notices served under sections 37(5) and 38(3) and what may be done with documents produced in response to a notice.

129. 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 40 – Power to obtain information, documents and assistance: offence

130. 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 37(5) or 38(3). It will not be 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.

131. 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 41 – Consistency and co-ordination with characterisations and plans under the 2003 Act

132. This section sets out arrangements for coordinating flood risk assessment and management work under Part 3 of the Bill, 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 Bill 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.

133. 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.

134. 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.

135. 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 42 – District flood risk advisory groups

136. 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.

137. Subsections (2) to (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 (section 16), flood risk and flood hazard maps (sections 17 and 20) and flood risk management plans (sections 23 and 28).

138. Subsection (4) requires SEPA to have regard to any advice given by advisory groups on these matters.

139. 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.

140. 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 25(5)(a) to (c) (responsible authorities, Scottish Natural Heritage and National Park authorities) and other persons with an interest in flood risk management.

Section 43 – Sub-district flood risk advisory groups

141. 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,
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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.

142. 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.

143. 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.

144. 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 17), or flood risk management plan (section 23). 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.

145. 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.

Section 44 – Power to give effect to Community obligations etc.

146. Subsection (1) provides that the Scottish Ministers may by regulations provide that the provisions of Part 1 of the Bill 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 45 – Annual report on implementation of Directive

147. 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 for securing compliance with the requirements of the Directive.

148. The report may be a freestanding report under the Bill 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 46 – Availability of documents for public inspection

149. This section applies whenever SEPA or a lead authority must make documents available for public inspection under this Part of the Bill. The Bill requires a number of documents to be made available for public inspection, for example flood risk assessments (section 12), assessments and maps about the possible contribution of alteration or restoration of natural features (section 16), flood hazard and flood risk maps (section 21), flood risk management plans, drafts of those plans and statements relating to their preparation (sections 25 to 27), local flood risk management plans, drafts of some parts and reports in relation to those plans (sections 30 to 33). It 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 these documents available for public inspection must also be publicised.

Section 47 – Publicity of matters

150. This section applies whenever SEPA or a lead authority must publicise something under this Part of the Bill, such as those requirements in relation to the matters mentioned in paragraph 149. 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).

Section 48 – Interpretation of Part 3

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

PART 4 – FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

Section 49 – General power to manage flood risk

152. Subsection (1) enables a local authority to do anything which it considers will contribute to the implementation of current measures described in any relevant local flood risk management plan. It may also do anything it considers necessary to reduce an imminent risk of flooding which would be likely to have serious adverse consequences, or which it considers will otherwise manage flood risk in its area without affecting the implementation of the area’s local flood risk management plan (for instance, because it will be possible to carry it out in addition to the measures identified in the plan).

153. Subsection (2) provides various illustrations of what a local authority may do under subsection (1), without restricting the generality of the power contained in that subsection.

154. Subsection (3) provides that work which meets the criteria in subsection (1) may be carried out within or outwith the local authority’s area.
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Section 50 – Limits of general power

155. Subsection (1) prevents a local authority from doing anything under section 49 which it would otherwise be unable to do because of a “limiting provision”. Subsection (2) defines a limiting provision, which must be contained in an Act or other form of legislation.

156. Subsection (3) provides that a limiting provision must contain a positive restriction on the powers of the local authority, rather than merely failing to confer a power on it to do a thing.

Section 51 – Limits of general power: statutory undertakings

157. Section 51 prohibits a local authority from exercising its general power to manage flood risk in a way which damages any works or property belonging to a statutory undertaker, or interferes with the carrying on of its statutory undertaking, unless the undertaker consents. However, consent is not required if it is withheld unreasonably and it is for the Scottish Ministers to determine whether consent has been withheld unreasonably in the event of a dispute, their decision being final. “Statutory undertaker” and “statutory undertaking” are defined in section 61.

Section 52 – Flood protection schemes

158. This section defines a flood protection scheme as being a scheme by a local authority for the management of flood risk within the authority’s area. Subsection (2) sets out what a proposed flood protection scheme must contain. The Scottish Ministers are empowered to lay down requirements to include maps, plans and other specifications in regulations. In addition, a scheme must state how the measures included in it will contribute to the implementation of any relevant local flood risk management plan and, if they will not contribute, demonstrate how this will not affect delivery of such a plan (for example, because there is no such plan or because it will be possible to carry out the scheme as well as the measures contained in the plan). Further provision about the making of a flood prevention scheme is made within schedule 2, which may also be amended by the Scottish Ministers by order.

Section 53 – Orders under the Land Drainage (Scotland) Act 1958

159. This section makes provision for flood protection schemes to vary improvement orders made under the Land Drainage (Scotland) Act 1958.

160. The 1958 Act allowed owners of agricultural land to apply to the Scottish Ministers for improvement orders authorising drainage works in order to improve drainage or prevent or mitigate flooding or erosion of agricultural land. The Flood Prevention (Scotland) Act 1961 gave local authorities power to protect non-agricultural land from flooding. That Act is repealed by section 60 of the Bill and the general power for local authorities to manage flood risk under section 49 now covers both agricultural and non-agricultural land. Paragraph 1 of schedule 3 amends the 1958 Act so that new improvement orders cannot be made for the purposes of preventing or mitigating flooding. That amendment does not prevent new orders being made under the 1958 Act for the purposes of improving drainage or preventing or mitigating erosion. Existing improvement orders under the 1958 Act will remain in place but this section allows
them to be varied where they affect any land on which operations are proposed to be carried out under a flood protection scheme.

161. Subsection (2) sets out the changes which can be made to improvement orders. Flood protection schemes can revoke improvement orders completely, they can reduce the size of improvement areas or they can remove all or any part of the drainage or protective works covered by an improvement order. Schemes can also amend, re-apportion or remove the obligations on authorised persons to maintain drainage or protective works covered by the improvement order. This should be read with subsections (3) and (4) which restrict the changes which can be made to maintenance obligations. “Authorised persons” are defined in section 2(2) of the 1958 Act as the owners of agricultural land situated in the improvement area covered by the improvement order.

162. Subsections (3) and (4) restrict the changes which can be made to maintenance obligations under improvement orders. Subsection (3) prevents flood protection schemes from altering maintenance obligations under improvement orders so as to oblige the authorised persons to maintain things done by local authorities under schemes. Where proposed scheme operations will alter drainage or protective works under an improvement order, subsection (4) requires the scheme to remove the obligations on authorised persons to maintain the parts of the drainage or protective works which are altered.

163. The commencement of a flood protection scheme triggers the variation or revocation of the improvement order. Subsection (6) requires a notice of the variation or revocation of an improvement order to be registered in the Land Register of Scotland or the Register of Sasines, whichever is appropriate. Subsection (7) enables the Scottish Ministers to prescribe the form and content of such notices by regulation.

Section 54 – Deemed planning permission for scheme work

164. Section 54 inserts a new section 57(2B) into the Town and Country Planning (Scotland) Act 1997. This provides that once a flood protection scheme is confirmed (whether by the local authority or the Scottish Ministers), the Scottish Ministers are to direct that any necessary planning permission is deemed to be granted, subject to any planning conditions which Ministers may specify.

Section 55 – Acquisition of land

165. This section enables local authorities to acquire land which they require to exercise functions under this Part by agreement. It also empowers local authorities, with the authorisation of the Scottish Ministers, to acquire land by compulsory purchase in connection with operations under a flood protection scheme.

166. Subsection (2) applies the procedure contained in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to any compulsory purchase by a local authority in connection with a scheme.
Section 56 – Assessment of watercourses etc.

167. Subsection (1) requires local authorities to assess the watercourses in their areas from time to time in order to find out whether any of them are in a condition likely to cause flooding. Where a local authority decides that a watercourse presents a risk of flooding, it must also consider whether that risk would be reduced if it exercised its functions under Part 4 of the Bill, for instance by carrying out flood protection work. Local authorities must also consider how any actions they take to reduce flood risk might affect the implementation of local flood risk management plans. In practice, a local authority could produce a maintenance schedule for watercourses identified as giving rise to a risk of flooding for inclusion in a local flood risk management plan.

168. Subsection (2) requires a local authority to warn another local authority where a watercourse 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 57 – Recovery of expenses

169. Section 57 enables a local authority to recover any expense incurred by it in repairing or reinstating flood protection work it has put in place from the owner or occupier of the land, where that person’s actions have caused the damage.

Section 58 – Information about ownership etc. of land

170. In order to enable it to exercise any of its functions under this Part, a local authority may require land owners or occupiers to state their interest in that land in writing. Land owners or occupiers may also be required to provide contact details for any other person known to have an interest in that land. Any person failing to comply with the requirements of a local authority under this section, or knowingly or recklessly providing false or misleading information, is guilty of an offence.

Section 59 – Damage to certain flood protection work

171. Subsection (1) creates a criminal offence which is committed by any person who intentionally or recklessly damages any flood defence work created by a local authority under this Part, or any ancillary apparatus. This includes owners and lawful occupiers of the land on which the work is located.

172. Subsection (3) provides that, where a person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding, this is a defence to a charge in any proceedings under subsection (1).

PART 5 – SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Section 62 – Advice to planning authorities and others as to flood risk

173. This section requires SEPA to provide advice to planning authorities and National Park authorities as to flood risk. Flood risk is defined in section 3 as the combination of the
probability of a flood and of the potential adverse consequences. This duty replaces SEPA’s duty to advise planning authorities under section 25(2) of the Environment Act 1995, which is repealed by paragraph 5 of schedule 3.

174. Subsection (1), like section 25(2) of the 1995 Act, requires SEPA to provide advice on flood risk in a planning authority’s district when requested by the authority. Section 1 of the Town and Country Planning (Scotland) Act 1997 provides that local authorities are planning authorities and that a planning authority’s district is the local authority area. Where any part of the district/local authority area is a National Park, it is possible for a National Park authority4 to be made the planning authority for the Park for the purposes of the planning acts5 – in that case SEPA must, when requested by the National Park authority, give it advice as to flood risk in the National Park.

175. Subsection (2) requires SEPA to provide advice to a National Park authority about their park where they are not made planning authorities but are to be treated as planning authorities for the National Park for certain purposes6. This is a new requirement.

176. Subsection (3), like section 25(2) of the 1995 Act, requires the advice SEPA provides to be based on information SEPA holds. The advice must take into account, but is not limited to, information produced under Part 3 of the Bill (flood risk assessments, flood hazard and flood risk maps, flood risk management plans and local flood risk management plans), and any information provided to SEPA by the planning authority or National Park authority.

Section 63 – Other assessment and maps of flood risk

177. This section allows SEPA to undertake other assessments of flood risk and to prepare other maps in addition to the flood risk assessments and maps it is obliged to prepare under Part 3 of the Bill.

178. When carrying out assessments or preparing maps under this section, subsection (2) requires SEPA to consider any relevant flood risk assessments, flood hazard and flood risk maps and flood risk management plans prepared under Part 3.

Section 64 – Flood warning

179. This section requires SEPA to make flood warnings available where it considers that a flood is occurring or is likely to occur in the near future.

4 National Parks and National Park authorities are established under the National Parks (Scotland) Act 2000 - an order under section 10(1)(a) of that Act may provide for a National Park authority to be the planning authority for the National Park.


6 A designation order under section 10(1)(b) of the 2000 Act can provide that a National Park authority is to be treated as the planning authority for the National Park for such purposes of Part II (development plans) of the Town and Country Planning (Scotland) Act 1997, as are specified in the order.
180. Subsection (2) sets requirements as to the timing of flood warnings, the information on which they are to be based and the means by which they are to be made available. Warnings must be based on information available to SEPA (paragraph (c)). Where SEPA considers a flood is already occurring, a warning must be made available as soon as is practicable (paragraph (a)) and where a flood is considered likely to occur SEPA may choose when to issue the warning (paragraph (b)). This discretion under paragraph (b) will allow SEPA to decide when it is appropriate to issue a very early warning and when it is appropriate to wait until more reliable information is available. SEPA can decide how to make warnings publicly available (paragraph (d)). This discretion will allow SEPA to issue general warnings, for example online or through a phoneline, and it would also allow it to establish systems for issuing warnings to individuals or other organisations if that is considered appropriate.

Section 65 – Assessment of whether flood warning systems should be provided or altered

181. This section makes provision for SEPA to assess where provision of or improvements to any form of flood warning system could assist in providing earlier or more accurate flood warning information and where that earlier warning or improved accuracy could help reduce the adverse consequences of flooding. SEPA may choose to carry out such an assessment at any time and must do so when directed by the Scottish Ministers.

182. “Flood warning system” is defined in subsection (4). The definition is similar to the one used in section 92(2)(a) of the Agriculture Act 1970, which is repealed for Scotland by paragraph 2 of schedule 3. The definition covers flood warning systems which rely on information from gauges and other monitoring equipment in rivers, coastal waters and other bodies of water and flood warning systems which rely on meteorological data and modelling software.

183. Subsection (2) requires SEPA to use information it has in making this assessment and subsection (3) and section 67(1) require SEPA to consult the relevant local authorities and chief constables in making its assessments.

Section 66 – Provision, alteration etc. of flood warning system

184. This section allows SEPA to provide, operate, alter and maintain flood warning systems and to carry out any building or engineering work required to provide and install apparatus for that purpose. “Flood warning system” is defined in section 65(4).

185. This section replaces sections 92 and 94 of the Agriculture Act 1970, which are repealed by paragraph 2 of schedule 3. SEPA’s general powers under section 37 of the Environment Act 1995 will apply in relation to its functions under this section, including powers to acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate.

186. Subsection (2) and section 67(2) require SEPA to consult the relevant local authorities and chief constables before it exercises its powers to provide a new flood warning system or to make material alterations to an existing system.
Section 67 – Consultation required by section 65 and 66

187. This section sets out consultation requirements for the purposes of sections 65 (assessment in relation to flood warning systems) and section 66 (provision or alteration of flood warning systems).

PART 6 – POWERS OF ENTRY AND COMPENSATION

Section 68 – Powers of entry

188. This section creates powers for SEPA and local authorities to enter land for the purposes of carrying out some of their functions under the Bill. The power to enter land includes a power to enter buildings because “land” is defined in the Interpretation Order\(^7\) to include buildings and other structures.

189. Subsection (1) allows any person authorised by SEPA to enter any land for the purposes of carrying out some of SEPA’s flood risk management functions under Part 3 of the Bill (sections 13, 14, 16, 17, 20, 23 and 28). This will allow SEPA to survey land in order to check the accuracy of information which it is using to prepare flood risk management documents. The section also allows SEPA to enter land in order to assess flood risk (section 63) and to provide, alter and maintain flood warning systems (section 66).

190. Subsection (2) allows any person authorised by local authority to enter any land on which scheme operations, temporary works, emergency flood protection work or maintenance operations are to be carried out under Part 4 of the Bill. Land may also be entered for the purposes of determining whether any function conferred by or under that Part is to be exercised.

Section 69 – Warrants authorising entry

191. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 68 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).

192. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant (either SEPA or the local authority) must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 70(3).

193. Subsection (5) makes it an offence to prevent or obstruct a person from exercising a power of entry under a warrant unless the person obstructing or preventing access has a

reasonable excuse for doing so. The standard scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. Level 3 is currently £1,000.

Section 70 – Powers of entry: supplementary

194. This section supplements sections 68 and 69. Subsection (1) provides that a right to enter land under section 68 (with or without a warrant under section 69) includes a right to enter adjacent land and a right to survey or examine the land.

195. Subsection (2) entitles those entering land under section 68 (with or without a warrant) to take other persons, materials and equipment onto the land. This includes vehicles. The subsection also enables them to do anything else reasonably required to fulfil the purpose of entering the land.

196. Subsections (3) sets notice periods which must be complied with except in the urgent cases defined in subsection (5). A seven day notice period applies where the power under section 68 is to be exercised without a warrant in order to enter a house or to take heavy equipment onto land (subsection (3)(a)). “Heavy equipment” and “house” are defined in subsection (7).

197. A twenty four hour notice period applies where the power under section 68 is to be exercised without a warrant, without entering a house and without taking heavy equipment onto the land (subsection (3)(b)). A twenty four hour notice period also applies to all cases where the power under section 68 is to be exercised with a warrant (subsection (3)(b)).

198. Subsection (4) requires that, except in the urgent cases set out in subsection (5), people entering land under section 68 (with or without a warrant) may only do so at a reasonable time.

199. In all cases, subsection (6) requires those entering land to be able to produce written evidence that they have been authorised to enter.

Section 71 – Compensation

200. Subsection (1) obliges SEPA to compensate anyone sustaining damage as a result of SEPA using its powers to install, provide, alter or maintain flood warning systems or its powers to enter land. “Damage” is defined in section 72(1).

201. Subsection (2) obliges local authorities to compensate anyone who has sustained damage as a result of scheme operations, or subsequent maintenance, carried out by or on behalf of the local authority or through the exercise of a right of entry.

Section 72 – Compensation: supplementary

202. Subsection (1) defines damage as the depreciation of the value of a person’s interest in land or the disturbance of a person’s enjoyment of land.
203. Subsection (2) places certain limits on the right to compensation and requires notice of any claim to be given to SEPA or the local authority within a specified period.

204. Subsection (3) provides that any disputes over compensation under section 72 are to be determined by the Lands Tribunal for Scotland.

PART 7 – RESERVOIRS

205. Part 7 amends the Reservoirs Act 1975, which sets safety requirements to prevent escapes of water from reservoirs. The 1975 Act imposes duties on persons (referred to as “undertakers”) who own, operate or use large raised reservoirs. These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, they require the appointment of qualified civil engineers to inspect and supervise works on reservoirs and recommend safety measures. Where an engineer recommends measures under the 1975 Act, the undertaker generally has a duty to implement those measures. “Relevant authorities” (also referred to in the Act as “enforcement authorities”) then have duties to maintain registers of information about large raised reservoirs, powers and duties to secure that undertakers comply with their duties under the Act and duties to report to the Scottish Ministers. Enforcement action involves service of written notices on undertakers who have failed to appoint engineers or implement measures recommended by engineers. Failure to comply with a notice is a criminal offence and also triggers a power for the enforcement authority to carry out the work itself and recover the costs from the undertaker.

Section 73 – SEPA to be enforcement authority under the Reservoirs Act 1975

206. Sections 73 to 75 make provision for SEPA to take over from local authorities as the relevant authority and enforcement authority under the 1975 Act. Section 73 appoints SEPA as the relevant authority for the whole of Scotland.

Section 74 – Transitional arrangements

207. This section contains detailed provision about the transfer of responsibility from local authorities to SEPA. Subsection (2) requires local authorities to hand over relevant registers, records and other relevant information to SEPA. Subsection (3) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority.

208. Subsections (4) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.

Section 75 – Service of documents

209. This section amends section 15 of the 1975 Act and inserts a new section 22B to provide for service of documents by SEPA in its new role as the relevant authority and enforcement authority for Scotland.
Section 76 – Extension of enforcement authority’s reserve powers

210. This section extends to Scotland amendments made to sections 8, 15 and 17 of the 1975 Act by section 75 of the Water Act 2003, which amended the 1975 Act for England and Wales. The effect of the amendments is to allow the enforcement authority to enter land under section 17 to determine whether measures recommended by engineers who were appointed by the enforcement authority under section 8 have been carried out. The enforcement authority can serve enforcement notices on undertakers who fail to implement such measures and if an undertaker fails to comply with an enforcement notice, the enforcement authority can also carry out the work itself and recover the costs under section 15.

Section 77 – Incident reporting

211. This section inserts a new section 12ZA into the 1975 Act. This enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of large raised reservoirs.

212. New section 12ZA(2) lists what regulations may cover.

213. Section 12ZA(3) sets consultation requirements which the Scottish Ministers must comply with before making regulations and section 12ZA(4) provides for regulations to be subject to affirmative procedure in the Scottish Parliament.

Section 78 – Reservoirs Act 1975: Crown application

214. This section inserts a new section 27B into the 1975 Act. This makes provision for the 1975 Act to apply to the Crown in Scotland. The new section is similar to section 27A which was inserted into the 1975 Act by the Water Act 2003 and which makes provision for the Act to apply to the Crown in England and Wales.

215. Subsection (1) of section 27B provides that the 1975 Act binds the Crown.

216. Subsection (2) and (3) of section 27B provide that the Crown will not be criminally liable for any contravention of the 1975 Act but allows SEPA to apply to the Court of Session for a declaration that any act of the Crown is in contravention of the Act.

217. Subsection (4) of section 27B provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

218. Subsection (5) and (6) of section 27B limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (6) defines “Crown land” and “appropriate authority” and subsection (8) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.
PART 8 – GENERAL

Section 79 – SEPA’s power to obtain information about land

219. This section applies section 27 of the Environment Act 1995 to section 16 and Part 5 of the Bill. This will allow SEPA to obtain information about land where it requires the information for the purposes of carrying out its functions in relation to assessment of possible contribution of alteration or restoration of natural features to management of flood risk, flood risk assessment and flood warning. In order to obtain such information SEPA must serve a notice on the occupier of the land or any person with an interest in the land. That notice must specify the land concerned, and that it is served under the Bill. Failure to comply with a notice is an offence under section 27(3) of the 1995 Act.

Section 80 – Crown application

220. This section makes provision for the Bill to apply to the Crown in Scotland.

221. Subsections (3) and (4) provide that the Crown in Scotland will not be criminally liable for any contravention of the Bill’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Bill’s provisions unlawful, upon application by the public body or office holder responsible for enforcing the provision in question.

222. Subsection (5) provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

223. Subsection (6) and (7) limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (7) defines “Crown land” and “appropriate authority” and subsection (9) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

Section 81 – Offences by bodies corporate etc.

224. This section provides that where an offence under the Bill has been committed by a corporate body, Scottish partnership or other unincorporated association and the offence was committed with the consent or connivance of a “relevant individual”, both the body and the individual can be prosecuted.

225. Subsection (2) defines “relevant individual” and includes directors and other officers of companies, partners and individuals who manage or control other unincorporated associations.

Section 82 – Ancillary provision

226. This section enables the Scottish Ministers by order to make incidental, supplementary, consequential, transitional, transitory or saving provision, if appropriate.
Section 83 – Orders and regulations

227. This section provides the procedure for the making of orders and regulations under the Bill.

228. Subsection (2) provides that all orders and regulations, except a commencement order, made under the Bill are subject to negative procedure unless they are listed in subsection (3). Orders and regulations which fall under subsection (3) are subject to affirmative procedure.

Section 84 – Interpretation: general

229. This section defines various terms used across the Bill. Schedule 4 contains an index of terms used across the Bill and defined in various provisions (see paragraph 273).

Section 85 – Minor and consequential modifications

230. This section introduces schedule 3, which contains amendments and repeals to other Acts.

Section 86 – Commencement and short title

231. This section makes the usual provision that all of the provisions of the Bill, except those containing definitions and providing where procedure is required for orders and regulations, are to come into force on a day set by the Scottish Ministers by order. The section also provides for the short title of the Bill.

THE BILL – SCHEDULES

SCHEDULE 1 – MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

232. This schedule sets out what flood risk management plans must contain. It is closely based on the Annex to the Directive and should be read with sections 23, 24 and 28 of the Bill.

Part 1 – Matters to be included in every plan

233. Part 1 of the schedule applies to the first plans produced under section 23 and to updated plans produced under section 28.

234. Paragraph 1 requires flood risk management plans to include a description of the objectives set and the measures identified by SEPA under section 23. They must also explain the priority to given to implementing each. Paragraph 5 also requires plans to include a description of how the priority given to implementing each measure was determined and how progress will be monitored.
235. Paragraph 2 requires plans to include the conclusions of the flood risk assessment, prepared under section 9. This should be presented in the form of a map of the flood risk management district showing the potentially vulnerable areas identified under section 13.

236. Paragraph 3 requires plans to include copies of the flood hazard maps and flood risk maps prepared under section 17.

237. Paragraph 4 requires plans to include a summary of flood-related measures taken under various EC directives.

238. Paragraph 6 requires plans to include a summary of the consultation which was carried out in order to comply with section 25. They must also include any other consultation measures taken in connection with preparation of the plan. This would include consultation carried out in relation to flood risk assessments and flood risk and flood hazard maps. It may also include information about the role of the advisory groups established under sections 42 and 43 in the preparation of assessments, maps and plans. A summary of changes made to the plan in light of views and representations received must also be included.

239. Paragraph 7 requires the plan to include information on SEPA. In practice, this would include information to reflect SEPA’s role as competent authority for the Directive.

240. Paragraph 8 requires the plan to include a description of how its preparation has been co-ordinated with the preparation of river basin management documents under Part 1 of the 2003 Act. This will include information about steps taken under section 41.

**Part 2 – Components of the subsequent update of flood risk management plans**

241. Part 2 of the schedule applies only to updated plans produced under section 28.

242. Paragraph 9 requires updated plans to include a summary of changes which have been made compared to the previous version of the plan.

243. Paragraph 10 requires an assessment of the progress made towards the achievement of the objectives set by SEPA for the management of flood risk, while paragraph 11 requires it to include information about why any measures included in the previous plan were not implemented.

244. Paragraph 12 requires a description of any other measures implemented which SEPA considers have contributed to the achievement of the objectives set by SEPA for the management of flood risk.
SCHEDULE 2 – FLOOD PROTECTION SCHEMES: PROCEDURE ETC.

Paragraph 1 – Notification

245. Paragraphs 1(1)(a) to (c) set out the requirements for newspaper advertisement of a proposed flood protection scheme by a local authority.

246. Sub-paragraphs (1)(d) to (f) require a local authority to send direct notification of a proposed scheme to those with an interest in affected land, the authorised persons in respect of any land covered by an improvement order under the Land Drainage (Scotland) Act 1958 and a number of specified consultees. Sub-paragraph (1)(f)(vii) enables the Scottish Ministers to specify additional consultees by order. Sub-paragraph (2) requires the local authority to display notice of the proposed scheme in a prominent position in the locality.

247. Sub-paragraph (3) sets out the required contents of each notice of the proposed scheme, whether published in a newspaper, sent directly to a person entitled to individual notification or displayed in the locality.

248. Sub-paragraph (4) requires notice to be given to those with an interest in land and the specified consultees, and to be displayed in the locality, no later than the date that notice is first published in local newspapers.

Paragraph 2 – Public inspection of scheme proposal

249. Paragraph 2 makes provision about the availability for public inspection of documents relating to the proposed scheme in both the area of the local authority taking forward the scheme and that of any other local authority where work would be carried out.

Paragraph 3 – Objections

250. Paragraph 3 entitles any person to object to a proposed flood protection scheme. Valid objections must be made in writing (including by electronic means so long as legible and useable) and include the name and address of the objector. These objections must be made to the local authority within 28 days from the date notice of the proposed scheme is published in local newspapers. Sub-paragraph (4) defines a “late objection” for the purposes of schedule 2.

Paragraph 4 – Decision where no valid objections received

251. Paragraph 4 places a requirement on the local authority, where no valid objections are received within the 28 day period, to either confirm or reject the proposed scheme. However, a late objection may be treated as being valid so long as the local authority is satisfied that it was reasonable for the objector to make the objection after the specified deadline.

Paragraph 5 – Preliminary decision following objections

252. Where a local authority receives a valid objection, it must make a preliminary decision under paragraph 5 to either confirm the proposed scheme, with or without modifications, or to
reject the scheme. In arriving at its decision, sub-paragraph (2) sets out that the local authority
must consider any valid objections (unless withdrawn) and may consider any late objections if
the authority is satisfied that it was reasonable for the respondent to make the objection after the
deadline. These matters are not exclusive and the local authority may consider any other factors
it considers appropriate.

253. The local authority must, under sub-paragraph (3), give notice of its preliminary decision
to either confirm the proposed scheme, with or without modifications, or to reject the scheme, to
every person who made an objection which it considered. Any person who made such an
objection is a relevant objector. Where a relevant objector falls within sub-paragraph (6), then
sub-paragraph (5) requires the local authority to give the Scottish Ministers notice of its decision
along with other material including the scheme documents and copies of all objections received.
The relevant objectors falling within sub-paragraph (6) are: those with an affected interest in
land; authorised persons under an improvement order made under the Land Drainage (Scotland)
Act 1958 where land affected by the order would have work carried out on it under the scheme;
and the specified consultees.

Paragraph 6 – Ministerial call-in

254. Where the Scottish Ministers receive notification of a proposed scheme under paragraph
5(5), paragraph 6 requires them to call in the proposed scheme where any relevant objector is a
local authority or National Park Authority. Otherwise, the Scottish Ministers must advise the
local authority within 28 days of receipt, whether or not they will call in the proposed scheme for
decision by them. In reaching this decision whether to call in, the Scottish Ministers must have
regard to the factors listed in paragraph 6(3).

255. Sub-paragraphs (4) and (5) allow the Scottish Ministers to extend the time in which they
must decide whether or not to call in a scheme by up to 28 days, but they must make any
decision to extend within the original 28 day period and must notify the local authority of the
extension as soon as practicable.

Paragraph 7 – Ministerial consideration of proposed scheme

256. Paragraph 7 applies where the proposed scheme has been called in by the Scottish
Ministers and requires them to hold a public local inquiry, unless all objections made by relevant
objectors are withdrawn. Paragraph 7(3) applies provisions of the Local Government (Scotland)
Act 1973 concerning local inquiries to inquiries held under paragraph 7. The Scottish Ministers
must consider the material received by them under paragraph 5(5) as well as the report of the
person who held the public local inquiry before either confirming the proposed scheme either
with or without modifications, or rejecting the scheme.

257. The Scottish Ministers may not confirm a scheme with modifications unless they have
notified relevant objectors and anyone else they consider to be affected of the proposed
modifications at least 28 days before confirming the scheme, given them an opportunity to make
objections about the proposed modifications, and considered any objections made as a result.
Sub-paragraph (6) requires the Scottish Ministers to notify the local authority of their decision as
soon as reasonably possible.
Paragraph 8 – Local authority hearing to consider proposed scheme

258. Paragraph 8 applies where the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5 and the proposed scheme has not been called in by the Scottish Ministers (either because it did not have to be notified to them under paragraph 5(5) or because they decided not to call it in following such notification).

259. Before making a final decision (see notes on paragraph 9), the local authority must hold a hearing to consider the proposed scheme if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the scheme, or may hold a hearing in any other case.

260. Sub-paragraph (3) requires the local authority to invite each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, to the hearing. Any invitation under sub-paragraph 3 must be given not less than 28 days before the proposed hearing. Notice of the hearing must be published in a local newspaper within the relevant local authority area(s) at least 21 days before the proposed hearing.

Paragraph 9 – Final decision following preliminary decision

261. Paragraph 9 requires the local authority to make a final decision in relation to the proposed scheme by either confirming it with or without modifications, or rejecting it, unless the scheme has been called in by the Scottish Ministers.

262. Sub-paragraph (2) lists matters which the local authority is to take into account.

263. Sub-paragraph (3) prohibits a local authority from confirming a scheme with modifications unless it has notified the relevant objectors and anyone else considered to be affected of the proposed modifications at least 28 days before confirming the scheme, given them an opportunity to make objections about the proposed modifications, and considered any objections made.

Paragraph 10 – Notice of final decision

264. Paragraph 10 requires that, where a final decision of a local authority or the Scottish Ministers is made on a proposed scheme, the local authority must give notice of the decision to every person given direct notification of the scheme at the outset, every relevant objector (see paragraph 5(3) and 5(4)) and anyone else who received notification of a proposed modification to the scheme. Should it be decided to confirm the proposed scheme (with or without modifications) then notice must be given in local newspapers in the relevant local authority areas, as well as in the Edinburgh Gazette.

Paragraph 11 – Commencement of scheme

265. Paragraph 11 sets out that a scheme becomes operative 6 weeks after notice of its confirmation is published under paragraph 10(2)(d).
Paragraph 12 – Appeals

266. Any person affected by a final decision of the local authority or a decision of the Scottish Ministers to confirm a scheme may appeal that decision. Paragraph 12 states that an appeal must be made within 6 weeks of the notice of confirmation of the scheme being published in a newspaper circulating in the area of the local authority taking forward the scheme.

267. An appeal under this paragraph is to be made by summary application to the sheriff of a sherrifdom in which all or some of the proposed operations are to be carried out.

268. Sub-paragraph (5) provides that the grounds on which a decision can be appealed are that the local authority or the Scottish Ministers failed to comply with the requirements relating to improvement orders under the Land Drainage (Scotland) Act 1958 (see section 53(3) and (4)), erred in law or failed to follow a procedural requirement.

269. Sub-paragraph (6) enables the sheriff to suspend the operation of the scheme in whole or in part pending consideration of the appeal. Sub-paragraph (7) enables the sheriff to uphold the appeal only where the interests of the appellant have been substantially prejudiced and to quash the scheme in whole or in part.

Paragraph 13 – Assessment of environmental effects

270. Paragraph 13 enables the Scottish Ministers to make regulations requiring environmental assessment of proposed schemes.

Paragraph 14 – Further provision

271. Paragraph 14 enables the Scottish Ministers to make regulations containing further procedural provisions relating to schemes.

SCHEDULE 3 – MINOR AND CONSEQUENTIAL MODIFICATIONS

272. Schedule 3 sets out minor and consequential modifications to other legislation.

SCHEDULE 4 – INDEX

273. This schedule is an index of terms used across the Bill and defined in various provisions – it also contains a list of the provisions where the meanings of the terms listed there can be found.
FINANCIAL MEMORANDUM

INTRODUCTION

274. This document sets out the financial implications of the Flood Risk Management (Scotland) Bill. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum, which is published separately, explains in detail the policy intentions of the Bill.

275. The aim of the Flood Risk Management (Scotland) Bill is to modernise the flood risk management system in Scotland. The Bill makes substantive provision to update the current statutory process and transposes the Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the Assessment and Management of Flood Risks, herein referred to as the “Directive”. It also makes provision to amend the Reservoirs Act 1975, including the transfer of a number of enforcement responsibilities from local authorities to SEPA. The costs and savings outlined in this memorandum are those costs and savings that are directly attributable to responsibilities and tasks set out in the Bill. The provisions in the Bill will clarify the roles and responsibilities of Scottish Ministers, SEPA, local authorities and other responsible authorities in managing flood risk in Scotland. This will result in improvements to flood risk management, which will ultimately lead to the reduction in economic costs to businesses, domestic properties and infrastructure and the improvement of the social well being of people in at risk areas. The costs and savings identified in this Memorandum have been estimated in consultation with the bodies involved in implementation.

276. The costs identified are preliminary estimates in the absence of a detailed implementation plan, which cannot be developed until the Bill is enacted and the new responsibilities that will be placed on the organisations involved in implementing the Bill are agreed. The costs identified can be profiled with some degree of flexibility, depending on the approach to implementation adopted, for example, some costs that are currently attributable to early parts of the first planning cycle could be re-profiled to fall within later stages of the planning cycle. However, there will be a requirement for new work to be undertaken to meet the first Directive deadline of December 2011.

277. The total cost of this Bill depends on a number of factors. The variables that could cause the greatest fluctuation in costs will be the nature of the flood risks identified in flood risk assessments and maps, and the number, scope or complexity of the flood risk management plans prepared to address these risks. An adjustment in these variables, for instance the complexity of the plans required to address flood risks, would result in a proportionate adjustment in the expected costs. The cost estimates presented in the Bill are based on an understanding of where current efforts to manage flood risk across Scotland are focused. For instance, it has been assumed that efforts to understand and manage flood risks are greater in Scotland’s urban centres than in Scotland’s rural areas, and the costs on local authorities reflect this spread of effort. Work is ongoing to assess different implementation scenarios, including how variations in the complexity and number of flood risk management plans could influence implementation costs.
IMPLEMENTING THE EC FLOODS DIRECTIVE

278. Transposing the Directive will incur significant additional costs mainly as a result of the requirements to produce preliminary flood risk assessments by 2011, flood hazard and flood risk maps by 2013, flood risk management plans by 2015 and to review all of these every six years.

Costs on the Scottish Administration

279. Additional costs to the Scottish Government will be incurred as a result of the new Ministerial duties and powers set out in the Bill. These include a requirement to consider and approve documents identifying potentially vulnerable areas and local plan districts and district flood risk management plans, to assign lead local authorities for local flood risk management plans, to produce an annual report to Parliament and to maintain a presence on flood risk management advisory groups. All of these activities will require staff resources.

280. The Bill creates a power to make further regulations and guidance. The benefits and costs that arise from the changes proposed in the Bill will be influenced by any regulations made under the Bill, which will require their own Regulatory Impact Assessment to assess potential costs. Costs associated with secondary legislation are not expected to be significant. Secondary legislation arising from the part of the Bill which implements the EC Directive includes for example:

- regulations to provide for the preparation of flood risk assessments;
- regulations relating to identification of potentially vulnerable areas and local plan districts;
- regulations to provide for the preparation of flood hazard maps and flood risk maps;
- regulations to provide for the preparation of flood risk management plans.

281. In addition to the staff resources that will be required to take forward the development of the regulations, additional costs will be incurred through production of Strategic Environmental Assessments (SEAs) and through consultation exercises. These additional administrative tasks are expected to incur non-recurring revenue costs of approximately £270,000 prior to 2015. Costs associated with secondary legislation that will fall on SEPA, local authorities and Scottish Water are included within the estimated costs for these organisations generated under the Bill.

282. Access to new datasets (e.g. high resolution topography data) will be necessary for improving the understanding of flood risk and meeting the mapping requirements of the Directive, particularly in relation to flooding from surface run-off due to heavy rainfall. The Scottish Government believe that the most efficient approach to obtaining new data is for the Scottish Government to negotiate and purchase data licences and datasets, and to make this data available to SEPA and other organisations contributing to improving the national picture of flood risk. The costs for new datasets will depend on, amongst other things, the outcome of the preliminary flood risk assessment. We expect costs of £3 million will be distributed over a number of years with an estimated cost of £0.5 million in 2009-10, £0.5 million in 2010-11 and approximately £1 million in both 2011-2012 and 2012 - 2013. These costs are based on the cost of previous data sets used for mapping flood risk.
283. Three full time members of staff will be required to carry out these additional duties at an estimated cost of £140,000 per annum. This is based on the current staff required for developing secondary legislation for the Water Environment and Water Services (Scotland) Act 2003. It is likely that additional staff will also be required during specific periods where there is a heavy workload in advance of the deadlines set out in the Directive, during the latter stages of completion and approval of flood risk assessments in 2011 and during the latter stages of completion and approval of flood risk management plans in 2015. It is estimated that two additional full time staff will be required for a six month period in both 2011 and 2015 at an estimated cost of £40,000 in each year.

284. Based on these figures, we predict that the total implementation costs for producing the first set of district flood risk management plans (up to December 2015) lies in the region of £4.26 million (£3 million + £140,000 * 6.5 years + £270,000 + [2 * £40,000] where 6.5 is the total number of years in the first planning cycle). Once the first planning cycle is completed, the costs incurred as a result of these provisions will be the staff costs required for approval of the review of flood risk assessments, maps and plans and the legislation itself. It is expected that the same three full time staff will be required at a cost of £140,000 per annum.

Costs on local authorities

285. The Bill will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties. This is because the scale and scope of the work required is dependent on the scale and number of areas identified as being at significant flood risk during the initial flood risk assessments. The majority of the additional work which local authorities will have to undertake will be done after 2010.

286. As a responsible authority, local authorities will be required to contribute to the flood risk assessments. These must be completed by December 2011. The role of local authorities will be to provide SEPA with assistance and both available or readily derivable information that they hold or can obtain on flood risk in their area. There will also be additional preparatory work required in the lead up to the production of preliminary flood risk assessments, including establishing a basis for collaborative and partnership working, and stakeholder engagement, including advisory groups. After consultation with CoSLA, the Scottish Government anticipate that that the average cost that local authorities will incur when undertaking work to contribute to the preliminary flood risk assessment and to other preparatory tasks will fall within the region of £60,000 per local authority, or a total of £1.92 million for all local authorities.

287. Local authorities will be under a duty to act with a view to managing flood risk, which will include providing assistance and information to SEPA in the preparation of flood risk maps (2013) and management plans (2015). The Bill also places a duty on local authorities to produce local flood risk management plans that will supplement the plans produced by SEPA. Once the first set of assessments and plans are produced in 2015, the documents will need to be reviewed and updated on a six yearly cycle. Flood management planning will be a new and challenging task, and the Scottish Government anticipate that costs incurred by local authorities for the first few planning cycles will be similar to the costs for the first cycle as set out in paragraph 289 below. Resource requirements may fall once the understanding of flood risk improves (across all forms of flooding) and once the planning process becomes embedded.
288. The Bill does not place a specific duty on local authorities to implement flood risk management plans. However, they will have an overall general duty to act, with a view to reducing flood risk and the Bill provides the framework to help local authorities and others to identify the most appropriate measures to address flood risk. There will be capital costs in implementing measures in flood risk management plans. Paragraph 327 examines these costs.

289. Local authorities and CoSLA have been consulted individually and collectively as the policy has been developed. We estimate the cost of the first flood risk management planning cycle (up to December 2015), across all 32 local authorities will be around £36.48 million (£1.92 million up to 2011 + £7.68 million \( \times 4.5 \) where 4.5 is number of years in the first planning cycle after 2010-2011 financial year). The average implementation cost for each local authority will be in the region of £1.14 million. The ongoing annual running costs are estimated to be £0.24 million per local authority (£7.68 million across all local authorities). This is an average figure, and the costs on individual local authorities are likely to vary significantly depending on the extent and type of flood risks that are being assessed and managed.

Costs on other bodies, individuals and businesses

Costs on SEPA

290. SEPA will be identified as the competent authority for the implementation of the Directive, which includes leading flood risk assessment work, preparing flood risk and flood hazard maps and preparing district flood risk management plans. SEPA will also be under a duty to act with a view to reducing flood risk and to promote sustainable flood management when carrying out their flood risk management functions. Compliance with the Directive is likely to have both cost and resource implications for SEPA as the competent authority.

291. Specific tasks that SEPA must undertake include completing a preliminary flood risk assessment to create a national picture of flood risk by December 2011 and preparing flood risk and hazard maps by December 2013. SEPA will be responsible for preparing the district flood risk management plans that set out objectives and measures to manage flood risks. These plans, which will be produced in concert with local flood risk management plans, will help set the framework in which measures are delivered, or planned for, at a local level by responsible authorities. SEPA, in close liaison with local authorities, will also be responsible for establishing the network of advisory groups that will support flood risk assessments and management plans.

292. Although there will be opportunities to build on existing resources and data, many of the duties and tasks that SEPA will be required to perform under the Bill will be new, particularly those relating to preparation of flood risk management plans, assessing whether natural features can contribute to flood risk management and assessing the need for flood warning systems. There will also be costs, particularly in the early stages of implementation, associated with training and resourcing flood risk management planners, hydrologists and flood modellers. The Scottish Government have liaised closely with SEPA to determine the resource implications of the Bill.

293. The first Directive deadline (preliminary flood risk assessment) is December 2011. To meet this deadline, SEPA will require additional resources to come on-line during the current spending review period. It is estimated that approximately 9 staff will be required in the 2009-
2010 financial year with around 14 additional staff required the following year. Based on those
tasks required to meet the first Directive deadline and to undertake preparatory work for
subsequent Directive tasks, we estimate that the costs incurred by SEPA up to 2010-2011 will be
in the region of £3.34 million. This includes the cost of the 23 new staff identified above plus
additional capital costs of approximately £1.6 million. Capital costs will be incurred in the
following areas: collation and management of flooding data and information and investment in
new tools and datasets to meet the technical standards of the Directive and wider improvement in
the quality of information on flood risks.

294. After 2011, SEPA will be responsible for preparing flood risk and flood hazard maps
(December 2013), and two district flood risk management plans (December 2015). This work
will be supported by a network of advisory groups, which SEPA will also be responsible for
establishing. All work will be undertaken in close coordination with the responsible authorities
and, in particular, local authorities. We estimate that SEPA will require in the region of 32
further new staff, which, when combined with the staff requirements set out in paragraph 293,
equates to total of 55 new staff to implement the Directive (£14.18 million).

295. There will be further costs associated with the development of new models and tools to
assess and map flood risks, and to support the production of district flood risk management
plans. These costs are estimated to be in the region of £8.05 million (this figure includes £1.6
million for the period up to 2011 as set out in paragraph 293). Examples of where investment in
new models, tool and data sets is likely to be required include: tools to improve identification
and coordination of flood management actions across catchments, new datasets on the social and
economic impacts of flooding and new models to improve understanding of surface water
flooding.

296. Based on these figures set out in paragraphs 294 and 295, the total implementation costs
for producing the first set of district flood risk management plans (up to December 2015) are
estimated to be in the region of £22.23 million (£14.18 million + £8.05 million). This figure
incorporates the costs set out in paragraph 293 covering the period up to 2010-2011. This cost
breaks down annually across the first flood risk management planning cycle as £3.34 million up
to 2010-11, £4.82 million in 2011-12, £5.57 million in 2012-2013, £3.4 million in 2013-2014,
£3.4 million in 2014-2015 and £1.7 million in 2015-2016 (up to December 2015).

297. We estimate that the annual cost for SEPA once all staff resources are on line after 2014
will be around £3.4 million, which includes annual staff costs and maintenance costs for models
and datasets of around £0.5 million.

Costs on Scottish Water

298. There will be costs to Scottish Water and other organisations identified as responsible
authorities. Responsible authorities will have a duty to act with a view to reducing flood risk.
The Bill also requires responsible authorities to contribute, through provision of information and
assistance to SEPA, to flood risk assessments and flood management planning, and to do so in
collaboration with SEPA and other responsible authorities.

299. An area that will require Scottish Water to undertake new work is improving the
understanding of flood risk from sewerage flooding, and linking this work with other flooding
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

studies undertaken by SEPA and local authorities. This will require the use of specialist modelling consultants.

300. The indicative cost for an urban catchment, based on the Glasgow Strategic Drainage Plan, is £1.9 million over 3 years for the Dalmarnock catchment (this is not all related to flooding but the work is required for integrated urban drainage planning). Dalmarnock has a population of 77,203 households. The cost for a rural catchment, based on Elgin, Rothes and Forres, is £317,000. These catchments serve a population of 20,125 households. Ongoing model maintenance costs to keep them fit for purpose are estimated at 10% per annum of the one off modelling cost, assuming (i) all drainage assessments will be undertaken to the same level of detail; (ii) that the cost used for the Dalmarnock catchment is compatible with what would be done now as the open watercourse and drainage modelling has moved on a lot since it was carried out; and (iii) that the existing DAS models are available and at a suitable stage for using in the flood risk management plans.

301. Scotland has 2,260,000 properties connected to the waste water network. This gives an idea of the scale of costs in order to achieve the level of coverage required to inform flood risk management planning. Until preliminary flood risk assessments are carried out, the number of plans that will have to be prepared is unknown. Assuming that 5 plans will be required for 200,000 households and that half are rural and will have similar costs to Elgin plan in paragraph 300 and half are urban and would have similar costs to the Dalmarnock plan identified in paragraph 300, then the cost of creating these models would be around £4 million over a four year period beginning in 2011. The ongoing cost of model maintenance would be £0.4 million per annum. If more than 5 plans are required then the costs will increase proportionately.

302. In addition to undertaking specific flood risk assessment work, Scottish Water will also be required to contribute to the wider flood risk assessment and management process established under the Bill. Scottish Water has set up a Water Framework Directive team to support its responsibilities under the 2003 Act with an annual cost of £1.5 million. We would expect Scottish Water would establish a similar arrangement for flood risk management planning.

303. Although the most substantial costs for Scottish Water will be incurred after 2010-11, we expect Scottish Water will be required to contribute to the preliminary flood risk assessment and to other preparatory work being undertaken by SEPA and local authorities. It is anticipated that Scottish Water will also need an initial staff member in place in 2010 to co-ordinate this work. We estimate that the initial costs on Scottish Water are likely to be in the region of £0.16 million.

304. We estimate that the total implementation costs for producing the first flood risk management plans (up to December 2015) will be in the region of £12.7 million (£0.16 million up to 2011 + £4 million investment in models + [£1.9 million * 4.5] where 4.5 is the total number of years in the first planning cycle after 2010-2011 financial year).

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8 Where £1.9 million includes £1.5 million annual staff costs (paragraph 29) and £0.4 million in ongoing maintenance costs for modelling work (paragraph 28).
Costs on National Park Authorities and other responsible authorities

305. There are likely to be costs to National Park Authorities and any other organisations identified as responsible authorities. Responsible authorities will have a duty to provide information and assistance to SEPA and contribute to the production of flood risk assessments, flood hazard and flood risk maps and district flood risk management plans. Responsible authorities will also have a role in the production of local flood risk management plans. National Park Authorities will only have a role in the plans which cover areas within the National Parks.

306. Loch Lomond and the Trossachs National Park Authority estimate that a full time project officer to undertake these additional duties will cost £35,000 per annum. They also estimate non recurring costs of £52,000 as a result of participation in the development of flood risk management plans, consultants’ fees and additional administration costs. The majority of these costs will be borne from 2011 onwards once the development of flood risk management plans has begun with an estimated total of £0.42 million (£35,000 *4.5 years + £52,000) * 2 National Park Authorities) over the first planning cycle. The costs borne by any other responsible authorities designated by Scottish Ministers are likely to vary depending on their role. Other bodies, such as the Forestry Commission Scotland, may be identified as responsible authorities at a later date. We expect these bodies will perform an advisory role within the planning process and that they will incur costs that are currently unquantifiable. This is because until the preliminary flood risk assessments are undertaken, the number of flood risk management plans they would be required to advise on is unknown.

LOCAL AUTHORITY FUNCTIONS AND THE STATUTORY PROCESS

Costs on the Scottish Administration

307. There are likely to be both costs and savings to the Scottish Government as a result of the changes to the statutory process, but both are difficult to quantify as they are dependent on the number and type of objections which are raised in relation to future flood protection schemes.

308. Under current arrangements, if schemes are uncontested or objections withdrawn, Scottish Ministers will formally consider any flood prevention schemes brought forward. This requires staff resources to process and sign off the schemes. If any objections have been made to a scheme, this incurs additional costs, generally part of one administrator’s and one engineer’s time in processing the objections at an estimated cost of £10,000 per annum for all schemes. Under the new arrangements, unless there were any objections from the category of objectors covered by paragraph 5(6) of schedule 2 of the Bill, Scottish Ministers would not be involved and therefore these costs will not arise. It is anticipated that initially local authorities are likely to seek advice from the Scottish Government on the new decision making process until they build up their own expertise and that there will be no reduction in resource requirements until after 2011.

309. At present, if objections are not withdrawn, Scottish Ministers must, if the objection is made by any person covered by the second schedule paragraph 5 of the 1961 Act, refer the case to the Directorate for Planning and Environmental Appeals (DPEA) to arrange a public local inquiry, the cost of which is met from the Scottish Government’s administration budget. If the objection is from another category of objector then they may or may not refer the case to the
DPEA. On receipt of the report of the inquiry, the Scottish Ministers will consider the report and if modifications are involved, they are obliged to consult widely on the changes before making a final decision.

310. Under the new arrangements set out in the Bill, if there are objections from the category of objectors covered by paragraph 5(6) of schedule 2 of the Bill, the Scottish Government may call-in the decision and refer the scheme to DPEA as outlined above. Two members of staff will be required to process the schemes and the objections. The costs for each case will not change as a result. If objectors withdraw, then the need for a public local inquiry is avoided. It will then be up to Scottish Ministers to determine whether to approve the scheme.

311. There are likely to be modest savings resulting from the new streamlined process as a result of a reduction in the number of public inquiries. It is difficult to quantify these savings as they will depend on the split between contested, contested but subsequently withdrawn and uncontested schemes.

312. Under the present arrangements, almost all schemes are also referred to the Scottish Government Planning Division to consider a call-in under planning legislation. It is rare for a scheme to be called in. There is an administrative cost in considering the referral. This will not happen under new arrangements but the reduction in Planning Directorate’s workload is not significant, approximately six schemes per year out of numerous other non-flooding planning cases and any saving is likely to be less than £5000 per annum.

Costs on local authorities

313. The Bill sets out a new statutory process for flood protection schemes, which will replace those provisions in the 1961 Act that specify the current statutory process. The provisions in the Bill remove the requirement to go through a separate planning approval process by carrying deemed planning permission. It is difficult to estimate the costs or savings to local authorities that will arise as a result of these changes. It is likely that savings will be made as a result of removing the need to go through a separate planning process. However, local authorities have estimated when the new system is in place, which is likely to be in 2010 that the changes to the statutory process will cost approximately an additional average of £10,000 per annum for an individual local authority and up to £0.32 million (£10,000 * 32) per annum for local authorities in total to carry out new duties including processing of objections, additional administration costs and setting up a new system to approve applications for flood protection schemes. Costs will vary from year to year for individual local authorities because the frequency and number of schemes brought forward will vary. In some years, individual local authorities may have no flood protection schemes to process and approve and will not incur any costs. Until flood risk management plans are prepared, the number of schemes required to manage flood risk is not known.

314. The provisions which outline to whom and on what basis compensation is paid by local authorities to persons who have sustained damage as a consequence of operations undertaken by a local authority are already present in the 1961 Act. The 1961 Act will be repealed as part of the Flooding Bill and the existing provisions that cover compensation from local authorities will be
replaced with the similar provision in this Bill. Therefore no additional costs will arise as a result of these provisions.

315. The Bill retains a duty on local authorities to assess watercourses from the 1961 Act. Any increased costs arising from this duty in future are not attributable to the Bill.

Costs on other bodies, individuals and businesses

Savings for SEPA

316. It is not anticipated that any new resources are required as a result of the changes to the statutory process which will arise as a result of the Bill. Streamlining the statutory process may result in a small saving for SEPA in that it should cut down the number of times SEPA is consulted on a flood protection scheme. Previously SEPA would be consulted twice on each scheme once as it went through the statutory process and again on the same scheme when it went through the planning process. However, flood prevention consultations currently represent a small proportion of SEPA’s entire flood risk assessment workload. In 2007 SEPA received almost 2000 flood risk consultations, of which less than 10 were flood prevention orders, which would result in marginal savings.

Costs on land owners

317. Where a flood protection scheme requires the amendment or revocation of a Land Drainage Order, this may result in small costs or savings to individual land owners. The Bill makes a number of amendments to the Land Drainage Act 1958 and enables improvement orders under the Land Drainage Act 1958 to be amended or revoked through the new statutory process provided for in this Bill. The costs or savings will arise as a result of any increases or decreases in the cost of maintaining drainage works which still form the improvement order. These are likely to be very minor costs or savings. Costs for works under the flood protection scheme which amend the improvement order will be borne by the local authority. In addition, local authorities will have a new power to recover their expenses. If land owners or occupiers damage any flood protection work carried out by a local authority; this would result in the local authority seeking to recover the cost of restoration.

SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

318. The Bill replaces SEPA’s existing power to undertake flood warning work with a statutory responsibility for making flood warning information available to the public. SEPA already operates a flood warning service and makes flood warning information available to the public. As such, there will be no new staff cost implications for SEPA in maintaining this service. Future investment in improving SEPA’s flood warning service will need to be balanced with other flood risk management measures identified in flood risk management plans. Paragraph 327, which describes costs for flood risk management measures, gives an indication of the implications of the Bill on costs for new measures.

319. The Bill provides SEPA with a power to undertake a national appraisal of where improvements to flood warning could help reduce flood risk. The development of a strategy to guide where flood warning can be improved, for instance through creation of a new flood warning scheme, will help ensure that future investment in flood warning is targeted in those
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

areas that will bring the greatest benefits. This new work will require in the region of two new staff, and these costs have been included in the costs set out for SEPA under its flood risk management planning work (paragraph 296).

320. SEPA’s role in providing advice to planning authorities on flood risk has been updated so that SEPA can provide advice on both the likelihood and impact of flooding. The advice is to be based on information available to SEPA, which could include information from its flood risk assessment work required for the Directive or information provided to SEPA from a planning authority. This provision is not expected to have any significant resource implications.

**ENFORCEMENT OF THE RESERVOIRS ACT 1975**

321. The measures provided in the Flooding Bill will amend the Reservoirs Act 1975 (“the 1975 Act”) including the appointment of a sole relevant authority for Scotland. The amendments include altering the powers of the enforcement authority under section 8 of the 1975 Act and making provisions for the 1975 Act to bind the Crown. The amendments introduce a system of post-incident reporting by reservoir undertakers to the enforcement authority.

**Costs on the Scottish Administration**

322. No additional costs on Scottish Ministers are anticipated as a result of the provisions to amend the Reservoirs Act 1975.

**Savings for local authorities**

323. There will be small savings to local authorities as a result of the transfer of responsibility for enforcement of the Reservoirs Act to SEPA, which is likely to occur at the end of 2010. Presently the enforcement role is generally a part-time activity in local authorities and removal of this role will not result in significant savings as these staff will still be required to cover their other functions. However, local authorities will be able to make some savings as these staff will be available to take on other duties and functions. Savings will be made as a result of no longer having to maintain a register of reservoirs, complete a biennial report for Scottish Ministers or appoint engineers where reservoir undertakers have failed to appoint them. These savings are estimated to be less than £5000 per annum for each local authority and therefore no more than £150,000 per annum for the local authorities in total.

**Costs on other bodies, individuals and businesses**

**Costs on SEPA**

324. The Bill provides for the duties and powers given under the Reservoirs Act 1975 (“the 1975 Act”) to local authorities, except those relevant to local authorities’ functions as reservoir undertakers, to be transferred to SEPA.

325. It will also allow a compulsory system of post incident reporting to be introduced and the Crown will no longer be exempt. The transfer of the existing enforcement role of the Reservoirs Act and the new duties will result in the requirement for approximately five additional staff. The
These documents relate to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

costs of these additional duties are estimated to be £0.1 million up to 2010-11 and £0.25 million per annum thereafter.

326. There are 678 reservoirs covered by the 1975 Act. These Reservoirs will be assessed as part of the preliminary flood risk assessment under the Directive, and where it is considered that a dam failure would give rise to significant flood risk then SEPA, as the competent authority under the Directive, would be required to assess and map those risks. The costs for mapping are included in the sections on implementing the Directive.

COSTS OF IMPLEMENTING FLOOD RISK MANAGEMENT MEASURES

327. The first set of flood risk management plans will be produced in 2015. These plans will identify the measures to be taken forward in the subsequent 6 year period, along with information on measures that may be implemented beyond this period.

328. At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence of the provisions set out in the Bill. However, where investment does occur, improved information on flood risk and a new flood risk management planning process will ensure that expenditure is targeted in those areas at greatest flood risk and on the most cost effective measures to manage those risks. By ensuring consideration is given to other planning processes, including development planning and river basin management plans, it will create new opportunities for using public funding to deliver multiple benefits.

329. Flood management measures would be taken forward through existing investment programmes. The identification of Scottish Water as a responsible authority under the Bill would place them under new statutory duties for flood risk management. This would mean that Scottish Water’s investment programme would need to take account of flood risk management alongside the protection of public health, environmental improvement, and in its approach to the maintenance improvement and extension of the existing sewerage and drainage network.
SUMMARY OF COSTS

Table 1: Summary of estimated costs

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Scottish Gov. £ Million</th>
<th>Local authorities £ Million</th>
<th>SEPA £ Million</th>
<th>Scottish Water £ Million</th>
<th>National Parks £ Million</th>
<th>Total £ Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cost of implementing the Directive for the first planning cycle (up to Dec 2015)</td>
<td>4.26①</td>
<td>36.48②</td>
<td>22.23③</td>
<td>12.7④</td>
<td>0.42⑤</td>
<td>76.09</td>
</tr>
<tr>
<td>Annual running cost of implementing the Directive (after Dec 2015)</td>
<td>0.14⑥</td>
<td>7.68②</td>
<td>3.4⑥</td>
<td>1.9⑥</td>
<td>0.07⑥</td>
<td>13.19</td>
</tr>
<tr>
<td>Annual running cost of local authority functions and the new statutory process</td>
<td>N/A</td>
<td>0.32⑦</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>0.32</td>
</tr>
<tr>
<td>Initial set up costs for SEPA from amendments to the Reservoirs Act 1975</td>
<td>N/A</td>
<td>N/A</td>
<td>0.1⑥</td>
<td>N/A</td>
<td>N/A</td>
<td>0.1</td>
</tr>
<tr>
<td>Annual running cost (or savings) from amendments to the Reservoirs Act 1975</td>
<td>N/A</td>
<td>(-0.15)⑧</td>
<td>0.25⑧</td>
<td>N/A</td>
<td>N/A</td>
<td>0.1</td>
</tr>
</tbody>
</table>

①Paragraph 284, ②Paragraph 289, ③Paragraph 296, ④Paragraph 304, ⑤Paragraph 306, ⑥Paragraph 284, ⑦Paragraph 289, ⑧Paragraph 297

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

330. On 29 September 2008, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Flood Risk Management (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

331. On 25 September 2008, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Flood Risk Management (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

FLOOD RISK MANAGEMENT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Flood Risk Management (Scotland) Bill introduced in the Scottish Parliament on 29 September 2008. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 15–EN.

POLICY OBJECTIVES OF THE BILL – GENERAL

2. The provisions in this Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding. By protecting and working with the environment, sustainable flood risk management is intended to provide the maximum possible social and economic resilience against flooding for current and future generations.

3. To deliver this framework, the Bill makes substantive provision in five policy areas:
   - coordination and cooperation in flood risk management;
   - assessment of flood risk and preparation of flood risk management plans, including transposing the EC Floods Directive (2007/60/EC) (the Directive);[^1];
   - amendments to local authority and SEPA functions for flood risk management;
   - a revised statutory process for flood risk management measures; and
   - creating a more uniform approach to the enforcement of the Reservoirs Act 1975 (the 1975 Act).

BACKGROUND

Flooding and flood risk management in Scotland

4. Flooding is a natural process that helps shape our landscape. However, flooding can also threaten health and safety, and cause substantial damage to property and infrastructure. Although flooding cannot be entirely prevented, it can be managed so as to reduce its social and economic consequences, and to safeguard the continued functioning of services and infrastructure.

5. Climate scenarios for Scotland tell us that over the course of this century our climate will become wetter and stormier. These trends could increase our susceptibility to flood risks and have wider implications for how we need to assess and manage flood risk. Our management and use of the water environment, such as straightening rivers, draining land for agricultural production and building in flood prone areas, can also increase our susceptibility to flooding and its impacts.

6. A wide range of legislation currently underpins flood risk management in Scotland, and the statutory responsibility for this function is widespread and at times unclear. The main piece of legislation is the Flood Prevention (Scotland) Act 1961 (the 1961 Act), which is now outdated and does not reflect the way that government and local services are now delivered in Scotland. The 1961 Act has also been criticised for restricting the range of flood risk management measures that can be adopted and delaying implementation of flood protection schemes. It also lacks a clear framework for coordinating measures across catchments.

The EC Floods Directive

7. The Directive came into force on the 26th of November 2007. The aim of the Directive is to reduce the adverse consequences of floods on human health, the environment, cultural heritage and economic activity. To achieve this, the Directive establishes a framework for the assessment and management of flood risks. The framework set out by the Directive fits in well with the Scottish Government’s own priorities for establishing a sustainable, risk-based approach to flood risk management. The Directive must be transposed by the 26th November 2009.

8. The basic requirements of the Directive are to:
   - produce preliminary flood risk assessments (deadline – December 2011);
   - produce flood hazard maps and flood risk maps (deadline – December 2013); and
   - produce flood risk management plans (deadline – December 2015).

9. The Directive recognises the importance of adopting a catchment-focused approach to managing all sources of flooding. The Directive also recognises the benefits that can be gained from coordinating flood risk management with other aspects of land and water management, including River Basin Planning undertaken for the Water Framework Directive. The Water Framework Directive was implemented in Scotland through the Water Environment and Water Services (Scotland) Act 2003.

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10. The Directive gives Member States the freedom to set their own objectives for flood risk management. This allows Member States to adopt objectives and measures that are suited to local and regional requirements and circumstances. The Directive also allows Member States to use and build on existing tools, information and plans.

BILL CONTENT – GENERAL

11. The Bill is separated into the following parts:

- **Part 1** sets out general duties which Scottish Ministers, SEPA, and responsible authorities must comply with when exercising their respective functions for flood risk management. These include a duty to exercise functions with a view to reducing flood risk and to collaborate when doing so and a duty to take account of guidance and directions in relation to flood risk management.

- **Part 2** defines some of the principal expressions used in the Bill, including “flood” and “flood risk”.

- **Part 3** sets out arrangements for the production of flood risk assessments and flood risk management plans. The aim is to create a nationally consistent and catchment focused approach to flood risk management planning that is underpinned by local coordination and delivery of measures. The provisions set out in Part 3 of the Bill also fulfil the Scottish Government’s obligation to transpose the Directive.

- **Part 4** sets out provisions to replace the 1961 Act. These provisions will equip local authorities with broad powers to allow them to take forward a full range of flood risk management measures. The provisions will also underpin the exercise of these powers with a streamlined and local authority based statutory process that provides for efficient use of local resources and timely introduction of flood management measures.

- **Part 5** updates SEPA’s responsibilities for flood warning and flood risk assessment. These provisions replace the provisions set out in the Agriculture Act 1970 and the Environment Act 1995. The provisions provide SEPA with a new statutory framework for exercising these important flood risk management functions.

- **Part 6** sets out new powers of entry and compensation provisions to support local authorities and SEPA in exercising their statutory responsibilities under the Bill.

- **Part 7** amends the Reservoirs Act 1975 to create a more uniform approach to the enforcement of this Act that will ultimately enhance the safe operation of Scotland’s reservoirs. This includes provision to transfer responsibility for enforcement of the 1975 Act from local authorities to SEPA, and a power to establish a new system for reporting incidents that affect safety at reservoirs.

- **Part 8** makes general provision for the making of orders and regulations under the Bill. It also makes provision about the application of the Bill to the Crown and commencement of the Bill.

12. The Bill is enabling in nature and provides for regulations in a number of areas to be made in due course. This is particularly the case in relation to the content and form of flood risk management plans and assessments of flood risk. This approach will allow the Scottish
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Government to supplement the Bill with further, more detailed, provisions that have been developed after thorough consultation and are suited to Scotland’s long term needs.

13. The Bill does not make specific provision for emergency responses to major flooding events – this remains under the remit of the Civil Contingencies Act (2003). However, the expectation is for flood risk assessments and management plans produced under this Bill to provide information that will help emergency responders prepare and react to flood events.

CONSULTATION – GENERAL

Flooding Advisory Committees and Groups

14. In October 2002, an Ad Hoc Committee of Ministers³, chaired by the Deputy First Minister, was set up to consider the arrangements for addressing flood risk and how advice and support is provided to those at risk from, and affected by, flooding. In February 2003, Cabinet agreed a Statement of Commitments and an action plan in the form of the National Flooding Framework.

15. The National Flooding Framework aimed to address the problems of flooding through four areas of action: Awareness, Avoidance, Alleviation, and Assistance. The Ad Hoc Committee also recommended that a National Technical Advisory Group on Flooding Issues (NTAG)⁴ be set up to provide technical advice to local authorities and other parties on flood prevention schemes.

16. NTAG included representatives from the Scottish Government, local authorities, the Scottish Environment Protection Agency (SEPA), Scottish Water, Scottish Natural Heritage (SNH), the Association of British Insurers, industry, environmental non-government organisations, academia, the Environment Agency and the Department for Environment, Food and Rural Affairs (DEFRA). The main aims of the group were to:

- offer advice to the Scottish Government on producing technical guidance for local authorities to take forward flood prevention schemes;
- offer advice to the Scottish Government on what sustainable flood management comprises;
- offer advice on the production of a Second Generation Flood Map; and
- provide a forum for expert discussion on the impacts of climate change on flooding, the links between flood prevention schemes and planning and the social impacts of flooding.

17. In April 2005 the Flooding Issues Advisory Committee (FIAC)⁵ was set up to continue the work of NTAG and to offer advice on taking forward the National Flooding Framework.

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⁴ National Technical Advisory Group: http://www.scotland.gov.uk/Topics/Environment/Water/Flooding/advisory-groups/ntag
⁵ Flooding Issues Advisory Committee: http://www.scotland.gov.uk/Topics/Environment/Water/Flooding/advisory-groups/fiac
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Flooding Summit

18. The Scottish Government commenced the Bill process with a Flooding Summit on 10th September 2007 in Perth. The Summit was attended by over 150 delegates representing a wide range of stakeholder groups including local authorities, Scottish Water, SEPA, the Forestry Commission Scotland, SNH, environmental non-government organisations, National Farmers Union Scotland, flood risk management professionals, academia, and police and fire rescue services.

19. The Summit demonstrated unanimous support for adopting a sustainable approach to flood risk management and provided a platform for taking forward outputs from the National Flooding Framework. The outcomes from the Summit were used to start the process of reviewing flooding legislation. A report was produced summarising the issues raised at the Summit and published on the Scottish Government web site, with notification sent to all attendees and interested parties.

Flooding Bill Advisory Groups

20. In November 2007, the Scottish Government set up the Flooding Bill Advisory Group and three sub-groups: Flood Risk Assessment and Mapping, Flood Risk Management Planning, and the Statutory Process. The role of these groups is to advise the Scottish Government on flood risk management issues at a strategic level and to assist with developing new legislation in this area, including advising on transposing the Directive.

21. The Flooding Bill Advisory Groups are informal forums which bring together professionals from a wide range of flood risk management stakeholders and practitioners. They include representatives from central and local government, SEPA, Scottish Water, SNH, relevant professional bodies, the Association of British Insurers, the Forestry Commission Scotland, agriculture/land use managers, academia, environmental non-government organisations, developers and people who have experienced flooding.

The Future of Flood Risk Management in Scotland – A consultation

22. A consultation – The Future of Flood Risk Management in Scotland – summarised the Scottish Government’s proposals for reforming Scotland’s flooding legislation. The consultation was published in February 2008, with the consultation period running from 14 February to 23 April 2008. The consultation was made available on the Scottish Government’s web site, and a wide range of stakeholders were invited by email or letter to respond to the consultation.

23. 145 organisations and individuals responded. 30 responses were received from members of the public with a further 14 from the private sector and 12 from consultants. A significant number of responses were also received from statutory consultees (7), professional organisations (6) and

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6 Flooding Summit – Papers: [Link no longer operates]
7 Flooding Summit – Summary: [Link]
8 Flooding Bill Advisory Group: [Link]
9 The Future of Flood Risk Management in Scotland – Consultation: [Link]
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emergency services (2). A summary of the responses to the consultation was placed on the Scottish Governments website.  

Consultation workshops

24. The Scottish Government hosted three stakeholder workshops in Glasgow, Aberdeen and Dunfermline, as an open forum for discussion on the legislative proposals. The workshops were attended by over 50 delegates and provided the opportunity for the policy proposals to be further explored, particularly by organisations not previously represented at the advisory groups. Each workshop had a specific theme, which explored a variety of questions relating to the Bill.

Public meetings

25. Also as part of the public consultation process, five public meetings were held in different towns across Scotland that have first hand experience of flooding: Rothes, Perth, Newton Stewart, Newmilns and Dumfries. The first meeting in Rothes was attended by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment and subsequent meetings were chaired by Michael Russell, Minister for Environment. Representatives from the Scottish Government Flooding Policy Team, SEPA, Scottish Water, SNH and each host local authority participated in the open question and answer session. The meetings were promoted with advertisements in the local press, Ministerial interviews and flyers. Local councillors, community council representatives, senior council officials and flood action groups were invited to attend and express their views on the proposals for updating flood risk management in Scotland.

Rural Affairs and Environment Committee

26. The Rural Affairs and Environment (RAE) Committee held an inquiry to examine Scotland’s current and future vulnerability to flooding, and to consider how flooding should best be managed in the future. The Committee published its report on Friday 16 May 2008. The Scottish Government considered the report fully in conjunction with the responses to the consultation document and those from the associated workshops and Town Hall meetings. The Committee’s recommendations helped to inform the Scottish Government’s proposals for a sustainable risk-based approach to flood management.

Summary of the outcomes of the consultation

27. The general consensus across the consultation was that the proposals contained within the Bill are a significant step towards ensuring more effective and sustainable flood management across Scotland. Consultees were particularly vocal in their support for a more streamlined statutory process, the development of a flood management process that couples national and local priorities and for enshrining the principles of sustainable flood management in legislation. More detail is provided on responses to particular issues at relevant points below.

PART 1: GENERAL DUTY, DIRECTIONS AND GUIDANCE

Policy objectives

28. The provisions set out in Part 1 of the Bill create the statutory framework within which the Scottish Ministers, SEPA and responsible authorities must operate when exercising their respective functions for flood risk management.

29. The Bill places a duty on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk, and to do so to secure compliance with the Directive. Provision is made to identify responsible authorities in Part 2 of the Bill. “Flood risk related functions” are functions under the Bill and, where the Scottish Ministers decide it is appropriate, may include functions set out in other legislation. For example, functions under the Coast Protection Act 1949 and the Sewerage (Scotland) Act 1968 will be relevant to flood risk management. Applying the new duty to act with a view to reducing flood risk to “flood risk related functions” will ensure that all efforts to reduce flood, including the exercise of certain powers under other legislation, are coordinated through flood risk management plans.

30. SEPA, by being given the role it is given in Part 3, is identified as the competent authority for the Directive, and this role will form one of SEPA’s key flood risk related functions. SEPA will be responsible for preparing assessments, plans and documents to fulfil the requirements of the Directive. In fulfilling this role, SEPA will be expected to work closely and collaboratively with local authorities, Scottish Water and stakeholders to ensure that work to assess and manage flood risk is undertaken in a coordinated and consistent fashion across Scotland.

31. Although ultimate responsibility for avoiding or managing flood risk would still lie with land and property owners, the clear expectation is for certain public bodies to take a proactive role in managing and, where achievable, lowering overall flood risk. This new duty will, for the first time, place flood risk management on the same footing as other general duties on local authorities, such as the provision of education and other services.

32. To ensure that flood risk management is underpinned by partnership working, the Bill also places a duty on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to cooperate so as to coordinate their respective functions for flood risk management. To assist in the pursuit of sustainable flood risk management, the Bill also places a series of general duties on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities, including:

- to exercise their functions with a view to managing flood risk;
- promotion of sustainable flood risk management;
- acting with a view to raising public awareness of flood risk; and
- acting to contribute to sustainable development.

33. Part 1 of the Bill also confers on the Scottish Ministers a power to give direction and guidance to SEPA and the responsible authorities, thereby allowing the Scottish Ministers to provide continued support to the implementation of the Bill and flood risk management in Scotland.
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PART 2: PRINCIPAL EXPRESSIONS

Policy objectives

34. The current statutory responsibilities for flood risk management in Scotland are unclear. Part 2 of the Bill allows the Scottish Ministers to identify “responsible authorities” who will have a clearly defined role in flood risk management. These responsible authorities are provided with specific duties for flood risk management in Part 1 and elsewhere in the Bill.

35. Local authorities and Scottish Water are identified as responsible authorities in the Bill. Additional responsible authorities will be designated by the Scottish Ministers, and may include National Park authorities, British Waterways and the Forestry Commission Scotland. The Scottish Government envisages that these “responsible authorities” will be bodies directly involved in flood risk management and will act to support local authorities and SEPA in their respective roles for flood risk assessment and management. The Scottish Government will consult further on which authorities should be so designated and what their functions will be.

36. Part 2 also defines “flood” and “flood risk”. The definition of “flood” ensures that the Bill covers all forms of flooding except where flooding is caused solely by a failure of the sewerage system infrastructure, for example a collapsed or blocked sewer. Scottish Water already has statutory responsibilities for maintaining the sewerage network. Other forms of sewerage flooding, including where a sewerage system is overloaded by intense rainfall, are covered by the Bill. This means that flood risk management must consider flooding from rivers, the sea, groundwater, and surface water flooding as a result of intense rainfall, including where sewerage and drainage systems are overloaded by intense rainfall.

37. The inclusion of a definition of “flood risk” is intended to promote common understanding of this term and its important role in managing floods. In summary, “flood risk” is defined as the likelihood of flooding coupled with the potential adverse consequences of flooding, whether they are to human health, the environment, cultural heritage or economic activity. In referring to human health, the intent is to cover all aspects of how flooding affects health, ranging from personal damage or loss of life, to the distress caused as a consequence of flooding.

PART 3: FLOOD RISK ASSESSMENT, MAPS AND PLANS

Policy objectives

38. Many elements come together to deliver flood risk management, including assessing flood risks, issuing flood warnings, undertaking structural (e.g. building flood walls or creating natural areas of flood storage) and non-structural (e.g. avoiding flood risk through development control) flood management measures and raising awareness of flood risk. The Bill creates a framework in which SEPA and local authorities, alongside other public, private and voluntary sectors, can work collectively to assess flood risks and put in place plans to coordinate and execute measures to manage those risks.

39. Part 3 (and schedule 1) of the Bill makes provision for preparing plans to manage flood risks, including new arrangements for assessing and mapping flood risks, and establishing objectives and measures to manage those risks. These provisions encompass five main policy aims:
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- to deliver a nationally consistent and coordinated approach to flood risk assessment and management;
- to utilise and build on local knowledge and expertise in all aspects of flood risk management;
- to improve understanding of flood risks, particularly in relation to surface water flooding (pluvial flooding);
- to create a clear instruments for collaborative working and public participation; and
- to transpose the Directive.

40. The Bill includes a series of enabling provisions, and the intention is to use regulations, ministerial directions, and guidance to supplement the provisions set out in Part 3. This will include regulations on the form and content of flood risk management plans and on the assessment of significant flood risk. This approach will allow the Scottish Government to put in place a detailed set of provisions that are appropriate to Scottish circumstances and have been developed after thorough consultation.

Flood risk management planning

The need for flood risk management planning

41. Flood risk management requires coordination of a range of actions, including flood risk assessment, flood warning and the creation of structures to reduce flood risk. As things that affect one part of a river or coastline often have consequences elsewhere, flood management actions are most effective when they are coordinated across catchments and along coastlines.

42. Some catchment focused flood management planning does occur in Scotland, but it is typically on an ad hoc or voluntary basis. Something more comprehensive and transparent is required to deliver sustainable approaches to flood risk management that ensure the needs of current and future generations are protected.

43. Flood risk management is most effective when it is coordinated with other aspects of water and land management. This ensures that opportunities for using public funding to deliver multiple benefits, for instance simultaneously reducing the risk of flooding while also improving water quality and enhancing water resources, can be identified and realised.

Flood risk management planning – an overview

44. The provisions set out in Part 3 will establish a system for flood risk management planning that is aligned with Scotland’s flood risk management needs, while also incorporating all the elements needed to fulfil the requirements of the Directive.

45. The intention is to develop a flood risk management planning process that will allow promotion of coordinated sets of actions that balance long-term and nationally focused objectives with local information and priorities. To deliver this framework, the Bill establishes a tiered, but fully integrated, system of flood risk management planning. The process is founded on the following sets of plans:
district flood risk management plans (district plans) will set the national and strategic framework for flood risk management in Scotland. These plans will coordinate and determine national priorities, and set the framework in which measures to manage flood risk will be delivered or planned for at a local level. These plans would also fulfil the reporting requirements of the Directive. SEPA will take the lead on this work, but it will need to do so in close partnership with other local authorities and other responsible authorities, and with due regard to local information and priorities; and

local flood risk management plans (local plans) will supplement the district plans and will ensure that the objectives and measures set out in district plans are translated into locally targeted and coordinated actions to manage flood risks. Local plans must be consistent with the district plans, but may include additional, locally relevant information, including additional details of particular measures. Local authorities will take the lead on this work, but they will need to do so in close partnership with SEPA and other responsible authorities. All local plans must be accompanied by an implementation strategy setting out how the measures described in the local plan will be delivered.

46. The Bill provides for both sets of plans to be developed in tandem, and the expectation is for a two-way interaction between each set of plans. For instance, all district level planning will need to be undertaken in consideration of locally derived information, including information on flood risk and the suitability of measures; equally, all local planning will need to reflect national and strategic objectives set out in the district plans. Advisory groups will be a critical tool in ensuring coordination of plans. Advisory groups will also ensure that the plans are not only developed by those responsible for undertaking flood risk management, but are also shaped by policy makers, regulators, businesses and communities alike. The Scottish Government believes this approach creates clear responsibilities for local authorities in the planning process, while also creating a national, strategic role for SEPA.

47. The district plans will meet the requirements for the flood risk management plans which have to be produced to comply with the Directive. The local plans will supplement the district plans but are not intended to form part of the plans required by the Directive. Relying on a single authority to lead on the production of the district plan provides for an efficient approach to fulfilling the requirements of the Directive.

48. The intention is to use regulations to set out further details on the form and content of flood risk management plans, and the procedures to be followed in the preparation of these plans. This approach will allow the Scottish Government to put in place a detailed set of provisions that have been developed after thorough consultation.

49. Although the Bill identifies SEPA as the lead authority for producing flood risk assessments, maps and district plans, SEPA’s key new role will be as a coordinator and facilitator. The detailed plans and assessments that will underpin the work of SEPA will be produced by the local authorities, and to a lesser degree other responsible authorities, who will also be responsible for delivering the measures to address flood risk. SEPA will be expected to work closely and collaboratively with local authorities, Scottish Water and stakeholders to ensure that work to assess and manage flood risk is undertaken in a coordinated and consistent fashion across Scotland.
50. In summary, the district plans will include:
   - **a preliminary flood risk assessment** (termed “flood risk assessment” in the Bill) that is undertaken to identify current and future flood risks, and provide a baseline of information to inform the next steps in the production of the plan. The assessment culminates in an appraisal of where the most significant flood risks are likely to occur (termed “potentially vulnerable areas” in the Bill). This information will be crucial to prioritising efforts to map and manage flood risks.
   - **flood hazard and flood risk maps.** Flood hazard maps will outline the likely extent of different flood scenarios. The flood risk maps will summarise the potential impacts of these flood events, including the number of people affected and the implications for economic activity.
   - **a set of objectives and measures** for tackling flooding issues in potentially vulnerable areas. Each plan will coordinate measures across catchments and all measures will be subject to cost-benefit analysis. It will not be possible to address all flood risks in one six year planning cycle; therefore, the district plan will organise sets of objectives and measures across planning cycles. This approach will provide a road map for the long term (25+ years) management of flood risks as well as targeted sets of actions across particular planning cycles.

51. The local plans, which will supplement the district plans, must include:
   - summaries of the (geographically) relevant information from the district plan, including summaries of flood risks, and objectives and measures to manage these risks; and
   - supplemental locally relevant information, including additional details of measures or schemes that are being taken forward.

52. Each local plan must be accompanied by an implementation strategy setting out how the measures described in the plan will be taken forward, including an implementation timetable and a summary of who will be responsible for funding and undertaking each measure.

Geographic boundaries of flood management plans

53. The intention is to use catchments as the basic unit of management for organising objectives and measures to manage flood risks. This is in line with the RAE Committee’s recommendation that the catchment be the fundamental unit for flood risk management. The district plans will be geographically coincident with the river basin districts designated under the Water Environment and Water Services (Scotland) Act 2003 (the 2003 Act). This will create two principal flood risk management districts for Scotland – a Scotland district and a cross border district with England and Wales (Solway and Tweed). Although these are large scale planning units, the intention is for all objectives and measures identified in the district plan to be coordinated across the catchments that are contained within the district.

54. The flood risk management plans covering the cross border district will need to be coordinated with the competent authority for the Directive in England and Wales. The intention is to adopt a similar approach to the one established under the 2003 Act for cross border river basin plans. The intention is therefore to liaise with DEFRA to develop separate regulations to specify cross border arrangements.
55. SEPA, in close consultation with local authorities, will be responsible for identifying where local plans are required and the geographic boundaries of these plans. In determining the geographic boundaries of local plans, the Scottish Government expects SEPA to identify appropriate, catchment (and coastline) focused units, which are developed in regard to factors like:

- where flood risks exist,
- natural drainage characteristics (i.e. catchments); and
- administrative arrangements, including the boundary of local authority districts.

**Advisory groups**

56. Securing participation and engagement in the flood management planning process is possibly the most important aspect of flood management planning. The Bill requires the creation of advisory groups, which will provide SEPA and local authorities with an important tool to ensure that a fully collaborative approach is adopted. These groups will act as standing consultative panels on flood management planning. To secure a nationally coordinated set of advisory groups, the Bill gives SEPA responsibility for establishing these groups and setting out their membership and remit.

57. The Bill requires establishment of a national advisory group to oversee production of the district plans. This group would be led by SEPA. The Bill also requires establishment of sub-district advisory groups. These groups would be led by local authorities and would be responsible for coordinating production of local flood risk management plans and coordinating contributions to the district plan. The sub-district groups will provide a critical link between the district and local plans, thereby ensuring that the district plans can take account of local priorities and circumstances, and that local plans remain consistent with agreed national priorities. Wherever possible, the intention is to use or update existing groups to fulfil these advisory group roles.

58. The Scottish Government’s policy preference is to put in place a flexible system whereby the remit and structure of these groups is a matter for SEPA to determine, within the context of Ministerial guidance and in close consultation with local authorities. The Scottish Government also expect SEPA and local authorities to use a range of other methods to discharge their participation and consultation duties, such as public meetings, bilateral meetings with stakeholders and other forms of local consultation.

**Flood risk assessments**

59. The Bill confers a duty on SEPA to carry out a flood risk assessment (by December 2011) and, based on the outcomes of this assessment, to identify those areas of the country that are potentially vulnerable to flood risks. This assessment meets the requirements of the preliminary flood risk assessment set out in the Directive (Article 4). The flood risk assessment must be based on readily available or derivable information and must consider all forms and sources of flooding, other than floods solely from sewerage systems, which are excluded from the definition of “flood” in Part 2 of the Bill. Scotland has a lot of information on flood risk that can be drawn on for this purpose. The flood risk assessment therefore provides an opportunity to collate this information to create a national picture of flood incidents and flood risks. The intention is for SEPA to hold and manage this information, and to set up mechanisms to share this information with the responsible authorities and stakeholders.
60. In addition to improving understanding of past flood events, the assessment must also consider climate change scenarios. This will provide valuable information for long-term planning and the promotion of actions to improve resilience to flooding. Ultimately, the assessment will provide a source of valuable information that can be used to inform flood mapping exercises, and the establishment of objectives and measures to manage flood risks.

61. A number of organisations hold information that will be relevant to this assessment, including local authorities and Scottish Water. Advisory groups will play a key role in coordinating the collation and production of information to inform the content of the flood risk assessment, including advising SEPA on locally important issues.

62. Using the information obtained through the preliminary flood risk assessment, SEPA will be required to identify those areas of the country believed to be at the most significant risk of flooding. This assessment will determine where efforts to map and manage flood risks should be targeted. The Bill includes provision for the Scottish Ministers to develop regulations to set out details on the preparation of this assessment, including consultation arrangements.

63. The Scottish Government believes that the assessment of potentially vulnerable areas will have an important role in targeting future investment in flood risk assessment and management. Accordingly, the Bill sets out provision for the Scottish Ministers to approve the assessment.

Assessing the contribution that natural features and processes can make to managing flood risk

64. A sustainable approach to flood risk management requires consideration of the widest possible range of options for managing flood risks. Natural flood management, which can usefully be regarded as efforts to work with, or restore, natural flooding processes, is increasingly being recognised as an important tool in the flood risk management armoury. Although evidence on the contribution that natural flood management measures can make to flood management is currently limited, the Scottish Government believes that these approaches should be considered within the flood risk management planning process.

65. The Bill gives SEPA responsibility for undertaking a national appraisal of where alteration, restoration or enhancement of natural features could contribute to managing flood risks. Although this assessment is not a direct requirement of the Directive, the Scottish Government believes that this information will form an important component of future flood risk management decisions. To ensure that outputs of the assessment can be integrated into flood risk management decisions, the assessment must be completed every 6 years and the outputs from the assessment must be considered when setting objectives and measures to manage flood risk. SEPA will be expected to collaborate with other organisations in undertaking this assessment and to publish and disseminate the outputs of this assessment.

Flood risk and hazard mapping

66. Maps are a powerful tool for communicating information on flood risk, and SEPA, in its role as lead authority for the Directive, will be responsible for producing flood hazard and flood risk maps (by December 2013), where:

- flood hazard maps show the likelihood and extent of different flood scenarios, including information on depth or level of flooding; and
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- Flood risk maps show the impact of flooding, including the indicative number of inhabitants affected and the type of economic activity affected.

67. The intention is for SEPA to lead on work to improve mapping and understanding of flood risks. However, other organisations, particularly local authorities and Scottish Water, are also expected to provide assistance and to contribute information. For instance, some local authorities have already undertaken work to map pluvial flooding, and Scottish Water is well placed to develop assessments and maps of sewerage flooding. The expectation is that this work will continue, but that it will now be undertaken in close liaison with SEPA to ensure that these efforts are coordinated. Advisory groups and wider consultations with stakeholders and the public are also expected to play a crucial role in ensuring flood risk maps reflect local experiences of the impacts of flooding. For instance, local experience can provide information on water levels and detail as to the chronology of a flood event.

68. The maps must include information on river, coastal, groundwater and surface water (pluvial) flooding. The Bill provides for an opt-out to be exercised by SEPA when mapping sewerage flooding. The intention is for this opt-out to be reserved for situations where technical constraints mean that mapping of these flooding scenarios would be impractical or impossible. Where an opt-out is exercised, effort would instead be focused on obtaining the information necessary to undertake a robust and reliable assessment of sewerage flooding in a subsequent planning cycle. This approach will ensure that mapping efforts focus on the provision of high quality and reliable information. Provision has also been made for the Scottish Ministers to direct SEPA to include information on sewerage flooding in flood maps.

69. The Bill does not set out details of which flood scenarios (e.g. return periods) must be mapped. The intention is for the Scottish Ministers to specify what should be considered as a low, medium or high probability flood. This approach creates flexibility for periodically reviewing and updating what flood scenarios should be mapped. The Bill also includes provision for the Scottish Ministers to set out details of further matters to be included in any flood maps in regulation. Examples of additional information, beyond the requirements of the Directive, that could be considered for inclusion in maps include flood duration periods, and information on risks to strategic assets or cultural interests. As information, technology and expertise in flood risk assessment and mapping evolves, this provision will also ensure that the form and content of maps can be updated to present the most reliable and informative information on flood hazards and flood risks.

70. The flood risk and flood hazard maps must be made publicly available. The intention is for information from these maps to be used to update SEPA’s “indicative river and coastal flood map”, which is currently accessible through SEPA’s website. This will ensure that the public have continued access to high quality information on the likelihood and potential impacts of flooding. The Scottish Government also expects that these maps will provide local authorities with information to support their development planning and development management decisions and, in particular, in the pursuance of actions to avoid flood risks.

Flood risk management plans – objectives and measures to manage flood risk

71. The main purpose of flood risk management planning is to identify and coordinate objectives and measures to manage flood risk. The district and local planning process, as described
in paragraphs 44 to 52, will provide for the preparation of an integrated set of flood risk management plans that balance local information and priorities with long-term and nationally focused objectives. SEPA will be responsible for preparing plans (district plans) that fulfil the Directive requirements (by December 2015).

72. The Directive does not set specific targets or objectives for flood risk management. SEPA, in consultation with local authorities and other responsible authorities, will therefore be responsible for identifying objectives and measures for inclusion in the district plan. These objectives and measures will also form the basis of all local flood management plans. It is therefore important that all decisions on objectives and measures have full regard to local circumstances and priorities, and to the information gathered through the flood risk assessment and mapping exercises. To ensure this level of coordination is achieved, the local plans will be developed in tandem with the district plans. The network of advisory groups is also expected to play a vital role in ensuring that the district plan reflects both local and national priorities.

73. The intention is to use regulations to set out further details on the structure and content of district and local flood management plans. The Bill sets out factors that must be taken into consideration in setting objectives and measures to manage flood risk. The list, which has been drawn from the requirements set out the Directive, is not intended to be exhaustive, and there is provision for SEPA and the Scottish Ministers to identify further factors for consideration. The list of factors set out in the Bill includes:

- impacts of climate change;
- the costs and benefits (flooding or otherwise, for instance coincident environmental benefits) of implementing proposed measures;
- the wider management of Scotland’s water and land resources;
- development plans;
- conservation objectives; and
- environmental objectives established under the 2003 Act.

74. The Scottish Government wants to avoid placing particular emphasis on any individual approach to flood risk management. This is because any number of measures could have a role in flood management depending on particular circumstances. Accordingly, the Bill does not identify particular measures for inclusion or consideration in flood management plans; instead, the Bill requires consideration of all structural and non-structural measures, where structural measures involve the carrying out of operations on land and non-structural measures are all other measures (e.g. awareness raising, flood warning and development planning). This is to ensure that consideration is given to all forms of flood risk management, ranging from building flood defences to improving flood warning or restoring lost flood plains.

75. The district and local plans will provide a basis for short and long-term planning. In addition to focusing on measures relating to a particular 6 year planning cycle, the flood risk management plans will also set out long-term (25+ years) objectives. The intention is for this information to contribute to the development of the spending plans of the bodies involved in implementing measures.
76. All objectives and measures must be attainable and suited to local circumstances. The clear intention is therefore for local authorities to work in partnership with SEPA and other bodies to identify realistic and deliverable objectives and measures for inclusion in flood risk management plans. To ensure that all measures are deliverable, each local plan must be accompanied by an implementation strategy that sets out how the measures contained within it will be delivered. These implementation strategies must be agreed by all bodies involved in delivering the measures.

77. The Bill requires local authorities to produce and publish interim reports that review the local flood risk management plans and the progress that has been made towards implementing measures. In addition to providing valuable interim information on progress and any problems experienced in implementing a local flood risk management plan, this exercise will also allow local authorities and SEPA to consider any new information on flood risks and how the respective plans may need to be amended or adapted to address these risks.

78. A coordinated approach to managing surface water runoff will be vital to the successful management of flood risk. The Bill creates a framework for collaborative working between all bodies involved in surface water management. Flood risk management plans, and the network of advisory groups, will provide the framework in which objectives and measures to manage surface water (including sewerage) flooding can be identified and coordinated. The intention is for local authorities to lead on the identification of measures to tackle surface water flooding, with Scottish Water, SEPA and others contributing through the exercise of their flood risk related functions (as described in Part 1).

79. Consultation responses indicated that the proposed hierarchical approach to flood risk management planning was well received. 16 out of the 20 relevant local authority responses felt that the proposals were a sufficient basis for flood risk management planning. All non-governmental organisations, the public, the private sector representatives and consultants provided a consistently positive view of the proposals. Only a small number of local authorities (4) and 2 statutory consultees were not in favour. The inclusion of surface water and sewerage flooding in the flood risk management planning process was seen as a positive step.

Coordination with the 2003 Act and development planning

80. The coordination of flood risk management planning with other planning processes will be necessary to the continued promotion of integrated water and land management. Furthermore, the Directive requires Member States to take steps to coordinate actions with the Water Framework Directive, focusing on opportunities for improving efficiency, information exchange and for achieving common synergies and benefits. To ensure flood risk management plans work in concert with other aspects of water management, the Bill includes provision for close coordination of flood risk management plans with river basin management plans prepared under the Water Environment and Water Services (Scotland) Act 2003, (the 2003 Act) which implemented the Water Framework Directive in Scotland. An important aspect of this coordination will be identifying opportunities to deliver coincident environmental and flood management benefits.

81. The establishment of environmental objectives and measures through river basin planning allows less stringent or alternative objectives to be set where there are overriding social or economic implications. This is an important mechanism for ensuring the needs of flood risk
management are balanced against protection of the water environment and the needs of other water users.

82. Planning decisions remain one of the most powerful tools available for managing flood risks. There will need to be a two way interaction between development planning and flood risk management planning. The Bill requires consideration of development planning when setting objectives to manage flood risk, and the intention is for flood risk management plans to include measures to avoid flood risk. The Bill also requires all public bodies and office holders to have regard to flood risk management plans when exercising their relevant functions, including development planning. The expectation is for subsequent planning legislation to include a specific provision requiring local authorities to have regard to flood risk management plans when preparing development plans. This will emphasise the important links between the flood risk management planning process and development planning. It is anticipated that a review of the Scottish Government’s planning guidance on flooding will be considered in light of the provisions set out in the Bill.

Approving flood risk management plans

83. The Bill provides for the Scottish Ministers to approve the district plans prepared by SEPA. The Scottish Ministers will therefore have the final say on the content of the plans and, importantly, the objectives and measures that are set out therein. The Scottish Ministers will be able to consider any objections made to the plan as submitted, and conduct further investigations of their own before coming to a decision.

84. Final ministerial approval will be an important safeguard, but it does not mean difficult decisions – or any party making its views known – can be postponed until the end of the process. The Directive’s strict timetable also rules out a cumbersome approval process.

85. In approving the plan, the Scottish Ministers will be agreeing delivery of a nationally prioritised set of objectives and measures to manage flood risks. As local plans will be based on, and consistent with, the objectives and measures set out in the district plan, we do not envisage a regular role for the Scottish Ministers in approving local plans. Provision has been made to require local authorities and other bodies contributing to the delivery of measures in a local plan to agree the content of that plan and for the lead local authority to publish the plan. The Scottish Ministers will have a role in determining the content of a local plan only where those bodies are unable to reach agreement.

86. The Scottish Ministers will be ultimately responsible for ensuring production and delivery of flood management plans, and they may have a role in addressing any problems that are inhibiting delivery of plans and/or measures. Local authorities will be required to produce interim reports (every 3 years) setting out progress towards delivering the agreed flood risk management measures set out in the local plans. This information will provide the Scottish Ministers with advance warning of issues that could inhibit delivery of plans and of the actions that may need to be taken to address any problems or barriers.

87. Respondents to the consultation were supportive of a role for the Scottish Ministers in approving district plans, with 71% agreeing that the Scottish Ministers should have the power to
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approve, reject or modify plans. The majority went on further to say that the Scottish Ministers must justify their decisions and have the necessary technical support to make such decisions. It was also suggested that where plans are to be modified it must be done in consultation with the organisation who has prepared the plans. The Bill makes provision for the Scottish Ministers to seek further information and carry out further investigation and consultation prior to determining whether to approve a plan. The Scottish Ministers must also state the reasons for their determination. The Scottish Government believes this creates the necessary accountability and transparency in the approval process.

Implementation of measures set out in flood risk management plans

88. Although ultimate responsibility for avoiding or managing flood risk would still lie with land and property owners, by placing a duty on the Scottish Ministers and certain public bodies to act with a view to reducing overall flood risk, the clear expectation is for these public bodies to implement measures to manage and, where achievable, lower flood risk.

89. The Bill requires local authorities to produce a strategy that sets out how the measures contained in a local plan will be delivered. This strategy forms part of the local plan and must include a timetable of works, and a summary of who will be responsible for undertaking and paying for the works. The implementation strategy must be agreed by all organisations involved in implementing the works before the strategy can be finalised and published.

90. The implementation strategy will serve two purposes: first, it will ensure that the objectives and measures set out in the district and local plans are realistic and supported by a clear pathway to implementation; and second, it will provide a clear requirement for all bodies involved in delivering flood risk management to come together to negotiate and coordinate their efforts to deliver the measures set out in flood risk management plans.

91. The identification of Scottish Water as a responsible authority under the Bill would place them under new statutory duties for flood risk management, which would mean that the duty to act with a view to reducing overall flood risk would need to be considered in the development of Scottish Water’s investment plans. In practice, this would mean that Scottish Water’s investment programme (termed Quality and Standards) would need to take account of flood risk management alongside the protection of public health, environmental improvement, and in its approach to the maintenance improvement and extension of the existing sewerage and drainage network. Scottish Water’s investment programme is developed to achieve a set of outcomes set by the Scottish Ministers. The Direction containing the present outcomes covers the period 2006-14. The consideration of the outcomes for the period post 2014, to cover a further period of at least 8 years, will begin in the near future and will be undertaken in full consultation with stakeholders. This will take full account of the new duty in relation to flood risk management.

92. The Bill sets a deadline for finalising local plans, including implementation strategies, of no later than 6 months after the district plan has been approved by the Scottish Ministers. This means that work to agree how measures will be implemented will need to be undertaken in tandem with work to identify objectives and measures for inclusion in the district plans. In adopting this approach, the Scottish Government is sending a strong signal that the implementation strategy is a critical aspect of the flood risk management planning process that must directly inform the establishment of objectives and measures to manage flood risks.
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93. Where agreement on the content of a local plan (including the implementation strategy) cannot be reached by the organisations involved in delivering measures, the Bill provides for the Scottish Ministers to intervene and, where deadlocks cannot be broken, to determine the content of the plan. This role for the Scottish Ministers will be an important safeguard, but the clear intention is for those responsible for delivering measures to work proactively to agree how measures will be implemented.

94. Although the expectation is for all agreed measures to be followed through to implementation, the Scottish Ministers have the power to make directions that could act as an enforcement mechanism in relation to the general duty to act with a view to reducing flood risk. In exceptional circumstances, the Scottish Ministers could therefore direct a local authority to implement a particular measure or set of measures that has been agreed through the flood management planning process. While in practice it is unlikely that the Scottish Ministers would need to rely on the direction-making power for this purpose, its existence gives the Scottish Ministers a means to exert pressure over responsible authorities and SEPA to carry out their functions under the Bill.

Participation, information and consultation

95. Consultees on the Bill proposals were split on their views on public participation, with some indicating that community and stakeholder engagement was not necessary, while other respondents called for active participation. The Scottish Government believes that a participative process is essential, however there are a range of issues to consider in relation to how SEPA and local authorities can make participation work in practice. For example, SEPA and local authorities will need to ensure that all those with an interest have a voice and it will need to strike the right balance between stakeholder views in drawing up the plans. SEPA and local authorities will also need to use existing consultative arrangements and networks creatively to avoid consultation fatigue.

96. Securing engagement in the flood management planning process from the wider stakeholder community beyond the public sector – in private and voluntary sectors and in communities – is crucial to the success of flood risk management.

97. Many such groups and individuals will have relevant knowledge and expertise to contribute to flood risk management and this needs to be drawn on. More than that, the objectives, and the measures that are put in place to meet them are more likely to be realistic and achievable if they incorporate the aspirations of stakeholders and have been developed in partnership with them. So SEPA and local authorities will need to engender real participation from stakeholders as well as consulting them.

98. The Bill places a requirement on SEPA and local authorities to seek and have regard to the views of a wide variety of interest groups and stakeholders and to report within their respective flood management plans how they have done so. SEPA will also be required to ensure representation from a full range of stakeholder interests in the establishment of advisory groups. The policy intention is for all those with an interest to have an opportunity to become involved in and have their say about flood risk management. These provisions send a strong signal to SEPA and local authorities about the importance of consultation and participation.
99. Comprehensive flood risk management planning has never been attempted in Scotland before, and it is difficult to predict what problems might arise in taking forward the participation agenda or what the solutions might be. It is envisaged that the Ministerial guidance and direction making powers, as well as regulations, will be used to guide SEPA and local authorities on how they should carry out their participation duties.

**Alternative approaches – Part 1, Part 2 and Part 3**

**Sewerage flooding and definition of a flood**

100. Sewerage systems in large towns and cities in Scotland are generally combined sewer systems. Domestic sewage is mixed with the rainwater from roofs and paved surfaces and transported in pipes to a waste water treatment works. These combined systems are designed with release points, known as combined sewer overflows, which operate during heavy rainfall to discharge a mixture of dilute sewage and rainfall to burns and rivers to protect households from sewer flooding.

101. Since the 1960s all new developments have been built with separate sewerage systems where the domestic sewage is transported in a foul sewer and rainfall is transported in a separate surface water sewer. This avoids the environmental problem of sewer overflows and greatly reduces the risk of overloading causing sewerage flooding.

102. The inclusion of sewerage flooding in the definition of a “flood” ensures that sewerage flooding is considered in flood risk assessments and flood risk management. An alternative approach that was considered by the Scottish Government was to omit sewerage flooding from the definition of a “flood” and to give Scottish Ministers power to determine under what circumstances sewerage flooding should be incorporated in flood risk assessments and plans. This approach would be consistent with the Directive, which provides for an opt-out to be exercised in relation to sewerage flooding.

103. The Scottish Government concluded that this approach created a risk that sewerage flooding would be treated separately to other forms of flooding, or worse, that sewerage flooding would receive less attention than other forms of flooding. In view of the technical challenges that mapping sewerage flooding represents, the Bill does however allow SEPA to exercise an opt-out when mapping sewerage flooding. The intention is for this opt-out to be reserved for situations where technical constraints mean that mapping of these flooding scenarios would be impractical or impossible. Where an opt-out is exercised, effort would instead be focused on obtaining the information necessary to undertake a robust and reliable assessment of sewerage flooding in a subsequent planning cycle.

**Flood risk management planning**

104. The Directive prescribes specific tasks that must be undertaken by Member States, including preliminary flood risk assessments, flood hazard and flood risk mapping, and preparation of flood risk management plans. There is therefore no scope to depart from those requirements. The principal area of flexibility is over the legal and administrative arrangements that are put in place to deliver these requirements.

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11 Other than flooding caused solely by a failure of the sewerage system infrastructure – see paragraph 36.
105. The two main questions that the Scottish Government considered in drawing up its proposals for flood risk management planning were:

- whether it was better to create a new authority to take the process forward, or to give that responsibility to an existing authority; and
- if the responsibility was given to an existing authority, who should fulfil the role of the lead authority.

106. The Scottish Government has carefully considered all potential approaches to implementing the Directive, and has concluded that setting up a new flood risk management authority would not be the most efficient means of implementing the Directive’s requirements and taking forward the Scottish Government’s other proposals for modernising flood risk management. As should be clear from the descriptions above, flood risk management is a cross cutting exercise, and no single authority, however carefully constructed, would be able to take the process forward by itself. Moreover, to set one up would entail considerable institutional upheaval as a whole range of relevant powers and functions would have to be transferred from existing authorities such as local authorities, SEPA and Scottish Water to the new authority. The Scottish Government believes that the identification of responsible authorities with general duties for managing flood risk, coupled with refinement of existing areas of responsibility, provides for a collaborative and partnership driven approach that is underpinned by clear lines of responsibility.

107. It is clear however that there needs to be a lead authority for implementing the Directive and coordinating the flood risk management process. The Scottish Government considered identifying all local authorities as lead authorities for the Directive. Although local authorities have existing functions for flood risk management and a wealth of planning expertise and experience, the Scottish Government concluded that this approach would not provide sufficient strategic direction and national consistency in flood risk management. The need for strategic coordination in flood risk management was a key output from the Scottish Government National Flooding Framework. It was also a recommendation in the RAE Committee’s report of its inquiry into flood risk management. Furthermore, the Pitt report for England and Wales, which was commissioned after the devastating floods of summer 2007, emphasised the need for strategic leadership and coordination in flood risk management.

108. Under this option, each flood risk management plan would be developed without a national framework or set of national priorities, and although a national group could be established to ensure a degree of coordination between plans, it would not result in the level of national prioritisation and direction that would be possible under the Bill proposals.

109. Consideration was also given to identifying the Scottish Ministers as the competent authority for the Directive. This would mean that all legal responsibilities for mapping and planning measures under the Directive would rest with the Scottish Ministers. In fulfilling these responsibilities, Scottish Ministers could enter into agreements with other authorities and/or organisations to exercise functions on behalf of the Scottish Ministers, both in terms of the provision of data and the preparation of the maps and plans. Alternatively, the Scottish Ministers could contract out work to fulfil Directive requirements to consultancies. Final responsibility for delivery would nevertheless still remain with the Scottish Ministers. The Scottish Ministers would also be responsible for all consultation exercises and for ensuring coordination with the Water Framework Directive objectives and other planning processes.
110. Fulfilling the Directive requirements would be challenging for the Scottish Ministers. The Government would need to rely on SEPA, local authorities and Scottish Water, as well as other subcontractors to undertake much of the work. The Scottish Government would therefore be acting in a strategic coordinating role, in much the same way as SEPA would under the Bill proposals. This would be an entirely new role for the Scottish Government in relation to flood risk management, and the Scottish Government would need to recruit staff with specialist expertise in flood risk assessment and management, or sub-contract this work out.

111. Although there are recent precedents for identifying Scottish Ministers as the competent authority for an EC Directive – the EC Environmental Noise Directive and the EC Directive on ambient air quality assessment and management – the nature and complexity of flood risk management, which relies on multiple organisations coordinating their work and continued stakeholder engagement, means that the Scottish Ministers would have to form a more hands on approach than the one created under these Directives.

112. As most of the experience and expertise required to fulfil the Directive and implement measures would remain local authorities, SEPA and Scottish Water, the Scottish Government would need to rely heavily on this experience in all aspects of fulfilling the Directive requirements, including relying on SEPA and local authorities to validate flood risk assessments, and maps and relying on local authorities to identify appropriate measures to manage flood risk. The Scottish Government also believes that this type of hands-on role for Scottish Ministers could conflict with other elements of the Bill, which aim to ensure that new responsibilities lie with organisations that have similar existing responsibilities or expertise.

113. The Scottish Government therefore decided that responsibility for the Directive should lie with an existing public sector organisation and that this organisation should have a national remit for implementing the Directive.

114. Of all the existing public sector organisations that could take on the role of lead authority for the Directive, the Scottish Government believes that SEPA is best suited to the task. SEPA already has much of the necessary environmental, technical and planning experience, particularly through its work as competent authority for the Water Framework Directive. SEPA has both a national perspective and the operational capacity across the country to work closely with individual local authorities and other responsible authorities to put the Directive’s requirements into practice.

115. SEPA is also accountable through its regional and national boards and to the Scottish Ministers, and although SEPA is an environmental regulator, it has a statutory duty to consider the social and economic implications of its decisions when discharging its regulatory functions. It is imperative that flood risk management does not conflict with environmental regulation, and the Scottish Government believes that SEPA’s existing statutory responsibilities will ensure that the correct balance is struck between flood risk management and environmental protection.

116. The Bill also provides for local authorities to have a proactive role in assessing and understanding flood risks, and organising and implementing measures to manage these risks. The Scottish Government believes that the approach offered by the Bill will ensure that the national and catchment focused approach to flood risk management planning is underpinned by local co-
ordination and delivery of measures by those bodies with direct experience of carrying out flood risk management in Scotland.

117. Consultees on the Bill proposals were asked if there should be a single lead authority with a national remit for implementing the Directive, and if it should be SEPA. 78% supported identifying a single national body, with 91% of those agreeing that the role should be fulfilled by SEPA. An analysis of local authority responses indicated that 79% of local authorities supported the proposal for SEPA to act as lead authority for the Directive. The overwhelming majority of respondents indicated that SEPA’s role should be supported by a strong role for local authorities in the planning process and in implementation of flood risk management works.

118. Taking on these new roles will be challenging for SEPA, local authorities and the other responsible authorities, and they will need to develop and expand their expertise in catchment planning, flood risk assessment and participatory working. The Scottish Government is committed to supporting these organisations so that they can discharge their new duties effectively, and will work to ensure that they are adequately resourced to do so.

Implementation of flood risk management plans

119. Unlike the Water Framework Directive, the Fl oods Directive does not set out specific targets for Member States to achieve. The Directive focuses on the preparation of plans, while leaving the setting of flood management objectives, and methods to achieve these objectives, to individual Member States. The Scottish Government recognises how important it is for flood risk management plans to be translated into on-the-ground actions to manage flood risks.

120. The Scottish Government carefully considered alternative options for securing implementation of measures set out in flood risk management plans. This included relying solely on local accountability to ensure that local authorities, SEPA and other responsible authorities implemented the measures set out in flood risk management plans. The Scottish Government believes that this approach would not adequately address the risk that flood management measures would be overlooked by other local priorities, particularly in localities that have not experienced a recent flooding event.

121. The Scottish Government also considered placing a duty on local authorities, SEPA, Scottish Water and other responsible authorities to deliver, so far as is practicable, the measures set out the relevant flood risk management plan. However, this would not be in line with the concordat with local government. The concordat states that while the Scottish Government must set the direction of policy and the over-arching outcomes, it will stand back from micro-managing service delivery, thus reducing bureaucracy and freeing local authorities and their partners to meet the varying local needs and circumstances across Scotland. The Government does not specify that a local authority must implement the specific detail of its transport, housing or education policies. Instead, the duty is on local authorities to provide such services. If there was a duty on local authorities to deliver the measures in a flood risk management plan, this could be seen as superseding all those other areas where local authorities have to provide a service, but where no similar duty to implement exists. The Bill will therefore set the framework to facilitate co-operation between all the bodies involved in flood risk management, but will leave local authorities and others free to deliver the policy in line with local needs.
122. The Scottish Government did recognise that, if there was no onus on local authorities to deliver flood risk management measures, there was a risk that they would be overtaken by other local priorities. The Bill will, therefore place a general duty on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to exercise their flood risk functions with a view to reducing overall flood risk. Although ultimate responsibility for avoiding or managing flood risk would still lie with land and property owners, the clear expectation is for local authorities and others to contribute to managing and, where achievable, lowering flood risk. Furthermore, by linking this duty to the Directive, the Bill creates a framework for coordinating these actions through flood risk management plans. This is in line with other general duties on local authorities as regards provision of education and other services.

PART 4: FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

Policy objectives

123. Current local authority responsibilities for flood risk management are set out in the 1961 Act, as amended by the Flood Prevention and Land Drainage (Scotland) Act (1997). The 1961 Act gives local authorities discretionary powers to mitigate flooding of non-agricultural land in their areas through the carrying out of certain operations and sets out a statutory procedure for the promotion of these operations. As well as this statutory procedure, there is a separate legislative procedure that local authorities must complete in order for a flood prevention scheme to be granted planning permission.

124. It is the Scottish Government’s view that the 1961 Act is outdated and does not align with the provisions set out elsewhere in the Bill. Ultimately, this risks undermining the sustainable approach to flood risk management that the Bill seeks to establish. Problems with the 1961 Act include a focus on “preventative measures” and restrictions on the types of flood management measures that can be adopted. Furthermore, the statutory process for confirming and implementing flood prevention schemes set out in the 1961 Act has been seen to be protracted, particularly when combined with the planning process. Local authorities felt it delayed the undertaking of important flood risk management works. The need to streamline the system of approval was upheld by the Rural Affairs and Environment Committee’s Report of its Inquiry into Flooding and Flood Management.

125. To ensure local authorities can deliver sustainable approaches to flood management, the Bill repeals the 1961 Act and replaces it with new provisions that aim to:

- equip local authorities with a range of powers that will allow them to take forward a full suite of flood risk management measures;
- create a streamlined statutory process that allows efficient use of local resources and delivers deemed planning permission; and
- to create clear links between the exercise of local authority functions and flood risk management plans.
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General power to undertake flood risk management measures

126. Delivery of sustainable flood management will require consideration and implementation of a wide range of flood management measures. The Bill therefore gives local authorities a general power to manage flood risk in their area. This general power places no restriction on what types of measures a local authority can take to manage flood risk, or where they can take place. This will ensure that local authorities can carry out a wide range of flood management measures, including engineering works and measures that promote natural flood management in any part of a catchment.

127. To ensure that these measures are undertaken with full regard to the measures identified in the flood risk management plans described in Part 3 of the Bill, the exercise of local authority powers to undertake measures to manage flood risk is limited to actions that will contribute to the delivery of objectives set out in the relevant flood risk management plan. This limitation would not apply in the case of emergency works or to measures that will not hinder delivery of objectives set out in the relevant flood risk management plan.

128. To ensure that flood risk management measures can be taken forward in the most efficient manner possible, the Bill does not place restrictions on how local authorities should take forward particular measures. For example, a local authority could enter into agreements with landowners, acquire land with appropriate compensation to the landowner, or make a financial contribution to any person undertaking works that would otherwise be undertaken by the local authority. Local authorities may also compulsorily acquire land in connection with a flood protection scheme. The overall intent is to ensure that local authorities have a flexible range of powers which they can exercise to deliver flood risk management measures in an efficient and timely manner. The provisions dealing with compensation to landowners are covered in Part 6.

Duty to assess watercourses

129. The Bill provides for the continuance of the current duty on local authorities to assess the watercourses in their area from time to time to ascertain whether the condition of any watercourse is likely to cause flooding of land – as with the rest of the Bill, there is now no distinction between agricultural and non-agricultural land. The information generated by these assessments will be used to identify where maintenance is required to reduce that flood risk. This will in turn inform the local flood risk management plan. The intention is for local flood risk management plans to include a maintenance schedule for watercourses considered to be at risk of flooding.

130. The Bill does not replicate the duty in the 1961 Act that required local authorities to maintain watercourses. This is because, as mentioned previously, the Bill places a new general duty on the Scottish Ministers, SEPA, local authorities and other responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk, and to do so to secure compliance with the Directive. To then place a specific duty on local authorities to maintain watercourses, could mean, for example, that by removing an obstruction to flow at one location, the local authority could cause further flooding downstream, which could conflict with its general duty to reduce overall flood risk. The intention is that such considerations would be taken into account in the development of flood risk management plans and that appropriate measures, for instance a schedule of maintenance works, are identified and implemented.
131. Furthermore, in some locations, the set of measures to reduce overall flood risk may include the abandonment of existing works which are no longer needed or the restoration of a watercourse to its natural condition to allow flooding in areas where it will cause least damage, thereby protecting other areas at greater risk. In such circumstances, it may be inappropriate to continue to maintain the existing arrangements. The expectation is that flood risk management plans will identify where the cessation of maintenance could deliver wider flood management benefits. The Bill therefore places a restriction on the exercise of local authority powers for undertaking maintenance works to areas where the work will not hinder delivery of the objectives and measures set out in the relevant flood risk management plan. This will help deliver a coordinated response to flood risk management. The Scottish Government expects local authorities to work closely with SEPA and other responsible authorities to coordinate their actions in this area, including developing and sharing maintenance schedules or plans.

132. The Bill does not replicate the provisions in the 1961 Act that require local authorities to produce biennial reports on the measures taken to prevent or mitigate flooding in their area. Instead, it creates a system of reporting that is tied closely to the flood risk management planning process. Under sections 32 and 33, local authorities are required to publish a report on a local flood risk management plan every six years, with an interim report after three years. These reports will include a review of the flood risk management plans and an update on the progress that has been made to implement measures. The intention is for these reports to also fulfil a similar function to that currently provided by the biennial reports. A research review found that the biennial reports were seen as useful, but there were concerns about the widely differing quality of the reports between local authorities as the 1961 Act did not specify the form or content of such reports. The Bill includes a provision for regulations to set out the form and content of the new reports. This will ensure that these reports are broadly similar across the country. Under the new system, the information will be updated every three years instead of two.

Statutory process for taking forward flood protection schemes

133. The Scottish Government accepted that the system for approving flood protection schemes (termed flood prevention schemes under the 1961 Act) needed to be simplified. As the intention is to reduce, where possible, the time taken to implement flood protection measures, the Bill does not require local authorities to complete this process in order to proceed with flood risk management measures. Where the local authority can proceed by agreement to carry out new works on land, they can do so without the need to follow a statutory process under the Bill, but they would still need to fulfil other relevant statutory consents. This provides for greater flexibility than was available under the 1961 Act, which always required the local authority to complete a statutory process for approving a flood protection scheme.

134. Where agreement to carry out works on land can not be reached, the Bill sets out a new local authority led approval process for taking forward a “flood protection scheme”. Completion of the process will enable local authorities to use coercive powers, and will also result in deemed planning permission without the need for an entirely separate planning process. It will be for local authorities to decide whether the benefits of going through the new approval process, in terms of the additional powers it provides, outweigh the disadvantages in a situation where other consents might not be required.
135. Although the new process is local authority led, the Scottish Government believes that there is a continuing role for Scottish Ministers to call-in any proposals for which there are outstanding objections from affected parties, including those from other responsible authorities. This role for Scottish Ministers will help ensure that the rights of those entitled to object under planning law and those entitled to object under the 1961 Act are maintained.

136. In order to secure approval for a flood protection scheme, a local authority must complete the steps set out in schedule 2 of the Bill. These are similar to those set out under the 1961 Act. Local authorities must give notice of a proposed flood protection scheme in newspapers and to those whose land will be affected by the proposed scheme or by the work needed to implement the scheme. Local authorities must also give notice to a number of identified organisations, including SEPA, SNH, and any local authority in whose area any of the proposed operations are to be carried out. Most flood protection schemes will take forward measures that have been identified in a flood risk management plan and will therefore have already been through a thorough consultation process. However, the exact detail of the scheme, such as the position of a wall, site of a wetland or the finish that will be used, is unlikely to have been contained in the plan. It is therefore important that other responsible authorities have the opportunity to comment on the specific detail of the proposed scheme. Local authorities must also make a copy of the scheme documents available for public inspection.

137. In proposing a flood protection scheme, the local authority must set out how the scheme will contribute to the implementation of the relevant local flood risk management plan. There is scope for local authorities to carry out work outwith flood risk management plans as long as this work will not impact on the delivery of the plan. In these circumstances, the local authority must state the reasons why the carrying out of this work will not affect the implementation of the plan.

138. Any objections to the proposed scheme must be made within 28 days, a reduction from 3 months under the 1961 Act. If no objections are received, then the local authority must either confirm or reject the proposed scheme. This means that for non-contentious schemes, local authorities will have completed the process with deemed planning consent, at least 2 months earlier than under the current system.

139. Where objections are made, the 1961 Act was silent on the timescale between the end of the objection period and the referral of the scheme to a public local inquiry. The new procedures streamline the process by carrying deemed planning consent, and by considerably shortening the time taken to get approval for non-contentious measures, where no objections have been received. However, there is an important balance to be struck between allowing individuals and organisations, which may be directly affected, to object to proposals without allowing the approval process to be unreasonably extended. It is equally important that the outcome is the right decision and that there is adequate time for the merits of proposals, and any counter proposals, to be properly considered in all the circumstances. The intention is therefore to create a framework which includes periods for a local authority to negotiate with objectors before coming to a preliminary decision. Once a preliminary decision has been made the Bill then provides different routes for dealing with unresolved objections.

140. Where there are unresolved objections from people whose property would be directly affected by the scheme or from other responsible authorities, National Park authorities, SEPA or
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Scottish Natural Heritage, the Scottish Ministers may exercise their option to call in the proposed scheme for Ministerial consideration, and to cause a public local inquiry held. They will have 28 days to make that decision; the only situation in which the Scottish Ministers must call in the scheme is if the outstanding objection is from another local authority or a National Park Authority. If they decide not to call it in, then local authorities will have a duty to give the objectors a hearing. Where Scottish Ministers are not involved, local authorities may also give a hearing to the objectors. If, as a result of a hearing or public local inquiry, any modifications to the original proposal are under consideration by either the local authority or the Scottish Ministers, then the modifications must be notified to the relevant objectors and any other person affected by any modification, who would have a further period to object to the proposed modification.

141. Only after this process has been completed can either local authorities or Scottish Ministers, as appropriate, make a decision to confirm or reject a scheme. On confirmation of a scheme, Scottish Ministers must then direct that planning permission shall also be deemed to be granted.

142. The new procedures streamline the process by carrying deemed planning consent, and by considerably shortening the time taken to get approval for non-contentious measures, where no objections have been received. A shorter implementation time is also provided by the fact that local authorities do not have to use the statutory process if they are confident that they can implement the required flood protection scheme by agreement. However, despite the fact that the statutory process in the 1961 Act is seen as a delaying factor in the implementation of schemes, it cannot be dispensed with completely. Flood protection schemes can have impacts on individuals, communities and on the environment and require careful and thorough planning. Most work will have to take place on private land and the procedures set out in the Bill safeguard property rights by giving property owners an opportunity to object when proposals might adversely affect their property and a right to a public hearing. Although the new process has been shortened where possible, it is important that any flood protection scheme properly balances the interests of an individual and the wider community.

143. The Bill enables the Scottish Ministers to specify by regulations further information to be included in a flood protection scheme including any assessment of environmental impacts. The Bill also allows the Scottish Ministers to amend schedule 2 to modify the procedures. The Bill provides for the Scottish Government issuing guidance to local authorities in relation to their flood risk related functions. These provisions will ensure that the procedures followed by local authorities can be reviewed and amended over time.

Amendments to the Land Drainage (Scotland) Act 1958

144. The Land Drainage (Scotland) Act 1958 (“the 1958 Act”) allows owners of agricultural land to apply to the Scottish Ministers for an “improvement order” authorising drainage works to improve drainage or prevent or mitigate flooding or erosion of agricultural land. The 1958 Act also allows the Scottish Ministers to give grants to fund improvements and, where a grant was paid, imposes an ongoing obligation on the owners to maintain the works. There have been no new improvement orders or variations to such orders since the 1980s, when the decision was taken to stop providing grants.
145. The 1961 Act only dealt with protection of non-agricultural land. The 1958 Act has therefore been seen as providing an equivalent means of protecting and funding the protection of agricultural land. There are many similarities between the procedures for making orders under the 1961 and 1958 Acts as well as the possible content of orders. The Bill repeals the 1961 Act and provides local authorities with new powers to protect land from flooding. These new powers are not intended to distinguish between agricultural and non-agricultural land so they will overlap with existing powers under the 1958 Act.

146. To ensure that there are no conflicts between the new Bill provisions and the existing provisions within the 1958 Act, the Bill repeals those elements of the 1958 Act which allow improvement orders to be made for the purposes of preventing or mitigating flooding. The intention is to leave the rest of the 1958 regime for making improvement orders in place, so that it is still open to land owners to seek an order for the purposes of improving drainage or mitigating erosion.

147. The Bill allows existing 1958 Act improvement orders to remain in force. Provision has however been made to ensure that individual improvement orders (whether they were originally for drainage, flood prevention or erosion purposes) can be revoked, partially revoked or varied if it becomes apparent that they conflict with the measures to be taken by a local authority in implementing a local flood risk management plan.

**Alternative approaches**

148. The Scottish Governments consultation on the Bill set out two possible approaches to simplify the processes for approving flood protection schemes. The first was for ministerial confirmation to continue as under the 1961 Act, but that it should also carry deemed planning permission, and the second was for a local authority based confirmation procedure that would also deliver deemed planning consent. The Rural Affairs and Environment Committee recommended that there should be different approval processes for different scales of flood management measures, and that the Scottish Ministers should continue to approve proposals for strategic flood prevention schemes.

149. In the responses to the consultation a clear majority (56%) considered it appropriate to take forward a local authority led approach to the approval of flood risk management measures, rather than retaining the existing process of Ministerial confirmation. In contrast only 14% felt that such an approach was inappropriate (the remainder gave an unclear or nil response).

150. The Scottish Government considered this area carefully in the light of the Committee’s recommendations and the responses to the consultation. The main objective was to simplify radically the current approval processes in order to:

- reduce the time taken to get approval,
- reduce the number of unnecessary public inquiries
- remove the possibility of two public inquiries being held – one on planning and one on a flood protection scheme.
151. The Scottish Government have already taken one step in simplifying the process by transferring funding for flood risk management to the block grant to local authorities from April 2008. Now that the Scottish Ministers no longer award central grant to a flood protection scheme, Ministerial confirmation has lost a significant part of its purpose. In order to reduce the time taken to proceed with flood protection schemes, the Bill removes the requirement that exists in the 1961 Act for local authorities to complete an approval process for a flood protection scheme. Instead, local authorities will have the option to choose to complete the statutory process if they feel they need the additional powers it will provide. The removal of the need to complete the statutory process, combined with the removal of the central grant to local authorities, means there was even less reason to require Ministerial approval of all schemes. For that reason, and taking into account the responses to the consultation, the Bill will establish a new local authority led approval process for flood protection schemes.

152. The Scottish Government was mindful of the Committee’s concerns about the Scottish Ministers being completely removed from the approval process, and so the Bill will enable the Scottish Ministers to get involved where it is appropriate. However, the current system of Ministerial approval and automatic referral to a public local inquiry for unresolved objections is problematic. Many unresolved objections are made on tenuous grounds unrelated to the property interest involved, or are based on a factual misunderstanding of the scheme proposal, which discussion is unable to correct. While retaining the right of objectors to be heard, the Bill will provide a mechanism which is more flexible and responsive to individual circumstances. The overall aim is to reduce the number of unnecessary inquiries, which are not only expensive but also result in major delays in securing benefits from particular schemes.

153. The process established under the Bill ensures that the scheme is subjected to public scrutiny and provides a further incentive to local authorities, and other responsible authorities, to ensure that flood protection schemes has been considered carefully, and the right options identified. The Scottish Government should only have to get involved in those schemes where it is likely to be difficult to reach local agreement.

PART 5: SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Policy objectives

154. The Bill establishes a collaborative framework for taking forward flood risk management. To make best use of this collaborative approach, this framework must include clear responsibilities on different organisations for specific aspects of flood risk management.

155. In summary, Part 5 of the Bill addresses the following policy objectives:

- updating SEPA’s other responsibilities for flood risk assessment, including the provision of advice to local authorities; and
- clarifying and extending SEPA’s role in flood warning.

Provision of advice to planning authorities on flood risk

156. SEPA’s current role in providing advice to local (planning) authorities, as set out in the Environment Act 1995, is maintained under the provision set out in the Bill. The duty also covers
provision of advice to National Park authorities which are treated as planning authorities. However, the definition of flood risk from Part 1 of the Bill now applies in relation to this function. This means that SEPA will now be required to advise on both the likelihood of flooding and, where information is available, on the potential impacts for human health, the environment, cultural heritage and the economy in relation to planning policies and proposals. This is an extension to SEPA’s current role, which is to advise solely on the likelihood of flooding. As the lead authority for flood risk assessment, SEPA will be expected to develop new skills and expertise in the field of risk assessment. The ultimate aim is for SEPA to provide information that is both relevant and helpful to local authorities in making planning decisions.

Other assessment of flood risk

157. The Bill provides SEPA with powers to undertake other forms of flood risk assessment beyond those set out in Part 3 of the Bill. This provision is similar to the current provision set out in the Environment Act 1995. This provision ensures that SEPA’s flood risk assessment work is not restricted to the assessments set out in Part 3, which is closely linked to the requirements of the Directive. Examples of additional flood risk assessments which could be undertaken in the future include: mapping exercises for areas not identified as being potentially vulnerable to flood risks and production of basic inundation maps for reservoirs. To ensure that any supplemental flood risk assessment work does not cut across the assessments produced under Part 3 of the Bill, SEPA is required to take into account all assessments, maps and plans prepared under Part 3 of the Bill.

Flood warning

158. The Bill requires SEPA to make flood warning information available for all floods it believes will occur in the near future. Discretion is left to SEPA to determine what information should be used and how best to make the information publicly available. This could include placing warnings on its website or directly issuing warnings to individuals, businesses or organisations, through, for example, emails or text messages. This will ensure that SEPA has flexibility to tailor its flood warning service to local requirements and to the information which is available. SEPA is also given discretion over when to release a flood warning for floods it believes will occur in the near future. This ensures that SEPA can balance the need for early warning with the need to provide accurate flood warning information. This discretion does not apply where SEPA become aware of a flood that is occurring. In these instances, SEPA must provide a flood warning at the earliest possible opportunity. Examples of when this could occur include flash floods and some extreme flooding scenarios where the failure of infrastructure is involved.

159. Flood warning is a powerful flood risk management tool that can save lives and help avoid damage to homes and businesses. The Bill provides SEPA with a power to undertake a full national appraisal of where improvements to flood warning could help reduce flood risk. This could include improvements to flood monitoring equipment, improvements to datasets (e.g. weather radar) or improvements to how flood warnings are issued to the public.

160. The Bill also sets out arrangements for SEPA to provide and operate flood warning systems. For the purposes of the Bill, a flood warning system is any system providing a warning of flooding, including systems relying on radar or other meteorological information and systems using gauged flow or water level information. These provisions replace the current provisions set out in the
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

Agriculture Act (1970). These powers would not be exercised in isolation, and SEPA would be required to consult local authorities and the police on its assessments and proposals.

Alternative approaches

161. The only practicable alternative considered was whether the Scottish Government’s policy objectives could be met through existing legislation. The Scottish Government recognises the vital role that flood warning plays in managing flood risk and protecting communities and businesses from the damaging effects of flooding. By amending SEPA’s functions for flood warning and assessments of flood risk, the Bill will ensure that SEPA is equipped with a modern legislative framework in which to exercise all of its flood risk functions.

PART 6: POWERS OF ENTRY AND COMPENSATION

162. The Bill places new duties on local authorities and SEPA to assess and manage flood risks. To support the undertaking of this work, the Bill provides local authorities and SEPA with powers of entry.

163. Local authorities need rights of entry to allow them to carry out flood protection works either as part of a flood protection scheme or otherwise, to carry out maintenance of such works or to carry out investigations to assess whether or in what manner they should carry out any of their functions under Part 4 of the Bill. SEPA could require access to land to verify the accuracy of information used for flood risk assessments and mapping exercises. Checking the accuracy of information obtained from modelling and other desk-based work is nearly always required to improve the quality of these kinds of assessments. If this information could not be checked it could affect the accuracy of the information obtained and hence the quality of the decisions about managing flood risks. SEPA may also require access to fulfil its flood warning functions; for instance, access may be required to carry out work to install, alter and maintain apparatus. If this work could not be carried out then SEPA might not be able to comply with its duty to provide flood warnings, potentially resulting in an increase in the adverse consequences of flooding.

164. Except in urgent cases, the person intending to exercise a power to enter land must give at least 24 hours notice of intended entry to the occupant of the land. Where the person exercising the power intends to enter a house (including its’ garden) or to take heavy equipment onto land, then seven days’ notice is required. Where entry is refused, the land is unoccupied or entry is necessary to take emergency action, a warrant can be obtained from a sheriff or a justice of the peace. The Bill provides for the payment of compensation for any damage caused by a local authority to the value of a person’s land or their enjoyment of their property as a consequence of the construction or maintenance of a flood protection scheme or other flood protection work or any investigatory work or by SEPA in installing any works or apparatus for flood warning. Claims must be made within the periods prescribed in the Bill and any disputes are to be settled by the Lands Tribunal for Scotland.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

PART 7: RESERVOIRS

Policy objectives

165. The safe operation and management of reservoirs is extremely important to protecting individuals, communities and businesses from the risks of extreme flood events, which include partial or full dam failure.

166. The Reservoirs Act 1975 (the 1975 Act) sets out safety requirements to prevent escapes of water from reservoirs. The 1975 Act imposes duties on persons who own, operate or use reservoirs (referred to in the Act as “undertakers”). These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, require the involvement of a “qualified civil engineer”. “Relevant authorities” then have duties to maintain registers of information about large raised reservoirs, to secure that undertakers comply with their duties under the 1975 Act and to report to the Scottish Ministers. Under the current system, local authorities act as the relevant authorities and fulfil the enforcement duties of the 1975 Act.

167. Although the current system has operated effectively for a number of years, the Scottish Government believes the system of enforcement can be improved through more uniform and efficient application of legislative powers throughout Scotland. The Bill therefore sets out arrangements to transfer enforcement responsibilities from local authorities to SEPA. This transfer of responsibility will ensure that one body assumes full responsibility for the reservoir enforcement regime. This will promote greater resilience to the risk of dam breaches as one body would take responsibility for, and accumulate knowledge on, all reservoirs in Scotland. The concentration of enforcement duties within Scotland in one body will provide not only a more focussed approach on matters affecting the safety of reservoirs, but also an opportunity for the Scottish Ministers to receive advice and a national overview from a single public body.

168. In order to explore and assess practice and methods of enforcement, an initial scoping exercise was carried out during 2005 to ascertain the views of the current enforcement authorities and other stakeholders engaged in water supply. The vast majority of responses (84%) were in favour of a transfer of enforcement responsibilities to a single national body. A minority of responders suggested a possible negative outcome of this proposal could be a potential loss of local knowledge. However, it was also acknowledged in the same replies that this knowledge could be built up and maintained within any new body. A similar level of support for a single enforcement authority was demonstrated (90%) during the consultation exercise for the Bill.

169. Incident reporting provides the basis for sharing important information on problems identified with particular reservoirs. By providing information on potential problems and issues, reliable incident reports can benefit all those involved in the safe operation of reservoirs, ultimately enhancing the protection of individuals, communities and businesses from the risks of extreme flood events. Current levels of compliance with the voluntary post incident reporting regime are variable.

170. To improve reservoir safety, the Bill includes provision for regulations on incident reporting. These regulations would allow the Scottish Ministers to set out detailed provisions in relation to the preparation and enforcement of incident reports, including:
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- defining what constitutes an incident;
- requiring undertakers to report, to the enforcement authority, incidents occurring at a reservoir; and
- creating offences and penalty charges.

Alternative approaches

171. The alternative to the Bill proposals is to retain the current enforcement regime or to establish a new authority for reservoir safety in Scotland. Currently, the enforcement of the Act in Scotland is the responsibility of the 32 Scottish local authorities. The biennial reports they submit indicate varying staffing and financial resource allocation to reservoir responsibilities amongst these authorities. This can be partly attributed to geography and topography; for example Highland Council has some 125 reservoirs which fall within the ambit of the Act, whilst Glasgow City Council has only 2. However, the enforcement role is considered an onerous burden which is disproportionate to the reservoirs located within many local authority areas. For example, two local authorities have responsibility for the enforcement of the Act for 21 reservoirs, some 1-2% of the total number of reservoirs in Scotland. However, both authorities experienced significant and lengthy problems in trying to establish ownership of one reservoir within each of their areas. The Scottish Government have therefore concluded that a single enforcement authority will provide a more efficient and nationally consistent approach to the enforcement of 1975 Act that will ultimately enhance the safe operation of Scotland’s reservoirs.

172. The creation of a new body for reservoir safety would have similar drawbacks to those identified earlier for the creation of a new flooding authority, in that it would be very resource intensive. Creating yet another public body to take on a role that could be carried out by an existing organisation would also be contrary to the Scottish Government’s stated aim of having fewer, better structured arms length bodies at a national level, which receive clear and integrated strategic direction from Government, while at the same time given room to deliver.

PART 8: GENERAL

173. Part 8 deals with ancillary provision, details relating to orders and regulations, minor and consequential modifications, Crown application and other technical matters. Minor and consequential modifications are set out in schedule 3, and include amendments to the Land Drainage (Scotland) Act 1958 (the 1958 Act).

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, AND SUSTAINABLE DEVELOPMENT ETC.

Impact on equal opportunities

174. Copies of the Scottish Government’s consultation paper on The Future of Flood Risk Management in Scotland were sent to all the main national equality groups and no equalities issues were raised during these consultations.

175. The Bill should not be considered in isolation from existing statutory obligations in relation to equal opportunities. Public authorities have relevant statutory obligations under the Race
Relations Act 1976, the Sex Discrimination Act 1975 and the Disability Discrimination Act 1995. All three Acts make discrimination in service provision unlawful. The Race Relations Act 1976 also places a general duty on public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between people of different racial groups. The Commission for Racial Equality produces codes of practice to provide practical guidance to public authorities on how to fulfil that duty. SEPA and the other responsible authorities will be obliged to carry out their flood risk management functions, including the provision of information to interested parties, in accordance with this legislation and in accordance with the Access to Environmental Information Regulations as well as the Freedom of Information (Scotland) Act 2002.

Impact on human rights

176. The Scottish Government considers that the provisions within the Bill are compatible with the European Convention on Human Rights. While provisions on matters such as powers of entry and compulsory purchase affect Convention rights under Article 8 (private and family life) and Protocol 1 Article 1 (peaceful enjoyment of possessions), the Bill strikes a proper balance between the rights of affected individuals and the public interest in management of flooding. Part 4 of the Bill includes provisions which allow for the determination of the civil rights and obligations of individuals but the provisions on hearings (including public local inquiries in appropriate cases) and appeals are considered to be compatible with Article 6 (right to a fair trial). The Bill includes important provisions to protect individuals that may be affected by the exercise of any powers and duties under the Bill, including provisions on hearings, processes for obtaining warrants in connection with powers of entry and financial compensation in connection with the undertaking of flood protection measures.

Impact on island and rural communities

177. The purpose of the Bill is to improve flood risk management for the whole of Scotland, including rural, island or urban settings. As such, communities and businesses in island or rural communities will benefit from this in the same way as those in other parts of Scotland.

Impact on local government and other Scottish public authorities

178. Currently, Scotland’s 32 local authorities are responsible for flood risk management measures within their areas. A key aim of this Bill is to empower local authorities to develop and implement local solutions for local needs through efficient use of local resources and timely introduction of flood management measures.

179. The Directive requires the appointment of a competent authority for the implementation of the Directive. SEPA will undertake this role nationally and, in doing so, will ensure that the national and catchment focused approach to flood risk management planning are underpinned by local co-ordination and delivery of measures. The Scottish Government is committed to resourcing SEPA adequately so that it can carry out these new duties effectively. There are likely to be cost implications for local authorities in terms of collating or providing information to SEPA and in preparing local flood risk management plans. The financial implications of the Bill are discussed in more detail in the Financial Memorandum.
Part 7 of the Bill transfers responsibility for enforcement of the Reservoirs Act 1975 from each of the 32 local authorities to a single national enforcement authority, namely SEPA. As before, resources will be provided to SEPA for this new role. Local authorities will benefit from this transfer given that their funding for this is currently managed within a central budget rather than them receiving additional monies.

Other public sector authorities, including Scottish Natural Heritage and the Forestry Commission Scotland, will need to devote limited resources to becoming involved in the flood risk management planning process. Some of them, notably Scottish Water, will incur compliance costs and these are discussed in more detail in the Financial Memorandum. However, all public sector authorities will benefit from being able to access better information on flood risk.

**Impact on sustainable development**

The Scottish Government is committed to building a sustainable future and has published its Economic Strategy aimed at creating a more successful country with opportunities for all of Scotland to flourish. Increasing sustainable economic growth, which is defined as building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can also enjoy a better quality of life, is the central tenet of this strategy.

To delivery this Economic Strategy, the Scottish Government has identified five Strategic Objectives which map a Scotland that is **wealthier and fairer**, **smarter**, **healthier**, **safer and stronger**, and **greener**. The alignment of the Scottish Government’s work with these Strategic Objectives will help us to deliver the sustainable development that will increase the prosperity of Scotland.

This Bill will have an important role to play in driving forward the **Greener Scotland** objective which focuses on living as part of nature within environmental limits, adapting our society to a greener approach and protecting and, where possible, enhancing the planet’s environment, resources and biodiversity. This will be achieved through the provisions that ensure objectives and measures to manage flood risk are coordinated with the environmental and conservation objectives.

The **Healthier Scotland** objective, to ensure that public services are high quality, continually improving, efficient and responsive to local people’s needs, will be met through the overall aim of the Bill which is to provide a framework in which all persons and organisations involved in flood risk management can coordinate their efforts to reduce the adverse consequences of flooding to health, as well as to the environment, cultural heritage and economic activity. Furthermore, the Bill sets out provisions for ensuring stakeholder engagement in the flood risk management planning process, for instance through advisory groups.

The **Healthier Scotland** objective to simplify and refocus Scotland’s public sector, to better serve people and businesses, by making partnerships work across organisational boundaries fits in with Parts 1 and 2 of the Bill which require SEPA, local authorities, Scottish Water and other responsible authorities to cooperate in the exercise of their flood risk related functions. Furthermore, updates to SEPA’s responsibilities for flood warning and flood risk assessment and the appointment of a single reservoir safety enforcement authority for Scotland, will further promote the protection of communities from the risk of flooding.
187. The Bill sets out provisions to deliver a nationally consistent and catchment focused approach to flood risk management, which is underpinned by local co-ordination and delivery of measures by the bodies experienced in implementing flood risk management measures in Scotland. This links in with the Safer, Stronger Scotland objective which seeks to ensure that people live in well designed, sustainable places that are either urban or rural. Flood risk management measures can also contribute to the regeneration of areas, leading to thriving communities and sustainable economic growth.
FLOOD RISK MANAGEMENT (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Flood Risk Management (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and the Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill contains a large number of provisions aimed at providing a framework in which all persons and organisations involved in flood risk management can coordinate their efforts to reduce the adverse consequences of flooding to health, the environment, cultural heritage and economic activity.

4. The Bill has 8 parts:
   - Part 1 creates general duties which the Scottish Ministers, SEPA and responsible authorities must comply with when exercising their respective functions for flood risk management. These include a duty to exercise functions with a view to reducing flood risk and to collaborate when doing so and a duty to take account of guidance and directions in relation to flood risk management.
   - Part 2 defines some of the principal expressions used in the Bill, including “flood” and “flood risk”.
   - Part 3 provides for the preparation and review of the flood risk assessments, flood hazard and flood risk maps and flood risk management plans which are required by the EC Floods Directive1 (“the Directive”). It also provides for local flood risk management plans to be prepared and reviewed. It requires advisory groups to be created to advise on the preparation of these documents and it imposes a duty on

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public authorities, including the Scottish Ministers, to have regard to flood risk management plans and local flood risk management plans where relevant.

- Part 4 sets out provisions to replace the Flood Prevention (Scotland) Act 1961. These provisions will equip local authorities with broad powers to allow them to take forward a full range of flood risk management measures.

- Part 5 replaces SEPA’s powers to provide flood warning systems and carry out flood risk assessments under the Agriculture Act 1970 and the Environment Act 1995. The provisions provide SEPA with a new statutory framework for exercising these flood risk management functions.

- Part 6 sets out new powers of entry and compensation provisions to support local authorities and SEPA in exercising their statutory responsibilities under the Bill.

- Part 7 amends the Reservoirs Act 1975 to transfer responsibility for enforcement of the Act from local authorities to SEPA. It inserts a new section into the Act to enable provision to be made, by regulations, to introduce a new system for reporting incidents which could affect safety at reservoirs. It also inserts a new section about the application of that Act to the Crown.

- Part 8 makes general provision for the making of orders and regulations under the Bill. It also makes provision about the application of the Bill to the Crown and commencement of the Bill.

5. Further information about the Bill’s provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 15–EN, and in the Policy Memorandum published separately as SP Bill 15–PM.

Rationale for subordinate legislation

6. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether these provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has carefully considered the importance of each matter against the need to:

- ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation;

- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation; and

- ensure that the bodies involved in flood risk management are regulated through flexible measures which can be applied in an appropriate manner based upon the relevant bodies’ success, or otherwise. This is with respect to self policing and its application of voluntary codes of practice and other appropriate systems.

General subordinate legislation provision

7. Section 83 (orders and regulations) contains the general subordinate legislation provisions. Subsection (1) provides that any power conferred on the Scottish Ministers to make orders or regulations must be exercised by statutory instrument and allows different provisions to
be made for different purposes. Subsection (1) also permits the powers to be used to make incidental, supplemental, consequential, transitional, transitory or saving provisions. Subsection (2) provides that all of these powers are subject to negative resolution procedure except those listed in subsection (3), which are subject to affirmative procedure, and the commencement provisions (section 86(1)) where no procedure is required. Subsection (3) provides for orders made under sections 52(4) and 82(1) to be subject to affirmative procedure, in the latter case only where the power is used to amend primary legislation.

8. Section 83 does not apply to the subordinate legislation power that is to be inserted into the Reservoirs Act 1975 by section 77 of the Bill. That power includes an express provision which applies affirmative procedure.

9. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

**DELEGATED POWERS**

10. The Bill confers a number of powers on the Scottish Ministers which are set out below.

**Section 1((3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Power to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities**

<table>
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<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order made by statutory instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>negative resolution of the Scottish Parliament</td>
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**Provision**

11. Section 1 imposes a duty on the Scottish Ministers, SEPA and responsible authorities (defined in section 5) to exercise their flood risk related functions with a view to reducing overall flood risk. Subsection (3) defines “flood risk related functions” for the Scottish Ministers (subsection (3)(a)), SEPA (subsection (3)(b)), local authorities (subsection (3)(c)) and other responsible authorities (subsection (3)(d)). In each case the definition includes functions under the Bill and such other functions as the Scottish Ministers may specify by order. The powers to specify functions are contained in subsection (3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii). The effect of specifying additional flood risk management functions will be to apply the general flood risk management duty in section 1 to functions under other legislation. As regards responsible authorities, the power should be read together with section 5 of the Bill.

**Reason for taking power**

12. It is important that all bodies who exercise functions which can impact on flood risk can be involved in the new flood risk management process and that they should also try to reduce overall flood risk when exercising those functions. For example, local authority functions under the Coast Protection Act 1949, Scottish Water’s functions under the Sewerage (Scotland) Act 1968 and road drainage functions of the Scottish Ministers or local authorities in their capacity as
roads authorities under the Roads (Scotland) Act 1984 could be as relevant to flood risk management as the functions conferred on local authorities or Scottish Water under the Bill. Applying the new duty to act with a view to reducing flood risk to other ‘flood risk related functions’ will ensure that all efforts to reduce flood risk, including the exercise of certain powers under other legislation, are coordinated through flood risk management plans. It would be difficult to identify all flood risk related functions on the face of the Bill, as it is likely that such functions will change over time as other legislation is amended or replaced, as the roles of different organisations evolve and as understanding of flood risk improves. The powers to specify different functions for different organisations therefore allows flexibility to take these changes into account and reflects the process of designation of responsible authorities and of their functions under the Water Environment and Water Services (Scotland) Act 2003 (“the WEWS Act”).

Choice of procedure

13. Orders made under these powers will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The principles of exercising flood risk related functions with a view to reducing overall flood risk and so as to secure compliance with the Directive are provided for in the primary legislation. Any order made under this power will support these principles. When read with the Section 5 power to designate ‘responsible authorities’, this power could bring other bodies and functions into the flood risk management regime. However, designation of a responsible authority’s functions would be for the limited purpose of reducing overall flood risk and ensuring compliance with the Directive. The negative resolution procedure is considered appropriate given the limited nature of the enabling power.

Section 5(c) – Power to designate ‘responsible authorities’

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Provision

14. Section 5(c) allows the Scottish Ministers to designate public bodies and office holders as “responsible authorities” by order. Responsible authorities will have to comply with the general duty in Part 1 of the Bill. They will also have duties under Part 3 to assist SEPA in preparing the flood risk assessments, maps and plans required by the Directive and to assist local authorities in the preparation and completion of local flood risk management plans. When designating responsible authorities under this section, the Scottish Ministers must comply with their general duty under section 1 of the Bill.

Reason for taking power

15. Part 2 of the Bill allows the Scottish Ministers to identify “responsible authorities” (in addition to local authorities and Scottish Water) who will have a clearly defined role in flood risk management. These responsible authorities are provided with specific duties for flood risk management in Part 1 and elsewhere in the Bill. Local authorities and Scottish Water are identified as responsible authorities on the face of the Bill because of the important role they already play in flood risk management, and the fact that they will need to begin work immediately on providing information to SEPA for the purposes of carrying out a preliminary
flood risk assessment. Whereas the flood risk management responsibilities of local authorities and Scottish Water are clearly understood, placing all the duties of a “responsible authority” on other organisations, such as the Forestry Commission, that have a more peripheral input to flood risk management would place an unnecessary burden on them at this stage. It may be appropriate in the future to identify other responsible authorities, but this could not be done without extensive consultation with those organisations that might be affected.

Choice of procedure

16. Orders made under this power will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature. The principles involved and the key responsible authorities which will be involved from the outset are already specified in the Bill. The power would clearly only be used to designate bodies whose work had a real impact on management of flood risk.

Section 8(1)(b) – Power to create flood risk management districts

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

17. Section 8(1)(b) provides the Scottish Ministers with powers to designate areas as flood risk management districts. If the power is not exercised then the flood risk management districts will be the same areas as the river basin districts which have already been designated under section 4(1) of the WEWS Act. If the Scottish Ministers choose to designate a flood risk management district, that district must comprise one or more coastal areas or river basins. This requirement derives from Article 3(2)(b) of the Directive.

Reason for taking power

18. 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 of the Bill. Although it is likely that the districts will be the same as river basin districts, the power allows flexibility to provide for different districts if that proves necessary in light of experience gained over time which may suggest the best units over which to manage flood risk.

Choice of procedure

19. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The core provisions relating to flood risk management districts and the default position that these will be the same as river basin districts are set out on the face of the Bill. Any provision for different districts would be likely to be based on detailed technical material.
Section 9(4)(a)(iii) – Power to prescribe information to be shown in the maps prepared as part of flood risk assessments

Power conferred on: Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

20. Section 9(4)(a)(iii) provides for the Scottish Ministers, through regulations, to require SEPA to show additional information in the maps they prepare as part of the flood risk assessment for each flood risk management district.

Reason for taking power

21. Flood risk assessments are a requirement of Article 4 of the Floods Directive and must include maps, descriptions of floods which occurred in the past and assessments of the potential adverse consequences for future floods. This power will enable the list of matters to be included in the maps produced as part of assessments to be added to where future experience of flooding or developments in risk management techniques suggest further material would be useful.

Choice of procedure

22. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the main matters to be included in these maps are already specified in the Bill.

Section 11 – Power to make further provision about the preparation of flood risk assessments

Power conferred on: Scottish Ministers  
Power exercisable by: regulations made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

23. Section 11 enables the Scottish Ministers to make more detailed provision, by regulations, as to the preparation (section 9), or the review or updating (section 10) of flood risk assessments, including the criteria to be applied and the methods and procedures to be followed.

Reason for taking power

24. Sections 9 and 10 already contain provision relating to preparation and review of risk assessments. However, it may be necessary to supplement these provisions following further consultation with stakeholders or experience gained from preparation of the first assessments or first reviews.
Choice of procedure

25. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature. These regulations would be likely to be technical and administrative in nature. It is thought unlikely that this power would be contentious as the principle of flood risk assessments is already provided for within the Bill.

Section 15 – Power to prescribe form and content of documents identifying potentially vulnerable areas and local plan districts

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

26. 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.

Reason for taking power

27. Preparing flood risk assessments will culminate in an appraisal of where the most significant flood risks, or potentially vulnerable areas as set out in the Bill, are likely to occur. This information will be crucial to prioritising efforts to flood map and manage flood risks. Preparing flood risk assessments will also culminate in an appraisal of the boundaries of the area or catchment that will form a local plan district. The identification of the local plan districts are a key milestone in the development of flood risk management plans. These powers ensure that stakeholders, local authorities in particular have an opportunity to be consulted before any decisions on boundaries are made. The type of provision which would be made under this power might well be lengthy and detailed, and would require further consultation with stakeholders.

Choice of procedure

28. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. Given the detailed and technical provisions which may be required, and the possibility that they will therefore need to be readily adjustable from time to time, the negative procedure is thought to be the most appropriate.
Section 18(1)(b)(iv) – Power to require further elements to be shown in flood hazard maps

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

29. Section 18(1)(b)(iv) gives the Scottish Ministers powers to require SEPA to include any further elements deemed appropriate for the preparation of flood hazard maps, by regulations.

Reason for taking power

30. Flood hazard maps are a requirement of Article 6 of the Floods Directive and will show flood hazards for all potentially vulnerable areas in a flood risk management district. Giving Scottish Ministers this power creates flexibility for them to specify additional elements that should be shown as information, technology and expertise in flood risk mapping evolve. This provision will, therefore, ensure that the form and content of maps can be updated to present the most reliable and informative information on flood hazards.

Choice of procedure

31. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the key provisions relating to flood hazard maps and elements to be included in them are already specified in the Bill.

Section 18(8)(a) – Power to define flooding probabilities to be shown in flood hazard maps

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

32. Section 18(8)(a) gives the Scottish Ministers powers to specify the levels of probability of floods which SEPA will require to show in flood hazard maps.

Reason for taking power

33. Flood hazard maps are a requirement of Article 6 of the Floods Directive and will show flood hazards 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 according to probability definitions which will be technical in nature. A consequence of climate change that could, and is very likely to, affect Scotland is an increased risk of flooding which may result in a change to the probabilities that should be used as a basis for mapping.

34. Giving Scottish Ministers this power creates flexibility for periodically reviewing and updating the flood scenarios that should be mapped by order. As information, technology and expertise in flood risk mapping and the effects of climate change evolve, this provision will
ensure that maps can be updated to present the most reliable and informative information on flood hazards.

**Choice of procedure**

35. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. As with the previous power, the negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the key provisions relating to flood hazard maps are already specified in the Bill.

**Section 19(2)(f) – Power to specify additional matters which must be shown in flood risk maps**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** regulations made by statutory instrument
- **Parliamentary procedure:** negative resolution of the Scottish Parliament

**Provision**

36. Section 19(2)(f) provides the Scottish Ministers with powers to make regulations to require SEPA to show additional information in flood risk maps.

**Reason for taking power**

37. Flood risk maps will show the potential adverse consequences of the floods shown in flood hazard maps. Giving Scottish Ministers these powers creates flexibility for periodically reviewing and updating details of further matters to be included in any flood maps. As information, technology and expertise in flood risk mapping evolve, this provision will also ensure that the content of maps can be updated to present the most reliable and informative information on flood risks.

**Choice of procedure**

38. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. As with previous powers, the negative resolution procedure is considered to offer an appropriate balance between flexibility to tackle future developments and the need for scrutiny for a provision of this nature, given that detailed provision about the main matters to be included in these maps is already contained in the Bill.
Section 22 – Power to prescribe methods and procedures to be followed in preparation, review or updating of flood hazard maps and flood risk maps

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

39. Section 22 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.

Reason for taking power

40. Any provision made under this power would be likely to be detailed and technical in nature, and would require further consultation before being finalised. There should be flexibility to adjust provision made in the light of experience of the preparation of these maps, and developments in flood risk management techniques.

Choice of procedure

41. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. These regulations would probably be technical in nature and may require adjustment from time to time to accommodate evolving developments in flood risk management. Negative procedure is thought to be appropriate, particularly as the Bill already contains detailed provision about the preparation of these maps, which any regulations would supplement.

Section 23(5)(b) – Power to specify additional matters for inclusion in flood risk management plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

42. Section 23(5)(b) gives the Scottish Ministers power, by regulations, to specify additional matters that should be included in flood risk management plans.

Reason for taking power

43. SEPA are required to prepare and submit flood risk management plans for the potentially vulnerable areas in each flood risk management district, which must be submitted to Scottish Ministers. As the process of flood risk management planning evolves, the Scottish Ministers may wish to use experience of the process to require new elements to be included. This power will allow the Scottish Ministers to act should this be required.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

Choice of procedure

44. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The principles relating to flood risk management plans and the core list of matters to be included in them are included in the Bill, and any regulations would provide supplementary detail only.

Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

45. Section 29(6) allows the Scottish Ministers to specify, in regulations, further matters to be included in local flood risk management plans by local authorities. Local authorities are required 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 plans will cover the local plan districts identified by SEPA under section 13.

Reason for taking power

46. Local flood risk management plans (local plans) will supplement the district plans and will ensure that the objectives and measures set out in district plans are translated into locally targeted and coordinated actions to manage flood risks. The intention is to use regulations to specify aspects of the content of local plans. This approach will allow the Scottish Government to put in place a detailed set of provisions that have been developed after thorough consultation.

Choice of procedure

47. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The required content of local plans is largely set out in section 29. Any additional provision would deal only with supplementary and detailed matters.

Section 35(1) – Power to make further provision in relation to the preparation of flood risk management plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

48. Section 35(1) 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. Regulations may cover the form of plans, the procedures to be followed regarding preparation, submission, approval, review and modification.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

of plans, consultation by SEPA and lead authorities in the preparation of their plans, and the form, content, preparation and publication of reports under sections 32 and 33.

Reason for taking power

49. As this new process is implemented, additional provision may be required to deal with developments in flood events, technology or management techniques. These regulation making powers reflect the potential for these scenarios and provide the Scottish Ministers with a degree of flexibility.

Choice of procedure

50. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The Bill currently sets out fairly extensive provisions on these plans, which could only be supplemented and not altered under this power. Any additional provision would be largely procedural in nature.

Section 44(1) – Power to give effect to Community obligations etc.

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Provision

51. Section 44(1) provides that the Scottish Ministers may, by regulations, provide that the provisions of Part 3 of the Bill 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.

Reason for taking power

52. This power is provided to allow for the possibility that new Community legislation may be enacted which is best implemented by amending relevant provisions of Part 3. It will ensure that the Scottish Ministers have the ability to fully meet their obligations in transposing any future instrument dealing with similar matters to the current Directive.

Choice of procedure

53. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. They could be made only to implement a binding Community obligation of the Scottish Government relating to flood risk assessment and planning.
Section 48(2) – Power to specify boundaries of coastal areas

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

54. Section 48(2) allows the Scottish Ministers to specify, by order, the boundaries of any coastal area for the purposes of Part 3. Under section 83(1)(b) different provision can be made for different areas around the coast.

Reason for taking power

55. This power is provided because it is impossible for the purposes of Part 3 to define the landward boundaries of any coastal area at risk of flooding from the sea as local features and circumstances have to be taken into account. The power will ensure that the Scottish Ministers can assign a coastal area to the appropriate flood management district under section 8 and that SEPA can ensure that flood hazard maps under section 18 show the appropriate information relevant to each coastal area.

Choice of procedure

56. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that any provision made under this power would relate to a point of detail and would be based on complex technical material.

Section 52(2)(b) – Power to make further provision for documents required in making flood protection schemes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

57. Section 52(2)(b) empowers the Scottish Ministers to require, by regulations, the inclusion of maps, plans and other specifications in a flood protection scheme.

Reason for taking power

58. The development of flood protection schemes is highly technical and can require a substantial number of documents to be produced. The type of provision which is envisaged here is likely to be too detailed and technical for inclusion in the Bill. Examples of things that may be covered by regulations include the scale required for different types of plan as well as detailed descriptions of works. This power will also allow the Scottish Ministers the opportunity in future to review and update what is specified in light of experience of the new process in operation. Due to the potential for future changes, it will be simpler to achieve this through regulations as opposed to primary legislation.
Choice of procedure

59. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. Regulations to specify additional information required would be highly detailed and technical in nature and, therefore, are considered inappropriate for inclusion within primary legislation. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the key provisions relating to a flood protection scheme are specified in the Bill and these would simply be supplemented by any additional specifications laid out under these Regulations.

Section 52(4) – Power to amend flood protection scheme making process

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

60. Section 52(4) allows the Scottish Ministers to, by order, amend the process within Schedule 2 for making a flood protection scheme.

Reason for taking power

61. Although the statutory process for the development of flood protection schemes in the Bill will ensure consistency of practice, this power allows the procedure to be changed if necessary to ensure that processes are relevant, up to date and operate effectively. The Scottish Ministers need the flexibility to respond to feedback on the operation of the new process by amending the procedure if necessary without having to resort to primary legislation.

Choice of procedure

62. The power under this section is a power to amend primary legislation. It is, therefore, considered appropriate that any order made under these powers should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 53(7) – Power to prescribe form and content of notices of variation or revocation of orders under the Land Drainage (Scotland) Act 1958

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

63. Section 53(7) enables the Scottish Ministers to prescribe the form and content of notices of the variation or revocation of an improvement order to be registered in the Land Register of Scotland or the Register of Sasines, whichever is appropriate.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

**Reason for taking power**

64. This Bill repeals those elements of the 1958 Act which allow improvement orders to be made for the purposes of preventing or mitigating flooding, so as to ensure that all matters falling within flood protection schemes are dealt with under Part 4. The intention is to leave the rest of the 1958 Act regime for making improvement orders in place, but to require an improvement order to be varied or revoked where necessary in consequence of the effects of a flood protection scheme. The improvement order will have been recorded in the Register of Sasines or registered in the Land Register, so any notice of revocation or variation should also be recorded/registered.

65. The power to specify the form and content of such a notice by order is being taken as this is a matter of technical detail, and the form and content may require to be adjusted over time in response to any changes in conveyancing law or practice.

**Choice of procedure**

66. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of varying and revoking improvement orders is already provided for within the primary legislation.

**Section 60 –Repeal of power under section 6A(3) of the Flood Prevention (Scotland) Act 1961**

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** order made by statutory instrument
- **Parliamentary procedure:** negative resolution of the Scottish Parliament

**Provision**

67. Section 60 repeals the Flood Prevention (Scotland) Act 1961, including section 6A(3). This subsection enables the Scottish Ministers to alter by subordinate legislation the intervals at which local authorities are required to publish reports about flooding in their areas.

**Reason for repealing power**

68. The provisions of the 1961 Act relating to these reports will be superseded by sections 32 and 33 of this Bill.

**Choice of procedure**

69. The power being repealed is subject to the negative procedure but the repeal is being effected by primary legislation.
Section 77 – Power to make provision for reporting incidents relating to reservoir safety

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative resolution of the Scottish Parliament

**Provision**

70. Section 77 inserts a new section 12ZA into the Reservoirs Act 1975. This enables the Scottish Ministers to make provision in regulations for the reporting of incidents which may affect the safety of large raised reservoirs. In summary, these regulations may define what constitutes an incident, provide for the determination of whether an incident has occurred, require undertakers to report incidents occurring, require guidance issued by the Scottish Ministers or enforcement authority to be consulted, make provision for the publishing of reports, create offences and penalties and ensure remedial action is taken following an incident.

**Reason for taking power**

71. Incident reporting provides the basis for sharing important information on problems identified with particular reservoirs. Current levels of compliance with the voluntary post incident reporting regime are variable. This power would allow Scottish Ministers to set out detailed provisions in relation to the elements of incident reporting as summarised in paragraph 70 above and section 77(2) of the Bill.

72. The power is being taken in order to introduce a compulsory system of incident reporting, but to do so after SEPA has been installed as single enforcement authority and has researched the matter and issued its own consultation on the subject.

**Choice of procedure**

73. As these regulations would establish a scheme from scratch, impose penalties and deal with SEPA enforcement powers, it is considered appropriate that regulations made under this power should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 82(1) – Ancillary provision

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** negative resolution of the Scottish Parliament, unless the order amends an Act, in which case affirmative resolution

**Provision**

74. Section 82(1) enables the Scottish Ministers, by order, to make incidental, supplemental, consequential, transitional, transitory or saving provision, if appropriate.

**Reason for taking power**

75. Any body of new law may give rise to a need for a range of ancillary provisions.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

76. Without the power to make incidental, supplemental and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources.

Choice of procedure

77. Where an order changes primary legislation it is submitted that the affirmative procedure is appropriate. In any other situation, the negative procedure is considered appropriate for these powers.

Section 86(1) – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no Parliamentary procedure

Provision

78. This section provides that all of the provisions of the Bill, except certain provisions containing definitions and order-making powers, shall come into force on a day set by the Scottish Ministers by order.

Reason for taking power

79. The decision on when and to what extent the Bill is commenced is an administrative issue for the Scottish Ministers.

Choice of procedure

80. As the decision on commencement is a matter for the Scottish Ministers, and as is usual, the Scottish Government considers that the commencement powers should not be subject to any Parliamentary procedure.

Schedule 2, paragraph 1(1)(f)(vii) – Power to specify those who should receive notification of proposed flood protection schemes

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

81. Paragraph 1(1)(f)(vii) enables the Scottish Ministers to specify, by order, additional consultees to whom a local authority should send direct notification of a proposed flood protection scheme.
Reason for taking power

82. As the planning process, and the operation of the statutory process itself, is embedded, this power will provide flexibility in terms of bodies it would be useful to notify. This will be informed by experience of using the new processes.

Choice of procedure

83. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of flood protection scheme consultation is already provided for within the primary legislation. The main appropriate consultees are also specified within the Bill.

Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

84. Paragraph 13 enables the Scottish Ministers, by regulations, to make provision about the consideration to be given, before a flood protection scheme is confirmed, to the likely environmental effects of the operations proposed in the scheme.

Reason for taking power

85. This power will ensure that a detailed specialist regime for environmental assessment can be created which can then be adapted in response to things such as scientific developments or changes in other environmental assessment regimes.

Choice of procedure

86. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of assessing environmental effects is already provided for within the primary legislation. The corresponding power in connection with planning applications, contained in section 40 of the Town and Country Planning (Scotland) Act 1997, is subject to negative procedure under section 275(3) of that Act.
This document relates to the Flood Risk Management (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 29 September 2008

Schedule 2, paragraph 14(1) – Power to make further provision relating to procedures for flood protection schemes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

87. Paragraph 14(1) enables the Scottish Ministers to make regulations containing further procedural provisions relating to flood protection schemes.

Reason for taking power

88. This power will ensure that the procedures followed by local authorities can be developed over time once experience of operating the new process in practice is gained.

Choice of procedure

89. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of flood protection schemes and the key steps in the process are already provided for within the primary legislation.
Rural Affairs and Environment Committee

1st Report, 2009 (Session 3)

Stage 1 Report on the Flood Risk Management (Scotland) Bill

Volume 1

Published by the Scottish Parliament on 15 January 2009
# Rural Affairs and Environment Committee

## 1st Report, 2009 (Session 3)

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Rural Affairs and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries and rural development and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and the Environment.

Membership:

Roseanna Cunningham (Convener)
Karen Gillon
Liam McArthur
Alasdair Morgan
Elaine Murray
Peter Peacock
John Scott (Deputy Convener)
Bill Wilson

Committee Clerking Team:

Clerk to the Committee
Peter McGrath

Senior Assistant Clerk
Roz Wheeler

Assistant Clerk
Lori Gray

Committee Assistant
Vikki Little
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Pre-legislative scrutiny

Recommendation 1: The Committee recommends to the Parliament the advantages of pre-legislative scrutiny where time permits, both as a method of influencing Scottish Government policy and as an aid to effective Stage 1 scrutiny. [Paragraph 23]

Scottish Government amendments

Recommendation 2: The Committee asks the Scottish Government to note that it is always helpful for the lead Committee to receive advance notice of proposed Government amendments to legislation before oral evidence commences during Stage 1 scrutiny and asks the Scottish Ministers to consider making this standard practice whenever possible. [Paragraph 31]

Part 1: General duty, practice and guidance

Recommendation 3: The Committee agrees that the Bill should be amended to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans [Paragraph 39].

Part 2: Principal expressions

Responsible authorities

Recommendation 4: The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers’ powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these
organisations directions or guidance, must be undertaken in accordance with the
general duty to reduce overall flood risk. [Paragraph 44]

Recommendation 5: In order to allow this Committee (or its successor) to influence
the selection of responsible authorities named in subordinate legislation, the
Committee recommends that it be consulted on Scottish Government proposals to
lay any order designating responsible authorities under section 1 before the
instrument is laid. [Paragraph 50]

Social and economic impacts of exercising functions
Recommendation 6: The Committee recommends that the Scottish Government
produces a timetable demonstrating what work it intends to undertake in order to
produce guidance on its preferred approach to the assessment of human and social
costs, recognising that any such guidance should be consistent with the advice set
out in the HM Treasury Green Book. Such guidance should be available sufficiently
far in advance of the deadline for SEPA’s production of initial flood risk
assessments (December 2011) to allow SEPA to take it fully into account. The
guidance will then also inform the work of SEPA and responsible authorities in the
production of flood risk management plans. [Paragraph 59]

Roles and responsibilities of lead and responsible authorities
Recommendation 7: The Committee re-iterates its inquiry report recommendation
that, at the earliest possible opportunity, there is a need for Scottish Government
guidance to SEPA on resolving conflicts between its existing responsibilities and its
new role under the Bill. The Committee expresses its disappointment at the lack of
Government action to address this issue since the report was published in May
2008. The Committee considers that the Government should set a deadline by
which such guidance should be issued, and that it should be sufficiently far in
advance of the December 2011 deadline for production of initial flood risk
assessments by SEPA. [Paragraph 69]

Recommendation 8: The Committee strongly recommends that the Scottish
Government takes steps to align the timing of funding streams for the lead and
responsible authorities as early as possible in the Bill’s implementation. [Paragraph
76]

Sustainable flood risk management
Recommendation 9: The Committee urges the Scottish Government to bring
forward an amendment to provide for a more specific reference to sustainability on
the face of the Bill, linked to the issuing of guidance on the question of
sustainability.

The Committee considers that another means of ensuring the promotion of
sustainable flood risk management is to strengthen the link between the general
duty in section 1 to reduce flood risk in a manner that promotes sustainable flood
risk management and the implementation of the flood risk management planning
process in Part 3. As highlighted above, Stage 2 is likely to afford further opportunity
for consideration of this important issue. [Paragraphs 81 and 82]

Recommendation 10: The Committee considers that at present Scottish Water
appears to prioritise the more immediate or short term financial cost of options when
assessing what form of work to undertake. This is likely to be incompatible with Scottish Water's duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing. [Paragraph 92]

**Recommendation 11:** The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools they consider place sufficient emphasis on these benefits and should therefore be adopted by local authorities. [Paragraph 97]

**Part 3: The flood risk management planning process**

**Long term planning**

**Recommendation 12:** The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water’s planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.

The Committee recommends that this strategic assessment should also provide an outline of longer-term priorities for 12 and 24 year periods based on SEPA’s projections of future flood risk, and that it should be laid before the Parliament at least once during each parliamentary session. Given the long-term nature of such an undertaking, to ensure that it is adhered to by successive administrations this should be a legislative requirement. [Paragraphs 107 and 108]

**Natural flood management**

**Recommendation 13:** The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process. [Paragraph 115]

**Recommendation 14:** In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to “natural processes” as well as “natural features”. [Paragraph 116]
**Recommendation 15:** The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision. [Paragraph 117]

*Local flood risk management plans and local development plans*

**Recommendation 16:** The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use another piece of planned legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation “that a full flood risk assessment [should be] a prerequisite for the granting of planning permission for individual development areas at risk of flooding”. [Paragraph 128]

*Surface water management*

**Recommendation 17:** The Committee recommends that the Bill should be amended to require the production of surface water management plans. [Paragraph 136]

**Recommendation 18:** The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2. [Paragraph 140]

**Recommendation 19:** The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government’s Stage 1 response before Stage 2 commences. [Paragraph 143]

*Interim arrangements*

**Recommendation 20:** The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements will be issued to local authorities in its written Stage 1 response. [Paragraph 148]

*Water Environment and Water Services (Scotland) Act 2003*

**Recommendation 22:** The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act. [Paragraph 158]
Stakeholder engagement
Recommendation 23: Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act. [Paragraph 162]

Cross-border flood risk management
Recommendation 24: The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government. [Paragraph 168]

Part 4: Local authority functions
Deemed planning permission
Recommendation 25: The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance. [Paragraph 177]

Recovery of local authority expenses
Recommendation 26: The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for recovery of expenses, the grounds on which authorities may fine landowners, and what those fine levels should be. [Paragraph 185]

Duty to cleanse, repair and maintain watercourses
Recommendation 27: The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and is in line with flood risk management plans. [Paragraph 190]

Part 5: SEPA: Other flood risk management functions
Flood warning
Recommendation 28: The Committee is encouraged by SEPA’s work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken. [Paragraph 195]

Emergency services response to flood warning
Recommendation 29: The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate
emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill’s scope allows. [Paragraph 203]

Part 7: Reservoirs

Transfer of responsibilities

Recommendation 30: The Committee requests a summary of the impact of the provisions of the UK Flood and Water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill’s introduction. [Paragraph 212]

Reservoir inundation maps

Recommendation 31: Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA’s request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues. [Paragraph 217]

Coastal flooding

Recommendation 32: The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government’s response prior to Stage 2. [Paragraph 225]

Resource implications

Hydrologists and other specialist staff

Recommendation 33: Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister’s reassurance that the steps being taken to recruit and retrain will “ensure future supply”.

The Committee is deeply concerned that a marked shortage in skilled staff may impact both on the effectiveness of Scotland’s new flood risk management process, and the time taken for implementation. [Paragraphs 231 and 232]

Financial implications

Recommendation 34: The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government to ensure that future memorandums to Bills are the best possible final estimate at the point of introduction. [Paragraph 237]

Recommendation 35: The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible
Recommendation 36: The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee’s inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above. [Paragraph 249]

Recommendation 37: The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above or in annual reports laid before Parliament. [Paragraph 255]

Recommendation 38: The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme. [Paragraph 261]

Conclusions on the general principles of the Bill

The Committee is all too aware of the current flood risk faced in parts of Scotland and the anticipated increase in the probability of flooding. Seeking to establish a co-ordinated approach to the adoption of sustainable flood risk management is clearly very desirable. The Committee supports the general approach taken in the Bill to achieve this aim.

However, the Committee considers that it is essential to give further consideration to the recommendations above which seek to strengthen the provisions of the Bill. The Committee also considers that its concerns on the adequacy of funding and staffing arrangements merit further consideration prior to the Bill being approved by the Parliament as a whole at Stage 3.

Recommendation 39: On this basis, the Committee recommends that the general principles of the Bill be agreed. [Paragraphs 268 to 270]
INTRODUCTION

1. The Flood Risk Management (Scotland) Bill¹ (“the Bill”) was introduced to the Scottish Parliament on 29 September 2008 by Richard Lochhead MSP. The Bill was accompanied by Explanatory Notes², a Financial Memorandum, and a Policy Memorandum³ as required by the Parliament’s Standing Orders⁴. On 8 October 2008, under Rule 9.6 of Standing Orders, the Parliamentary Bureau referred the Bill to the Rural Affairs and Environment Committee (“the Committee”) to consider and report on the general principles of the Bill.

2. As the Bill contains provision for making subordinate legislation, a report from the Subordinate Legislation Committee is attached at Annexe A. The Finance Committee’s report on the Financial Memorandum is attached at Annexe B.

PURPOSE OF THE BILL

3. The Policy Memorandum states that—

“The provisions in the Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding.”⁵

4. The Bill in part seeks to transpose the EC Floods Directive⁶ which came into force on 26 November 2007. The Policy Memorandum explains that the Directive aims to—

“…reduce the adverse consequences of floods on human health, the environment, cultural heritage and economic activity. To achieve this, the Directive establishes a framework for the assessment and management of flood risks…The Directive must be transposed by 26 November 2009.”⁷

Part 1 – General duty, directions and guidance

5. Part 1 consists of two sections. Section 1 imposes a general duty upon the Scottish Ministers, the Scottish Environment Protection Agency (SEPA) and responsible authorities to exercise their flood related functions under Part 3 of the

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⁵ Policy Memorandum, paragraph 2.
⁷ Policy Memorandum, paragraph 7.
Bill (the flood risk management planning framework) with a view to reducing overall flood risk. This is the general principle underpinning the Bill. Section 2 includes provision for the Scottish Ministers to give directions and guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions.

Part 2 – Principal expressions

6. Part 2 defines “flood” and “flood risk” for the purposes of the Bill. It also names local authorities and Scottish Water as responsible authorities, and enables the Scottish Ministers to designate other public bodies and office-holders as responsible authorities through subordinate legislation.

Part 3 – Flood risk assessment, maps and plans

7. Part 3 seeks to transpose the EC Floods Directive, setting out a process for flood risk management planning at “district” level by SEPA. It requires the production of preliminary flood risk assessments (Directive deadline for this is December 2011), an assessment of flood risk including the production of flood hazard maps and flood risk maps (by December 2013), and the production of flood risk management plans (by December 2015). It also requires flood risk management plans to be supplemented by local flood risk management plans, to be produced by local authorities at “sub-district” level.

8. The Policy Memorandum\(^8\) states that the district plans will be geographically coincident with the river basin districts designated under the Water Environment and Water Services (Scotland) Act 2003\(^9\). The 2003 Act transposed the EC Water Framework Directive setting out a river basin management planning process for the protection and improvement of the water environment. Section 41 sets out measures SEPA must take to seek to ensure consistency and co-ordination between flood risk management planning and river basin management planning.

9. Part 3 also sets out the arrangements for consultation and participation including the publication of assessments, maps, plans, an annual report on implementation by SEPA and the establishment of district flood risk advisory groups and sub-district advisory groups.

Part 4 – Flood risk management: local authority functions


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\(^8\) Policy Memorandum, paragraphs 53-55.
11. The 1961 Act currently enables local authorities to undertake measures to
defend non-agricultural land from fluvial flooding (stemming from rivers overtopping
their banks) or coastal flooding. It also enables them to promote flood protection
schemes, subject to approval from the Scottish Ministers. The 1961 Act was
amended by the 1997 Act which places a duty on local authorities to assess the
state of watercourses and act if they consider that these watercourses generate a
flood risk.

12. The provisions in Part 4 repeal these Acts and set out a revised statutory
process for approval of flood risk management measures including flood protection
schemes which the Policy Memorandum suggests will—

“underpin the exercise of these powers with a streamlined and local authority
based statutory process that provides for efficient use of local resources and
timely introduction of flood management measures.”

Part 5 – SEPA: other flood risk management functions

13. The provisions in Part 5 replace those in the Agriculture Act 1970 and the
Environment Act 1995, setting out updated responsibilities for SEPA for flood risk
assessment, including the provision of advice to local authorities, and extending
SEPA’s current role in flood warning.

Part 6 – Powers of entry and compensation

14. Part 6 provides local authorities and SEPA with powers of entry onto private
land and into private property, to be used in carrying out their duties to assess and
manage flood risk. It also provides for the payment of compensation for any
damage caused as a consequence of the construction or maintenance of a flood
protection scheme or other flood protection work.

Part 7- Reservoirs

15. Part 7 amends the Reservoirs Act 1975\(^\text{12}\), which sets out safety requirements
to prevent escapes of water from reservoirs. The amendments would have the
effect of transferring enforcement responsibilities from local authorities to SEPA.

Part 8 – General

16. Part 8 includes provisions for the making of orders and regulations, the
application of the Bill to the Crown, and provisions on the Bill’s commencement.

PRE-LEGISLATIVE SCRUTINY

17. At the start of the parliamentary session, the Committee consulted
stakeholders on which issues they viewed as being of highest priority for the

\(^{12}\) Reservoirs Act 2005. Available at:
January 2009]
Committee’s attention. Flooding was identified by a number of stakeholders as a high priority.

18. As a result, the Committee began an inquiry on Flooding and Flood Management ("the inquiry"), launching a call for written evidence on 19 September 2007. The Committee received 65 written responses, then took oral evidence at six meetings (including one in Elgin). The Committee also undertook fact-finding visits to areas at high risk of flooding including Perth and the River Devon catchment, East Kilbride, and Glasgow.

19. The Committee launched its inquiry in the knowledge that the Scottish Government was in the process of drafting legislation in this area, and with a view to informing the contents of the upcoming Bill. The full inquiry report and associated written and oral evidence are available via the Scottish Parliament’s website. Amongst other things, the inquiry report considers the social, economic and environmental cost of flooding and the potential impact of climate change on flood risk levels across Scotland. This provides useful context for the consideration of the general principles of the Bill and the Committee suggests that it would be helpful to read this report in conjunction with it. A summary of the report’s recommendations is reproduced at Appendix 1.

20. The Committee considers that this pre-legislative scrutiny has proved valuable in aiding its Stage 1 scrutiny of the Bill. It has allowed the Committee to influence Scottish Government legislation "upstream", which means that a significant number of inquiry recommendations are reflected in the Bill. (Where the Committee wishes to re-iterate a recommendation that it does not consider has been taken into account in the Bill this is made clear within the body of this report.)

21. It has also provided those members serving on the Committee for the duration of the inquiry with a useful knowledge base to inform consideration of the Bill’s provisions.

22. Additionally, giving stakeholders the opportunity to provide written evidence to the inquiry on the broad subject matter means that submissions received on the Bill were in the main very concise, highlighting areas where the Bill was perceived as lacking. All of these factors allowed the Committee to conduct focused and informed scrutiny within a somewhat restrictive Stage 1 timetable.

23. The Committee recommends to the Parliament the advantages of pre-legislative scrutiny where time permits, both as a method of influencing Scottish Government policy and as an aid to effective Stage 1 scrutiny.

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24. The Committee opened its call for evidence on the Bill on 1 October 2008 and received 33 written responses. The written submissions of those individuals and organisations that did not also provide oral evidence are reproduced at Annexe E.

25. The Committee held four evidence sessions on the Bill. The first evidence session with Scottish Government officials on 19 November 2008 provided a general overview of the provisions of the Bill.

26. A panel consisting of Scottish Environment Link (SE Link), Scottish Natural Heritage (SNH) and the Forestry Commission Scotland gave evidence on 26 November 2008, focussing primarily on sustainable flood risk management. At the same meeting, a panel of representatives from the Scottish Rural Property and Business Association (SRPBA), the National Farmers’ Union Scotland (NFUS) and the Scottish Council Development and Industry (SCDI) gave evidence mainly on the Bill’s implications for land management and commercial interests.

27. On 10 December 2008 the Committee heard from the Scottish Water, local authorities (specifically Scottish Borders Council and Fife Council) and Loch Lomond and Trossachs National Park Authority, followed by the Association of British Insurers. On 17 December 2008 the Committee took evidence from SEPA and then from the Minister for Environment (“the Minister”) and accompanying officials. The relevant extracts of the minutes of these committee meetings are reproduced at Annexe C. The relevant extracts of the Official Report of these meetings, written submissions and any supplementary written submissions from witnesses are reproduced at Annexe D.

28. The Committee would like to thank all those who provided written and oral evidence on the Bill, and those who provided evidence during pre-legislative scrutiny, including on informal visits to areas affected by flooding.

SCOTTISH GOVERNMENT AMENDMENTS

29. The Committee is conscious that legislation is often introduced to Parliament whilst the specifics of some of the provisions are still being developed by the Scottish Government. With this in mind, the Convener wrote to the Minister at the start of Stage 1 requesting information on any amendments the Scottish Government was already aware it wished to make at Stage 2.

30. The response from the Minister outlined a number of sets of amendments that the Government proposes to lodge (reproduced at Appendix 2). The Committee appreciates the level of information provided by the Minister as it has enabled the Committee to anticipate to an extent how the Bill may evolve at Stage 2 and to scrutinise proposed changes at Stage 1. This may lessen the need for the Committee to take further evidence at Stage 2. These sets of amendments are considered further in the body of the report.

31. The Committee asks the Scottish Government to note that it is always helpful for the lead Committee to receive advance notice of proposed
Government amendments to legislation before oral evidence commences during Stage 1 scrutiny and asks the Scottish Ministers to consider making this standard practice whenever possible.

ISSUES ARISING FROM STAGE 1 EVIDENCE TAKING

32. As noted above, the Committee’s pre-legislative scrutiny has been instrumental in informing the contents of the Bill and therefore it is unsurprising that the Committee endorses the general approach taken to flood risk management within it. In particular the Committee endorses the general approach of there being a more co-ordinated and integrated approach to flood risk management, with SEPA drawing up flood risk management plans and responsible authorities (principally local authorities) using information held by SEPA to develop flood protection schemes for their area. However, the Committee has some outstanding concerns outlined below in relation to a number of provisions in the Bill and its funding arrangements. The Committee invites the Scottish Government to adopt the associated recommendations in order to further strengthen the Bill.

PART 1: GENERAL DUTY, DIRECTIONS AND GUIDANCE

33. As mentioned above, Part 1 imposes a general duty upon the Scottish Ministers, SEPA and responsible authorities to exercise their flood related functions under Part 3 of the Bill (the flood risk management planning framework) with a view to reducing overall flood risk. Amongst other things, section 1 requires these organisations, in exercising their functions to reduce flood risk, to have regard to the social and economic impact of doing so and to promote sustainable flood risk management.

General duty to exercise functions with a view to reducing flood risk

34. Concerns have been raised with the Committee in relation to the strength of the link between this general duty and flood risk management planning itself. It has been argued that this could impact on the extent to which the requirements within section 1 are carried out through the flood risk management planning process. In its submission, RSPB Scotland argues that a weakness in the Bill is that there is no specific duty on responsible authorities to implement measures (such as flood protection schemes) on the ground; they are expressly required only to establish the framework within which such measures would sit.

35. In oral evidence, Chris Spray from SEPA broadly agreed—

“We want a better linkage between the beginning of the bill, which deals with the correct and understandable general duty of responsible authorities and others to reduce flood risks, and the mechanisms for producing and implementing plans. That linkage needs to be tightened up...”

36. Evidence from local authorities suggested an awareness amongst these authorities that there would be no specific requirement to implement flood risk management plans under the Bill. Jim Moodie from Fife Council told the Committee that Scottish Government officials had indicated in a recent meeting that the duty to implement flood protection schemes was “permissive”15. The Committee takes this to mean that local authorities would not be open to legal challenge if they did not implement any schemes in a flood risk management plan. Paul Frankland from Scottish Borders Council suggested during the same session that, whilst councils may not be legally bound to implement local flood risk management plans, the provisions currently in the Bill combined with the importance of the issue to constituents would ensure implementation16.

37. The Committee appreciates that there will be an expectation from constituents in local authorities that authorities will act to reduce flood risk. But this may not lead to flood risk being reduced in the manner outlined in flood risk management plans. Nor would it necessarily prevent some local authorities continuing to rely on outdated practices to reduce flood risk, rather than promoting sustainable flood risk management techniques wherever possible, which would be more in the spirit of the legislation.

38. When questioned on the link between the general duty to reduce flood risk and the implementation of measures in flood risk management plans Scottish Government officials indicated that the Minister is considering amendments to the Bill to promote a stronger link between the two17.

39. The Committee agrees that the Bill should be amended to strengthen the link between a duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans.

PART 2: PRINCIPAL EXPRESSIONS

40. Part 2 of the Bill defines “flood” and “flood risk” for the purposes of the Bill. It also names local authorities and Scottish Water as responsible authorities, and enables the Scottish Ministers to designate other public bodies and office-holders as responsible authorities.

Responsible authorities

Powers conferred on Scottish Ministers

41. Subsection (3) of section 1 confers power on the Scottish Ministers (amongst other things) to name additional responsible authorities and to specify any further functions such authorities should hold, through subordinate legislation. The Subordinate Legislation Committee has raised with the lead committee concerns...
that this power is not subject to the general duty imposed under section 1. When the Subordinate Legislation Committee raised this point with the Scottish Government, the Government responded that making section 1(3) subject to the general duty would have "limited practical impact". According to the Subordinate Legislation Committee—

"The restriction on the use of this delegated power by the Scottish Ministers offers comfort to the Parliament that the power will be exercised appropriately and that only bodies with the potential to contribute to a reduction in the overall flood risk will be designated as responsible authorities."

42. The Subordinate Legislation Committee raises a similar issue in relation to directions and guidance. Section 2(1) provides that the Scottish Ministers may give directions and guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions but again this is not subject to the general duty under section 1.

43. This Committee understands that the Minister has indicated he will consider amending the Bill to address the Subordinate Legislation Committee’s point.

44. The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers’ powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these organisations directions or guidance, must be undertaken in accordance with the general duty to reduce overall flood risk.

**Additional responsible authorities**

45. SNH has argued that omitting it from the list of responsible authorities, and only naming it as a consultee on flood risk management plans and flood protection schemes, means it may not be involved in planning at a sufficiently early stage. SNH is concerned that this could result in it having to resort to late stage objections because it has been unable to influence the development of plans. The Forestry Commission Scotland also stated in its evidence that it would welcome being designated as a responsible authority for similar reasons.

46. Scottish Government officials have suggested that those named as responsible authorities in the Bill have a clear and central role in reducing flood risk and that such a level of responsibility would be an odd duty to place on SNH. In supplementary evidence, officials also pointed out that the Water Environment and Water Services (Scotland) Act 2003 did not name any bodies as responsible authorities (although SNH was subsequently so designated in subordinate legislation). Additional responsible authorities in the flood risk management planning process could similarly be designated through secondary legislation.

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18 Annexe B, Subordinate Legislation Committee report on Flood Risk Management (Scotland) Bill, paragraphs 7-14.
19 SNH. Written submission to Rural Affairs and Environment Committee on Flood Risk Management (Scotland) Bill.
47. The Committee supports the flexibility allowed for in the flood risk management planning process, as this will enable SEPA and local authorities to plan their approach to managing flood risks on a case by case basis. It may also help reduce bureaucracy or “consultation fatigue”. The Committee also considers that there is a difference between ensuring that important stakeholder bodies are consulted adequately and early in the process and designating every such body as a responsible authority. The former is to be supported, but the latter may endanger the flexibility of the flood risk management planning process. Members of the Committee urge the Scottish Government to report back in future on progress towards the designation of further responsible authorities.

48. The Committee accepts the Scottish Government’s argument that it would be unnecessary to set out on the face of the Bill every organisation that should be involved at an early stage of the flood risk management planning process as a responsible authority. The focus should instead be on ensuring that bodies such as SNH and Forestry Commission Scotland are fully involved in helping SEPA and responsible authorities prepare plans and schemes.

49. The laying of any subordinate legislation under section 1 will afford the lead committee the opportunity to consider whether bodies are being appropriately designated as responsible authorities or whether functions are being appropriately assigned. When such orders are laid, the detail of the flood risk management planning process will presumably also be more developed and organisations may be in a better position to provide practical examples of how they may or may not benefit from being made a responsible authority. However since orders cannot currently be amended by committees it would help the lead committee if it had the opportunity to consider Scottish Government proposals in this area before an instrument is laid.

50. In order to allow this Committee (or its successor) to influence the selection of responsible authorities named in subordinate legislation, the Committee recommends that it be consulted on Scottish Government proposals to lay any order designating responsible authorities under section 1 before the instrument is laid.

Social and economic impact of exercising functions

51. Section 1(2)(a) requires that, in exercising their flood risk related functions, Scottish Ministers, SEPA and responsible authorities must have regard to the social and economic impact of doing so.

52. The Committee inquiry report suggested that the Scottish Government explores methods to ensure that the social and human costs of flooding, as well as the economic costs, be included in future assessments of the value of proposed flood management measures.
53. Research carried out by the University of Dundee in 2007, *Exploring the social impacts of flood risk and flooding in Scotland*, highlighted the significance of social and human costs but did not propose methods by which such costs should be included in assessments. It also highlighted that some methods that enable social and human costs to be evaluated can be very costly to carry out.

54. In the annexe to its submission, SEPA noted that it—

“...is unaware of any specific new tools which have been developed in this regard and recognise that accounting for such factors properly is difficult...there is a lack of specific guidance on how social and human costs might be included or prioritised.”

55. In response to a question about the mechanisms that would be used to assess human and social costs of flooding, Scottish Government officials agreed that the matter “is slightly in the air; it is difficult to assess at the moment.”

56. The Committee is aware that there is existing Scottish Government guidance detailing a range of tools deemed appropriate for undertaking cost-benefit analysis, including the appraisal and evaluation of social costs. The Scottish Public Finance Manual sets out guidance on cost-benefit analysis, with reference to the Green Book which is the UK Treasury guidance on appraisal and evaluation. The SPFM website states that "the guidance in the Green Book has been adopted by the Scottish Ministers and applies directly to the constituent parts of the Scottish Administration. However, as the Green Book embodies good practice in appraisal and evaluation, its use is also recommended for all other organisations subject to the requirements of the SPFM". These organisations include SEPA, local authorities and Scottish Water. The Green Book has an annexe on methods of valuing non-market costs and benefits, such as environmental and social costs and benefits. The Committee appreciates that any consideration given by the Scottish Government to appropriate assessment methods for social and human costs should have regard to best practice guidance in the Green Book.

57. The first flood risk management plans do not require to be produced until 2015. However the scale of this task will require the lead-in work by SEPA, local authorities and Scottish Water to commence immediately following the passage of the Bill. On this basis, the Committee’s view is that the Scottish Government’s consideration of which methodology should be adopted to assess human and social costs is at a surprisingly early stage, especially since the terms “human and social costs” are extremely wide ranging and difficult to quantify accurately.

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58. The Committee is concerned that SEPA and responsible authorities may be required to take into account human and social costs without clear guidance on what this entails from the Scottish Government. The absence of such guidance may mean that this important requirement ends up being low on their list of priorities. The absence of guidance may also lead to the provision being implemented in an inconsistent manner across responsible authorities and between responsible authorities and SEPA, impeding their ability to co-ordinate their work in reducing flood risk.

59. The Committee recommends that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs, recognising that any such guidance should be consistent with the advice set out in the HM Treasury Green Book. Such guidance should be available sufficiently far in advance of the deadline for SEPA’s production of initial flood risk assessments (December 2011) to allow SEPA to take it fully into account. The guidance will then also inform the work of SEPA and responsible authorities in the production of flood risk management plans.

Roles and responsibilities of lead and responsible authorities

60. Under current law, SEPA, local authorities, and Scottish Water all have roles in relation to flood risk management. In its inquiry report, the Committee said that “there must be clarity about where responsibilities lie and where the boundaries of those responsibilities begin and end”.

61. The Committee report also noted that there may be circumstances where a new duty related to flood risk management may come into conflict with the existing statutory duties of the organisations concerned (e.g. to promote habitat conservation). The report stated that “some mechanism for resolving such conflicts will be needed”.

62. Part 3 of the Bill does extensively set out requirements placed on SEPA and local authorities in undertaking the flood risk management process. There is also a general requirement in section 1(2)(c) for the Scottish Ministers, SEPA and responsible authorities to co-operate and co-ordinate the exercise of their specific functions. In addition, the Scottish Ministers are given powers of direction, included in direct response to concerns raised in the inquiry report about the need for a last resort to resolve conflicts between or within organisations.

63. The Committee appreciates the efforts made by the Scottish Government to ensure clear lines of responsibility within the Bill. However, during evidence taking on the Bill concerns have been expressed about the continuing potential for conflict or lack of co-ordination.

SEPA’s role as lead authority

64. SEPA is given the lead national role for flood risk management in the Bill. In particular, it is expected to be the main information-holder on flood risk at national level. This reflects the majority opinion of evidence highlighted in the Committee inquiry report, although there was some evidence to suggest that a new body should be established to lead on flood management at a national level.
65. During the inquiry, Professor David Crichton from Benfield UCL Hazard Research Centre argued that SEPA has “an unenviable conflict of interest"\(^{25}\). He compared its responsibilities under the Water Environment and Water Services (Scotland) Act 2003 to protect the water environment to its potential responsibilities for flood management under the Bill that might require it to insist on modifications to watercourses.

66. When recommending SEPA be given the lead national role, the Committee therefore highlighted a number of steps which needed to be taken, including the need for clear guidance to enable SEPA to resolve conflict between its new role and existing responsibilities.

67. Scottish Government officials were asked in evidence whether there had been progress made to ensure that conflicts between responsibilities could be resolved. In response officials suggested that there was no “rule of thumb” as to which of SEPA’s functions took precedence should they come into conflict, that this would be resolved on a case by case basis, and that the Bill gave the Scottish Ministers the right to intervene and direct as a last resort\(^{26}\).

68. The Committee appreciates from the evidence session with SEPA that there is considerable work underway aimed at ensuring that SEPA is in a state of readiness for its proposed new role. The Committee also accepts that SEPA is probably already in a position where it is required to balance the requirements of potentially conflicting pieces of legislation. However, the Committee remains concerned that the Scottish Government has thus far apparently taken no steps to determine how SEPA should resolve conflicts of interests. The Committee anticipates that, in the absence of a resolution process, SEPA’s actions may be stifled due to conflicting internal priorities, with the Scottish Ministers potentially required to regularly use powers of intervention intended as a last resort.

69. The Committee re-iterates its inquiry report recommendation that, at the earliest possible opportunity, there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA.

Local authorities
70. Evidence to the Committee’s inquiry highlighted that local authorities acting as planning authorities might face a potential conflict between the desire to grant planning permission for developments of benefit to the local community and economy, and wanting to prevent new developments on areas at risk of flooding. This issue is considered in the section on Part 3 of the Bill (paragraphs 118 to 128).

Alignment of funding streams – Scottish Water
71. In its submission, SEPA expressed concern that funding streams for the lead and responsible authorities are not aligned and that without alignment co-ordinating work between these organisations would prove very challenging—

“...tasks such as aligning funding streams may prove to be difficult and ultimately may require guidance and support from the Scottish Government...the timings of the existing funding mechanisms for Local Authorities, Scottish Water and SEPA do not coincide. This may lead to problems in terms of being able to plan for and ultimately fund joint work at the appropriate times to meet future deadlines.”

72. Glasgow City Council’s submission highlights the extent to which Scottish Water’s current planning process does not sit comfortably alongside the flood risk management planning process—

“The development of the Business Case for Quality & Standards IV requires to commence towards the end of 2013. By the conclusion of this Scottish Water will require to have identified, and costed to within 5%, all the capital works it intends to undertake in the period 2014 to 2022. At the time of the development of this Business Case SEPA will have just concluded their Flood Risk and Hazard Mapping and will be less than halfway through the timescale for the development of District Flood Risk Management Plans. The conclusion of Local Flood Risk Management Plans by May 2016 will still be over two years from conclusion.”

73. Geoff Aitkenhead from Scottish Water also confirmed in evidence that this is one of the biggest challenges that Scottish Water faces.

74. The Minister acknowledged the specific issue in relation to Scottish Water’s funding and planning cycle, stating that—

“...once [Scottish Water’s] flooding priorities and timescale of spending are aligned, the matter becomes entirely clear. In the end, the buck stops, as it has to stop, with the minister. If things are not happening, the minister will have to ensure that they do happen.”

75. The Committee is aware that the successful implementation of the flood risk management plans under the Bill is in large part reliant on co-ordination between the lead authority and responsible authorities in planning and funding projects set out in the plans. Therefore, it is imperative that the timing of the funding mechanisms for these organisations coincide. The Committee is pleased to note that the Minister acknowledges, most markedly in the case of Scottish Water, that there is a requirement to alter timescales for spending to aid the Bill’s implementation.

76. The Committee strongly recommends that the Scottish Government takes steps to align the timing of funding streams for the lead and responsible authorities as early as possible in the Bill’s implementation.

Sustainable flood risk management

References to sustainable flood risk management in the Bill

77. Section 1(2) outlines what matters the Scottish Ministers, SEPA and responsible authorities must have regard to in carrying out their flood risk management related functions. This includes the promotion of sustainable flood risk management. The Policy Memorandum states that the Bill will produce a framework—

“...to deliver sustainable approaches to managing all forms and consequences of flooding. By protecting and working with the environment, sustainable flood risk management is intended to provide the maximum possible social and economic resilience against flooding for current and future generations.”

78. In its written evidence SE Link said that the provisions of the Bill “do not ensure the sustainable delivery of flood risk management” and suggested that defining sustainable flood risk management in Part 2 or mentioning the term in the long title would highlight the central importance of this concept on the face of the Bill.

79. In evidence before the Committee Scottish Government officials and the Minister suggested that the process laid out by the provisions of the Bill would be sufficient to deliver sustainable flood risk management, and that defining it on the face of the Bill would not therefore be necessary. Officials also suggested that the understanding of the term “sustainable” may evolve over time and that defining it in statute now could restrict the approach taken to implementing the Bill in the future, possibly excluding the use of more modern methods yet to be developed.

80. The Committee supports SE Link’s intention of ensuring that sustainable flood risk management is adopted wherever possible by local authorities but is clear that defining the term in the Bill is problematic for the reasons already indicated in paragraph 79. The Committee is however agreed that it is very important to ensure that the Bill sets out a process that will guarantee that sustainable flood management techniques are always considered and are applied as often as is practicable.

81. The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.

29 Policy Memorandum, paragraph 2.
30 Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11
November 2008.
82. The Committee considers that another means of ensuring the promotion of sustainable flood risk management is to strengthen the link between the general duty in section 1 to reduce flood risk in a manner that promotes sustainable flood risk management and the implementation of the flood risk management planning process in Part 3. As highlighted above, Stage 2 is likely to afford further opportunity for consideration of this important issue.

Scottish Water

83. SE Link has also raised concerns that regulation by the Water Industry Commission for Scotland (WICS) could impact on Scottish Water’s ability both to promote sustainable flood risk management and to have regard to social impacts in exercising its functions under the Bill.

84. Scottish Water’s activity is based on objectives set by the Scottish Ministers over a four year period. Scottish Water also has a duty, under the Water Industry (Scotland) Act 200233, to “act in a way best calculated to contribute to sustainable development”.

85. Scottish Water considers how much funding it will need to achieve the objectives set by Scottish Ministers with this duty in mind and then sets out the basis for these funding requirements in business plans (including detailing projects it intends to undertake). The WICS scrutinises Scottish Water’s proposals to determine whether they represent value for money for customers. The WICS then converts Scottish Water’s funding requirements, based on lowest reasonable overall cost, into annual limits on the prices that Scottish Water can charge customers over the four year review period.

86. SE Link’s submission states that—

“The role of the WIC appears to clash with the duties of SW to contribute to sustainable development. Sustainable solutions may not always be the cheapest solutions for a specific problem in the short term, but may require a larger initial investment, with longer-term gains. Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term. Sustainable, innovative solutions should be promoted and Scottish Water encouraged by Scottish Ministers and the WIC to contribute actively to sustainable development in Scotland.34”

87. Geoff Aitkenhead from Scottish Water acknowledged that the current approach adopted is to a large degree driven by financial considerations—

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“…we focus on the financial costs of constructing the solution, which would be the immediate capital cost, and the operating costs throughout the life of the asset.”

88. Mr Aitkenhead also confirmed that, as a result of this approach, Scottish Water is likely to be biased against more sustainable developments because they may be more expensive.

89. The Committee suggested to the Minister that Scottish Water’s cost-benefit analysis processes may not place sufficient emphasis on social and environmental benefits. The Minister replied—

“It is probably best to include that in the ministerial instruction to Scottish Water, and I can perhaps assure you that I need to discuss that point with my ministerial colleagues who deal with Scottish Water. We can take a belt-and-braces approach to that.”

90. He added that “…there is a case for discussing the instructions to the Scottish Water Industry Commission with the responsible ministers.”

91. The Committee is of the view that, at the very least, an element of cultural shift is required on Scottish Water’s part to ensure it fulfils its duties under section 1 of the Bill. A more fundamental issue is whether the WICS’ regulatory regime has led to an over-emphasis on purely financial considerations, and whether this requires further investigation by the Scottish Government. This point of course goes wider than scrutiny of the Bill.

92. The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when assessing what form of work to undertake. This is likely to be incompatible with Scottish Water’s duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing.

Local authorities
93. SE Link also raised a concern that cost-benefit analysis processes currently used by local authorities might not be conducive to the selection of sustainable flood

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risk management techniques\textsuperscript{39} where the use of hard engineering is also an option\textsuperscript{40}. SE Link then provided supplementary information on a range of other assessment techniques which they considered could effectively incorporate environmental and social impacts\textsuperscript{41}.

94. The existing skills base of local authorities may lead to a preference for hard engineering solutions. Whether SEPA and responsible authorities will have sufficient specialist staff to implement the Bill is considered further in paragraphs 226 to 232 below.

95. As indicated in paragraph 56, the Treasury’s Green Book details a range of tools deemed appropriate for undertaking cost-benefit analysis and includes an annex on best practice methods of valuing non-market costs and benefits, such as environmental and social costs and benefits.

96. The Committee acknowledges that flood management works will usually tend to incorporate some form of hard engineering. However, as detailed above in relation to Scottish Water, if assessment techniques that go beyond short term cost-benefit analysis are not adopted, this may lead to some responsible authorities continuing to rely on hard engineering solutions when alternative approaches may be more sustainable and, in the longer term, no more costly. This would not be in keeping with the spirit of the legislation.

97. The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools they consider place sufficient emphasis on these benefits and should therefore be adopted by local authorities.

PART 3: THE FLOOD RISK MANAGEMENT PLANNING PROCESS

98. Part 3 of the Bill seeks to transpose the EC Floods Directive, setting out a process for flood risk management planning at “district” level by SEPA. It requires the production of preliminary flood risk assessments (Directive deadline for this is December 2011), an assessment of flood risk including the production of flood hazard maps and flood risk maps (December 2013) and then for the production of flood risk management plans (December 2015). It also requires flood risk management plans to be supplemented by local flood risk management plans, to be produced by local authorities at “sub-district” level.

\textsuperscript{39} Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 November 2008.

\textsuperscript{40} Hard engineering is the use of man-made structures such as concrete breakwalls as opposed to solutions based around natural geographic features and processes.

\textsuperscript{41} Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 December 2008.
Long term planning

99. The Committee inquiry report recommended that the Scottish Government sets out a “road map” for investment to look across at least 25 years and that there should be a mechanism to update it each parliamentary session.

100. In evidence on the Bill a number of organisations suggested that there should be some form of rolling long-term strategy to be published by the Scottish Government to inform the production of flood risk management plans. The Association of British Insurers suggested the Scottish Government should—

“…put in place a long-term strategy to reduce flood risk; set out the Scottish Government’s objectives and measures at a national level, ensuring effective and prioritised allocation of resource across each 6 year planning cycle, backed by local plans with realistic and deliverable objectives and measures; agree long-term outline spending plans that are aligned with funding arrangements for all responsible authorities.”

101. In addition, Scottish Water suggested a “nationally prioritised list of flooding schemes” would prove very valuable in informing its decisions on which projects to focus on within its business plans.

102. Under the Bill SEPA is required to produce district level flood risk management plans and it is proposed that there will be two such districts, one covering the majority of Scotland and another part of the Scottish border.

103. Scottish Government officials were asked why the Bill did not require the production of any long-term strategy. They replied that the rolling 6 year planning process for district and local flood risk management plans proposed in Part 3 will require long-term planning and that SEPA’s planning at a district level will provide a national overview.

104. The Minister was asked for a view on the benefits of a long-term strategy. He responded “nothing in the bill prevents the creation of a long-term strategy. In fact, much in the bill encourages such a strategy.”

105. Chris Spray from SEPA explained how the organisation would approach district flood risk management planning—

“We should look 20 or 25 years ahead. The Scottish Government has given us a steer to consider the strategic needs for flooding in that time period so that we can start building in what we know about climate change, and so that we can set priorities…

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42 Association of British Insurers. Submission to Rural Affairs and Environment Committee.
43 Scottish Water. Submission to Rural Affairs and Environment Committee.
It is important to get a vision or road map for 25 years because it will allow people to understand the key issues and it will enable us to bring together climate information from SEPA and the Met Office and to consider how the Government’s key economic priorities fit in. We will put all of that together.46

106. Since SEPA clearly acknowledges the importance of long-term planning and the need to identify national priorities in producing district level plans, it seems to the Committee that it would not appear particularly labour intensive for SEPA to produce and publish a long-term national strategic assessment as well.

107. The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water’s planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.

108. The Committee recommends that this strategic assessment should also provide an outline of longer-term priorities for 12 and 24 year periods based on SEPA’s projections of future flood risk, and that it should be laid before the Parliament at least once during each parliamentary session. Given the long-term nature of such an undertaking, to ensure that it is adhered to by successive administrations this should be a legislative requirement.

Natural flood management

109. Section 16 provides that SEPA must assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example, flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district. This section is intended to promote the use of “natural flood management” wherever possible. According to SEPA—

“Natural flood management promotes a subset of flood alleviation techniques that aim to work with natural processes to reduce flood risk. Examples of such natural techniques include replanting upland forests, reconnecting rivers to their flood plains and restoring wetlands to act as natural sponges for flood waters.47”

110. SNH highlights that such approaches can produce—

“…additional public benefits by helping to counter diffuse pollution and by improving biodiversity, geodiversity, landscape and recreation, for example

from the creation of woodlands and wetlands and restoring natural landforms and river processes.\textsuperscript{48}

111. The Committee inquiry report recommended that—

“...the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale.”

112. SE Link expressed concern in evidence on the Bill as to whether, in practice, section 16 will have the effect of ensuring natural flood management is the preferred approach wherever appropriate. SE link was specifically concerned that an assessment at a national level may not be detailed enough for use by local authorities and suggested that it might be better carried out at a more local level. Mike Donaghy stated in evidence that—

“...we must find a way of getting SEPA, the local authorities and the other responsible authorities to work together to get the right resolution for the approach to implementation [of natural flood management].\textsuperscript{49}

113. SE Link also suggested that the emphasis on natural flood management techniques could be further strengthened by amending section 16 so that it included reference to “natural processes” as well as to “natural features”. Mr Donaghy argued that—

“The process, in conjunction with the feature, gives us the effect. The definition of natural flood management is the restoration of natural features and processes to lower flood risk. Therefore, it is true to say that when we put in a natural feature, a process will be linked to it.

To anyone who is trying to interpret the definition or to engage in work on the ground, it will be much clearer if the word “processes” is included in the Bill.\textsuperscript{50}

114. John Thomson of SNH agreed—

“I acknowledge that some reluctance might be felt about using the word ‘processes’ in the bill, because it might not be readily defined. I am not sure whether it has been customarily used in legislation, but Mike Donaghy is right

\textsuperscript{48} SNH. Submission to Rural Affairs and Environment Committee Flooding and Flood Management inquiry. Available at: http://archive.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/ScottishNaturalHeritage.htm [Accessed 13 January 2009]


to say that processes are fundamental, that we should recognise that and that the Bill should be explicit about that.\textsuperscript{51}"

115. The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process.

116. In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to “natural processes” as well as “natural features”.

117. The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision.

Local flood risk management plans and local development plans

118. The Committee’s inquiry report recommended that—

“…the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensure that a full flood risk assessment is a prerequisite for the granting of planning permission for individual development areas at risk of flooding.”

119. Section 24 of the Bill states that SEPA, in preparing flood risk management plans, must take account of any development plan relating to the district. The Policy Memorandum explains that the production of flood risk maps and flood hazard maps within the flood risk management planning process should—

“…provide local authorities with information to support their development planning and development management decisions, and in particular, in the pursuance of actions to avoid flood risks.\textsuperscript{52}"

120. Current planning guidance within \textit{Scottish Planning Policy: Planning and Flooding (SPP7)}\textsuperscript{53} also advises against developments which would have a significant probability of being affected by flooding.

\begin{footnotes}
\item[52] Policy Memorandum, paragraph 70.
\end{footnotes}
121. The Committee agreed to consider public petition PE1207 from Mr Gordon Sinclair on the interaction between planning and flood risk assessment as part of its Stage 1 scrutiny. The petition suggests that SPP7 may not be being followed appropriately by all local authorities. Members questioned local authority witnesses on this proposition and also asked which they considered would take precedence should the Bill be enacted: local development plans or local flood risk management plans.

122. Jim Moodie from Fife Council suggested that SPP7 was being implemented correctly at present in Fife but that if the Committee wished to see consistent implementation across local authorities, then legislation would be required to ensure local authorities took flood risk into account in considering planning applications.

123. The local authority witnesses tended to agree that there was uncertainty at present as to whether a local development plan or a local flood risk management plan would take precedence were there apparent conflict. Paul Frankland from Scottish Borders Council explained that—

“We feel that they should be on an equal footing, and that there should be a bit of give and take…When the development of a site on a flood plain is believed to be of paramount importance to the economic development of a small town. We believe that discussions would be held around that.”

124. Neither of the local authority witnesses had any particular suggestions as to how disagreements between councillors as to which plan should take precedence should be resolved.

125. Scottish Government officials have said that the intention would be to revise SPP7 in light of the Bill. The Scottish Government has also suggested that it may introduce planning provisions within future legislation to strengthen the link between the two forms of plans. Presumably this would include provisions to require local development plans to have regard to flood risk management plans. No timescale has been suggested for this legislation and officials have stated that such provisions would not “naturally fall” within this Bill.

126. The Committee appreciates that competing land use demands are such that there will need to be some flexibility in the interaction of flood risk management planning and development planning, and that local authorities are sometimes in a difficult position in having to balance these demands.

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58 Policy Memorandum, paragraph 82.
127. The Committee welcomes the Scottish Government’s plans to produce revised planning guidance reflecting the need for planning authorities to take flood risk management plans into account when considering planning applications. However, the Committee is concerned that flood risk management plans may not be considered by local authorities to be on an equal footing with development plans in the absence of revisions to planning legislation.

128. The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use another piece of planned legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation “that a full flood risk assessment [should be] a prerequisite for the granting of planning permission for individual development areas at risk of flooding”.

**Surface water management**

129. Pluvial flooding occurs when precipitation is so heavy that it exceeds the rate at which it can drain away. It can be a particularly acute problem in urban areas where the land surface tends to be less porous than in rural areas. Sewer flooding can be considered as a subset of pluvial flooding as it can occur when domestic sewage is mixed with surface water in older combined sewer systems. The Committee’s inquiry report recommended that—

“...the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding.”

130. Correspondence from the Minister on possible Stage 2 amendments states that—

“A key policy objective for the Bill is the creation of an integrated and coordinated approach to dealing with all sources of flooding. This is particularly the case in urban areas where there is currently a complex interaction between different components of the drainage system and fragmented responsibilities. The existing arrangements can lead to piecemeal investment and a lack of coordinated actions. Future impacts of climate change, which include increased frequency of high intensity rainfall, could further increase the risks of pluvial and sewerage flooding caused by surface water runoff.”

131. The definition of “flood” in Part 2 includes sewerage flooding. The Bill divides responsibilities for managing surface water between local authorities and Scottish Water. The Policy Memorandum states that local authorities and Scottish Water are “well placed to develop assessments and maps of sewerage flooding” for incorporation into flood risk management plans.

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59 Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment Committee (November 2008).
60 Policy Memorandum, paragraph 67.
132. Correspondence from the Minister detailed several amendments that the 
Scottish Government is considering to strengthen the provisions set out in the Bill in 
relation to surface water management. These are intended to ensure that the 
appropriate level of information is produced on flooding and drainage assets, to 
clarify responsibilities for the assessment of sewerage flooding, and to strengthen 
the basis for collaborative working between local authorities and Scottish Water.

133. Witnesses from both Scottish Water and local authorities welcomed the 
intention behind these proposed amendments and suggested a number of 
additional measures that could further enhance the Bill.

Surface water management plans
134. Scottish Water’s written submission stressed the importance of surface water 
management plans (which would feed into the production of flood risk management 
plans), in ensuring the sharing of information and collaborative working. Jim Conlin, 
Scottish Water, further explained—

“Such plans bring together all the partners and can be used to deal with a 
number of issues in addition to flooding, such as development, planning and 
habitats in green urban areas. All those issues can be co-ordinated and we 
can get extra advantages out of what we do to deal with sustainable flood 
management…

We feel that surface water management plans are the key to making the 
collaboration between all the authorities work. The plans can set out clearly 
who is responsible for what and can deal with how systems will be managed 
and operated. They can clearly align and highlight other benefits.”

135. As the Committee’s report highlighted, and as the Minister acknowledged in 
correspondence, the management of pluvial flooding, including sewerage flooding, 
is complex. The Committee therefore welcomes the provisions which seek to clarify 
the roles and responsibilities of Scottish Water and local authorities, together with 
the Scottish Government’s proposed amendments, which should help improve the 
level of information available to responsible authorities.

136. The Committee recommends that the Bill should be amended to require 
the production of surface water management plans.

Sustainable urban drainage systems (SUDS)
137. Witnesses have discussed the importance of sustainable urban drainage 
systems (SUDS) in reducing flood risk. Scottish Water’s submission explains that 
SUDS—

“…use natural systems like ponds and filter strips that treat the surface water 
before it discharges to burns and rivers. SUDS can be used to ensure that

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61 Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment 
Committee (November 2008).
62 Scottish Water. Submission to Rural Affairs and Environment Committee (November 2008).
there is no increase in downstream flood risk but their primary purpose is providing surface water treatment.  

138. SEPA have expressed concern that the Bill makes no mention of SUDS and therefore of “their potential role in urban flood mitigation, particularly with respect to pluvial and sewer flooding”. The Society of Chief Officers of Transportation in Scotland (SCOTS) also suggested that clarification about the adoption and maintenance of SUDS is required in the Bill.

139. The Committee inquiry report detailed concerns raised by local authorities on where responsibility lies for the maintenance of SUDS where Scottish Water does not adopt them. In evidence on the Bill, Jim Moodie, Fife Council, echoed those concerns—

“In my opinion, the bill does not clarify who is responsible for SUDS. Scottish Water has introduced a second edition of the ‘Sewers for Scotland’ documentation and design manual. It restricts SUDS to only a couple of things, such as detention basins and attenuation ponds, and excludes all the other facilities, such as swales and filtration trenches...there is still a question mark over who will adopt all the SUDS features in places other than where a council has already put in place a system in which a factor looks after, for example, an attenuation pond or a detention basin...It is not an omission; it is a sidestep by Scottish Water to avoid taking on responsibility for SUDS.”

140. The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2.

Assessment of infrastructure drainage

141. In evidence to the Committee on 19 November 2008, Scottish Government officials stated that “we are looking to put a specific duty for that [the assessment of infrastructure drainage] on Scottish Water”. This duty is not contained in the Bill as introduced. However, the Minister’s letter on possible Stage 2 amendments suggested this duty may be placed on local authorities—

“We are considering amendments that would impose an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas, including information on the condition and ownership of certain drainage structures. The information would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968, as amended by the Water Industry Scotland Act 2002, which includes a

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63 Scottish Water. Submission to Rural Affairs and Environment Committee (November 2008).
map of sewers drains and sewerage treatment works for which they have responsibilities.\textsuperscript{66}

142. It would therefore appear that it is as yet undecided whether Scottish Water or local authorities, or a combination of the two, will hold responsibility for assessing infrastructure drainage.

143. The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government’s Stage 1 response before Stage 2 commences.

Interim arrangements

144. Written submissions from a number of local authorities expressed concern with the lack of interim arrangements, including funding arrangements, for flood risk management in advance of the Bill’s full implementation in 2015. (General funding arrangements for local authorities are considered in the section on the financial implications of the Bill).

145. In evidence to the Committee on 19 November 2008, Scottish Government officials said that they had not yet drawn up interim arrangements. Council representatives expressed different views on whether this concerned them. Jim Moodie of Fife Council said that—

“They are a concern because there is nothing in the bill to say that councils have to do anything until the management plans are in place.\textsuperscript{67}"

146. Paul Frankland, Scottish Borders Council, said that—

“They are not a concern for us. We will carry on with the assessments that we do at present, although we will tweak them slightly in line with the bill.\textsuperscript{68}"

147. This contrasting evidence demonstrates the potential for starkly different interpretations of how to proceed with flood risk management in advance of the finalising of the flood risk management plans in 2015. The Committee is concerned that the Scottish Government may not appreciate this variation of interpretation amongst local authorities, leading to an insufficient sense of urgency on the part of the Scottish Government to produce guidance on how to proceed.

148. The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements will be issued to local authorities in its Stage 1 response.

\textsuperscript{66} Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment Committee (November 2008).


Obtaining information, documents and assistance

149. Sections 37 and 38 provide SEPA and local authorities with the power to obtain information, documents and assistance reasonably required in the exercise of functions relating to flood risk management planning. Perth and Kinross Council’s submission questioned—

“Will the powers to obtain information, documents and assistance help local authorities and SEPA obtain information from Scottish Water which they often say is protected under data protection legislation?”

150. Members asked witnesses from Scottish Water for examples of instances where data protection requirements prevented them providing information. Jim Conlin from Scottish Water suggested that data protection is an issue in relation to customer addresses but that the organisation seeks to provide the relevant information without divulging specific details, for example by providing postcodes to local authorities without the corresponding names and addresses. Geoff Aitkenhead from Scottish Water also suggested that for security reasons the locations of drinking water supplies could not be divulged. Beyond those examples Scottish Water witnesses were unaware of instances where local authority requests for information had been refused.

151. Perth and Kinross Council was invited to provide specific evidence backing up its concerns. The Council did not provide this evidence. Scottish Water did correspond with Committee clerks following discussion of this issue on stating that—

“As it is not clear exactly what information the enquiry refers to we will contact Perth and Kinross Council and Fife Council to clarify their particular concerns.”

152. The Committee notes the evidence received in relation to the sharing of information between Scottish Water and local authorities. However, in the absence of specific examples of a lack of willingness to share information the Committee does not wish to make any recommendation on this issue.

Water Environment and Water Services (Scotland) Act 2003

153. Section 41 consists of broad provisions intended to ensure consistency and co-ordination with river basin management planning under the Water Environment and Water Services (Scotland) Act 2003.

154. Much of the flood risk management planning mechanism in Part 3 is intended to mirror the approach taken for river basin management planning, so as to encourage integration of the processes as far as is practicable. For example, section 41(1)(a) requires SEPA, in identifying districts established for flood risk

71 Scottish Water. Submission to Rural Affairs and Environment Committee (16 December 2008).
management planning, to have regard to the districts established under the 2003 Act (and the Policy Memorandum suggests there is a strong possibility that district boundaries will be the same under both\(^\text{72}\)). Timescales under the Bill and the Act are also intended to run in parallel, with both processes operating on a six year planning cycle, and the first flood risk management plans due at the same time as the second river basin management plans.

155. According to the Macaulay Institute—

“…there will be considerable difficulties in ensuring consistency and co-ordination, due to (amongst other things) a lack of a joined-up approach even within river basin management planning, the complex and congested policy arena for water management and the difficulty of communicating complex technical data to a wide range of people.\(^\text{73}\)”

156. There have clearly been teething problems with implementation of the 2003 Act\(^\text{74,75}\) but many of these problems would not necessarily be repeated under this Bill as a result of lessons learned during this implementation.

157. The Committee appreciates that the river basin management planning process is still in its infancy and that some practical problems remain. The implementation of the Bill will undoubtedly further complicate matters to a degree. However, as the intentions behind the Act and the Bill are inextricably linked, and in the interests of efficiency and joined up working, the Committee would wish that every effort be made to integrate these processes from the outset.

158. The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act.

**Stakeholder engagement**

159. Part 3 includes arrangements for consultation and participation such as the publication of assessments, maps and plans. It also provides for the establishment of district flood risk advisory groups and sub-district advisory groups to advise SEPA and local authorities on the preparation, review and update of documentation required under the Bill.

160. Scottish Government officials suggested in evidence that advisory groups under the Bill would involve many of the same organisations involved under the

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\(^\text{72}\) Policy Memorandum, paragraph 53.
\(^\text{73}\) Macaulay Institute. Submission to Rural Affairs and Environment Committee.
\(^\text{74}\) Macaulay Institute. Submission to Rural Affairs and Environment Committee.
2003 Act so it was hoped that existing groups could take on advisory roles under the Bill.\footnote{Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report, 19 November 2008}, Col 1184.}

161. SEPA’s submission also reflects this intention—

“River Basin Planning operates using 10 area advisory groups across Scotland, each helping to produce sub-basin plans for their catchments and coastal areas. Members of the River Basin Management Plan advisory groups include Local Authorities, Scottish Water, Scottish Natural Heritage, the Forestry Commission, representatives of land-owners, NGOs and fishery boards. Many of these members will have a role in flood risk management and we shall seek opportunities to integrate these groups with the flood risk management groups wherever relevant.\footnote{SEPA. Submission to Rural Affairs and Environment Committee (November 2008).}"

162. Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act.

**Cross-border flood risk management**

163. As mentioned above, the district boundaries defined in subordinate legislation under section 41 are very likely to mirror those used for river basin management planning, including the existing cross-border district.

164. The Macaulay Institute’s submission states that there is a lack of clarity on how cross-border flooding incidents will be handled and that this needs to be addressed, especially as parts of the Borders are highly susceptible to flooding. The submission also argues that steps should be taken to prevent similar cross-border implementation problems as were encountered with river basin management planning under the 2003 Act in Scotland and the Water Environment (Water Framework Directive) Regulations (England and Wales) 2003 in England (which both transposed the EC Water Framework Directive).

165. The Institute’s submission outlines specific difficulties encountered in establishing the river basin management planning process—

“Under RBMP, additional guidance and a policy statement from DEFRA and the Scottish Government had to be developed during 2007, but there are still ongoing challenges in reconciling the different ways in which data is collected and recorded by the agencies; the different regulatory frameworks and different advisory networks.”

166. The Committee has heard evidence to suggest that a sizeable amount of work has been undertaken to better co-ordinate cross border implementation in recognition of these issues. For example, Paul Frankland from Scottish Borders Council suggested that, at a local authority level, the existing collaborative work
undertaken by the Tweed Forum for river basin management planning had proved very valuable\textsuperscript{78}. The Committee considers that such existing mechanisms for co-ordination could be built upon to ensure consistent implementation of flood risk management planning.

167. It therefore appears that a number of lessons were learnt as a result of problems encountered during the cross-border implementation of the EC Water Framework Directive and a number of processes in place for river basin management planning could be built upon in implementing this legislation. The Committee would hope that the Scottish Government, SEPA, local authorities, Scottish Water, and their English counterparts would work effectively together to ensure that the EC Floods Directive is effectively transposed on a cross-border basis.

168. \textbf{The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government.}

\begin{center}
\textbf{PART 4: LOCAL AUTHORITY FUNCTIONS}
\end{center}

169. The provisions in Part 4 set out a revised statutory process for approval of flood risk management measures, including flood protection schemes, which the Policy Memorandum suggests will—

\begin{quote}
“…underpin the exercise of these powers with a streamlined and local authority based statutory process that provides for efficient use of local resources and timely introduction of flood management measures.\textsuperscript{79}”
\end{quote}

\textbf{Deemed planning permission}

170. At present, the Flood Prevention (Scotland) Act 1961 requires that local authorities (as promoters of flood prevention schemes) undertake an initial approval process for proposed schemes. Final decisions are taken by Scottish Ministers where there are outstanding objections. In addition they are required to apply for planning permission from planning authorities (which is the local authority in another guise). Finally, local authorities are required to gain approval from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2005.

171. Section 54 of the Bill amends the Town and Country Planning (Scotland) Act 1997. The Explanatory Notes for the Bill explain that this—

\begin{quote}
“…provides that once a flood protection scheme is confirmed (whether by the local authority or the Scottish Ministers), the Scottish Ministers are to direct
\end{quote}


\textsuperscript{79} Policy Memorandum, paragraph 11, bullet point 4.
that any necessary planning permission is deemed to be granted, subject to any planning conditions which Ministers may specify.80"

172. This proposed change is in recognition of the need for the existing system for approving flood protection schemes to be simplified, an issue which the Committee highlighted in its inquiry report. Evidence to the inquiry had suggested that the existing procedure, involving three separate approval processes, each with a different lead decision-making body, took an unreasonable length of time. The net effect of this was clearly articulated in Argyll and Bute Council’s written evidence to the inquiry—

“When the owners of properties affected by flooding hear that a Council is promoting a scheme, their expectation is usually that construction to protect their properties would start in, say, a year at the most. In reality, the process from feasibility and engineering report to confirmation of funding and a start on site can take 5 years or more.81”

173. Given this situation, the inquiry report recommended—

“…that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions.”

174. The Committee welcomes the Bill’s provision for deemed planning consent following the Committee’s request that this process be streamlined.

Approval of flood protection schemes

175. The Bill repeals the Flood Prevention (Scotland) Act 1961, which sets out the approval process for flood prevention schemes. The Bill puts in place new provisions for the approval of schemes (referred to as flood protection schemes) Schedule 2 includes provisions for notification of a proposed scheme. For example, paragraph 1 states—

“The local authority must give notice of a proposed flood protection scheme…to every person known to the local authority…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.”

176. As the planning application procedure will no longer be followed for confirmed flood protection schemes, it is important that the initial consultation in the process for approval of proposed schemes is suitably robust to ensure that the public and stakeholders have every opportunity to comment or raise objections.

80 Explanatory Notes, paragraph 164.
The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance.

Recovery of local authority expenses

Section 57 of the Bill states that—

“...a local authority may recover any expense it incurs in carrying out any repairs or re-instatement to flood protection work...from the owner or, as the case may be, occupier of the land on which the work was carried out if such expense is as a result of the actions of that person.”

Fife Council stated in its submission that—

“Section 57 appears to restrict recovery of costs to repairs or reinstatement of flood prevention works. This is too restrictive. Section 57 should be linked to Section 49; General power to manage flood risk and Section 56; Assessment of watercourses.”

The SCOTS submission suggests that there is a need for guidance on this section including an explanation of the mechanism for recovering costs. This could perhaps include agreed levels of charges for different pieces of work so local authorities across Scotland adopt parallel charging regimes.

It has been suggested to the Committee that a barrier to being able to recover expenses may be the need to prove negligence on the part of the landowner and that the responsibility of landowners in relation to reducing flood risk should perhaps appear on the face of the Bill.

However, the SRPBA has suggested that imposing such a responsibility on landowners could prove problematic as it may require landowners or property owners to have responsibility for flood prevention which could include actively maintaining flood protection works. The SRPBA suggested that these individuals “cannot be expected to have full information and technical expertise to take on principal responsibility for proactively assessing and responding to flood risks”.

The Committee agrees with the SRPBA that landowners should not be expected to have primary responsibility for the implementation of flood prevention measures determined by responsible authorities. However, the Committee believes that landowners do have a responsibility to maintain features such as field drains and watercourses where they play an important role in flood prevention. In situations where such features have not been adequately maintained by private landowners and a local authority has been obliged to reinstate or repair these features, the Committee agrees that the local authority should be able to reclaim its expenses for so doing.

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82 South Lanarkshire Council. Submission to Rural Affairs and Environment Committee.
83 SRPBA. Submission to Rural Affairs and Environment Committee (December 2008).
184. The Committee supports the intention behind section 57 but the evidence received demonstrates that its wording leaves it open to varied interpretation. The Committee also notes concerns about whether section 57 would be effective in the absence of clarity as to how landowners’ negligence would be evidenced.

185. **The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for recovery of expenses, the grounds on which authorities may fine landowners, and what those fine levels should be.**

**Duty to cleanse, repair and maintain watercourses**

186. The Flood Prevention and Land Drainage (Scotland) Act 1997 would be repealed under section 60 of the Bill. One of the provisions of this Act is a requirement for local authorities to cleanse, repair and maintain watercourses. In his written evidence to the Committee, Dr John Riddell argues that this has proved one of the most effective methods of reducing flood risk.

187. Scottish Government officials argued that this duty was being removed—

“…because local authorities will have an overall duty to reduce flood risk. Previously, local authorities’ only duty in relation to flood risk management was the duty to assess and maintain watercourses. We thought that the overall duty encompassed that requirement. If we included in the bill a duty to maintain watercourses, that might become the overriding duty in some circumstances.”

188. Officials also suggested there were some circumstances where watercourses were deliberately blocked to re-direct water for flood management purposes and that this duty might require local authorities to clear a watercourse that had been blocked for flood risk management purposes.

189. The Committee does not accept the logic of the Scottish Government’s argument that retaining this specific provision could lead to situations where authorities clear watercourses despite stipulations to the contrary in local flood risk management plans (although it is accepted that some amendment of the relevant provisions may be needed to take account of the Bill). In addition, if it is envisaged that an overriding duty to reduce flood risk will encompass a specific duty to maintain watercourses, the Committee sees no reason why the provision in the 1997 Act cannot co-exist with the broader provision on the face of the Bill.

190. **The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and is in line with flood risk management plans.**

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PART 5: SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

191. The provisions in Part 5 replace those in the Agriculture Act 1970 and the Environment Act 1995, and set out updated responsibilities for SEPA for flood risk assessment, including the provision of advice to local authorities, and expansion of its role in providing flood warnings.

Flood warning

192. In evidence, Chris Spray from SEPA told the Committee how the organisation is involving key stakeholders in ongoing work to refine the flood warning—

“It is worth reassuring the committee that we are working on a new flood warning dissemination system for Scotland. It is a £7 million project. The advisory board for that includes ACPOS, the Society of Local Authority Chief Executives and Senior Managers, COSLA, and fire and rescue services. We are also going to bring the national health service on to the board. The new system will enable folk to get individual messages. It is key that everybody understands the messages and how they are produced. It is not a SEPA system; it is for all of those groups.”

193. In its written submission the Association of British Insurers expressed an interest in collaborative working with SEPA to see how flood risk can be better communicated to the public and insurers as “over time this will impact on insurance premiums for those worst affected, reducing premiums for others.”

194. The Met Office also expressed a keen interest in collaborative working with SEPA, a re-iteration of sentiments expressed in its submission to the Committee’s inquiry—

“The Pitt Review of the flooding in England and Wales in 2007 recognised the benefits that closer working between the Met Office and the Environment Agency would bring to flood risk management in England and Wales. The Met Office and the EA have taken this key recommendation forward in its consideration to form a joint flood forecasting centre. The Met office would welcome the opportunity to work with SEPA in a similar arrangement to ensure Scotland also takes best advantage of advances in developing science and technology, and their integration.”

195. The Committee is encouraged by SEPA’s work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken.

Emergency services response to flood warning

196. The Committee is aware that this Bill deals specifically with flood risk management, which can include informing those at risk, but does not extend to rescue activities in the event of flooding. Section 64(1) states that “SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood”.

197. David Faichney from SEPA detailed which organisations SEPA currently informs as part of its flood warning system—

“SEPA's primary customers for flood warnings are local authorities, the police, fire and rescue services in some instances, the telephone floodline service and the web service, through SEPA’s website. We make flood warnings available to the public through the floodline service and through professional partners such as the police and local authorities. Some local authorities cascade those flood warnings down to individual customers in their areas, such as businesses and householders. The local authorities and the police are category 1 responders. In large flood events, SEPA, as a category 1 responder itself, has to share information about the event that it is leading on—in this case floods—with all other category 1 responders through the strategic co-ordinating group structure.”

198. The Civil Contingencies Act 2004 outlines the specific roles of the emergency services in responding to flood risk. The police play a co-ordinating role in the management of responses to flood events but are not responsible for rescue. The latter responsibility lies predominantly with the fire and rescue service.

199. The Committee was not convinced during its inquiry that the police and fire and rescue services always act proactively once they have been issued with a flood warning. Evidence from these emergency services suggested that they perhaps viewed their role as commencing once a flood had become an emergency. For example, David Wynne of the Chief Fire Officers Association of Scotland told the Committee—

“In reality, the first indication that a response is needed is usually a 999 call.”

200. The lack of a single authority holding responsibility for responding to flood events was also raised in evidence as a possible obstacle to immediate action being taken when emergency services are informed of a flood risk.

201. The inquiry report included recommendations to encourage decisive and proactive action from emergency services in response to a flood warning. Specific recommendations were “that the fire and rescue service be tasked with co-ordinating all flood-related rescue activities” and “that the Scottish Government

should explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency”.

202. The Committee notes that the proactive element of the role of the emergency services in preparation for flooding could probably be seen as being part of “flood risk management”, whereas other inquiry recommendations in this area relate to flood rescue, which the Bill does not address.

203. The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill’s scope allows.

PART 6: POWERS OF ENTRY AND COMPENSATION

204. Part 6 provides local authorities and SEPA with powers of entry onto private land and into private property in carrying out their duties to assess and manage flood risk. It also provides for the payment of compensation for any damage caused as a consequence of the construction or maintenance of a flood protection scheme or other flood protection work.

205. The Policy Memorandum makes clear that powers of entry would only be used in urgent cases following attempts to provide advance notice of the need to grant access to the land or property owner or occupier. The Committee welcomes the assurance that these powers will only be used as a last resort.

206. The Committee notes that a number of witnesses and written submissions explored the potential for funding streams within the Scotland Rural Development Programme to be used to supplement compensation and to incentivise land owners to avoid the compulsory purchase of land wherever possible. This is considered further in the section on the financial implications of the Bill below (paragraphs 256 to 261).

PART 7: RESERVOIRS

207. Part 7 amends the Reservoirs Act 1975, which sets out safety requirements to prevent escapes of water from reservoirs. The amendments would have the effect of transferring enforcement responsibilities from local authorities to SEPA. This would include provisions to allow SEPA to prepare reservoir maps and plans for very high risk reservoirs.

208. The possibility of a delay in the implementation of a number of these provisions has been raised with the Committee as outlined below.

90 Policy Memorandum, paragraphs 163-4.
Transfer of responsibilities

209. Jim Moodie, Fife Council, told the Committee that Scottish Government officials had suggested that the handover of responsibilities could take two to three years as the Scottish Government wishes to consider the nature of provisions to tighten reservoir security in the UK Flood and Water Bill before implementing its own Bill’s provisions.\(^{91}\)

210. The Minister informed the Committee that the proposed flood and water Bill is unlikely to be considered at Westminster until the next UK parliamentary session.\(^{92}\)

211. The Committee acknowledges the merits of ensuring that the Bill is implemented in such a way that it complements comparable legislation in England and Wales. This is in the interests of co-ordinated cross border implementation. The Committee intends to continue to monitor the Scottish Government’s progress towards the transfer of responsibilities to SEPA.

212. The Committee requests a summary of the impact of the provisions of the UK flood and water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill’s introduction.

Reservoir inundation maps

213. In its submission SEPA requests clarification from the Scottish Government on national security issues related to reservoir inundation plans, stating that—

“...we would wish to see clarification within the Bill or through future policy and guidance giving clear direction to SEPA and other relevant authorities on security issues with respect to reservoir inundation plans, and taking account of guidance drafted by DEFRA.\(^{93}\)”

214. SEPA representatives were asked to elaborate on this issue when they appeared before the Committee. David Faichney explained that—

“From our security manager and emergency planning manager, we understand that sensitivities surround inundation plans showing what would happen if a reservoir were to fail. There are particular concerns about terrorist activity and the ability of organisations to understand quickly which reservoirs could have the biggest impacts down stream. I believe that such concerns are being thrashed out among the Department for Environment, Food and Rural Affairs, the Environment Agency and the security services in England and Wales.”\(^{94}\)

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\(^{93}\) SEPA. Submission to Rural Affairs and Environment Committee (November 2008).

215. The Minister and accompanying officials were then asked to outline progress being made towards resolving this issue. Scottish Government officials explained that—

“National security has been extensively discussed since the issue came up when the Water Act 2003 conferred on ministers a power to acquire inundation maps. The power has not yet been enacted, for the simple reason that there has been much discussion about who should see the maps, how they should be stored and who should have access to them. Much discussion has focused on security, and inundation maps have not yet been produced in England and Wales…Agreement has been reached with the security services that category 1 responders should have access to the inundation maps. I think that it was agreed that that will happen in a controlled environment.”

216. The Committee is concerned to learn that provisions within the Water Environment and Water Services (Scotland) Act 2003 have not yet been implemented. On a wider issue, the Committee is concerned that this lack of an agreement with security services could have impacted on the ability of strategic co-ordinating groups to plan in the event of an emergency. The Committee is encouraged that agreement has now been reached and hopes that as a result there will be no unnecessary delay in the implementation of the Bill’s provisions.

217. Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA’s request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues.

PART 8: GENERAL

218. Part 8 includes provisions for the making of orders and regulations, the application of the Bill to the Crown and also on the Bill’s commencement. A number of the provisions within Part 8 stem from provisions elsewhere in the Bill and therefore have been dealt with above. No specific issues were raised with the Committee in relation to the application of the Bill to the Crown. As regards the Bill’s commencement, concerns over interim arrangements were raised in the discussion on local authority responsibilities (paragraphs 144 to 148).

COASTAL FLOODING

219. Although the Bill does not specifically mention coastal flooding, the definition of “flood” as “the temporary covering by water from any source of land not normally covered by water…” includes coastal flooding. For example, flood protection schemes proposed in the Bill could be developed for any type of flooding within a local authority area, including coastal flooding.

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220. The Bill’s provisions are intended to sit alongside those in the Coast Protection Act 1949\(^96\) which seeks to manage coastal erosion. Section 4 of this Act empowers local authorities “to carry out such coast protection work, whether within or outside their area, as may appear to them to be necessary or expedient for the protection of any land in their area.”

**SEPA coastal flood risk maps**

221. SE Link’s supplementary submission notes the potential for changes in sea levels in the future, including increases as a result of climate change—

“…a study of coastal flooding by Dundee University\(^97\)…suggests that the uplift of land due to the melting of Scottish ice sheets has been over-estimated and potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20cm higher in the Clyde estuary and 28cm higher in Moray and Aberdeenshire than previously estimated. It is also likely that the net sea level changes in the Firth of Forth had shifted from a net fall to a net rise since the 1970s.”

222. At present SEPA’s inundation maps are based on estimated flood probability under current climate conditions. The Committee sought assurances from SEPA that, in its new role under the Bill, predictions of flood probability as a result of climate change over the long term would be taken into account in the production of flood risk maps and assessments. SEPA’s supplementary submission confirmed that this was definitely its intention.

223. The value of flood risk management plans which include coastal areas depends upon the accuracy of the flood risk maps and assessments upon which they are based, including detailed information on localised tidal patterns. In addition, as recommended above (paragraphs 118 to 128), local development plans and decisions on planning applications should also reflect flood risk as assessed and mapped by SEPA. It is therefore extremely important that SEPA ensures that its flood risk maps and assessments produced under the Bill reflect the most accurate predictions available on the impact of climate change on sea levels over the long term.

224. Section 22 of the Bill enables Scottish Ministers to prescribe through subordinate legislation “criteria to be applied and the methods and procedures to be followed” in the production of flood risk maps and flood hazard maps.

225. The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government’s response prior to Stage 2.


\(^97\) Coastal Flooding in Scotland: A scoping study, 2008, SNIFFER report.
RESOURCE IMPLICATIONS

Hydrologists and other specialist staff

226. The Bill’s Financial Memorandum details the additional tasks that SEPA, Scottish Water and local authorities will be required to undertake as a result of the Bill and the potential staffing implications. The Financial Memorandum includes an estimate of 55 new staff for SEPA to aid the establishment of the flood risk management planning process, including hydrologists and flood modellers. The Financial Memorandum also indicates that Scottish Water will require an additional team focused on duties arising from the Bill and input from specialist modelling consultants.

227. In its submission on the Bill, SEPA states that—

“Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. SEPA highlighted this in its previous evidence to the RAE Committee and it is widely recognised by the Committee, Ministers and others that this will be a severe challenge to SEPA, Local Authorities and all others involved in the delivery of the Bill.” In addition, in evidence to the Finance Committee SEPA quantified the shortage elsewhere in the UK mentioning that the Environment Agency already has 200 vacant flood management posts.

228. The Committee is also aware that the requirement to transpose the EC Floods Directive by 2015 will mean specialist staff will be in high demand across Europe and that this will further exacerbate the problem.

229. On the same issue Scottish Government officials stated in evidence that—

“There is definitely a deficit of qualified hydrologists. However, a wide range of skills is required; we need not only hydrologists but trained engineers and people who understand how the rivers and coastal environments function. We hope that we will be able to draw on and build on the experience that is already available, such as in-house experience in SEPA and the experience of qualified engineers in local authorities.”

230. The Minister remarked that—

“Positive engagement is taking place with universities, trainers and others to ensure future supply. We are looking at retraining people with other engineering skills. I am in contact with my opposite numbers in the education portfolio to encourage them and to highlight the opportunities…It should be possible for small amounts of resource to be found from flooding research and development.”

98 Explanatory Notes, Financial Memorandum, paragraph 294.
99 Explanatory Notes, Financial Memorandum, paragraphs 302-3.
100 SEPA. Submission to Rural Affairs and Environment Committee (November 2008).
other areas if new courses need to be provided. However, I think that the issue is getting the individuals rather than the cash.\textsuperscript{102}\textsuperscript{a}

231. \textbf{Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister’s reassurance that the steps being taken to recruit and retrain will “ensure future supply”}.\textsuperscript{102}\textsuperscript{a}

232. \textbf{The Committee is deeply concerned that a marked shortage in skilled staff may impact both on the effectiveness of Scotland’s new flood risk management process, and the time taken for implementation.}

\textbf{Financial implications}

\textit{Adequacy of the Financial Memorandum}

233. The Finance Committee’s report, reproduced at Annex B, considers whether the potential range of costs for the Bill’s implementation outlined in the Financial Memorandum are reasonable and whether all potential costs are accounted for.

234. In addition to considering the Financial Memorandum, the Finance Committee also considered supplementary information provided by the Scottish Government on 7 November 2008 (also reproduced at Annex B). Scottish Government officials stated in evidence to the Finance Committee that—

\textit{“The purpose of the supplementary evidence was to register the further work that had gone on in the interim to refine the policy and develop the detailed provisions in the bill.”}\textsuperscript{103}\textsuperscript{a}

235. The supplementary information outlines revised upper and lower estimates for costs on SEPA, Scottish Water and local authorities. For example, it projects an upper estimate of costs to local authorities up to 2015 of £44.9 million, whereas the Financial Memorandum suggests an upper limit of £36.48 million. Assuming that there are a number of other underestimates in the Financial Memorandum, the total anticipated start up and ongoing costs suggested within it could be significantly lower than the actual costs of implementing the Bill.

236. Provision of the most accurate information available to inform scrutiny is appreciated. However the Committee considers that this legislation should only have been introduced when the specifics of the policy work underpinning the Bill were at a suitably advanced stage to allow an accurate estimation of the Bill’s potential cost in the Financial Memorandum. The figures set out in the Financial Memorandum are clearly based on outdated policy information and include significant underestimates.

237. \textbf{The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial...
implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government to ensure that future memorandums to Bills are the best possible final estimate at the point of introduction.

**Actual costs**

238. The Financial Memorandum explains that a number of uncertainties (primarily the need to await the outcome of the initial flood risk assessments) mean that cost estimates cannot be entirely robust at this stage. The Finance Committee report notes that its witnesses generally seemed to accept that the assumptions within the Financial Memorandum about uncertainties were reasonable.

239. In the interests of transparency, Scottish Government officials confirmed in evidence to the Finance Committee that information on the costs incurred by various public bodies in delivering their new responsibilities could be included in the formal mechanisms for reporting to the Parliament provided in the Bill\(^\text{104}\). The Minister’s response to the Finance Committee (in Annexe D) confirmed that he will give consideration as to whether the Scottish Government will provide information on actual costs within the annual report to Parliament on implementation (provided for in section 45).

240. **The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible authorities in the run-up to implementation and reports these costs to this Committee and its successor.**

**Method of funding allocation**

241. The Financial Memorandum attempts to assess the cost of the establishment of the flood risk management planning process but does not estimate the potential cost of the implementation of this process. For example, Highland Council’s submission raises the issue of the cost of increased duties in relation to watercourses stating—

> “Under current legislation the Council have a duty to access watercourses. These watercourses generally relate to urban, built up areas. Under the proposed Bill the Council will have a duty to assess all watercourses – rural and urban. The ‘extra’ cost for the wider watercourse assessment does not appear to be included in the Financial Memorandum.”

242. Scottish Water also mentioned, in evidence to the Finance Committee, that the significant cost of work required in areas not yet covered by drainage plans did not feature in the Financial Memorandum\(^\text{105}\).

243. The Committee appreciates that it would be nigh on impossible to estimate in the Financial Memorandum overall running costs of the Bill’s implementation, such as the cost of establishing and maintaining flood protection schemes across Scotland. However, given the importance of these schemes and their substantial

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\(^{105}\) Scottish Water. Submission to the Finance Committee.
cost, it is imperative that the Parliament is reassured before agreeing to the general principles of the Bill and its financial resolution, that the relevant organisations will receive sufficient funds to manage flood risk on an ongoing basis. The most effective approach to this would appear to be the establishment of clear funding streams.

244. The Committee inquiry report recommended that three distinct streams of funding would be required to effectively implement flood management legislation, namely—

- a relatively modest amount of budget retained at a national level to ensure that the Scottish Government is able to fund overarching projects directly;
- a centrally controlled budget held specifically for flooding used to fund, in accordance with national needs and priorities, major flood management projects that may be too expensive for individual local authorities to fund; and
- some funding should be distributed to individual local authorities (whether or not on a ring-fenced basis) to enable them to prepare and deliver smaller scale local schemes as they see fit.

245. There is no central mechanism proposed by the Scottish Government for the allocation of funding to local authorities for funding future flood protection schemes or for carrying out any other duties. The Minister’s written response to the Finance Committee suggested that future funding allocations for flood management to SEPA, Scottish Water and local authorities would be made through existing arrangements for block funding allocations to these organisations. In addition, it confirmed that SEPA and local authorities would need to source funding for the initial stages of the Bill’s implementation to 2011 from existing spending review allocations.

246. The majority of local authorities submitting evidence on the Bill said that the lack of a specific funding mechanism for flood management was a major concern, and a number have suggested this will seriously impact on the Bill’s implementation. This is entirely understandable considering the cost of these schemes (for example a single flood protection scheme in Elgin has an estimated cost of around £98 million). Justin Jacobs from the Association of British Insurers also highlighted that the knock on effect of a lack of certainty over funding for flood protection schemes is a higher assessment of risk and therefore a higher potential level of premiums being passed on to the customer\textsuperscript{106}.

247. Jim Moodie from Fife Council was pragmatic in evidence on this issue, stating that the lack of a clear funding mechanism—

“…will mean that many schemes will not be delivered at all, because the funding will be allocated to what councils consider to be other priorities. We face that issue at the moment...Our budgets are defined by accountants and asset management people who are not directly affected by flood prevention

issues or functions. They might have higher priorities, such as education or social work.\textsuperscript{107}

248. The Minister reiterated in evidence the Scottish Government’s commitment to agree future funding allocations for local authority work during discussions with COSLA on the Concordat between the Scottish Government and local government\textsuperscript{108}.

249. \textbf{The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee’s inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above (paragraphs 99 to 108).}

\textit{Transparency of funding allocation process}

250. The Finance Committee report reflected concerns from a number of local authorities on the absence of any criteria to inform what level of funding allocation each authority should receive to fulfil all of their various duties under the Bill. Such criteria could include the level of flood risk faced and/or the proportion of each authority area deemed to be rural or urban.

251. As noted above, the Minister’s response to any request for details of the basis for decisions on funding allocations to local authorities is likely to be that funding decisions will be made following discussions with COSLA on the Concordat.

252. However, the Committee is aware that it is Scottish Government practice to transfer expenditure from one portfolio into the local government portfolio for a specific purpose, such as funding flood prevention work, and considers that, as a minimum, the Scottish Government should be able to provide information on how this funding is allocated. For example, during evidence on the 2009-10 Scottish Government Draft Budget the Committee was informed by the Cabinet Secretary for Rural Affairs and Environment that £40m had been allocated in the local government settlement for each year of the spending review period and that this covered all schemes that were currently going ahead or were planned to start during the current spending review period\textsuperscript{109}.

253. In evidence on the Bill, the Minister responded to the Committee’s concerns on the lack of a transparency in the allocation of funding for flood risk management stating that—

“The money that is being spent is clearly going into recognised schemes that we all know are required...I would be happy if a system were developed that shows what is being spent and what the plans expect to be required, in the context of a series of variable estimates.”

254. The Minister’s remarks would appear to tie in with the Committee’s proposal above for the publication of a national strategic assessment of priorities alongside estimates of the potential cost of work required to address these priorities (paragraphs 99 to 108). In addition to information on possible costs, and in the interests of transparency, the Committee considers that information on what funding allocations are actually made to local authorities towards the delivery of these national priorities should also be provided by the Scottish Government.

255. The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above (paragraphs 99 to 108) or in its annual reports laid before Parliament.

Allocation of funding to land managers
256. As mentioned above, section 55 enables local authorities to acquire land by agreement. It also enables local authorities to acquire land by compulsory purchase should that land be required as part of a flood protection scheme. Such compulsory purchase requires authorisation from the Scottish Ministers. The number of farms and other land based businesses affected by proposals within flood risk management plans will only begin to become apparent as these plans are developed.

257. The Committee considers that where a piece of land is required to be part of a flood protection scheme, the powers of compulsory purchase should only be used as a last resort. Wherever possible, land should be retained by its owner and compensation provided to ensure any business requiring that land or attached land remains viable.

258. SE Link’s written submission also highlighted the potential for incentives, and other forms of funding support for land managers, to encourage the adoption of land management techniques in keeping with sustainable flood risk management.

259. The Committee received evidence in support of this idea that suggested funding streams available through the Scotland Rural Development Programme, including agri-environment and forestry schemes, could be used for this purpose. For example, Gordon Watson from Loch Lomond and Trossachs National Park Authority suggested that—

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111 Scottish Environment Link. *Submission to Rural Affairs and Environment Committee, 11 November 2008*. 

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“…other funding streams could be brought to bear on natural flood management. For example, the Scottish rural development programme and rural development contracts could be used to provide support to land managers who undertake works on their land. There could be a process of offering incentives in addition to funding significant schemes that councils will be involved in. The national parks could play a role in supporting the heightened emphasis on natural flood management.\(^{112}\)

260. Hugh Clayden, Forestry Commission Scotland, added in relation to forestry—

“In the UK—and Scotland is no different—over the years we have fought to get away from the forest law aspect of compulsion and used persuasion and incentives. There is no reason why that should not continue. If there is a need for particular flood regulation duties, we already have the instrument of the Scottish rural development programme to fund them.\(^{113}\)”

261. The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme.

Subordinate legislation

262. As the Bill contains provision for subordinate legislation, the Subordinate Legislation Committee considered and reported on the Bill, and its report is reproduced at Annexe A.

263. As detailed above, the Committee supports the Subordinate Legislation Committee’s recommendation in relation to the powers conferred on Scottish Ministers under section 2(1) (paragraphs 41 to 44) and thanks the Committee for bringing this issue to this Committee’s attention.

264. The Committee also acknowledges the other recommendations made by the Subordinate Legislation Committee. The Committee notes the agreement from the Minister to bring forward amendments at Stage 2 as a direct result of these recommendations.

Policy Memorandum

265. Under Rule 9.6.3 of Standing Orders, the Committee is required to consider and report on the Policy Memorandum. The Policy Memorandum sets out the Bill’s policy objectives, what alternative approaches were considered, the consultation undertaken and an assessment of the effects of the Bill on equal opportunities,

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human rights, island communities, local government, sustainable development and other relevant matters.

266. Notwithstanding the concerns outlined above in relation to whether some of the specific provisions in the Bill bring into effect the aims expressed within the Policy Memorandum, the Committee is content that the Policy Memorandum is clear and reflects the intentions of this legislation.

Equal opportunities

267. In the Policy Memorandum, the Scottish Government sets out the impact of the Bill on equal opportunities. The Committee is content that such matters have been accounted for and that no major issues arise.

CONCLUSIONS ON THE GENERAL PRINCIPLES OF THE BILL

268. The Committee is all too aware of the current flood risk faced in parts of Scotland and the anticipated increase in the probability of flooding. Seeking to establish a co-ordinated approach to the adoption of sustainable flood risk management is clearly very desirable. The Committee supports the general approach taken in the Bill to achieve this aim.

269. However, the Committee considers that it is essential to give further consideration to the recommendations above which seek to strengthen the provisions of the Bill. The Committee also considers that its concerns on the adequacy of funding and staffing arrangements merit further consideration prior to the Bill being approved by the Parliament as a whole at Stage 3.

270. On this basis, the Committee recommends that the general principles of the Bill be agreed.

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114 Policy Memorandum, paragraphs 174-5.
Thank you for your letter of 21 October in which you requested details of amendments that the Scottish Government plans to introduce at stage 2 for the above Bill. Please see the attached document which provides these details and which, I hope, will assist members with their scrutiny.

As you will be aware, we have also received a report from the Subordinate Legislation Committee in relation to the delegated powers memorandum that accompanied the Bill. We will be considering the recommendations on minor amendments to the Bill in due course.

Finally, I have noted the provisional evidence session date of the morning of 17 December.

MICHAEL RUSSEL MSP
MINISTER FOR ENVIRONMENT

SUMMARY OF PROPOSED STAGE 2 AMENDMENTS TO FLOOD RISK MANAGEMENT (SCOTLAND) BILL

Reservoir safety

Inundation maps and on-site reservoir plans

The Flooding Bill does not currently include any specific reference to reservoir inundation maps or reservoirs plans. However, the Bill does already include the necessary provisions that would allow SEPA to undertake inundation mapping for very high risk reservoirs as part of their work under the EC Floods Directive (which includes preliminary flood risk assessments, assessments of significant flood risk and flood mapping).

The intention is to introduce an enabling power that would allow Scottish Ministers to make regulations requiring undertakers of ‘high risk’ reservoirs to produce ‘reservoir plans’, the regulations would also specify the matters to be included in the flood plan, and any criminal or civil penalties in relation to the plans. SEPA would act as the enforcement authority for this work.

Reservoir plans - what they are and why they are important

A reservoir on-site flood plan is intended to ensure that reservoir undertakers have arrangements in place to (i) understand the implications of an uncontrolled release of water and (ii) on-site arrangements to contain or limit the potential effects of an incident, which could including works to delay failure or minimise damage. The Water Act 2003 in England and Wales includes provision for operators to produce reservoir plans. The Environment Agency have produced guidance on the preparation of reservoir plans.
A reservoir plan provides a vital link between the dam undertaker and the emergency response services. This plan should not be confused with an off-site plan or other form of emergency response plan, which would fall under the auspices of the Civil Contingencies Act (2004) and would be the responsibility of the Category 1 responders.

It is envisaged that a reservoir on-site flood plan would include:-

- details of the courses of action an undertaker would take to try to contain and limit the effects of less serious (or non-emergency) incidents, based on a range of scenarios that could result in any escapes of water (i.e. overtopping, escapes involving more than the intended amount of water being released from the reservoir via normal channels, including complete failure / collapse of dams);

- a communications strategy to engage the relevant external organisations at the appropriate times.

The scope and details of these plans would vary depending on the level of flood risk associated with a particular reservoir. This would ensure that the effort required by operators would be proportionate to the risk associated with a particular reservoir.

For some higher risk reservoirs, the expectation would also be for operators to prepare inundation maps to support the development of reservoir plans.

How inundation mapping and reservoir plans are connected

Under the existing Bill provisions, we would expect SEPA to produce, high level flood maps (risk and hazard) for those reservoirs that SEPA identify as posing a significant flood risk, i.e. areas identified as potentially vulnerable to flooding. These would show where water would be likely to escape to and its potential impact. However, these maps would not be sufficiently detailed to show how different mitigation measures could alter the release of water and its impact.

Under the proposed amendments, the regulations would require reservoir plans to be prepared by reservoir operators to identify action to be taken to minimise the impacts of an uncontrolled release of water. Inundation maps may also need to be prepared by operators of high risk reservoirs. These maps would help in the preparation of reservoir plans to minimise the impact of an uncontrolled release of water. Operators of some large reservoirs in Scotland have already prepared detailed inundation maps. The regulations would specify what the maps should demonstrate, but ideally they should include the impacts of action taken to manage various flood scenarios and show where water is likely to go following steps taken by the undertaker to minimise flood risk, e.g. drawing down water, or using controlled flooding to minimise impacts.
Surface water management

A key policy objective for the Bill is the creation of an integrated and coordinated approach to dealing with all sources of flooding. This is particularly the case in urban areas where there is currently a complex interaction between different components of the drainage system and fragmented responsibilities. The existing arrangements can lead to piecemeal investment and a lack of coordinated actions. Future impacts of climate change, which include increased frequency of high intensity rainfall, could further increase the risks of pluvial and sewerage flooding caused by surface water runoff.

Responsibilities for managing surface water in urban areas are principally split between local authorities and Scottish Water. Scottish Ministers (through Transport Scotland) also have responsibilities for drainage of surface water from major trunk roads, while SEPA has responsibility for environmental protection. These arrangements for managing surface water can create several inefficiencies in the system which can act as barriers to a more sustainable approach.

Based on past experiences and case studies, the keys to developing an integrated approach to managing surface water are:

1. availability of reliable data on which to base decisions;
2. a basis for collaborative working and production plans to manage risk;
3. a clear leader in the process, complemented by clear responsibilities for those involved.

We believe that the third point is addressed by the Bill. Under the Bill provisions, SEPA will be responsible for district flood risk management plans while local authorities will be responsible for local flood risk management plans. Local flood risk management plans will provide a basis for local authorities, SEPA, Scottish Water and others to coordinate their efforts to manage surface water flooding. Local authorities and Scottish Water will be ultimately responsible for the majority of measures to tackle surface water flooding. As the lead authority for local flood risk management plans, local authorities would be expected to lead on surface water flooding issues. To support collaborative working, the Bill sets out clear consultation exercises, provision for advisory groups and a general duty to cooperate and coordinate the exercise of flood risk management functions.

We are considering some minor amendments to the Bill to (i) ensure the provision of high quality information on flooding and drainage assets, (ii) clarify who will be responsible for assessing sewerage flooding and (iii) strengthen the basis for collaborative working.

(i) Provision of information on flooding and drainage assets

Reliable information on the location, condition and ownership of existing flood risk management measures, including information on drainage assets and watercourses, would:

- assist in the identification of measures to manage flood risk;
- assist in the preparation of maintenance schedules and coordination of maintenance efforts; and
- Identify any ownership/maintenance responsibilities that need to be addressed.

Different organisations already hold some of this information but it is held in different forms and has never been collated. We are considering amendments that would impose an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas, including information on the condition and ownership of certain drainage structures. The information would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968, as amended by the Water Industry Scotland Act 2002, which includes a map of sewers drains and sewerage treatment works for which they have responsibilities.

The information would need to be made available, in map form, to SEPA and other responsible authorities. We feel it would also be sensible for this new duty to work alongside the current duty on local authorities to assess watercourses to ascertain the risk of flooding, which is in Section 56 of the Bill. This would enable the development of a more rounded picture of the overall flood risk in a local authority area.

(ii) Assessing sewerage flooding

Under the current Bill provisions, SEPA are responsible for producing maps to comply with the Directive. To support production of these maps, the expectation is that SEPA will need to rely on information provided by other organisations, and in particular information on sewerage flooding from Scottish Water. SEPA have powers under the Bill to request information from other organisations to support their flood risk assessment, mapping and planning work.

Assessing sewerage flooding will be an important but challenging task. Scottish Water are recognised as being best placed to undertake this work and already prepare basic assessments of sewerage flooding as part of their work to remove properties from the ‘at risk’ register.

We are considering requiring Scottish Water, to, where practicable, prepare assessments of where their sewerage network might discharge sewage contaminated floodwater during a pluvial event, and to share this information with SEPA and other responsible authorities. This information will need to be incorporated in maps prepared by SEPA to comply with the Directive and so will need to be in a form that will ensure that the outputs from this assessment could be integrated with other assessments and maps prepared by SEPA. We would expect that further guidance or Ministerial Direction would be required to ensure that local authorities, SEPA and Scottish Water take a broadly similar technical approach to assessing flood risk.
(iii) Coordination of efforts to assess/manage surface water (pluvial flooding)

The Bill requires Ministers, SEPA, and responsible authorities to co-operate with each other so as to coordinate the exercise of their respective functions (section 1(2)(c)). Cooperation will be essential when assessing and managing pluvial flooding, including the contribution of sewerage flooding.

The duty to co-operate would apply to assessing and managing pluvial and sewerage flooding. However, to ensure that this work is fully coordinated, we are considering strengthening the cooperation and coordination provisions to ensure that an integrated approach to assessing and managing pluvial flooding and sewerage flooding is delivered.

Preparation of other types of flood maps

Although SEPA will be responsible for meeting the mapping requirements of the Directive, local authorities will often need to undertake additional, more detailed and targeted mapping exercises to allow them to identify the right combination of local measures to address flood risk.

We are considering amendments that may help to clarify the roles and linkage we envisage, for example the preparation by local authorities of supplementary maps to support the identification of measures, that where these maps are intended to help to tackle pluvial flooding, their preparation should be coordinated with work undertaken by Scottish Water and that SEPA should also consider any supplementary maps prepared by local authorities when reviewing the maps it has prepared to comply with the Directive.

Flood probabilities and mapping

Section 18(8) of the Bill allows the Scottish Ministers to specify what constitutes low probability, medium probability and high probability. “Medium probability” must involve a return period of 100 years or more. This is based on the Directive, which defines medium probability floods by reference to return periods.

Return periods can sometimes give the false impression that only one “50 year flood” will occur within each 50 year period. They can also be confusing when referring to low and high probabilities. For example, although 500 is a much higher number than 50, a flood with a 50 year return period is one with a fairly high probability whereas a flood with a 500 year return period is one with a much lower probability.

It is becoming more common to refer to an annual probability of recurrence, expressed as a percentage, rather than to return periods. This is thought to be easier to explain to the public and less likely to cause confusion than references to return periods.

We intend to amend the definition of “medium probability” in subsection 18(8) to provide that the Scottish Ministers can specify as “medium probability”, floods with an annual probability of recurrence of not more than 1%.
Other amendments under consideration

Section 1 (General duty to reduce overall flood risk). The Bill establishes a framework in which key public bodies and stakeholders can work together to prepare plans to reduce overall flood risk. The intention is for flood management measures identified in plans to be followed through to implementation. To ensure that plans form the basis for on-the-ground action, the Bill places a general duty on Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to act with a view to reducing overall flood risk.

The Bill also requires local authorities to prepare an implementation strategy. The implementation strategy will serve two purposes: first, it will ensure that the objectives and measures set out in the district and local plans are realistic and supported by a clear pathway to implementation; and second, it will provide a clear requirement for all bodies involved in delivering flood risk management to come together to negotiate and coordinate their efforts to deliver the measures set out in flood risk management plans.

The Bill does not require that measures are implemented. If there was a duty on local authorities to deliver the measures in a flood risk management plan, this could be seen as superseding all those other areas where local authorities have to provide a service, but where no similar duty to implement exists.

We are, however, considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans. More specifically, we are considering a general provision that would complement the existing provision within the Bill that ensures that the exercise of local authority powers to undertake measures to manage flood risk is limited to actions that will contribute to the delivery of objectives set out in the relevant flood risk management plan. This limitation would not apply in the case of emergency works or to measures that would not hinder delivery of objectives set out in the relevant flood risk management plan.

Section 13 (local plan districts). The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding. The Bill currently requires SEPA to identify local plan districts for the purpose of preparing local flood risk management plans. In identifying these areas, SEPA must have regard to the flood risk assessment (section 9) which includes maps of river basins and sub-basins.

Although the clear intention is that catchments (sub-basins) would form the basis of the local plan districts identified by SEPA, we are considering an amendment that would clarify the basis on which SEPA are to identify local plan districts.

Section 62 (Advice to planning authorities). At present, section 62 does not limit the scenarios under which SEPA should be expected to provide advice to planning authorities on flood risk. To ensure that SEPA’s role is clear, we are considering refining the duty to it make clear that advice only has to be provided in relation to development planning. This would limit SEPA’s role to providing advice on individual development proposals and development plans.
Appendix 2

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

FLOODING AND FLOOD MANAGEMENT INQUIRY

SUMMARY OF RECOMMENDATIONS

Recommendation 1: The Committee strongly recommends that the Scottish Government fully consider the recommendations contained within this report before introducing its bill on flooding and flood management. [Paragraph 14 of the Inquiry Report]

Recommendation 2: The Committee recommends that the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding. [Paragraph 57]

Recommendation 3: The Committee recommends that the Scottish Government conduct an assessment of the resilience of national infrastructure to potential storm surge events, especially given that storm surges and related coastal flooding are likely to increase in the future. [Paragraph 61]

Recommendation 4: The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs, as well as the economic costs, of flooding can be included in future assessments of the value of proposed flood management measures. [Paragraph 74]

Recommendation 5: The Committee recommends that the Scottish Government establish how it can best contribute to building capacity in hydrological expertise. [Paragraph 80]

Recommendation 6: The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management. [Paragraph 100]

Recommendation 7: The Committee recommends that SEPA should be given the role of competent authority and take the lead at a national level in flood risk management, with suitable further safeguards to its independence. [Paragraph 113]

Recommendation 8: The Committee recommends that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans. [Paragraph 119]

Recommendation 9: The Committee recommends that the Scottish Government place significantly greater emphasis on pluvial flood management in setting future objectives for Scottish Water. [Paragraph 136]

Recommendation 10: The Committee recommends that the Scottish Government set out a national, strategic “road-map” for investment in flood management that
looks forward over a period of at least 25 years, with provision for updating every parliamentary session. [Paragraph 139]

Recommendation 11: The Committee recommends that the Scottish Government publishes clear criteria for prioritising the funding for future flood management. [Paragraph 150]

Recommendation 12: The Committee recommends that needs-based funding should be provided to local authorities in order that they can contribute to catchment flood management plans and believes the funding method adopted should embrace the three distinct levels of funding set out at paragraph 145. [Paragraph 151]

Recommendation 13: The Committee recommends that the Scottish Government consider where there is scope for different approval processes to be established for different scales of flood management measure; that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions. [Paragraph 162]

Recommendation 14: The Committee recommends that the Scottish Government establishes further pilot studies to assess the contribution that natural flood management measures can make at a catchment scale. [Paragraph 175]

Recommendation 15: The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale. [Paragraph 177]

Recommendation 16: The Committee recommends that local authorities ensure that, when planning permission is granted for new developments incorporating sustainable urban drainage systems, and where Scottish Water is not adopting the system, an appropriate maintenance regime is a requirement of the planning permission. [Paragraph 184]

Recommendation 17: The Committee recommends that, given the importance of land-use management, the Scottish Government should ensure it has the power to require changes to land use for flood management purposes. Such a power would have to be accompanied by a provision for landowners to be compensated. [Paragraph 199]

Recommendation 18: The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas at risk of flooding. [Paragraph 209]
Recommendation 19: The Committee recommends that the Scottish Government ensure that the suggestion of enhanced reinstatement following flooding is communicated to representatives of the insurance industry and should seek to persuade the insurance industry that it is the best way to minimise the cost implications of further flooding incidents. [Paragraph 220]

Recommendation 20: The Committee recommends that the Scottish Government develops a flood warning strategy and, in doing so, addresses SEPA’s other eight recommendations regarding flood warning. [Paragraph 233]

Recommendation 21: The Committee recommends that the Scottish Government take steps, including by making representations to the UK Government, to ensure that high-resolution radar coverage is established throughout Scotland to ensure that flood warning is as effective as possible. [Paragraph 238]

Recommendation 22: The Committee recommends that the Scottish Government ensures that SEPA has the necessary funding to enable it to collaborate with the Meteorological Office to provide an effective flood warning system for all types of flooding. [Paragraph 240]

Recommendation 23: The Committee recommends that the Scottish Government investigates the possibility of individual property vendors providing information on previous flooding incidents associated with a particular property to potential purchasers and requiring developers to provide flood risk assessments for new developments to potential purchasers. [Paragraph 243]

Recommendation 24: The Committee recommends that the Scottish Government takes steps, together with SEPA, local authorities, the emergency services and the insurance industry, to considers how it can educate members of the public at risk of flooding of how they can best protect themselves and their property. [Paragraph 248]

Recommendation 25: The Committee recommends that the fire and rescue service be tasked with coordinating all flood-related rescue activities. [Paragraph 251]

Recommendation 26: The Committee recommends that the Scottish Government explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency. [Paragraph 254]
ANNEXE A: REPORT FROM SUBORDINATE LEGISLATION COMMITTEE

FLOOD RISK MANAGEMENT (SCOTLAND) BILL

The Committee reports to the lead committee as follows—

Introduction

1. At its meetings on 4 November\(^1\) and 2 December 2008\(^2\) the Subordinate Legislation Committee considered the delegated powers provisions in the Flood Risk Management (Scotland) Bill at Stage 1. The Committee submits this report to the Rural Affairs and Environment Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (DPM).\(^3\)

3. The Committee’s correspondence with the Scottish Government is reproduced in the Appendix.

Delegated Powers Provisions

4. This Bill relates to flooding but it is limited to matters occurring before an actual flood and does not (except incidentally) deal with the response to flooding. There are many provisions in the Bill which delegate powers to make subordinate legislation.

5. The Committee considered each of the delegated powers provisions in the Bill.

6. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following sections: 8(1)(b); 9(4)(a)(iii); 11; 15; 18(1)(b)(iv); 18(8)(a); 19(2)(f); 22; 23(5)(b); 26; 27; 28; 30; 31; 33; 35(1); 48(2); 52(2)(b); 53(7); 54; 65; 86(1); Schedule 2, paragraph 1(1)(f)(vii) and Schedule 2, paragraph 14(1).

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Power to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

7. Section 1 of the Bill imposes a general duty upon the Scottish Ministers, the Scottish Environment Protection Agency (SEPA) and responsible authorities (which are defined in section 5 as local authorities, Scottish Water and any other public body or office-holder so designated by the Scottish Ministers by order). The general duty requires them to exercise their flood related functions with a view to

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1 Official Report 4 November
2 Official Report 2 December 2008
3 Delegated Powers Memorandum
reducing overall flood risk and, in particular, to exercise their functions under Part 3 of the Bill so as to secure compliance with the Flooding Directive. This general duty appears to be the basic mechanism for ensuring that these public bodies operate so as to reduce flood risk and deliver the requirements of the Flooding Directive. It seems to be a matter of general principle underpinning the Bill.

8. This general duty only attaches to flood risk related functions of the relevant bodies. Subsection (3) defines “flood related functions” for these bodies. It identifies the specific functions under the Bill which are flood risk related functions and confers power on the Scottish Ministers to specify any further powers (under the Bill or any other enactment) as flood risk related functions.

9. The Committee asked the Government to explain why this power to specify flood risk related functions is not itself subject to the general duty in section 1 of the Bill. To set this question in context, the functions of the Scottish Ministers under Parts 2 to 5 of the Bill, including the power to designate public bodies as responsible authorities are flood risk related functions. However, the power to specify additional flood risk related functions (either of the Scottish Ministers or responsible authorities) is set out in Part 1 of the Bill and so is not currently a flood risk related function or subject to the overarching duty in section 1. It appeared to the Committee that specification of responsible authorities and their flood risk related functions and the issuing of mandatory directions and guidance in relation to their exercise of those functions are interconnected. It was not clear whether it was a drafting oversight to make designation of responsible authorities subject to the duty but not their functions or powers of direction or to issue guidance.

10. The Scottish Government responded that this function is not subject to the general duty in section 1 to act with a view to reducing overall flood risk as it would have “limited practical impact” upon the function. The Government also stated that applying the general duty to this function would create scope for confusion as to whether the duty had been complied with in the exercise of the function which is not outweighed by the benefits of applying the general duty to the function. The Government also comments that it may be circular to apply the general duty in section 1 to this function.

11. The Scottish Government did not explain why it considers that applying the general duty to act with a view to reducing overall flood risk would be of “limited practical effect”, particularly in the circumstances where the power to designate other bodies as responsible authorities is already subject to the general duty. It was the Committee’s view that there must be a practical effect in specifying that the delegated power in section 5 to specify other public bodies and office-holders as responsible authorities is subject to the section 1 general duty to reduce overall flood risk. The restriction on the use of this delegated power by the Scottish Ministers (through the application of the general duty) offers comfort to the Parliament (and potentially affected bodies) that the power will be exercised appropriately and that only bodies with the potential to contribute to a reduction in the overall flood risk will be designated as responsible authorities. On this basis, it

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is not clear why there would be limited practical effect in providing that the delegated power to specify additional functions of responsible authorities is subject to the general duty to act with a view to reducing overall flood risk. If it is appropriate that the designation of responsible bodies should be subject to the general duty, it is not clear to the Committee why the specification of responsible authorities’ functions as flood risk related functions should not also be subject to the general duty.

12. Furthermore, the Committee did not consider that the Government’s point that the application of the general duty to this delegated power relating to the specification of flood risk related functions introduces confusion as to whether the duty had been complied with has merit. Were the function to be subject to the general duty then Ministers would discharge that duty through a reasoned explanation for their actions based on the impact (or potential impact) on overall flood risk and delivery of the requirements of the Flooding Directive.

13. The Committee accepted that there would be a certain circularity in applying the general duty to the Scottish Ministers’ exercise of the power to specify their own flood risk related functions where the effect of specifying additional functions as flood related functions means that the general duty applies to the exercise of those functions. However, the Committee did not consider that this potential circularity applies to the application of the section 1 general duty to the exercise of the Scottish Ministers’ power to specify additional functions of SEPA or responsible authorities as flood risk related functions.

14. The Committee reports this power to the lead committee on the basis that it may wish to consider whether the Scottish Ministers’ powers under section 1(3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) (to specify additional functions of SEPA and the responsible authorities as flood risk related functions) should be specified as “flood risk related functions” of the Scottish Ministers in section 1(3)(a)(i). The result would be that, in exercising these powers, the Scottish Ministers must act in accordance with the general duty in section 1 to reduce overall flood risk and secure compliance with the Flooding Directive.

Section 2(1) — Directions and guidance

15. Section 2(1) provides that the Scottish Ministers may give directions (whether general or specific) and any guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions. Subsection (2) provides that SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

16. The Committee asked the Government to explain why this function (of giving directions and guidance) is not subject to the general duty in section 1. For the reasons set out in relation to section 1(3) above, the Committee considered that it would be appropriate for the power to issue directions or guidance, which is binding on the responsible authorities and SEPA in relation to their flood risk related functions, to be subject itself to the requirements of the general duty. This
would provide a limit on the use of this power which is consistent with the general principles of the Bill.

17. The Minister responded that he is happy to consider amending the Bill to provide that the general duty in section 1 applies to the issue of such directions and guidance by the Scottish Ministers.

18. The Committee also asked the Government to consider amending the Bill to provide that this direction-making power is exercisable only after consulting with SEPA and/or any responsible authority about the proposed directions. The Minister again agreed to consider amending this power to provide for consultation with SEPA and/or responsible authorities about the proposed directions.

19. The Committee therefore recommends that the Scottish Government give further consideration to amending the Bill to—

(a) apply the general duty to reduce overall flood risk (in section 1) to the exercise of this power; and

(b) provide that the direction-making is exercisable only after consulting with SEPA and/or any responsible authority about proposed directions in light of their impact upon the exercise of these bodies' functions; and reports to the lead committee accordingly.

Section 5(c) – Power to designate “responsible authorities”

20. Section 5(c) allows the Scottish Ministers to designate public bodies and office-holders as a “responsible authority” by order. Section 1 of the Bill imposes a duty upon responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, to exercise their functions under Part 3 of the Bill so as to secure compliance with the Flooding Directive. Responsible authorities are also consultees of SEPA and of local authorities in relation to the preparation of flood risk management plans and local flood risk management plans respectively. In addition, the Bill imposes duties upon responsible authorities to (a) provide information, documents and assistance to SEPA in connection with SEPA’s preparation and review of flood risk assessments, flood hazard and flood risk maps and flood risk management plans and (b) provide information, documents and assistance to local authorities in connection with their preparation of local flood risk management plans.

21. Local authorities and Scottish Water are already specified as responsible authorities on the face of the Bill (section 5). The DPM explains that, whilst it might be appropriate in the future to designate additional bodies or office-holders as responsible authorities under the Bill, this could only be done with “extensive consultation” with those organisations that might be affected by such designation.

22. The Committee considered the delegation of this power to be acceptable in principle, acknowledging that it would be difficult to specify each of the responsible authorities on the face of the Bill and that these may change over time. The Committee also considered that negative resolution procedure provides the
appropriate level of Parliamentary scrutiny in the circumstances where the remit of responsible authorities is largely defined in the Bill and the Scottish Ministers are obliged to exercise this delegated power in accordance with their section 1 general duty.

23. However, in light of the Government’s apparent intention to conduct “extensive consultation” with any body proposed as a responsible authority, the Committee asked the Government to consider amending the Bill so that this power is subject to an obligation to consult with affected organisations before its exercise. The Minister responded that he is willing to consider amending the Bill to provide that this power is subject to an obligation to consult appropriately before its exercise.

24. The Committee recommends that the Scottish Government give further consideration to amending the Bill to provide that this power is subject to an obligation to consult appropriately before its exercise, particularly in light of its apparent intention to conduct “extensive consultation” with any body which it proposes to specify as a responsible authority. The Committee reports this to the lead committee accordingly.

Section 9(2) – SEPA to prepare flood risk assessments

25. Section 9(2) provides that a flood risk assessment must be prepared by SEPA by 22 December 2011 (which is the deadline imposed by Article 4(4) of the Flooding Directive) or an earlier date as directed by the Scottish Ministers.

26. This direction appears to the Committee to be of an administrative nature and there appears to be no need for the direction-making power to be incorporated in any form of delegated legislation.

27. However, this power enables the Scottish Ministers to direct that SEPA must prepare a flood risk assessment earlier than 22 December 2011, which is the deadline imposed by the Flooding Directive. In light of the better regulation agenda, which is critical of implementation which goes beyond the minimum necessary to comply with the requirements of Community legislation and the lack of explanation by the Government as to the potential use of this direction-making power, the Committee asked the Government to explain the circumstances in which it envisages using this delegated power to direct SEPA to prepare a flood risk management plan before the deadline given in the Flooding Directive (i.e. 22 December 2011). The Committee also asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise.

28. The Scottish Government explained that this direction-making power would only have been exercised if it was practicable for SEPA to prepare flood risk assessments early and the power was included in case early availability of flood risk assessment would facilitate the identification of potentially vulnerable areas under section 13 of the Bill or the preparation of other information under the Water Environment and Water Services (Scotland) Act 2003. However, in his response, the Minister indicated that, upon further consideration of this section, he is considering whether to remove the flexibility for Ministers to direct SEPA to
prepare flood risk assessments prior to 22 December 2011 on the basis that it is unlikely to be practicable for this work to be delivered before 2011.

29. **In light of the Minister’s response, the Committee agreed to reconsider this aspect of the Bill after Stage 2 to assess whether this direction-making power has been removed from the Bill. It therefore reports this to the lead committee accordingly.**

**Section 10(1)(a) – Flood risk assessments: review**

30. Section 10(1)(a) provides that SEPA must review and, where appropriate, update each flood risk assessment prepared under section 9 of the Bill by 22 December 2018 (which is the deadline imposed by Article 14(1) of the Flooding Directive) or an earlier date as directed by the Scottish Ministers.

31. As with section 9(2), this direction-making power appears to be of an administrative nature and there appears to be no need for this power to be incorporated in any form of delegated legislation.

32. The Committee asked the Government to explain the circumstances in which it envisages using this delegated power to direct SEPA to review (and update) each flood risk assessment before the deadline given in the Flooding Directive (22 December 2018). In addition, in light of the potential impact of the imposition of an earlier deadline upon SEPA and its organisational planning, the Committee asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise.

33. The Scottish Government explained that this direction-making power is required as the flood risk management planning process requires preparation of various pieces of information by dates specified by the Community and the preparation of information under this Bill will need to be co-ordinated with information prepared under the Water Environment and Water Services (Scotland) Act 2003. It also explained that the information provided under flood risk assessment reviews may inform spending decisions by other organisations.

34. The Government also explained that a requirement to formally consult with SEPA before exercising this direction-making power may introduce delays into a tight timetable of deadlines. The Minister confirmed that he is confident that informal discussion will take place with SEPA about the direction of dates in any event.

35. **In light of the Government’s explanation that this direction-making power will provide Ministers with the flexibility to direct SEPA to prepare a flood risk assessment review before 22 December 2018 where it is apparent that this information would assist in the co-ordination of flood risk management with other planning and investment cycles, the Committee considers this direction-making power acceptable in principle.**

36. The Committee also draws the Scottish Government’s response that a formal consultation requirement would impinge upon an already tight
timetable of deadlines to the attention of the lead committee. The lead committee may wish to consider whether this power to direct that a review is to be conducted earlier than required under the Flooding Directive should be subject to a consultation requirement.

**Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts**

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

**Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features**

37. Section 13(1) provides that SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk exists or is likely to occur. Subsection (2) provides that this document must be submitted to the Scottish Ministers by such date as directed by the Scottish Ministers and after SEPA has carried out any consultation required under regulations made under section 15 relating to the preparation of the document.

38. Section 14(1) provides that, after carrying out such consultation as may be required by regulations under section 15, SEPA must—

(a) review and (where appropriate) update the document approved under section 13 (which identifies potentially vulnerable areas and local plan districts) by such date as the Scottish Ministers may direct; and

(b) review and (where appropriate) update the latest review document approved under section 14 by the end of the period of 6 years and by the end of each subsequent period of 6 years (or, in each case, by such lesser period as directed by the Scottish Ministers).

39. Section 16(1) provides that SEPA must, by such date as the Scottish Ministers direct, assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district. Subsection (2) provides that SEPA must (a) by such date as the Scottish Ministers direct, review and (where appropriate) update its assessment under subsection (1); and (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) review and (where appropriate) update the latest assessment reviewed under this subsection.

40. The Committee considered that these direction-making powers appear to be of an administrative nature and there appears to be no need for the direction-making powers to be incorporated in any form of delegated legislation.

41. As the exercise of these direction-making powers will oblige SEPA to carry out various acts by a certain date and may have resource implications for the
organisation, the Committee asked the Government to consider making these powers subject to a requirement to consult with SEPA before its exercise. The Minister responded that he does not consider it appropriate for these direction-making powers to be subject to a requirement to consult with SEPA before their exercise as this may introduce delays into a tight timetable of deadlines. He also indicated that he is confident that informal discussion between the Government and SEPA on the direction of dates will take place in any event.

42. The Committee draws to the attention of the lead committee the Scottish Government’s response that it considers that a formal consultation requirement would impinge upon an already tight timetable of deadlines. The lead committee may wish to give further consideration to whether these direction-making powers should be subject to a consultation requirement with SEPA.

Section 18(4), (5) and (6) – Flood hazard maps

43. Section 17 provides that SEPA must prepare flood hazard maps by 22 December 2013, for the potentially vulnerable areas in each flood risk management district, at the appropriate scale, and so as to secure that the maps for the district cover all such vulnerable areas.

44. Section 18(1) provides that the following information must be shown in flood hazard maps:

(a) the geographical areas which could be flooded by floods of low probability (or which would be an extreme event); floods with a medium probability; and floods with a high probability; and

(b) the following elements for those types of flood: the flood extent; water depths or water level (whichever is appropriate); where appropriate, the flow velocity or the relevant water flow; and such other elements as the Scottish Ministers may specify by regulations.

45. The Bill also sets out derogations (which are permitted by the Flooding Directive, Articles 6(6), 6(7) and 2 respectively) from these requirements providing that information may be omitted from flood hazard maps in relation to the following circumstances: where SEPA considers that the coastal area concerned is adequately protected from such floods (section 18(3)(a) and (4)); high and medium probability flooding from groundwater (section 18(3)(b) and (5)); and floods from sewerage systems (section 18(3)(c) and (6)). However, in each case, this information may be included if SEPA considers it appropriate/practicable to do so and must be included if the Scottish Ministers direct SEPA to do so.

46. The Committee considered that these direction-making powers are administrative in nature as they compel SEPA to include information in flood hazard maps about certain types of flooding in certain areas where it is not otherwise required to do so by the Bill (as the Bill exercises derogations which are available under the Flooding Directive). It was therefore considered that there is no requirement for these powers to take the form of delegated legislation.
47. However, it was noted that the exercise of these direction-making powers impose additional obligations upon SEPA and could have resource implications for the organisation. The Committee therefore asked the Scottish Government to consider making these powers subject to a requirement to consult with SEPA before its exercise. In his response, the Minister indicated that he is happy to consider making these powers subject to a requirement to consult with SEPA before their exercise as the Government acknowledges that the exercise of these powers involve directing SEPA to undertake assessments in a particular manner and that prior consultation with SEPA may help ensure that it is practicable for SEPA to prepare this information.

48. The Committee recommends that the Scottish Government give further consideration to amending the Bill to introduce a requirement to consult with SEPA, as the exercise of these powers will impose additional obligations upon SEPA which may have resource implications for the organisation. It reports this to the lead committee accordingly.

Section 23(2) – SEPA to prepare flood risk management plans

49. Section 23(2) provides that a flood risk management plan must be submitted by SEPA to the Scottish Ministers by such date as the Scottish Ministers direct. This direction-making power is limited by subsection (3) which provides: “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.” (We note that 22 December 2015 is the deadline for completion and publication of flood risk management plans imposed upon Member States by Article 7(5) of the Flooding Directive).

50. The Committee considered that this direction-making power, which allows the Scottish Ministers to impose a deadline upon SEPA for the submission of a flood risk management plan, is of an administrative and there is therefore no requirement for the power to be incorporated in any form of delegated legislation.

51. As the exercise of this direction-making power will oblige SEPA to prepare a flood risk management plan before the deadline set out on the face of the Bill and may have resource implications for the organisation, the Committee asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise. The Minister responded that he does not consider it to be appropriate for this direction-making power to be subject to a requirement to consult with SEPA before its exercise as this may introduce delays into a tight timetable of deadlines. The Minister also indicated that he is confident that informal discussion between the Government and SEPA on the direction of dates will take place in any event.

52. The Committee draws to the attention of the lead committee the Scottish Government’s response that it considers that a formal consultation requirement would impinge upon an already tight timetable of deadlines. The lead committee may wish to give further consideration to whether this power
to direction-making power should be subject to a consultation requirement with SEPA.

Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

53. Section 29(1) imposes a duty upon the relevant local authority to prepare a local flood risk management plan for each local plan district. (A local plan district is the geographical area(s) around potentially vulnerable areas identified by SEPA for the purpose of preparing local flood risk management plans.)

54. Section 29(6) confers a delegated power on the Scottish Ministers to, by regulations, specify additional matters which must be included in local flood risk management plans.

55. It was not clear from the DPM how the Scottish Ministers intend to use this delegated power to make regulations specifying additional matters to be included in local flood risk management plans. The DPM merely provides: “The intention is to use regulations to specify aspects of the content of local plans. This approach will allow the Scottish Government to put in place a detailed set of provisions that have been developed after thorough consultation.” The Committee sought a more detailed explanation from the Government of the nature of the additional matters which the Scottish Ministers intend to specify by regulations as being required in a local flood risk management plan and detail which person(s) or bodies are to be consulted by the Scottish Ministers in this regard.

56. In its response, the Government states that this power will be used to specify further details on the structure and content of local flood risk management plans with a view to ensuring that they are prepared in a consistent manner across Scotland and that they are co-ordinated with the flood risk management plans prepared by SEPA. The Government provided the following examples of the matters to be specified in these regulations:

- details of steps to be taken to ensure coordination with flood risk management plans prepared by SEPA;
- details on how information should be prepared or presented, particularly where information is supplemental to the information in the flood risk plans prepared by SEPA; and
- dates by which key steps in the plan should be completed.

57. The Government also confirmed that it intends to conduct a full and thorough consultation exercise with local authorities, SEPA, Scottish Water and other responsible authorities and stakeholders before exercising this power to make regulations.

58. The Committee reports that it considers that this power should be subject to a requirement to consult with local authorities and other appropriate bodies including SEPA and Scottish Water.
59. The Committee also reports that it considers that the power conferred by section 29(6) allows Ministers, by regulations, to specify other matters which must be included in a local flood risk management plan. The Committee queried whether it is within the vires of this proposed delegated power to make provisions as to the structure of such plans and the procedural steps that must be taken in the course of their preparation. The Committee draws this matter to the attention of the lead committee, which may wish to consider it further.

Section 44(1) – Power to give effect to Community obligations etc.

60. Section 44(1) confers a power on the Scottish Ministers to, by regulations, modify Part 3 of the Bill for the purpose of giving effect to any Community obligation or exercising any related derogation or other right to make more onerous provisions, which are available in respect of that obligation (referred to as “related rights”). Part 3 of the Bill is mainly concerned with implementing the Flooding Directive but it does go further than the Directive itself.

61. The Committee recognised that this is a very wide power as the only limitation upon the use of the power is that modification Part 3 of the Bill must be required in order comply with a Community obligation or related right. Furthermore, it was proposed that the exercise of this “Henry VIII” power (which permits modification of the provisions of Part 3 of the Bill by way of regulations) should attract only negative procedure. The Committee asked the Government to consider amending the Bill to provide that this power to modify Part 3 is subject to affirmative rather than negative procedure in light of the presumption in favour of affirmative procedure where a provision in a Bill enables primary legislation to be amended or repealed by subordinate legislation.

62. The Minister confirmed in his response that he is happy to amend the Bill to provide that this power should be subject to affirmative procedure.

63. The Committee welcomes the Government’s agreement to amend the Bill to provide that this power will be subject to affirmative rather than negative procedure. The Committee will reconsider this power at Stage 2 to ensure that this amendment has been made to the Bill.

Section 52(4) – Power to amend flood protection scheme making process

64. Schedule 2 to the Bill sets out further provision about the making of flood protection schemes.

65. Section 52(4) confers power on the Scottish Ministers to, by order, modify the procedure for making flood protection schemes which is set out in schedule 2 to the Bill.

66. The Committee considered this delegated power to be acceptable in principle and that it is appropriate for it to be subject to affirmative procedure where it provides for modification of the procedure specified in primary legislation.
67. However, as this power to modify the procedure for making flood protection schemes will impact upon the local authority seeking to make the flood protection scheme and may impact upon consultees if the notice and consultation arrangements are amended, the Committee asked the Government to consider amending the Bill to require consultation with affected parties (especially local authorities) before the exercise of this power. The Minister responded that he would be happy to amend the Bill to require consultation with persons to be specifically affected by the proposed exercise of the power, for example local authorities and agents of local authorities.

68. The Committee welcomes the Scottish Government’s commitment to amend the Bill to provide that the exercise of this power is subject to a requirement to consult with those parties to be specifically affected by the exercise of the power, such as local authorities and agents of local authorities.

69. The Committee also recommends that the Scottish Government, in considering the amendment to this power, give careful consideration to whether other notifiable bodies (such as SEPA, responsible authorities, National Park authorities, statutory undertakers and Scottish Natural Heritage), whose interests may be affected by any proposed change to flood protection scheme making process, should also be consulted before the exercise of this power. The Committee reports to the lead committee accordingly.

Section 77 (inserting a new section 12ZA into the Reservoirs Act 1975) – Power to make provision for reporting incidents relating to reservoir safety

70. Part 7 of the Bill relates to reservoir safety. Section 77 inserts a new section 12ZA (incident reporting) into the Reservoirs Act 1975 ("1975 Act"). New section 12ZA(1) of the 1975 Act confers power on the Scottish Ministers to, by regulations, make provision for the reporting to the enforcement authority (SEPA) of incidents occurring at large raised reservoirs.

71. New section 12ZA(2)(d) of the 1975 Act provides that regulations (making provision for the reporting to SEPA of incidents occurring at large raised reservoirs) made by the Scottish Ministers under subsection (1) may require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by SEPA or the Scottish Ministers. The Committee sought further information from the Government as to the likely content of any such guidance in the circumstances where no information as to the kind of guidance to be issued by SEPA or the Scottish Ministers had been provided.

72. In his response, the Minister indicated that he envisages that the guidance on post-incident reporting will broadly mirror that which the Environment Agency produced in 2007 for England and Wales and will include the following details:

- guidance on who an undertaker (or other person) should speak to if they have concerns about the state of their reservoir and how to report the onset of an incident;
• guidance on who should provide information post-incident and to whom;
• full contact details for the enforcement authority;
• examples of completed post-incident reporting forms to assist those reporting post-incident;
• information on next steps (for example, setting out that the enforcement authority may wish to contact the undertaker to discuss the incident further for knowledge gathering purposes);
• general questions and answers on aspects of reservoir safety legislation (for example, how someone can find a panel engineer).

73. The Committee was content, based upon the Government's response that the proposed guidance on incident reporting will concern practical matters relating to the response to an incident having occurred at a large raised reservoir and that it is appropriate that a power be conferred upon SEPA and the Scottish Ministers to issue such guidance to undertakers, supervising engineers and other specified persons.

74. Separately, the Committee was content that the delegated power conferred by section 12ZA(1) of the 1975 Act (to make regulations making provision for the reporting to SEPA of incidents occurring at large raised reservoirs) is acceptable in principle. The Committee also considered it appropriate that this power is subject to affirmative procedure in the circumstances where it is a broad power to set up a wholly new system of compulsory incident reporting at large raised reservoirs which includes the power to create offences and to amend the 1975 Act.

Section 82(1) – Ancillary provision

75. Section 82(1) confers a power on the Scottish Ministers to make incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, the Bill or any provision of the Bill. Section 82(2) provides that an order under subsection (1) may modify any enactment, instrument or document.

76. Section 83 provides that this power is exercisable by negative resolution unless it contains provisions which add to, replace or omit any part of the text of an Act in which case it is subject to affirmative procedure (per section 67(4)(b)).

77. The Committee recognised that this is a wide power to make orders to “modify any enactment, instrument or document” and, as such, it could be used to amend or repeal primary legislation (including the Bill once enacted). However, the Committee recognised that the power could only do so in order to make incidental, supplemental, consequential, transitional, transitory or savings provisions. In addition, Ministers would also require to be satisfied that the provisions were necessary or expedient to deliver the purpose of, in consequence of or to give full effect to the Bill.

78. However, the Parliamentary procedure applicable to orders made under this power depends upon whether textual or non-textual modification of an Act is
provided for in such an order. The Bill provides that only orders which contain provisions which add to, replace or omit any part of the text of an Act are subject to affirmative procedure: non-textual modification of an Act (or any form of modification of an instrument or document) is subject to negative procedure.

79. The Committee recognised that it is possible to modify the effect of an Act using such powers without making textual amendments to it which would add, replace or omit any part of its text. The Committee considered that, whilst this form of modification may be appropriate in limited circumstances such as a transitory provision that was to apply only for a short period when moving over to the new statutory regime, there may be concerns as to transparency and the proper role of Parliament as guardian of primary legislation were the power to be used in this way for a more significant amendment. The Committee therefore asked the Government—

(a) whether it is prepared to agree that any modification of primary legislation however effected should be subject to affirmative procedure; and

(b) if not, whether it will give an undertaking that any significant or permanent modifications made to enactments using this power will be effected through textual amendment and so subject to affirmative procedure?

80. The Minister stated in his response that non-textual modification is normally confined to modifying particular pieces of text for certain limited circumstances, application or adaptation and that negative procedure is usually appropriate in relation to such modification. However, the Minister has agreed to give further consideration to this issue and advise the Committee of the outcome of that consideration.

81. The Committee recommends that the Scottish Government give further consideration to agreeing that any modification of primary legislation however effected be subject to affirmative procedure, and reports this to the lead committee accordingly.

82. The Committee will reconsider this power after Stage 2 following notification of the outcome of the Government’s further consideration.

Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

83. Paragraph 13 of schedule 2 confers power on the Scottish Ministers to, by regulations, make provision about the consideration to be given to the likely environmental effects of the operations proposed in the flood protection scheme before the scheme is approved under paragraph 4 (decision by the local authority where no valid objections have been received), 7 (Ministerial consideration) or 9 (final decision by the local authority where valid objection received by the Scottish Ministers have not called-in the proposed scheme for consideration). This power is to be subject to negative procedure.
84. The DPM simply states that this power will ensure that “a detailed specialist regime for environmental assessment” can be created which can then be adapted in response to things such as scientific developments or changes in other environmental assessment regimes. In the circumstances, before reaching a view in relation to the appropriateness of this delegated power, the Committee sought further explanation of what kind of provision is likely to be made under this power and, in particular, what form of “detailed specialist regime for environmental assessment” is envisaged.

85. In its response, the Scottish Government stated that it is envisaged that these regulations will require an Environmental Impact Assessment (EIA) to be completed and included as part of the package of documents that will be submitted for flood protection scheme approval. It also indicated that the regulations made under this power will be developed in line with Commission Directive 2003/35/EC on Public Participation (PPD) and EIA requirements.

86. The Scottish Government explained that the regulations to be made under this power, making provision about the consideration to be given to the likely environmental effects of the operations proposed in a flood protection scheme before the scheme is confirmed, will be based upon Community obligations relating to EIA and the PPD.

87. The Committee considered that the delegated power is acceptable in principle as the decision whether or not to confirm a flood protection scheme is an administrative decision. In addition, the Committee considered that negative procedure is the appropriate level of parliamentary procedure in the circumstances where the content of such regulations is likely to be technical in nature and based upon receipt of specialist scientific and technical advice.

APPENDIX

Response from Scottish Government

Flood Risk Management (Scotland) Bill at stage 1

I am writing further to the Committee Clerk’s letter of 4 November to Paul Johnston in which you requested an explanation of specific delegated powers for the above Bill. I hope this response will assist members with their scrutiny.

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Power to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

The Committee asks the Scottish Government why this function (of specifying flood risk related functions) is not subject to the general duty in section 1.

This function is not subject to the general duty in section 1 because it was considered that a general duty to act with a view to reducing overall flood risk would have a limited practical impact on the function of specifying flood risk related
functions. There was a risk that applying the general duty would create scope for confusion about whether the duty had been complied with and that risk was not outweighed by clear benefits of applying the general duty.

It might also appear circular to apply a general duty to act with a view to reducing overall flood risk to the function of specifying flood risk related functions, when the purpose of specifying functions would be to apply the general duty to those functions.

I am happy to consider further whether to amend the Bill such that the general duty in section 1 applies to these powers.

**Section 2(1) – Directions and guidance**

The Committee asks the Scottish Government why the function (of giving directions and guidance) is not subject to the general duty in section 1 and whether the Scottish Government is willing to consider amending the Bill to provide that the direction-making power is exercisable only after consulting with SEPA and/or responsible authorities.

This function is not subject to the general duty in section 1 because there is a risk that applying the general duty would create scope for confusion about whether the duty had been complied with in issuing guidance and directions and that risk was not considered to be outweighed by clear benefits of applying the general duty.

I am happy to consider amending the Bill such that the general duty in section 1 applies to directions and guidance issued by Ministers.

I am happy to consider amending this power to consult, where practicable, SEPA and/or responsible authorities about proposed directions.

**Section 5(c) – Power to designate “responsible authorities”**

The Committee asks the Scottish Government to consider amending the Bill so that this power is subject to an obligation to consider with affected organisations.

I am happy to consider amending the Bill so that this power is subject to an obligation to consult appropriately before its exercise.

**Section 9(2) – SEPA to prepare flood risk assessments**

The Committee asks the Scottish Government to explain the circumstances in which it envisages using the delegated power to direct SEPA to prepare a flood risk assessment before the deadline in the Flooding Directive (22 December 2011)

This power was included in case early availability of flood risk assessments would facilitate the identification of potentially vulnerable areas under section 13 of the Bill or the preparation of other information under the Water Environment and Water Services (Scotland) Act 2003. The power would only have been exercised if it was practicable for SEPA to prepare flood risk assessments early.
I have considered this section further and am considering removing the flexibility for Ministers to direct for the flood risk assessment to be prepared prior to December 2011. This is on the basis that it is unlikely to be practicable for this work to be delivered in advance of 2011.

**Section 10(1)(a) – Flood risk assessments: review**

The Committee asks the Scottish Government: to explain the circumstances in which it envisages using the delegated power to direct SEPA to review and update each flood risk assessment before the deadline in the Flooding Directive (22 December 2018); and to consider making the power subject to a requirement to consult SEPA.

The flood risk management planning process requires preparation of various pieces of information by EC specified dates. The preparation of information needs to be coordinated with information prepared under the Water Environment and Water Services (Scotland) Act 2003. Finally, the information could inform spending decisions by other organisations. This power gives Ministers flexibility to set earlier dates where, for instance, it is apparent that early availability of this information would help in the coordination of flood risk management with other planning and investment cycles.

I have considered the Committee’s recommendation to make this power subject to a requirement to consult with SEPA before its exercise. However, I do not consider it appropriate to do so. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

**Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts**

The Committee asks the Scottish Government to consider making this power (to direct the date by which a document under this section is to be submitted) subject to a requirement to consult SEPA before its exercise.

I have considered the Committee’s recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider it appropriate to do so. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.
Section 14(1) – Potentially vulnerable areas and local plan districts: review

The Committee asks the Government to consider making this power (to direct the date by which a document under section 13 must be reviewed and updated) subject to a requirement to consult with SEPA before its exercise.

I have considered the Committee’s recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features

The Committee asks the Government to consider making these powers (to direct the dates by which an assessment of the contribution of alterations of natural features must be carried out and reviewed) subject to a requirement to consult with SEPA before their exercise.

I have considered the Committee’s recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 18(4), (5) and (6) – Flood hazard maps

The Committee asks the Government to consider making these powers (to direct SEPA to include in flood hazard maps information on coastal floods, flooding from groundwater and floods from sewerage systems) subject to a requirement to consult with SEPA before their exercise.

I am happy to consider amending these powers to make them subject to a requirement to consult with SEPA before their exercise. This is because Ministers would be directing SEPA to undertake assessments in a particular manner, and prior consultation with SEPA may help ensure that it is practicable for SEPA to prepare this information.
Section 23(2) – SEPA to prepare flood risk management plans

The Committee asks the Government to consider making this power (to direct the date by which SEPA must submit a flood risk management plan) subject to a requirement to consult with SEPA before its exercise.

I have considered the Committee’s recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

The Committee asks the Government to provide a fuller explanation of the additional matters which the Scottish Ministers intend to specify by regulations as being required in a local flood risk management plan and detail which person(s) or bodies are to be consulted by the Scottish Ministers in this regard.

Additional matters that may be required in a local flood risk management plan would relate to further details on the structure and content of such plans. The intent is to ensure that these plans are prepared in a consistent manner across Scotland and that the plans are prepared and coordinated with the flood risk management plans prepared by SEPA:

- details of steps to be taken to ensure coordination with flood risk management plans prepared by SEPA
- details on how information should be prepared or presented, particularly where information is supplemental to the information in the flood risk plans prepared by SEPA
- dates by which key steps in the plan should be completed.

We would expect there to be a full and thorough consultation exercise with local authorities, SEPA, Scottish Water other responsible authorities and stakeholders.

Section 44(1) – Power to give effect to Community obligations etc.

The Committee: observes that the power is available in place of the power in section 2(2) of the European Communities Act 1972 and were section 2(2) to be used to modify primary legislation, the expectation is that affirmative procedure would apply; and asks the Government to consider amending the Bill so that the power to modify Part 3 is subject to affirmative rather than negative procedure.
I note the Committee’s expectation that should section 2(2) of the European Communities Act 1972 be used to modify primary legislation, affirmative procedure would apply and I confirm that I agree to observe this. I am also happy to accept the Committee’s recommendation that the power to apply Part 3 with modifications should be subject to affirmative procedure.

Section 52(4) – Power to amend flood protection scheme making process

The Committee asks the Scottish Government to consider amending the Bill to require consultation with affected parties before the exercise of this power (to amend the procedure for making flood protection schemes).

I am happy to accept the Committee’s recommendation to require appropriate consultation before the exercise of this power, although I consider it appropriate to consult with a limited group of those specifically affected, for example local authorities and agents of local authorities.

Section 12ZA of the Reservoirs Act 1975 (inserted by section 77) – Incident reporting

The Committee asks the Scottish Government to provide some indication of the likely content of guidance to be issued to undertakers, supervising engineers and any other specified person under this power.

I envisage that guidance on post-incident reporting, that would be issued to undertakers and panel engineers, will broadly mirror that which the Environment Agency produced in 2007 for England and Wales.

This will include:

- guidance on who an undertaker (or other person) should speak to if they have concerns about the state of their reservoir and how to report the onset of an incident;
- guidance on who should provide information post-incident and to whom;
- full contact details for the enforcement authority;
- examples of completed post-incident reporting forms to assist those reporting post-incident;
- information on next steps (for example, setting out that the enforcement authority may wish to contact the undertaker to discuss the incident further for knowledge gathering purposes);
- general questions and answers on aspects of reservoir safety legislation (for example, how someone can find a panel engineer).

Section 82(1) – Ancillary provision

The Committee asks whether the Scottish Government would be prepared to agree that any modification of primary legislation should be subject to affirmative procedure or, alternatively, to give an undertaking that any significant or
permanent modifications made to enactments using this power would be effected through textual amendment and so subject to affirmative procedure.

The Bill provides for textual modification of primary legislation to attract affirmative procedure. Normally, non-textual modification is confined to modifying particular pieces of text for certain limited circumstances, application or adaptation - thus negative procedure would usually be appropriate in relation to such modifications. However, I will give further consideration to the issue and advise the Committee of the outcome of that consideration.

Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

The Committee asks the Scottish Government what kind of provision is likely to be made under this power and, in particular, what form of “detailed specialist regime for environmental assessment” is envisaged.

It is envisaged that these regulations will require an Environmental Impact Assessment (EIA) to be completed and included as part of the package of documents that will be submitted for flood protection scheme approval. This is the same process as section 40 of the Town and Country Planning (Scotland) Act 1997 and the Land Drainage (Scotland) Act 1958, amongst others follow.

The Environmental Impact Assessment (Scotland) Regulations 1999 were amended with effect from 1 February 2007 by the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 (the 2006 Regulations) to transpose Article 3 of European Commission Directive 2003/35/EC on Public Participation (the PPD). The PPD is concerned with the rights of the public to participate in the assessment of the environmental effects of certain projects likely to have significant effects on the environment.

The power outlined in Schedule 2, paragraph 13, will allow regulations to be developed in line with the PPD and EIA requirements and will form the detailed specialist regime for environmental assessment.
ANNEXE B: REPORT FROM FINANCE COMMITTEE

REPORT ON THE FINANCIAL MEMORANDUM OF THE FLOOD RISK MANAGEMENT (SCOTLAND) BILL

The Committee reports to the Rural Affairs and Environment Committee as follows—

Introduction
1. The Flood Risk Management (Scotland) Bill ("the Bill") was introduced in the Parliament on 29 September 2008. The Rural Affairs and Environment Committee has been designated as the lead committee on the Bill at Stage 1. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum. In doing so, it is required to consider any views submitted to it by the Finance Committee.

2. At its meeting on 7 October 2008, the Committee agreed to adopt level three scrutiny in relation to the Bill. The Committee took evidence from SEPA, Scottish Water, Angus Council and North Ayrshire Council at its meeting on 18 November. Written submissions were also received from all of these bodies. The Committee then took evidence from Scottish Government officials at its meeting on 25 November. Prior to the oral evidence sessions, a supplementary written submission was received from the Minister for the Environment, Michael Russell MSP. Further supplementary material on flood management schemes was also received from the Scottish Government and from Angus Council. Angus Council also submitted a further supplementary letter dated 28 November 2008.

3. The Committee also received written evidence from:
   - Clackmannanshire Council
   - Comhairle nan Eilean Siar
   - East Lothian Council
   - Highland Council
   - Moray Council
   - Orkney Islands Council
   - Renfrewshire Council
   - Scottish Borders Council
   - South Ayrshire Council
   - West Lothian Council
   - Forestry Commission Scotland
   - NFU Scotland
   - Scottish Environment LINK

4. All written evidence received is published as Annexe B to this report. The Official Report of the evidence sessions on 18 and 25 November can be found on the Parliament’s website.

The Bill
5. The Bill seeks to modernise the flood risk management system in Scotland by ensuring that all persons and organisations involved in flood risk management can co-ordinate efforts

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1 For information on the Committee’s three-level system of scrutiny for Financial Memoranda, please see http://archive.scottish.parliament.uk/s3/committees/finance/inquiries/financialMemo.htm
2 Available at: http://www.scottish.parliament.uk/s3/committees/finance/or-08/fi08-2701.htm and http://www.scottish.parliament.uk/s3/committees/finance/or-08/fi08-2801.htm respectively.
to deliver sustainable approaches to managing all forms and consequences of flooding. The Bill makes provision in five policy areas:

- co-ordination and co-operation in flood risk management;
- assessment of flood risk and preparation of flood risk management plans, including transposing European Directive 2007/60/EC on Assessment and Management of Flood Risks;
- clarifying the responsibilities of Scottish Ministers, SEPA, local authorities and other responsible authorities in managing flood risk;
- a revised statutory process for flood risk management measures; and
- amending the Reservoirs Act 1975, transferring some enforcement responsibilities from local authorities to SEPA.

Costs

**General background**

6. To a significant extent, the costs arising from the Bill are expected to be incurred in phases. An initial period of flood risk assessment has to be completed by the first Directive deadline of December 2011. To a degree, the total subsequent costs are dependent on the results of this initial assessment work.

7. A significant element of subsequent costs are associated with a phase up to 2015, by which time flood risk management plans are required to be prepared. This 2011-2015 period is described in the Financial Memorandum as the “first planning cycle”.

8. There are a number of establishment costs – both revenue and capital – associated with both the initial assessment period and the first planning cycle.

9. After the first planning cycle, there is a requirement for flood risk assessments, flood hazard and risk maps and flood risk management plans to be reviewed every six years. Annual running costs for the first few of these subsequent planning cycles are expected to remain at a level similar to those for the first planning cycle, with possible savings in time as the processes become more embedded.

10. The costs are not expected to fall equally across the first few financial years, and the profile of costs could be managed flexibly depending on the approach to implementation taken. The Financial Memorandum describes the costs it outlines as “preliminary estimates” as detailed implementation plans cannot be developed until the Bill is enacted. Similarly, the total cost of the Bill depends on the result of the initial assessment work in the period to December 2011, and the Financial Memorandum states that a number of variables - such as the nature of flood risks identified in initial assessments – could cause significant fluctuation in costs. Work to assess different cost scenarios was still ongoing at the time of the Bill’s introduction, and is the subject of supplementary material submitted by the Scottish Government.

11. The main costs identified in the Financial Memorandum are a total of £76.09 million for implementation up to December 2015, and a subsequent annual running cost of £13.19 million after 2015. The supplementary material from the Scottish Government dated 7 November 2008 refines the estimates into two scenarios, one resulting in lower range costs totalling £62.24 million and the other resulting in higher range costs totalling £81.89 up to December 2015, and lower and upper annual costs beyond 2015 of £11.08 million and £14 million respectively.
12. The Financial Memorandum emphasises that the Bill does not place a specific duty on local authorities to implement flood risk management plans. It states that, until the end of the first planning cycle in 2015, it is not clear whether the current capital cost of flood management measures is likely to rise as a result of the provisions of the Bill. The costs stated in the Financial Memorandum are, therefore, those associated with the flood risk management planning process rather than the provision of flood risk measures themselves.

**Costs on the Scottish Government**

13. The Financial Memorandum states a variety of costs on the Scottish Government arising from the Bill. The estimated costs of implementation of the Directive over the 6.5 year planning cycle up until 2015 total £4.26 million, comprising:

- Staff resources and other non-recurring revenue costs required to take forward secondary legislation etc - amounting to £270,000 prior to 2015
- £3 million in total over a number of years prior to 2015 for access to new datasets required for mapping etc.
- £140,000 per annum in staff costs to carry out additional duties, with further temporary staff likely to be required in certain phases.

14. Again, the supplementary information dated 7 November outlines revised upper and lower estimates of £3.76 million and £4.76 million.

15. After 2015, the ongoing annual running costs on the Scottish Government are expected to continue at £140,000 per annum.

16. Both costs and savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes, with an expectation of modest savings as a result of a reduction in the number of public inquiries.

17. There are no additional costs on the Scottish Government anticipated as a result of amendment of the Reservoirs Act 1975.

**Costs on local authorities**

18. The Financial Memorandum states a variety of costs on local authorities. The estimated costs of implementation of the Directive over the planning cycle up until 2015 total £36.48 million, comprising:

- £1.92 million for the preliminary flood risk assessment over 2010 and 2011 (an average of £60,000 per local authority)
- £7.68 million per annum over 4.5 years from 2010-11 to 2015 for ongoing annual running costs (an average of £240,000 per authority, although likely to vary significantly depending on the extent of flood risk in each area).

19. After 2015, the ongoing annual running costs on local authorities are expected to continue at £7.68 million per annum, although costs may fall in time as the planning process becomes better established.

20. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £36.48 million – the same as the Financial Memorandum - and the upper estimate is £44.9 million. The lower estimate for the
annual costs beyond 2015 is £7.68 million – the same as the Financial Memorandum - and the upper estimate is £9.5 million.

21. Both costs and savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes. Local authorities have estimated an average additional cost of £10,000 per authority.

22. There is a small saving anticipated (less than £5000 per authority) as a result of amendment of the Reservoirs Act 1975.

Costs on SEPA
23. The Financial Memorandum states that SEPA will be identified as the competent authority for implementation of the Directive, imposing specific duties on it in respect of flood risk assessment and mapping. A variety of costs for the period up to 2015 are stated, including:

- £8.05 million for the development of new modelling tools, data sets, etc.
- £14.18 million for staff costs during different developmental phases.

24. After 2015, ongoing costs of staff and dataset maintenance are estimated at £3.4 million per annum.

25. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £16 million and the upper estimate is £22.23 million – the same as the Financial Memorandum. The lower estimate for the annual costs beyond 2015 is £2.7 million and the upper estimate is £3.4 million – the same as the Financial Memorandum. SEPA indicates that it considers the upper estimate to be the likely scenario.

26. Marginal savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes.

27. Additional staff costs are anticipated as a result of amendment of the Reservoirs Act 1975 to transfer the existing enforcement role to SEPA. This is estimated at £100,000 up to 2010-11 and £250,000 per annum thereafter.

Costs on Scottish Water
28. The Financial Memorandum states that, under implementation of the Directive, Scottish Water and other responsible authorities will have a duty to act with a view to reducing flood risk. This will involve it in considering flood risk from sewerage and linking with other flooding work by SEPA and local authorities. Costs are estimated to total £12.7 million up to 2015, including:

- £4 million on specialist modelling consultants
- £1.5 million per annum on staff resources to contribute to wider flood risk work and £400,000 per annum to maintain modelling.

29. After 2015, ongoing costs of staff and modelling maintenance are estimated to continue at £1.9 million per annum.
30. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £6 million and the upper estimate is £10 million – both lower than the Financial Memorandum. The lower estimate for the annual costs beyond 2015 is £0.7 million and the upper estimate is £1.1 million – again, both lower than stated in the Financial Memorandum.

**Costs on other bodies**

31. The Financial Memorandum states that the costs on other responsible authorities of Directive implementation in the period to 2015 are likely to be £420,000, comprising:

- £52,000 non-recurring costs for participation in developing flood risk plans.
- £35,000 per annum staff costs per national park authority.

32. The Financial Memorandum also states that there are likely to be very minor costs and savings on some landowners where a flood protection scheme requires the revocation or amendment of a land drainage order. Costs may also be incurred if local authorities seek to recover the cost of any damage by landowners to local authority flood prevention works.

**SUMMARY OF EVIDENCE**

**General issues**

**Adequacy of cost estimates**

33. The Financial Memorandum explains that a number of uncertainties (primarily the need to await the outcome of the initial flood risk assessments) mean that cost estimates cannot be entirely robust at this stage. Witnesses generally seemed to accept that these assumptions about uncertainties were reasonable.

34. Some of the uncertainty associated with the costs also appears to arise from the split between different layers of responsibility, where SEPA will conduct national planning work to a certain degree and local authorities will subsequently apply local expertise to their area plans. Angus Council suggested that this could cause some delay in clarifying costs and expressed concern that, “The local authority may in consequence be heavily constrained by and obliged to the financial consequences of decisions made by the unelected authority.”

35. Whether the division of responsibilities and apportionment of expected costs under the Bill between SEPA, Scottish Water and local authorities is an appropriate and effective division is a policy matter for the lead committee to consider. However, witnesses expressed some concern over how the Scottish Government will co-ordinate those organisations’ different funding streams to ensure effective delivery. The Financial Memorandum does not indicate whether any different delivery models (i.e. a different balance between national [SEPA] and local authority planning) were tested and costed, and SEPA confirmed that it was not aware of any such work being done.

36. Some local authorities and Scottish Water also said that several issues arising from the Bill have not been covered in the Financial Memorandum. For example, North Ayrshire Council mentioned coastal flooding and the surface water sewer network, and Scottish Water mentioned significant work in areas not yet covered by drainage plans. Moray Council stated that the estimates of costs falling on local authorities are abbreviated overall totals, and so it

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is not clear whether all cost headings are included. It mentioned the cost of local advisory
groups and stakeholder participation and consultation in the process.\(^5\)

37. Several witnesses emphasised the complex and very dynamic nature of flood risks, with
climate change altering assumptions and the Bill requiring a move from reactive to proactive
approaches and now covering all types of land. This raised concern about whether the cost
implications of the Bill had yet been fully appreciated. Angus Council stated, “Our wider remit
covers not only non-agricultural land, as before, but all land, and it covers fluvial flooding,
pluvial flooding, coastal inundation and climate change.”\(^6\) SEPA also stated that, “The
elements in [flood risk management plans] that must be reported on are much more
extensive than we have a handle on at present.”\(^7\)

38. North Ayrshire Council’s written submission stated that that it is difficult to be certain
about the cost estimates for local authorities and said that the annual cost estimate of
£240,000 up to 2015 “can easily be accounted for”.\(^8\) Several councils (for example, Angus
Council and East Lothian Council) also stated that a high level of resources is required to
produce flood risk assessments and management plans, and disputed the average estimates
in the Financial Memorandum. Angus Council expressed concern that “the memorandum
deals with average figures in only one (the lower) of two specifically identified scenarios”\(^9\).

39. While a number of witnesses noted the high cost of implementing the Bill even before any
actual flood management measures are funded, SEPA confirmed that it did not consider that
the approach to implementation provided by the Bill gave rise to costs beyond the scope of
what is required in the European Directive.\(^10\)

40. Scottish Government officials confirmed that information on the costs incurred by various
public bodies in delivering their new responsibilities could be included in the formal
mechanisms for reporting to the Parliament provided in the Bill.\(^11\)

**Funding mechanisms**

41. Although accepting that the uncertainties were reasonable, witnesses suggested that the
funding methods and allocation needed greater clarity. Scottish Water emphasised that, “The
question is how those are built into future funding.”\(^12\)

42. The different funding mechanisms for different public bodies, and the costs falling in
different periods, raised a number of issues. For example, SEPA stated that it will work with
the Scottish Government to review its current spending review allocation to identify
resources. It pointed out that the deadline for completion of the flood risk planning preliminary
studies is December 2011 – around the end of the current spending review period. It later
said that it was “content that we can do that within our current allocation, although we will
have to consider our priorities and look to find as many efficiencies as possible.”\(^13\)

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\(^5\) Written submissions to the Finance Committee.


\(^8\) Written submission to the Finance Committee.


43. Scottish Water stated that costs falling on it will have to be covered in its business plan for 2010-14, to be submitted to regulators and then funded through customer charges. However, it is normally funded for the agreed costs of specific projects and it is not able to give that certainty for work arising from this Bill. It stated that, “We intend to submit our estimates on the basis that we will draw down funding based on the results of the flood risk assessments.”

44. Angus Council said that the current spending review allocations to local authorities do not cover the initial implementation costs. It stated that, “The grant-aided expenditure settlement does not address the bill’s costs, which I understand are identified as being additional and are not currently met through the settlement.” North Ayrshire Council also said that, “We can see no detail on how funding will be allocated from 2011 up to 2015”. However, Scottish Government officials stated that they did take “some account of the issue in the spending review”, and that, as future risk mapping information became available, it would need to form the basis for further discussion with COSLA.

45. Several local authorities noted that the Financial Memorandum provides an overall figure for local authorities as a whole, and does not clarify how individual allocations to local authorities will be calculated – although it does state that costs will vary significantly depending on the extent of flood risk in each area. It is not yet clear whether the Scottish Government will make a set allocation for an authority to budget within, or a mechanism to claim back actual costs. Angus Council suggested that, given the uncertainty, a system of revenue grants outwith the main local authority settlement would be an appropriate way to proceed, notwithstanding the general trend to minimise ring-fenced sums.

Skills
46. North Ayrshire Council’s written submission stated that there is a “scarcity of experienced flood practitioners” and a number of witnesses discussed the potential difficulty and cost implications of attracting sufficient skilled staff in the context of competition across the UK and Europe for those skills. SEPA said that the Environment Agency already has 200 vacant flood management posts across the UK. Scottish Government officials stated that various discussions with educational institutions would help ensure that future employment needs are properly catered for. They emphasised that, when developing the policy, “we paid close attention to existing skill sets in organisations and tried to ensure that the responsibilities that we placed on them were based on the skills that they had...The need to work with existing skills in the organisations concerned was one reason why we went along the lines that we did in developing the policy.”

Revised estimates based on two scenarios

Adequacy of information
47. The supplementary information from the Scottish Government outlines two scenarios, with some cost estimates differing from those in the Financial Memorandum. Witnesses were generally content that these scenarios were a useful illustration of the uncertainties. SEPA appeared to regard the upper cost scenario as the likely one, although the Scottish

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18 Angus Council. Written submission to the Finance Committee.
Government’s supplementary material seemed to suggest that it expects the lower one to be realistic and Scottish Water also estimated its costs at the lower end.

48. Scottish Government officials expressed confidence that the upper scenario represents the likely upper limit of costs. They said that the cost estimates had been developed through a series of workshops and discussions to tease out the implications of the new responsibilities. They suggested that SEPA faces a significant set of new responsibilities, whereas Scottish Water’s role will build on a set of existing competences and understandings. Scottish Government officials stated that “there are significant challenges for all the organisations” and estimated that, overall, “Our best guess is that the cost will probably be in the middle range, possibly tending towards the upper range”.

Process

49. The supplementary material from the Minister states that “the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised”. Standing Orders require a Financial Memorandum to be the best estimate of the cost implications of a Bill as introduced, and do not provide for the option of this being supplemented at a later stage to allow for the work not being done earlier.

50. Scottish Government officials stated that,

“The purpose of the supplementary evidence was to register the further work that had gone on in the interim to refine the policy and develop the detailed provisions in the bill, which allowed us to identify and quantify some of the uncertainties. Those are the best estimates that we have.”

51. The officials emphasised that policy on certain aspects “was developing right up until the bill’s introduction”, and stated that, “The cost estimates that are in the supplementary information have not changed since the financial memorandum was published; we have just provided additional information.” However, the upper scenario provided in the supplementary material does in fact project significantly higher potential initial and recurring costs on local authorities than those outlined in the Financial Memorandum. If the upper scenario proves accurate, the costs to local authorities up to 2015 increase to £44.9 million, from the £36.48 million stated in the Financial Memorandum. The supplementary evidence also suggests that, under both lower and upper scenarios, the costs on Scottish Water will be significantly lower than originally estimated in the Financial Memorandum.

52. Several local authorities also suggested in written submissions that the time allowed for consultation during the development of the Bill did not allow for a detailed formulation of costs, and that the Scottish Government’s consultation on flood management in April 2008 did not allow for comments on financial assumptions.

Other issues specific to local authorities

53. Moray Council said that paragraph 289 of the Financial Memorandum assumes that costs will be higher for urban than rural authorities and that funds will be skewed accordingly. Both it and other local authorities seemed to dispute this and questioned the usefulness of

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providing simply an average figure per authority with no information on likely margins of variation or likely upper or lower limits for an authority. Angus Council also stated that cheaper flood alleviation measures are being ruled out on environmental grounds, and that this cost pressure on rural authorities is not reflected in the Financial Memorandum.

54. Scottish Government officials clarified that ‘urban’ in this context is not meant to be confined to large cities. They said, “An urban area is not necessarily a large metropolitan area—it is any town area with flooding problems in addition to coastal and pluvial flooding, which are recognised. Any urban area that has problems with surface water run-off and pluvial flooding caused by drainage comes within the definition.”

55. For the transfer of enforcement responsibilities for reservoirs from local authorities to SEPA, West Lothian Council said that the average figure of £5000 per authority quoted in the Financial Memorandum is more than it spends and would not want this amount to be removed from its budget automatically.

**Funding of flood management measures**

56. Many of the local authorities submitting evidence made comments about meeting the cost of flood risk management measures. The Bill does not directly provide for a duty to implement flood management measures, but is rather about the assessment and planning system. SEPA emphasised that the substantial resources associated with the Bill are targeted at the plans because, “We need to understand what the current and future flood risk is likely to be in order to prioritise things.” However, the Financial Memorandum and the Scottish Government’s supplementary information both acknowledge that the assessment and flood management planning processes are bound to lead to increased expectations that identified flood risks will be addressed. Local authority witnesses raised a number of concerns, partly about how capital allocations can be made in the current local authority funding context of moving away from specific grants, and partly about how increased pressure for grants in the future will be accommodated and prioritised.

**Funding mechanism**

57. North Ayrshire Council stated that, “As yet, we have been unable to get any information on how local authorities are expected to fund capital schemes in the future”. Angus Council also stated that it is unclear how schemes that are confirmed by a flood prevention order are to be funded within the current spending review period, even before considering the situation after implementation of the Bill. Previously 80% grants were available for specific flood alleviation schemes which had received flood prevention order consent. The Financial Memorandum does not provide any information on how block grant for the capital cost of flood management measures will be distributed equitably to local authorities.

58. Scottish Government officials stated that the removal of ring-fencing from certain funds does not “seem to have inhibited flood-related activity on the ground so far. A significant amount of activity—probably more than in any recent year—is going on this year and next year.”

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25 West Lothian Council. Written submission to the Finance Committee.
59. Officials stated that, although they now have no formal meetings in respect of grant funding for projects, they still gather information on the flood risk management measures that local authorities are pursuing. They said that, beyond the next spending review period, “the process that the bill puts in place will enable us to form a view on the resource requirements and on what schemes or proposals should have priority. That will be the subject of continuing discussions with COSLA.”\(^{30}\) The Bill is intended to produce a process that will provide continually developing information about how the relative priority of flood risk areas is changing.

**Extent of capital funding required**

60. The extent to which the Scottish Government expects the current capital expenditure on flood management measures to have to rise as a result of the Bill is not clear. However, officials stated that, “if the process identifies a significantly greater quantum of flood risk than has been identified so far, a fair question about resources must be put to ministers and the Parliament”.\(^{31}\)

**CONCLUSIONS**

**Provision of supplementary information**

61. There are a number of aspects of the Financial Memorandum which have been clarified in the course of evidence. The Committee considers that it would have been helpful for the Financial Memorandum to have reflected the range of costs later provided by supplementary written material. Supplementary information from the Scottish Government was useful. However, it is unfortunate that the consultation and policy development work was not done in time to allow this information to be included in the Financial Memorandum. As the Committee has had cause to remind the Scottish Government in respect of other recent Bills, it remains the case that the Financial Memorandum at the time of introduction should provide the best estimate of the costs associated with the provisions in a Bill.

**Issues requiring clarification**

62. While the Committee acknowledges the uncertainty over eventual costs which is created by the need to await the outcome of the initial flood risk assessments, evidence has indicated a number of significant concerns. The Committee, therefore, recommends that the lead committee may wish to seek clarification from the Cabinet Secretary on the following issues:

- Whether the cost estimates for local authorities, which are presented as abbreviated overall totals, include costs for all the expected responsibilities and are as comprehensive and robust as possible (paragraphs 36 and 37 above).

- Whether the Scottish Government intends formal reporting to the Parliament on implementation of the Bill to include information on the actual costs on all public bodies (paragraph 40).

- How the Scottish Government will be able to build the implications of the significant uncertainty about the extent of future responsibilities into the different financial planning frameworks for the different public bodies involved (paragraphs 42-44).


- Whether the current spending review period allocations to local authorities include sums to cover the responsibilities in this Bill and, if so, how these sums have been allocated among local authorities (paragraph 44). If not, the lead committee may wish to seek clarification on the mechanisms the Scottish Government will use to allocate additional funds where new responsibilities have been imposed on public bodies within a spending review period.

- How the Scottish Government will ensure that future local authority funding allocations will reflect actual costs rather than averages and, specifically, how the different burdens on rural and urban authorities and those with different flood risk issues will be equitably reflected in funding (paragraphs 45 and 53).

- How the Scottish Government will distribute block grant for the capital cost of flood management measures equitably to local authorities in future (paragraph 57).
SUBMISSIONS RECEIVED

This annexe contains submissions from the following organisations—

- Michael Russell MSP, Minister for Environment
- Scottish Environment Protection Agency
- Scottish Water
- Angus Council
- North Ayrshire Council
- Clackmannanshire Council
- Comhairle nan Eilean Siar
- East Lothian Council
- Highland Council
- Moray Council
- Orkney Islands Council
- Renfrewshire Council
- Scottish Borders Council
- South Ayrshire Council
- West Lothian Council
- Forestry Commission Scotland
- NFU Scotland
- Scottish Environment LINK
- The Scottish Government (supplementary)
- Angus Council (supplementary)
SUBMISSION FROM THE MINISTER FOR ENVIRONMENT

I am writing in advance of the Finance Committee’s scrutiny of the Financial Memorandum which accompanied the Flood Risk Management (Scotland) Bill.

I am pleased to enclose a supplementary evidence paper that has been prepared by the Scottish Government to assist Committee members with their consideration of the financial aspects of Bill. Members should read this paper in conjunction with the Financial Memorandum that was submitted to the Scottish Parliament alongside the Bill.

In summary, the paper provides supplemental information on the costs of implementing the EC Floods Directive. The paper focuses on:-

• providing additional details and background to the resource estimates set out in the financial memorandum, including an examination of potential implementation scenarios and associated costs; and

• Providing additional information on the potential cost of implementing future flood risk management measures.

As Committee members will be aware from the Financial Memorandum, the information presented in it was developed in close consultation with those involved in implementing the Bill. However, the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised. The Scottish Government has continued to liaise with key stakeholders to examine the Bill provisions, new responsibilities and associated financial implications. This work has allowed the Scottish Government and stakeholders to develop a clearer picture of new responsibilities and their resource implications.

The Scottish Government wish to ensure that the committee members are provided with the most up-to-date information on the potential costs of the Bill and hope that members find this helpful.

MICHAEL RUSSELL MSP
MINISTER FOR ENVIRONMENT
Supplementary evidence on costs of implementing the Directive

Purpose

This supplementary evidence paper has been prepared by the Scottish Government to assist members of the finance committee in their consideration of the financial aspects of the Flood Risk Management (Scotland) Bill. The paper should be read in conjunction with the Financial Memorandum that was submitted to the Scottish Parliament alongside the Bill.

The paper provides supplementary information on the costs of implementing the (Floods) Directive. The paper focuses on providing the following:

- additional details and background to the resource estimates set out in the financial memorandum, including an examination of potential implementation scenarios and associated costs; and

- additional information on the potential cost of implementing future flood risk management measures.

The paper does not provide supplementary information on the costs associated with local authority functions and the statutory process, or enforcement of the Reservoirs Act 1975.

Costs for the period up to and including the 2010-2011 financial year will not be affected by the implementation scenarios outlined in this paper. Costs for this period are summarised in the financial memorandum.

Rationale for submitting additional evidence

The Scottish Government wishes to ensure that the committee members are provided with the most up-to-date information on the potential costs of the Bill.

The information presented in the financial memorandum was developed in close consultation with those involved in implementing the Bill. However, the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised.

The Scottish Government has continued to liaise with key stakeholders to examine the Bill provisions, new responsibilities and associated financial implications. This work has allowed the Scottish Government and stakeholders to develop a clearer picture of new responsibilities and their resource implications.

Furthermore, as stated in the financial memorandum, the final cost of this Bill will depend on the results of initial flood risk assessments which must be completed by 2011 and the identification of potentially vulnerable areas. The Scottish Government has therefore taken the opportunity to consider potential implementation scenarios and associated uncertainties in more detail.

Background

The Scottish Government has worked closely with key stakeholders to ensure that each organisation clearly understands the roles and responsibilities delegated to them under the Bill. This process has involved:
workshops with SEPA to discuss the Bill provisions and SEPA’s role;

meetings with Scottish Water and CoSLA to discuss the implications of the Bill;

Scottish Government led Bill Advisory Group meetings and workshops. The Bill advisory group includes senior representatives from local authorities, CoSLA, Scottish Water, SEPA and other stakeholders likely to be impacted by the Bill.

CoSLA, SEPA, and Scottish Water were asked to submit assessments of the resource implications of the Bill on their organisations. Further written information has also been submitted in templates specifically prepared by the Scottish Government to examine resource implications, uncertainties and implementation scenarios.

The Scottish Government also commissioned an independent review of the information presented in the financial memorandum (Flooding Bill Financial Implications Assessment September 2008). This report concluded that the costs set out were directly attributable to the Bill and that the assumptions and costs set out were justifiable. The report also concluded that the level of uncertainty was justified, as many costs were ultimately dependent upon the results of the assessment of vulnerable areas required under the Bill.

Assumptions

A number of assumptions have been employed to allow the Scottish Government to estimate the potential resource implications of the Bill. The financial memorandum describes specific assumptions employed in relation to particular organisations or responsibilities. The key overarching assumptions that have been employed are:

- all per person staff costs are estimated to be between £50-60,000. These costs are based on typical staff costs for the organisations involved and include an estimate of all ongoing overheads. Where available, more precise staffing costs have been used and these have been based on a range of appropriate staff grades;

- inflation has been included in all estimates of costs across the first planning cycle, and has been set at 2.5%.

Implementation scenarios and uncertainties

- As stated in the financial memorandum, there are a number of uncertainties associated with the resource estimates for the Bill. These uncertainties include:

- estimating the costs of new mapping and modelling work, particularly where new tools will need to be developed, e.g. to map pluvial flooding;

- variations in the quality of information available on pluvial and sewerage flooding across the country;

- reporting standards for the Directive have yet to be established by the Commission; these could result in additional work for SEPA to comply with the Directive;
the results of the initial flood risk assessments will determine the proportion of the
country that will be identified as being vulnerable to flooding and therefore the scope
and number of flood risk management plans.

The variables that could cause the greatest fluctuation in costs will be the number and scope
of the flood risk management plans. Any adjustment in these variables would result in a
proportionate adjustment in the expected costs, although efficiencies of scale would be
expected. The results of the assessment of potentially vulnerable areas (Section 13 of the
Bill) will determine where efforts to map and manage flood risk are targeted.

To ensure the cost estimates for the Bill reflect these uncertainties, the Scottish Government
has considered two implementation scenarios. These scenarios are based on potential
outputs from the assessment of vulnerable areas, which will provide a national overview of
flood risk and will determine where efforts to map, plan and manage flood risk are targeted.
The greater the number and complexity of flood risks identified, the greater the resources
required to address these risks. Based on potential outputs from the assessment of
vulnerable areas, the following implementation scenarios have been considered.

- **Scenario 1** - Assumes that the overall proportion of areas known to be at flood risk will
  be similar to current understanding of flood risk- around 3.6% of properties estimated
to have a 0.5% or greater chance of flooding each year. (SEPA Indicative Flood Map
2007 Summary results\(^{32}\)). Under this scenario, improved information on pluvial and
sewerage flooding, and the impacts of climate change, will identify new areas as
having a 0.5% or greater chance of flooding. However, a better understanding of the
different types of flood risk may also result in some areas being shown as having a
lower flood risk than the current maps indicate. On balance this would result in a
similar proportion of properties in Scotland being at risk of flooding from all sources.

- **Scenario 2** - Assumes that improved information on flood risk, particularly on pluvial
  and sewerage flooding and the impacts of climate change, will identify enough new
potentially vulnerable areas to increase the overall number of properties considered to
have a 0.5% or greater chance of flooding. Furthermore, the improved information will
require the development of new types of flood maps (e.g. pluvial flood maps) and flood
risk management plans that tackle complex flooding problems.

The relevant resource estimates set out in the financial memorandum have been reviewed in
light of these implementation scenarios. Where appropriate, an upper and lower resource
threshold for the work required to fulfil the requirements of the Directive have been set out.

As assessment, mapping and planning work is undertaken over the first planning cycle and
beyond, the uncertainties surrounding implementation costs of the Bill will be resolved. The
Scottish Government and the bodies responsible for implementing the Directive will therefore
have opportunities to take informed and positive decisions throughout the planning cycle on
where investment should be targeted. Resource constraints mean that it will not be possible
to address all flood risks in one six year planning cycle, but the identification of vulnerable
areas will be crucial to prioritising efforts to map and manage flood risks. The responsible
authorities will be able to target resources to those areas where they would be most effective,
but also include longer term goals across future planning cycles for all areas at risk of
flooding This will ensure that investment can be aligned both to vulnerable areas and

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particular flood management needs, for example investment in mapping or investment in resources to support selection of measures.

As the scenarios are based on the outputs from the assessment of vulnerable areas, the implementation scenarios apply to the work carried out after the deadline for this work, which is shortly after the production of the first flood risk assessment that must be prepared by December 2011.

**Costs on the Scottish Administration**

As set out in the financial memorandum, the most efficient approach to obtaining new flood risk data (e.g. high resolution topography data), would be for the Scottish Government to negotiate and purchase important data licences and datasets, and make this information available to the organisations involved in implementing the Bill. The costs for these datasets will vary depending on the type of data purchased and the level of coverage required.

The financial memorandum estimates the total cost for new datasets to lie in the region of £3 million. This was based on an average figure for key datasets. The Scottish Government, in liaison with SEPA, has investigated datasets costs more fully. Based on this information and with reference to the implementation scenarios described in paragraph 14, a range of potential costs for obtaining new datasets and licences are presented below. The mean costs are still estimated to lie in the region of £3 million.

For some datasets, full national coverage will be required. The cost of these datasets, which include Ordnance survey data and aerial photographs, is around £1 million. However, for other datasets, including high resolution topography data, the data can be targeted at specific parts of the country that would benefit from this information, for instance urban centres to support mapping of pluvial flooding.

Applying the scenarios described in paragraph 14, a range of implementation costs for new datasets can be estimated. Under scenario 1, targeted datasets, for instance high resolution topography data to support mapping of pluvial flooding, will need to cover around 15% of the country. Based on typical data licence cost for key datasets, including high resolution topography data the cost for new datasets will be around £1.5 million.

Scenario 2 assumes that the outputs of the assessment of vulnerable areas will increase the proportion of the country currently considered to be at risk of flooding. For the purposes of assessing implementation costs, it is assumed that the proportion of the country considered to be at risk from flooding would increase and that targeted datasets would need to cover around 20% of the country. Based on typical data licence cost for key datasets, including high resolution topography data, the cost for new datasets is estimated to be around £2.5 million. This estimate includes licensing costs for more expensive forms of data that have been shown to be valuable for mapping pluvial flooding.

In summary, new datasets and data licenses to support implementation of the Directive are estimated to be in the range of £2.5 million and £3.5 million.

The implementation scenarios set out in paragraph 14 are not expected to influence other costs on the Scottish Government set out in the financial memorandum, which include staff costs. These costs are estimated to be in the region of £1.26 million over the first flood risk management planning cycle.
Costs on local authorities

The costs on local authorities presented in the financial memorandum were based on estimates from six local authorities. These local authorities covered different geographic parts of Scotland and different types and severities of flooding problems, ranging from urban centres to rural parts of Scotland. The estimated total costs for all local authorities were based on the average costs across these six local authorities, which was subsequently applied to the 32 local authorities.

The resource implications for local authorities will be strongly dependent on the results of the assessment of vulnerable areas. This assessment will identify where the greatest flood risks exist across the country and where local flood risk management plans will be required to identify measures to tackle these risks. Applying the implementation scenarios set out in paragraph 14, an upper and lower estimate of potential costs across all local authorities has been produced.

The figures presented in the financial memorandum are aligned with scenario 1 described in paragraph 14. This is because the estimates provided by local authorities covered authorities with extensive experience of tackling flooding problems alongside local authorities with more limited experience in flooding matters. Overall these estimates therefore provide a good picture of the likely effort required to assess and plan flood risk measures based on current understanding of flood risks.

To enable the Government to examine scenario 2, which assumes that the collation of information on flooding problems could result in a greater proportion of Scotland being identified as being at risk of flooding, the overall estimate of the resource implications across all local authorities has been weighted towards the costs estimated by those local authorities with more experience in tackling a wide range of flooding problems, and in particular pluvial flooding. This weighting exercise results in an overall cost across all local authorities of £44.9 million.

In summary, it is estimated that the cost of the first flood risk management planning cycle (up to December 2015), across all 32 local authorities will be between £36.48 million and £44.9 million.

We estimate that the annual running cost for all local authorities once all staff resources are on line after 2015 would therefore be between £7.68 million and £9.5 million.

Costs on SEPA

Although SEPA is required to produce national assessments, maps and plans, the detail of these assessments, maps and plans will be determined by the results of the assessment of vulnerable areas. The resource implications for SEPA will therefore also be strongly dependent on the results of the assessment of vulnerable areas.

The cost estimates for SEPA were developed in consideration of how understanding of flood risk could change once the assessment of vulnerable areas is completed. The costs set out in the financial memorandum for SEPA and its floods directive work reflect the costs associated with scenario 2 described in paragraph 14. This is because SEPA have

33 Total cost £22.23 million. Staff costs (55 staff) £14.18 million. Capital costs £8.05 million.
assumed that information collated through the preliminary flood risk assessment work will result in new flooding problems being identified and therefore an overall increase in the proportion of Scotland at risk of flooding. Furthermore, SEPA have assumed that improved understanding of the complex sources of flooding (pluvial, fluvial, coastal and groundwater) will require development of integrated management plans to address all sources of flooding. Under this scenario, SEPA would be expected to provide support to local authorities in assessing flood risks and identifying or coordinating objectives and measures.

If the results of the assessment of vulnerable areas indicated that there was no increase in the proportion of Scotland at risk of flooding and that the complexity of flooding problems that needed to be addressed are similar to those that are already well understood (scenario 1), then a lower resource estimate may apply. It is estimated that SEPA’s costs for the first flood risk management planning cycle (up to December 2015) would be in the region of £16 million. This would break down as £9.5 million in staffing costs (40 staff) and £6.5 million in investment into new tools and datasets. These lower costs reflect a reduced level of effort in flood mapping and planning work, for instance, in mapping pluvial flooding. Under this scenario, it is also possible that flood risk management could rely more heavily on local flood risk management plans, which would be driven by current local understanding of flooding problems.

In summary, it is estimated that the cost of the first flood risk management planning cycle (up to December 2015), for SEPA will be between £16 million and £22.23 million.

We estimate that the annual cost for SEPA once all staff resources are on line after 2015 will be between £2.7 and £3.4 million.

Costs on Scottish Water

The estimated costs on Scottish Water presented in the financial memorandum were based on information provided by Scottish Water. The resource implications for Scottish Water will be strongly dependent on the results of the assessment of vulnerable areas. This assessment will identify where the greatest flood risks exist across the country and where modelling work and local flood risk management plans will be required to identify measures to tackle those risks.

Scottish Water will be required to undertake new work to improve understanding of flooding from sewers. This information will need to be linked to other flooding studies undertaken by SEPA and the local authorities to provide an overall picture of surface water (pluvial) flooding. This will require the development and application of specialist modelling. The estimated cost of this modelling work over the first flood risk management cycle (up to 2015) as specified in the financial memorandum is £4 million for 200,000 households, with an ongoing running cost of £0.4 million. This estimate includes consideration of variations in modelling effort for rural and urban areas. The cost of modelling work will vary depending on the complexity of the situations being modelled. These figures therefore represent an indicative cost for modelling based on costs of similar modelling work already undertaken by Scottish Water.

Applying the scenarios described in paragraph 14, it is estimated that investment in modelling flooding from sewers would lie in the region of £3 million to £5 million over the first flood risk management cycle (up to 2015). This is based on an assumption that the assessment of vulnerable areas could identify between 150,000 to 250,000 households at risk of sewer
flooding. Ongoing running costs for maintaining models are estimated to remain in the region of 10% of the one-off modelling cost.

In addition to undertaking specific flood risk assessment work, Scottish Water will also be required to contribute to the wider flood risk assessment and management process under the Bill. Initially Scottish Water had estimated that the annual running costs of this additional work would be approximately £1.5 million per annum, based on the known cost of implementing the Water Framework Directive. Now that Scottish Water have a clearer understanding of the duties and responsibilities they will have under the Bill, they have re-evaluated their estimates. Based on the scenarios described in paragraph 14, it is estimated that the annual cost of contributing to the preparation of flood risk management plans, excluding the modelling work, will be between £0.375 million and £0.625 million. This is based on an assumption that this work will require approximately 5-8 highly skilled staff to deal with flooding issues including detailed knowledge of flood modelling.

In summary, taking into account the reduction in the expected annual running costs, it is estimated that the total cost of the first flood risk management planning cycle (up to December 2015), for Scottish Water will be between £6 million\(^{34}\) and £10 million.

We estimate that the annual cost for Scottish Water once all staff resources are on line after 2015 will be between £0.7 million and £1.1 million.

Implementation costs for measures to manage flood risk

At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence of the provisions set out in the Bill. However, where investment does occur, improved information on flood risk and a new flood risk management planning process will ensure that expenditure is targeted in those areas at greatest flood risk and on the most cost effective measures to manage those risks. By ensuring consideration is given to other planning processes, including development planning and river basin management plans, new opportunities for using public funding to deliver multiple benefits will also be created.

Total investment by local authorities in flood protection schemes has increased significantly in recent years, from over £10 million in 2002-03 to over £40 million in 2007-08. Given that flood protection schemes currently under construction are valued at nearly £150 million with tenders for others being sought, this trend is likely to continue. Further, local authorities have responsibilities for cleansing watercourses, which can make a significant contribution to managing flood risk in certain circumstances. For the years 2002-2008, revenue support to local authorities was based on the Grant Aided Expenditure Assessment which included allowances for flood prevention revenue expenditure, which ranged from £3.4 million in 2002-3 to £4.9 million in 2007-08.

The local government settlement for 2008-11 provided local authorities with block grants towards capital and revenue expenditure. However, it is for each authority to allocate the total financial resources available to it for flood risk management. This must be done on the basis of local needs and priorities having first fulfilled its statutory obligations and its Single Outcome Agreement with the Scottish Government.

\(^{34}\) £3 million (investment in models) + (£0.3 million (model maintenance costs) + £0.375 million (staff costs)\(^4.5\)), where 4.5 is the total number of years in the first planning cycle after 2010-2011 financial year.
The Scottish Government has also invested in other forms of flood risk management, including investing in awareness raising campaigns, new flood maps, a database of flood management assets and new flood warning schemes. Over the period 2002-2008, it is estimated that in the region of £5 million has been invested in these areas, with a further £7 million currently being invested in improving the dissemination of flood warning information to the public.

Scottish Water is responsible for providing water and wastewater services to its customers. Included in its duties is the requirement to collect and treat wastewater from households and businesses as well as surface water from roofs etc and to discharge the combined effluent safely to the environment. In the current regulatory period, Scottish Water will invest in the region of £2 billion in Scotland’s water and wastewater services. These will deliver the Ministerial Objectives for Scottish Water for the period 2006-10 that were set in February 2005. The objectives set by Scottish Ministers include a requirement for Scottish Water to reduce the number of properties at risk of internal flooding, and investment is already contributing to reducing the risk of flooding in Scottish towns and cities. Scottish Water holds a register of all properties that are connected to sewers of inadequate capacity (1,603 in March 2006) and is investing to remove at least 456 properties from the risk of internal flooding by 2010. Also between 2006-2010, around £160 million will be invested in improving sewerage network infrastructure. A significant proportion of the investment will be in the Glasgow Sewerage network and is linked where possible with the requirements of the Metropolitan Glasgow Strategic Drainage Partnership.

Scottish Water’s investment requirements for the next regulatory period (2010-14) are currently under consideration.

**Summary of refinements to the costs set out in the financial memorandum**

Table 2 summarises the refined costs for implementing the Directive based on the two implementation scenarios described in paragraph 14. A summary of the costs set out in the financial memorandum is also provided. The costs cover the period up to December 2015, but exclude costs prior to the 2011-2012 financial year. Based on the same implementation scenarios, Table 3 summarises the ongoing running costs for implementing the Directive once all new staff come on line after 2015.

The costs for the period up to 2010-2011 would be incurred prior to the preparation of the assessment of potentially vulnerable areas and are therefore not subject to the implementation scenarios outlined in this paper. These costs are summarised in the financial memorandum.
Table 2 Summary of refined total cost estimates for implementing the Directive*

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Costs in financial memorandum (£million)</th>
<th>Revised lower range cost (£million)</th>
<th>Revised upper range cost (£million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government</td>
<td>4.26</td>
<td>3.76</td>
<td>4.76</td>
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<tr>
<td>Local authorities</td>
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<td>36.48</td>
<td>44.9</td>
</tr>
<tr>
<td>SEPA</td>
<td>22.23</td>
<td>16</td>
<td>22.23</td>
</tr>
<tr>
<td>Scottish water</td>
<td>12.7</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>75.67</strong></td>
<td><strong>62.24</strong></td>
<td><strong>81.89</strong></td>
</tr>
</tbody>
</table>

* Costs are for the period 2011-2015, and exclude costs prior to the 2011-2012 financial year.

Table 3 Summary of annual running costs (post 2015) for implementing the Directive*

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Costs in financial memorandum (£million)</th>
<th>Revised lower range cost (£million)</th>
<th>Revised upper range cost (£million)</th>
</tr>
</thead>
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<tr>
<td>Local authorities</td>
<td>7.68</td>
<td>7.68</td>
<td>9.5</td>
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<tr>
<td>SEPA</td>
<td>3.4</td>
<td>2.7</td>
<td>3.4</td>
</tr>
<tr>
<td>Scottish water</td>
<td>1.9</td>
<td>0.7</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12.98</strong></td>
<td><strong>11.08</strong></td>
<td><strong>14</strong></td>
</tr>
</tbody>
</table>

* Annual running costs for the Scottish Government have been omitted as they are not expected to vary significantly with the implementation scenarios set out in paragraph 14. The cost set out in the financial memorandum was £0.14 million per annum.
SUBMISSION FROM THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

Opening Remarks

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to respond to the Finance Committee on the Financial Memorandum of the Flood Risk Management (Scotland) Bill [the Bill].

The Bill will create the framework that will ensure that organisations involved in flood risk management work together to deliver sustainable approaches to managing the various forms and consequences of flooding.

The Bill will bring new duties to SEPA in terms of flood risk assessment, flood mapping, flood risk management planning and reservoir safety. The Bill will also require changes to our flood warning services and the way in which we undertake our statutory duties in relation to flood risk advice for planning and development.

SEPA recognises the responsibilities associated with its new roles and looks forward to the challenges they will bring. Clearly, success will depend on the powers and duties conferred, the relationships defined within the legislation, how organisations work together and the resources that are made available.

Background

SEPA has a team of approximately 90 staff dedicated to providing hydrological services in hydrometry, water resources, groundwater and flood risk management. As the hydrometric authority for Scotland, we run the surface and groundwater monitoring networks, with over 450 river and tidal monitoring stations and 550 rain gauges. As the flood warning authority we operate 45 flood warning schemes and run the Floodline service for Scotland. We are a statutory consultee in the planning process for flood risk issues, and manage the Indicative River and Coastal Flood Map (Scotland).

SEPA has a long history of engagement with the Scottish Government on flooding issues and is a core member of the Government’s flooding advisory groups. Since the development of the Floodline service in Scotland in 2001, SEPA has also worked closely with the Government flooding team in developing flood warning in Scotland and raising awareness of flood risk. SEPA are a category one responder under the Civil Contingencies Act (2004) and the lead on flooding issues.

Since the EC Floods Directive was proposed by the European Commission in January 2006, SEPA has been tracking the development of this legislation and considering the likely implications for our flood risk management operations. Since the Directive has entered into force, we have been working closely with the Flooding Bill Team in the Scottish Government as they have explored the options for transposing this Directive in Scotland.

SEPA and the Scottish Government are both members of the Defra EC Floods Directive Steering Group and Technical Working Group and as such have been working together at the UK level as well.
Finance Committee questions

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Flooding Bill Team throughout the Bill drafting process in providing comment on the wording of the provisions relevant to SEPA.

SEPA formally responded to the Scottish Government consultation “The Future of Flood Risk Management in Scotland” in April 2008. We also assisted the Government in the stakeholder engagement process of this consultation through the stakeholder workshops and as panel members at the public Ministerial meetings around the country.


SEPA is a core member of the Flooding Bill Advisory Group (FBAG) and in recent years has held lead roles in the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC). These groups have had considerable influence in outlining the national flood risk management priorities for Scotland; the priorities that are now captured within the Flood Risk Management (Scotland) Bill.

SEPA worked closely with Scottish Government on the development of options and the range of financial assumptions made.

SEPA believes it has managed to do the best it can to establish its estimate of the resources required at each of the various stages of the Bill’s development, given the available knowledge at each stage of the process.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, the assumptions used in the Financial Memorandum reflected our understanding of the Bill at that time.

Since then we have continued to work with the Scottish Government to better understand the possible scenarios for delivery of key elements of the Bill. In doing so, and in the light of the clearer guidance and assumptions made, we have been able to further refine our estimates of the resources required.

Did you have sufficient time to contribute to the consultation exercise?

Yes.
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has significant financial implications for SEPA; in the Financial Memorandum these were presented as £22.23 million to December 2015 and an annual cost of £3.4 million for implementing the EC Directive requirements. The costs associated with the amendments to the Reservoirs Act were a further £0.1 million set-up costs and £0.25 million annual running costs.

The precise financial implications will depend on a number of factors. To a great extent, overall costs will be determined by the result of the preliminary flood risk assessment process. Until this crucial first stage has been completed, it is impossible to be precise about the level of the resource requirements for the subsequent stages:- flood mapping and flood risk management planning.

The financial implications for SEPA outlined in the Financial Memorandum are in line with our estimates, based on our understanding of the Bill at that time. Since then we have continued to work with the Scottish Government to better understand the possible scenarios for delivery of elements of the Bill. In doing so we have been able to further refine our estimates of the resources required in light of the clearer guidance and assumptions made.

The Scottish Government’s latest supplementary evidence on costs of implementing the directive now outlines two scenarios based on the two possible outcomes from the preliminary flood risk assessment process:

- Scenario 1 is based on an outcome of the preliminary flood risk assessment that shows no increase in the proportion of the population at risk of flooding than is currently understood. (Around 3.6% of properties estimated to have a 0.5% chance or greater of flooding in any one year. Based on Indicative River and Coastal Flood Map (Scotland) 2007 summary results.)

Under this scenario SEPA would expect to carry out only limited mapping covering approximately 1-2% of Scotland’s river and coastal floodplains including the four main urban centres. Limited action will also be required in terms of flood risk management planning.

It should be noted that this scenario does not include any resource to carry out the new duties associated with the enforcement of reservoir safety.

The £16 million cost estimate (up to December 2015) in this scenario would enable SEPA to carry out these new duties on the basis of our current understanding of flood risk across Scotland. However, SEPA feels that this will not adequately address the challenges Scotland faces in the future from flooding of all types; river, pluvial and coastal.

We do not believe that this scenario will allow us to develop the level of understanding of pluvial flooding that will be required to address urban flood risk. This is particularly important given climate change predictions on the likely increase in short duration, high intensity rainfall events.
Scenario 2 assumes that the outcome of the preliminary flood risk assessment will show an increase in the proportion of the population at risk. In particular this is likely to show an increase in flood risk in urban areas. These are the areas more vulnerable to extreme rainfall events and are likely to be exposed more frequently to flooding due to climate change.

This scenario will require the development of more complex maps and flood management plans. Initial work done by some local authorities indicates that there will be a significant increase in the proportion of the population at risk from pluvial and sewerage flooding. Following the devastating flooding in England and Wales in 2007, the Pitt Review recognises both issues and makes strong recommendations to address these.

Under this scenario SEPA would expect to carry out detailed mapping for approximately 2-4% of Scotland’s river and coastal floodplains, including the four main urban centres and other urban centres with significant populations at flood risk. A higher level of involvement in the flood risk management planning process would also be required to address present and future flood risk in Scotland. In particular the potential impact of climate change on flooding in urban areas is significant.

The £22.23 million cost estimate (up to December 2015) shown in the Government’s latest supplementary evidence on costs of implementing the directive would enable SEPA to carry out its new duties, including those relating to reservoirs, on the basis of this more comprehensive understanding of flood risk in Scotland.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, however, given what we know at this point it will be challenging. There is a considerable number of tasks that SEPA must complete that fall within the current CSR period. SEPA will work with the Scottish Government to review its current CSR allocation with a view to identifying internally where resources can be directed to fund this work. December 2011 is the deadline for the completion of the preliminary flood risk assessments; however, it is essential to complete much of the work in advance of this date to allow other responsible authorities to start planning for their new duties under the Bill, e.g. the earlier the identification of areas vulnerable to flooding, the earlier local authorities and Scottish Water can start their business planning processes.

None of these costs could be classified as re-chargeable, and it is assumed that future costs will be met through future CSR funding. Clearly SEPA will look for efficiencies by integrating current and future flooding work with its other work, where possible and we will reprioritise work to ensure we meet the requirements of the Bill as far as is practicable. We look to Government to take account of the various new duties and all other SEPA responsibilities in allocating resources in future CSR rounds.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, the cost estimates associated with Scenarios 1 and 2 as described in the answer to Q4 and supplied by the Scottish Government in the latest supplementary evidence on costs of implementing the directive reflect the margins of uncertainty. It is clear that the extent of, and
results from, the preliminary flood risk assessments will have a significant bearing on subsequent costs.

SEPA believes that its initial estimate of required resources was accurately reflected in the Financial Memorandum submitted with the Bill (£22.23 million up to December 2015). This cost is shown as Scenario 2 under the latest supplementary evidence on costs of implementing the directive and we still believe this to be a fair estimate of the resource needed to deliver the requirements of the Bill.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

While the Bill costs in the Financial Memorandum are those directly attributable to the Bill, we have concerns as to the wider implications, especially for the hydrometric network and for the recruitment of trained hydrologists and flood risk management professionals:

- **Hydrometric network** - Improving our ability to manage flood risk, particularly in the longer term, will require improvements to Scotland’s hydrometric network. Long term decisions, often costly in nature, demand to be based on sound scientific and technical data. The hydrometric network underpins a lot of what the Bill aims to achieve and its development needs to reflect the increasing challenge and geographical scope of hydrological variability, particularly in relation to climate change and urbanisation.

- **Building a skills base** - Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. We highlighted this in our evidence to the RAE Committee and it is widely recognised by the Committee, Ministers, and others that this will be a severe challenge to SEPA and all others involved in the delivery of the Bill.

We assume that any future requirements for flood warning schemes and associated infrastructure identified in flood risk management plans will be funded through the usual channels, i.e. outside funding associated with the implementation of the Bill.

Whilst these are associated costs, SEPA will strive to make efficiencies by integrating new flood risk management duties with existing duties wherever possible. In particular we will seek opportunities to combine elements of work associated with the Bill with those of the Water Framework Directive.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Our current understanding is that subordinate legislation would focus on setting out processes and guidance on the content of assessments and plans, rather than on setting out significant new tasks or responsibilities. As such SEPA would not expect there to be significant cost implications. If new duties did arise then there may be costs associated with these, but it is not possible for SEPA to quantify these costs at this stage.

SEPA
November 2008
SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to respond to the Financial Memorandum for the Flood Risk Management (Scotland) Bill. We are particularly interested in this paper due to our involvement in four areas relating to Flood Risk Management.

Scottish Water will be designated as a responsible authority under the Bill and will have a duty to act with a view to reducing overall flood risk.

Scottish Water will require to undertake new work improving the understanding of flooding from sewers and linking this work with other flooding studies undertaken by SEPA and the local authorities. This will require the use of specialist modelling consultants in the first instance.

In addition to undertaking specific flood risk assessment work, Scottish Water will also be required to contribute to the wider flood risk assessment and management process under the Bill.

In relation to reservoir safety Scottish Water will have to work closely with SEPA as the competent authority.

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?


• The Bill introduces additional responsibilities for Scottish Water and therefore additional costs. In our response to the consultation we highlighted that it was unclear how these additional responsibilities would be funded and how the various funding routes of different Organisations will be coordinated.

• Scottish Water is funded by customer charges. The priorities for what we spend customers’ money on are set by Government and Regulators through the Quality and Standards process for each four year regulatory period. We have assumed that Scottish Water will be funded through customer charges to deliver the requirements of the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Scottish Water identified additional duties and changes as a result of the Bill and our initial estimates were included in the Financial Memorandum. We have continued to work with the Government to better understand the implications for Scottish Water.

Did you have sufficient time to contribute to the consultation exercise?

Yes
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

- Scottish Water believes that the Bill has significant financial implications. The cost estimates that we provided to Scottish Government cover the period 2010 to 2014. We recognise that the costs set out in the financial memo cover the whole flood risk management planning cycle up to Dec 2015. The approach that the Government has taken to extrapolating costs based on information provide by Scottish Water is logical.

- We have worked closely with the Government since submitting our original cost estimates. This work has resulted in the development of implementation scenarios with a range of the £6 to £10 million. We believe that this is a sensible approach to estimating the range of costs to Scottish Water for the flood risk management planning cycle as long as the assumptions set out below in response to Question 6 are fully understood.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

- Our estimates of the financial costs to Scottish Water of the Bill will be included in our 2nd Draft Business Plan for the period 2010-2014 which will be presented to the Water Industry Commission in March 2009. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period 2010-2014.

- We remain concerned that it is not clear how the various funding routes of all the organisations involved will be linked to allow efficient delivery of schemes to reduce flooding risk. We recognise that the Government decided not to proceed on the basis of creating a single national authority with a secure funding route. The proposed arrangement of Competent and Responsible authorities can work but its success will be reliant on the proper allocation of funding. The challenge for the Government will be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body.

- As implementation proceeds the Government will have to keep the arrangements under careful review to ensure that Scottish Water securing funding through customer charges, for our capital contributions to any Flood Risk reduction scheme, remains the most appropriate route of financing. Alternatives may include relevant capital contributions to any Flood Risk reduction scheme being allocated entirely to the relevant Local Authority responsible for the scheme.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- It should be noted that the estimate of £4 million for 200,000 households is based on historical work done for the Dalmarnock drainage catchment in Glasgow and the Elgin, Rothes and Forres drainage catchments. This should not be considered as a definitive value for different catchments. Costs will vary due to the complexity of the catchment.
Scottish Water currently has drainage area models for 75% of the population connected to the sewerage system in Scotland. These models are not of a uniform standard and may require to be significantly improved before they are suitable for using in flood risk management plans. Significant work in areas not currently covered by drainage models has not been allowed for.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

- This Bill aims to reduce flood risk through sustainable flood management. As discussed in our response to the Rural Affairs & Environment Committee a fundamental aspect of this wider policy initiative should be surface water management plans so that long term solutions are implemented to reduce the flood risk. This will require Local Authorities and Scottish Water to enter into agreements to allow the integrated drainage of surface water. Scottish Water believes that such integrated drainage arrangements will be the key to reducing flood risk. The impact on the operating costs of both Scottish Water and Local Authorities is not fully understood at present and is not reflected in the Financial Memorandum.

- The Financial Memorandum does not include the wider requirements of the Pitt report to address flood risk management through completing critical assets flood risk assessment and investing in currently identified remedial works at critical water supply installations, estimated cost range £7.7 to £11.6m in the 2010-2014 period. These figures require to be reviewed for flood risk assessment and optioneering through the best practice Halcrow guidance produced in April 2008. These figures include an estimate for delivering water asset flooding improvements and flood risk assessment for wastewater assets. These costs will also be included in our 2nd Draft Business Plan for the period 2010-2014.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

- We believe there will be operating and capital costs in all future regulatory periods in relation to flood risk management. Scottish Water believes that it is only when more detail regarding the preliminary Flood Risk Assessment has been developed, that a more accurate costing of the impact on Scottish Water can be produced.

- No assessment can be made of the capital cost of improving Scottish Water’s network as part of any Flood Risk Reduction Scheme identified in Flood Risk Management Plans. It is assumed that these costs will be identified in the 2010-2014 period for delivery in the 2014-2018 period. We envisage that this process of doing study and modeling work in one regulatory period to identify the capital investment requirements for the following regulatory period will continue through all future regulatory periods.

Scottish Water
11 November 2008
**SUBMISSION FROM ANGUS COUNCIL**

**Draft Detailed Response to Questionnaire (Pending Approval by the Infrastructure Services Committee, Angus Council, on 25/11/08)**

<table>
<thead>
<tr>
<th>Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?</td>
</tr>
<tr>
<td>A1. Yes – The comments made on the financial assumptions made can be summarised as follows:</td>
</tr>
</tbody>
</table>

(i) While SEPA, as the only competent authority with a national remit, would be given the strategic role of both assessing and quantifying national flood risk and developing strategic Flood Risk Management Plans (FRMP’s) the Local Flood Risk Management Plans (LFRMP’s) are to be produced by the local authorities (LA’s). This would mean that, as the LFRMP’s would have to be compliant with the FRMP’s, the LA’s would potentially be significantly constrained in finding the best and most cost effective approach to solving local flooding problems. For instance the FRMP, essentially dictated by SEPA, could compel an LA to only consider a specific range of measures to solve a flooding problem which may be expensive to operate and maintain. Yet it will be the LA that would have to fund these measures, particularly as the grant allocation from the Scottish Government appears to no longer be directed at specific flood prevention schemes [see also item A1. (iv) below].

(ii) The new legislation should put the onus on Scottish Water (SW) to deal with excess surface water from an incompetent system (that is, incompetent to deal with flows resulting from extreme rainfall events greater than that of the critical design 1 in 30 year storm return period, which is all that is required by the recently implemented Sewers for Scotland 2). Currently the Water Commission and SW appear to regard this excess water as someone else’s problem (i.e. LA’s). Funding should be available either directly to SW or through funding of LA’s to deal with the excess [see also item A1. (v) below].

(iii) It must be recognised that the level of assessment that will be required for Local Flood Risk Management (LFRM) is much greater than it is at present. The LFRMP’s are major strategy documents and will require
extensive research and consultation by the lead authority. As an example the Shoreline Management Plan for the Angus coastline took five years and cost in excess of £200,000.

(iv) Given that Ministers would only approve or otherwise SEPA’s FRMP’s and would have no part in approving the LFRMP (other than requiring it to “not be inconsistent with anything in the relevant flood risk management plan”) and as already alluded to in item A1. (i) above, it is not clear how and when block funds from the Scottish Government would be made available to an LA acting as deliverer of the LFRMP’s. Angus Council would prefer that commitment to funding is made on the basis of the LFRMP’s. This would undoubtedly require prior approval of plans by Ministers as a precursor to funding allocations.

(v) Similar to A1 (ii) above, in agreeing that integrated urban drainage plans should be included as part of an LFRMP, it was stated that a properly funded means of dealing with outflows from SW’s systems was required. At present the means of dealing with these outflows is not properly funded because it falls out-with any legislation. Angus Council did not support the proposal to make SW responsible for implementing measures associated with drainage infrastructure as SW have never demonstrated an appetite to take on this role and it would be very questionable if it would ever be given any degree of priority in their spending profiles. This would inevitably lead to major difficulties in the integration of budgets and be a massive constraint on the delivery of measures and schemes. Angus Council would prefer to be funded directly to deal with all types of outflows from either incompetent or competent systems in the same way it has to deal with other overflows, as part of an integrated approach to urban catchments [see item A1. (ii) above].

(vi) The contention that LA’s are no longer constrained by reliance on central funding and may therefore undertake “non 1961 Act” activities needs to be fully elaborated in the proposals, as it is vital for clarity to know which other legislation is being referred to. With respect to this finance is still a constraint for two reasons:

a) If LA’s do not have express statutory power to act, they may be cautious about taking action in the face of potential vires issues, particularly in urgent situations.

b) If funding is insufficient or uncertain this will hamper the development of projects contained in LFRMP’s.

LA’s have argued this uncertainty about the disjointed nature of legislation and regulations has caused problems in the past. The 1997 Flood Prevention and Land Drainage (Scotland) Act has received
particular criticism for being imprecise in its drafting, leading to severe
difficulties in its implementation. The Act was intended to allow LA’s to
take action but they are still constrained in being proactive since they
had to bear the cost of any such actions where there is no specific,
direct funding. This was even though it might be considered that LA’s
have powers in terms of the Local Government in Scotland Act 2003,
Section 20 – Power to advance well-being.

(vii) For pro-active catchment management, which is central to achieving
Sustainable Flood Management, SFM, LA’s should be empowered to
deliver agreed LFRMP’s, where necessary on private land. In order to
do this proper compensation arrangements for private landowners
would be vital. Such compensation should be properly considered as
part of the funding in block allocations to LA’s. It should be noted that
such compensation may include long term commitments to achieve
changes in environmental management plans and management
regimes.

Q2. **Do you believe your comments on the financial assumptions have
been accurately reflected in the Financial Memorandum?**

A2. This depends on which comments (using the same numbering as A1.
above) as follows:

(i) As the three tier approach has essentially been maintained, it is
believed that the original concern has not been adequately addressed:
the measures which the locally accountable LA’s can take and would
have to fund themselves to solve specific local flooding problems will
still be dictated by the unelected organisation, SEPA, via its FRMP’s.
Therefore it seems likely that the whole life cost of measures to be
taken to solve flooding will be significantly higher than present, though it
is noted from Cl. 328 of the Memorandum that “at this stage it is not
possible to predict whether current expenditure on flood risk
management measures will change significantly”.

(ii) While Cl. 329 of the Memorandum states that “the identification of
Scottish Water as a responsible authority under the Bill would place
them under new statutory duties for flood risk management” it is open to
interpretation what this would actually compel SW to do. In fact the
reiteration, or even underlining, in Sewers for Scotland 2 of the previous
status quo, whereby SW have no responsibility for increased flood risk
out-with a development site due to increased run-off from that site due
to that development beyond the critical 1 in 30 year return period storm
event, would tend to emphasise an interpretation which continued to
assume that this problem was not SW’s to deal with.

This is particularly concerning given the removal of an LA’s right, which the repealed flooding legislation gave, to request grant assistance from the Scottish Government. However, it is noted that, although not explicitly stated, the fact that the Coast Protection Act 1949 remains in force unaltered, LA’s would still have this right for coastal protection schemes (though it is understood that this will also now normally be dealt with through the unspecified block funding allocation mechanism).

It should also be noted that a representative of SW stated at a meeting in September 2008 that SW only had a budget to deal with flooding (due to inadequacies in SW’s system) within a private property that had a flood risk up to and including the 1 in 10 year return period. Thus it appears that SW currently has no budget to deal with incompetent systems which cause “internal” flooding (i.e. within private homes) beyond the 1 in 10 year return period, let alone any “external” flooding (i.e. on the public roads, etc.) at all.

(iii) It is unlikely that providing an additional £240,000 p.a. to each LA would be sufficient to cover the additional costs to the Council of producing LFRMP’s. This is particularly as this figure is an average which, as stated in Cl. 277, is likely to be skewed towards “Scotland’s urban centres” rather “than in Scotland’s rural areas”, which is likely to discriminate against Scotland’s small, primarily rural councils such as Angus Council. It should be understood that Angus Council, due to its location, climate and topography is highly prone to problematic flooding (it currently has 4 significant flood prevention schemes at various stages of development or maintenance which is more than some of the major urban councils) and the allocation of funding should reflect this.

Also a lot of the additional costs in the last 5 years for the development of flood alleviation schemes are due to the increasing need for environmental safeguards, monitoring and improvement. As rural councils tend to have some of the best river environments, which support significantly higher levels of biodiversity than heavily engineered and relatively polluted urban watercourses, there appears to be a stronger focus and higher environmental standards demanded by statutory environmental bodies and fishery boards on rural rivers than on urban watercourses. For instance, if there are no protected fresh water pearl mussels potentially present, as is likely to be the case in an urban watercourse of a major city, the statutory environmental bodies are unlikely to ask for an expensive fresh water pearl mussel survey to be carried out, nor will the flood prevention scheme being developed have to take into account their presence, which can be costly and often lead to cheaper flood alleviation options being ruled out on environmental grounds. These additional environmental concerns have led to significant increased costs for rural councils developing flood alleviation schemes, which given the Flood Management Bill’s emphasis on SFM is only likely to increase. This factor does not appear to be acknowledged in the Financial Memorandum.
Related to this it is understood that SEPA’s FRMP’s, which an LA’s LFRMP will be constrained by, are more likely to place a greater emphasis on catchment management measures in rural areas than in urban areas, as there will simply be more scope for significant catchment wide measures to be applied in the rural areas. Given that the effectiveness of the catchment management measures will be largely dependent on the understanding, goodwill and implementation of local landowners and farmers who may not see the benefits outweighing the costs, it seems highly likely that there will be a greater need for significant and ongoing negotiations and incentives for a disparate group of stakeholders to sign up to such a plan. This, in the long-term, is likely to have a higher whole life cost than the initially more capital intensive, hard engineered solutions that urban LA’s are more likely to be allowed to implement, particularly in view of the changing requirements of the catchment stakeholders due to inevitable changes in landownership. This increased cost appraisal excludes the high cost of the likely monitoring and, if possible, enforcement role which it is, perhaps erroneously, assumed SEPA will undertake to ensure that the catchment wide measures are implemented or adhered to by private landowners, etc.

Finally, based on the level of flood risk shown by the flood plain definitions given by Scottish Planning Policy SPP 7 in development control, it appears that the additional £240,000 p.a. envisaged grossly underestimates how much more flood alleviation work these LFRMP’s will generate. Currently, due to resource constraints, LA flood alleviation work tends to be reactive rather than proactive. This means that the focus of LA’s tends to be on areas where a flood has already recently occurred, with a view to preventing a similar flood happening again. The development of the FRMP’s will mean that LA’s will have to address a much more extensive area at risk of flooding (where LA’s had previously no knowledge of a recorded historic flood risk) than is currently the case.

(iv) As stated in item A2. (ii) the Bill effectively removes a LA’s right to request grant assistance from the Scottish Government for flood protection schemes. Nor does the Bill explain how the block grant for flood prevention will be equitably distributed to LA’s on the basis of their need. As explained in item A2. (iii) above, the statement in Cl. 277 of the Memorandum that “it has been assumed that efforts to understand and manage flood risks are greater in Scotland’s urban centres than in Scotland’s rural areas, and the costs on LA’s reflect this spread of effort” is also clearly unsatisfactory.

With respect to this, a letter was sent to the Cabinet Secretary for Finance and Sustainable Growth, Mr. John Swinney, MSP, on 30/05/08, from David S. Sawers, Chief Executive, seeking confirmation that the funding regime had now changed from “grants” awarded to individual projects when a Flood Prevention Order (FPO) has been made to funds being directed to LA’s through “block allocations” and that this will
continue beyond the current three years settlement period. Two issues were raised with respect to this:

(a) Firstly, the current grant allocations provide for schemes having the benefit of an FPO. Clarification was sought as to how schemes are likely to receive financial support where the FPO for a scheme is programmed to be confirmed during the current three year settlement period. In the case of one particular scheme, the Brechin Flood Prevention Scheme (BFPS) the FPO was programmed for promotion commencing in 2008. It was queried whether the block allocation would be made ahead of an FPO being made for an individual scheme, for example on the basis of the LA’s capital plan containing a programme of both coastal and flood alleviation schemes or whether the funding would be part of the Scottish Futures Trust (SFT). Also, in either case, clarification was sought on what approval process would be applied and how the funding would be allocated and whether funding through block allocations would allow the opportunity for funds to be available before the FPO is made. With particular reference to the BFPS, this scheme has occurred in the period when new SFM practices are being introduced and the regulatory framework has been undergoing extensive change. This council has extraordinary preparatory costs occasioned by the need to comply with these recent legislative developments during the preparation of the scheme. At a recent conference on Infrastructure Investment in Scotland, John Mason spoke on the matter of flood prevention and its relationship with SFT, indicating that the funding for the BFPS was included in the Scottish Government’s £35bn, 10 year programme. If the BFPS is to be funded from or through SFT, it was queried when the Scottish Government would be providing guidance on its application. The importance of receiving this clarification was emphasised if the BFPS was to get approval in 2008 as noted above, which now seems unlikely.

(b) Secondly, clarification was sought as to what extent the financial support may provide for such elements as necessary environmental mitigation or enhancements and design costs (i.e. it was queried what would comprise “eligible costs”). When developing a scheme LA’s have to bear the preparatory cost of design and investigations required to bring forward any scheme significantly in advance of an FPO. Eligible costs had previously been subject to grant after the FPO was made. Previously and at present the risk of obtaining approvals is with the LA. By contrast for other capital schemes the preparatory costs are included in the capital plan and are considered within the overall funding package for the scheme.

Although it is understood that an acknowledgement from the Minister’s office was received, no substantive response has yet been received, prompting the Chief Executive of Angus Council to write again to the Minister on 24/09/08 requesting a likely timescale for a substantive response from the Minister’s office.
(v) Although it is satisfactorily noted that the proposal to make SW responsible for implementing measures associated with drainage infrastructure has been withdrawn, the funding issues raised for dealing with outflows from SW’s systems have not been addressed [see item A2 (ii) above].

With respect to this, the letter sent to the Cabinet Secretary for Finance and Sustainable Growth, Mr. John Swinney, MSP, on 30/05/08 [see item A2. (iv) above] also sought clarification on whether the revised funding mechanism would remove a number of apparent legislative restraints of the 1961 Flooding Act and the 1949 Coastal Protection Act, as stated in the consultation on the emerging Flooding Bill, particularly with respect to the BFPS. It was asked whether it would be competent for Angus Council to include all the work required to deal with the outflows from drainage systems, including the sewers, in an integrated manner as part of the flood scheme and consequently how it would be funded.

The letter stated that: the effectiveness of the BFPS will rely on its interrelationship with the sewer system. At present there appears to be no requirement on SW to “flood proof” their sewers which they contend operate to their design standards. Equally it may not be within the legislative powers of the Council to achieve this flood proofing either through the promotion of the BFPS or through other legislation. The consultation paper on the Flooding Bill 2009 appeared to hold out hope of a resolution to this difficulty. Confirmation was requested that this difficulty would be overcome through the forthcoming legislation [though this does not appear to have happened as per item A2. (ii) above] or otherwise.

With respect to a lack of a substantive response to the queries raised in this letter see item A2. (iv) above.

(vi) While Sections 49 – 51 of the Bill appear to be more precise in stating what LA’S can or cannot do with respect to their general power to manage flood risk than the flooding legislation to be repealed, LA’s will still be constrained in being proactive as they will still have to bear the cost of any such actions where there is no specific direct funding. Although the new power conferred by Section 57 of the Bill for LA’s to recover any expense it incurs in carrying out repairs, etc. to flood protection work from the owner or occupier of the land if that person caused the damage is welcome, it may be difficult in practice to prove that the damage repaired was “as a result of the actions of that person”.

(vii) It is not clear that the cost to primarily rural LA’s, such as Angus Council, of carrying out proactive catchment management measures as part of SFM has been sufficiently allowed for in the additional £240,000
Q3. Did you have sufficient time to contribute to the consultation exercise?

A3. The timescale for a consultation response to this Questionnaire on the Financial Memorandum has been very tight and it has been difficult to accommodate the Committee’s requirement for this response along with other high priority flooding issues.

Costs

Q4 If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A4. In addition to the outstanding financial issues Angus Council still has from the original draft Bill consultation detailed above in item A2, the following financial implications have not been accurately reflected in the Financial Memorandum:

(i) The estimate given in Cl. 313 by LA’s (which LA’s, it is not clear) that “when the new system is in place ... the changes to the statutory process will cost approximately an additional average of £10,000 per annum for an individual local authority ... to carry out new duties including processing of objections, additional administration costs and setting up a new system to approve applications for flood protection schemes” appears to be far too low an additional cost incurred, certainly between the enactment of this Bill and when the FRMP’s are in place (December 2015). This is because currently the level and detail of documentation required for an FPO is significantly less than that required for full planning permission, although the FPO consultation required is much more extensive. This means that an LA can do the minimum amount of work required for the FPO for a scheme to be granted and then, due to the extensive consultation requirement for an FPO, be fairly certain (once the FPO is approved by Ministers) that the scheme will be granted Planning Permission before carrying out the extensive additional work required for Planning Permission. By combining the FPO and planning processes, LA’s will have to undertake a much greater minimum amount of work on a scheme before the proposed scheme is tested against public opinion, etc. via the extensive new consultation process. Given that flood protection schemes are
generally relatively complex and are normally, by their nature, carried out on private land, it is likely that the rejection of such an LA scheme by the Scottish Government will result in significantly more abortive work by the LA than the rejection of an FPO would currently. This does not appear to have been taken into account in this LA cost estimate. It should be noted that it is hoped that when the FRMP’s have been approved the likelihood of significant levels of abortive work would be reduced as, providing the proposed scheme is consistent with the approved FRMP, the scheme should be more likely to be accepted by consultees.

(ii) With respect to Cl. 323, while it is accepted that there will be a small saving to LA’s as a result of the transfer of responsibility for the enforcement of the Reservoirs Act to SEPA. In the case of Angus Council, this saving is likely to be offset by the new requirement for incident reporting on the 3 reservoirs it owns.

Q5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

A5. Given the outstanding concerns raised in items A2 and A4 above it seems highly unlikely that Angus Council will be able to meet the financial costs associated with this Bill (i.e. as detailed in the summary of estimated costs in the Memorandum) particularly in view of the concern raised in item A6. below.

Given that a high degree of uncertainty is expressed throughout the Memorandum regarding the likely additional costs of implementing the requirements of the Bill, it would seem fair and logical that a LA should be able to claim back any additional expenditure it has incurred on implementing this Bill from the Scottish Government until such time as the real additional costs to LA’s are known. Although it is recognised that claiming a grant to cover the additional cost incurred is perhaps against the current CoSLA and Scottish Government line of aiming to minimise ring fencing to allow LA’s greater flexibility, given the uncertainty surrounding the costs and how these will be spread amongst LA’s, the option of having a grant out-with the main settlement, at least initially until such time as the outcome from implementing the new Directive has become clear, is considered to be most appropriate. It is therefore suggested that the mechanism for claiming back the additional cost incurred could be similar to that which previously was in place for LA’s to claim the 80% grant from the Scottish Government for carrying out a flood prevention scheme. The Scottish Government would be in a good position to compare the additional expenditure incurred between similar LA’s and carry out audits as it saw fit to ensure that no LA’s were making spurious additional expenditure claims, the
cost of which could be charged to an LA if this was found to be the case. There would also be the benefit of this process being generally well understood by flood prevention practitioners in both LA’s and the Scottish Government.

If LA’s are unable to adequately fund the additional requirements, there is a danger that LA’s will be unable to take the proactive approach envisaged by the Bill, but will only be able to carry out the minimum requirements of the Bill. This will mean that the development of the LFRMP’s is likely to be much delayed and until more certainty is given over the likely funding mechanism for the detailed flood protection measures (particularly those to be incorporated within flood protection schemes to be promoted) the detailed timetable of completion and implementation of measures is likely to be long-term. Please note that LA’s have various competing demands for resources, and the priority of flooding as an issue tends to recede as the time since the last major flood occurred lengthens. The decision to allocate the central government funds, which previously were available as an 80% grant for specific flood alleviation schemes, as block grants, on an as yet unspecified basis, to individual LA’s is only likely to encourage this unfavourable response from LA’s as higher priority demands eat into this funding.

Q6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A6. While for virtually every cost the Memorandum states uncertainty in the cost and timescales of implementing the requirements of the Bill, it states mean costs for each Council with no mechanism by which the real costs can be claimed back should the cost estimate and timescale prove significantly erroneous. Furthermore the Bill also makes an allowance for Ministers to add significantly to the workload of LA’s at virtually every stage of the Bill’s implementation, both directly and indirectly.

Wider Issues

Q7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A7. It is understood that this Bill, in promoting SFM, forms part of a wider environmental policy initiative, as introduced by the Water Environment
& Water Service (Scotland) Act 2003 (WEWS) from which the River Basin Management Plans (RBMP) and Controlled Activities Regulations (CAR) legal requirement for Sustainable Drainage Systems (SuDS) and Scottish Planning Policy SPP 7: Planning and Flooding have emanated. The prime associated costs have mainly come from the introduction of the CAR, SuDS & SPP 7. As all three of these policy initiatives have already been introduced, it is presumed that the cost estimates in the Memorandum have not taken account of them. However, it is not clear that the substantial additional financial burden which these place on LA’s (in particular the adoption of virtually all forms of SuDS which do not meet SW’s Sewers for Scotland Version 2 strict vesting criteria, i.e. the vast majority of SuDS) have been allowed for in the current budget allocation for individual LA’s. With respect to this see item A2. (iii) & (iv) (a) above.

In addition, and similar to the problem highlighted in the Bill’s proposed amalgamation of the FPO and Planning Approval stages of the statutory approval process [see item A4. (i) above] the Bill gives no indication of how the CAR licence application and approval requirement will fit into the process. There is a danger that SEPA could require the detailed information it needs to assess and approve a licence application, which can take up to 4 months, at the new flood protection scheme approval stage, rather than after the detailed design stage when it would be most appropriate to provide the detailed information required for a CAR application. While this may appear to shorten the whole statutory approval process, it would only do so at LA’s risk, as this may make the issue of abortive work, similar to that described in item A4 (i) above, even more significant. For an LA, in order to gain scheme approval, may need to carry out this work before it has any indication that the scheme will be approved. Currently, it is understood that SEPA in the Angus area would require conditional approval of a scheme at both the FPO and planning stages to ensure that its CAR approval requirements would be met and the relevant licence be issued to Angus Council prior to construction work beginning on site. This allows any detailed information requirements to be dealt with by an LA at the appropriate stage in a scheme’s development.

<table>
<thead>
<tr>
<th>Q8.</th>
<th>Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A8.</td>
<td>Yes, there may be future costs associated with the Bill as per items A6. above. No, it is not possible to quantify these costs at this stage.</td>
</tr>
</tbody>
</table>

David S. Sawers  
Chief Executive  
5 November 2008
SUBMISSION FROM NORTH AYRSHIRE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes to both

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

No, see comments for question 4 below:

Did you have sufficient time to contribute to the consultation exercise?

No, the timescale did not allow for North Ayrshire Council’s submission to be approved by its Executive Committee.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Council expressed concerns over the funding of large-scale flood protection schemes following the ring fencing of flood prevention and coast protection grants as part of the single outcome agreement. This effectively allocates funding to those local authorities with approved schemes and which will be built in the 3 years up to 2011. The Financial Memorandum, paragraph 327, states that the first set of flood risk management plans will be produced in 2015 and will identify measures to be taken forward in the subsequent 6 years. There is no detail provided on how funding will be allocated in the period from 2011 up to 2015. From 2015, the Financial Memorandum is very vague stating only that “expenditure will be targeted in those areas at greatest flood risk and on most cost effective measures to manage those risks”.

North Ayrshire Council is currently progressing a scheme for the upper Garnock catchment at Kilbirnie, Glengarnock and Dalry. The estimated cost is around £12 – 15m and the Council has concerns over the lack of information in the Bill with respect to a mechanism which would allow local authorities to bid for flood protection schemes.

With regard to revenue funding, the annual costs given in paragraph 286 for undertaking work to contribute to the preliminary flood risk assessment seem fairly accurate. Until local flood risk management plans are complete, it is impossible to comment on whether the costs given in paragraph 289 are an accurate reflection of the work that will be required. Within North Ayrshire Council, based on current knowledge gained by officers since the 1997 Amendment, it is considered that the identified cost of £0.24m per annum can easily be accounted for during the first 6-year cycle.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
North Ayrshire Council would not be able to meet these costs out of its current budget allocation for flood prevention. Accordingly, it is the Council's contention that the anticipated costs of implementing this legislation be fully funded by the Scottish Government.

**Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

North Ayrshire Council does not consider that the Financial Memorandum accurately reflects the margins of uncertainty. Currently most local authorities have a fair understanding of the condition of their watercourses and the financial implications of the work that are required. The question of dealing with flooding from all sources has, at present, not generally been identified. The costs of dealing with coastal flooding, overland flow and, in particular, upgrading an antiquated and often unrecorded surface water sewer network (including culverted minor watercourse in urban areas) is considered to be high. Few local authorities in Scotland, with possibly the exception of Renfrew and Glasgow, have assessed this aspect of flood risk in any detail.

**Wider Issues**

**If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?**

No, for reasons stated above, if the costs in the Financial Memorandum are not considered to accurately reflect the Bill then it follows that they not will not reflect any associated costs of a wider policy initiative.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?**

On past experience of this type of legislation, in particular the 1997 amendment to the Flood Prevention and Land Drainage (Scotland) Act 1961, North Ayrshire Council has no doubt that there will be future costs associated with the Bill. This view is based not only on past experience but also on the scarcity of experienced flood practitioners, current uncertainty on flood risk and public expectation where flood risk is a real concern.

R Small
Head of Infrastructure & Design Services
November 2008
SUBMISSION FROM CLACKMANNANSHERE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Clackmannanshire Council did respond to the call for comment on the draft Bill, but no direct comment was made on the financial assumptions taken at that time. The C.C. response was sent within the timescale required.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The "summary of questions" document to be completed on the draft bill did not ask for comment on the financial issues related to the bill.

Did you have sufficient time to contribute to the consultation exercise?

It is considered that despite the relatively tight timescales and importance of the topic there was sufficient time to offer useful comment.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Although the Bill successfully sets out a robust framework for the future of flood management in Scotland, the scale and cost of the resultant duties and responsibilities on Local Authorities (LA) has not yet been determined. LA costs can only be known accurately enough to allow meaningful financial planning once more detailed knowledge is gained of the Bill by the relevant LA staff. As an example, the exact extent of Local Plan Districts and the identify of all Lead Authorities are unknown at this time. It is therefore difficult for CC to have confidence in the accuracy of the costs quoted in the Explanatory Notes given the significance and extent of these variables. Also, with the variety of council area sizes, catchments and likely Local Plan Districts, giving average cost figures does not seem to offer any useful information.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As the scale of the duties and responsibilities that will fall to CC are not known at this time, CC cannot confirm that the financial costs associated with the Bill can be met from normal LA resource allocations from SG.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
CC considers that the draft Financial Memorandum does reflect a level of uncertainty in terms of resource estimates and of course a process to derive estimates is needed. However, the topic involved is of such a complexity and Council and catchments sizes vary so greatly that concern is expressed as to usefulness of the figures quoted.

**Wider Issues**

*If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

Given the flood bill will transpose the EC Floods Directive, it does, to some extent, form part of a wider EC policy initiative. The Financial Memorandum does reflect costs associated with required steps towards adherence with the EC Flood Directive, but C.C. cannot as yet determine whether all such costs are currently included.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

There will, no doubt, in future years be subordinate legislation and other requirements placed on LAs and it is inevitable that resultant future costs will require to be borne. However, given the very early stage in the legislative process combined with complexity of the topic involved, it is very difficult to determine any meaningful future costs.
SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Comhairle responded to the consultation on the Bill and on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, however as the costs detailed in the Financial Memorandum refer to estimated average amounts for each local authority, the actual costs on individual local authorities will vary significantly depending on the extent and type of flood risk that are being assessed and managed.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill will have significant financial implications for Comhairle nan Eilean Siar. For the reasons expressed in answer to Q2., it is difficult to ascertain whether the information submitted by the Comhairle has been taken account of in the Financial Memorandum.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Comhairle cannot meet the financial costs associated with the Bill. Comhairle nan Eilean Siar budgets are fully committed and services generally are under considerable pressure not least from the requirement to make year on year efficiency savings.

As the Bill places significant additional duties on Comhairle nan Eilean Siar, costs should be met by additional funding to the Comhairle from the Scottish Government. As the Bill has resulted from an EC Directive, consideration could be given to the EU as an appropriate source of finance to implement the requirements of the Bill.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Without access to the financial information submitted by each local authority, a definitive answer cannot be provided regarding the accuracy of cost estimates. However, given that the
cost estimates are a reflection of submissions from all parties, the Financial Memorandum provides reasonable estimates of costs in relation to uncertainty and timescales.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Yes.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Future costs will become apparent as the extent and type of flood risk that are being assessed and managed are developed by the processes stated in the Bill.

<table>
<thead>
<tr>
<th>Statutory Process Costs per annum – including appeals/objections*</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil Ad-hoc meeting as required with local communities costs met from existing revenue.</td>
<td>See previous spreadsheet Total costs for flood risk management responsibilities £107k per annum</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Nr of full time/ part time Staff Employed in Statutory Process</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
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<tbody>
<tr>
<td>Small variable revenue staff costs as required for local meetings etc.</td>
<td>6 no part time staff Total annual commitment 147 days (Approx 0.5 full time post)</td>
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<table>
<thead>
<tr>
<th>External Consultancy Fees (per annum) – Statutory process</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
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</thead>
<tbody>
<tr>
<td>nil Budget set at £40k per annum</td>
<td>nil</td>
<td></td>
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</table>

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<thead>
<tr>
<th>Planning Process that deal with flood prevention schemes Costs per annum*</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
</tr>
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<tbody>
<tr>
<td>nil nil</td>
<td>nil</td>
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</table>

<table>
<thead>
<tr>
<th>External Consultancy Fees (per annum) – Planning process related to Flood prevention schemes</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
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<tbody>
<tr>
<td>nil nil</td>
<td>nil</td>
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<table>
<thead>
<tr>
<th>Nr of full time/ part time Staff Employed in Planning</th>
<th>Pre Bill Introduction £/annum</th>
<th>Post Bill Introduction £/annum</th>
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<tbody>
<tr>
<td>nil nil</td>
<td>nil</td>
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<tr>
<td>Process – that deal with flood prevention schemes</td>
<td></td>
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<tr>
<td>--------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>External Consultancy Fees (per annum) - reservoirs</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>Cost of Enforcing Reservoir Act per annum</td>
<td>Variable sum generally less than £1k per annum</td>
<td>Variable sum generally less than £1k per annum</td>
</tr>
<tr>
<td>Nr of full time/ part time Staff Employed in Reservoir Act Enforcement</td>
<td>1 part time</td>
<td>1 part time</td>
</tr>
<tr>
<td></td>
<td>Small part of overall piers, harbours and coastal duties</td>
<td>Small part of overall piers, harbours and coastal duties</td>
</tr>
<tr>
<td>Fees for reservoir Inspection Engineers (per annum)</td>
<td>Small cost as necessary</td>
<td>Small cost as necessary</td>
</tr>
<tr>
<td>Cost Incurred in Water Framework Directive per annum (River Basin Management Planning)</td>
<td>Small staff attendance costs, meetings etc organised by SEPA</td>
<td>Small staff attendance costs, meetings etc organised by SEPA</td>
</tr>
<tr>
<td>Nr of full time/ part time Staff Employed in WFD Process (River Basin Management Planning)</td>
<td>Staff only for attendance at meetings, cost met from revenue.</td>
<td>Staff only for attendance at meetings, cost met from revenue.</td>
</tr>
<tr>
<td>External Consultancy Fees (per annum) WFD process</td>
<td>No external consultants employed by CNES</td>
<td>No external consultants employed by CNES</td>
</tr>
</tbody>
</table>

* As annual figures will vary considerably it may be useful to provide the costs associated with the passage of an individual scheme through these processes.
SUBMISSION FROM EAST LOTHIAN COUNCIL

Introduction

East Lothian Council welcomes the opportunity to comment on the Financial Memorandum for the Flood Risk Management Bill.

All questions have been answered as outlined on the Questionnaire.

Flood Risk in East Lothian

The “Impact of Flooding in Scotland Maps” prepared by the Scottish Executive Geographic Information Service covering both fluvial and coastal flooding and using the SEPA Indicative Flood Maps do not take into account any flood or coastal defences.

Properties which have already been protected are included in the number of properties at risk from flooding as shown on the SEPA Maps.

If Government Funding was distributed to Local Authorities on an average basis, East Lothian Council would be unfairly treated, as the number of properties in East Lothian at risk of Flooding is greater than the average number in each Local Authority area.

Consultation

Q1 Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

A1 Yes.

Q2 Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

A2 No.

Q3 Did you have sufficient time to contribute to the consultation exercise?

A3 Yes.

Costs

Q4 If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A4 No. The estimated staff costs associated with the preparation of the Flood Risk Management plans appear to be low compared with the expertise which will be required to prepare meaningful plans.

Para 276. “The costs identified are preliminary estimates.”
Para 285. “The Bill will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties.”

Para 289. “The average implementation cost for each local authority.”

Para 291. “SEPA, in close liaison with local authorities, will also be responsible for establishing the network of advisory groups that will support flood risk assessments and management plans.”

Para 294. “All work will be undertaken in close co-ordination with the responsible authorities and, in particular, local authorities.”

Para 298. “Scottish Water to assist SEPA on flood risk assessments and flood management planning, and to do so in collaboration with SEPA and other responsible authorities.”

Para 299. “An area that will require Scottish Water to undertake new work in improving the understanding of flood risk from sewerage flooding, and linking this work with other flooding studies undertaken by SEPS and local authorities.”

Para 328. “At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence on the provisions set out in the Bill.”

Para 329. “Flood management measures would be taken forward through existing investment programmes.”

Q5 Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met.

A5 No. Additional Central Government Funding is required.

Q6 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A6 No. The estimated staff costs associated with the preparation of the Flood Risk Management plans appear to be low compared with the expertise which will be required to prepare meaningful plans.

Para 276. “The costs identified are preliminary estimates.”

Para 285. “The Bill will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties.”

Para 289. “The average implementation cost for each local authority.”

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Para 329. “Flood management measures would be taken forward through existing investment programmes.”

Wider Issues

Q7 If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A7 Unable to answer at this time. It is unlikely that the associated costs have been accurately reflected.

Q8 Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed? If so, is it possible to quantify these costs?

A8 Unable to answer at this time, but it is likely that there will be future associated costs.
SUBMISSION FROM THE HIGHLAND COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Highland Council did take a full part in the consultation, but did not comment on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Highland Council did not make any comments on any financial assumptions.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has substantial financial implications for the Highland Council. It is not possible to give a firm opinion on the financial details. The total financial costs for Local Authorities have been inserted after consultation with COSLA but are given for the whole of Scotland and are simply averaged for each of the 32 Authorities. There is no detail of the basis or breakdown of the costs. There is no guidance for the likely Highland Council liabilities.

There are some apparent omissions from the Financial Memorandum:-

Under current legislation the Council have a duty to access watercourses. These watercourses generally relate to urban, built up areas. Under the proposed Bill the Council will have a duty to assess all watercourses – rural and urban. The ‘extra’ cost for the wider watercourse assessment does not seem to appear in the Financial Memorandum.

The measures in the proposed Bill can be varied by future regulation, ministerial direction and guidance. It is unlikely that these unknown future changes are included in the costs.

If the proposed Bill is successful - as intended - in simplifying and accelerating the procedures for flood protection then it is likely there will be increasing pressures to deliver such schemes. This will increase the financial pressures on the Council’s budget.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The financial costs cannot be met by the Highland Council from within existing budgets. Many parts of the Bill will give the Council many extra duties and short fixed timescales. The Council will be seeking clarification from the Government over the substantial financial implications.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The financial memorandum is broken down into sections and is only averaged for each Authority. There are no margins of uncertainty given. It is not possible to say whether the margins, estimates or timescales are realistic.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

It is not possible to say whether these costs are accurately reflected or not.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The measures in the proposed Bill can be varied by future regulation, ministerial direction and guidance. It is unlikely that these unknown future changes are included in the costs. It is not possible for the Council to quantify these costs.
SUBMISSION FROM MORAY COUNCIL

Q1 The Moray Council took part in the consultation exercise and commented on the financial assumptions made to CoSLA.

Q2 It is unclear whether our comments have been accurately reflected. The response identified the establishment and administration of local advisory groups as likely to have significant additional costs attached but these have not been separately identified in the Financial Memorandum. Likewise the costs of stakeholder participation and consultation are not separately identified.

Q3 The time allowed for local authorities to respond to CoSLA with the information requested by the Scottish Government was too tight and did not allow for a detailed formulation of costs.

Q4 As the costs given at para 289 (the bulk of the costs for local authorities) are averages for all authorities with no indication of upper or lower limits or of what the costs include, it is unclear whether the likely financial implications for the Moray Council have been accurately reflected in the Financial Memorandum. However, the comment at para 277, assuming that costs will be higher for urban authorities than rural authorities, gives rise to concern that the costs for the Moray Council may have been underestimated in the preparation of the Financial Memorandum.

Q5 The Bill will clearly have significant additional revenue and potentially additional capital costs for the local authority. There is no scope to meet these additional costs within current financial resources. Additional statutory duties should be funded through additional revenue support and capital grant as appropriate.

Q6 The Financial Memorandum states that there is considerable uncertainty, particularly at the level of individual authorities, but does not attempt to indicate the margins of uncertainty within which the Scottish Government expects authorities to operate or the likely range of additional resource requirements.

Q7 A significant risk to the delivery of flood alleviation schemes in Moray is funding support from the Scottish Government. Prior to April 2008 the Council was guaranteed 80% funding for eligible expenditure. With the move to capital grants that at present do not match the 80% level, there is major uncertainty for Moray Council in terms of affordability. Further details are provided in the Additional Comments section below.

Q8 Unclear therefore cannot quantify.

Additional Comment

Flood Risk management is well developed in Moray because of the recent history of flooding and concomitant commitment to develop Flood Alleviation Schemes. Flood Risk maps already exist for the most vulnerable areas. However, the Bill will inevitably entail additional work. The costing developed by the Moray Council for likely additional costs assumes that the work already carried out will not require to be duplicated in the initial stages. However, additional costs will be entailed to meet the requirement to update plans on the timescale set within the Bill, and these were not requested as part of the consultation exercise.
The bulk of the £44.33 million cost estimated as falling on local authorities as a result of the Bill are described in paragraph 289, but in such an abbreviated fashion that it is difficult to see what has been included in the calculation and how this might be expected to apply to individual authorities. It is consequently difficult to assess whether or not the Financial Memorandum sets out the best estimate of the administrative, compliance and other costs to which the provisions of the Bill would give rise.

Paragraph 329 states that flood management measures arising from the new flood risk management procedures would be taken forward through existing investment programmes. This does not recognise that existing investment programmes are underfunded compared to the 80% specific grant funding regime previously in place. In the case of the Moray Council this results in a shortfall of £23 million between 2008/09 and 2010/11. This shortfall is calculated before allowing for construction inflation over the period, the cost of public local inquiries (if necessary) and the full cost of compensation for landowners affected by the schemes. At the least, public expectations of flood alleviation works will be raised by the process as described in the Bill and there is no recognition in the memorandum that additional capital works cannot be absorbed within current investment processes without significant impact on other capital investment or that additional capital works entail additional revenue expenditure on maintenance. The Council anticipates further capital expenditure of £71 million between 2011/12 to 2013/14 to complete the Flood Alleviation Schemes in Moray.
SUBMISSION FROM ORKNEY ISLANDS COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Answer – Orkney Islands Council did not take part in the consultation exercise for the Bill consequently no comments were made by the Council on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Answer – Not applicable but please refer to the answer for 1.

Did you have sufficient time to contribute to the consultation exercise?

Answer – Sufficient time was allowed for a contribution to be made to the consultation exercise but Orkney Islands Council did not contribute in this instance.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Answer – The assessment of costs has been arrived at by consultation with CoSLA. On that basis it is accepted that the additional cost to be borne by local authorities is accurate. The figures are averaged across all Council’s however and it is not possible therefore to assess the particular costs for Scotland’s smallest local authority, Orkney Islands Council.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Answer – Given that the Financial Memorandum anticipates average costs per local authority of £300,000 (£60k – flood risk assessments & £240k – flood risk planning cycle) to instigate and continue with the requirements of flood risk management it is unlikely that Orkney Islands Council would be able to absorb costs of this magnitude without affecting other service provision. It would be expected that additional funding from the Scottish Government would be made available to the Orkney Islands Council in this regard.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Answer – Yes.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Answer – Yes.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Answer – No.

Brian Thomson
Director of Technical Services
Orkney Islands Council
SUBMISSION FROM RENFREWSHIRE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, took part in consultation exercise through Cosla and commented on the financial assumptions. However, this was before the significant reduction in development took place, which has now shifted the perceived need for very local flood risk management planning much further ahead of cost recovery from improved capital receipts and development constraint removal. There are therefore much greater up front costs, within a fixed EU timeframe.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes. However, the mechanisms for aligning the budgets and especially the timeframes of Scottish Water are problematic.

Did you have sufficient time to contribute to the consultation exercise?

Yes. However, the implications and development of the Bill is ongoing.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes. However, with the information available at the time it would be reasonable to expect a significant margin of error to potentially exist. Further estimates made are on the higher side, but no allowance is made for any duplication with similar potential costs as a result of the Climate Change Bill, and overlapping measures that may be applicable.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Do not believe that the organisation could meet the financial costs associated from within current resources. An increase in GAE would be required and this should be based on the number of properties at risk of flooding.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Financial Memorandum provides reasonable estimates given the level of uncertainty. However, key decisions in respect of the WIC brief, could substantially affect both implementation timescales and expenditure profiles.
It should be noted however that the estimates provided are substantially based upon the existing expertise, intellectual capital, and data developed with 1M Euros of urban water project assisted by Westminster and the EU. Other LA’s may not be so fortunate to be in this position.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The potential implications of the Climate Change Bill, include for a structural reassessment of our street layouts both old and new, to reflect a much needed reduction in carbon generation by traffic. Coupled with Statute on the quality of water runoff from within our urban areas and the need to control the volume of runoff and flow through these urban areas, we now have legislation fit for the 21st Century.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Production of flood risk maps by 2013 and management plans by 2015 will result in a greater call on local authority staff time in co-operating with SEPA and Scottish Water on working parties. To maximize the integrated working required it will probably be necessary for the most forward thinking LA’s to produce a very local Flood risk management plan by 2011 for discussion with SEPA and SW to align budgets as closely as possible, whether or not the WIC have had their brief brought up to date.

In respect of costs there is a balance between revenue and preliminary design and capital cost, that is quite complex, and so is very difficult to quantify the human resource costs solely with the LA.
SUBMISSION FROM SCOTTISH BORDERS COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, I responded on the 30 April 2008 to the “The Future of Flood Risk Management in Scotland – A Consultation Document. There was no opportunity to comment on financial assumptions in this document.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

I did not identify any opportunities in the original consultation and made no comment at the time.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill does have financial implications for Scottish Borders Council. These implications arise out of:-

(a) the costs associated with initial flood risk assessments, production of local flood risk management plans and inspection and maintenance of an increased number of watercourses;

(b) the cost of implementing Flood Protection Schemes in view of the Bill’s general duty to reduce overall flood risk compared with the permissive and discretionary powers under the Flood Prevention (Scotland) Act 1961;

(c) the cost associated with the increased scope of the Bill compared with the Flood Prevention (Scotland) Act 1961 in that it covers all land not just non-agricultural land and all sources of flooding not just fluvial flooding.

Scottish Borders Council is a rural area with a large number of rivers and with most communities located in valleys adjacent to rivers. It has 8% of the properties in its area at risk of flooding, one of the highest percentages in Scotland. It is therefore very likely that the average figures derived in consultation with CoSLA will not cover the cost of preparing flood risk assessments and preparing and implementing local flood risk management plans for the area.

Scottish Borders Council is taking forward seven Flood Protection Schemes. These schemes are still at a very early stage. The initial estimate for these schemes is £72 million
(2006 prices). It is likely that the work phase of the schemes will start to come on stream in 2011 but the proposed funding mechanism is very unlikely to provide sufficient funding from the Scottish Government to allow the Council to implement these schemes.

At present Scottish Borders Council is in a position to limit the demand for fluvial flood protection to isolated properties on the basis that the 1961 Act only relates to non-agricultural land and it is the owner’s responsibility to protect their own property. The Bill will remove this restriction and the Council will consequently come under increased pressure to provide flood protection to such properties from all sources of flooding. This may increase the number of schemes the Council will have to consider. The proposed funding mechanism is very unlikely to provide sufficient funding for even existing Flood Protection Schemes and so will not accommodate additional schemes.

In summary Scottish Borders Council has concern about the responsibility for increased duties and functions under the Bill without a commitment to fund these additional duties and functions.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

No.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum only partially identifies how additional duties and functions will be funded. Several Councils have disproportionately large Flood Protection Schemes that cannot now be funded by the model suggested and it is not clear how these can be taken forward, if at all.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Bill relates specifically to flood risk management and is not part of a wider policy initiative. There are therefore no associated costs with a wider policy initiative.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Yes, but without further details it is impossible to quantify these costs.
SUBMISSION FROM SOUTH AYRSHIRE COUNCIL

With regard to the Questionnaire on the above Bill, we’ve studied the Financial Memorandum produced to accompany the Flood Risk Management (Scotland) Bill, which is currently before the Scottish Parliament. Significant costs may be incurred by local authorities if the legislation is enacted, both in implementing the EC Floods Directive and by the statutory process. However, until the legislation is put in place it is difficult to predict what costs would fall on South Ayrshire Council. Taking a rough estimate from Table 1 of the Financial Memorandum, dividing the £36.48 million total cost to local authorities and dividing by 32 gives some £1.14 million, plus an annual running cost of some £250,000, but this would be very dependent on the flood risks assessed and managed.

Given the large uncertainties in these financial estimates at the current time we would wish to reserve the Council’s position and record a “nil return” to the general questions raised.
SUBMISSION FROM WEST LOTHIAN COUNCIL

Q1. Did you take part in the consultation exercise for the Bill, if applicable, and if so, did you comment on the financial assumptions made?

A1. Yes, West Lothian Council submitted a comprehensive response to the consultation document and made a number of observations on the financial implications of the bill.

Q2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

A2. To a point, the suggestion that it might cost local authorities on average, £5,000 per annum to fulfil their role as Enforcement Authority under the reservoirs is probably too high a sum. West Lothian Council spends considerably less than this and would be reluctant to see a sum as large as this reflected in the settlement.

Q3. Did you have sufficient time to contribute to the consultation exercise?

A3. The council had time to contribute to the consultation on the proposed flood risk management bill but taking into account the consultation workshops, it meant that meeting the deadline required some short-circuiting of the usual democratic processes at a local level. The time available to respond to the questionnaire on the financial Memorandum was too limited.

Q4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A4. The savings that it is suggested that local authorities will make from passing the role of Enforcement Authority under the reservoirs Act to SEPA is considered too high and should not, therefore, be reflected in the overall settlement.

Q5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

A5. West Lothian Council would be unable to meet the proposed costs from its existing resources. Given the already well documented substantial cost pressures that councils are facing it would be necessary for the resulting costs associated with successfully implementing the ensuing Act to be funded by the Scottish Government. Also, given that the costs quoted in the Financial Memorandum are outline estimates, there is an expectation that the Scottish Government will also find ways of increasing funding if the national experience later identifies this need. There continues to be concerns that West Lothian will lose funding to more densely populated areas despite there being a significant risk of flooding in its disparate less-populated communities and having to commit exactly the same resources to meet the proposed legal duties.

Q6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
A6. No, local authorities will be expected to resource the new duties as soon as possible after the ensuing Act receives Royal assent in order to secure and train the best personnel. This needs to be reflected in the financial profile of any settlement made to local government. Simply put this means funding in 2009/10.

Q7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A7. Perhaps. There are concerns, however that disparity between the funding regimes of local authorities and Scottish Water, in particular, are likely to frustrate effective progress.

Q8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A8. The identification of risk and the associated publicity will inevitably increase the expectation of local people that something will be done to reduce risk. The financial memorandum suggests that improvements to flood risk management will ultimately lead to the reduction in economic costs to businesses, domestic properties and infrastructure and the improvement of the social well being of people in at risk areas. The resources available to bring forward Flood Protection Schemes is finite and will need to be increased significantly if public expectation is to be satiated.
SUBMISSION FROM FORESTRY COMMISSION SCOTLAND

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Yes. FCS, as the Government’s Forestry Directorate, submitted a response to the consultation on ‘The Future of Flood Risk Management in Scotland’. In it we welcomed FCS’s potential designation as a responsible authority, regarding this as a clarification and extension of our duties under the WEWS Act. We also drew attention to the relationship between the delivery of sustainable flood management and the level and availability of financial resources.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Yes. The Financial Memorandum acknowledges (e.g. paragraphs 278, 279, 305) that there are likely to be costs to organisations identified as responsible authorities. Making specific reference to FCS (paragraph 306) it also acknowledges that such costs are currently unquantifiable as, until preliminary flood risk assessments are undertaken, the number of flood risk management plans on which we would be required to advise or act, is unknown. We agree with this.

Did you have sufficient time to contribute to the consultation exercise?
Yes. FCS was fully involved before and during the consultation exercise.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
If Forestry Commission Scotland were to be designated as a responsible authority our costs would vary depending on the role we were expected to fulfil. Based on previous discussions, and in expectation of further dialogue with our Scottish Government colleagues, we anticipate three key roles. Firstly, an advisory role within the flood management process. Secondly, implementing natural flood management (NFM) techniques on the national forest estate (managed by Forest Enterprise Scotland on behalf of Ministers). Thirdly, for other forest land, FCS would be expected to promote and support NFM techniques, where appropriate, through the Scottish Rural Development Programme and Rural Development Contracts.

These roles could represent significant costs for FCS through staff training, provision of advice and modelling work, and implementing flood alleviation measures on the ground. However, and as stated in the Financial Memorandum, it is not possible to quantify these potential costs at present as, until the preliminary flood risk assessments are undertaken, the number of flood risk management plans that will be required, and hence subsequent delivery actions, are unknown.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
As it is not yet possible to assess the full range of potential costs it is hard to answer this question definitively. However, given the lead-in period to the implementation of delivery measures, our expectation is that the Comprehensive Spending Review (CSR) process will enable us to bid for new resources and/or re-prioritise existing resources as necessary. Other
mechanisms may also enable new measures (such as appropriate woodland creation) to be implemented within existing resources on the national forest estate, particularly where these have a climate change dimension (e.g. please refer to the current consultation on forestry provisions in the Climate Change Bill at: http://www.forestry.gov.uk/forestry/INFD-7KUMVM).

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Yes. At this early stage of development it is reasonable to state that the costs to FCS, and associated timescales, cannot be quantified.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
It is implicit that successful delivery of sustainable flood management will require significant expenditure. We believe the CSR process will be the appropriate mechanism for resource allocation.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
The Bill is enabling in nature and the Policy Memorandum states that it provides for regulations, in a number of different areas, to be made in due course. This relates, in particular, to the content and form of flood risk management plans and the assessments of flood risk. There will be a cost associated with this and Scottish Government colleagues are well placed to comment on this issue.

There are also other areas of the Bill which require further policy development. For example a Natural Flood Management (NFM) Group has been convened recently to offer advice to the Scottish Government and help develop a NFM policy strategy. The group is developing a research strategy for NFM and it is proposed that a number of demonstration projects be set up to provide empirical evidence on the value of such techniques. Funding will need to be secured to ensure these demonstration projects can be taken forward.

One area we would like to highlight is the potential disconnect between current agricultural economics, other land use pressures and natural flood management techniques such as the creation of floodplain woodland (as a mechanism to hold back floodwaters and desynchronise downstream flood peaks). Experience in England indicated that even doubling the rate of forestry support measures was insufficient to encourage floodplain woodland creation at various trial sites. If mirrored in Scotland, which is likely given the comparative scarcity of good quality agricultural land, this might have implications for the cost of providing ‘environmental services’ of this nature. However, although such costs may appear high in terms of forestry’s standard costs, the true comparison will be with alternative, hard engineering solutions. From that perspective, such forestry-related environmental services can be expected to be extremely cost effective, particularly as other benefits will also accrue (such as carbon sequestration, reductions in agricultural emissions through reduced use of fertiliser, reductions in diffuse pollution, and biodiversity gains).

Forestry Commission Scotland
November 2008
SUBMISSION FROM NFU SCOTLAND

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

NFUS did respond to the consultation on the Flood Risk Management (Scotland) Bill, but did not make any specific reference to the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Given the response above, this question is non-applicable.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

NFUS is concerned by paragraph 317 on page 48 of the Financial Memorandum. The paragraph speaks of minor costs or savings to individual land owners or occupiers in respect of the Bill making amendments to the Land Drainage Act 1958. NFUS must seek greater clarity over new powers being given to local authorities to recover their expenses, including the costs of restoration if land owners or occupiers damage any flood protection work carried out by the local authority.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

It is impossible to estimate what the potential or actual costs might be for either individual farm businesses, farming sectors, or the agricultural industry from the operation of the proposed legislation on flood risk management.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

NFUS has no comment to make.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
Impossible to assess without further explanation of where and how the Flood Risk Management (Scotland) Bill fits into a wider policy initiative.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?**

NFUS is concerned that there might well be future costs associated with the Bill, for either individual farm businesses, farming sectors, or the agricultural industry from the operation of the proposed legislation on flood risk management. However, these are as yet unknown and therefore cannot be quantified.
SUBMISSION FROM THE FRESHWATER TASKFORCE OF SCOTTISH ENVIRONMENT LINK

Scottish Environment LINK is the liaison body for Scotland’s environmental organisations, the members of which are supported by around 500,000 people. LINK member organisations have been actively involved in work on water issues and have worked in partnership with the Scottish Government in the lead up to the Flood Risk Management (Scotland) Bill 2008, they;

- Were actively involved in the transposition of the Water Framework Directive into Scots law, and instrumental to introducing a duty on Scottish Ministers and Responsible Authorities to ‘promote sustainable flood management’.
- Have been active members of the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC) and instrumental in producing the definition of sustainable flood management
- Are active members of the Flooding Bill Advisory Group, and the Natural Flood Management sub-group
- Have been instrumental in improving the understanding and the benefits of natural flood management
- Have provided written and oral evidence to the Environment and Rural Affairs Committee on its Flooding Inquiry
- Held a number of events for MSPs and other stakeholders on the issue of flooding.

All the previous submissions, briefings, reports and consultation responses can be on the LINK website, www.scotlink.org

Introduction

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Finance Committee on the Flood Risk Management (Scotland) Bill 2008. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

A critical part of introducing the new Bill is estimating and evaluating the costs and the benefits of the new approach to be introduced under the Bill. The new approach aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aim to deliver environmental and other benefits.

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because, traditionally, only the cost-benefit of hard engineering option was considered, and not the cost-benefit analysis of a range of different options. In addition, the cost-benefit analysis was also only carried out for easy-to-quantify monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analyses.
The real benefit in introducing the new framework for flood risk management is in the assessment of a variety of options, delivery of multiple benefits and the provision of long-term solutions. In this submission we would like to highlight the multiple benefits that would result from the new framework for flood management, in particularly looking at the benefits of natural approaches to flood management and long-term planning. Where Scottish data are not available, figures from England or other countries are used as indicated.

**Benefits of long term planning**

Strategic planning for flood defence allows for the most cost effective solutions for each catchment to be found. It also helps identify areas where flood mitigation is difficult and where development should be avoided. Planning is particularly important given that flooding is likely to increase in frequency due to climate change. By linking flood risk management with land use planning, it will be possible to avoid new development in areas at high risk of flooding, and so reducing the need for expensive flood protection measures. Avoiding building on floodplains and high flood risk areas remains the cheapest, long-term option for flood management.

**Climate change**

The UK Climate Impacts Programme\(^3^5\) (CIP) predicts how climate might change over time, and concludes that winters will become wetter, and summers drier, but the intensity and frequency of summer storms may increase. For example, a medium-emission climate change scenario predicts that a 1 in 100 chance flood in any year is expected to become a 1 in 70 chance flood in any year by the 2020s, and to a 1 in 40-60 chance flood in any year by the 2080s\(^3^6\). Therefore floods, which are currently considered ‘extreme’, will become more frequent in future. The sustainable approach to flood risk management provides effective means of planning for these changes and a framework for sustainable adaptation.

**The costs of setting up the new framework for flood management**

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Although we cannot calculate the potential cost saving from sound planning for the future, there are many examples of the costs of the lack of integrated flood management planning, especially in areas where development was allowed to take place on floodplains and now they must be defended at very high cost.

**Costs and benefits of traditional hard defences**

**Costs of hard defences**

Traditional flood defence measures are very expensive. The present value of Scotland’s current flood defences is £1.3 million/kilometre.\(^3^7\)

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\(^{3^5}\) UK CIP 2002 - Climate Change Scenarios for the United Kingdom, Tyndall Centre for Climate Change Research, 2002

\(^{3^6}\) Foresight report, 2002

\(^{3^7}\) JBA Consulting, 2007, *Scottish flood defence asset database*, Scottish Government, Edinburgh. This figure is based on £62 million in costs for 61 km of defence. Costs and benefits are best assessed over a long time frame, so that the relevant maintenance and replacement costs can be taken into account. The best way to do this is to use present value, which is the total value of the future benefit stream in present day terms - this allows costs and benefits to be compared.
Maintenance and replacement costs are also high for hard defences. Around 38% of the annual capital cost is required to maintain the defences, which is a very large additional expense. This is reflected by the Environment Agency (EA), in England, spending more of its flood risk management budget on maintenance in 2006-07 (38% of the budget) than on flood defence construction and replacement (36% of the budget). Additionally, hard defences generally need to be replaced after fifty - sixty years.

With the anticipated changes in climate and the frequency and severity of flooding events, these costs are likely to increase in future.

Benefits of traditional hard defences
The benefits of traditional hard defences are likely to be limited to the single purpose, which is flood defence. The evaluation is usually based on the analysis of the number of homes/businesses protected from flooding.

Multiple benefits of natural flood management

There are multiple benefits that result from the habitat creation that accompanies many forms of sustainable flood management, and in particular through natural flood management. These can be categorised as ecosystem services – aspects of ecosystems that can be consumed and/or utilised to produce human well-being. The four main categories of ecosystem services, and examples of the types of services that would arise from an increase in habitats and biodiversity are:

- Provisioning (fresh water, food)
- Regulating (water purification)
- Supporting (nutrient cycling)
- Cultural (tourism/recreation, aesthetic, sense of place)

These benefits are summarised in Table 2 at the end of this document. The value of these services is usually very site specific, and dependent on variables such as the availability of other sites providing similar services and the population that enjoys the services. Because they are difficult to value they are often neglected in traditional cost-benefit analyses. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis. We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options.

Costs and benefits of natural flood management

It is difficult to generalise about the cost of sustainable and in particular natural flood management measures as the measures vary widely. It is also worth noting that this is a new area of economic research, with a number of European research projects due to report shortly. Some of these research projects are particularly relevant, and include the economic

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assessment of the benefits of flood warning, and the evaluation of multiple benefits/ecosystem services in cost-benefit analysis.

Despite this, it is clear that sustainable flood management measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure. Some examples of the lower cost of sustainable defences are given here.

Managed realignment
Managed realignment is widely practiced as a coastal flood management measure in England by the Environment Agency (EA) and elsewhere in Europe, and is still a new concept in Scotland. The costs provided in this submission are therefore largely based on research carried out in England.

Managed realignment schemes are often less costly over time than hard defences as they require less maintenance.\textsuperscript{41} The height needed for embankments is generally lower due to the retreat inland, and erosive pressure is lessened due to the buffering action of the intertidal habitat created in front of the embankment. No defences might be required at all if the retreat is to a contour. In 1998 the EA estimated that the difference in costs, for building new seawalls, with 30 metres of saltmarsh in front of the seawall cost £800 per metre as opposed to £5,000 per metre without saltmarsh.\textsuperscript{42}

Freiston Shore is an example of the potential benefits to be gained from managed realignment. The realignment of the flood defence walls saved almost half a million pounds in costs – the cost was £2 million compared to the £2.47 million estimated for maintenance/replacement of the walls.\textsuperscript{43} This greater cost effectiveness was achieved without even taking into account the significant environmental benefits gained from creating 65 hectares of intertidal habitat. Another additional benefit was the improved recreation value of the site. By 2008 almost 60,000 people were visiting Freiston Shore each year compared with approximately 11,000 people before the realignment. The nature reserve on the site supports an estimated 6 full time equivalent jobs in the local community and also provides a valuable place for local people to exercise and relax.

The use of wetlands

Often sustainable flood management includes restoration of wetland to store or slow water flow. The Scottish Rural Development Plan indicates the likely costs of wetland creation and management. Table 1 displays the rates landholders are paid for creating and/or managing wetlands.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Annual payment</th>
<th>Present value\textsuperscript{44}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of open grazed or wet grassland</td>
<td>£111.00/ha</td>
<td>£2,043/ha</td>
</tr>
</tbody>
</table>

\textsuperscript{41} Environmental Futures, 2006, \textit{Economics of managed realignment in the UK}, Coastal Futures.

\textsuperscript{42} Empson, B. \textit{et al.}, 1997, "Sustainable flood defence and habitat conservation in estuaries – a strategic framework", \textit{Proceedings of 32\textsuperscript{nd} MAFF Conference of River and Coastal Engineers}.

\textsuperscript{43} Environmental Futures, 2006, \textit{Economics of managed realignment in the UK}.

\textsuperscript{44} Present value is the total value of the future benefit stream in present day terms.
for wildlife

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost 1 (ha)</th>
<th>Cost 2 (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of Wetland</td>
<td>£90.00</td>
<td>£1,656</td>
</tr>
<tr>
<td>Creation, restoration and management of wetland</td>
<td>£227.00</td>
<td>£4,178</td>
</tr>
<tr>
<td>Management/restoration of lowland raised bogs  General Mgt.</td>
<td>£40.00</td>
<td>£736</td>
</tr>
<tr>
<td>Grazing Mgt.</td>
<td>£83.00</td>
<td>£1,528</td>
</tr>
<tr>
<td>Creation and management of water margins and enhanced riparian buffer areas</td>
<td>£294.00</td>
<td>£5,491</td>
</tr>
<tr>
<td>Management of flood plain</td>
<td>£39.00</td>
<td>£718</td>
</tr>
</tbody>
</table>

These wetlands are being created or managed for wildlife benefits, and as such are likely to cost more than wetlands that are created simply for flood management. This means they wetlands created and managed for biodiversity are likely to be more expensive than a less managed wetland. However, these costs are still lower than the cost of hard flood defences.

**Estimating the value of natural flood management**

Whilst this area of economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding. As a general guideline, Defra flood appraisal guidance recommends the use of £175 or £300/ha per year for the environmental benefits of managing water levels. This gives a present value of £3,221 to £5,521 per hectare. Other figures, derived from “meta-analyses” of the economics valuation literature, suggest that benefits from grazing marsh is likely to be even higher, around £290-360/ha per year, or a present value of £4,785 - £7,177/ha.45

To minimise the risk of double counting, generally ecosystem services are estimated together in one benefit valuation. One exception might be carbon storage, which is a service with a global impact. The UK government’s shadow price of carbon is currently £26.52/t, and increases each year. The value of carbon sequestration over time is potentially high. A recent analysis of the proposed Wallasea Island realignment assumed that one tonne of carbon was sequestered per hectare of intertidal habitat created.46

In light of the multiple benefits it will probably be appropriate to seek funding from more than the traditional flood defence sources. Scottish Ministers have a role to play in ensuring that adequate funding is made available to deliver SFM on the ground, and to reward farmers and foresters for managing their land for the benefit of flood

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management and climate change adaptation. This may require integrated funding streams.

Conclusions

The benefits of sustainable flood management, and in particular the natural component of flood management are many fold. We believe that sustainable flood management provides cost-effective means of protecting communities from flooding, whilst also providing additional benefits for the environment and the society. It therefore makes an economic sense to invest now on implementing a framework for the management of flood risk that will provide long-term solutions and ultimately reduce the future costs of flood protection. This is particularly important in the light of changes in weather and the predicted increases in flooding associated with climate change.

APPENDIX 1

Table 2: Natural Floodplain Functions and Societal values, (Department of Water Recourses California, May 2005)

<table>
<thead>
<tr>
<th>Natural Floodplain Functions</th>
<th>Human Services and Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain Natural Channel Processes</td>
<td>All of below</td>
</tr>
<tr>
<td>Maintain natural dynamic channel processes and equilibrium</td>
<td>All of below</td>
</tr>
<tr>
<td>Manage Flows</td>
<td>Protection of life and property</td>
</tr>
<tr>
<td>Conduit for water, nutrients and organisms</td>
<td>• Avoided structure and content losses</td>
</tr>
<tr>
<td>Spread and retain surface and subsurface water</td>
<td>• Avoided crop losses</td>
</tr>
<tr>
<td>Moderate speed, force, depth and timing of flows</td>
<td>• Avoided income losses</td>
</tr>
<tr>
<td></td>
<td>• Avoided damage to public infrastructure and services</td>
</tr>
<tr>
<td></td>
<td>• Avoided emergency response and recovery costs</td>
</tr>
<tr>
<td></td>
<td>• Avoided flood insurance</td>
</tr>
<tr>
<td>Maintain base flows</td>
<td>administration costs</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td></td>
<td>• Avoided hospitalization and related health care costs</td>
</tr>
<tr>
<td></td>
<td>• Avoided physical, financial and emotional disruption of lives</td>
</tr>
<tr>
<td></td>
<td>• Avoided loss of life</td>
</tr>
<tr>
<td>Reduce frequency and duration of low surface flows</td>
<td>Avoided flood/sediment control infrastructure costs</td>
</tr>
<tr>
<td>Maintain sediment balance</td>
<td>Value of flow-related goods and services</td>
</tr>
<tr>
<td></td>
<td>• Recreational boating</td>
</tr>
<tr>
<td></td>
<td>• Commercial navigation</td>
</tr>
<tr>
<td>Maintain connectivity between channel and floodplain</td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>

**Maintain Water Supply**

<table>
<thead>
<tr>
<th>Increase surface water storage</th>
<th>Value of goods and services produced with additional water supplies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promote groundwater recharge and storage</td>
<td>• Agricultural</td>
</tr>
<tr>
<td></td>
<td>• Municipal and industrial</td>
</tr>
<tr>
<td></td>
<td>• Environmental</td>
</tr>
<tr>
<td></td>
<td>Avoided water supply infrastructure costs</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>

**Natural Floodplain Functions**

| Filter nutrients and impurities from runoff | Value of goods and services produced with improved water quality |

**Human Services and Values**
| Process organic wastes | • Agricultural  
• Municipal and industrial  
• Environmental |
|------------------------|--------------------------------------------------|
| Moderate water temperature fluctuations | Avoided water treatment infrastructure costs  
Avoided damage to plumbing, fixtures and appliances  
Avoided habitat enhancement/replacement costs |

### Maintain Soil Quality

| Detention of particulates, compounds and elements | Value of goods and services produced with improved soil quality  
Avoided soil treatment costs  
Avoided habitat enhancement/replacement costs |

### Maintain Air Quality

<p>| Carbon sequestration (removal of atmospheric carbon by vegetation) | Value of goods and services produced with improved air quality |</p>
<table>
<thead>
<tr>
<th>Vegetation humidifies atmosphere and moderates air temperatures</th>
<th>Improved property values</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Value of improved health and comfort</td>
</tr>
<tr>
<td></td>
<td>Avoided damage caused by poor air quality</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>

### Maintain Plant and Animal Habitats

<table>
<thead>
<tr>
<th>Maintain characteristic and diverse plant and animal communities</th>
<th>Value of goods and services associated with habitats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide habitat interspersion and connectivity</td>
<td>- Natural products</td>
</tr>
<tr>
<td>Provide breeding and feeding grounds</td>
<td>- Aquaculture</td>
</tr>
<tr>
<td>Protect habitat for species of special concern</td>
<td>- Recreation</td>
</tr>
<tr>
<td></td>
<td>- Hunting and fishing (sport and commercial)</td>
</tr>
<tr>
<td></td>
<td>- Open space/aesthetics</td>
</tr>
<tr>
<td>Maintain ecological succession</td>
<td>- Environmental studies</td>
</tr>
<tr>
<td></td>
<td>- Cultural resources</td>
</tr>
<tr>
<td></td>
<td>Improved property values</td>
</tr>
<tr>
<td></td>
<td>Enhanced economic development</td>
</tr>
<tr>
<td></td>
<td>Preservation values (existence, option and bequest)</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>
SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH GOVERNMENT

During the Committee session on Tuesday 25 November 2008, the Finance Committee took evidence from Scottish Government officials on the Financial Memorandum for the Flood Risk Management (Scotland) Bill. During the evidence session officials agreed to provide details of the flood protection work which is known to be currently taking place in Scotland.

Please see the spreadsheet below which contains details of the Flood Prevention Schemes that were taken into account in the local government settlement and their current state of development.

Schemes which were specifically taken into account in the block grant for flood prevention/coast protection in local government settlement

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Scheme</th>
<th>Dates</th>
<th>Total capital cost £m</th>
<th>comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argyll &amp; Bute</td>
<td>Kilbride Rd, Dunoon</td>
<td>2008-09</td>
<td>1.2</td>
<td>Construction to start shortly duration 30 weeks</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>Braid Burn</td>
<td>2006-10</td>
<td>28.5</td>
<td>under construction</td>
</tr>
<tr>
<td></td>
<td>Water of Leith</td>
<td>2009-12</td>
<td>46.5</td>
<td>at Tender</td>
</tr>
<tr>
<td>Falkirk</td>
<td>Bo’ness</td>
<td>2008-10</td>
<td>4.5</td>
<td>under construction</td>
</tr>
<tr>
<td>Fife</td>
<td>Dunfermline</td>
<td>2007-11</td>
<td>13.3</td>
<td>under construction</td>
</tr>
<tr>
<td>Glasgow</td>
<td>White Cart Reservoirs</td>
<td>2008-11</td>
<td>26</td>
<td>under construction</td>
</tr>
<tr>
<td></td>
<td>White Cart - Urban corridor</td>
<td>2008-11</td>
<td>27</td>
<td>contract awarded</td>
</tr>
<tr>
<td>Highland</td>
<td>South West Inverness</td>
<td>2009-12</td>
<td>11</td>
<td>confirmed in September 08</td>
</tr>
<tr>
<td>Moray</td>
<td>Forres (Burn of Mossett)</td>
<td>2007-10</td>
<td>16.9</td>
<td>under construction</td>
</tr>
<tr>
<td></td>
<td>Rothes</td>
<td>2008-11</td>
<td>21</td>
<td>under construction</td>
</tr>
<tr>
<td></td>
<td>Elgin</td>
<td>2010-15</td>
<td>65</td>
<td>objections - PLI likely</td>
</tr>
<tr>
<td>Nth Ayrshire</td>
<td>Saltcoats</td>
<td>2007-08</td>
<td>2.3</td>
<td>Completed</td>
</tr>
<tr>
<td>Renfrewshire</td>
<td>North Renfrew</td>
<td>2008-12</td>
<td>7.8</td>
<td>under construction</td>
</tr>
</tbody>
</table>
The undernoted schemes have been submitted for confirmation since SR07:

- Moray Council: Forres (Findhorn and Pilmuir) FP Scheme 2008 published, on 1 April estimated cost £28 million
- Highland Council: River Ness (Tidal Section) and (Upper section) FP schemes 2008, published on 18 June, estimated cost £13 million

We are also aware that:

- Angus Council intend to develop the £7m Brechin FP scheme for publication next summer
- Aberdeenshire Council are developing a £0.5m scheme for Fettercairn
- Scottish Borders Council are looking to appoint consultants to develop schemes at:
  - Selkirk: circa £15m
  - Galashiels: £0.5m

These are with a view to obtaining consents by 2011

- Argyll & Bute intend to publish a £2m scheme at Dunoon next year and are considering a feasibility study of a scheme at Campbeltown.
- Dundee City Council are scoping schemes addressing coastal flooding
- Glasgow City Council are planning to take forward measures as part of the MGSDP
- Dumfries and Galloway are taking forward proposals to develop schemes at Stranraer, Dumfries and Moffat.
## SUPPLEMENTARY MATERIAL FROM ANGUS COUNCIL DATED 20 NOVEMBER 2008

### Coastal and Flood Schemes in Angus as envisaged November 2008

#### Impact of Flood Risk Management (Scotland) Bill - Revenue Cost implications.

**Table 1**

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Commentary</th>
<th>Review in light of Flood Bill 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbroath Sea Wall at Victoria Park and West Links</td>
<td>Identified in Shoreline Management Plan (2004) and policy is to “hold the line” Initial Capital Project Appraisal proposal has been approved. Proposals are to develop scheme to address erosion and wave overtopping to replace defences at Arbroath which are now approaching the end of their life The scheme protects large low lying area of town both to west and east of harbour, to west it also protects the main NE railway line and leisure park, to the east it protects the soft cliff face and thereby the elevated properties overlooking Victoria Park. The value of these assets is very large. Cost estimates for the scheme is £5-10m. Preparatory costs have been identified in the Roads Capital budget for 08-11</td>
<td>If treated as a coastal defence which also protects against inundation/ overtopping then no real changes to status Note existing grant arrangements might apply (80%) If treated as flooding, then all cost borne by AC but some savings should result from deemed planning approval arrangement in new bill. This might be countered by increased costs of preparation of scheme under SFM regime. Regarding non capital cost with AC acting as client then no real increases in recurring revenue burden</td>
</tr>
<tr>
<td>Montrose golf course frontage</td>
<td>Identified in Shoreline Management Plan (2004) and policy is “managed retreat” with research into low-tech solutions. Reported to Committee (953/07) in October 2007. An unfavourable cost benefit ratio precludes traditional heavy engineering, therefore undertaking major research into non-traditional solutions, which might be applied. There may also be a need to augment the end point of the defences at Trail Drive New funding regime from Scottish Government may open up discussion on alternative proposal regarding realignment of course. Research cost are included in Roads revenue budget 08-11</td>
<td>AS ABOVE</td>
</tr>
<tr>
<td>Tayock</td>
<td>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</td>
<td>AS ABOVE</td>
</tr>
<tr>
<td></td>
<td>Being progressed under coastal emergency powers in consultation with SWT, SNH, and SEPA. It is intended to start on site spring 2008. This scheme is not a formal Coast Protection scheme but is an interim measure to contain the landfill materials and is being funded from contaminated land funds. To keep costs within the available budget it has been designed to a lower specification and height than a fully engineered scheme. These cost are contained in the ECP Capital budget 08-09. A fully engineered scheme is estimated at between £5-8m but it would protect NE railway line so could generate benefits and potential for shared funding with Network Rail. Such a scheme would require intensive environmental assessment for impact on SSSI etc.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Identified in Shoreline Management Plan (2004) and policy is to “hold the line” Scheme to contain landfill could have been progressed under emergency powers or contaminated land Act. However draft scheme was too expensive and has now been deferred in favour of increased maintenance to clean up any spillage caused by erosion. A long-term solution needs to be considered. A fully engineered scheme is estimated at between £2 -3m but as it would protect NE railway line and pumped sewer (SW) it could generate required costs benefits and there is potential for shared funding with Network Rail and Scottish Water. This would require intensive environmental assessment. Currently no estimates or budget allowance</td>
<td></td>
</tr>
</tbody>
</table>

AS ABOVE
<table>
<thead>
<tr>
<th>Location</th>
<th>Description</th>
<th>Funding Options</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Esk Road to Railway Bridge on south side of Montrose Basin</td>
<td>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</td>
<td>Long-term erosion could threaten the NE railway line. If this is taken into account it gives a favourable benefit to cost ratio, and potential for shared funding with Network Rail.</td>
<td>AS ABOVE</td>
</tr>
<tr>
<td>Monifieth Groyne Field</td>
<td>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</td>
<td>The groynes have been damaged by recent storms associated with higher tide levels in February and March 2008. Two options are under consideration; replacement of damaged groynes on like for like basis accepting the same protection as existing but noting this would be a lower degree of protection than would be required by today’s standards; or replacement of groynes to increased heights to afford contemporary standard of protection. This option may require a different form of construction. Scheme would protect NE railway line so could generate benefits and potential for shared funding with Network Rail. Scheme would also protect pump sewer main so could generate benefits and potential for shared funding with Scottish Water. Like for like replacement has been estimated at £150k with no current budget allowance. Long term project and costs not yet identified.</td>
<td>AS ABOVE</td>
</tr>
</tbody>
</table>
## Table 2

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Commentary</th>
<th>Review in light of Flood Bill 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brechin Flood Prevention</td>
<td>At the recent budget setting meeting in February the estimate was revised for inflation and the indicated costs is now £ 9.1 m. An allowance is made within the Roads Capital budget 08-12. The application for FPO is due in autumn 2008 depending on results of investment appraisal and analysis of pumping requirements to deal with flows in the drainage system, which the floodwater would impound.</td>
<td></td>
</tr>
<tr>
<td>Scheme at River Street and East Mill</td>
<td></td>
<td>Scheme has been prepared in line with emerging guidance on SFM therefore should not be impacted other than in terms of the funding mechanism. Cost implications nil although the Council’s capital programme assumes central government funding support under the existing regime.</td>
</tr>
<tr>
<td>Brothock Water, Arbroath</td>
<td>The present scheme will protect against a 1 in 20-25 year event. This level of protection cannot be economically improved in line because of substantial physical constraints such as large culverts in the urban area. Potential exists for upstream attenuation in agricultural section of flood plain. A study has been conducted and a proposal for a preferred scheme with an estimated cost of £2.15m was agreed at the budget meeting in February 2008. Scheme will protect large urban area and has large benefits of £11-15m. It could release major development potential on brown field sites. Preparatory costs included in Roads Capital budget 08-11</td>
<td>May require re-considering the option of attenuation of combined storm overflows in order to comply with the requirement to examine all options under SFM. Reconsidering the need for scheme under SEPA flood risk appraisal will need substantial input from LA Modelling the urban catchment will require substantially more time and additional funding probably shared funding between AC and SW Whichever party controls this aspect will also have additional revenue costs Cost implications probably in the order of 2-3 times current allowances –additional £300-500k</td>
</tr>
<tr>
<td>Table 2 contd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>
| **Gairie Burn, Kirriemuir** | Present scheme is in moderate condition and offers just below the design level of protection of a 1 in 50-year event. Maintenance works are underway (£50k)  
This is below the current standard of a 1 in 100 year event and again consideration could be given to upstream attenuation. Scheme should have moderate benefits greater than the cost of the scheme, but costs and budget remain to be identified | Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?)  
Cost implications probably in the order of 2-3 times current allowances –additional £300-500k |
| **Barry Burn Upgrade and sediment management** | A sediment management scheme is to be considered for this small catchment, which already has a full FPS in the lower section. Currently no budget provision | Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?)  
Cost implications probably in the order of 2-3 times current allowances –additional £300-500k |
### Table 2 contd

<table>
<thead>
<tr>
<th>Location</th>
<th>Details</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tayock Burn at Montrose</td>
<td>Scheme to relieve tidal flooding costs with estimated circa £50k. Not yet identified in capital plan</td>
<td>Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?) Cost implications circa £200 - 300k</td>
</tr>
<tr>
<td>Logie Mill</td>
<td>Unfavourable cost benefit for four houses, capital works project unlikely to proceed.</td>
<td>N/a</td>
</tr>
<tr>
<td>Fowlis</td>
<td>A management scheme is to be considered for this small catchment where small-scale flood events occasionally occur. Currently no budget provision</td>
<td>Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?) Cost implications circa £200 - 300k</td>
</tr>
<tr>
<td>Scheme</td>
<td>Commentary</td>
<td>Review in light of Flood Bill 2009</td>
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<tr>
<td>Montrose Town Coastal Flooding/Inundation</td>
<td>Identified on SEPA flood maps could cause extensive damage and hazard to life No current information on extents duration depths etc.</td>
<td>Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Probably shared funding between AC and SW Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs If this is required for SEPA Area plans the studies will have to be accelerated Ditto if required for first iteration of Local Plans Cost implications circa £500 - 750k</td>
</tr>
<tr>
<td>Arbroath Town Coastal Flooding</td>
<td>Identified on SEPA flood maps could cause extensive damage and hazard to life Some indirect knowledge because of the Brothock Water Flood PS and the Coastal PS. However specific studies required for lower section of urban area</td>
<td>Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Impact also on Brothock Water FPS Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs</td>
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| | If this is required for SEPA Area plans the studies will have to be accelerated
| Ditto if required for first iteration of Local Plans
<p>| Cost implications circa £500 - 750k |</p>
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<th>Table 3 contd.</th>
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| **Carnoustie Town Coastal Flooding** | Identified on SEPA flood maps could cause extensive damage and hazard to life  
No current information on extents duration depths etc.  
Could combine with flooding of Barry burn |
|  | Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Probably shared funding between AC and SW  
Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs  
If this is required for SEPA Area plans the studies will have to be accelerated  
Ditto if required for first iteration of Local Plans  
Cost implications circa £300 - 500k |
| **Monifieth Town Coastal Flooding/Inundation** | Some indirect knowledge because of the Brothock Water Flood PS and the Coastal PS. |
|  | Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component.  
Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs  
If this is required for SEPA Area plans the studies will have to be accelerated  
Ditto if required for first iteration of Local Plans  
Cost implications circa £300 - 500k |
Coastal and Flood Schemes in Angus as proposed November 2008

Impact of Flood Bill 2009

Summary

Table 4

<table>
<thead>
<tr>
<th>Category</th>
<th>Extra costs</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Coastal Protection</td>
<td>Nil</td>
<td>Assumes current arrangements under Coastal Protection Bill remain</td>
</tr>
<tr>
<td>Fluvial Flooding</td>
<td>£1.3 – 2.1m</td>
<td>If outputs of studies required are time critical then cost will increase</td>
</tr>
<tr>
<td>Coastal Flooding</td>
<td>£1.6 – 2.5m</td>
<td>If outputs of studies required are time critical then cost will increase</td>
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Extra costs circa £2.9 - 4.6m in addition to the costs identified in the consultation document.

These expenditures could be required in a short time period if the information is required for first generation Area Plans

The information will definitely be required to inform the development of Local Plans and formulate evidence based, robust action plans
Pursuant to Angus Council's previous response to your consultation on the above financial memorandum the subject was discussed further by the Council's Infrastructure Services Committee at its meeting held on 25 November 2008. Following that discussion the committee has instructed me to write to you further to emphasise in the strongest terms the seriousness with which it considers the memorandum and to stress in particular the following points:

The committee regrets the decision to retain the three tier system of administration of the incumbent duties and the consequential financial implications which it places on the local authorities to deliver the necessary measures, which measures will themselves be largely determined by the work done (led by SEPA) at national and regional level. The local authority may in consequence be heavily constrained by and obliged to the financial consequences of decisions made by the unelected authority.

Together with that the committee has very major concerns about the means of funding such (capital) measures as may be identified through the flood risk assessment work required by the bill, particularly in comparison to the regime as currently exists in the present legislative framework.

Given the (acknowledged) uncertainties in the financial implications of the emerging legislation for the relevant bodies the committee has concerns about the adequacy of any likely revenue monies as may be allocated to the local authorities to reflect the needs in that authority area, particularly as the memorandum deals with average figures in only one (the lower) of two specifically identified scenarios. (Angus Council has made a proposal in this regard in its earlier written response). Clearly the allocation of funding should reflect the identified needs of the individual authorities. Specifically in the case of Angus Council there are four coastal towns and three other burgh towns with three major river catchments all of which have their own particular needs in this regard.

Given the allocation of duties to deal with the overland flows in excess of the (Scottish Water) sewer network, for other than sewer only flooding events, the committee has serious concerns about the adequacy of the financial resources available to local authorities to deal with these, together with the efficiency of the mechanism for the relevant authorities to interact and co-operate in the pursuit of this. Further the committee has concerns about the allocation of the responsibility for the response to sewerage flooding and the public health issues associated with such where the local authorities themselves are not resourced to deal with these in the way that Scottish Water currently is.

Overall the committee is concerned in light of the move towards a more proactive approach to flood risk management, together with the inclusion of flooding from all sources (rather than fluvial) that the financial implications of the duties imposed on the local authorities are likely to have been significantly underestimated in the preparation of the work supporting the
memorandum. Further and specifically the committee are concerned about the potential implications of the removal of the limitation to non-agricultural land in the scope of the Bill and the possibility of land owners arguing a duty on the authorities to afford protection against flooding of land outwith urban areas.

While I realise that your date for receipt of responses has passed, the committee would hope that the Finance Committee might be prepared to consider the comments which it has articulated through this letter particularly in view of the seriousness with which it views this topic and given the timetable of its own meetings which precluded an earlier response.
ANNEXE C: EXTRACTS FROM THE MINUTES

15th Meeting, 2008 (Session 3), Tuesday 9 September 2008

Flood management legislation: The Committee considered its approach to forthcoming legislation on flood management and agreed specific terms for the call for evidence; that the clerks should issue a call for written evidence following introduction of the bill; to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in respect of consideration of this bill; and to consider drafts of the Committee's report on the bill in private.

18th Meeting, 2008 (Session 3), Wednesday 8 October 2008

Flood Risk Management (Scotland) Bill (in private): The Committee agreed to invite Scottish Environment Link, Scottish Natural Heritage and the Forestry Commission Scotland to give evidence at future meetings.

19th Meeting, 2008 (Session 3), Wednesday 29 October 2008

Flood Risk Management (Scotland) Bill (in private): The Committee considered possible witnesses and agreed to invite National Farmers' Union Scotland, the Scottish Council for Development and Industry, Scottish Rural Property and Business Association and Homes for Scotland to give evidence at its meeting on 26 November.

21st Meeting, 2008 (Session 3), Wednesday 19 November 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Nick Evans, Principal Planner on Sustainable Development, Climate Change and Renewable Energy, Stuart Greig, Senior Flooding Policy Officer, Lindsey Henderson, Principal Legal Officer, Legal Directorate, Bob Irvine, Deputy Director of Water, Air, Soils and Flooding Division, Louise Miller, Head of Branch 2 Food and Environment, Legal Directorate, Fiona Quinn, Flood Risk Management (Scotland) Bill Manager, and Judith Tracey, Flooding Policy Team Leader, Scottish Government.

The Scottish Government officials agreed to provide further supplementary information.

Petition PE1207: The Committee considered a petition by Gordon Sinclair calling for a review of Scottish planning policy to prevent developments being built on areas designated as being at a high risk of flooding. The Committee agreed to take the issues raised by the petition into consideration during its scrutiny of the Flood Risk Management (Scotland) Bill at Stage 1 and to close the petition on that basis.
**Flood Risk Management (Scotland) Bill (in private):** The Committee reviewed the evidence heard earlier in the meeting. The Committee agreed to invite Scottish Water, local authorities, a national park authority and the Association of British Insurers to give evidence at its meeting on 10 December. The Committee also agreed to invite SEPA and the Minister for Environment to give evidence at its meeting on 17 December.

**22nd Meeting, 2008 (Session 3), Wednesday 26 November 2008**

**Flood Risk Management (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Hugh Clayden, Sustainable Forest Management Policy Adviser, Forestry Commission Scotland;
- Mike Donaghy, Scottish Environment LINK;
- John Thomson, Director of Strategy and Communications, Scottish Natural Heritage;
- Nigel Miller, Vice President, National Farmers’ Union Scotland;
- Dr Karen Smyth, Rural Development Manager, Scottish Rural Property and Business Association;
- Gareth Williams, Policy Manager North, Scottish Council for Development and Industry.

The Committee agreed to write to the first three witnesses with questions that could not be covered during the evidence session. The other witnesses agreed to provide supplementary information on issues arising during the evidence session.

**Flood Risk Management (Scotland) Bill (in private):** The Committee reviewed the evidence heard earlier in the meeting.

**23rd Meeting, 2008 (Session 3), Wednesday 10 December 2008**

**Flood Risk Management (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Geoff Aitkenhead, Asset Management Director, and Jim Conlin, Regulation Manager, Scottish Water;
- Paul Frankland, Civil Engineering Design Manager, Scottish Borders Council;
- Jim Moodie, Lead Officer, Harbours Flood and Coast, Transportation Services, Fife Council;
Gordon Watson, Director of Planning, Loch Lomond and The Trossachs National Park Authority;


and agreed to request clarification from Perth and Kinross Council and from the City of Edinburgh Council on issues raised in their written submissions.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

24th Meeting, 2008 (Session 3), Wednesday 17 December 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

David Faichney, Flood Warning Unit Manager, and Chris Spray, Director of Environmental Science, SEPA;

Michael Russell MSP, Minister for Environment, Judith Tracey, Flooding Policy Team Leader, and Dr Stuart Greig, Senior Flooding Policy Officer, Scottish Government.

The Committee agreed to write to the first two witnesses with questions that could not be covered during the evidence session.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier and considered the possible contents of a draft Stage 1 report.

1st Meeting, 2009 (Session 3), Wednesday 7 January 2009

Flood Risk Management (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

2nd Meeting, 2009 (Session 3); Wednesday 14 January 2009

Flood Risk Management (Scotland) Bill (in private): The Committee agreed the Stage 1 report subject to specified changes being made.
Rural Affairs and Environment Committee

1st Report, 2009 (Session 3)

Stage 1 Report on the Flood Risk Management (Scotland) Bill

Volume 2: Evidence

Published by the Scottish Parliament on 15 January 2009
Rural Affairs and Environment Committee
1st Report, 2009 (Session 3)

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LETTER FROM MICHAEL RUSSELL MSP, MINISTER FOR ENVIRONMENT ON POTENTIAL STAGE 2 AMENDMENTS

Thank you for your letter of 21 October in which you requested details of amendments that the Scottish Government plans to introduce at Stage 2 for the above Bill. Please see the attached document which provides these details and which, I hope, will assist members with their scrutiny.

As you will be aware, we have also received a report from the Subordinate Legislation Committee in relation to the delegated powers memorandum that accompanied the Bill. We will be considering the recommendations on minor amendments to the Bill in due course.

Finally, I have noted the provisional evidence session date of the morning of 17 December.

MICHAEL RUSSELL MSP, MINISTER FOR ENVIRONMENT
November 2008

SUMMARY OF PROPOSED STAGE 2 AMENDMENTS TO FLOOD RISK (SCOTLAND) BILL

Reservoir safety

Inundation maps and on-site reservoir plans

The Flooding Bill does not currently include any specific reference to reservoir inundation maps or reservoirs plans. However, the Bill does already include the necessary provisions that would allow SEPA to undertake inundation mapping for very high risk reservoirs as part of their work under the EC Floods Directive (which includes preliminary flood risk assessments, assessments of significant flood risk and flood mapping). The intention is to introduce an enabling power that would allow Scottish Ministers to make regulations requiring undertakers of ‘high risk’ reservoirs to produce ‘reservoir plans’, the regulations would also specify the matters to be included in the flood plan, and any criminal or civil penalties in relation to the plans. SEPA would act as the enforcement authority for this work.

Reservoir plans - what they are and why they are important

A reservoir on-site flood plan is intended to ensure that reservoir undertakers have arrangements in place to (i) understand the implications of an uncontrolled release of water and (ii) on-site arrangements to contain or limit the potential effects of an incident, which could include works to delay failure or minimise damage. The Water Act 2003 in England and Wales includes provision for operators to produce reservoir plans. The Environment Agency has produced guidance on the preparation of reservoir plans.

A reservoir plan provides a vital link between the dam undertaker and the emergency response services. This plan should not be confused with an off-site plan or other form of emergency response plan, which would fall under the auspices of the Civil Contingencies Act (2004) and would be the responsibility of the Category 1 responders.

It is envisaged that a reservoir on-site flood plan would include:-

- details of the courses of action an undertaker would take to try to contain and limit the effects of less serious (or non-emergency) incidents, based on a range of scenarios that could result in any escapes of water (i.e. overtopping, escapes involving more than the intended amount of water being released from the reservoir via normal channels, including complete failure / collapse of dams);
a communications strategy to engage the relevant external organisations at the appropriate times.

The scope and details of these plans would vary depending on the level of flood risk associated with a particular reservoir. This would ensure that the effort required by operators would be proportionate to the risk associated with a particular reservoir.

For some higher risk reservoirs, the expectation would also be for operators to prepare inundation maps to support the development of reservoir plans.

How inundation mapping and reservoir plans are connected

Under the existing Bill provisions, we would expect SEPA to produce, high level flood maps (risk and hazard) for those reservoirs that SEPA identify as posing a significant flood risk, i.e. areas identified as potentially vulnerable to flooding. These would show where water would be likely to escape to and its potential impact. However, these maps would not be sufficiently detailed to show how different mitigation measures could alter the release of water and its impact.

Under the proposed amendments, the regulations would require reservoir plans to be prepared by reservoir operators to identify action to be taken to minimise the impacts of an uncontrolled release of water. Inundation maps may also need to be prepared by operators of high risk reservoirs. These maps would help in the preparation of reservoir plans to minimise the impact of an uncontrolled release of water. Operators of some large reservoirs in Scotland have already prepared detailed inundation maps. The regulations would specify what the maps should demonstrate, but ideally they should include the impacts of action taken to manage various flood scenarios and show where water is likely to go following steps taken by the undertaker to minimise flood risk, e.g. drawing down water, or using controlled flooding to minimise impacts.

Surface water management

A key policy objective for the Bill is the creation of an integrated and coordinated approach to dealing with all sources of flooding. This is particularly the case in urban areas where there is currently a complex interaction between different components of the drainage system and fragmented responsibilities. The existing arrangements can lead to piecemeal investment and a lack of coordinated actions. Future impacts of climate change, which include increased frequency of high intensity rainfall, could further increase the risks of pluvial and sewerage flooding caused by surface water runoff.

Responsibilities for managing surface water in urban areas are principally split between local authorities and Scottish Water. Scottish Ministers (through Transport Scotland) also have responsibilities for drainage of surface water from major trunk roads, while SEPA has responsibility for environmental protection. These arrangements for managing surface water can create several inefficiencies in the system which can act as barriers to a more sustainable approach.

Based on past experiences and case studies, the keys to developing an integrated approach to managing surface water are:

1. availability of reliable data on which to base decisions;
2. a basis for collaborative working and production plans to manage risk;
3. a clear leader in the process, complemented by clear responsibilities for those involved.

We believe that the third point is addressed by the Bill. Under the Bill provisions, SEPA will be responsible for district flood risk management plans while local authorities will be responsible for local flood risk management plans. Local flood risk management plans will provide a basis for local authorities, SEPA, Scottish Water and others to coordinate their efforts to manage surface water flooding. Local authorities and Scottish Water will be ultimately responsible for the majority of measures to tackle surface water flooding. As the lead authority for local flood risk management plans, local authorities would be expected to lead on surface water flooding.
issues. To support collaborative working, the Bill sets out clear consultation exercises, provision for advisory groups and a general duty to cooperate and coordinate the exercise of flood risk management functions. We are considering some minor amendments to the Bill to (i) ensure the provision of high quality information on flooding and drainage assets, (ii) clarify who will be responsible for assessing sewerage flooding and (iii) strengthen the basis for collaborative working.

(i) Provision of information on flooding and drainage assets

Reliable information on the location, condition and ownership of existing flood risk management measures, including information on drainage assets and watercourses, would:

- assist in the identification of measures to manage flood risk;
- assist in the preparation of maintenance schedules and coordination of maintenance efforts; and
- Identify any ownership/maintenance responsibilities that need to be addressed.

Different organisations already hold some of this information but it is held in different forms and has never been collated. We are considering amendments that would impose an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas, including information on the condition and ownership of certain drainage structures. The information would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968, as amended by the Water Industry Scotland Act 2002, which includes a map of sewers drains and sewerage treatment works for which they have responsibilities.

The information would need to be made available, in map form, to SEPA and other responsible authorities. We feel it would also be sensible for this new duty to work alongside the current duty on local authorities to assess watercourses to ascertain the risk of flooding, which is in Section 56 of the Bill. This would enable the development of a more rounded picture of the overall flood risk in a local authority area.

(ii) Assessing sewerage flooding

Under the current Bill provisions, SEPA are responsible for producing maps to comply with the Directive. To support production of these maps, the expectation is that SEPA will need to rely on information provided by other organisations, and in particular information on sewerage flooding from Scottish Water. SEPA have powers under the Bill to request information from other organisations to support their flood risk assessment, mapping and planning work.

Assessing sewerage flooding will be an important but challenging task. Scottish Water are recognised as being best placed to undertake this work and already prepare basic assessments of sewerage flooding as part of their work to remove properties from the ‘at risk’ register.

We are considering requiring Scottish Water, to, where practicable, prepare assessments of where their sewerage network might discharge sewage contaminated floodwater during a pluvial event, and to share this information with SEPA and other responsible authorities. This information will need to be incorporated in maps prepared by SEPA to comply with the Directive and so will need to be in a form that will ensure that the outputs from this assessment could be integrated with other assessments and maps prepared by SEPA. We would expect that further guidance or Ministerial Direction would be required to ensure that local authorities, SEPA and Scottish Water take a broadly similar technical approach to assessing flood risk.

(iii) Coordination of efforts to assess/manage surface water (pluvial flooding)

The Bill requires Ministers, SEPA, and responsible authorities to co-operate with each other so as to coordinate the exercise of their respective functions (section 1(2)(c)). Cooperation will be essential when assessing and managing pluvial flooding, including the contribution of sewerage flooding.
The duty to co-operate would apply to assessing and managing pluvial and sewerage flooding. However, to ensure that this work is fully coordinated, we are considering strengthening the cooperation and coordination provisions to ensure that an integrated approach to assessing and managing pluvial flooding and sewerage flooding is delivered.

**Preparation of other types of flood maps**

Although SEPA will be responsible for meeting the mapping requirements of the Directive, local authorities will often need to undertake additional, more detailed and targeted mapping exercises to allow them to identify the right combination of local measures to address flood risk.

We are considering amendments that may help to clarify the roles and linkage we envisage, for example the preparation by local authorities of supplementary maps to support the identification of measures, that where these maps are intended to help to tackle pluvial flooding, their preparation should be coordinated with work undertaken by Scottish Water and that SEPA should also consider any supplementary maps prepared by local authorities when reviewing the maps it has prepared to comply with the Directive.

**Flood probabilities and mapping**

**Section 18(8)** of the Bill allows the Scottish Ministers to specify what constitutes low probability, medium probability and high probability. “Medium probability” must involve a return period of 100 years or more. This is based on the Directive, which defines medium probability floods by reference to return periods.

Return periods can sometimes give the false impression that only one “50 year flood” will occur within each 50 year period. They can also be confusing when referring to low and high probabilities. For example, although 500 is a much higher number than 50, a flood with a 50 year return period is one with a fairly high probability whereas a flood with a 500 year return period is one with a much lower probability.

It is becoming more common to refer to an annual probability of recurrence, expressed as a percentage, rather than to return periods. This is thought to be easier to explain to the public and less likely to cause confusion than references to return periods.

We intend to amend the definition of “medium probability” in subsection 18(8) to provide that the Scottish Ministers can specify as “medium probability”, floods with an annual probability of recurrence of not more than 1%.

**Other amendments under consideration**

**Section 1 (General duty to reduce overall flood risk).** The Bill establishes a framework in which key public bodies and stakeholders can work together to prepare plans to reduce overall flood risk. The intention is for flood management measures identified in plans to be followed through to implementation. To ensure that plans form the basis for on-the-ground action, the Bill places a general duty on Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to act with a view to reducing overall flood risk.

The Bill also requires local authorities to prepare an implementation strategy. The implementation strategy will serve two purposes: first, it will ensure that the objectives and measures set out in the district and local plans are realistic and supported by a clear pathway to implementation; and second, it will provide a clear requirement for all bodies involved in delivering flood risk management to come together to negotiate and coordinate their efforts to deliver the measures set out in flood risk management plans.

The Bill does not require that measures are implemented. If there was a duty on local authorities to deliver the measures in a flood risk management plan, this could be seen as superseding all those other areas where local authorities have to provide a service, but where no similar duty to implement exists.
We are, however, considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans. More specifically, we are considering a general provision that would complement the existing provision within the Bill that ensures that the exercise of local authority powers to undertake measures to manage flood risk is limited to actions that will contribute to the delivery of objectives set out in the relevant flood risk management plan. This limitation would not apply in the case of emergency works or to measures that would not hinder delivery of objectives set out in the relevant flood risk management plan.

Section 13 (local plan districts). The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding. The Bill currently requires SEPA to identify local plan districts for the purpose of preparing local flood risk management plans. In identifying these areas, SEPA must have regard to the flood risk assessment (section 9) which includes maps of river basins and sub-basins.

Although the clear intention is that catchments (sub-basins) would form the basis of the local plan districts identified by SEPA, we are considering an amendment that would clarify the basis on which SEPA are to identify local plan districts.

Section 62 (Advice to planning authorities). At present, section 62 does not limit the scenarios under which SEPA should be expected to provide advice to planning authorities on flood risk. To ensure that SEPA’s role is clear, we are considering refining the duty to it make clear that advice only has to be provided in relation to development planning. This would limit SEPA’s role to providing advice on individual development proposals and development plans.
The Convener: This is our first evidence-taking session on the bill. The format is that Scottish Government officials will explain each part of the bill in order and the committee will ask questions on each part, after it has been explained, rather than leave them in a pile to be asked at the end.

The panel of officials is welcome. Nick Evans is a principal planner in sustainable development, climate change and renewable energy; Stuart Greig is a senior flooding policy officer; Lindsey Henderson is a principal officer from the legal directorate; Bob Irvine is the deputy director of the water, air, soils and flooding division; Louise Miller is head of branch 2 food and environment; Fiona Quinn is the flooding bill manager; and Judith Tracey is the flooding policy team leader.

I invite the relevant officials to make their opening remarks, which should include an explanation of part 1. You will have to be fairly brief, so that we can get straight to the meat. You will be aware that the committee has done an extensive inquiry on flooding and is already pretty up to speed on a lot of the issues.

Bob Irvine (Scottish Government Climate Change and Water Industry Directorate): Thank you, convener. I will make a few introductory remarks before Judith Tracey goes over parts 1 and 2. As you say, the committee investigated flooding with great thoroughness and produced a helpful report, which was published earlier this year. We hope that the provisions that we will describe reflect how ministers took the committee’s work fully into account.

The bill has eight parts—the degree of detail varies—and attempts to do five principal things, which we will describe as we go through our evidence. First, there is co-ordination and co-operation in flood risk management, which involves a new set of obligations and a clarification of responsibilities on existing bodies that relate to the assessment of flood risk and the preparation of flood risk management plans. In those provisions we have transposed the recent European directive on floods: the European Directive on the Assessment and Management of Flood Risks (2007/60/EC of 23 October 2007).

We then look at amending and clarifying local authority and Scottish Environment Protection Agency functions for flood risk management, to co-ordinate their actions and those of other relevant agencies. There is also a revised
statutory process for flood risk management schemes and the processing of them that replaces those in the Flood Prevention (Scotland) Act 1961, which have been widely thought to be unsatisfactory and not up to contemporary requirements. Finally, a more uniform approach to the enforcement of the Reservoirs Act 1975 is created. All those provisions have been extensively discussed with stakeholder groups, and that process continues. We are looking to deliver, as far as we can, the best set of provisions. Ministers are clear that they are positively disposed to suggestions that can improve the principles and provisions that we have set out in the bill.

I hope that that introductory context is helpful. I ask Judith Tracey, who led the detailed consideration from the policy point of view, to introduce and set out parts 1 and 2.

**The Convener:** Right. We wanted to go through the bill part by part and go straight to questions on each part. It would be more helpful for us to do that for part 1 before we move to part 2.

**Bob Irvine:** I am sure that Judith Tracey can break her comments at the end of part 1.

**Judith Tracey (Scottish Government Environmental Quality Directorate):** Part 1 sets out the general duty directions and guidance. It creates general duties that the Scottish ministers, SEPA and the responsible authorities must comply with when exercising their functions in relation to flood risk management. It includes a duty to exercise those functions with a view to reducing overall flood risk. It will, for the first time, place flood risk management on an equal footing with other general duties on local authorities, such as that to provide education and other services. Also for the first time, it will give Scottish Water a statutory responsibility for flood risk management. To ensure partnership working, there is a duty on the Scottish ministers, SEPA, local authorities, Scottish Water and the other responsible authorities to co-operate so as to co-ordinate their respective functions for flood risk management.

**The Convener:** Thanks. Some written evidence asks why the bill is not a bit more specific about some of the responsibilities, and some witnesses have suggested that questions about the bill must start with that. The “it depends” kind of answer will not necessarily move us much further forward if the lines of responsibility are not clear cut. Can the officials explain why we are left with that slight blurring in the bill?

**Judith Tracey:** I think that we have gone as far as we can in setting out who is responsible for each part. When we set out the proposed amendments for stage 2, we realised that we might need to strengthen in two areas who exactly is responsible for particular things—it concerns the assessment of the drainage infrastructure; we are looking to put a specific duty for that on Scottish Water—but responsibility for general flood risk management has always been with local authorities and it remains there.

**The Convener:** So you are clear that that responsibility lies with local authorities?

**Judith Tracey:** Yes.

**Peter Peacock (Highlands and Islands) (Lab):** Who is responsible for implementation? In a letter subsequent to the policy memorandum on the bill, the Minister for Environment indicated that he is “considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans.” Can you say what the Government has in mind?

**Judith Tracey:** Some concern has been raised that the bill places no duty on authorities to implement flood risk management plans. We do not want to impose a duty to implement such plans because there is no duty to implement other, similar, plans that local authorities develop. Placing a duty on local authorities purely to implement flood risk management plans would risk elevating those plans above other services that local authorities provide.

In light of the concerns that have been raised, we included the general duty at the beginning of the bill, to ensure that all local authorities, Scottish Water and the other responsible authorities have a duty to reduce overall flood risk. Combined with the power, which is provided later on, to carry out any work to reduce flood risk in their area—provided that such work is linked to a flood risk management plan—the general duty imposes a fairly strong duty on local authorities to carry out the work that is in a flood management plan. However, because those other concerns have been raised, we might try to see whether we can strengthen the duty slightly. We have not taken that any further yet, but we are open to suggestions—although we would not go as far as imposing a particular duty to implement flood risk management plans.

**Peter Peacock:** So there is no intention to impose a specific duty to implement the plans?

**Judith Tracey:** No.

**Peter Peacock:** People have made quite strong representations that the lack of a specific duty seems like an omission. One conclusion of our inquiry into flooding and flood management was the need for absolute clarity about who is responsible for what. Are the flood risk management plans that local authorities will not be
under a specific duty to implement nonetheless plans that they must agree to, along with the other partners?

Judith Tracey: The plans must be developed by SEPA in co-operation with all the other responsible authorities.

Peter Peacock: Do local authorities need to agree those plans? Will there be some process whereby, once the co-operation has taken place, all the partners involved say, “This is now an agreed plan”?

Judith Tracey: Yes, agreement is required.

Peter Peacock: But local authorities will be under no duty to implement their agreed plan.

Judith Tracey: There will be no duty to implement, but they will have a duty to reduce flood risk. Plus, anything that a local authority wants to do on flood risk management in its area must be related to the plan. Local authorities will have the overall responsibility. I find it difficult to accept that a local authority that has a flooding problem will not want to deal with that problem. The only way it could deal with the problem would be through the agreed flood risk management plan, unless there was an emergency.

Peter Peacock: You have pointed out that all local authorities will want to improve the situation in their area. Notwithstanding that, there may be aspects of the plan that they find it difficult to address at particular moments in time because of the effect on the livelihood or health or wellbeing of their residents or citizens. What provision if any does the bill make for addressing situations in which the agreed plan is not being implemented? I am not necessarily thinking about a sanction but, given that there will be no duty to implement the flood risk management plan, what would happen if the agreed plan was not being implemented?

Judith Tracey: Ministers have powers under part 3 to step in if a plan is not being implemented.

Peter Peacock: Could ministers direct the authority?

Judith Tracey: Ministers have powers under part 3 to step in if a plan is not being implemented.

Peter Peacock: Could ministers direct the authority?

Judith Tracey: Yes.

The Convener: I want to explore the social, economic and human impact of flooding, which ministers and SEPA are required to take into account in exercising their management duty. Recommendation 4 of the report of our inquiry into flooding and flood management stated:

“The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs ... of flooding can be included in future assessments of the value of proposed flood management measures.”

The research that was carried out by the University of Dundee in 2007 considered some aspects of that issue, but it did not propose any method by which such impacts could be included in an assessment. How will the Government go about making that assessment?

10:15

Judith Tracey: Part 2, “Principal expressions”, gives a definition of flood risk. The reference to human health is intended to cover all aspects of human health, including emotional aspects such as the distress and emotional impact of flooding.

The Convener: What mechanisms will you use to make that assessment?

Judith Tracey: That needs to be developed further. A lot of work is going on in that area, not just in Scotland but in lots of other places. The Environment Agency is doing research into how you can give a value to the type of emotional distress that is caused by flooding.

The Convener: Will you let us have a reference to that research? It would be useful.

Judith Tracey: Yes.

The Convener: At the moment, however, the matter is still slightly in the air.

Judith Tracey: It is slightly in the air; it is difficult to assess at the moment.

John Scott (Ayr) (Con): Local authorities, SEPA and Scottish Water have raised concerns in their submissions about the requirement to co-operate and co-ordinate. What action will be taken to ensure that the roles of different organisations will be aligned to enable the successful delivery of assessment maps and plans, as set out in the bill?

Judith Tracey: I am sorry; I did not catch the last bit about which mechanisms will be used to—

John Scott: What action will you take to ensure that the roles of different organisations will be co-ordinated and that they co-operate to enable the successful delivery of assessment maps and plans?

Judith Tracey: Part 3 goes into a lot more detail about that. Stuart Greig may want to take over and talk about it.

Stuart Greig (Scottish Government Environmental Quality Directorate): We can deal with it now, or I can deal with it in more detail when we get to part 3.

The Convener: I will take a note of John Scott’s question and he can follow it up later.

John Scott: When we talk about part 3, will you talk about the resolution of conflicts, and conflicts of interest, between bodies or even within organisations, or will you talk about that now?
Stuart Greig: We can deal with it now or when we talk about part 3.

John Scott: Deal with it now, then, please.

Stuart Greig: There is a requirement in part 3 for everyone to come together to agree the implementation aspects of local flood risk management plans. There is a clear stage when any conflicts between the priorities of the different organisations need to be met and addressed. Part 3 also provides for the establishment of advisory groups that will support the production of the plans and identification of the measures. That forum is where potential conflicts that might exist between organisations can be addressed.

Do you have a specific type of conflict in mind?

John Scott: Just when people cannot agree—I envisage a situation involving two local authorities in which one regards itself as a winner and the other regards itself as a loser. How will you ensure that conflicts are resolved? Forums, assessments and discussions are all very well, but they might not in and of themselves resolve an entrenched position involving SEPA and a local authority or two local authorities in one catchment area.

Stuart Greig: Part 3 provides that when agreement cannot be reached between all the parties involved in developing and implementing the local flood risk management plan, ministers are required to step in to agree the plan on behalf of whoever is leading that work. If outstanding issues hinder the final development of the plan, particularly if they hinder production of the wider district flood risk plan with which SEPA would be involved, ministers might need to step in to resolve such conflicts. We have not set out the steps that ministers would take, but they can step in and take appropriate action to resolve conflicts.

John Scott: I noticed that you use the words "co-operate" and "co-ordinate" in the bill whereas others suggest that organisations should integrate. Is that because you are afraid that you will not get sufficient co-operation and co-ordination to allow integration, or are you just hastening slowly? I appreciate that it is a play on words, but one would expect such services to be integrated rather than just to co-operate, which is slightly less well-defined language.

Stuart Greig: We spent quite a bit of time looking at that. The policy steer was that co-operation and co-ordination are the steps to allow integration. Integration, where appropriate, is what we are looking for. Given aspects of the particular functions that the different organisations have, it is not always possible to integrate fully. There are particular circumstances, such as emergencies, in which the system should work by itself and it should not have to be fully integrated with a longer-term planning process. Integration is the model to use when that is appropriate, and co-operation and co-ordination help to deliver it.

Peter Peacock: I understand why the different elements relating to the various plans are in the bill; you have transposed the European directive. Do you have separate, sequential stages rather than a combination of elements and things being done in tandem or in parallel?

Bob Irvine: A sequential timetable is set out in the directive.

Peter Peacock: So that is an absolute requirement under the directive?

Bob Irvine: Yes.

The Convener: Let us move on to part 2.

Judith Tracey: Part 2 covers the definitions that are used in the bill. It provides a definition of "flood" that covers all forms of flooding with the sole exception of flooding that is caused solely by a failure of the sewerage network—Scottish Water already has statutory responsibility for maintaining the sewerage network. The bill does not, however, exclude flooding caused by heavy rainfall that leads to the sewerage network discharging; the exception lies purely with a failure in the mechanism of the sewers.

Part 2 also defines "flood risk", to promote common understanding of the term, and covers its important role in managing floods. The reference to "human health" covers all aspects of human health, from personal damage or loss of life to the distress and emotional impact of flooding.

Part 2 sets out the responsible authorities, which are:

"local authorities … Scottish Water, and … such other public bodies … as the Scottish Ministers may designate" at a later stage.

Peter Peacock: The term “sustainable flood management” is not used in the long title or elsewhere. There is no definition of sustainable management in the bill. Why did you choose not to include it in the long title or elsewhere in the bill?

Judith Tracey: We feel that the whole bill will deliver sustainable flood management. We have drawn up the entire bill with sustainable flood management in mind—and sustainable flood management is mentioned in the bill. The definition of “flood” includes all types of flooding; it does not cover just the limited sorts of flooding that have been dealt with under previous legislation. We are confident that the whole bill will deliver sustainable flood risk management. We felt that it was not necessary to include it in part 2 because it is covered enough in other parts of the bill.
Peter Peacock: If the whole bill is about sustainable flood management, would it not be entirely appropriate for that term to be in the long title? I appreciate that there are difficult legal concepts and definitional problems. No doubt parliamentary counsel is wrestling with that—and no doubt you are wrestling with parliamentary counsel on the matter. Is it a drafting issue, or is it a policy question?

Judith Tracey: It is a drafting issue, to some extent. We are creating a framework for sustainable flood management, which is an idea that is still evolving. What sustainable flood management meant a year or two ago is different from what it means now. The definition will probably differ again in 10 years' time, when we have a better understanding of the meaning of sustainability. If we tie ourselves down too closely to a particular form of words in the bill, we run the risk of being in the same position with the legislation that we are considering now as we find ourselves in with regard to the 1961 act. The way legislation is set out might stop certain things being done. We want to make the bill as open as possible, ensuring that local authorities and other bodies can use whatever tools they have at their disposal to manage flood risk in their areas without being tied to a particular definition.

Peter Peacock: I understand your argument, and you take me neatly to my next point. Is there a duty on ministers to issue guidance about sustainable flood management over time?

Judith Tracey: We will issue guidance. The good thing about guidance is that, when things move on, we can change it. It is far more difficult to go back and change legislation.

Peter Peacock: Indeed, but will ministers be under a duty to issue guidance, or will they have the power to do so?

Judith Tracey: Ministers will have the power to issue guidance, not a duty to do so.

The Convener: Elaine Murray wanted to talk about surface water management. Has the minister's letter changed your view slightly, given that it addresses that issue?

Elaine Murray (Dumfries) (Lab): The issue has been addressed to an extent, but I would like more detail. Surface water flooding is particularly frustrating for constituents who suffer from it because many authorities are involved—Scottish Water and the roads authority, or Transport Scotland if a trunk road is involved. Also, in my experience, flooding frequently occurs from private land and it can be difficult to get action on it. Will you expand a little on how the bill will address surface water, which causes particular distress to individuals?

Judith Tracey: The first measure that will address surface water management is the requirement on the various organisations to work together. We seek to make it clear that, because local authorities will have initial responsibility for flood risk management, in general, the management of surface water will be their responsibility. They will have to work with the other organisations to do that. We hope that there will be a move towards better management of surface water so that it does not end up in the sewerage system, which is where it causes problems.

The consultation paper on householder permitted development, which will come out shortly, will ask whether it would be suitable to place limits on paving over front gardens for hardstandings, or to ensure that they remain porous, to stop surface water run-off. We are considering that and we hope to move towards more solutions of that type. The bill will enable the various organisations to work together in that way to provide co-operative solutions.

Elaine Murray: So the buck-passing that goes on at present should not happen?

Judith Tracey: Local authorities should no longer turn round and say, “If it’s in the sewer it is Scottish Water’s responsibility and if it’s on the trunk road it is Transport Scotland’s.” That should not happen any more.

Elaine Murray: You mentioned guidance on new developments. Several issues arise in current developments, in urban areas and in rural areas. For example, there can be problems with field drains not being cleared, which can lead to flooding on people’s properties. How will the bill deal with issues that involve surface water that originates from privately owned property?

Judith Tracey: The bill will require a lot of stakeholder engagement, including engagement with communities. The idea is to involve communities closely in the development of local flood risk management plans. It will be in communities’ best interests to ensure that anything that can be done in their area to help prevent flooding of their houses is included in the local flood risk management plan. A lot of work will be done to raise awareness of flood risk and of what people can do to help themselves, rather than rely on others to sort out the flooding. We are all responsible for looking after our property. It is important to make the public aware of that and of the fairly simple measures that they can take to protect themselves without going as far as having flood risk management schemes.

Elaine Murray: We will probably return to this issue. One problem is that of water that comes off one person’s property and ends up as flooding in somebody else’s. Often, the individual whose
property is the source of the flooding is not all that bothered because it does not affect them. What provisions are there on that? We may return to this issue when we consider duties and responsibilities.

John Scott: I presume that nothing will change. The reality is that those below will receive flood water from those above—no legislation will change that. I think that that is what Elaine Murray is talking about.

10:30

The Convener: Is Elaine Murray suggesting that when the house above or the neighbouring property is at fault—

Elaine Murray: Yes—when it is at fault.

The Convener: Is that not a matter between the two property owners?

Bob Irvine: That must be right. The bill will do nothing to affect that situation.

As the minister’s letter suggested, dealing with surface water is complex and difficult. We do not start from a perfect understanding of all the relevant issues in the places that are most affected. The processes and co-ordination in the bill are an important step to improving that position. We are considering strengthening the provisions, particularly to improve the reliability of the data, which are the starting point for understanding surface water and working out what to do about it. That will require significant effort by local authorities and Scottish Water.

We acknowledge that dealing with the issue is important and we are keen to get that right. We are reviewing the provisions and we have suggestions for improving them further. We will examine carefully how the committee approaches the issue and the evidence that is presented, to ensure that the bill provides the best basis for working to address the problem. It must be borne in mind that we expect the guidance to deal with quite a lot of the practical details of modelling and interactions between the various parties. We will track the developing methodology through that guidance. We expect a high level of co-operation between the responsible authorities to address the matter and take it forward from our present understanding.

Alasdair Morgan (South of Scotland) (SNP): The bill defines flood risk as

“the combination of the probability of a flood and of the potential adverse consequences”.

A minor point is that most lay members of the public would probably think that the probability of a flood was its risk and would not go into the risk management-speak. I do not know whether that will give you problems in any consultation with communities.

A more substantive point is that adverse consequences are not defined. That definition might vary according to people’s perceptions. Did you consider fleshing that out?

Lindsey Henderson (Scottish Government Legal Directorate): The definition of flood risk is closely based on the definition in the floods directive, which refers to adverse consequences.

Alasdair Morgan: I do not know whether that fills us with confidence, but never mind.

Lindsey Henderson: Adverse consequences are referred to because flooding is not always a bad thing—that depends on where it occurs. Adverse consequences are associated only with flooding of people’s property and with flooding that risks people’s lives. In sustainable flood management, we might want actively to promote flooding in areas where it is useful for a flood to go—for example, it might be better for a functional flood plain to flood than for somewhere else to flood. I expect adverse consequences to be reasonably understandable.

Alasdair Morgan: If the term is reasonably understandable, why is it not defined in the bill?

Stuart Greig: Part 3 provides for flood risk maps, which will go into the detail of assessing the impacts. We provide that the maps should include information such as the number of people who could be affected and the economic activity that could be affected, but we have kept some flexibility to specify in regulations more matters to include in the assessment. We can add issues once we have engaged with stakeholders to understand what they want to be included, which we will have the flexibility to add. By its nature, the definition of flood risk is broad, but we can add to that over time to take on board different views.

Peter Peacock: In its report, the committee supported the notion that SEPA should have a significant, enhanced responsibility. However, we drew to the minister’s attention, first, the need for mechanisms to ensure that SEPA is independent; secondly, SEPA’s need for clear guidance on how to resolve internal disputes that arise because of its different responsibilities in relation to, for example, the controlled activities regulations and watercourses; and, thirdly, the need for an independent mechanism to review and audit SEPA’s decisions and recommendations. How have those concerns been addressed?

Bob Irvine: Ministers’ starting point is that SEPA, as a non-departmental public body, is independent and free to carry out its functions appropriately. Ministers’ powers of direction under
various parts of the bill could be used to resolve the tensions that you mention between various parts of SEPA’s responsibilities but, in general, ministers are confident that SEPA’s management and board will properly reflect on the balance of responsibilities and reach an appropriate outcome. If that is not so, as I said, ministers can intervene.

Again, much will be developed through the guidance to SEPA and the various other parties that are involved. In the guidance, we will articulate ways in which to resolve difficulties in the areas that you have in mind and set out how to deal with them. Ultimately, if things become difficult as the plan is worked through and they are unresolved, the plan will be submitted to ministers. If there are difficulties with objections and local interests make representations for or against particular parts of the plan, ministers have a route to resolve that, because the provisions allow them to modify the plan.

Peter Peacock: I understand that. However, there are contemporary examples in which SEPA is objecting to local flood management plans because of its specific environmental responsibility for a watercourse—for scouring out a river, or whatever. Under the bill, SEPA will also have a duty to ensure that flooding in the area is managed effectively. Which duty will supersede or trump the other? Will SEPA’s primary duty be the protection of communities, families and houses or the protection of the environment, or is it impossible to say?

Bob Irvine: I regret that it is not possible to say. I risk incurring the wrath of the convener, but the answer is that it all depends on the particular circumstances.

It would be difficult for ministers—or indeed anyone else—to set out an absolute set of principles to be followed in every case in which there was tension between those responsibilities. It is a fact of life that those factors have to be resolved. There is a process for allowing them to be identified and a process for consultation and discussion and, ultimately, ministers can resolve the situation if an appropriate way through it cannot be found. It would be going too far for ministers to say that SEPA must favour one responsibility or the other.

Ministers are confident in their relationship with SEPA and confident that it has the processes to identify the most appropriate balance of policies at any particular time. If things go wrong, ministers will have the opportunity to change that.

Elaine Murray: The bill designates certain authorities as responsible authorities and gives ministers powers to designate others in regulations. Scottish Natural Heritage seems to be under the impression that it is not designated in the bill and will not be designated in regulations. It fears that, although it may be a consultee, it will not be involved early enough in the process and could end up lodging late-stage objections, which may extend the time that it takes to introduce flood risk management plans. Why are some responsible authorities named in the bill, why will others be designated in regulations, and why is SNH not included in either category?

Judith Tracey: No decisions have been made about what the other responsible authorities will be. SNH, along with others that are under consideration, may still be designated. Local authorities and Scottish Water are included in the bill because they are the main organisations that have on-the-ground responsibilities for flood risk management. Scottish Water has drainage responsibilities, and local authorities have overall responsibility for managing flood risk in their areas. The timeframes for implementation of the European directive, especially the first part of it—on flood risk assessment—are very tight.

I do not know whether you are familiar with the Water Environment and Water Services (Scotland) Act 2003, which provides for a similar set-up and responsibilities. In that case, there was the option of identifying responsible authorities, but that was done not in the bill but later, after a long, time-consuming process. The matter went out to consultation and a great deal of consideration was given to exactly what responsibilities and functions such authorities should have under the 2003 act. We will have to go through a similar consultation process when determining whether organisations such as SNH and the Forestry Commission should be designated as responsible authorities. Because local authorities and Scottish Water have on-the-ground responsibilities for flood risk management, it was obvious that they needed to be named up front, so that they could start work straight away. All other organisations will be subject to a consultation process, so that everyone has the opportunity to have an input.

Elaine Murray: SNH may be feeling a little nervous about the fact that it appears that to have been omitted because, at one time, it was mooted that it would be merged with SEPA. You mentioned the WEWS act. How long did it take for other responsible authorities to be designated in that case?

Judith Tracey: I cannot remember exactly—I think that it took about two years.

Stuart Greig: It took about two years. That was the first time that we had dealt with such a process, so it may be possible to complete it significantly more quickly in this instance.

You raised the issue of the engagement of SNH in the flood risk management process and the
lodging of objections. The role of the advisory groups is to ensure that all partner organisations are around the table right from the start. Even if an organisation is not a responsible authority, it will be at the table to put across its views at an early stage in the preparation of plans, so that we do not find that there are stumbling blocks at the end of the process.

Judith Tracey: Under the bill, responsible authorities will have a lot of duties, including a duty to reduce overall flood risk. That is an obvious duty to place on the organisations that we have already named, because there are measures that they can take to do that. It would be odd to place a duty to reduce overall flood risk on SNH, given its functions. We must examine the issue carefully.

The Convener: I invite Stuart Greig to introduce part 3. We will then move to questions.

Stuart Greig: The provisions in part 3 are lengthy, complex and technical, so it will be useful if I break them down into smaller, more manageable pieces. I will take advice from you, convener, on how quickly you would like me to go through this part of the bill.

Overall, part 3 will create the framework within which SEPA, Scottish Water, local authorities, responsible authorities and the public will work together to create flood risk assessments and maps, and to prepare plans that will set out all the measures that we need to put in place to tackle the risks that have been identified. It may be useful if I begin by summarising briefly the role of SEPA as the competent authority. I will then say something about the geographical boundaries of flood management plans and go through the provisions relating to flood risk assessments, flood hazard maps and flood risk management plans. I will finish by talking about advisory groups and consultation.

10:45

The Convener: As long as you do not take half an hour to do that.

Stuart Greig: No. I will keep it as brief as I can. The first point is that, through the combination of the duties that are placed on it, SEPA is identified as the lead authority for the work. Critically, though, SEPA will not work in isolation. It will work alongside others, local authorities in particular, in preparing the assessments. It will act as the overall national body providing strategic direction and co-ordination, but it will facilitate all the other bodies to come together and work under clear guidelines so that we get a nationally consistent approach. It will act as a facilitator, rather than holding a whip and controlling the situation.

The district plans, which SEPA will prepare, will be along the same geographical boundaries that we have for river basin management plans. There will therefore be two plans for Scotland: a Scotland one and a cross-border plan for the Solway/Tweed area. There will be another plan for Northumbria, but only a very small part of the district covered by that plan is in Scotland. That provision will help to ensure that there is clear co-ordination between the work for the water framework directive and the work for the floods directive. It will also help to identify the opportunities where we can use the public purse to improve the environment and deliver flooding benefits as well.

SEPA will have responsibility for identifying where local flood risk management plans need to be prepared. In doing that, SEPA will have to work across catchments, which are the fundamental unit of management for flood risk management. SEPA will also be responsible for identifying what are the most appropriate catchments or sub-basins, as they are called in the bill, in order to be in line with the directive. We see it as being a catchment-based approach.

SEPA will also be responsible for preparing the flood risk assessment, which is the first-cut examination of where the most significant flood risks are in the country. We have made a set of provisions that need to be incorporated in the assessment, which is basically an assessment of where flooding has occurred in the past and what its impacts have been. The assessment will give a national picture and will culminate in an assessment of where the most vulnerable areas are. The assessment of the most vulnerable areas will need to be submitted to ministers for approval. That will be a matter for regulations because it will be an important step in the consultation process that needs to take place. There will also be regulations on some of the processes and content of the assessment of vulnerable areas. We can set that out in more detail in regulation, rather than put something fixed in the bill. We have set out the framework in the bill and can add the detail later.

SEPA will be responsible, too, for the flood risk and hazard maps, but it will need to take a lot of information and advice from local authorities and Scottish Water in the preparation of the assessments. The flood hazard map is the map of where the water goes. Particular flooding scenarios are set out that must be considered. As was discussed earlier, the flood risk assessment is the assessment of the impact of the water once it has entered the different parts of communities and so on. We have set out particular things that must be taken account of in preparing the assessments, but we have kept the opportunity to add detail to that in guidance and regulations so that we have the flexibility to take account of stakeholder views and to adapt the approach as flood management needs change over time.
We discussed surface water management issues; I think that we included some extra provisions in our submission on the stage 2 amendments that we are considering, which might help to clarify that Scottish Water is best placed to deal with sewer flooding and that it will perhaps need to have a more direct responsibility to prepare that information and provide it to SEPA. We expect local authorities, with their responsibilities for surface water, to be best placed to provide guidance to SEPA on surface water flooding problems so that SEPA can incorporate that in the wider picture of flood risks and problems for Scotland.

The most important part of the bill is on the preparation of flood management plans. The plans will have two tiers. One is the district plan and the national plan, which I described as being an overview for Scotland; the other is the local flood risk management plans. The critical provision is that the two tiers of plans need to be prepared in co-ordination because they are not two separate plans. They need to be prepared in parallel, and we have set out steps in the provisions to ensure that things such as consultation happen in tandem or closely together. We have also ensured that the plans cannot be inconsistent and that we have a set of integrated plans coming together.

To support the preparation of those plans, we have advisory groups and a set of consultation provisions, which are similar to what we had under WEWS. There will be a fairly wide-ranging set of advisory groups that can input to the process without limitations on who should be on them.

The Convener: By WEWS, do you mean the Water Environment and Water Services (Scotland) Act 2003?

Stuart Greig: Yes. We used that as a model. We have critical consultation steps for the assessment of vulnerable areas and for what happens once the plans have been prepared so that we have a full consultation process.

Alasdair Morgan: It will require a great deal of technical expertise to bring about all the plans, assessments and maps. The financial memorandum goes into some detail about the costs of recruiting all the required people. I know that it is not something that should be in the bill itself but, on the assumption that there are not lots of unemployed hydrologists floating around at the moment, exactly what consideration is being given to ensuring that the required number of people are available if the bill becomes an act?

Stuart Greig: It will be difficult. There is definitely a deficit of qualified hydrologists. However, a wide range of skills is required; we need not only hydrologists but trained engineers and people who understand how the rivers and coastal environments function. We hope that we will be able to draw on and build on the experience that is already available, such as in-house experience in SEPA and the experience of qualified engineers in local authorities.

Alasdair Morgan: Would it be fair to say that no real assessment has been made yet? Some guesstimates of how many people will be needed have been made for the financial memorandum, but there is no measurement of how many of them may already be in the field doing something else that presumably will still have to be done by somebody else.

The Convener: Could I characterise the position as keeping your fingers crossed?

Bob Irvine: Yes and no, I suspect. We acknowledge that there is an issue with skills. Local authorities, SEPA and Scottish Water are registering and considering that. The financial memorandum contains the first assessment of the resource implications of the bill. If there is a shortage of particular skills, we will have to think carefully about what we can do to rectify that, such as engaging with the Scottish Further and Higher Education Funding Council and the higher education sector to provide graduate studentships in the relevant disciplines. However, at the moment, we must go with the skill base that we have and ensure that it is properly directed and focused on the key tasks. As part of the process that Stuart Greig described, we must register the key tasks, register where all the various agencies that will be engaged in them can most appropriately apply their effort and build up the knowledge and expertise as and when we have the opportunity.

Alasdair Morgan: Given the timescales that are involved, you will have to do some of that interaction with the funding council pretty soon. Perhaps lots of people who were considering careers in merchant banking could be usefully diverted.

Bob Irvine: I suspect that they might divert themselves; they might not need much encouragement.

We have opened a dialogue with the funding council, and SEPA is talking to a number of higher education institutions about the possibility of supporting studentships and graduates. An active discussion is taking place.

Liam McArthur (Orkney) (LD): Alasdair Morgan is talking about an overall absence of hydrologists and other skilled people. SEPA and local authorities have registered concerns about that. When it was considering the financial memorandum, the Finance Committee expressed concern about an inflation in the head count at SEPA but no apparent expansion of the required
skills in local authorities. Do you accept that if we are to move towards more sustainable flood management, the necessary hydrology and other skills will be needed most acutely in the local authorities, which, to date, have tended towards using engineering solutions to the problems that we have experienced?

**Bob Irvine:** Possibly, but I encourage you to direct that question to the local authorities.

**Liam McArthur:** They are telling us that they do not have the funding.

**Bob Irvine:** Yes, but it is important that they look at their resource requirements and the type of people they need across the range of their responsibilities.

**The Convener:** Rhoda Grant has a question on an area on which the minister has already given quite a lot of specifics.

**Rhoda Grant (Highlands and Islands) (Lab):** Yes, so it is just a very short question.

You said that there will be an amendment to restate the duties that local authorities already have for flood risk management. Is the bill really about fulfilling the planning process that is laid down by the European directive rather than about providing practical solutions to flooding? The practical solutions remain as they were and the bill is just about setting up the bureaucracy to deal with the European directive.

**Bob Irvine:** To an extent, yes, the bill is mostly about process. However, it is important to register that the bill releases some constraints that apply at present, particularly to local authorities in relation to what constitutes a flood prevention scheme. That is the point that Judith Tracey was trying to make about sustainable flood management. In devising a plan to address the flood risks that have been identified through the processes that Stuart Greig has described, local authorities can now do anything. The 1961 act was pretty specific about hard-wall and diversion structures and so on, so the bill presents an opportunity to think about and develop new approaches.

**Stuart Greig:** We know that there is a large planning process involved, and that there is an interaction between national and local plans. A lot of effort will therefore go into working out the appropriate combination of measures. That is necessary to give us the right combinations in the right places. Unfortunately, it takes a lot of up-front planning to come up with the right combinations to manage flood risk, so we have been careful to ensure that we have transposed the directive in a way that is appropriate to our organisational setup in Scotland, and particularly to the needs of local authorities. That is why we have brought in the local flood risk management plans, which are really delivery plans that allow local needs to be accounted for. That ensures that there is the right combination of local measures at the same time as a broad overview or perspective is set out by SEPA.

**Rhoda Grant:** My next question is about planning and the bill, so it follows on quite neatly. What is the role of individuals? The bill gives quite strong planning powers so that if something ends up in the final plan, it is deemed to have received planning permission. Under normal circumstances, planning permission involves discussion with neighbours and other consultation, but there seems to be very little about public consultation in the bill. It is all about how different authorities act together but not about how the public, community councils and other folk on the ground interact with the process.

**Stuart Greig:** The consultation provisions that are set out in the bill are not intended to be limited to the bodies that are directly involved in managing flood risks. Consultation is meant to be done widely with the public and as wide a group of stakeholders as possible. Trying to get views through consultation is important. Likewise, the advisory groups are not limited to the public bodies that are directly involved in flood management; the door is open to the National Flood Forum or community representatives, for example, to be involved in the process. The consultation process is fairly flexible. Different consultation formats can be used to get messages out to as many people as possible. I hope that having fairly flexible provisions will allow that to be done.

11:00

**Rhoda Grant:** That seems to me to be an area of concern. Will there be guidance on it to local authorities and SEPA? A big human rights issue is involved if people who will be directly affected by things in a plan have not been consulted on or made aware of those things. It seems that there will be great flexibility, but surely there must be a minimum standard.

**Stuart Greig:** A useful exercise was carried out for the Water Environment and Water Services (Scotland) Act 2003. SEPA set out a consultation very early on in the process. It said how its consultation exercise would take place and what its strategy was for engaging with all the people whom it needed to engage with. A similar approach early in the process, with the involvement of local authorities, could be helpful to show exactly how the necessary level of engagement will be obtained.

**Rhoda Grant:** Would we be able to see guidance on how that would happen?
Stuart Greig: Yes. We can consider whether we can do something about that in the bill or whether guidance would be sufficient.

The Convener: The committee recommended that consideration of the resilience of the national infrastructure be part of any flood risk assessment. Will you clarify whether infrastructure resilience assessments are intended to be part and parcel of the proposed flood risk assessments? I do not think that that is specifically outlined in the bill.

Stuart Greig: Absolutely—that is my short and sweet answer. The issue is where the greatest flood risks are, and there are great flood risks in that context.

The Convener: That is fine.

Alasdair Morgan: Section 16 requires SEPA to consider the contribution that the alteration of natural features could make to preventing floods. I suspect that the committee would tend to favour such an approach as opposed to hard measures. Did you consider building into the bill a presumption in favour of natural flood management measures, unless there were strong arguments for not using them?

The Convener: The committee recommended that.

Stuart Greig: We certainly considered the matter. We have wanted to adhere to the principle of getting the right measure in the right place, whether we are talking about a natural flood management measure, a flood warning scheme, or a flood protection scheme. However, we are reluctant to have a presumption in favour of any particular type of flood management measure; rather, it is a matter of finding the right measure for the right circumstances.

A thorough assessment of the costs and benefits of measures that are identified in the flood management plans is needed. The benefits of measures in tackling flooding are not the only benefits that must be considered; other benefits that could result—wider environmental benefits, for example—should also be considered. We think that the approach that we have taken means that an appropriate balance will be struck in deciding the most appropriate measure.

Alasdair Morgan: You say that environmental benefits could be considered. That leaves things a bit optional.

Stuart Greig: Benefits beyond that of reducing flood risks would have to be considered. Things would depend on the type of measure that is involved. Any associated environmental benefits would need to be considered. In some instances, urban regeneration benefits would need to be brought into the mix. It is a matter of considering the wide range of benefits and selecting the most appropriate measure.

Peter Peacock: I would like something to be clarified. I think that you have said in communications with the committee that you would consider the issue of natural features and natural processes. We have had representations on the matter. Will you confirm that you will consider introducing the words "processes" and "features" into the bill?

Stuart Greig: We can certainly consider that. That would be no problem.

Peter Peacock: I would like to pursue a bit further what Alasdair Morgan said. It was no accident that, having considered the presumption that he mentioned, the committee made the recommendation that it made. It did so deliberately and purposefully to try to shift from having hard engineering solutions to everything to considering more natural processes. If part of the bill’s purpose is to achieve sustainability, I presume that it would be entirely appropriate to put such a presumption in the bill for the reasons that Alasdair Morgan touched on. So that I am clear, are we talking about a policy consideration? Are you saying that you do not want to include such a presumption as a matter of policy or that it is quite difficult to capture what has been suggested in drafting terms?

Stuart Greig: I do not think that it is difficult in drafting terms. On policy, we want to focus on the principle of sustainability and sustainable flood management. That will entail using the right combination of measures in the right places.

Issues still arise to do with the evidence base for natural flood management approaches. To have a presumption in favour of something that is very new and fairly novel in the field of flood risk management might, we feel, shift the balance too soon. We want to build up the evidence base first. The evidence base is increasing, and steps have been put in place through some research and development work. As a result, we may find that natural approaches are the most appropriate, in which case we would hope that the focus would move towards them in flood management plans. However, such approaches should be adopted only when the evidence supports them.

Peter Peacock: Does your concern arise because your interpretation of a presumption is that it is something that must happen? That was not the committee’s interpretation; our interpretation was that a presumption is something that must be considered. If it were not to happen, a justification would have to be given. We did not feel that it would have to happen in all
circumstances. Is there a difference between the committee’s view on a presumption and your view?

Bob Irvine: There possibly is a difference, Mr Peacock. As Stuart Greig said, we would find it difficult to accept that having a presumption in favour of a particular approach would be the right thing to do. However, when measures to address identified flood risks are being considered, it would be expected that all appropriate techniques—including natural flood management techniques—would be considered. If, following analysis, the natural techniques had the most to commend them, they would be pursued because they would be right—to use Stuart Greig’s word.

In setting out guidance on schemes, we could certainly stress that natural flood management techniques should be considered or reviewed, and that they should be assessed relative to other techniques. However, we have reservations about capturing that idea in the bill itself.

The Convener: That is a useful clarification, because my next question was going to be about where, in the bill, that expectation is expressed. It would be useful if you could find a way of expressing it, even if it was in the guidance that would go along with the bill.

Bill Wilson (West of Scotland) (SNP): The strategic environmental assessment apparently suggested that the bill could actively promote the restoration of ecosystems, but the report also noted that the bill did not appear to do that. The Government’s aim is to enhance and improve biodiversity, so it seems as if an opportunity has been missed. Was the opportunity considered? If so, why was it not taken?

Bob Irvine: My answer will be rather similar to those that we gave to the previous question. It may be that, in particular circumstances, the restoration or enhancement of an ecosystem would be a gain from the measures that were proposed. However, that would not apply to all schemes. As Stuart Greig has said, considerations of urban regeneration might be a stronger driver in particular circumstances. We therefore find it difficult to envisage how, in the bill, we could successfully include the thought that one particular objective should be put above all others.

We could address the restoration of ecosystems in guidance, suggesting that it is an important issue to consider when the opportunity occurs. We could also ensure that that is properly assessed in the methodologies that we were talking about earlier. However, that is different from making the issue a duty, as the report seemed to imply that we should.

Bill Wilson: Perhaps ideas can be tied together. If you were going ahead with sustainable development, part of that could include a duty to enhance ecosystems. If you are taking step 1, why not ensure that you take step 2?

Stuart Greig: There is provision in the bill to consider conservation and environmental objectives, as set out under the Water Environment and Water Services (Scotland) Act 2003, when a measure to address flooding is identified. The steps that must be considered when measures are identified are set out. The provision for that is set out so that those needs can be balanced with flood management needs. Ultimately, you want flood protection measures that will reduce the risk of flooding, but the opportunity to deliver other things where possible should be taken as well.

There has to be close co-ordination with the 2003 act and the objectives that are set out therein, for which SEPA is responsible. There is a clear opportunity for SEPA to look at all its work on environmental improvement and tie it in with flood management measures, where appropriate.

John Scott: Will there be a clearly defined methodology for doing that? You talk about a cost benefit analysis, but it seems to me that it will all be rather subjective. How will an urban regeneration scheme, for example, be evaluated against the Forestry Commission’s proposal for a hydraulic roughness scheme that enhances ecosystems and biodiversity?

Bob Irvine: That is the great challenge with all such cost benefit tools, and why they are constantly being redeveloped and re-examined. At the start of our discussion, I talked about how the health benefits are taken account of properly in methodologies. We have to find the appropriate way to do that. You are right to say that the process is complicated and difficult, but all we can do at this stage is register that those are important factors that must be taken account of and then find the best way of doing that as we go forward.

In the bill, we have the opportunity to create a relatively open-ended framework for the development of plans and schemes. We can develop and refine the guidance as people’s understanding develops over time.

John Scott: I took the view that the Forestry Commission’s thinking was far advanced on the matter, and we felt that it was worth while reflecting that in our report.

Bob Irvine: Absolutely; it makes an important contribution.

Stuart Greig: We set up advisory groups in developing the bill with representation from the Forestry Commission, SNH and all the other people who will be involved. The intention is to keep those groups in place in the long term and to
use them to develop the tools, methods and guidelines. Those measures will not be dictated because all the people who are involved are coming together to work out the best way of doing things. We can then distil that into appropriate guidance and regulation as necessary.

**John Scott:** Excellent. Thank you.

**Elaine Murray:** You referred to the length of time that it would take for some aspects of the WEWS act to come into force. The planning cycle will take time to come into force; I think that there has been talk of the first cycle beginning in 2015. What are the interim arrangements for the time between the passage of the bill and the act being enforced? How do you foresee things working in that period?

**Judith Tracey:** The legislation makes provision for transitional measures to be drawn up. We have not yet drawn them up, but there will not be a cut-off between the provisions under the 1961 act and those under the bill. We know that local authorities will continue to work on flood risk management and to develop flood plans. One of the first things that will go into any local flood risk management plan will be the work that local authorities have under way or close to the start. We need to ensure a smooth transition, but we will work out formal transitional arrangements, for which the bill makes provision.

11:15

**Elaine Murray:** Local authorities have raised concern over whether and how they will be funded for that work.

**Bob Irvine:** We recognise that concern, on which the committee has heard the minister’s views a number of times. An important point is that the bill does not mean that there will be silence on the issue until 2015. The EC directive imposes successive requirements at 2011 and 2013 that will form important parts in building up the big picture from which the detailed plans will emerge at 2015. Identifying the extent of flood risk in a number of vulnerable communities and so on will provide important information to ministers and local authorities at successive spending reviews for identifying future resource requirements for addressing flood risk and flood hazard. The plans that are created will provide a pretty long-term view, as the committee recommended in its report in the summer. To all intents and purposes, they will provide a road map for planning to address those risks over the longer term.

**The Convener:** I think that Elaine Murray’s other question has been covered substantially in the responses to John Scott. Does Rhoda Grant feel that her question was sufficiently dealt with in those responses?

**Rhoda Grant:** I would like some clarification on how the flood risk assessments will interact with planning policy. If a development is proposed in a flood risk area, will a full flood risk assessment be a prerequisite for planning permission? How will that work in practice?

**Nick Evans (Scottish Government Directorate for the Built Environment):** I do not think that the provisions in the bill will change the current arrangements. If a planning authority thinks that a flood risk affects a planning application, the authority consults the Scottish Environment Protection Agency. SEPA has the opportunity to require the developer to undertake a flood risk assessment, which SEPA will then consider and comment on. The planning authority takes those comments into account before determining the application. That provision is expected to continue.

**Rhoda Grant:** So that will continue as at present.

**Elaine Murray:** My constituency is probably nearer than anyone else’s to the Borders, which is obviously an area that has been subject to flooding. What arrangements will be put in place to ensure effective cross-border working, given that it seems to have taken time to develop cross-border strategies under the 2003 act? According to the Macaulay Institute, there are still on-going challenges in reconciling the different regulatory frameworks and advisory networks. Who will be responsible for cross-border flooding incidents? How will risk assessments, maps and plans and so forth be developed across the border?

**Judith Tracey:** We have started talking to the Department for Environment, Food and Rural Affairs about that. We will look to develop specific regulations to deal with the cross-border areas. It is likely that we will follow broadly the plans for the 2003 act, in that SEPA and the Environment Agency will perform joint functions in the area and report jointly to Scottish ministers and to DEFRA ministers. We are aware that difficulties can arise because local authorities in Scotland have different responsibilities for flood risk management from those of local authorities in England and Wales, so the authorities in the border areas will need a much closer connection with the Environment Agency. However, we have started talking to DEFRA about that and we are working out how best to deal with those problems.

**The Convener:** Let us move to part 4. Who is dealing with part 4?

**Judith Tracey:** I am.

**The Convener:** Judith Tracey is working hard this morning.

**Bob Irvine:** As always.
Judith Tracey: Part 4 repeals the Flood Prevention (Scotland) Act 1961 and replaces it with new provisions. It sets out the new powers for local authorities and gives them general powers to manage flood risk, in line with our sustainable flood risk management policy. It does not limit what flood risk management local authorities can undertake, as the 1961 act did. It does not state that they have to build walls or embankments or knock things down; it leaves it open to local authorities to decide what tools to use. We have left it that way specifically because we want the legislation to last for a fairly long time and because we want local authorities to be able to implement new tools and techniques as they are developed.

Part 4 enables local authorities to take the full range of flood risk management measures—there is no restriction on the type of measures that they can take, only that they must contribute to the delivery of a local flood risk management plan. We believe that, along with the general power at the beginning of the bill, that will place a strong duty on local authorities to implement their flood risk management plans. The only exception to that is when there is an emergency—when a flood is imminent—and a local authority wants to take immediate action. It was difficult for local authorities to do that under the 1961 act. It happened, but there was no provision for them to do that under that act, and it was something that local authorities were quite keen to see included in the bill. The intention is to reduce, whenever possible, the time that is taken to implement flood risk management measures.

The bill does not require local authorities to go through a statutory process—the statutory process is set out in schedule 2—if they are comfortable that they have got local co-operation, that they have spoken to local people and that they can go ahead with whatever plans they have without having to complete a statutory process to get the coercive powers. They can go ahead and do that. There is no need for a local authority to go through a statutory process for flood risk management; they have to do it only when they want the additional powers and benefits that the statutory process will bring. If they decide to go through the statutory process, that results in deemed planning permission so that they have to go through only one process. If they do not go through the statutory process, they still have to get planning permission in the normal way.

Peter Peacock: I want to pick up on the question of the funding of local authorities and Scottish Water. The committee made specific recommendations about funding for the future. You could argue that that is a matter of policy, which can change from time to time, rather than a matter of law and that, therefore, there should not be anything about it in the bill. Did you consider setting out in the bill any of the factors that ministers should have to take into account in deciding on funding for the various partners that will deliver flooding policy? Was that a consideration?

Bob Irvine: No. I do not see how we could do that. Ministers will look at the funding of local authorities in the widest understanding of local authority responsibilities and take all those into account. It would be strange for them to identify one particular local authority responsibility as being above and beyond any other.

Peter Peacock: Is it envisaged that SEPA, given its insights into the matter and its overall responsibility in this, will advise ministers formally on the funding needs into the future?

Bob Irvine: Certainly—so will local authorities and other agencies. As I said a few moments ago, part of the plan will provide a set of long-term priorities, schemes and activities that must be planned for and resourced in the appropriate way. There will be a much better collective picture of what requires to be done to address the priorities that have been identified by a more extensive analysis of all the relevant factors than exists at present. That will provide a much more secure basis for the collective identification and allocation of resources throughout Scotland than we have at the moment.

Peter Peacock: You do not envisage any formal duty on SEPA to advise ministers on an annual or triennial basis, or whatever, about the funding that will be needed to tackle flooding. You do not envisage any formal requirement for that.

Bob Irvine: No, because that will come out of the way in which the plans are presented. The plans have to be revised on a six-yearly basis.

Peter Peacock: Scottish Water has new responsibilities, which you have talked about. It will have to consider potential funding implications as part of its forward budgeting process. What will be the role of the Water Industry Commission for Scotland in that? Will the commission have to have regard to what is required under the bill, given that Scottish Water will have duties and responsibilities under the bill? The commission could be influential in relation to charging and costs.

Bob Irvine: The commission's role will be to look at the objectives that ministers set for Scottish Water, which, following this bill, will contain references to flooding, as well as a range of other objectives for improving the water system and customer service. The commission will determine the level of revenue that Scottish Water can collect from its customers that is necessary to meet those objectives through the business plan that it submits. It will not be for the commission to say
that this or that flooding measure is more important than another, just as it is not for the commission to say that this or that water treatment works is more important than another. It has to look to ensure that Scottish Water has the resources needed; the determination of those resources will involve significant efficiency objectives and targets for Scottish Water.

**Peter Peacock:** I was not implying that the commission should take a view about individual schemes. There is currently no constraint on the commission to consider such matters. Will its remit have to change in any respect to allow it to do so?

**Bob Irvine:** No, because the commission’s remit is driven by what Scottish Water has to do and the plans that it presents to the commission, which, in turn, are driven by the objectives that ministers have set Scottish Water.

**John Scott:** The committee recommended that there should be a sort of strategic rolling roadmap that would look 25 years ahead. The Association of British Insurers also look that view, yet you have no such timescale in the bill. We took the view that there should be a rolling look ahead, so that we can anticipate what is coming. We could perhaps look ahead for longer than 25 years, given all the predictions that we have all received about climate change. Will you consider addressing that?

**Judith Tracey:** We think that the bill enables that to happen through the flood risk management planning process. Although the plans have to be produced and reviewed only every six years, we expect that they will take a long-term view, rather than limiting themselves to the six-year planning cycle. Flood risk management planning always has to be considered in the long term. The point of taking a national overview and getting a district-level plan is that we can look across Scotland and identify priorities over the next 25 to 50 years.

**John Scott:** So you could be looking at a 50-year overview or projection.

**Judith Tracey:** Yes. Given how the bill is set out, there is no limit on how long-term the plans can be. They just have to be reviewed every six years. The bill does not say that the plans have to consider only the next six years.

**Liam McArthur:** Robert Irvine has clearly picked up the same straight bat that the cabinet secretary used in relation to funding at our meeting on 8 October. As John Scott said, the ABI in its evidence to the committee suggested that flood risk could be better managed if funds for flood risk management were identified separately and ring fenced for that purpose. Leaving aside some of the policy discussions around that, do you accept that there are implications for local authorities, communities, individuals and businesses of an assumption by the ABI and its members of a higher risk as a result of the approach that is being adopted in the bill?

11:30

**Bob Irvine:** It remains to be seen whether there is a higher risk. The cabinet secretary made it clear that during spending reviews we will continue to have discussions with local authorities about the best approach to the issue. Ministers have a strong desire to ensure that local authorities have as much opportunity and power as possible to make local decisions and to allocate local resources to what they see as local priorities. I suspect that that will continue to underpin their approach to discussions. If the present method of funding causes local authorities problems, and ministers agree that there is a better method, it will be adopted at an appropriate point in the future.

**Liam McArthur:** Do you accept that the evidence that we have received from the ABI indicates that the insurance industry, which is already in a high state of nervousness, has concerns about the approach that is being adopted? To some extent, it is the insurance industry, rather than local authorities, that needs reassurance.

**Bob Irvine:** The insurance industry can be reassured by what is happening in local authorities, where a significant effort is under way. A large number of schemes that were being planned a year or 18 months ago are in process. Nothing has changed in the progress of those schemes as a result of the change in funding that has taken place—nor would ministers expect it to. However, if matters become difficult and a better way of funding flood risk management is identified in the future, ministers will be willing to discuss that with local authorities.

**Alasdair Morgan:** The Flood Prevention and Land Drainage (Scotland) Act 1997, which will be repealed in toto by the bill, placed a specific duty on local authorities to cleanse and maintain watercourses in certain circumstances. It has been argued that that duty has been in useful in preventing floods from happening, but it will be taken away and replaced by a general enabling power. Why?

**Judith Tracey:** We removed the duty to maintain watercourses because local authorities will have an overall duty to reduce flood risk. Previously, local authorities’ only duty in relation to flood risk management was the duty to assess and maintain watercourses. We thought that the overall duty encompassed that requirement. If we included in the bill a duty to maintain watercourses, that might become the overriding duty in some circumstances, because it would be
additional to the overall duty and local authorities might look at it before considering other forms of flood risk management. Such a duty might also conflict with the overall flood risk management plan, because in some areas it may be better not to maintain a watercourse and to allow it to flood, to reduce flooding downstream. Flood risk management involves a combination of measures, so an overriding duty to maintain watercourses could cause problems.

Alasdair Morgan: Have there been any instances of local authorities causing flooding by fulfilling their statutory duties?

Judith Tracey: No. However, there could be a conflict if the duty to maintain watercourses prevented implementation of a decision in a local flood risk management plan to allow a public park to flood, as part of a suite of measures to prevent flooding downstream. At the moment, the local authority would clear the watercourse, as it would not want the park to be flooded.

Alasdair Morgan: Surely there is a difference between a watercourse that one blocks up deliberately in order to prevent flooding and one that becomes blocked. If someone phones a local authority to ask it to clear a watercourse, because there will be a problem if that is not done, the authority will be able to get off the hook by saying that it is not required to do that.

Judith Tracey: We will expect a maintenance schedule or a maintenance regime to be set out in the local flood risk management plan. It is not that there will no longer be a duty on authorities to maintain watercourses, because that duty will be subsumed within the general duty. It would not make sense to have a separate duty to maintain watercourses, because that would make it seem as though maintaining watercourses was in some way more important than other measures that local authorities could take to reduce flood risk.

Alasdair Morgan: I do not see that at all. I struggle to see how such a duty would cause problems, unless you can produce evidence that indicates that the existing system is causing problems. I do not see why the larger picture should not be cleared, whether they are at risk, draw up a schedule and then deal with the watercourses. They will do exactly the same under the proposals in the bill—but as part of their overall duty to reduce flood risk. The provisions in the bill will not prevent people from phoning up and saying that a ditch is blocked or prevent the local authority from dealing with the problem. It is very unlikely that a local authority would deny that it had a specific duty to do that work.

The Convener: You are saying that the widening of the overall duty subsumes the duty to maintain watercourses, and that the overall duty should not be construed as indicating that it excludes the duty to maintain watercourses.

Judith Tracey: Such work will be part of local authorities’ duty to reduce flood risk. They do not need an additional duty.

Rhoda Grant: What would happen if Joe Bloggs phoned his local authority to say that a watercourse was blocked only to be told that it would not be cleared because doing so would not prevent flood risk as the watercourse was not going to flood? The removal of the duty would give the local authority an excuse.

Judith Tracey: The local authority would not have cleared any watercourse under the previous system if it was not a flood risk; the duty to maintain related entirely to the risk of flooding.

Rhoda Grant: So flood risk had to be proved before the council would maintain a watercourse.

Judith Tracey: Yes.

Alasdair Morgan: South Lanarkshire Council made the point that if a local authority digs out someone else’s ditch, there is no provision in the bill for them to reclaim the costs of doing so from the owners of the watercourse or ditch. Will you consider putting such a provision in the bill? If an authority clears out a watercourse that is on someone else’s land to maintain it properly because the landowner refuses to do so, can it...
reclaim the costs from the landowner? Is there provision in the bill for that?

Judith Tracey: There is no specific provision in the bill for that.

Alasdair Morgan: Should there be?

Bob Irvine: We can consider that. Local authorities have the ability under a more general power to pursue landowners for interventions that they make in relation to safety and so on. That might cover a local authority in those circumstances, but let us consider the issue.

Alasdair Morgan: It would be helpful if you could come back to the committee on that.

The Convener: We have only about 10 minutes left to deal with the remaining parts of the bill but, mercifully, they are relatively short. Who will take charge?

Bob Irvine: Stuart Greig will deal with part 5.

Stuart Greig: I will be succinct.

The three main aspects of part 5 relate to SEPA providing advice to planning authorities and undertaking other assessments of flood risk, and to its flood warning functions.

On advice to planning authorities, the provisions in the bill are very similar to SEPA’s existing duties under the Water Environment and Water Services (Scotland) Act 2003. The only major change relates to the definition of flood risk, as set out in the bill. That creates flexibility for SEPA. When it is asked to provide advice to a local authority, it will be able to give advice not only on where flooding might occur, but on possible associated impacts.

Section 63 provides SEPA with flexibility to undertake other assessments of flood risk that may be outside the specific assessments that have been set out to adhere to the floods directive requirements. For instance, the interactive maps that SEPA already has on its website are the type of work that would fall under the provision.

There will be a new statutory duty on SEPA to provide flood warnings, whereas at present it has a discretionary power to do so. There is flexibility in the provisions, so that SEPA will be able to decide on the most appropriate way of obtaining the information and providing it to the public.

The Convener: You have built in a lot of flexibility and discretionary power. Is that simply because the expertise lies in SEPA and it will be for SEPA to make decisions as and when appropriate?

Stuart Greig: Absolutely. The only matter on which we have not provided flexibility is that, if SEPA is aware that a flooding event is happening, it must release a flood warning. In any other instance, it will be up to SEPA to work out the best approach and timing.

The Convener: We come to part 6.

Judith Tracey: Part 6 sets out powers of entry and compensation powers. It creates powers for local authorities and SEPA to enter land, which includes buildings, for the purposes of carrying out their functions under the bill. It also sets out the compensation provisions and provides that any disputes over compensation shall be determined by the Lands Tribunal for Scotland.

John Scott: As far as I can see, there is no mention of compensation to farmers when it is intended to flood land for sustainable or natural flood defences—only the use of compulsory purchase orders is mentioned. Perhaps I have misunderstood that. Will you clarify?

Judith Tracey: The process will be the same as at present. Local authorities will enter into discussions with landowners to try to work out by agreement the best way in which to use the land, and they will also work out the compensation arrangements. That happens under the existing legislation. If the parties cannot come to an agreement, they will go to the Lands Tribunal. If it comes down to it, authorities will be able to purchase land compulsorily, but only as a last resort, if they cannot come to an agreement. Local authorities and landowners almost always come to an agreement—either the local authority will purchase the land at a reasonable cost or it will provide compensation to the farmer when they undergo loss of the land because it floods.

Alasdair Morgan: You say that the power to enter land includes buildings. I take it that that power already exists. In what circumstances would SEPA want to enter a building for the purposes of the bill?

Judith Tracey: SEPA will not—

Alasdair Morgan: Well, whoever it is.

Judith Tracey: With local authorities, the provision is more to cover cases in which officers need to get through gates. It is more of a legal issue, so my colleagues might want to comment.

The Convener: Could it be for sheds and things like that?

Louise Miller (Scottish Government Legal Directorate): When the provision was discussed, it was suggested that local authorities carrying out scheme operations might need to flood proof a wall of a building that is also the wall of a water channel. Some buildings directly adjoin water, and a local authority might need access to flood proof a wall of such a building.

Lindsey Henderson: People might also have to go through a building to reach land at the back.
The Convener: We do not want to create unforeseen obstacles.

Alasdair Morgan: No, but we tend to give draconian powers in legislation to various people simply on the basis that they might come in handy at some stage. I realise that that has been going on for years, because such powers are already in legislation.

The Convener: I am having difficulty envisaging the SEPA storm troopers battering down doors.

Peter Peacock: Convener, I would like to clarify one point about the flood warning arrangements. On SEPA's duty to issue flood warnings, is the responsibility to warn individual citizens or the responsible authorities?

The Convener: We are going back to part 5.

Peter Peacock: Indeed—sorry.

11:45

Stuart Greig: We have not specified to whom such warnings are to be made available; they are to be made available to whomever is relevant. SEPA has different ways of making information available, and there is a new project to make information directly available to citizens. SEPA already issues flood warning information directly to category 1 respondents. It can simply make information available on its website, if that is the more appropriate or only mechanism available. It does whatever is appropriate to the circumstance.

The Convener: There are no questions from the committee so far about parts 7 and 8, so perhaps the witnesses could deal with them together.

Fiona Quinn (Scottish Government Environmental Quality Directorate): Part 7 amends the Reservoirs Act 1975, which aims to reduce the risks to the public from flooding following reservoir or dam failures. It seeks to do so by ensuring that large raised reservoirs are adequately constructed and maintained under the supervision of qualified engineers.

Part 7 will enhance the safe operation of Scotland's reservoirs through a number of changes to the 1975 act. Primarily, it provides for responsibility for reservoir enforcement to transfer from local authorities to SEPA. It also sets out transitional arrangements to ensure that that responsibility is transferred smoothly. That will involve the transfer of information and legal provision for local authorities' work.

Part 7 also binds the Crown and provides for ministers to set out detailed provisions and regulations relating to the preparation and enforcement of incident reporting. The regulations will define what constitutes an incident. Undertakers will be required to report to the enforcement authority on incidents occurring at reservoirs. The bill provides for offences and penalty charges.

Judith Tracey: Part 8 is very general. Its provisions allow SEPA to obtain information about land where it requires that information for the purposes of carrying out its statutory functions. It makes provisions for the bill to apply to the Crown in Scotland. If an offence under the bill is committed by a corporate body, both the body and the individual who committed the offence may be prosecuted.

Section 82 enables Scottish ministers to make "incidental, supplemental, consequential, transitional, transitory or saving provision" if appropriate.

The Convener: There are no further questions. Thank you all for coming—I hope that it was not too painful. No doubt you will watch with interest the rest of the evidence sessions and our further deliberations.

You undertook to provide us with one or two bits and pieces of further information. I ask you to provide those directly to the clerk in due course.

Bob Irvine: We will do that as soon as we can.

The Convener: We will continue our stage 1 consideration of the bill on 26 November, when we will take evidence from two panels of witnesses representing various stakeholder groups.
SUPPLEMENTARY SUBMISSION FROM SCOTTISH GOVERNMENT BILL TEAM (21 NOVEMBER 2008)

During scrutiny of the Flood Risk Management (Scotland) Bill by the RAE Committee on 19 November 2008, the Committee requested information on methodologies that could be used to assess the social impacts of flooding. Scottish Government officials advised that Defra had done some work in this area and agreed to forward details to the Committee. Below are links to 3 documents produced by Defra which the Committee may find helpful.

The link below is for the Defra Project- Social Justice in the context of Flood and Coastal Erosion Risk Management: A review of Policy and Practice.


Also attached is a note published by Defra on Reflecting Socio- Economic Equity in Appraisal & Appraisal of Human Related Intangible Impacts of Flooding.


Defra has also published a supplementary note to operating authorities on Assessing and Valuing the Risk to Life from Flooding. The method was based on the 'Risks to People - Phase 2 (FD2321) research project' part of Defra's Making Space for Water Strategy. It's main purpose is to enable the risk of fatalities to be assessed as part of a more comprehensive flood risk appraisal where the social benefits associated with any reduction in this risk are also taken into account. This document is attached below.


The Committee also requested sight of the River Basin Planning strategy prepared by SEPA. A link to this document is attached below.

http://www.sepa.org.uk/water/water_publications/idoc.ashx?docid=8d74606c-6978-4cd0-8be7-

This strategy sets out details of advisory groups and steps to ensure consultation and participation. We envisage something similar for flood risk management, with SEPA and local authorities working together to produce a strategy.

In addition, the Committee raised concerns that their recommendation that there should be a presumption in favour of natural flood management had not been fully adopted in the Bill and that this may as a result of the interpretation of this recommendation. I have attached a short paper (Appendix) explaining the consideration given to Natural Flood Management in the Planning processes outlined in the Bill. We are also discussing with the stakeholder advisory group, concerns raised about the use of the term 'Natural features' rather than 'Natural processes' in Section 16 of the Bill and whether alternative wording could achieve the desired objective.

We have not included the previous duty for local authorities to maintain water courses in the Bill as the duty is subsumed within the general power to reduce flood risk in Section 49 of the Bill which is a much wider power. It is expected that local flood risk management plans will contain maintenance regimes for water courses and other assets. Section 49(c) also allows local authorities to carry out works not included in a flood risk management plan such as clearing blockages from a watercourse, if alerted by a member of the public, in order to manage flood risk.

Flooding Policy
Environmental Quality Directorate
Scottish Government
21 November 2008
Appendix

Presumption in favour of NFM

A key principle of sustainable flood management is that there should not be a presumption in favour of any particular flood management measure. This has been a key recommendation of our Bill advisory groups and their predecessors- the Flooding Issues Advisory Group, and the National Technical Advisory Group.

The measure or combination of measures, adopted must be appropriate to a particular location, objective and set of circumstances.

In considering what the most appropriate measures are, sustainable flood management requires consideration of the following objectives:

- **Social** – enhance community benefit, with fair outcomes for everyone
- **Environmental** – protect and work with the environment, with respect for all species, habitats, landscapes and built heritage
- **Economic** – deliver resilience at affordable cost; with fair economic outcomes and the protection of local jobs and wealth

The Bill provisions, and in particular Section 24, have been drafted to ensure the selection of the most sustainable flood risk management measures approaches. For instance,

- In selecting measures, consideration must be given to, so far as is appropriate, structural and non-structural measures. This ensures that all measures, from traditional engineering through natural flood management or flood warning are considered.
- In selecting measures consideration must be given to the environmental objectives of the River Basin Plans prepared under the Water Environment and Water Services Act.
- The benefits of that are likely to be derived from the proposed measures must be considered. Benefits must consider the contribution towards reducing flood risk and other benefits. Although the nature of other benefits are not specified in the Bill, the intention is that other benefits would include those elements described above, i.e. social, environmental or economic.

The intention of the Government is to issue guidance on how cost-benefit analysis must be undertaken. This guidance will focus on assessing all costs and all types of benefits, including environmental and social. In developing this guidance, the intention is to work with those involved in implementing the Bill and stakeholders to determine the most appropriate costs-benefit tools.

We believe that these steps would ensure that where different approaches to reducing flood risk are available, the most sustainable approach will be adopted.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH GOVERNMENT BILL TEAM (14 DECEMBER 2008)

The Water Environment and Water Services Act (2003) (2003 Act) did not name any responsible authorities. Instead, it provided Scottish Ministers with a power to designate responsible authorities. Responsible authorities were subsequently designated in a Ministerial Order. A range of bodies were considered for designation, and a consultation setting out options was held before the designation order was made.

We have included a similar power to the one set out in the 2003 Act that will enable Scottish Minister to designate responsible authorities. However, due to their critical role in flood risk management, two responsible authorities are named (designated) on the face of the Bill- local authorities and Scottish Water.
The intention is to follow a similar approach to the 2003 Act and to use a designation order to identify other responsible authorities. This would be preceded by discussions with all potential responsible authorities and a formal consultation on the Government’s proposals. The Scottish Government would expect to begin this process shortly after the Bill is enacted.

In considering organisations that could be identified as responsible authorities, careful consideration would be given to (i) an organisation’s existing role in managing or reducing flood risk, (ii) how the Bill provisions could affect the current role/remit of an organisation and (iii) whether an organisation’s role in flood risk management could be fulfilled through participation in advisory groups and other consultation exercises set out in the Bill, e.g. by providing guidance or information on particular aspects of assessing flood risk. A further critical consideration would be the degree to which an organisation will be able to directly contribute to the overarching duty set out in Section 1 which requires responsible authorities to act with a view to reducing overall flood risk.

In preparing flood risk assessments, maps and plans, SEPA and local authorities must have regard to advice from advisory groups. The ‘district’ advisory groups must include representation from SNH amongst others. The sub-district group must include representation from persons SEPA deem appropriate. This was to ensure that the membership of these groups could be tailored to local issues and needs. The policy intention is for organisations like SNH to be represented on these groups where they feel their representation would be helpful. The ultimate intention is for a range of organisations and stakeholders to be engaged in flood risk management, but to also provide flexibility to ensure that consultation fatigue is avoided.

SEPA is required to consult on and issue a statement setting out the consultation steps that are to be taken in connection with the preparation of flood risk management plans (Section 25). The intention is for this statement/consultation to set out the proposed role, remit and membership of advisory groups as well as other steps that would be taken to secure participation and engagement in the preparation of flood risk assessment, maps and plans. This consultation would help ensure that the views of a wide range of stakeholders and organisation are considered and that all appropriate organisations and persons are engaged in flood risk management.

Responsible authorities under WEWS are:

- Scottish Natural Heritage,
- Scottish Water,
- Forestry Commission Scotland,
- Local authorities,
- District Salmon Fishery Boards,
- British Waterways,
- Fisheries Committee,
- National Park Authorities.
I am responding to the above call for evidence on behalf of Forestry Commission Scotland (FCS) which serves as the Forestry Directorate of the Scottish Government and is responsible to Scottish Ministers. We are happy for this response to be made public and for our response to be shared.

Our comments on the general principles of the Bill are as follows:

- The proposed Bill achieves the aim of the Scottish Government to establish the statutory framework to deliver sustainable flood management (SFM). Its provisions ensure national objectives for flood management are translated into objectives and measures suited to local circumstances. The requirements for transposing the EU Flood Directive will also be achieved.

- The Bill will ensure that the principles of sustainable flood management (SFM) are firmly embedded in legislation. While SFM is not a new concept in Scotland, to-date the design of many flood protection schemes has been dominated by traditional hard engineering. The Bill therefore presents an important opportunity to develop a common understanding of SFM across all sectors and enhance its implementation in Scotland.

- We strongly support the integration of natural flood management (NFM) techniques into the suite of sustainable flood management measures. We also support the provision in Part 1, Section 16 of the Bill to place a duty on SEPA to undertake a national appraisal of where such techniques could contribute most effectively to flood management. Additional guidance on this provision will help guide SEPA and relevant parties on the context and scope of these assessments. We would be very willing, through our involvement in the Natural Flood Management Group, to help develop such guidance.

- Through modelling and demonstration work FCS and Forest Research are developing their knowledge of NFM techniques and the contribution they can make to SFM at a catchment scale. Dr Tom Nisbet’s submission to the Committee’s Flooding Enquiry (see attached) indicated that forestry-related NFM can offer an effective, low cost, and environmentally sensitive option which, particularly if considered at a catchment level, could contribute significantly to reducing flood risk.

- The integration of NFM into the Bill provides an opportunity to ensure that such techniques are considered before, or certainly in conjunction with, hard engineering solutions. We would therefore support the general thrust of the RAE Committee’s recommendation 15 in their Flooding and Flood Management report (May 2008). Given the potential time-lag between implementing and then gaining benefit from some NFM techniques there may be merit in considering hard engineering as an immediate solution to current flooding issues, with NFM helping to address future, climate change-induced increases in flood risk.

- The Bill enables Scottish Ministers to designate public bodies as responsible authorities in secondary legislation and we note that consideration is being given to appointing Forestry Commission Scotland to this role. This would support and broaden FCS’s role as a responsible authority under the Water Environment and Water Services Act (2003) and we would welcome that. We also welcome the intention to consult further on which authorities should be designated as responsible authorities (through secondary legislation) and the nature of their functions.

- We welcome the Bill’s intention to seek integration between flood management and the Water Framework Directive by providing for close co-ordination of flood risk management planning and river basin management planning. The integration of water and land use management is fundamental to achieving this if opportunities to deliver coincident environmental, water and flood management benefits are to be captured. Forestry has an
established track record in delivering such multiple benefits. This is particularly relevant in the context of climate change where environmental services, such as flood risk management or water quality protection, can be delivered alongside climate adaptation measures (such as the creation of forest habitat networks), carbon sequestration and the production of sustainable building materials and/or wood fuel.

- Experience in England indicated that even doubling the rate of forestry support measures was insufficient to encourage floodplain woodland creation at various trial sites. If mirrored in Scotland, which is likely given the comparative scarcity of good quality agricultural land, this might have implications for the cost of providing ‘environmental services’ of this nature. However, although such costs may appear high in terms of forestry’s standard costs, the true comparison will be with alternative, hard engineering solutions. From that perspective, such forestry-related environmental services can be expected to be extremely cost effective, particularly as other benefits will also accrue (such as carbon sequestration, reductions in agricultural emissions through reduced use of fertiliser, reductions in diffuse pollution, and biodiversity gains).

- Through its management of the national forest estate, FCS is well placed to help implement targeted NFM techniques both on the existing estate and through helping to create new woodlands in appropriate locations (the Scottish Forestry Strategy contains an aspiration to expand woodland cover to around 25% of Scotland’s land area over the coming decades century, this equating to about 10,000 ha of new woodland creation each year). Targeted land acquisitions by Forest Enterprise Scotland, who manage the national forest estate on behalf of Scottish Ministers, could help address the potential disconnect between current agricultural economics, other land uses and natural flood management techniques such as the creation of floodplain woodlands.

The role of woodland in flood control: a landscape perspective - T.R. Nisbet¹ and H. Thomas²

¹ Forest Research, Alice Holt Lodge, Farnham, Surrey, GU10 4LH, UK. e-mail: tom.nisbet@forestry.gsi.gov.uk

² Forest Research, Talybont Research Office, Cefn Gethiniog, Talybont on Usk, Brecon, Powys, LD3 7YN, UK.

Abstract

Sustainable flood management is increasingly looking to the role of catchment land use in alleviating downstream flooding. Woodland presents a number of opportunities that are dependent on its location within the landscape. One way that woodland can attenuate flooding is through the greater water use by trees. The overall impact on the generation of flood flows, however, depends on the interaction of many factors and is most marked at the headwater level. Another way relies on the ‘sponge effect’. Improved infiltration resulting from the targeted planting of sensitive soils or the use of down-slope woodland buffers could attenuate rapid run-off at the local scale. Finally, the greater hydraulic roughness associated with riparian and floodplain woodland can aid the retention and delay the passage of flood waters, potentially assisting downstream flood defence in larger catchments. This paper examines each of these opportunities and considers whether woodland can make a significant contribution to tackling future flooding as part of a whole-catchment approach to sustainable flood management.

Keywords: Woodland, water use, soil infiltration, hydraulic roughness, sustainable flood management

Introduction

A series of major floods across Europe in recent years has raised serious concern that the frequency of extreme floods may be increasing due to climate change. Model predictions of a 35% rise in winter rainfall and a 25% increase in daily rainfall totals for storm events in some parts of the UK by 2080, based on the ‘business as usual scenario’ (Hulme et al. 2002), has
placed the management of flood risk high up the political agenda. This has been reinforced by the fact that the consequences of flooding are expected to become more severe and expensive with the rise in the value of the built environment and pressure to build on the floodplain.

At the same time, the increasing cost of providing hard engineered flood defences and the growing emphasis on sustainable development has resulted in greater attention being given to finding more sustainable, ‘softer engineering’ solutions. This is reflected in the Government’s Flood and Coastal Erosion Risk Management Strategy ‘Making Space for Water’ (Defra, 2005). A key pillar of the strategy is to adopt a whole catchment approach and make greater use of rural land use solutions, including the creation of wetlands, washlands and effective land management techniques.

Forests and woodland have long been associated with an ability to slow down run-off and reduce downstream flooding (McCulloch and Robinson, 1993). In fact, deforestation has often been cited as a major contributing factor in the apparent rise in flood events in the developing world. Re-planting or creating new forests is increasingly viewed as offering a number of opportunities to help reduce flood risk. The potential to assist flood defence however, is highly dependent on the scale of forest cover and its location within the landscape. Other important factors include the type of forest and how it is managed. This paper examines whether woodland expansion in the UK could make a significant contribution to tackling the predicted rise in flood risk, as part of a whole-catchment approach to sustainable flood management.

Woodland and floods

Water use by trees

The most obvious way that woodland can attenuate flooding is through the greater water use by trees. Trees and woodlands can use more water than shorter types of vegetation mainly due to the interception of rainwater by their aerodynamically rougher canopies (Nisbet, 2005). A distinction can be drawn between conifers and broadleaves, with evergreen conifers tending to have a greater water use because high interception losses are maintained throughout the year, particularly during the winter when conditions are usually wettest and windiest.

Studies in the UK have found that between 25 and 45% of annual rainfall is typically lost by interception from conifer stands, compared to 10-25% for broadleaves (Calder et al. 2003). If such losses could be transferred to flood flows then forestry could make a major contribution to flood reduction. However, interception varies greatly throughout the year and in particular, declines with the size and intensity of a given rainstorm. Light showers can be completely intercepted, while losses as a proportion of rainfall decline with increasing rainfall intensity, reaching a maximum of 6-7 mm d⁻¹ for conifers (Calder, 1990). This reflects the relatively small water holding capacity of forest canopies, equivalent to only a few mm of rain water. As a result, interception losses are likely to be <10% for individual major storm events. The impact of broadleaves is even smaller, especially for events during the leafless period, which is often when the risk of flooding is greatest. Another factor is tree age, with the greater water use of forests only becoming fully established when the canopy closes, which tends to occur at around 10-15 years age in conifer plantations and even later for broadleaves.

A downside of the increased water use by trees is the potential impact on catchment water yield. Any reduction in flood flows could be outweighed by the effect on water supplies and dry weather flows, especially in catchments where water demand exceeds supply. This is likely to become an increasingly important issue as the combination of drier summers and rising water demand generates ever greater pressure on water resources. Conservation and other constraints would also limit the scope for realising the potentially greater flood benefit associated with an expansion in conifer woodland.

The ‘sponge effect’

Another way that woodland can affect flood flows is by their soils holding back and delaying the passage of rain water to streams and rivers. Woodland soils tend to have a more open structure resulting from greater amounts of organic matter, the action of tree roots and soil fauna, and the lower level of soil disturbance by man. The presence of a network of
macropores helps to transmit water quickly to depth, reducing the likelihood of surface saturation and rapid run-off. These conditions enhance the ability of the soil to receive and store rain water and are commonly referred to as a ‘sponge effect’.

Time of year and soil type affect the magnitude of the sponge effect. It is usually greatest during summer and autumn periods due to the generally drier condition of woodland soils and therefore larger capacity to store rain water. Consequently, the flood alleviation benefit could be expected to be most marked for flood events generated by seasonal thunderstorms. However, this effect can be constrained in organic soils by the tendency for soil drying to result in greater hydrophobicity, which promotes rapid surface run-off. Once woodland soils are rewetted during the autumn, they will have a reduced capacity to receive and hold storm water and thus to influence winter and spring flooding.

The sponge effect is associated with both conifer and broadleaved woodland, but is strongly influenced by management practices (see below). The benefit from new planting would be greatest where woodland replaces land uses associated with a high risk of soil damage. This is especially the case in the UK, where storm rainfall intensities rarely exceed ‘natural’ soil infiltration rates (Ward and Robinson, 2000). Recent studies at Pont Bren in Wales have found infiltration rates up to 60 times higher under young native woodland compared to grazed pasture (Bird et al. 2003). The rates under compacted pasture are readily exceeded during storm events, leading to rapid run-off and potentially higher flood flows.

Soils that are prone to structural damage such as surface capping and shallow compaction would probably benefit most from a change to woodland. Opportunities exist for targeting woodland planting onto the most sensitive soils or in key locations for intercepting and ‘soaking-up’ surface run-off generated from the adjacent ground. Examples include using woodland buffers along lower field edges or within the riparian zones of streams and rivers.

Hydraulic roughness

The use of riparian and floodplain woodland to delay the progression of flood flows may offer the greatest potential to assist flood control. This relies on the hydraulic roughness created by woody debris dams within stream channels and by the physical presence of trees, shrubs and deadwood on the floodplain. The net effect of these features is to reduce flood velocities, enhance out of bank flows, and increase water storage on the floodplain, resulting in an overall smaller downstream flood event.

Hydraulic modelling studies in south west England demonstrate that the planting of woodland across the floodplain could have a marked effect on flood flows (Thomas and Nisbet, 2004). The additional roughness created by a complete cover of woodland along a 2.2 km reach of the River Cary in Somerset was predicted to reduce water velocity by 50% or more and raise the flood level by up to 270 mm for a 1 in 100 year flood event. This increased the volume of flood storage by 71% and delayed the downstream progression of the flood peak by 140 minutes. These results were considered to be significant in terms of protecting downstream sites and providing more time for issuing flood warnings.

The main concern surrounds an enhanced risk of upstream flooding above the floodplain woodland due to the backing-up of flood waters. In the case of the River Cary example, the flood level was raised by up to 180 mm over a distance of nearly 400 m upstream. Another issue is an increased risk of downstream flooding due to the wash-out of large woody debris blocking bridges and other critical structures in towns and cities.

The role of woodland design and management

The different ways that woodland can affect flood flows are greatly influenced by design and management factors. Forest design determines species, age and structural diversity, as well as the balance of forest cover and open space. Since the water use effect is greatest for closed canopy conifer stands, the smaller that this component becomes the lesser the potential effect on flood flows. In terms of existing forests, the ongoing shift away from single aged plantations to more mixed species and aged stands with a significant component of broadleaves and open space, will act to ‘dilute’ the present water use effect on flood flows. This is despite the greater
length of edge between young and old stands within a mixed-aged forest, which enhances local turbulence and thus interception loss. Research suggests that the edge effect is limited to a very narrow band (<20 m from the stand edge) and is therefore only significant for individual stands or woodlands that are less than 1 ha in area (Neal et al. 1991). In contrast, efforts to transform conifer stands into continuous cover crops could be expected to reverse the dilution effect of mixed aged woodlands by maintaining the presence of a fully intercepting canopy.

Forest design has less of an influence on the sponge effect but is a key factor in determining the ability of floodplain woodland to slow down flood flows. To form an effective barrier, floodplain woodlands need to straddle most of the width of the floodplain, otherwise the effect will be negated by increased flows between or around woodland blocks. Relatively narrow, linear strips parallel to the river flow would have a minimal retaining effect. Location, shape, size, age and species choice all influence the flood attenuation effect.

Woodland management also exerts a marked impact on the ability of woodlands to reduce flood flows. Ground cultivation and drainage has the opposite effect of tending to speed-up the removal of water from a site. This is greatest for deep ploughing and intensive drainage, which can increase the density of surface water channels by 60 times or more. Research at Coalburn in north England showed that such ground treatments can increase peak flows by 20-30% and decrease the time to peak by about one third (Robinson et al. 2003). However, cultivation treatments have greatly changed in the last 20 years, with the focus now on scarification and mounding rather than ploughing. The need for drains has also reduced with the shift in planting to better drained soils. For new native woodlands, very wet soils are either left unplanted or mounded and planted with a species appropriate for such conditions.

Felling is the most dramatic intervention with effects on both woodland water use and run-off pathways. Clearfelling usually leaves a bare site with minimal water use apart from the interception loss associated with brash residues. The increase in run-off and therefore greater contribution to flood flows is likely to last for at least 10-15 years until the replanted trees close canopy once again. Timber harvesting and extraction, however, can have an even greater effect on flood generation. Poor practice such as the use of inappropriate machines and excessive loads can cause severe ground damage, leading to rapid run-off from compacted soil and along wheel ruts. Best practice guidance was introduced in the UK in the late 1980’s and 1990’s to prevent these problems and help protect forest soils and water. The guidelines apply to both public and private forests and together with a shift to alternative forms of felling and smaller sized clearfells, should help to preserve the forest sponge effect.

Forest roads are another important consideration. The extensive network of roads and supporting extraction and other access tracks that permeate large managed forests, together with associated drains, represent a significant surface area for the collection of rain water and its rapid delivery to streams. Older forests that predate modern guidelines will have the largest effect due to less attention being given to drainage design and preventing road drains flowing directly into natural watercourses. As with clearfelling, this factor can act against the flow reduction benefit resulting from the water use and sponge effects of the wider forest area.

The importance of scale

Scale is a key issue when extrapolating the effects of forests and woodland to the level of a larger catchment. Obviously, as the proportion of the area occupied by a forest declines, its ‘signature’ will be progressively diluted by that of the non-forest land cover. This is especially relevant when considering flood alleviation, with most serious flooding problems arising well down the catchment of major river systems. At this scale, forest cover often forms a relatively small proportion of the total land area, limiting the potential to contribute to flood defence. The diverse and mixed nature of the land cover is a key factor in the UK.

Scale appears to have less of an influence on the impact of floodplain woodland. The significant effect on flood storage and timing that was predicted by the hydraulic modelling study on the River Cary was achieved by a relatively small area of floodplain woodland, covering less than 2% of the total catchment area of 82 km². It is possible that the same barrier effect could have been produced by an even shorter reach of woodland, provided that it
straddled the full width of the floodplain. Opportunities for creating a continuous area of woodland across the floodplain will usually be greatest in the middle and upper reaches of river systems, where housing and other forms of habitation pose less of a constraint. The narrow nature of headwater floodplains and high water velocities would require extended lengths of floodplain/riparian woodland to achieve a significant reduction in peak flows.

Modelling work suggests that it should be possible to exert a significant effect on flood flows within large river systems by establishing a series of floodplain woodlands along a major river channel or across several main tributaries (Thomas and Nisbet, 2004). However, woodland location is an important consideration since planting provides an opportunity to desynchronise the flood flow contribution from individual tributary catchments. This could have both positive and negative effects depending on the overall timing and mix of flows within a large river system. A detailed analysis of the hydrographs of each tributary would be required to identify where the restoration of floodplain woodland would exert the greatest benefit in terms of the main flood peak. Site location also needs to consider potential constraints such as the presence of local buildings and transport links that could be affected by the backing-up of floodwaters upstream of any floodplain woodland.

Evidence base in support of woodland controlling flood flows

The impact of forestry on flood flows has been the subject of much national and international research. Earlier hydrological studies in the UK found little evidence of a significant forest effect either at the headwater or at the large catchment scale. For example, an analysis of 35 years of flood flow records from moorland and forest research catchments at Plynlimon in mid-Wales found that upland floods in excess of the mean annual flood were scarcely affected by land use. A later study of the impact of extensive forest clearfelling in the same catchments also failed to find a significant change in peak flows (Robinson and Dupeyrat, 2003). The Natural Environmental Research Council’s Flood Studies Report of 1975 concluded from regional flood studies in Britain that the area of forest was not a significant factor in statistical relationships used for flood prediction. This was supported by McCulloch and Robinson’s (1993) review of the history of forest hydrology, which found that forests may reduce small floods but, generally, not extreme events.

Other studies have observed that forestry can have a significant effect on flood flows at the small catchment scale but not within large basins. This was the conclusion of a major pan-European study by Robinson et al. (2003) involving hydrological data from 28 research catchments spanning a wide range of forest types, climate conditions and soil/geology. They found that forest growth could result in a 10-20% reduction in peak flows in headwater catchments, while forest drainage and felling could have the opposite effect. These effects could not be detected in larger catchments, leading them to suggest that forestry has probably a relatively small role to play in managing regional or large-scale flood risk. Similarly, a major review of the impacts of rural land use and management by O’Connell et al. (2004) concluded that there was substantial evidence of effects on local flooding at the field and hillslope scale, but little sign of these changes propagating far downstream.

These findings are in line with recent assessments by the Food and Agriculture Organisation (2005) and Calder and Ayward (2006). Both studies found that while forests around the world can play a role in ameliorating localised flooding, there is no evidence that they can prevent, or that their removal is a cause of large-scale major floods. The impact of forests on floods was considered to be limited to catchments <100 km² in area.

The downstream progression of headwater effects within larger catchments was examined by Archer (2003) in a study of the River Irthing catchment in north England. A comparison was made between the effects on peak flows recorded within the small 90% afforested headwater Coalburn catchment (1.5 km²) and the larger 19% afforested River Irthing catchment (335 km²), to which it drained. An analysis of the annual number and duration of peak flows pulses found that the significant increases recorded due to deep ploughing followed by subsequent decreases due to forest growth at Coalburn, were effectively lost at the scale of the larger Irthing catchment. This agrees with the work of Cornish (1993) in Australia, who found that
forest hydrological effects were very difficult to discern when less than 20% of a catchment was affected.

The lack of evidence of a significant impact of forestry on flood flows at the larger catchment scale may be partly due to the research focusing on conifer plantations, especially in the UK. It is possible that the contrasting effects of the mix of forest ages, species and open space, together with that of forestry management practices such as drainage and clearfelling, effectively cancel each other out. Semi-natural forests that are unaffected by these activities may offer greater scope for flood reduction, although in the case of broadleaved woodland this would be limited by its much lower water use. Unfortunately, few studies have been able to test this due to the small scale of such woodland in many countries and the reluctance to undertake sizeable felling treatments in view of the woodland’s high conservation value.

The same problem also applies to floodplain forests, with few measurements available to properly quantify their impact in terms of flood alleviation. Work is now underway to start to address this gap and help test the positive results derived from hydraulic modelling studies (Nisbet et al. 2005). Some research has demonstrated the positive effects of riparian woodland and large woody debris dams in reducing peak flows but only for smaller events at the local scale (Linstead and Gurnell, 1999). Further work is also needed on this topic.

The ability of woodland to reduce flood generation, at least within headwater catchments, also has potential benefits for water quality. Rapid surface run-off is usually associated with a greater risk of soil erosion and consequently increased pressure from the entry of sediment and chemical-bound pollutants such as pesticides and nutrients entering watercourses. Therefore forestry can provide a win-win solution by helping to tackle both local flooding and diffuse pollution issues.

Conclusions

Woodland offers a number of potential opportunities for flood control. Research and experience indicates that those provided by the greater water use by trees and the forest sponge effect are largely restricted to the headwater or small catchment level. Modelling studies suggest that floodplain woodland offers the main way of ameliorating extreme flood events at the large catchment scale, although results remain to be tested in practice. Overall, there appears to be significant scope for using woodland to help reduce flood risk, as well as to provide a wide range of other environmental, social and economic benefits. However, in order to achieve these, woodland needs to be better integrated with agriculture and other land uses as part of a whole-catchment approach to sustainable flood management.

References


SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Summary

- The Freshwater Taskforce of Scottish Environment LINK welcomes the general principles for the Bill, and the new flood risk related duties for Scottish Ministers, SEPA and Responsible Authorities. However, whilst these provisions make the new flood risk related functions clear, they do not ensure the sustainable delivery of flood risk management.
There is much scope to improve the provisions and safeguard the adoption of sustainable approaches to flood management in this legislation.

- The Bill creates a new framework for the future management of flood risk. Whilst we are generally supportive of the new framework, a number of key elements could be strengthened. This includes strengthening the role of natural flood management, clarifying the role of catchment based planning and better co-operation with land uses and other relevant policies.

- The Bill should introduce clearer provisions for natural flood management and a presumption for the use of natural flood management measures in flood risk management planning, as recommended by the Committee in its Flooding inquiry.

- A stronger trigger to policy join up should be introduced for all Ministerial departments and responsible authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the flood risk management plans.

- Local Authority should be given stronger duties to work with, and co-operate with, farmers, foresters and land managers in flood risk management planning, and flexible powers to deliver changes to land management.

- A new duty on local and responsible authorities to implement/contribute to the implementation of measures in flood risk management plans is needed.

- Adequate funding must be made available to establish the framework for SFM. Funding for flood management measures should be allocated on a catchment basis for each local flood risk management plan.

Overall, we believe that the Committee should support the general principles of the Bill whilst recommending that several improvements are considered as part of stage 2.

Scottish Environment LINK is the liaison body for Scotland’s environmental organisations, the members of which are supported by around 500,000 people. LINK member organisations have been actively involved in work on water issues and have worked in partnership with the Scottish Government in the lead up to this Bill, they:

- Were actively involved in the transposition of the Water Framework Directive into Scots law, and instrumental to introducing a duty on Scottish Ministers and Responsible Authorities to ‘promote sustainable flood management’.
- Have been active members of the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC) and instrumental in producing the definition of sustainable flood management
- Are active members of the Flooding Bill Advisory Group, and the Natural Flood Management sub-group
- Have been instrumental in improving the understanding and the benefits of natural flood management
- Have provided written and oral evidence to the Environment and Rural Affairs Committee on its Flooding Inquiry
- Held a number of events for MSPs and other stakeholders on the issue of flooding.

All the previous submissions, briefings, reports and consultation responses can be on the LINK website [www.scotlink.org](http://www.scotlink.org)

The following organisations are members of the Freshwater Taskforce and support this submission:

RSPB Scotland, WWF Scotland, Buglife, Scottish Wildlife Trust
We would welcome the opportunity to develop any of the points here either through oral evidence or through further written submissions.

Introduction

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Rural Affairs and Environment Committee on the Flood Risk Management (Scotland) Bill. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

Whist we greatly welcome and support the general policy objectives of the Bill, as stated in the Policy Memorandum, we have some concerns as to the delivery of these aims through the legislation. This submission highlights these concerns, particularly in relation to:

- Weak duties/provisions for the sustainable management of flood risk
- Lack of clarity on the use of natural flood management as key component of flood risk management planning
- No provisions to ensure that measures contained in flood risk management plans are implemented on the ground.

We further discuss the role of farmers and land managers and the need for better integration with land use management planning, agricultural regulation and River Basin Management Planning. In addition, the financial implications of the Bill and the economic benefits of sustainable approach are discussed towards the end of this submission.

Some of these issues are fundamental to the recommendations of the RAE inquiry into Flooding and Flood Management. We are concerned that some of these recommendations have not been fully met in the new Bill. Specific recommendations from the RAE report are listed in italics at the start of each relevant section and suggestions are made on how these recommendations could be better incorporated into the Bill.

Provisions for the sustainable management of flood risk

Flood Risk Management Bill, Policy Memorandum: ‘The provisions in the Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding’

As clearly stated in the policy memorandum, the Bill’s intention is to deliver sustainable approaches to flood management. We fully agree and support this statement, but we are not convinced that the Bill’s language is clear enough to deliver this aim. The only provision made in the Bill for sustainable flood management (SFM) is in a duty on SEPA, and others ‘to promote SFM’. This duty has already been in place for 5 years through the Water Environment and Water Services (Scotland) Act 2003, but has not been implemented on the ground in any way or form. ‘Promoting’ SFM is fundamentally different to ‘implementing’. It would be a missed opportunity if the new Bill failed to deliver its main purpose due to such weak duties. We therefore recommend that the Committee considers how best to ensure delivery of SFM, and we make the following suggestions:

- Including ‘sustainable management of flood risk’ in the long title of the Bill, and
- As part of general duties on Ministers, SEPA and responsible authorities:
  - Introducing a stronger duty on Scottish Ministers, SEPA and Responsible Authorities on SFM, such as to ‘further the implementation of SFM’
  - Ensuring that social, economic and environmental impacts are considered when addressing flood risk
  - Ensuring that those responsible for flood risk management adopt an integrated approach
Provisions for catchment based approach to flood risk management

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 6: The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management.

LINK has discussed the benefits of a catchment approach to flood management in its previous submission to the Flooding and Flood Management Inquiry and we do not intend to discuss this issue here in further detail. After all, this was one of the key recommendations from the RAE Flooding Inquiry. Despite this, we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach in local flood risk management planning.

Therefore, we seek clarification as to the intention of the Bill in this regard.

Provisions for natural flood management

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 15: The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as part of each catchment plan.

We warmly welcome the proposal for the Assessment of contribution of natural features to flood management in Part 3, section 16 of the Bill. However, we remain concerned that this provision does not place natural approaches to flood management at the heart of the new Bill. We do not feel that this provision meets the recommendation of the RAE Committee in its Flooding Inquiry report to introduce a presumption for the use of NFM techniques. Furthermore, we are concerned over the wording of this proposal. Currently, it only provides for the assessment of natural features and not for the assessment of the natural processes related to flooding. Both components - natural features and flooding processes are important part of natural flood management. Again, there is much scope to improve the provisions for NFM, and we would recommend:

- Section 16 to include the assessment of natural approaches to flood management, which would include within its scope natural features and flooding processes;
- Introduce a presumption in favour of natural flood management in flood risk management plans in section 24 of the Bill as recommended by the Committee;
- Introduce timescales by which such assessment must be produced;
- Introduce requirements on SEPA to consult local authorities, Responsible Authorities and other relevant stakeholders in making such an assessment;
- The assessment should produce a 24 year vision, with a more detail assessment covering a period of/becoming reviewed every 6 years, and
- The assessment must consider environmental objectives in River Basin Management Plans.

We believe that if the above recommendations are taken forward the provisions for natural flood management will be greatly improved. Whilst natural flood management is a new concept, it has proven to be effective in lowering flood risk and is integral to the sustainable outcome of the new Bill.

Ensuring the funding and implementation of plans and measures on the ground

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation: The Committee recommends that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans. Scotland’s communities will only benefit from the new, sustainable approach if the measures contained in flood risk management plans are funded appropriately and implemented on the ground. Whilst we welcome the provisions in the Bill for identifying responsible authorities in statute and a general duty to reduce flood risk, we remain concerned over the implementation
A new duty to implement/contribute to the implementation

We believe that in order to see full benefits of the new approach, a duty to implement or contribute to the implementation must be written in the law. Without such duty, there is no guarantee that measures identified in flood risk management plans will be implemented. This is particularly important in light of the competing pressures on local authorities to deliver many other objectives. The new duty could sit in a new section 37 in a section on Local Flood Risk Management Plans.

Funding flood management measures

Funding which is made available for flood risk management should be spent on lowering flood risk to communities. If the funding is not linked to the flood risk management plan and there is no direct duty on local authorities to deliver the measures, then funding is likely to be re-prioritised to help meet other pressing obligations, leaving communities at risk. Funding should be allocated on a catchment basis for each local flood risk management planning area and linked to the flood risk management plan. Where necessary this means that funding could be allocated to one or more local authorities in any one area and may be best held centrally rather than allocated to local authorities through single outcome agreements. Considering the importance of this issue and the current uncertainties we would welcome further clarification as to the future of funding arrangements.

Scottish Water and the role of the Water Industry Commission

The above applies to other responsible authorities which need to plan for the flooding requirements as part of their spending review processes, including the Quality and Standards investment programme for Scottish Water (SW). There is a clear role for the Water Industry Commission, which is not a Responsible Authority, but which is Scottish Water’s economic regulator. SW’s investment programme is largely constrained by the level of investment agreed by Scottish Ministers and price caps set by the Water Industry Commission (WIC) for a given period. The current regulatory system involving SW, Scottish Ministers and the WIC does not appear to be ‘in tune’ with the sustainability requirement of the Water Environment and Water Services (Scotland) Act 2003 or the Water Industry (Scotland) Act 2002. The role of the WIC appears to clash with the duties of SW to contribute to sustainable development. Sustainable solutions may not always be the cheapest solutions for a specific problem in the short term, but may require a larger initial investment, with longer-term gains. Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term. Sustainable, innovative solutions should be promoted and Scottish Water encouraged by Scottish Ministers and the WIC to contribute actively to sustainable development in Scotland.

The role of Scottish Ministers

Scottish Ministers should also have duties to deliver sustainable flood management through their powers to set the funding for, and approve measures contained in, Scottish Rural Development Programmes and other aspects of the budget. It is therefore essential that a duty on Scottish Ministers and Responsible Authorities to deliver flood measures on the ground achieved through an appropriate funding process is introduced as part of the Bill. The duty could sit in a new section 37.

Integration with the statutory land use planning system and other land use policies

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 17: The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development plans and structure plans.
Recommendation 18: The Committee recommends, given the importance of land use management, the Scottish Government should ensure it has the powers to require changes to land use for flood management purposes.

All land uses in Scotland impact either directly or indirectly on flooding and therefore have a role of flood management. Policy join-up needs to be effective throughout land management and in the way in which it is planned. Full integration is needed with the statutory land use system, as well as with other land use policies and regulations. Stronger emphasis on policy integration is therefore essential if the Bill is to be effective and in meeting the sustainability objectives of the new legislation. We therefore recommend that a stronger trigger to policy join up is introduced in the Bill. This should include a strong duty on all Ministerial departments and all Responsible Authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the FRMPs.

Land use planning

It is essential that the potential contribution of land uses to flood risk management is fully recognised and that land managers are awarded and compensated for their contribution to flood management. The Bill should also aim to strengthen the general duties of Scottish Ministers to integrate all relevant departmental functions in order to provide adequate support to farmers and landowners and to achieve SFM. There should also be a stronger duty on local authorities and Responsible Authorities to cooperate with farmers, foresters and landowners in the production and implementation of flood risk management plans. This could be achieved by strengthening the provisions under section 30.

Development planning

The Bill proposes a general duty on Scottish Ministers, and every public body and office holder, to have regards to the local and district flood risk management plans. This is encouraging but does not necessarily mean that local authorities will be required to assess whether FRMPs are compatible with their structure and development plans. This could be achieved by strengthening the provisions under section 36. We also recommend that this issue is considered further through a revision of the Scottish Planning Policy on flooding (SPP7) and other appropriate policies.

Financial implication of the new Bill

The key policy objective of the new legislation is to shift from our current reactive approach towards sustainable management of flood risk. This means that we need to develop new tools, improve our assessments and mapping of flood risk and put in place new structures that would allow us to make the right decisions for now and in future. Implementing the new framework will take time and resources. Initially, this may require a substantial investment in the development of new frameworks and research agendas. For example, SEPA alone has identified the need for an investment of £8million up to 2015 to fund the development of new modelling tools and data sets. The current allocation of £1.7million on flooding is by no means sufficient to take this agenda forward. Costs will also fall on local authorities as they will require additional funding to support their role in local flood risk management planning. Scottish Government has been developing a research agenda to take forward work on natural flood management and demonstration projects. Despite its importance and political support, the work on NFM is currently hugely under-resourced. In future, some funding could be available through agri-environment and forestry schemes to encourage the beneficial management of land for flooding. However, this funding is likely to be limited.

The economic benefits of sustainable flood risk management

The new framework aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aims to deliver environmental and other benefits. The real benefit in introducing the new framework for flood risk management is therefore in the delivery of multiple benefits and the provision of long-term solutions. These
benefits are difficult to estimate in monetary terms, and do not fit well with the traditional framework of cost–benefit analysis.

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Traditional flood defence measures are very expensive. The present value of Scotland’s current flood defences is £1.3 million/kilometre.

It is difficult to generalise about the cost of sustainable flood defence measures as the measures vary widely. However, sustainable flood defence measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure.

We therefore seek reassurance from the Ministers that funding adequate funding will be made available to support Scottish Government, SEPA and responsible authorities in their new roles.

Cost-benefit analysis of flood management measures

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis.

We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options. The Committee should seek re-assurance that the cost-benefit analysis of flood management measures will consider non-monetary costs and benefits. Whilst this subject is still new, much research has emerged recently from the UK and elsewhere how such benefits can be incorporated into cost-benefit analysis.

Conclusions

This Bill offers a unique opportunity to deliver much improved management of flooding in Scotland. Whilst we welcome the general policy aims and structures for the management of flood risk, we remain concerned over the delivery of sustainable approaches to flood management on the ground. This is particularly relevant as the Bill lacks provisions to ensure implementation of measures on the ground. A number of provisions could be strengthened, including the provisions for natural flood management, integration with other relevant plans and policies, including the statutory land use planning system, and the duties of local authorities to implement measures on the ground. We believe that we will only benefit fully from the new approach to flood management if SEPA, the Scottish Government, local authorities and Responsible Authorities are adequately resourced to fulfil their new duties.

Annex  Summary of strengths and weaknesses in the Flood Risk Management (Scotland) Bill

PART 1 and 2: General duty, directions and guidance; and principle expressions

We strongly support the following in the Bill:

- SEPA to be designated as a lead authority
- The designation of ‘responsible authorities’, including Scottish Water, local authorities and others with roles in flood management
- Strong duty on Ministers, SEPA and responsible authorities to reduce overall flood risk
The following issues must be addressed:

- Overall policy must aim to deliver sustainable flood management
- Ensure regard is given to three aspects of sustainability when assessing impact - social, economic and environmental

PART 3: Flood risk assessments, maps and plans

We strongly support the following provisions in the Bill:

- Designation of district areas as per the WEWS Act
- The principle behind the provisions for natural flood management in section 16
- Provisions for advisory groups and public participation
- Provisions for reporting and public accountability

The following issues must be addressed:

- Catchment based approach to flood risk management planning
- Stronger provisions for natural approaches to flood management
- Stronger provisions for local authorities to consult individual landowners when preparing local plans
- A new duty on local authorities and responsible authorities to implement/contribute to the implementation of measures in local flood risk management plans

PART 4: Flood Risk Management: local authority functions

We strongly support the following provisions in the Bill:

- Flexible powers for local authorities to manage flood risk
- Provisions for compensation

The following issues must be addressed:

- Duty to implement/contribute to the implementation of measures in local flood risk management plans
- More flexible measures for Local Authorities to manage land for flooding (such as land management orders)

SE Link
11 November 2008

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

We welcome the general principles of the Bill as set out in the Policy Memorandum. The following comments relate to how these principles are expressed in the Bill itself.

Spirit of the Legislation

The Policy Memorandum sets out the intention to deliver sustainable flood management but it is not clear from the text of the Bill how this objective is to be achieved. In our judgement the Bill will create a framework that will allow sustainable approaches to be adopted but we do not think it will 'ensure' these approaches are delivered (paragraph 2 of the Policy Memorandum). We think it would be helpful if the policy intent behind the Bill was more evident within the text of the Bill. This could be addressed by adding a ‘General Purpose’ to the Bill that set out more clearly the spirit of the legislation, which involves making sure that sustainable approaches are adopted and that flood risk management is pursued at the catchment scale, with the restoration of natural habitats and processes being recognised as one tool for flood risk management.
Responsible Authorities

SNH has not been named as a responsible authority in the Bill and we understand that the Scottish Government is not planning to put us forward as a responsible authority under future orders. We are however named in the Bill as a consultee on the District Flood Risk Advisory Group (Section 42, subsection 7a, SEPA 'must seek to ensure appropriate representation of the interests of – a) the persons specified or referred to in section 25(5)(a) to (c) which includes SNH) but not necessarily on the sub district groups (Section 43, subsection 7, 'The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.'). This puts us in a position where we are still involved in the process of providing comments on flood risk management but may not be actively involved at an early stage in the development of local proposals. We have some concerns about this. In the worst case, lack of early involvement could result in us having to resort to late stage objections to flood protection schemes because we have been unable to influence their development. If, by contrast, SNH were named as a responsible authority we could play an important role in ensuring that sustainable options for flood risk management were considered and where practicable pursued. By increasing our understanding of the issues and practical options, it would also minimise the risk of our querying proposals on an ill-informed basis late in the process.

Important role of Advisory Groups

As mentioned above, Section 43, subsection 7 of the Bill says that ‘The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.’ This contrasts with the wording in the Water Environment and Water Services (Scotland) Act 2003 (the 2003 Act) which sets out a list of likely stakeholders that SEPA should involve in River Basin District Advisory Groups (Section 17, subsection 6 of the 2003 Act). There is a risk that this flexible wording in the Flood Risk Management (Scotland) Bill could be used to exclude stakeholders with a genuine and important interest in the approach to be adopted from involvement in development of the local flood risk management plans. In our view a list of stakeholders along the lines of the one in the 2003 Act should be included to guide SEPA on who should be included on the sub-district advisory groups.

Habitats Regulations

Natura 2000 sites are referred to under Section 19 on Flood risk maps and Section 24 on Flood risk management plans. In both cases, the reference is to the 2003 Act which relates to water dependent Natura features. However, under the Habitats Regulations, Flood Risk Management Plans would be considered a plan or project that would need to be considered for its effect on all Natura features. If any of the proposals were likely to have a significant effect on a Natura feature then an appropriate assessment would need to be carried out. The conservation objectives of Natura features therefore need to be considered when drawing up flood risk management plans.

Work needed beyond this legislation

There are pieces of work beyond this current bill that need to be taken forward in order for the new approaches to flood risk management to be deliverable. These include:

- The need to amend the cost benefit rules used to assess flood protection schemes. Current cost benefit rules do not take into account many of the benefits delivered by soft engineering, for example by managed realignment schemes. If these rules are not changed, these sorts of measures will still not be taken forward as their full benefits will not be recognised.
- Planning guidance on flooding will need to be updated.
- The use of SUDS for dealing with flooding and improving biodiversity as well as improving water quality should be addressed. Currently there is an increasing focus on the water
quality elements of SUDS by SEPA and SW, with less attention being given to the other two aspects of the SUDS triangle. If this continues, it will be a missed opportunity for realising multiple benefits from SUDS.

- Transitional arrangements will need to be put in place for the period up until the completion of the first flood risk management plans.

Scottish Natural Heritage
11 November 2008

SUBMISSION FROM NATIONAL FARMERS’ UNION SCOTLAND

NFU Scotland thanks the Committee for their invitation to give evidence on the Flood Risk Management (Scotland) Bill on Wednesday 26 November. NFU Scotland appreciates that the Bill intends to introduce new measures to reform the current legislation, the Flood Prevention (Scotland) Act 1961, transpose the planned EU Directive on the Assessment and Management of Flood Risks and provide a portfolio of responses for managing flood risk. The Bill intends to allow a modernised and sustainable approach to flood prevention with streamlined decision making.

We hope that the following brief submission will be of use to Committee members in preparation for the meeting.

Flood Risk Management (Scotland) Bill

NFU Scotland recognises the shift in policy from ‘hard-engineered’ flood prevention and protection to a more integrated flood risk approach, utilising natural flood management. Prioritising the focus on managing flood risk rather than the event of flooding itself so that its impact is minimised, however, entirely dependant on the use of flood plains, which lie, by and large, on Scotland’s most productive agricultural land.

Farmers occupying that land are under increasing pressure to optimise their productive potential in order to satisfy an increasing number of demands

- running a viable business that provide the bedrock for rural economies and a host of ancillary industries
- producing food (and biomass) to ever increasing environmental and animal welfare standards
- delivering significant public benefits by way of providing access opportunity, enriching and maintaining Scotland’s distinct biodiversity and landscapes

In every sense, Scottish agriculture is already delivering to the Scottish Government’s

This zero sum game remains a constant dilemma for farmers and policy makers alike. However, it is only policy makers that identify where trade-offs should take place.

NFU Scotland is firmly of the opinion that any proposed measures as a result of this legislation must recognise the agricultural productivity or economic value of flood plains. NFU Scotland seeks assurance that any proposed measures are fully costed to properly assess the economic, as well environmental and/or social, benefits of taking such an approach.

Consequently, NFU Scotland considers that flood risk management measures that depend upon agricultural land must be extremely well thought out, and any associated payments must not simply be based on ‘income foregone’ founded on standard gross margins over the short to medium term.

NFU Scotland considers that maintaining flood defences on rivers is not always incompatible with good environmental and social policies. NFU Scotland supports the concept of ‘slow the flow’ over land within catchments, but is firmly of the view that flow must not be impeded once
NFU Scotland believes there may be a direct conflict here between the intentions of this flooding legislation and the excessive demands of the Controlled Activities Regulations (CARs) as part of the implementation of the Water Framework Directive.

Any flood risk management Bill that results in legislation must take into account both the public and private costs associated with a shift to using high agricultural land as a flood plain. If public money were to be saved in preventing flooding, it should be used to offset any actual revenue (income), management and capital costs endured by individual farm businesses already struggling to meet the ever-increasing land management expectations being placed on them.

In this respect, there may also be very complicated issues for agricultural tenancy agreements that would require extreme consideration if the interests of all parties were to be treated justly.

Premium agricultural land in Scotland is already very limited, and is diminishing in area through development and other pressures. NFU Scotland does not believe that it would be of benefit to use such land as a flood risk management tool when the costs of doing so may very well prove to be the loss of vital production potential and other rural development benefits.

NFU Scotland
20 November 2008

SUBMISSION FROM SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

Introduction

The Scottish Rural Property and Business Association (SRPBA) welcomes the opportunity to comment on the Flood Risk Management (Scotland) Bill. We also look forward to providing oral evidence at stage 1 and more detailed comments as the Bill progresses through Parliament.

The SRPBA represents the interests of a wide variety of land based businesses including farming and forestry, therefore this Bill is of particular interest. We recognise that historically Scotland has not faced the same degree of river and coastal flooding as other parts of the UK, due mainly to its different topography. However, climate change is expected to potentially double the risk of flooding in some areas of Scotland before the end of this century. Flooding can have serious effects on businesses, homes, people and health and therefore Scotland needs to adopt an effective flood management system to prevent and/or minimise flood risk.

The SRPBA recognises that the framework for the Flood Risk Management (Scotland) Bill is the EC Floods Directive (Directive 2007/60/EC), which entered into force on 26 November 2007. Member States have two years to transpose the Directive into domestic law. The Directive requires Member States to assess if water courses and coast lines are at risk from flooding, to map the flood extent, assets and humans at risk in these areas, and to take adequate and coordinated measures to reduce this flood risk. The Directive also reinforces the rights of the public to access this information and to have a say in the planning process. The SRPBA therefore appreciates that the Flood Risk Management (Scotland) Bill is the first step for the Scottish Government in transposing the EC Floods Directive into Scots law.

GENERAL COMMENTS ON THE BILL

Policy proposals

The SRPBA broadly supports the policy proposals of the Flood Risk Management (Scotland) Bill and we recognise that current legislation needs to be updated in order to manage the increasing risk of flooding in Scotland caused primarily by climate change. We are supportive of a more modernised and sustainable attitude to flood risk management and are pleased that the
Bill proposes to streamline and speed up the development and implementation of flood defences. We also welcome the more joined up and coordinated approach to flood risk management at both a national and local level that the Bill proposes.

Additionally, the SRPBA recognises the importance of adopting a catchment-focused approach to managing flooding. We agree that flood risk management districts should be identified and recognise the importance of identifying potentially vulnerable areas within each district. The production of flood hazard maps will be beneficial to visually depict these potentially vulnerable areas. The SRPBA is also supportive of the publication of flood risk management plans for each potentially vulnerable area.

Areas of concern

The SRPBA agrees that a single competent authority should have a national remit for implementing the Floods Directive. However, we still have concerns about SEPA fulfilling this role for a variety of reasons. SEPA will have the role of both the administrator and the enforcer and the SRPBA has reservations about this approach. We also have concerns that SEPA does not have the full range of skills necessary to undertake this role. They are a regulatory body with a scientific focus but one of the main objectives of the competent authority in this process is accountability, which includes opportunities for public participation and stakeholder engagement.

The SRPBA has experience of SEPA’s approach to stakeholder engagement through the Water Framework Directive Area Advisory Groups (AAG). Although many SEPA staff worked hard to encourage widespread engagement, this was not the case with every AAG. We believe that in order for SEPA to fulfil the role of competent authority there is a need for staff training, sufficient time allocation and resources to encourage meaningful stakeholder engagement.

The SRPBA acknowledges that the flood risk assessments and the flood risk maps will be made available for public inspection when they have been produced by SEPA. We also note that district flood risk advisory groups and sub-district flood risk advisory groups will be set up to influence the preparation of these documents. The SRPBA is anxious that the most appropriate people are selected to sit on these advisory groups. We strongly recommend that relevant land managers are involved because they are closely linked to the land and are more aware of actual risks of flooding in their area. The SRPBA would also wish to see the advisory groups adequately resourced both in terms of finances and personnel, this should allow for more involved local consultation where necessary.

The SRPBA is also concerned about the delivery of soft engineering techniques preferred for sustainable flood management, such as the re-establishment of meanders and re-establishing floodplain tree cover to slow down the movement of water. Section 55 (Acquisition of land) gives local authorities the power to acquire land where it requires it for flood risk management practices and gives Scottish Ministers the power to compulsorily acquire this land. The SRPBA is anxious that land managers could risk losing large portions of their land depending on their geographical location, and in some cases this could make the remainder of their holding unviable. Land managers must be reassured that meaningful compensation will be available in order to cover the costs of sustainable flood management that will have adverse impacts on their land. Compensation should also apply where flood protection schemes are undertaken under section 53 where there are any adverse effects of the land manager’s business or property rights.

As a general concern, we found that the Bill was unnecessarily confusing in relation to the interaction between the various plans. For example:-

* there is provisions for a flood risk assessment
* under Part 3 section 13(1) the preparation of a 'document' identifying each flood risk management district - is this different to flood risk assessment?
* flood hazard map and flood risk map- is this submitted with the 'document' or is it stand alone?
* flood risk management plans - is this “the document”?
* flood protection scheme- is this a stand alone document?
We feel there could be some simplification in this regard.

**Does the Bill adequately reflect the Flooding and Flood Management inquiry’s findings?**

The SRPBA believes that, on the whole, the Bill does reflect the Flooding and Flood Management inquiry’s findings, for example, the catchment was recommended as being the fundamental unit for flood management and this has been adopted.

**Could the implementation of the provisions in the Bill be coordinated in practice with the continuing implementation of the WEWS Act?**

The Water Framework Directive (Directive 2000/60/EC) obliges Member States to take the Directive into account in all future legislation. The Directive was transposed into Scots law by The Water Environment and Water Services (Scotland) Act 2003. Consequently, there is a statutory obligation to always take water issues into consideration in Scotland and the provisions of the Bill should run in unison with the WEWS Act. The SRPBA suggests that the structures already set up for the implementation of the Water Framework Directive water basin planning are used in the implementation of the Floods Directive to save resources. However, these structures should be reviewed to ensure they are operating efficiently and effectively.

SRPBA members have been involved in the Area Advisory Groups (AAG) for river basin planning and have a number of criticisms of how the system operates, for example:

- AAG representatives are expected to represent their peers across the whole catchment. One land manager does not necessarily know what another land manager is thinking/doing on their land. For example the land management representative on a group may be a riparian owner who will not necessarily have the knowledge about the concerns of farmers or foresters in the area. The process should ensure that an appropriate level of funding is in place for adequate representation from all those with an interest and relevant expertise in advisory groups.

- meeting tight timetables can lead to rushed consultation. AAG meetings are often highly technical which excludes many of the members without technical knowledge. Non-technical members of such groups do not have the knowledge to assess whether the information is correct or how it will impact on them. If possible it would be helpful to have access to a technical support officer who can advice on the impact of the Directive and support non-technical members of the flooding steering groups.

- expenses are not paid and many AAG representatives are not employed by any organisation therefore attending meetings is at their own expense. The Flood Risk Management (Scotland) Bill (Section 43) should provide that SEPA must pay expenses of those willing to assist in area advisory groups to ensure the best representation and consultation is obtained.

Finally, the SRPBA is anxious that the introduction of the Flood Risk Management (Scotland) Bill does not lead to another layer of bureaucracy and regulation. The implementation of the Floods Directive and the Water Framework Directive should encourage a joined up approach to water management and should not further increase burdens on land managers.

**Conclusion**

The SRPBA is broadly supportive of the key objectives of the Flood Risk Management (Scotland) Bill. We recognise the need to develop a more robust framework for mitigating the impacts of an increased flood risk in Scotland caused primarily by climate change. However, we still have reservations about SEPA being the competent authority for implementing the Directive and would prefer to have further details about how compensation to land managers will be calculated.

SRPBA
SUBMISSION FROM SCOTTISH COUNCIL DEVELOPMENT AND INDUSTRY

The following submission is a copy of the response sent to the Scottish Government’s consultation on flooding.

- The Scottish Council for Development and Industry (SCDI) is an independent membership network that strengthens Scotland’s competitiveness by formulating policies to encourage sustainable economic prosperity. Its members are drawn from businesses, local authorities, trades unions, educational institutions and the voluntary sector from across Scotland.

- SCDI welcomes the Scottish Government’s intention to introduce a Flooding Bill in 2008 to modernise the flood risk management system in Scotland. The threat of more frequent and more severe flooding posed by climate change demands that the range of relevant legislation needs to be streamlined and updated. A catchment focussed approach must be developed across Scotland, with the responsibilities for sustainable flood risk management and the delivery of flood management capital projects defined. There is a pressing need to create a much clearer legislative framework which leads to a strategic programme of risk assessment and construction of effective flood defences.

- Managing the risks associated with flooding over the long-term would make a substantial contribution to sustainable economic growth by protecting lives, communities, businesses, property, infrastructure and the environment. There is also a shorter-term potential competitive benefit to Scotland of putting in place a clearer legislative framework, supported by the appropriate funding. The Association of British Insurers (ABI) has warned that increasing cost of flooding events and inadequate management of flood risk by government is putting the private sector funded insurance system under severe strain. This may make flood insurance prohibitively expensive or even unavailable for more businesses. SCDI members in areas such as Moray have had their insurance priced at a level that puts it beyond many policyholders. However, the ABI has indicated that, if there is a more effective framework for Scotland, its members may publish a statement of principles for Scotland, including specific references to the management of flood risk in Scotland, and: “The principle is that the better the risk management and the better the provision of data on risk, the more enthusiastic insurance companies are to provide insurance at affordable rate.” (Col 590, Official Report, Environment and Rural Affairs Committee, The Scottish Parliament, March 19th, 2008)

- While legislation is needed, government at all levels, including its agencies, should not simply concern itself with the broader environmental issues or their own statutory responsibilities, but consider in a much more joined-up way the impact on individual communities and businesses. Many SCDI members in the business community have been directly affected by flooding. In particular, the serious floods in Elgin in 1997 and 2002 damaged a number of member companies. In the aftermath of these events, SCDI met and corresponded with the then Deputy Environment Minister Allan Wilson on the insurance problems facing these businesses. SCDI submitted evidence to the ongoing Scottish Parliament’s Environment and Rural Affairs Committee’s inquiry into ‘Flooding and Flood Risk Management’ which was substantially based on members’ experience of the effectiveness of flooding management and the response to flooding events, and assisted the Committee in arranging for these businesses to give oral evidence in Elgin. Some significant business and economic issues are not included in this consultation document and SCDI believes that the final Flooding Bill should pay greater attention to them.

Business Contribution to Flood Prevention, Compensation and Insurance

- Land owners and businesses could have a much greater role in community flood prevention if supported properly by government. Following the flooding in Elgin, significant flood defences were installed by businesses to protect their properties. SCDI believes that appropriate financial grants and compensation should be available to land owners including businesses putting in place measures to reduce flood risks. Better guidance for businesses would allow them to protect their properties in line with flood management plans.
Businesses in at-risk areas often monitor water levels and this on-the-spot, real-time information could contribute to improved flood warning systems.

- Under current legislation, there is a lack of clarity around compensation issues for loss of property and infrastructure as a result of a flood prevention scheme, including the timescale for making a claim and payment after a Flood Prevention Order is granted. SCDI understands that local authorities could delay this payment for up to 10 years. Businesses also report problems in getting any information from the district valuer and concerns about whether the district valuer can be seen as genuinely independent from the local authority. The legislation needs to be enhanced and, perhaps, the period for claim has to be extended beyond 10 years. Another issue is that local authorities used to be able to claim 80 per cent of the cost of compensation from the Scottish Government. However, SCDI understands that the transfer of funding for flood risk management to local authorities means that compensation now has to come from their own budgets. When the local authority costs a flood scheme, it does not know the costs of compensation claims. If it is then faced with significant compensation claims, the burden of providing this money will be fully on its own local council tax payers.

- After the 2002 flooding, SCDI wrote to the then Scottish Executive highlighting that some of the larger employers in Elgin were being forced to operate without insurance through no fault of their own. It pointed out the potential repercussions for their operations there and in other parts of Scotland, for the wider Scottish economy and, through business rates, for public finances. SCDI suggested that an Executive backed interim flood disaster insurance scheme for larger businesses in Scotland should be introduced for such cases. The Executive, which appeared unaware that there were companies which had flood cover excluded from their insurance policies, claimed that this would infringe state aid regulations and place “an unquantifiable burden on Executive resources” In the USA some state organisations provide cover in relation to hurricane damage and SCDI continues to support a similar scheme for flooding damage in Scotland. In the light of the long delay in the government-sponsored flood prevention schemes, it can be argued that it has an obligation to support affected companies.

- It has been highlighted to SCDI that the Assessors for business rates may offer minimal relief to businesses with property which is at risk from flooding, even though their valuation on the property market is seriously affected. There is a strong argument that one way the Scottish Government could support larger businesses would be to offset their higher insurance costs through equivalent reductions in business rates to more accurately reflect the effect of flooding on property value. This would place limits on the burden on the public purse. Short-term relief can also be offered to businesses after flooding through councils’ powers to suspend or reduce business rates due to ‘hardship’. There may be a case for suspension of water charges, at least for the period of the clean-up when extra water has to be used for the purpose of clearing pollution.

Questions

Q1. Do you believe the definition of Sustainable Flood Management is helpful and of practical benefit to flood risk management?

Q2. Do you think the definition is clear and simple to understand?

- A definition of Sustainable Flood Management would be useful in creating a greater and shared understanding among public bodies, businesses and the public of the framework in which policies and measures will be developed and considered. SCDI strongly supports the Scottish Government’s intention to develop guidance, including objectives, principles and indicators, which can be used to assess the performance of flood management measures and plans.

- It is unclear in the document whether the four objectives for Sustainable Flood Management are listed in any particular order. The Scottish Government’s stated purpose is “to focus Government and public services on creating a more successful country, with
opportunities for all of Scotland to flourish, through increasing sustainable economic growth.” The proposed economic objective of Sustainable Flood Management should, therefore, possibly be listed first.

- SCDI is uncertain what is meant by “fair access for everyone” in the proposed social objective and whether this relates to regional equity. SCDI believes that there is a need for national and local prioritisation for those areas at greatest risk. Resources need to be targeted at those areas with the highest number of people and businesses at risk and also better protection of critical strategic infrastructure, such as energy and water facilities. However, support should also be offered to schemes important to rural towns and economies, where the recovery period from a flood, for example in the tourism industry, may be much longer. While flooding often occurs outside the peak tourism season, repairs and refurbishments to hotel accommodation and tourist attractions – often located in areas at most risk of flooding – can take months during which time these businesses are closed and the local economy seriously suffers.

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

- Yes. There is a pressing need for a single body to take a strategic overview and have overall responsibility for coordinating and developing national flood risk assessments and Flood Management Plans, looking well beyond three-year spending cycles. SCDI also believe that there is a national role for the competent authority in promoting the skills necessary for the design and specification of flood schemes, and in exploring innovative methods of procurement. Ministers have ruled out the creation of a new Floods Authority body with would have a strategic overview and co-ordinate flood risk assessments, management plans and fund delivery of flood defences at all levels. SCDI therefore agrees that the local co-ordination and delivery of flood defences, and local engagement should be undertaken by the local authorities.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

- Yes. SCDI supports the proposal that SEPA should become this competent authority, given its experience in flood risk assessment and catchment planning. SCDI welcomes the essential work which it is doing to map at risk strategic assets, including sewage treatment works and electricity sub-stations. It is already the competent authority for River Basin Planning in the Water Framework Directive. SCDI would suggest that another key quality to enable the delivery of the Floods Directive is ‘Financial capability/capacity’. The Scottish Government must adequately fund SEPA to deliver this new national remit and, as the competent authority, to secure the participation of responsible authorities and to consult stakeholders. There is a particular need to address its engineering and economic capability to understand the capital works programme and undertake cost-benefit analyses. SEPA and the Scottish Government must also ensure that it does not become another bureaucratic layer. Improving the information flow to businesses must be a key priority.

- SCDI welcomes the funding provided to SEPA to establish an up to date flood information dissemination scheme. This should include the significant populated areas across Scotland at risk of flooding which are not already covered. Businesses should be contacted through text messages, emails and websites. In creating this system, it will be important to clarify who has responsibility for disseminating information. SCDI recommends that SEPA has national responsibility and works with local authorities. The Environment Agency in England already operates a scheme in which individuals and businesses sign-up for warnings. However, it may be necessary to extend this further by introducing an “opt-out” service rather than “opt-in”. This would require providing SEPA with access to sensitive personal address and other contact details and this would need to be handled extremely carefully.
Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not, what alternative do you propose?

Q6. Should Ministers of SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

- SCDI generally welcomes the proposed hierarchical process for flood risk management planning which is set out as Box 7 of the consultation document. The integration of Local and Area Flood Risk Management Plans and co-ordination between local authorities where a catchment area crosses their boundaries are essential. SCDI has some concerns about the number of plans which it appears may be produced. While it anticipates that local authorities will normally determine the best approach to their co-operation, experience suggests that agreement may not always be possible. In SCDI’s view, it would be prudent to reserve the power for Ministers to designate a lead authority within a catchment area where the local authorities have been unable to do so.

- SCDI supports a clear and participative approach to flood risk planning. A consistent complaint from SCDI members is a lack of information. Early contractor involvement and upfront consultation with businesses would seem to be the best way to design a deliverable scheme with wide support. Evidence to the Scottish Parliament’s Environment and Rural Affairs Committee has highlighted that businesses and members of the public in Moray in at-risk areas are often not receiving flood alerts from the council. SCDI therefore suggests that all Local Flood Risk Management Plans should include a comprehensive Communications Plan covering the participation of other responsible authorities, stakeholder consultations and flood warning systems.

- SCDI acknowledges that devolving funding for flood risk management to local authorities may streamline the process of building flood alleviation schemes within local authority areas. However, it has also expressed some concerns that the transfer may make it more difficult to make progress with cross-border strategic flood management schemes as the priority attached may differ upstream and downstream, and long-term schemes would have to compete with other, perhaps more short-term, political priorities. The intention that the future allocation of that money will be based on the level of significant flood risk in each local authority is an improvement. SEPA’s new role in monitoring the performance of flood management measures and plans against objectives, principles and indicators will be an essential part of this process. However, an assessment of the flooding risk in every authority still fails to take into account which area solutions are priorities for funding and/or are ready to deliver. There is a need to look again at the funding mechanism. Another issue which should be resolved is the maintenance of assets. It seems at present that local authorities are not funded to maintain flooding schemes.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Q8. Which other bodies should be identified as responsible authorities?

- Yes, Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities. More frequent and severe rainfall in Scotland would undoubtedly lead to increased incidence of transport disruption, landslides, damage to other infrastructure or loss of services. As events such as the closure of the A83 at the Rest and Be Thankful in Argyll in 2007, and of the A96 and the Inverness-Aberdeen railway at Elgin in 1997 and 2002 demonstrate, this disruption and damage can have a serious economic impact. SCDI would suggest that Transport Scotland, Network Rail and the Regional Transport Partnerships might be identified as other responsible authorities. The clear responsibilities of emergency services in preparing for a flooding event could also be identified. Finally, while SCDI understands that, as private sector companies, they could not be identified as responsible authorities, the owners and operators of hydro power stations and other critical energy infrastructure, principally Scottish and Southern Energy, ScottishPower and National Grid Company, have clear interests, expertise and responsibilities, and there is a need to consider how best to involve them.
Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Q10. Do you agree that the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

- Yes. There should be a duty for responsible bodies to collaborate to produce Area Flood Risk Management Plans and Local Flood Risk Management Plans, and to deliver the objectives and measures agreed through these plans.

- SCDI also supports the proposal to establish stakeholder forums. SCDI believes that national and local stakeholder forums should be set up. It will be important to ensure that these forums are genuinely representative and a key constituent group should be the business community. The national stakeholder forum should lead awareness-raising of the increasing risk of flooding and what individual householders and businesses can do to protect their safety, well-being and property. There should be the opportunity for genuine dialogue at local stakeholder forums, not just with the Local Authorities, but with SEPA, Scottish Water and the other responsible authorities. These forums should not be seen by public bodies as a means of ticking the public consultation box, but as an opportunity for meaningful business and community contributions to the Area Flood Risk Management Plans and Local Flood Risk Management Plans. Many businesses have a great deal of experience and knowledge of the flood risks in their areas, and routinely monitor water levels. Nor should the plans be the substitute for wider engagement. Innovative ways should be found for harnessing the ideas and enthusiasm of the community as a whole into flood risk management planning.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for preparation by SEPA of area flood risk management plans?

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

- Yes. A similar process to the River Basin Management Planning - with its National and Area Advisory Groups - is appropriate for the preparation of Area Flood Risk Management Plans. The boundaries should be contiguous and the advisory groups should be fully aware of each other’s work streams. Over time, it may be possible to bring them even closer together. SCDI agrees that, as with River Basin Management Planning, Ministers should have the power to approve, reject or modify the Area Flood Risk Management Plans.

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

- Yes. The Metropolitan Glasgow Strategic Drainage Plan is highlighted as an exemplar in the consultation and SCDI agrees. The integrated and catchment focussed flood risk management planning framework will assist with this approach elsewhere. However, SCDI remains concerned that the differing local authority and Scottish Water budgetary cycles make it harder to take forward the simultaneous construction of flood management schemes and drainage infrastructure. Scottish Water has established an efficient four year capital investment programme which makes it very difficult for it to fund associated drainage work in a flood management scheme which is brought forward under a different budgetary cycle. There is therefore a case for transferring responsibility for funding drainage infrastructure investment to local authorities. If not, SCDI believes that a stronger role for the competent authority in ensuring compliance with the Area Flood Risk Management Plan and establishing a mechanism to agree investment plans could be beneficial.
Q14. Should Flood Risk Management Plans (FRMPs) inform the way that development plans are prepared, or should there be a stronger linkage such as requirement on planning authorities to show that they have regard to the FRMPs?

- In ‘Firm Foundations’, the Scottish Government has set out plans to increase the number of houses constructed in Scotland per year to at least 35,000 a year by the middle of the next decade, which represents a significant increase from the circa 25,000 a year trend since the late 1990s. If this ambitious, but economically and socially necessary, target is to be achieved, it is clear that development in built-up areas on floodplains will continue, and the task will be to minimise the risk. New development in areas where there is not already existing settlement should clearly generally be free from significant flood risk, but should still be considered on a case by case basis. It should also be possible for development plans to require higher flood resilience for new buildings on floodplains which may mitigate the risks. Building on the introduction of the river basin planning system and the advice which SEPA gives to planning authorities, development plans should be informed by flood management plans in areas of risk, but it would be inappropriate to insist that they conform. It should be recognised that they do not have statutory force.

- While Scottish Planning Policy 7 (SPP7) has specific requirements for undertaking all flood risk assessments, there is little advice on what constitutes an allowance for climate change. This is largely left to the discretion of those undertaking the flood risk assessment. As climate change is considered to be an important aspect of future flood risk, it is recommended that future planning policy should provide more specific guidance on climate change.

Flood protection measures – Simplifying the Statutory Process

- SCDI strongly supports the Scottish Government’s determination to radically simplify and speed-up planning permission for flood prevention schemes. The current process, which may involve two public inquiries, can be piecemeal and torturously slow. The consultation document proposes two alternative approaches to simplification. SCDI has not attempted to answer every question in this section (Q15-Q22) particularly those which ask respondents to specify appropriate timescales, and it does not have a favoured option. The Ministerial Approval system has worked well with Scottish Water’s water and sewerage capital investment programme and, if it remains responsible for funding drainage infrastructure, this is, perhaps, an argument for opting for Ministerial Approval of flood risk management schemes. However, SCDI’s comments focus on specific concerns voiced by members with either approach which it highlights as issues to be resolved before a final decision is made.

- It should be stressed that not only does the current process expose businesses and communities to greater risk of flooding and affect individuals’ sense of wellbeing, insurance companies price according to risk, so delays can lead to longer-lasting high insurance premiums for businesses which damages economic prosperity. Companies have a strong self-interest in simpler and faster delivery of flood prevention schemes, but this must also be inclusive.
Option 1 – Ministerial Approval to Also Grant Deemed Planning Permission

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

- At 3.58, the consultation document states that under either option the procedures would have to ensure “That the rights of those entitled to object under planning law and those entitled to object under [the] 1961 Act are maintained.” According to paragraph 3.49, the Act states that “Only objections from those to whom that scheme was notified and those who are likely to be affected by the carrying out of a scheme or the change in the flow of water must be considered at a public local inquiry”. However, it is said at paragraph 3.62 says that “Under [Option 1] there would only be two classes of objectors – those entitled to appear at the inquiry because the scheme was to be built on their land and those who could only appear at the inquiry by invitation.” SCDI has significant concerns that this does not appear to take into account other parties with an interest in the land or those who might be affected by flooding as a result of a prevention scheme, perhaps as a result of an error in the design. Their right to be heard seems to depend on the discretion of the Reporter, although Minister would be required to consider the objection. If the limited eligible parties withdraw their objections, then the inquiry would not proceed. Ministers would “simply” consider the remaining objections. Questions must be asked about the rigorousness which they would apply to this consideration.

- Many distilleries and other businesses in Scotland may not own a particular area of land, but they could be significantly impacted by a proposed flood scheme. For instance, an SCDI member company in Moray had interests in extracting water from an area of land which would be flooded by a scheme. It did not own the land, but had a deed of servitude allowing the extraction.

- Many flood schemes flood farm land yet the flood scheme is not built on the farmers’ land. It is not clear to SCDI whether the owner of the fields would be allowed to object and attend the Inquiry. There may also be instances in which a landowner or another interested party notices that a flood scheme calculation was incorrect and the consequence of this might mean that their property would be flooded. An example of such a design error which was spotted by a local landowner was on the drawings for the Elgin Flood Scheme. The height of the new river bank was too low and if the scheme had been constructed to this height, a large area of housing in the town would have been flooded.

Option 2 – Relying on a local authority based procedure

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Q19. What would be the appropriate timescales for notification and response?

Q20. Would it be appropriate for such a process to carry deemed planning consent?

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

Q22. Are there any additional alternatives to the options outlined above which would simply procedures?

- The transfer of funding for flood risk management to the block grant to local authorities would appear to make it logical to rely wholly on local authority based procedures for flood
prevention schemes and remove the Ministerial confirmation process. This would be consistent with a development plan-led approach and would raise the importance of Local Flood Risk Management Plans. However, based on their own experiences, SCDI members in the business community have strong concerns about whether there would be sufficient information-sharing, opportunity to comment, safeguards for land and property owners, and technical capacity in some smaller local authorities. SCDI notes that a procedure separate from planning is deemed necessary. But, given that local authorities are in effect applying to themselves for planning permissions, still has some reservations about the concentration of powers.

- SCDI has some concerns about the proposal that for occasions where local authorities could not reach agreement with a landowner on the use of land for flood management purposes, they would have the option to use powers of compulsory purchase. It does not regard the safeguards conferred by the European Convention on Human Rights as sufficient and would argue that the rights of companies and individuals have to be strengthened in the Bill. SCDI has been made aware of a specific example in Moray of the Flood Team totally disregarding the objections of a local business, which were subsequently upheld at a Public Inquiry. The concern would be that if local authorities are given rights of compulsory purchase without sufficient safeguards for companies and individuals, the only way to challenge a decision would be through a Public Inquiry and, given the costs of legal representation, few objectors could afford to go to an inquiry. It must be remembered that the costs to businesses of professional help to advise on a scheme or appear at a Public Local Inquiry can be prohibitively high.

- If this option is implemented, the lack of certain skills within local authorities, such as specialist planners, must be addressed urgently. With some current flood prevention schemes, little attempt appears to have been made to import skills from other local authorities which have completed similar projects. In view of the planned level of construction activity around Scotland, this approach cannot be adopted in the future. SEPA and the local authorities must carefully consider the options as part of the shared services/resources agenda. A pool of experienced flood engineers from local authorities in each Flood Risk Management Planning Area is one potential approach. Another idea worthy of consideration which has been suggested to SCDI is that a virtual delivery company could be created by local authorities with people seconded in from them to do all the work on flood management schemes in Scotland.

Q23. Do you consider local authorities' powers are sufficient to take necessary action to aver danger to life and property?

- Local authorities should have sufficient powers in an emergency situation where a clear and present danger exists to take urgent remedial action, including on private land. However, the presumption should be that if possible consent is granted from the land owner and costs recovery should be on the basis that the local authority can demonstrate that such a clear and present danger did indeed exist, and that it took the appropriate remedial actions.

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

- Better guidance and joined-up working are certainly supported. The consultation paper indicates that there is a lack of technical knowledge on flooding matters within local authorities and that they employ consultants to produce flood schemes. If option 2 is implemented, it is probable that further consultants would be contracted to check the
consultants creating the scheme. At the moment Scottish Government technical staff checks the application for a Flood Order. In addition, SEPA check the application as a CAR licence is required, but SEPA does not always get access to adequate information. SCDI is not yet convinced that better guidance alone can streamline the processes.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?
- Yes. Ensuring integration and avoiding bureaucratic duplication is important.

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?
- SCDI agrees that there is no need to set out in detail in the Bill what a sustainable flood management measure might be. However, as a new and untested approach in Scotland, there is a need to move quickly thereafter to:
  - Establish what domestic and international evidence is available to guide the development of sustainable flood management
  - Consider whether further studies are necessary
  - Decide whether there should be Scottish Government funded pilot schemes by SEPA, relevant local authorities, university researchers and other responsible authorities to trial and test the effectiveness of the portfolio of potential sustainable flood management measures.

- The uncertainties around the impact of climate change suggest that there is a need to create a flexible and responsive system of management, but that sustainable flood management should be used wherever practical and appropriate. SCDI believes that rural land management and smaller scale solutions should be promoted as well as larger flood management schemes. Sustainable flood management schemes need not always be based on once-in-a-century or even rarer events, but should be capable of extension at a later date, perhaps as the impact of climate change on flooding becomes clearer.

Scottish Council Development and Industry
23 April 2008
The Convener: Item 2 is evidence taking on the Flood Risk Management (Scotland) Bill. I welcome to the meeting our first panel of witnesses: Hugh Clayden, sustainable forest management policy adviser with the Forestry Commission Scotland; Mike Donaghy from Scottish Environment LINK; and John Thomson, director of strategy and communications with Scottish Natural Heritage.

As we have the witnesses' written submissions, we will not have any opening statements and instead will go straight to members' questions. I open the bidding with Peter Peacock.

Peter Peacock (Highlands and Islands) (Lab): What does the panel think of the argument made by Government officials at last week's meeting that, as the process set out in the bill will result in better sustainability of flood management, it is not necessary for the term “sustainability” to be stated in the bill? I am particularly interested in hearing from Scottish Environment LINK, which has mentioned the issue in the past, and from Mr Clayden who, as sustainable forest management policy adviser, presumably understands the legal meaning of the term.

Perhaps Mike Donaghy could go first.

The Convener: Don’t all rush at once.

Mike Donaghy (Scottish Environment LINK): I am happy to go first. One of the bill’s main principles is sustainability, which is our key to the future—for Scotland and everyone. We must understand that although sustainability is complex and sometimes difficult to define, we must work in a sustainable way. Taking a sustainable approach to flood management will allow us to deal with the unit, and in dealing with flooding we must understand that the unit is the river catchment, which is where all the problems start and where they have their effects.

How would we go about dealing with flooding? We would start by talking to everyone who is impacted by it or has a role in cutting down the impact or influencing it in some way. We would identify such people and groups, then we would get them to work together in a coherent and effective way for the long term. Having an integrated catchment approach and considering everything that must be done is the way forward for modern flood management. That is the sustainable approach.

Peter Peacock: In a sense, you are arguing what the Government officials argued at last week’s meeting, which is that the process that the bill will set up embraces the sustainable approach. However, is the bill lacking because it does not contain the word “sustainable” per se?

Mike Donaghy: Yes. It is great that the bill is about taking a sustainable approach, but where is that said in the bill's long title or short title? If we could get that into, say, the long title, anyone who picked up the act in future would know right away that the legislation was about sustainability—that would be up there in black and white and there would be a line in the sand. The bill is not about saying, “Let's see what we can get away with,” as we used to do; it is about a new approach.

Peter Peacock: I would be grateful for comments from the other witnesses on that.

Hugh Clayden (Forestry Commission Scotland): In forestry, we now take sustainability as read in everything that we do. The way in which the industry has developed over the past 15 to 20 years is entirely predicated on sustainability being taken as read, so we do not need telling that sustainable flood management is what is meant in the bill. That approach pervades everything that we do; it is the combination of the social, environmental and economic, with good buy-in through consultation and sharing of ideas, and it is based on good if not perfect evidence. Sustainability is part and parcel of everything that we do and of whatever the Scottish Government proposes.

The Convener: Before John Thomson comes in, I have a question. Is the argument that the bill does not deliver sustainable flood management, or is it that it does, so the argument is about the small bits and pieces? Mike, are you saying that the bill should say that it delivers sustainable flood management? Is the argument about the bill as a whole, or is it simply about having the word “sustainable” somewhere in the bill?

Mike Donaghy: It is more the second, convener.

The Convener: Right. So it is not a substantive argument with the bill itself; it is more about putting something about sustainability on the face of the bill.

Mike Donaghy: Yes, and making the intentions clear from the start.

John Thomson (Scottish Natural Heritage): In our written evidence, we argued that it would be helpful to have a specific reference to sustainability in the bill. We believe that the bill will create a framework in which sustainable approaches can be adopted. Certainly, the policy memorandum suggests that that is the intention. However, we suggest that it would be helpful to have a statement of purpose that makes it clear...
that we seek sustainable approaches. Apart from making it clear that that is the intention, such a statement would provide a peg that would, if need be, allow sustainability to be defined and, indeed, redefined. Although, as Hugh Clayden said, the concept has been around for a long time, we are still learning. We are certainly learning what sustainable flood management means in practice. Therefore, it would be helpful to have the word “sustainability” in the bill and to have the opportunity, if need be, formally to interpret and reinterpret the word in the context of flooding.

The Convener: Can I just press you on that? Is the argument that the word should be in the bill but there should be no definition of it?

John Thomson: Ideally, there would be a definition of it in the bill as well.

The Convener: Is there unanimous agreement—not just among the three of you, but across the board—on what that definition would be? If we examine the word “sustainability” and the arguments about its definition, will we open up an entire debate about what an interpretation section might say?

Mike Donaghy: It might help if we accept a number of points. First, the Parliament has already produced pieces of legislation that use the word “sustainable”, so we should not redefine it. Secondly, sustainability in flood management is about an approach; it is not about the approach. There might be several choices, all of which are sustainable. It is not desirable to identify only one way of doing things. There will be a range of options.

The Convener: So you do not want too specific a definition.

Mike Donaghy: There is already a pretty good definition of sustainable flood management. I was involved in coming up with it through the flooding issues advisory committee and the flooding bill advisory group. I am quite comfortable with the existing definition, but I know that there are groups that are less comfortable with it, because they find it too technical to understand. I do not want too specific a definition, but we will still need a working definition.

The Convener: I think that Bill Wilson wants to follow up on that.

Bill Wilson (West of Scotland) (SNP): I have another question for SNH, which is not specifically on that area.

The Convener: You do not want to come in on question 1.

Bill Wilson: No—that was Peter Peacock’s question.

Peter Peacock: My next question moves on rather neatly from what the witnesses have just said. The bill will help to deliver sustainability, but another aspect of it relates to the use of natural flood management methods, techniques and approaches. Last week, Government officials argued that it might be problematic to define too tightly a presumption in favour of the use of natural flood management techniques. Part of their argument was that highlighting that approach could be problematic for the management of the process as a whole. Will you comment on the desirability of having a presumption in favour of the use of natural flood management techniques and on the Government officials’ point that that could be problematic?

John Thomson: I have read last week’s exchanges. I feel that there is merit in having a presumption in favour of natural flood management. Like Mr Peacock, I feel that that in no way would amount to prescribing that that must be the outcome; it would merely be a statement that natural flood management is an option—indeed, the first option—that should be examined.

The reasons for that are several. First, natural flood management captures a concept that is fundamental to the idea of sustainability, which is about working with rather than against nature. In addition, natural processes are much more likely to deliver associated multiple benefits than other approaches, so there is a presumption that the natural flood management option, if it is feasible and will deliver the desired outcome for flood risk management, is the one that is likely to bring the widest set of benefits beyond that primary purpose.

Mike Donaghy: I agree completely with what SNH has just said. I think that the Scottish Government has viewed a presumption in favour of the use of natural flood management as prioritising that approach and saying that it must be followed. I would argue that given the number of benefits that come from having natural flood management as a tool in one’s toolkit for achieving sustainable flood management, if one has the option to incorporate natural flood management in one’s approach, one should do so. Maybe it is the idea of having a presumption in favour of natural flood management or of prioritising it that is causing problems. We might need something that is a little stronger, such as a duty to consider it, or even something that is a bit more definitive, but we do not want babies to be thrown out with bathwater. If natural flood management can be done, it should be done.

10:15

Hugh Clayden: Our locus is always in the natural flood management part of sustainable
flood management, so that would be our starting presumption—that is where we would come in. I can see the argument that an overemphasis on the word “presumption” might make people feel that that must always be the solution, but sustainable flood management should always consider natural flood management as part of the suite of objectives.

Part of our experience—and, having been flooded, I can speak personally—is that people can doubt that a natural flood management process will work in the here and now, although it might work in future, and might well need a great deal of persuading that natural flood management is the solution in all cases. Therefore, we should have a presumption that natural flood management will always be considered, but I would fight against saying that it will always be the solution.

Peter Peacock: That is a helpful clarification; I thank all the witnesses.

Government officials and, to some extent, the policy memorandum argue that capturing a duty on the Scottish Environment Protection Agency to consider natural features has gone a long way towards meeting the requirement for a presumption in favour of natural flood management. What is your view on that?

Also, several people, including Scottish Environment LINK, have argued that we need to capture a definition of natural flooding processes as opposed to just features. What do you mean by processes? Is that essential, or even desirable?

It is not clear to me that section 16 of the bill is sufficient to have an impact other than on SEPA at a high level. What would the impact of section 16 be on local flood management plans? Notwithstanding the point about processes, is section 16 strong enough?

Mike Donaghy: I will deal with those points.

The first question was about whether such a definition is essential or even highly desirable. A key message that we must get over about the new theme of natural flood management is that it is about more than just features. Features can be wetlands, flood plains, or wet woodlands, for example. If someone who does not know anything about natural flood management—and there could be a lot of them about—takes that at face value, they could just think, “Well, we’ll just put those features in,” and think that processes will be associated with the features. However, they could put the wrong feature in the wrong place at the wrong time.

The process, in conjunction with the feature, gives us the effect. The definition of natural flood management is the restoration of natural features and processes to lower flood risk. Therefore, it is true to say that when we put in a natural feature, a process will be linked to it.

To anyone who is trying to interpret the definition or to engage in work on the ground, it will be much clearer if the word “processes” is included in the definition.

The second point is fundamental. Section 16 looks a little bit odd. In effect, it asks SEPA to take a low-resolution, national look at the potential or capacity for natural flood management in the Scottish river basin, although that information will be used and implemented right down at the local plan level, through local authorities. That is probably the wrong resolution if we want to achieve anything. SEPA will be looking at the top level of detail that will be used at a catchment or subcatchment level, and that is a mismatch. We have section 24, and then there will be implementation through section 29, on local flood risk management plans. We must find a way of getting SEPA, the local authorities and the other responsible authorities to work together to get the right resolution for the approach to implementation.

Peter Peacock: I accept your argument on my first point, but on your second point, are you saying that although section 16 places a duty on SEPA to look at natural features at the national level, it does not place a duty on local authorities and others when they are developing local plans to have the same regard to natural features? Is there a disconnect in that sense?

Mike Donaghy: A disconnect exists, but not precisely in the way that you describe. The disconnect relates to the resolution or level of detail. The proposal is the equivalent of handing a big map of Scotland to someone in Edinburgh and telling them to use it to reach Leith. The resolution and the scale would be wrong. We need to find a way of collecting the information at the correct level, so that it is useful locally.

Peter Peacock: I would be grateful for comments from John Thomson or Hugh Clayden on natural processes and the other issue.

John Thomson: I support what Mike Donaghy has said on both counts. I acknowledge that some reluctance might be felt about using the word “processes” in the bill, because it might not be readily defined. I am not sure whether it has been customarily used in legislation, but Mike Donaghy is right to say that processes are fundamental, that we should recognise that and that the bill should be explicit about that.

Hugh Clayden: The issue is all about definition. We work in forestry, where natural features are part and parcel of processes. We do not regard a woodland as anything other than a process, too—
it is not about the trees but about everything else that goes on. The key point is that a feature must be functional—that can be dealt with through a definition or through inclusion of a process. I take it on board that a feature without due process and functionality will not do what it should do. There is something in how the term "feature" is defined. That is not an issue for us; we understand that a feature includes processes. However, if the bill is to be used as a tool to help others, more definition would help.

I take the point about the resolution, but SEPA will have a key role in setting the tone and the frame for looking closely at natural features. The resolution at local plan level is less of an issue. The various advisory groups will involve a range of people who press home the point that processes are important at the local level. Nationally, it is difficult to define processes other than by setting the tone broadly. The concern that exists can be accommodated within the existing advisory structure.

Liam McArthur: You all unequivocally support a presumption in favour of natural flood management, which the committee supported in its inquiry into flooding. The Forestry Commission’s submission mentions the time lag between the implementation and the effectiveness of natural flood risk management projects—Mr Clayden mentioned that in an earlier response to Mr Peacock. Does a conflict exist between the long-term objective of the presumption in favour of natural flood management and the more immediate flood risks that might need to be addressed through harder engineering solutions? If so, how will that conflict be managed?

Hugh Clayden: That question is hard to answer in the abstract, because the answer depends on local circumstances. I did not intend to say that natural flood management processes are always long term. If a site has an existing woodland or wetland feature, quick wins can be obtained by undertaking simple and inexpensive measures such as drain blocking. However, I had been thinking of the establishment of a flood plain woodland, for instance. By definition, it will be several years before that starts to make an impact and years beyond that before the maximum impact is achieved.

The issue is how the two elements work together. I am conscious that people are being flooded now and that they want a solution now as well as for the future. A parallel system might be worth thinking of. When a natural flood management process cannot be implemented immediately because we have nothing on which to implement it, we might need to rely first on hard engineering for today’s events and increasingly flow in natural flood management to cope with the longer-term, larger events that might occur. That will always come down to local interpretation. Local circumstances will dictate the mix.

Mike Donaghy: Let me take Hugh Clayden’s point a little further. The quality of the Scottish Government team that we have been working with is very high, and its outputs are good. On the point about whether there are natural flood management measures that we could take right now, I am a bit frustrated by the fact that we saw things that could be done right away in 2004, when WWF started its demonstration site.

Hugh Clayden gave the example of a flood plain forest. That will indeed take some time to have an effect—trees grow slowly. However, if we were to block off drains in uplands that are not used any more, that could have an almost instant effect. There are things that can be done right away. My frustration is that we have been saying that for many years now and we are only now about to embark on the whole project of natural flood management demonstration sites. One focus should be on what we can do right now that would start to make a difference. We could do something in the uplands, probably. If there is a lot of uncertainty about it, let us go to an area where there is less risk of getting things wrong. There are areas in the uplands where we could do things and measure the effects. Let us not use a project that will last about 10 years as an excuse not to do anything for the next 10 years.

Peter Peacock: I wish to move the discussion on again. You will be glad to know that I will shut up shop soon—I am sure that the committee will be glad to know that, too.

The Convener: I am anxiously looking at the clock.

Peter Peacock: Absolutely. I am conscious of that.

We will be going through all the processes that are contained in the bill and we will get all the local plans and so on sorted out, but people have been surprised that there is no specific duty under the bill to implement any of those plans. We heard arguments last week about why that is the case, including the contention that to provide a specific duty to implement might supersede other general duties. Do you think that the bill would be strengthened by a specific duty to implement the plans that are agreed to?

John Thomson: I was a bit puzzled by that argument. I might be wrong, and I am certainly not an expert on much of the legislation under which local government operates, but my understanding is that local government has many mandatory duties. In debates on local authority budgets, the decision on where the money should go is very much influenced by whether a duty is mandatory.
or discretionary. I was surprised by the argument that a mandatory duty could not be imposed on a local authority. I would have thought that Government imposes such duties all the time. People might ask whether the matter is felt to be so important as to justify such a duty, but I would think that the mounting evidence of growing flood risk is a good reason for making the duty mandatory.

Mike Donaghy: We strongly agree with a duty to implement. We are dealing with a new theme, sustainable flood management, and other sub-themes such as natural flood management. We are finding our way with that. There will be a natural reticence among practitioners to get involved—they might say that they simply do not understand. Allied to that is a piece of proposed legislation showing that flood hazard maps must be produced. However, the bill is weak on saying “Go out and do it.”

The dangerous thing is that local authorities and other organisations are already indicating that they do not have the money. We can just imagine what will happen: authorities will retreat into themselves and do the absolute minimum to meet the requirements of the law. That means that even a really good piece of legislation will produce only a limited effect on the ground.

10:30

Hugh Clayden: I appreciate the complexity of the arguments about implementation and duties, so I will restrict my comments to the Forestry Commission Scotland, which, as the Scottish Government’s forestry directorate, has a duty to implement Scottish Government policy. Therefore, we will have a duty to implement what is in the bill.

The Convener: That is helpful.

Elaine Murray (Dumfries) (Lab): We talked about the duty on local authorities, but there are other responsible authorities, such as SEPA and the Scottish ministers. Should a duty also be placed on them, particularly given the issue to do with funding flood defence schemes?

Mike Donaghy: Yes, I absolutely agree with that suggestion. The whole point is to achieve change on the ground that will lower flood risk and secure benefits for people. Anything that makes that happen is a good thing.

Elaine Murray: This question is for SNH and Forestry Commission Scotland. SNH expressed concern that it might not be designated as a responsible authority, which might mean that its input to the process would come too late to be effective and might even be counterproductive. At last week’s committee meeting, Government officials countered that argument by explaining that they were saying not that SNH would not be a responsible authority but that they would put the matter out to consultation, given that the general duties on responsible authorities will be onerous. Will you elaborate on whether you should be a responsible authority?

The Convener: I take it that the witnesses from Forestry Commission Scotland and SNH have read the evidence that we heard last week.

Hugh Clayden: Yes.

John Thomson: Yes. The key point is that we want to be involved at an early stage, as Dr Murray said. Whether that requires us to be designated as a responsible authority is perhaps debatable, but there would be great benefit all round in our being involved at an early stage. In our submission, we highlighted the dangers that could arise if we are not involved at an early stage.

The Government has onerous responsibilities under European directives, including the Natura directives, and we have safeguarding responsibilities in that regard. It is our fervent desire to find ways of reconciling those duties with sustainable flood management and the mitigation of flood risk, but we can do so only if we are brought into the process at an early stage, so that we have an opportunity to explore the options. We want to have that role, whether or not we end up being designated as a responsible authority, and we are pleased that the Government seems to have in mind such a role for us. However, it might be good to consolidate our role by formally making us a responsible authority.

The Convener: Government officials argued that doing so would place far more duties and obligations on you than you might be prepared to shoulder. Do you understand that that was their concern?

John Thomson: Yes, I understand that. There would certainly be resource implications, which are always a concern for us, but we think that great gains could be achieved.

Hugh Clayden: Forestry Commission Scotland would welcome the opportunity to become a responsible authority, but before legislation committed us to such a role we would want to know a great deal about what it would mean. We are fairly relaxed about responsible authorities being designated in secondary legislation.

The principle is important. We want to be involved in discussions early, so that we can help the process rather than come in at a late stage to criticise. We have had experience of being a responsible authority under the WEWS act—

The Convener: Will you expand the acronym, for the purposes of the Official Report?
Hugh Clayden: Yes, I am talking about the Water Environment and Water Services (Scotland) Act 2003. There is no doubt that whatever one feels about the WEWS act, being a responsible authority concentrates the mind wonderfully.

Alasdair Morgan (South of Scotland) (SNP): Involvement is fine, but given the general duties that fall on responsible authorities—some people suggest that almost every quango in Scotland will be a responsible authority—is there a danger that when too many people are involved, nobody will take proper responsibility? The advantage of the current situation is that we have a short list, potentially, and we know where the responsibility lies. Will there not be an awful lot of opportunity for buck passing if we designate you all as responsible authorities?

Hugh Clayden: It depends on what we are responsible for. Although I recognise your point, you can define the levels of responsibility and make things happen.

John Thomson: I echo that and add that engagement in initial discussions about appropriate management is critical. When it comes to delivering that management, I see great advantage in responsibility being relatively concentrated, albeit with an obligation on bodies that might have only a minor part to play to play that part nonetheless. However, it is engagement in the initial analysis and decision-making process that is critical.

The Convener: Do you agree that there might be a danger of a protracted debate about levels of responsibility because different organisations will be looking for different definitions?

Hugh Clayden: Perhaps it would be helpful to reflect on the role of a responsible authority under the WEWS act. Had that responsibility not come to us, there would have been difficulties for organisations such as SEPA in talking knowledgeably to the forestry industry. Being a responsible authority helped us to go out and do that work for organisations such as SEPA. There is a level of understanding out there, and bridging the knowledge gap was a fundamental part of our role.

The Convener: Mike Donaghy nodded his head. It looked as if you were agreeing with the concerns about dissipating responsibility among too many organisations. Do you want to say something about that, briefly?

Mike Donaghy: The point comes back to the overarching principles behind the bill: it is about taking a new approach, which means identifying who is likely to be effective in trying to achieve it. We have to identify at an early stage who we need to talk to and who needs to be involved. I do not want to get down to the nitty-gritty here and say to those involved, “This is your exact role and this is where you come in.” The principle is to involve the people whom we need to achieve the purpose of the bill.

John Scott (Ayr) (Con): For the sake of a rounded and integrated approach, would it make sense to have the same responsible authorities under the bill as under the WEWS act? Otherwise, it would be anomalous to have different responsible authorities under two different but complementary pieces of legislation.

Hugh Clayden: We would welcome the dovetailing of flooding issues with water framework issues to do with water quality and quantity. In relation to our role, we see those areas working together logically.

John Thomson: I echo that.

Rhoda Grant (Highlands and Islands) (Lab): Evidence has been submitted to the committee regarding community and public consultation and concerns that the bill might not afford adequate space for the public to take part, especially given that planning procedure will be involved. Do panel members think that the bill provides adequately for participation? If not, how can it be improved?

The Convener: The witnesses appear to be silent. If you do not have any suggestions or comments, please say so and we will move on.

Hugh Clayden: Our only comment is that community buy-in is essential. If we have learned one lesson, it is that that is how you get effective delivery—you have to bring people with you if you want legislation to be effective.

Mike Donaghy: That is important. We have evidence, particularly to do with measures on the ground, that if you do not involve the local community you can end up with lots of problems. However, you must look at the mechanisms that enable the community to engage properly rather than simply be consulted. That works both ways, because members of the public or stakeholders have to be aware of their role in the process.

John Thomson: I refer to Hugh Clayden’s comments about the importance of dovetailing river basin planning under the water framework directive with flood risk management. Community engagement is important in both processes. The scales may be different at times, but such engagement is important. Obviously, there are benefits in not overloading communities, but opportunities need to be sought to integrate involvement across the board.

Bill Wilson: SNH’s evidence refers to the need to amend the cost benefit rules to take fully into account the benefits of soft engineering. Will the SNH representative and the other witnesses expand a little on that?
John Thomson: I am not an expert on the details of the cost benefit techniques that are used, but our point was that the scope of those techniques is too narrow, which means that some wider benefits cannot be taken into account in reaching conclusions. The thrust of our argument is that multiple objectives and benefits should be considered and we must ensure that the methodologies that are used to assess the cost effectiveness of individual schemes take those objectives and benefits fully into account.

Mike Donaghy: I welcome Mr Wilson’s question and thank him for asking it. WWF and RSPB Scotland have tried to address the issue during the process. We have found that there is a dearth of information to help in considering benefits other than monetary benefits. Of course, much of a cost benefit analysis involves economic analysis, but we must start to explore ways in which we can allow social and environmental benefits to be given a value and considered. In a sustainable context in particular, it is essential that we allow appropriate assessments of costs and benefits, which includes non-monetary costs and benefits.

Hugh Clayden: Considering such benefits is a particularly important part of considering natural flood management. It is hard to conceive of something that could be done for natural flood management that would not have a non-market benefit. Such benefits ought to be considered.

Of course, the difficulty lies in valuing non-market benefits. We know from the past 20 years in forestry that it is difficult to put a precise value on such benefits, but techniques are being developed. Our forest research agency has done a great deal of work on valuing social benefits. More research needs to be done on evaluating strict environmental benefits, but there is already fairly good empirical evidence on some non-market benefits.

I suspect that the answer to Bill Wilson’s question is that the benefits of soft engineering must be considered. The information might not be perfect at the moment, but I am sure that there is sufficient information to add to an evaluation.

The Convener: We are running well behind if we want to reach our time target, so I ask members and witnesses to be as succinct as possible, otherwise, at this rate, we will be here until around half past 1. Committee members may not wish to be sitting here at that time.

Liam McArthur: The bill will create a requirement for local authorities to prepare rolling six-year flood risk management plans. I think that Scottish Environment LINK in particular has argued in favour of setting out a longer-term vision in the bill. I would welcome an explanation of the reasons behind that argument.

SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?

Mike Donaghy: I feel qualified to talk about the first issue, but I will have to get my colleague from the RSPB to give a more detailed written answer on the second one.

The Convener: We can follow up the second issue.

10:45

Mike Donaghy: If we want to plan for anything, especially to do with flood risk management, we cannot tell people not to worry because we have it all planned for the next five or six years. We must look much further into the future and take a much more cohesive approach. A good timescale for flood risk management is probably 24 or 25 years. There must be a funding mechanism to support such plans. Scottish Environment LINK believes that a 24-year timescale would fit neatly with the six-year cycle for reappraisal of all maps and plans. We think that the timescale should be much longer than six years, as flooding is a long-term issue and we must find ways of supporting and funding plans.

John Thomson: A longer-term perspective is essential. It is part of the answer to Mr McArthur’s earlier question about whether we will need to use more hard engineering solutions in the short term. As Mike Donaghy said, that may be the case, but often such solutions are needed because of mistaken decisions that were taken in the past. If we want to avoid that situation in the future, we need to take a much longer-term view.

There are upland sites in the Natura 2000 network that are not water-dependent features but may be affected significantly by measures that we want to take under flood risk management plans. For example, afforestation of upland catchments would affect Natura 2000 sites. The issue is important.

The Convener: I will allow this evidence-taking session to run until 11 o’clock. We will follow up with written requests any questions that are outstanding at 11. That is the best and fairest way forward for the witnesses and everyone else.

Elaine Murray: Concerns have been expressed about possible conflict over land use. The organisations that will be represented on the next panel—the Scottish Rural Property and Business Association and NFU Scotland—suggest that there may be a conflict between the use of land for agriculture and the use of land for flood risk
management. They are concerned about whether the use of land as flood plain will make the remainder of estates unviable and threaten future security. Would you like to comment on that?

We are aware that the climate change bill consultation includes a proposal to lease 25 per cent of the Forestry Commission’s estate to the private sector on 75-year leases. Is that proposal of concern to the commission? Will it affect the commission’s duties and ability to use its estate for flood risk management?

Hugh Clayden: We understand the potential conflict that the NFUS, in particular, has highlighted in relation to the value of prime agricultural land. Currently, such land represents about 6 per cent of Scotland. As climate change happens, the figure will probably rise to 20-odd per cent, according to the latest thinking on mid-scenario assessments, so we need to be aware of the issue. In my view, most of the impact of natural flood management techniques that involve forestry will be further up the glen, rather than in prime land at the bottom, although we need a great deal more evidence on that. Desynchronising flood peaks in smaller catchment areas is likely to have the biggest impact; down at the level of prime agricultural land, the catchment is on a much larger scale, so the battle will probably have been lost by then. I do not rule out entirely action at that level, but we must address the significant issue of food security and the best use of prime land. The problem need not be on quite the scale that has been suggested.

On the climate change bill consultation, forestry will require to be managed to the United Kingdom forestry standard. That in turn will relate to guidance, such as the forest and water guidelines, which will be revised next year. I am quite certain that, in that revision, we will take into consideration not only the water framework directive but the new flooding legislation. That will be reflected in forest and water guidelines that are an adjunct to the UK forestry standard. There will be a protection on woodland management that will not be on estate management.

The money that might be freed up for use on climate change may be targeted at flooding measures as well as other environmental and connectivity measures. There could be benefits from that and safeguards against what I suspect you are asking about.

Elaine Murray: My perhaps simplistic concern is about what happens if you lease out part of a forest and subsequently some of it is required for flood risk management after the development of flood risk management plans. If you lose control of that land, is it not more difficult to use it in the most appropriate way?

Hugh Clayden: In the UK—and Scotland is no different—over the years we have fought to get away from the forest law aspect of compulsion and used persuasion and incentives. There is no reason why that should not continue. If there is a need for particular flood regulation duties, we already have the instrument of the Scottish rural development programme to fund them.

Mike Donaghy: One good principle of the bill is that it will allow grown-up, sensible discussions to be had. For example, there is the question of food or flood. What is the value to society of a big haugh or arable field? If it is identified as both lowering flood risk and being important for food production, the decision must be made, in a democratic and fair way, on its inclusion or exclusion from a flood risk management plan. However, if we know that we can store water on such a field but that we do not, that risk must be paid for and reduced somewhere else in the catchment.

The discussion appears to assume that fields are not flooded. Under big floods, they are flooded, no matter what is in them. Floods do not respect what crop is in them, so they are flooded under certain floods. They are also defended by non-engineered banks. Although they primarily protect fields, they may also afford some protection to communities downstream, so we have to be careful before mucking about with them. The hydrologists lead on that one.

We must make decisions at a catchment level. We need more locally grown food, but we also need flood protection. The bill should allow us to make the grown-up decisions on how to achieve that. There is a limited number of huge arable areas in Scotland, and they are usually where rivers are extremely large, so there is little that we can do in any case—such areas are where water stores itself during big floods. Natural flood management will largely be concentrated further upstream.

John Thomson: I endorse what has been said and will add one point. When we talk about resources, we must recognise that, if flood risk management is to work, money may need to be transferred between different budgets to ensure that it is available for the most cost-effective solutions to the flood risk management problem.

Bill Wilson: The Scottish Environment LINK submission says:

“we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach”.

We have a letter from the Government that states:

“The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding”
and that it is
"considering an amendment that would clarify the basis on
which SEPA are to identify local plan districts."
Would that satisfy your concerns?

**Mike Donaghy:** It would largely satisfy our
concerns. What matters is that the appropriate unit
is used.

**The Convener:** Does Bill Wilson have another
question?

**Bill Wilson:** I had one, but it related to my
earlier question about ensuring that social,
economic and environmental factors are
considered when flood management is addressed.

**The Convener:** Are you happy with the answer
that you were given earlier?

**Bill Wilson:** I think so, to be fair.

**Elaine Murray:** The Government has indicated
that it is considering lodging amendments at stage
2 on surface water management. There is no
mention of coastal flooding in the bill. Are the
witnesses content that the bill adequately covers
coastal flooding as well as surface water flooding?

**Mike Donaghy:** No, we are not content. That is
the Cinderella issue. Two things are missing from
the bill: we need much more on surface water in
urban areas, and we need much greater
consideration of how we work with coastal
processes to protect people and reduce flood risk.

**Elaine Murray:** Can you suggest amendments
that would address your concerns?

**Mike Donaghy:** Yes.

**Elaine Murray:** Concern has been expressed
about the period before the provisions on flood risk
come into effect in 2015. Local authorities have
said that they do not have enough money in their
budgets to address issues in areas that suffer from
severe flooding. Do the witnesses have a view on
the potential impact of delays in implementing the
bill’s measures as a result of inadequate funding?
What should local authorities’ priorities be, if
funding is limited, as they say it is?

**Mike Donaghy:** Your second question is the
easiest to answer. The first priority of local
authorities is to protect their constituents—the
people. That is what flood management is about.

Your first question was more interesting. In
Europe, Scotland is regarded as a leader in the
modernisation and development of flood
management—people are looking to see how we
do it. If we produce a good piece of legislation that
is appropriately funded, we will have a great
opportunity to do a good job. We must get away
from the mindset according to which there is a
great big muckle fund that we must all go for.
Sustainable flood management does not work like
that; it opens up other funding streams. We have
to be clever and innovative in how we access
those funding streams, so that the strain is taken
off one pot and shared among a series of pots.

**The Convener:** Do other witnesses want to
comment on funding?

**John Thomson:** Mike Donaghy’s point is, in
essence, the same as the one that I made about
the need to bring together moneys from different
sources.

**The Convener:** Peter Peacock has a question,
but I warn him that I will hold fast to what I said
about ending this part of the meeting. You have
two minutes.

**Peter Peacock:** I will be brief. Scottish Water
has a role to play and will have funding needs. Will
its ability to fund schemes properly be impacted on
by the Water Industry Commission for Scotland’s
role?

**Mike Donaghy:** Scottish Environment LINK is
concerned that Scottish Water’s regulator—the
Water Industry Commission for Scotland—seems
to be dominated by the economic approach. WICS
claims that it allows Scottish Water to do
everything in respect of its sustainability duty, but
we see with our own eyes evidence that Scottish
Water does everything as cheaply as possible,
and probably with the short term in mind. If a duty
in relation to sustainability were placed on WICS, it
could take a longer-term approach and encourage
Scottish Water to retrofit sustainable urban
drainage systems. SUDS are extremely
expensive, so members can imagine that Scottish
Water tends to install a big pipe rather than
something that is more sustainable and sensible.

11:00

**The Convener:** Members had a few more
questions to ask, but we will follow up our inquiries
after the meeting. I thank the witnesses for
coming. No doubt there will be a continuing
exchange between you and the committee during
the next few weeks and during stage 2.

I welcome to the meeting the next panel of
witnesses: Nigel Miller, vice-president of NFU
Scotland; Dr Karen Smyth, rural development
manager for the Scottish Rural Property and
Business Association and a frequent flyer with the
committee; and Gareth Williams, policy manager
north with the Scottish Council for Development
and Industry.

Because of time constraints, I will first take
questions from members who are interested in
funding, to ensure that the matter is covered.
Rhoda Grant: Councils are obviously responsible for their own maintenance but, in submissions to the committee, some have expressed concern that under the bill they will be unable to recover costs from landowners who have not maintained their flood management schemes. I would like to hear whether the panel thinks—

The Convener: Rhoda, will you speak up a bit? It is very difficult to hear you at this end of the table.

Rhoda Grant: Sorry.

The Convener: It is probably because you are turning your face away from us.

Rhoda Grant: Is the panel happy with what I said?

Dr Karen Smyth (Scottish Rural Property and Business Association): I am sorry—I did not quite get it.

Rhoda Grant: Local authorities have expressed concern that, under the bill, they will be unable to recoup expenditure incurred in carrying out flood prevention work on land where the landowner has not completed such work. What is the panel’s view of the suggestion that councils should have the power to recoup that money from landowners?

The Convener: Quickly, please.

Nigel Miller (NFU Scotland): Our strong view is that if the work is for public good the public should pay for it. Under the proposed integrated approach, agricultural land will be used as a safety net to protect other communities or interests. There will, of course, be costs and benefits, but many of the costs will be pushed on to landowners and agriculture, while many of the benefits will be felt by other communities and land users. That might well be correct, but I feel that land managers and agriculture should not foot that bill.

Dr Smyth: It is.

Nigel Miller: Such work would be part of an integrated plan with wider impacts on land management as a whole.

The Convener: Not necessarily. It might be work that should have been done anyway. Do you see the difference?

Nigel Miller: Could you give us a specific example of the kind of maintenance that you think landowners might not be doing?

The Convener: Clearing blocked culverts.

Nigel Miller: If a blocked culvert on somebody’s property was causing a problem, it would be reasonable to ask them to maintain it.

Dr Smyth: If it is a legal matter, it should go through the appropriate channels, with fines imposed if necessary. However, cases would have to be dealt with individually, so it is difficult to comment.

Nigel Miller: You have to take into account the implications of the water framework directive, which makes the maintenance of some channelling quite difficult for farmers and landowners. A SEPA process, which is not easy, has to be gone through. Constraints relating to drainage and to channelling watercourses are being put on farmers. Those constraints almost negate the farmers’ own interests, but they are being put on the industry because of wider benefits.

The Convener: Does Mr Williams want to comment?

Gareth Williams (Scottish Council for Development and Industry): It is probably not so much of an issue for our membership.

Peter Peacock: I have a question on finances that probably is for Gareth Williams. In its evidence, the SCDI raised issues to do with funding. Some of your members have spoken about their difficulties in getting insurance for their premises or property. At a UK level, a deal has been done by the insurance industry to stick with flood insurance, provided that sufficient long-term public investment is made in better flood management.

Is the bill adequate, or could it be stronger in requiring consideration of long-term flood investment, which would have the benefit of improving businesses’ ability to get insurance?

Gareth Williams: We welcome the indications that thinking will cover a 25-year period, although...
we would like it to go even further ahead if at all possible. I understand that the Association of British Insurers is in talks on a statement of principles, which would cover Scotland, and that the ABI has welcomed the bill. It is good that we appear to be ahead of the game.

We have some concerns over the lack of detail on investment and on the development of plans, and we would like more detail on the funding over a long period. How will the funding feed down to a local level? We are concerned about flood management schemes being given the priority that they deserve.

**Alasdair Morgan:** We have just had an emergency budget statement, and the chancellor has said that, beyond 2010, public expenditure will be severely constrained. Do you really expect the Scottish Government to give commitments to really long-term funding?

**Gareth Williams:** It will never give hard-and-fast commitments to long-term funding, but it could give us some idea of the funding that would be required as part of future plans. Decisions would be taken in each budgetary cycle, but it would be clear that the Government was working towards longer-term improvements.

**John Scott:** My questions are for all the panel members and are more general. What impact will the bill have on the people whom you represent? What problems and burdens do you foresee? How might they be addressed?

**The Convener:** Discuss—briefly.

**Nigel Miller:** As representatives of farmers, we think that, at a strategic level, a lot of priorities are already laid on agriculture, whether in relation to access, food production, biodiversity or landscape. Those issues all underpin communities. If we are to address them all and are given an additional focus or burden, it is inevitable that we will not be able to deliver quite as well on some of them. That should be taken into account in the national picture.

As far as the bill’s impact on small businesses is concerned, there has already been a discussion about the loss of some of the best land in Scotland. There is obviously not a lot of good land in Scotland—only two farms have grade 1 land on them, and one of them is right next to the River Tweed. We are already losing good land for food production due to increased building. There is a more pertinent issue further up the hill, in that very small flood plains are likely to be key in natural flood management schemes. Those small flood plains are crucial to the overall economics of agriculture in the areas concerned. If they are removed or if real constraints are put on their use, large areas will become unviable and land may be abandoned in some hill areas. We are all pretty supportive of natural flood management, because it makes a lot of sense, but in reality flood management is not very natural; it is about selectively deciding where we want a flood to go.

We must look carefully at the cost benefit analyses, because being under such constraints raises issues for farmers. Obviously, their management options and the procedures that they carry out on the land will be constrained if the land is in a flooding area, so that will have an economic impact. Beyond that, if the land is lying wet, there will be constraints in relation to poaching and spreading fertilisers or muck. Constraints may be placed on wetlands for dirty water control if the area is likely to be flooded. There are also implications for how a tenancy is valued if those pressures are put on a tenant. There are many practical issues. As well as the direct implications for the land involved, there are also implications for the surrounding land. Those factors must all be taken into account and costed, and the money must be recouped in some way if rural areas are to remain viable. That is a real challenge and it is not clear that it has been taken up in the bill.

**Dr Smyth:** I agree with Nigel Miller. It has already been proposed that land managers or farmers may have to change watercourses or plant additional trees, or that lower-lying land may need to be flooded. Such measures could have a significant economic impact on land managers or farmers, and that needs to be adequately costed.

The lack of information on costs does not give land managers great security. As Gareth Williams said, a 25-year funding strategy would be beneficial. I acknowledge that because of the economic situation it is difficult to ensure that level of commitment for 25 years, but we must provide some level of security to land managers. If they are going to have to change watercourses and plant trees, where will they get money from in five years’ time when the SRDP is not focused on those agendas? They need security beyond that timeframe.

**Gareth Williams:** Businesses make their investment decisions 25 years in advance in relation to both investing in their own businesses and moving into new areas. If they are making decisions based on that period of time, they need security for that period.

**The Convener:** Even if the Government was in a position to put forward a notional figure for a strategy that would continue for 25 years, it could not bind any future Governments.

**Gareth Williams:** I acknowledged that earlier. I accept that decisions will be taken on a budgetary cycle, but a wider buy-in to those plans, which seems to be the bill’s objective, would provide greater reassurance for businesses that the plans
would be taken forward by any future Government. We would welcome that.

Our members welcome the bill as a whole. We also welcome the plans to speed up the planning system. As the committee knows, that has been a particular challenge in Elgin and other parts of Moray. We look forward to having a little more detail on how the plans might be achieved and how local businesses might be able to input into the process.

11:15

Nigel Miller: We have concentrated on the direct impacts and the costs of those. At the planning stage, if we want to take an integrated approach in catchments, perhaps we could try to minimise the impacts by considering solutions further up the hill and how we manage wetlands and moorland. We could try to use those areas as reservoirs for holding water, or at least slowing down flows. That might involve hard engineering to supplement or build up existing features. In the long term, that could be more cost effective than relying totally on flood plains and hard solutions further down.

Hard solutions will be part of an integrated plan—they must be if flows are to be maintained through critical infrastructure, such as bridges and villages. The integrated plan is part of the solution. We hope that organisations such as the Scottish Agricultural College and the Macaulay Institute will fit into the planning process, so that wider views of land management and land management options are taken into account.

Rhoda Grant: The SRPBA's written submission expresses concern about SEPA being designated the competent authority. We have heard evidence that ministers will be able to give directions to SEPA and that SEPA will be issued with guidance on carrying out its role. Does that give you any comfort?

Dr Smyth: Our concern is that SEPA is a regulator and not a facilitator or co-ordinator. Procedures should be put in place to ensure that SEPA undertakes its job appropriately. For example, an ombudsman could oversee how SEPA undertakes its duties. We want to ensure that SEPA is checked in some way. Anything that attempted to do that would be a form of reassurance.

Rhoda Grant: The proposal is not to create an ombudsman or a different body to watch how SEPA performs. There will be Government overview of the way in which SEPA carries out its role and the Government will give guidance and direction.

Dr Smyth: Guidance and direction will be helpful but, in our experience of working with the water framework directive and the area advisory groups, we found problems on a range of levels. Therefore, advice and guidance may not be the only answer. There is perhaps a need for training and additional resourcing. I do not know whether you want me to go into the details—I submitted evidence on that in our written submission.

The Convener: Yes, we have that.

Dr Smyth: It highlights some of our concerns with the area advisory group process. We would like those to be addressed to assist in the implementation of the bill.

Alasdair Morgan: I will continue on the issue of the role of various organisations. In written evidence, the NFUS has expressed “doubts as to whether local authorities, who should be accountable to all local interests, are best able to judge the needs of their areas.”

What is behind that? If the local authorities are not best placed, who is?

Nigel Miller: We want a coherent and integrated plan, but having SEPA defining the overall goals at district level and then rolling that down to a process that is driven by local authorities will not necessarily feed through seamlessly the policy priorities and likely solutions. At times, local authorities, by their nature, will be driven by particular interest groups, rather than take an holistic approach.

The Convener: So who should do it?

Alasdair Morgan: The idea is to have a cascade down from a central view, which will get gradually more local. Obviously, each solution must be implemented locally. I do not know exactly what you have against local authorities, but if they are not given the role that they are to be given under the bill, who will do that instead?

Nigel Miller: We do not have anything against local authorities. However, in our experience, in a forum that is chaired by a local authority with various competent authorities feeding into it, it is difficult to get a meaningful view in for those who are directly affected or the land managers who are involved. Some helpful comments have been made about the need for a robust advisory board. If such a board were feeding into the process, that might protect those people. If there was some sort of ombudsman to ensure that those interests were taken into account and balanced in the overall outcomes, that might be a solution that we could support.

Alasdair Morgan: Is there something specific about the way in which local advisory boards are itemised in the bill that you have concerns about?
Nigel Miller: There is a level of commitment in the bill to take into account the views of those who are directly affected and the land managers, but it is not a clear commitment. There is also a commitment to the provision of funding, but that is not totally clear, either. If we are to be comfortable that land managers and those who are directly affected will be properly represented, there will need to be a clearer definition of the level of representation that there will be and a commitment to real funding for those representatives to ensure that they can commit the time to balancing up professional submissions from competent authorities and local authorities.

Alasdair Morgan: Okay. I will move on. The bill does not mention many responsible authorities—even SNH is not one. The written submission from the SCDI suggests that Scottish Water, the Forestry Commission, SNH, Transport Scotland, Network Rail and the regional transport partnerships should be responsible authorities—it even mentions that power companies could be, if they were not private bodies. Would that approach not diffuse responsibility far too much? Is not one of the benefits of the bill as it stands that, although there are mechanisms to get people involved, the number of responsible authorities is very small so that responsibility can be pinned down?

Gareth Williams: The submission to which you refer was our response to the consultation document, not to the bill. In it, we pointed out some issues that the Government might want to consider—we were not necessarily saying that we wanted those bodies to be involved. However, I take your point. I felt that the original consultation document failed to consider critical infrastructure such as transport infrastructure and some of the electricity infrastructure, so I suggested that the Government might consider how those bodies might be involved.

I listened to the evidence that the previous witnesses gave. We would have concerns if SNH were not involved, if it was suggested that it may object to flood prevention schemes at a later stage. That would be an issue if we were trying to front load the planning system as much as possible and to avoid having to deal with late objections.

Not all those bodies should be responsible authorities, but we suggested that they were worthy of consideration.

Alasdair Morgan: Okay. Fair enough.

The Convener: Excellent. Rhoda Grant wants to ask about public participation in consultation.

Rhoda Grant: Some of the submissions that we have received express concerns about public participation, how that would be resourced and whether the bill adequately allows for it. The previous panel talked about public engagement and said that it should be more than consultation. Does this panel agree with that? If so, is the matter adequately covered in the bill? If not, what steps should be taken to allow members of the public, communities and stakeholders to engage with the process?

Dr Smyth: We raise that as a concern in our written submission. In our experience, the area advisory groups have not been sufficiently funded and representatives have not been able to represent their whole catchment. For example, an SRPBA representative may not necessarily know what the farmer two miles up the road is doing to his land and how he is dealing with it. It is difficult to represent a whole catchment, so we asked SEPA whether village hall consultations could be carried out. SEPA’s response was that it was concerned that the resourcing was not in place to do that. The bill should be adequately resourced to allow for more community-level participation where required and when advisory groups feel that it is necessary for and beneficial to the development of the plans.

In our submission, we note that section 43(8) says that financing “may” be made available to members of a sub-district flood risk advisory group. Many advisory group members have to pay out of their own pockets to attend meetings and some will have to travel long distances to participate in meetings. We encourage the committee to consider providing financing for those people who represent their communities at a local level.

Rhoda Grant: Is that an either/or suggestion? Do you want funding for village hall consultations or for advisory group members?

Dr Smyth: Both.

Nigel Miller: I have already touched on the matter and my comments run along pretty similar lines to those of Karen Smyth. There is a requirement for producer organisations to be represented on the relevant body.

The key point that Karen Smyth made is that it is difficult for any representative to get a handle on the requirements of all the communities and individuals whom they represent, and there will be some pretty extreme impacts on some of them. SEPA or the local authority should appoint someone to be a point of contact to whom local people and communities could feed their issues by way of local meetings, individual interview or letter.
The point-of-contact person could sift through the issues, prioritise them and feed them into the process to ensure that individuals are not disfranchised. That is a real danger, given the level of representation that is likely to be put in place and the cost constraints on people in trying to make inputs. There is also the issue of trying to keep the relevant bodies manageable in size.

There will be extreme impacts on some communities, businesses and land managers. The concerns of those people should be fed into the process. Perhaps the word “ombudsman” is not the right one to use, but funding for advocates of some sort should be found so that such persons can be put in place and play a part in the process.

Dr Smyth: I agree with Nigel Miller. I have received a number of comments from our members about their involvement in the area advisory groups. One suggestion was that there should be a technical support officer whom they could approach for information. Much of the information that is provided at flood risk meetings is high level and technical. If you are a farmer or land manager without a scientific background, it is difficult to get up to speed on some of the issues and the pace has also been very fast. I encourage the committee to consider how the issue could be addressed.

Gareth Williams: I want to echo a couple of points that have been made thus far. First, our members are looking for an influencing role, rather than one that is simply advisory. Secondly, I agree about the technical nature of the discussion. We have found that in our involvement in river basin management planning. Also, meetings tend to be dominated by those with scientific knowledge. It would be helpful if some way could be found for communities and businesses to engage fully in the process and understand what is being discussed.

The Convener: We turn to questions from John Scott on the Water Environment and Water Services (Scotland) Act 2003.

John Scott: In its submission, the SRPBA argues that

"the structures already set up for the implementation of the Water Framework Directive water basin planning are used in the implementation of the Floods Directive ... However, these structures should be reviewed”.

Which aspects of the WEWS act structures are in need of review for the purposes of implementing the flood risk management process?

11:30

Dr Smyth: I have probably covered part of that already. It is about how the area advisory group structure operates. There is a need to step back and consider how the groups have functioned and what can be done to improve the way in which the area advisory groups and the national flooding advisory group interact and work together in order to make the process more streamlined and effective. The technical support that I suggested would be useful must also be considered.

The Convener: I take it that the other witnesses agree, given that they are nodding.

I know that Elaine Murray wanted to ask about flood risk management plans and land use, but I think that we have dealt with that already. I invite Peter Peacock to ask about natural flood management techniques and the ability to strengthen them.

Peter Peacock: I think that you were all present for the previous evidence session. There are arguments for strengthening the bill’s provisions on national flood management techniques. The SRPBA and the NFUS have both expressed concern about that, which they articulated in earlier answers. Would you be concerned about that? Would your concerns be eased if there were adequate compensation packages for the impact on farm activity or land owning activity?

Nigel Miller: We would certainly be concerned if there were a presumption that natural flood management should take precedence over other systems. We see natural flood management as part of a suite of measures that should be used in an integrated way. Hard engineering would be part of that suite in some cases but not in others. We have to consider how we can manage the water flows in upland areas more rationally, too. That is what we are looking for. Certainly, there will be times when some areas will have to be used for natural flood management. In such cases, we would definitely look for compensation, not just for the direct impact on the land and the management constraints that were imposed, but for the impact on the overall viability of the business unit. In the uplands, such land is likely to be a key part of the viability of the unit. Compensation is vital for individuals, but before we get to that stage, we want the plan to be right. If we get the planning right, we can minimise the number of areas that are blighted, which would be a real win for everybody.

Dr Smyth: The most appropriate method must be implemented, whether it is hard engineering or soft engineering. By introducing a presumption in favour of soft engineering, you might not be implementing the most appropriate method. As part of sustainable flood management, you have to have a toolkit of methods to implement.

We want to raise points about compensation, but perhaps we had better do so in writing. As a general principle, it is vital that the compensation provisions are right, so that land managers are not
dissuaded from becoming willing participants. SEPA and local authorities need to work with land managers to ensure that the appropriate compensation is in place. We have concerns about the wording of the compensation provisions in part 6, but I am not a legal expert, so I think that it would be better if we provided a written submission on that.

Peter Peacock: I want to pin you down on this a bit more. I take the point about compensation; you can write to us about that.

I want to clarify what Mr Miller said. Am I right in thinking that you are not opposed to a duty that requires the relevant authorities to consider natural flood management methods and that you would be concerned only if flood management had to be delivered through natural mechanisms, rather than hard engineering, in all circumstances?

Nigel Miller: We accept that, in some circumstances, natural flood management would be the correct way forward. It might be uncomfortable for the business or the land manager involved, but it would be the optimal solution. In some cases, it might be the only solution if we wanted to protect a certain community. However, the costs, benefits and other practicalities of the individual situation would have to be considered.

The Convener: Do the witnesses from the SCDI have anything to add?

Gareth Williams: We will need a mix of measures.

John Scott: I declare an interest as a farmer. I understand what Nigel Miller said about the disproportionate effect that using flood plains would have on the viability of upland farm units, but perhaps he might like to discuss it a bit more to point out the importance of flood plains to such units.

Nigel Miller: More than 80 per cent of Scotland is under the less favoured area scheme, so huge areas fall into that category. Upland farming is very much livestock oriented, but overwintering the livestock requires some sort of area for cropping to get winter keep. In most of our upland areas, that cropping area will probably be on or very close to the flood plain. Beyond that will be grazing, permanent pasture and hill ground. If the flood plain is taken out of the equation and is no longer part of the business, the unit is not viable because the farmer cannot produce winter feed or does not have sheltered or safe areas for lambing.

Even if the land is not flooded a lot of the time but is open to frequent inundation or lies wet, there are real constraints on cropping. Under regulations concerned with maintaining good agricultural and environmental condition, farmers are not allowed to spread manure or fertiliser on waterlogged land. That also constrains grass production on such areas. If there is frequent inundation, there will be gravel deposits, which might prevent the farmer from cutting grass. Those deposits would have to be removed. There will also be ingress of weeds—ragwort, for example, which is poisonous—to which there is a cost and which cause problems. Moreover, Scottish Water has agreements with SEPA, certainly in southern Scotland, whereby the local sewage works can discharge pure sewage into the watercourses in flood conditions. If that inundates land, there are issues not only with animal health but with public health and farm assurance status.

The use of flood plains has a huge impact on one’s ability to manage a farm and get a viable system within the constraints of Scottish agriculture. In many cases, a small area of quite good land on the flood plain can ensure viable activity over an area 10, 20 or 30 times larger than that flood plain. In small valleys, if two or three of those areas are taken out of use, whole communities will be lost and the landscape will change. We have real fears that that might happen.

The Convener: The SRPBA and SCDI both have some concerns about compulsory purchase in the context of flood management. I ask them to expand a little on those.

Dr Smyth: I have already raised some issues on compensation under part 6. If possible, it would be better to incentivise or provide funding rather than use compulsory purchase. If compulsory purchase is necessary, we would like a bit of work to be done on it, but I am not part of the legal team so I cannot really expand on that.

Gareth Williams: We accept that there is a case for compulsory purchase but are anxious that businesses receive fair value when it takes place and that there is also an independent element to any appeals process.

The Convener: Would the same concerns also apply to the powers of entry for SEPA that are contained in the bill?

Dr Smyth: I would have to go back to the legal team on that. Nigel Miller mentioned that, if land is moved into flood plain management, it means that part of a farm is taken out. That is a real concern for us. If the overall size of farmland is reduced, it can have a significant impact on farming practice. That needs to be given full consideration.

The Convener: Would Gareth Williams like to say something on the powers of entry?

Gareth Williams: The presumption should be that there is agreement with the landowner. If the powers of entry are used, the local authority, or
whoever enters the property, should be able to justify doing so and there should be compensation for any damage that might occur.

The Convener: Okay. Rhoda Grant wants to ask about the linkage between structure plans, development plans and flood risk management plans.

Rhoda Grant: The SCDI’s written submission talks about the conflict between Government policy on house building and flood management plans. It says that it would be “inappropriate” to insist that development plans conform to the flood management plans. What should the balance be between those two kinds of plan? There is an obvious need for house building, but there is an equally obvious need to protect people from flooding. How should the plans interlink and where should the balance of power lie between the plans?

Gareth Williams: The development plan would take precedence and the flood management plan should inform the development plan. We take the view that some building on flood plains is inevitable and desirable, given the wider social and economic context. The insurance industry, too, accepts that that will take place. However, we recognise the need to include flood resilience measures in those developments.

Nigel Miller: There is general agreement that flood risks are increasing, that we need to look to the long term and that not taking flood risk into account in a development is a big mistake. That would multiply or generate the challenges that we would face. It would also increase costs not just on the farming industry, but on other sectors and local government as well. That does not make sense.

Scotland is lucky in that it has quite a small population and there is a reasonable amount of land. For goodness’ sake, let us develop in areas where that will not increase pressures and costs or blight large areas of productive land.

The Convener: Bill Wilson has a supplementary question to ask.

Bill Wilson: According to global warming predictions, the sea level will rise by anything between 10cm and a catastrophic 5m and there will be an increase in the number of storm surges. What is your view on the Government saying that significant developments cannot be built below, let us say, a height of 1m at coastal sites?

The Convener: Should the Government do that? I do not think that Bill is suggesting that that is what the Government has decided—he is asking what your view on that would be if the Government were to do that.

Nigel Miller: As somebody with no expertise at all in the matter, I totally agree with you.
SUPPLEMENTARY SUBMISSION FROM FORESTRY COMMISSION SCOTLAND

Thank you for your request for supplementary information following our meeting with the Rural Affairs and Environment Committee on 26 November.

Our comments on the additional questions are as follows:

[Questions posed by the Committee appear in italics]

Question 1: Interim arrangements

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 2015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

FCS is designated as a Responsible Authority (RA) under the WEWS Act and we are pleased that consideration is being given to the designation of a similar RA role for FCS under the Flood Risk Management (Scotland) Bill. During the transitional period, and with our potential role as a RA in mind, we would anticipate being involved in appropriate catchment-scale, natural flood management measures on the national forest estate and on private land (supported through the SRDP). We would, therefore, like to see FCS's prospective role reflected in any transitional arrangements.

We welcome the establishment of the Scottish Government’s Natural Flood Management Group, of which FCS is a member. The group is developing a scoping study to frame a 10-year research strategy for natural flood management (NFM) techniques and this will include the establishment of demonstration projects. The outputs from this research will help develop the empirical evidence required to support, and build confidence in, NFM during and beyond the transitional period.

Question 2: Flood warnings

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This question is not within our competency to answer.

Question 3: Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

It is essential that assessments of flood management schemes incorporate the wider range of environmental and social benefits/services provided by NFM. For example, appropriately designed woodland can provide, simultaneously, climate change mitigation benefits (e.g. carbon storage, wood for fuel) and adaptation benefits (e.g. enhancing the functional connectivity of habitats), recreational potential and wider, water-related environmental benefits such as temperature control and reductions in diffuse pollution and/or sedimentation. Such ecosystem services would be part of the economic case for supporting land use change in appropriate locations.
A holistic approach would be a prerequisite for assessing the true value of NFM.

Some of the wider environmental benefits could be captured using simple cost-benefit analysis. However, a complementary approach could be the use of multi-criteria decision analysis (MCDA) tools. Such approaches tend not to compare monetary costs and benefits, but instead provide a way of comparing scenarios in terms of the benefits perceived by stakeholders. Crucially, the approach provides a transparent, repeatable, and auditable mechanism for public participation in MCDA. Our Forest Research colleagues would be pleased to provide additional information on such tools to the Committee.

**Question 4: Coastal flooding**

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

This question is not within our competency to answer.

**Question 5: Natura**

Finally, during the evidence session Liam McArthur specifically asked ‘SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?’

If these issues read-across to other legislation it would seem appropriate to refer to them in the Flood Risk Management (Scotland) Bill. However, SNH would be the competent body to advise the Government on this matter.

**SUPPLEMENTARY SUBMISSION FROM SCOTTISH ENVIRONMENT LINK**

**(RSPB SCOTLAND AND WWF SCOTLAND)**

**Interim arrangements**

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 2015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

One of our main concerns with regard to interim arrangements is the means by which funding of flood risk management measures is distributed to local authorities. Funding which is made available for flood risk management should be spent on lowering flood risk to communities. Currently, the funding is distributed to local authorities as part of a block grant. There are concerns that funding could be re-prioritised to help meet other pressing obligations, leaving communities at risk. In some cases, funding may need to be allocated to one or more local authorities in any one area. In these circumstances, funding for major flood protection schemes may be best held centrally rather than allocated to local authorities through single outcome agreements.

In light of achieving multiple benefits it will probably also be appropriate to seek funding from more than the traditional flood sources, and this may require integrated funding streams.

**Flood warnings**

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty...
about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This is not our area of expertise

Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

The value of ecosystem services is difficult to value and so is often neglected in traditional cost-benefit analysis. This is because, traditionally, the cost-benefit analysis only assesses monetary values in a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis.

Whilst the evaluation of non-monetary benefits in economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding.

We would suggest that the best way forward would be to introduce a hybrid of cost-benefit analysis with multi-criteria analysis to capture the non-monetary factors. A shift to a broad definition of the purpose of flood risk management (including social, environmental and economic objectives) combined with cost-effectiveness analysis (CEA) would broaden the range of options considered, and drive the adoption of multi-functional solutions. This is because CEA places an emphasis on meeting the objectives set in a way that maximises value for money, and not in meeting a Cost Benefit Analysis threshold within a tight framework of flood defences.

CEA is used widely in the implementation of the Water Framework Directive and in the decision making process about the most cost-effective programme of measures. CEA helps to select the best combination of measures to achieve a particular objective. The steps taken in cost-effectiveness include:

- Identify nature and scale of the problem
- List potential measures to achieve reduction in flood risk
- Assess the cost of individual (or package of) measures
- Assess the effectiveness of individual (or package of) measures
- Combine cost and effectiveness information for ranking measures based on cost-effectiveness ratio

Both costs and effectiveness analysis should in this case include both monetary and non-monetary information.

Coastal flooding

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

This estimation of uplift in Scotland has recently been put under scrutiny in a study of coastal flooding by Dundee University¹, which suggests that the uplift of land due to the melting of Scottish ice sheets has been over-estimated and potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20cm higher in the Clyde estuary and 28cm higher

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¹ Coastal Flooding in Scotland: A scoping study, 2008, SNIFFER report
in Moray and Aberdeenshire than previously estimated. It is also likely that the net sea level changes in the Firth of Forth had shifted from a net fall to a net rise since the 1970s. Whilst the estimation of sea level rise in Scotland requires further exploration, it is clear that developments taking place within the 1m contour could, in the near future, experience high risk from coastal flooding and sea level rise. We would therefore agree and strongly support the view that no further development should be allowed to take place below the height of 1m. However, at certain locations, the risk of coastal flooding may be further exacerbated due to the increased risk of storm surges and riverine flooding, in particular in estuarine locations. This needs to be further factored in the assessment of flood risk for a particular location.

Natura

Finally, during the evidence session Liam McArthur specifically asked ‘SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?’

Section 19 of the Bill on Flood Risk Maps (subsection (v)) includes the assessment of areas designated for the protection of habitats and species where the maintenance or improvement of the status of water is an important factor in such protection. This definition is very limited as it only considers water dependant sites. It therefore potentially excludes Natura sites which do not directly depend on water, including many terrestrial sites and upland sites, but nevertheless could potentially be damaged by flooding (e.g. impacts of flash floods, sea level rise impacts to terrestrial habitats).

We would recommend a very small change to include all Natura sites in the Flood Risk maps section of the Bill, in order to assess potential adverse consequences associated with flooding to Natura sites.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Interim arrangements

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 20015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

There is uncertainty about what the arrangements will be between the passing of this new legislation and the development of the first flood risk management plans. Clear transitional measures need to be drawn up so that responsible authorities and stakeholders know to what standards they should be working.

The process of preparing plans will in due course help to prioritise work on flood risk management, and to gather the data needed to inform these decisions, but if schemes are taken forward in the meantime, they need to be developed in the spirit of the new legislation.

The new legislation should help responsible authorities to take forward new approaches to flood risk management even without plans being in place. A catchment approach to flood risk management could be adopted and natural flood management measures could be included in flood protection schemes. We would very much hope that any guidance on the transitional period would make this clear so that an immediate start could be made in implementing the new approach to developing flood protection schemes. We would also wish to see any cost benefit analysis carried out to assess schemes broadened to take into account the wider benefits of natural flood management measures, even when it was not possible to ascribe a precise economic value to them.
Flood warnings

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This is not an issue on which we feel competent to comment.

Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

In some cases, economic benefits arising from natural flood management measures can be quantified and where well-founded figures are available, SNH would wish to see them used. But an absence of calculated economic values should not result in these benefits being overlooked. Any analysis of the benefits of flood management measures should take account of all potential benefits, even if a monetary value cannot be assigned to them. This can be achieved, for example, through multi-criteria analysis.

Adopting an ecosystem approach can help to identify the benefits of natural flood measures, for instance for managed realignment. The following extract is taken from an Environment Agency report:

“Looking at the benefits from managed realignment schemes, the main one (up to now) has generally been flood defence. The newly created inter-tidal zone acts as a natural sea defence, dissipating the energy of incoming waves and water. The new defences (if any) are set back from the sea, cheaper to build and often shorter. The saltmarsh also acts as a sponge, absorbing flood water and thus increases the storage of flood water, which would otherwise be flooding dry land.

The re-creation of inter-tidal habitat as a result of coastal realignment also has a number of other benefits, both economic and environmental. These benefits depend on the amount and the type of the habitat created and the speed of that habitat recreation. Location within the estuary and the salinity and topography of the site also matter. Taking an ecosystem services perspective, the benefits of new inter-tidal habitat also include:

• Benefits to commercial and recreational fisheries: increased fish populations as the new habitat acts a feeding ground for juvenile fish;
• Carbon sequestration: as the new habitat builds up, it absorbs carbon;
• Water quality benefits: for example, the stripping of polluting nutrients from the water course and the absorption and/or metabolism of contaminants such as heavy metal, nutrients, toxic organic compounds, and so forth;
• Air quality benefits: it may be that inter-tidal habitats are particularly good at absorbing PM 10s and some ozone precursor chemicals, through dry absorption as well as the more normal processes of wet deposition. These benefits are likely to be greatest close to people in urban areas;
• Biodiversity benefits: many birds home in on inter-tidal habitats and the fish they attract. Thus there are also broader ecological, recreational and tourism benefits; and
• Regeneration benefits: the creation of new wet habitats in an urban area provides a welcome respite from the built-up city.”

Valuing ecosystem benefits

By William Watts and Ino Kremezi, Environment Agency.
http://www.environment-agency.gov.uk/commondata/103599/ecosystem_benefits_2146628.doc [Link no longer operates]
Coastal flooding

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

It would seem reasonable to question the sense in building close to sea level when levels are expected to rise and storm surges are likely to increase. Any significant development close to sea level is likely to lead to calls for flood protection in the future. The simplest measure for avoiding flooding is to avoid developing in areas likely to flood.

Natura

Finally, during the evidence session Liam McArthur specifically asked ‘SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?’

Our evidence drew attention to the fact that when flood risk management plans are being developed they will need to consider whether any of the measures in the plan would be likely to affect Natura features. The Bill as it stands only refers to water dependent features. Flood risk management plans might well have a significant effect on other types of Natura feature. If that were the case the competent authority would have to conduct an appropriate assessment to determine if the plan would have an adverse effect on the integrity of the Natura site. The question therefore arises as to whether the Bill should make specific mention of this requirement, which stems from other, existing, legislation.

The Conservation (Natural Habitats, &c.) Amendment (No.2) (Scotland) Regulations 2007 at regulation 2(2)(f) amends regulation 47(1) of the Habitats Regulations by inserting at (b) ‘in relation to all other plans and projects’. This acts as a safeguard to ensure that plans and projects not specifically referred to in regulations 69-85(e) of the Habitats Regulations are subject to the requirements of regulations 48, 48(a) and 49. It is for the drafters of the legislation to consider whether this is sufficient or whether they feel that specific amendments are required such as inserted by regulation 20 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007, which introduced a new regulation 84(b) to the Habitats Regulations that specifically refers to abstraction and works authorised under water legislation.

SUPPLEMENTARY SUBMISSION FROM SRPBA

The Rural Affairs and Environment Committee has asked the SRPBA to comment on the written evidence of South Lanarkshire Council in relation to recovery of costs from landowners who have failed to adequately maintain watercourses on their land.

SRPBA comments in response to South Lanarkshire Council (the Council) evidence:

- One of the aims of the Bill is to “establish a clear framework of responsibility with duties and powers defined so that each organisation involved knows exactly what is required”. This has been partly achieved by defining SEPA’s and Local Authorities’ responsibilities but it is not clear how far landowners’ responsibilities extend. The Council’s evidence has helpfully raised this issue.
- Our understanding is that currently property owners have primary responsibility for flood protection for their own property. This is to be distinguished from flood prevention which may go further. It is reasonable to expect property owners to be responsible to protect their own properties. Landowners would also be bound by the common law prohibiting them from doing anything to inhibit the enjoyment of another’s property and from interfering in the natural course of water on their land.
- It is not clear whether the Council would expect property owners to have responsibility for flood prevention works which have a wider benefit to the general public.
- Individual landowners and the general public cannot be expected to have full information and technical expertise to take on principal responsibility for proactively assessing and responding to flood risks.
- The standard of maintenance and protection required would naturally be subjective. The standard required for flood risk management could differ from that required for flood prevention. The standard could be difficult to assess without technical expertise. It could be difficult to enforce and could lead to a rise in claims against landowners.
- Local authorities are empowered by Clause 49 to do anything necessary to implement measures described in a Flood Prevention Management Plan and to do anything necessary to reduce flood risk in its area. As indicated above landowners would be restrained by the common law. The Bill would have to be very clear that any interference in a watercourse or another’s property was justifiable in the interest of flood risk management, and protect landowners against claims in this respect.
- Section 57 allows local authorities to recover expenses from landowners for repairs or reinstatement of flood protection work carried out under section 49 which is a result of the landowner’s actions. Does this not give the Council enough comfort as regard works which are for the wider benefit?
- Maintenance of watercourses could provide minimal benefit to the proprietor but be of huge benefit to neighbours’ and the general public. e.g. A bund could be on agricultural property to protect one field from flooding. An indirect consequence of this bund is that a low-lying local village is also protected from flooding. We would be concerned that the Council’s proposals would allow the local authority to recover costs for ‘lack of maintenance’ where the landowner could not be reasonably expected to individually bear the costs of maintaining the watercourse for flood management purposes to benefit the general public. Would there be provision for all properties benefited by flood risk reduction and watercourse maintenance to share the costs of doing so? The local authority, as funded by taxpayers, would be in a better position to fund flood risk management and watercourse maintenance for these purposes.
- The Bill makes provision for identifying flood risk and taking steps to prevent damage, but it is impossible to predict accurately how flooding will occur. To lay responsibility on individual landowners or allow local authorities to recover costs for lack of maintenance from landowners would be unfair as the persons assessing risks and maintenance standards would be the local authority and SEPA.

SUPPLEMENTARY COMMENTS ON COMPENSATION PROVISIONS

Land Acquisition - Part 4, section 55

Section 55 permits a local authority to acquire land for the exercise of its functions under Part 4 (i.e. flood risk management). The provisions on compulsory purchase incorporate the Land Clauses Compensation (Scotland) Act 1845 by incorporating the 1947 Act (which incorporates the 1845 Act).
It would be preferable to state clearly that the 1845 Act is incorporated and compensation is to be assessed in accordance with the Compensation for Land (Scotland) Act 1963. That way you would be confident that any land take will be compensated in accordance with the existing compulsory purchase compensation legislation. At the moment that is not clear. The provisions mirror the Flood Prevention (Scotland) Act 1961 Act but that does not mean they should just be accepted and this is an opportunity to improve on them.

Compensation

Part 6 deals with compensation for other disturbance to land etc and, in summary, provides as follows:-

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Section 71:
- Compensation for damage caused by SEPA in installing or maintaining apparatus or building or engineering works in respect of a flood warning system under section 66
- Compensation for damage caused by Local Authority in consequence of:-
  - Scheme operations - defined as an operation described in a flood protection scheme in pursuance of section 52 (2) (a)
  - Any other exercise of LA's general powers to manage flood risk under section 49 (1)
  - The exercise of a right of entry under section 68(2)

SRPBA Comments:-
- The onus is on the landowner to notify SEPA or the LA within a defined period and make a claim stating the heads of claim and the amount claimed.
- Any disputes are to be determined by the lands tribunal - although the Bill does not state at whose referral but presumably it should be by either party. This could be specified for clarity.
- In section 72 (2) compensation only payable if the damage is not attributable to an act or omission of the landowner in question. It is not clear what happens if it is partly attributable to him/her or his/her actions have made it worse but there was nonetheless damage. This needs clarified.
- Compensation is also not available where there is an omission by the landowner. This is unfair, particularly if the landowner does not know that the omission is happening or that it might have consequences that result in damage.
- Damage is defined in section 72 as being depreciation in value. We believe this would in practice cover injurious affection and severance, but it would be helpful if this was specified for the avoidance of doubt. Damage also includes being disturbed in the person's enjoyment of the land, but there is no clear inclusion of the 1845 Clauses Act nor any specific provisions that say that compensation will be paid for the value of the land taken (if any). We have to assume it is covered under s 72(1)(b) but it would be better to clearly state that.
- There is no express link between section 55 (land acquisition) and the compensation provisions.
- The provisions do not seem to provide compensation for loss or damage from temporary works - e.g. for SEPA under 66 1(a) or (b) but such works could give rise to damage.
- The term "scheme operations" is defined in section 84 by reference to s 52(2) (a) - that is the section which deals with the local authority's definition of the scheme - but you would be dependent on how the local authority has described the scheme - it might be vague or unclear, and most importantly, there may be unintended consequences which would not be compensated as this is drafted at present.
- It would be preferable to add a clause stating that compensation is available for land take and for damage or loss caused by any and all operations by the local authority or SEPA under the authority contained in this Act or something along those lines - although Parliament may want to limit compensation in some respects.
- Regarding local authority compensation, damage under section 49(2) appears not to be compensated.
- There is a time limit right to compensation s 72(2) (d) - apart from in the General Vesting Declaration procedure (under the Town and Country Planning (S) Act 1997 Sch 15, (which is 6 years) there is no time limit elsewhere in compulsory purchase compensation so this seems harsh and should be reviewed.
- There is also a need to give notice to claim compensation which is not usual. In normal circumstances it is sufficient simply to write a letter (no set style) claiming compensation. It needs to be clarified what is meant by notice - is it enough just to claim? Or do you need to raise an action in the Lands Tribunal to protect entitlement to claim to stop the 2 year cut off period?
Introduction

Scottish Water welcomes the opportunity to provide further evidence to the Rural Affairs & Environment Committee (RAE) on the proposed Flood Risk Management (Scotland) Bill.

Scottish Water provided evidence to the Committee in May 2008 and responded to the consultation “The Future of Flood risk Management In Scotland”. We are satisfied overall with the framework provided by the Bill and we welcome the collaborative approach taken to ensure the delivery of its requirements.

We would like to highlight the following issues which we feel have not been fully addressed by the draft Bill.

Integrated Urban Drainage & Surface Water Management Plans

If Scotland is to properly address urban flooding in the future then new urban developments have to be designed so that they do not add to the risk of flooding and integrated urban drainage and flood resilience must be built in from the start.

Surface Water Management Plans, such as those being developed for the Metropolitan Glasgow Strategic Drainage Plan (MGSDP), cover the interactions between sewerage systems, watercourses and surface water drainage to ensure that flood risk is appropriately addressed with the added benefit that development constraint, water quality and amenity issues can also be targeted in an holistic manner. The aim is to manage the flow of surface water through the urban environment using sustainable techniques such as Sustainable Urban Drainage Systems (SUDS), flow routing and the provision of undeveloped spaces that can be used as flood storage areas.

We believe it is essential that the development of Surface Water Management Plans should be one of the measures considered in achieving the objectives set by SEPA to manage flood risk within the Flood Risk Management Plans. Local Flood Risk Management Plans should then incorporate the Surface Water Management Plans. Scottish Water believes that Surface Water Management Plans should be referenced in the Bill under the Flood Risk Assessment and form part of the Local Flood Management Plans.

Scottish Water is currently looking to form standard agreements with all Scottish Local Authorities for the provision of integrated drainage arrangements. We are concerned that this approach is extremely difficult to organise with 32 Local Authorities and that such agreements may take years to put in place. We therefore believe that standardised agreements between Local Authorities and Scottish Water should be included as part of Local Flood Risk Management Plans.

Funding

Scottish Water is funded by customer charges. The priorities for what we spend customers’ money on are set by Government and Regulators through the Quality and Standards process for each four year regulatory period. We have assumed that Scottish Water will be funded through customer charges to deliver the requirements of the Bill.

We remain concerned that it is not clear how the various funding routes of all the organisations involved will be linked to allow efficient delivery of schemes to reduce flooding risk. We recognise that the Government decided not to proceed on the basis of creating a single national authority with a secure funding route. The proposed arrangement of Competent and Responsible authorities can work but its success will be reliant on the proper allocation of funding. The challenge for the Government will be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body.
As implementation proceeds the Government will have to keep the arrangements under careful review to ensure that Scottish Water securing funding through customer charges, for our capital contributions to any Flood Risk reduction scheme, remains the most appropriate route of financing. Alternatives may include relevant capital contributions to any Flood Risk Reduction Scheme being allocated entirely to the relevant Local Authority responsible for the scheme.

If Scottish Water is to be funded to contribute to specific flooding schemes then the flood management plans and costed solutions would have to be sufficiently developed to be included in Scottish Water’s Business plan two years prior to the start of the regulatory period. This will not be possible without a nationally prioritised list of flooding schemes. Producing this list and ensuring that it is included in the Quality and Standards process is the responsibility of the Competent Authority.

**Water Environment and Water Services (Scotland) Act 2003 (WEWS)**

Scottish Water believes that coordination between the River Basin Management Plan (RBMP) process and the Flooding Bill is essential. To ensure better coordination between the provisions in the Bill and the continuing implementation of the WEWS Act we suggest the Scottish Government may wish to consider the following issues.

- Data used by SEPA to develop RBMPs and Flood Risk management plans should have the same level of control and scrutiny.
- It would be advantageous to ensure that Flood Risk Maps and Flood Hazard Maps are compatible with the maps developed under the requirements of the Water Framework Directive so they can be displayed using the same GIS system and provide a comprehensive picture of Scotland’s water environment.
- Activities under the Flood Risk Management Plans (FRMP) and RBMPs should be streamlined to ensure the most efficient use of resources for the Responsible Authorities.
- Careful consideration should be given to how coordination between the activities under the Flooding Bill and WEWS Act will be carried out. Adequate time should be given to the Advisory Groups formed under the two regulatory regimes to consider issues requiring coordination.
- SEPA should demonstrate that the Programmes of Measures (POMs) developed under the WEWS Act do not conflict with the measures identified within the FRMPs and that the timescales for delivery are consistent with each other.

**A wider vision for Water Management**

Scottish Water believes that a long term objective for Flood Risk Management should be to reduce the overall level of flood risk in urban areas while facilitating the development of urban areas.

In the consultation document “Making space for water”, Defra outlined a strategy to address flooding and coastal erosion risk within the context of a long term overall vision. This approach sets the context within which all future legislation and strategies relating to the water environment can be developed.

Scottish Water believes that, to ensure that the framework set by the Bill achieves its full potential, it is essential a similar approach is taken and that all aspects of water management are brought together under a strategic vision in line with the Government’s objectives for Scotland.

In order to deal with the future demands on Scotland’s water resources brought about by climate change the strategy should cover issues such as green roofs, grey water re-use, minimising impervious area and proactive disconnection of surface water from combined sewers. Scottish Water believes that such a strategy could bring benefits by:

- reducing our carbon footprint (through reduction of energy used for treating and pumping both drinking and surface water);
- creating a better environment for people to live in through the provision of amenity and improved biodiversity;
- reducing pollution events caused by combined sewers overflows discharging excess wastewater during heavy rainfall; and
• reducing flood risk.

This would have to be a long term approach with investment being put in place now in the knowledge that it may take many years for the benefits to be realised.

Scottish Water
11 November 2008

SUBMISSION FROM SCOTTISH BORDERS COUNCIL

In general Scottish Borders Council welcomes the overall direction of the draft Bill but would like to make the following comments. Reference is made to the relevant section / paragraph of the Bill or other accompanying documents to which the comment relates:

Comment 1:- Scottish Water Responsibilities

Part 1: Section 1 – General Duty

The above sections places a general duty on the Scottish Ministers (SM), SEPA, and responsible authorities* to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, they must exercise their function under Part 3 so as to secure compliance with the Directive.

*Responsible Authorities are defined in the draft Bill as Local Authorities (LA), Scottish Water (SW), and any other public bodies and office holders as designated by SM.

Part 4: Section 49 – General Power to manage flood risk

The above section states that a LA may do anything which it considers;
(a) will contribute to the implementation of current measures described in any relevant local Flood Risk Management Plan (FRMP)
(b) is necessary to reduce the risk of a flood in its area which is likely to –
(c) occur immediately, and
(d) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or
(e) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).

Comment:- The above 2 sections give Local Authorities wide ranging powers to reduce the overall flood risk within their area. All forms of flooding are now covered by the Bill except where flooding relating to the failure of a sewage system is caused solely by a blockage or a failure in the sewage system. However it is not clear who would be responsible for upgrading a public sewer system, whether it be a foul or surface water sewer, if it was causing flooding of land following heavy rain. It is Scottish Water as a responsible authority and as the publicly owned company with responsibility for the public sewage system?

Comment 2:- Funding and potential Legal Challenges

Financial Memorandum - Paragraph 288

The Bill does not place a specific duty on LA to implement flood risk management plans. However, they will have an overall general duty to act, with a view to reducing flood risk and the Bill provides the framework to help local authorities and others to identify the most appropriate measures to address flood risk.

Comment:- One significant measure allowed for in the Bill is the implementation of Flood Protection Schemes (FPS) but it is unclear how these high capital cost schemes will be funded. A wholly transparent funding process needs to be put in place.
If due to lack of funds LA’s are unable to implement measures to reduce the overall flood risk to a level considered acceptable by the public are LA’s at risk of legal challenge?

Comment 3:- Ultimate Responsibility for Managing Flood Risk

Policy Memorandum - Paragraph 31

Although ultimate responsibility for avoiding or managing flood risk would still lie with land and property owners, the clear expectation is for certain public bodies to take a proactive role in managing and, where achievable, lowering overall flood risk. This new duty will, for the first time, place flood risk management on the same footing as other general duties on local authorities, such as the provision of education and other services.

Comment: -The policy memorandum repeatedly states that ultimate responsibility for avoiding or managing flood risk lies with land and property owners. This responsibility should be contained within the Bill.

Scottish Borders Council
11 November 2008

SUBMISSION FROM FIFE COUNCIL

It is considered that the Fife Council Corporate Response to The Future of Flood Risk Management in Scotland has been adequately addressed by the proposed Flood Risk Management (Scotland) Bill.

However, the following should be considered:--

Part 4: Section 57; This Section requires to more specific regarding the recovery of costs associated with the removal of debris, fallen timber and obstructions that are an identified flood risk, where private land owners do not act to remove the obstruction. This then normally falling to the Local Authority to act in order to reduce flood risk and to incur the associated costs. These costs should be recoverable from the private land owner by the Local Authority. This should also apply to general maintenance works. Section 57 appears to restrict the recovery of costs to repairs or reinstatement of flood prevention works. This is too restrictive. Section 57 should be linked to Section 49; General power to manage flood risk and Section 56; Assessment of watercourses etc.

Part 4: Section 60; Interim transitional guidance needs to be issued to cover the time gap between the Repeal of the Flood Prevention (Scotland) Act 1961, the enactment of the Flood Risk Management Scotland Bill and the preparation of Local Flood Risk Management Plans. Ongoing inspection, assessment and maintenance of watercourses require to continue throughout the transitional period and beyond. Will the transitional period retain the need for biennial flood alleviation reports, until such time as the three year cycle kicks in under the Section 32; Local Flood Risk Management; Interim Report?

It is considered that the preparation of process maps defining procedure, output and timeline regarding flood risk assessment, flood hazard maps, flood risk management plans and local flood risk management plans would provide useful supplementary guidance.

Fife Council
11 November 2008

SUBMISSION FROM LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY

Thank you for the opportunity to comment further on the Flood Risk Management (Scotland) Bill and the Scottish Government’s aims for implementing a comprehensive approach to sustainable flood management. In February 2008 the National Park Authority submitted a response to the
consultation document “The Future of Flood Risk Management in Scotland”. In this response the Park expressed the following views:

- The National Park Authority should be recognised as a responsible authority and should have a participatory role in the development of district and local flood risk management plans.
- There should be a clear process for National Parks to access funding for developing and implementing district and local flood risk management plans.
- The National Park Authority should have representation on Flood Advisory Groups where they are relevant to the Park boundary.
- Planning Authorities (including National Parks) should be required to take account of Flood Risk Management Plans when developing Local Development Plans.
- Ministerial approval should be sought for Flood Risk Management Plans and flood prevention schemes to ensure that the national values of the Park are taken into account.

The Bill in its current form provides for the National Park Authority’s interests in the following ways:

- There is provision in the Bill for the National Park Authority to be designated as a responsible authority if approved by Ministers. If the Park seeks to acquire this status it would be required to assist SEPA prepare flood risk management plans, flood risk assessments and maps.
- The National Park Authority will be consulted by SEPA and involved where appropriate in the development of District Flood Management Plans and flood risk assessments.
- The National Park Authority will be consulted by local authorities on draft Local Flood Risk Management Plans.
- The National Park Authority must have regard to district and local flood risk management plans when exercising planning functions.
- The National Park Authority will have membership on Flood Risk Advisory Groups at the district and sub-district levels.
- Ministers will have the authority to call-in proposed flood prevention schemes where the National Park Authority objects. Local authorities will not be able to apply section 54 for deemed planning consent to schemes that affect the Park area.

The National Park Authority is supportive of the way in which the Bill provides for the Park’s interests, however, would like to reiterate the importance of providing clarity for the Park’s involvement in the development of district and local plans, risk assessments and flood risk advisory groups. The Park is currently represented on four area advisory groups for the River Basin Management Planning process. The advisory groups represent the four catchments across the Park. Participating in more than one flood risk advisory group would be resource intensive. The Park is supportive of minimising the number of advisory groups that require its involvement and looks forward to negotiating the most workable and resource efficient way of securing its participation. I look forward to the Park’s continued involvement in the Bill process.

Loch Lomond and the Trossachs National Park
12 November 2008

SUBMISSION FROM ASSOCIATION OF BRITISH INSURERS

The Association of British Insurers (ABI) is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. They control assets equivalent to a quarter of the UK’s capital. They are the risk managers of the UK’s economy and society. Through the ABI their voice is heard in Government and in public debate on insurance, savings, and investment matters.

The ABI considers that the above Bill does generally provide an appropriate framework for flood risk management in Scotland. In particular, we note the arrangements being made to ensure that all authorities coordinate their activities and cooperate in addressing the risk of flooding. This will
allow the difficult issues arising from the increasing risk of surface water flooding to be addressed much more effectively than at present.

The key to achieving better management of flood risk in Scotland, beyond the introduction of the Bill itself, also depends very much on how it is implemented. We have, therefore, also commented on some aspects of this below.

We are currently discussing a Statement of Principles for flood insurance with the Scottish Government and as part of this we have identified that measures to achieve the following must be taken by the Scottish Government, working together with insurers:

- improve our understanding of flood risk through assessing both the probability and consequences of flooding from all sources including surface water;
- put in place a long-term (25+ years) strategy to reduce flood risk; set out the Scottish Government’s objectives and measures at a national level, ensuring effective and prioritised allocation of resource across each 6 year planning cycle, backed by local plans with realistic and deliverable objectives and measures; agree long-term outline spending plans that are aligned with funding arrangements for all responsible authorities;
- ensure that the planning system prevents inappropriate development in flood risk areas, and that any essential new development in high flood-risk areas is flood resistant and/or resilient;
- raise awareness in areas where flood risks are significant, encourage actions to mitigate and minimise the risks and costs of being flooded; and provide information about how to obtain flood insurance; and
- promote access to insurance for low-income households.

**Flood Risk Assessment**

We look forward to discussing the assessment of flood risk in detail with the Scottish Environment Protection Agency (SEPA). The Bill clearly identifies SEPA as the authority with responsibility, as well as the delivery, of this as required under the EU Floods Directive. However neither the Bill, nor the Floods Directive is specific on the detail and quality of the information to be delivered. We would like to discuss plans for more accurate identification of flood risk and better communication of this risk to both the public and insurers, for flooding from all sources.

Currently information on properties where the annual probability of flooding from rivers or the sea is higher than ‘1 chance in 200’ is not sub-divided at any higher annual probability level for the public and only to a limited extent, for insurers. This limits the extent to which insurers are able to charge premiums that equate with flood risk. As insurers seek to manage their exposure to risks that they can’t quantify, this could affect the availability of affordable insurance against flooding in parts of Scotland.

We would also like to see more accurate assessment of flood risk from the sea and from surface water, although we recognise that assessment of the latter is a developing science, both in Scotland and elsewhere in the UK. Despite this, it is important for Local Authorities to assess and take measures to address this risk in towns which both have and have not previously suffered from surface water flooding. The events in England in 2007 highlighted how serious this can be in areas which, with the benefit of hindsight, should have been seen to be at high risk of flooding, but which weren’t.

**Long-Term Strategy**

The development of a long-term (25+ years) strategy to reduce flood risk is potentially achievable under the framework that will be created by the Bill. However, we are concerned that the funding for this is provided from several streams, which are not aligned with each other or with the 6 year planning cycles required under the EU Floods Directive and that these funds are not ring-fenced.
Flood risk could be better managed if funds for flood risk management were separately identified and ring-fenced for this purpose.

The long-term strategy needs to identify those areas that don’t meet an agreed minimum standard; those areas that can be defended to this standard cost-effectively, with an investment strategy and timetable in place to do this; and a proposed approach to support property owners in areas that cannot be defended to this standard cost-effectively.

Planning System

We note that, generally, the Scottish Planning Policy (SPP7) does already ensure that planning applications are considered based on a proper assessment of drainage issues and flood risk and that there are plans to review this policy following introduction of the Bill.

On recommendation 23 in the Committee’s report and the response from the Minster for the Environment, we are pleased to note that a question asking previous owners whether the property has previously flooded, is to be included in the Property Questionnaire, which will be made available in a Home Report to all prospective purchasers of a property.

With regard to the recommendation that developers should be required to provide flood risk assessments for new developments to new purchasers, the Statement of Principles for flood insurance is not intended to apply to new developments. We will be making this clear when this is revised for Scotland (as we have already done in England). We also intend to provide guidance to developers on how they can provide prospective purchasers with the information they might need to obtain flood insurance. We will be recommending in this guidance that they provide them with the valuable information that they have already provided to planning authorities on the assessment and management of flood risk to the development. It will be a matter for individual insurers to decide if and when to request this information for assessing the insurance risk.

On recommendation 16 in the Committee’s report - that an appropriate maintenance regime for any sustainable urban drainage system should be a requirement for planning permission - and the response from the Minister for the Environment stating that where this is not to be vested in Scottish Water, and the resources are to be owned by a number of domestic householders, Local Authorities have the power to enter into such agreements; we will also recommend in guidance that information on this should be provided to prospective purchasers.

Flood resistance and resilience

We support proposals for flood resilience for new developments and look forward to discussing any proposals brought forward.

On recommendation 19 in the committee’s report, that enhanced reinstatement following flooding is the best way to minimise the cost implications of further flooding incidents, we note the recent research from the Department of the Environment, Food and Rural Affairs in England, that this is really only cost-justified where the annual risk is higher ‘1 chance in 50’. However insurers are keen to encourage such action by property owners and the ABI is currently carrying out research on the increased cost of repairing properties using resilient measures by analysing recent flood claims. We are also very mindful of the implications that this might have on the cost of insurance for those at highest risk of flooding, if this was to be made a mandatory requirement.

We believe that the best way to encourage this is through:

- Clearly identifying those properties at a very high risk of future flooding
- Clearly Identifying those properties that are very unlikely to benefit from community flood protection schemes
- Development of expertise to provide property owners with a flood-reduction survey.
- Financial support for the cost of carrying out such a survey and implementing the recommended measures.
Where all of these are available – accurate knowledge of risk, knowledge that community funded defences cannot be cost-justified and recommendations on what can be done to manage the risk by the property owner - insurers can advise on the impact that possible actions would have on future insurance arrangements.

**Raising awareness of significant flood risk; encouraging action by property owners and promoting wider uptake of insurance, particularly by low-income households**

This is addressed in recommendation 24 from the Committee. We have indicated above that we want to work with SEPA to see how flood risk can be better communicated to the public and insurers. Over time this will also impact on insurance premiums for those worst affected, reducing premiums for others. The premiums for those worst affected will also be reduced (or may not need to be increased so significantly) provided that effective protection can be implemented either through community or individual property owner flood protection measures, as referred to above.

The ABI is taking steps to encourage the development of ‘insurance with rent schemes’ to promote increased take-up of insurance by low-income households and will welcome support from the Scottish Government in this.

Over recent months HM Treasury’s Financial Inclusion Taskforce has been considering access to insurance for financially excluded groups and the ABI has agreed to take forward its recommendations on access to home contents insurance. As part of this work Norwich Union and Aon are hosting a workshop to discuss insurance for tenants in social housing at the Mitchell Library in Glasgow on Tuesday 9th December.

The workshop will provide a key opportunity for delegates to discuss different approaches to running contents insurance schemes, explore the challenges to running a successful scheme and how to overcome barriers for development. Representatives from local authorities, housing associations and other stakeholders have been invited. Mick Johnson from the DWP’s ‘Now Lets Talk Money’ campaign is the keynote speaker and Anne Feeney from Inverclyde Council, the recently appointed Financial Inclusion Champion for Scotland, is also due to attend.

The ABI supports the recommendations for better flood warning measures as an important way of reducing the damage caused by flooding.

Association of British Insurers
November 2008
Scottish Parliament
Rural Affairs and Environment Committee
Wednesday 10 December 2008

[THE CONVENER opened the meeting at 10:00]

Flood Risk Management (Scotland) Bill: Stage 1

The Convener (Roseanna Cunningham): Good morning, everybody, and welcome to this meeting of the Rural Affairs and Environment Committee. I ask everybody in the room, including those in the public seats, to switch off their mobile phones and pagers. We have received apologies from Karen Gillon, who is on maternity leave. Rhoda Grant is her long-term substitute. No other apologies have been received.

Agenda item 1 is to take evidence on the Flood Risk Management (Scotland) Bill at stage 1. There are three panels of witnesses, the first of which consists of Scottish Water representatives. I welcome Geoff Aitkenhead, who is Scottish Water’s asset management director, and Jim Conlin, who is Scottish Water’s regulation manager.

We have received a written submission from Scottish Water, so there is no need for opening statements. We will go straight to members’ questions. I will ask the opening question, if I may.

Why does Scottish Water believe that a broader strategy is required in addition to the planning process that is set out in the bill? I think that Scottish Water said that in its written evidence.

Geoff Aitkenhead (Scottish Water): We believe that it would be helpful to have a long-term strategy for Scotland’s water resources and water-related issues, including drainage issues. I will put things in context. Our investment needs require considerable forward planning. We are closing off our work on the business plan for 2010 to 2014, which we are still two years away from starting to implement, and we are starting conversations with the Scottish Government about quality and standards IV, which will run for an eight to 10-year period from 2014—the timescales have not yet been determined. To make decisions about objectives for Q and S IV through to 2024, we need an overarching, long-term strategy. I am talking about the sort of thing that has been done elsewhere. The Department for Environment, Food and Rural Affairs has promoted a long-term strategy for water resources in England and Wales. We believe that having a similar strategic document in Scotland would be helpful.

Jim Conlin (Scottish Water): One reason why we made that proposal is that it would allow us to take account of new ways of doing things and things that we would want to change for sewerage and drainage systems in the future. In our submission, we specifically mentioned “green roofs, grey water re-use … and proactive disconnection of surface water from combined sewers.”

Those things can help to deal with flood risks, but they also help with the management of Scotland’s wider water resource. The issue is linking flooding with the drinking water supply, droughts and other things.

The Convener: How do you see such a strategy fitting in with how the bill is structured?

Jim Conlin: Such a strategy would help the bill. The bill provides a framework for partnership working and for people to consider how they are developing their strategies for dealing with flood risk management. Our long-term vision of what we are trying to do—

The Convener: I will stop you there. Are you saying that what you have described does not necessarily need to be included in the bill?

Jim Conlin: I do not think that it does. It is a separate strategy for water resources.

The Convener: Clarifying that is useful. If a broader strategy does not need to be included in the bill, you are looking for reassurance from ministers that it will be forthcoming as part of the process. Do members have any supplementary questions?

John Scott (Ayr) (Con): One or two things have been mentioned, but have the witnesses given an exhaustive list of the things that need to be considered? I am sure that if you are in constant contact with the Minister for Environment, you are making him aware of what you see as the objectives in the mid and distant future.

Jim Conlin: We have not given an exhaustive list; rather, we have given examples of things that need to change.

John Scott: Briefly, are there other things that you would like to see on that list? You have an opportunity to put those things on the record, and they would help to inform the committee.

Jim Conlin: The main issue for us is how we deal with surface water and excess surface water. We must invest now to remove surface water from combined sewer systems. The majority of large urban areas in Scotland have combined sewer systems—rain mixed with sewage. We must start actively to deal with that issue by seeing how we
can remove surface water from sewers and future-proof systems.

Peter Peacock (Highlands and Islands) (Lab): You say that a long-term strategy for water in Scotland is needed. Would that be a conceptual document? Would it be about philosophy and the direction in which we ought to move, or long-term public sector finance planning? What would the document be for?

Geoff Aitkenhead: It would deal with both of the issues that you raise. The long-term plan would be less detailed than the short-term plans, so it would inevitably be a conceptual document at the outset, but it would set a clear direction. We support the bill on the need for collaborative working between Scottish Water and local authorities, especially in relation to the roads and planning aspects of local authority work. In that context, the long-term plan would set a strategic direction for how we in Scotland will deal with surface water flows not tomorrow but in 20 years’ time.

Peter Peacock: Would it look at the quantum of cash that would be needed in 15 or 20 years? I accept that it could not be precise on that issue.

Geoff Aitkenhead: It might be possible to include broad indications of funding requirements, but we would have to be cautious about that.

Alasdair Morgan (South of Scotland) (SNP): My question relates to Mr Aitkenhead’s comments on the business case for Q and S IV, which covers the period 2014 to 2022. According to Glasgow City Council, in 2014 you will estimate to within 5 per cent the cost of the capital works that you will carry out in the Q and S IV period. However, the council makes the point that local plans will not be concluded until 2016—two years into that period. If particular works are required or expected of you under local plans, how will you build them into a particular works are required or expected of you concludes until 2016—two years into that period. If we are asking to prepare our thinking for a 10-year period prior to the period of execution of our investment plan.

I will use Glasgow as an example. We are making provision in the 2010 to 2014 period for the study work that requires to be done on the long-term strategy for the treatment of waste water in Glasgow and on what sewerage and drainage upgrades are required in Glasgow. That will enable us to be clear about what we call the executable plan for Glasgow, on what needs to be done and what it will cost. When we have that degree of clarity, we can plan with much greater certainty for future regulatory periods. It is important that we have funding in the immediate period to do the modelling and the studies on the drainage systems, so that we understand exactly what is needed.

Alasdair Morgan: Is the Q and S period from 2014 to 2022 longer than previous periods?

Geoff Aitkenhead: No. Objectives for Q and S III were set for eight years from 2006 to 2014, and they are then delivered in two price review periods.

Alasdair Morgan: And the same will apply in Q and S IV.

Geoff Aitkenhead: For Q and S IV, we are being asked to prepare our thinking for a 10-year period from 2014. We are not yet clear whether the price review periods will remain at four-year intervals, but we anticipate an eight to 10-year period for Q and S IV, which would be broken into two price review chunks.

Liam McArthur (Orkney) (LD): You talked about the difficulties of alignment and referred specifically to the WIC’s role. You may be aware that Scottish Environment LINK and others have to be implemented over multiple regulatory periods. We do not yet have an answer to that question, but we have an open dialogue with the commission. We need to develop an understanding of how future provision can be made. There needs to be recognition that projects will have to be seen through over multiple regulatory periods. I am not sure that we have clarity yet on how the funding that the local authority will bring to the Glasgow strategic drainage scheme will be aligned with the funding that Scottish Water will bring to it.

Alasdair Morgan: The implication of what you are saying is that you will not implement anything that Glasgow City Council comes up with in its local plan and is not in your programme until after 2022, because you are already committed up to that point. Is that a fair assessment?

Geoff Aitkenhead: It is important for Scottish Water to get to a position that allows it to carry out investigations and feasibility work in the period prior to the period of execution of our investment plan.

We have had discussions with the Water Industry Commission for Scotland, the body that sets our funding for each price review period, about how we will manage projects such as the Glasgow strategic drainage scheme, which needs...
raised concerns about the statutory remit of the WIC. Its submission states:

“The role of the WIC appears to clash with the duties of SW to contribute to sustainable development.”

It explains that

“Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term.”

Does the remit of the WIC need to be reviewed or reformed to meet the requirements of the bill? Do you see any conflict now between what you deliver and the statutory remit of the WIC?

Geoff Aitkenhead: I will ask Jim Conlin to comment on that matter, because he is much more familiar with the detail of Scottish Environment LINK’s point. A general point is that the role of the WIC is to ensure that Scottish Water is funded to deliver ministerial objectives. Whatever objectives are set for Scottish Water by Scottish ministers, the WIC has to determine the lowest reasonable cost for us to deliver them and, through that determination, set customer prices. Therefore, the WIC cannot decide Scottish Water’s objectives; they will always be determined by Scottish ministers.

Jim Conlin: To be slightly more specific, a duty is placed on us by the Scottish Government to take account of sustainable development and we have a sustainable development strategy that works towards that duty. As Geoff Aitkenhead said, it is our responsibility to put forward plans that take account of our duty for sustainable development and it is for the WIC to consider how those plans should be funded. We do not see a conflict in that arrangement. The Water Services Regulation Authority—Ofwat—which is the WIC’s opposite number in England and Wales, has a duty to take account of sustainable development. In Scotland the duty was placed on Scottish Water rather than on the WIC.

The Convener: Does Scottish Environment LINK misunderstand the way in which the system currently works?

Jim Conlin: I think that Scottish Environment LINK would like the WIC also to have a duty on sustainable development. I think that that is the point that it is making in its submission.

Liam McArthur: I will use an example from another sector. It is suggested that the problems in which the Beauly to Denny power line has become mired are a result of directions set by regulators that were delivered against the lowest cost, which meant that options such as undergrounding cables were not feasible. The concern on sustainable flood risk management is that there will continue to be a tendency to err on the side of hard engineering solutions, which may in the first instance appear to be cheaper but which, over the longer term, may not necessarily be in the public interest. Are you saying that that could not happen in the water sector?

Jim Conlin: We are considering the most sustainable solutions that it would be possible for us to introduce. Scottish Water is the only water authority in the United Kingdom that currently has sustainable urban drainage systems as part of its design manual. We are at the forefront of developing such systems, and we view them as linking in directly with the sustainable flood management requirements in the bill. We want to find the most sustainable solutions—not just to build bigger pipes and pumping stations. We believe that that fits with our duty to consider sustainable development as a whole.

10:15

Liam McArthur: But if, as you say, the work that you are undertaking on that within your remit is absolutely fine, why are we sitting here considering a bill to tighten it up further?

Jim Conlin: The bill promotes sustainable flood management, which we have not done in the past. I was saying that, as part of our contribution to the issue, we have been working on sustainable urban drainage systems anyway, within our own requirements. We have been moving forward on sustainable ways of dealing with drainage, which link in with the bill’s approach to sustainable flood management. The previous approach to flood defences was not a sustainable flood management approach.

Peter Peacock: Does Scottish Water ever find itself under pressure from the WIC to set a price that is less than it would like, notwithstanding the compatible duties between the two bodies? Alternatively, is the relationship entirely harmonious, in that Scottish Water always strikes an agreement in which exactly the right price is set for it to achieve what it wants? Does it find itself under cost pressure because of the WIC?

Geoff Aitkenhead: There are cost pressures, because we are asked in each regulatory period to deliver efficiencies at a defined level, both in the operating cost of Scottish Water and in the cost of delivering the capital programme. However, that is not played out at an individual project level, or even at a sub-programme level. The settlement is in the round, so we are allocated a certain sum of money to deliver the capital programme. In the current regulatory period, the estimated outturn cost is £2.5 billion over four years. Within that, the challenge is for Scottish Water to deliver all the regulatory outputs that ministers ask of us. There is—quite rightly—cost pressure for us to deliver
that capital programme in the most efficient way for our customers, and it is for us to determine at each individual project level the lowest whole-life cost to deliver the output.

**Peter Peacock:** Is it conceivable that seeking to meet those efficiency objectives might impinge on the sustainable nature of the delivery of the projects that you are working on in aggregate, or is that unlikely to happen?

**Geoff Aitkenhead:** It is for Scottish Water to be innovative in finding the right solution, while always keeping the sustainability agenda at the forefront of our thinking when we are examining our specifications and standards and our standard solutions. We need to keep searching for better ways of doing things, so that we achieve the required efficiencies but also deliver the required outputs and the objectives.

**Peter Peacock:** With regard to finance, you say in your submission that Scottish Water assumes that the extra costs that may well arise from the provisions of the bill and the direction of travel will be met “through customer charges”. Have you any indication of what the impact might be on customer charges, or has that not yet been assessed?

**Geoff Aitkenhead:** It is too early to say. At the moment, we are looking at the early stages of the bill’s implementation, which revolve around the modelling of the capacity of sewerage and drainage infrastructure. We will then move on to understand the capital investment that is necessary to put in place new flood management systems. Only when we reach that point can we assess the significant spend that we suspect might be required, and how that will affect customer pricing.

**Peter Peacock:** You also mention in your submission that a potential alternative to customer charges would be capital contributions from local authorities, if funding was channelled through those authorities. Would you prefer there to be a clear division between those two matters, and to deal with your costs through customer charges? Alternatively, are you hinting in your submission that you would like the local authorities to pick up the cost, whether or not that is through Government capital consents? Is it a mix of the two?

**Geoff Aitkenhead:** We have an open mind. As I said, we support the concept of working in collaboration with other parties to deliver the right answer for customers and the people of Scotland. Our suggestion was an attempt to address that question of alignment to funding. We are simply suggesting that the Scottish Water element is not large in a lot of the flood alleviation or prevention schemes that we have seen around Scotland in recent years. For example, Scottish Water’s component of the Water of Leith scheme was quite small. We are simply suggesting that the entire funding should sit with one body to deliver the whole project, which would make project management a lot easier and would align the funding.

**Peter Peacock:** Is this an issue that cannot be left for much longer? We have to come to a clear resolution in advance that it is going to be funded either by customer charges or by local authority capital, so that we never find ourselves in a position where we assume that we are going one way but someone else assumes that we are going another, and no one is responsible. Do we need absolute clarity?

**Geoff Aitkenhead:** We do.

**Peter Peacock:** I am not sure about the context of the bill, but do we need clarity as the bill goes through?

**Geoff Aitkenhead:** Yes, and we should bear in mind that there are time thresholds for regulatory periods. Scottish Water is now closing off the regulatory business plan for 2010 to 2014 so, four years from now, we will be closing off the business plan for 2014 to 2018. We have made provision in the 2010 to 2014 period for the studies that are required for work with the local authorities on the bill requirements. Therefore, for Q and S IV from 2014 onwards, we will need absolute clarity by 2011-12.

**Bill Wilson (West of Scotland) (SNP):** I have a short question. Previous witnesses have emphasised the importance of how the costs are calculated when working in sustainable development. Specifically, they have asked whether the costs are simply the costs of construction, or whether they take into account possible environmental and social advantages and disadvantages. Do you include social responsibility indices as part of your cost calculation, or is it a strictly financial calculation?

**Jim Conlin:** As we say in our submission, we think that the way to deal with that in a flooding context is through surface water management plans for the area in question. Such plans bring together all the partners and can be used to deal with a number of issues in addition to flooding, such as development, planning and habitats in green urban areas. All those issues can be co-ordinated and we can get extra advantages out of what we do to deal with sustainable flood management. Glasgow City Council, for example, is considering having green corridors through the city, and we are looking at working with the council to integrate its drainage system and our sewerage system in the green corridor. In that way, surface water could be dealt with sustainably, and it would add to the city’s environment.
The Convener: Bill, do you want to ask a follow-up question? I am not entirely clear that that is an answer to the question that you asked.

Bill Wilson: I am not sure that it was. It was an interesting answer.

The Convener: It was an answer to a different question.

Bill Wilson: My question is more specific. Let us say that you have two options. Option A is a hard engineering option and option B is a slightly more complex sustainable engineering programme. There are two ways of estimating the cost difference between the two. One is simply to look at the finances and say, "It costs X to do this and Y to do that." The other way is to say that there are additional costs that could be calculated—there are sustainable responsibility indices, for example—and to include a cost estimate for environmental and social benefits and disbenefits. When you are estimating the costs of various options, are you looking at the strictly financial cost of putting that in place, or does your cost estimate include the social and environmental benefits and disbenefits?

Geoff Aitkenhead: No, we focus on the financial costs of constructing the solution, which would be the immediate capital cost, and the operating costs throughout the life of the asset.

Bill Wilson: Does that not mean that you will probably be slightly biased against more sustainable developments because they might cost more, even if their overall social benefits might be far greater than the financial cost of the development?

Geoff Aitkenhead: I think that that is right. However, I should point out that there are two stages. There is a need for cost benefit analysis at the point of defining the objectives for Scottish Water. We work with the drinking water quality regulator for Scotland and the Scottish Environment Protection Agency to debate priorities and needs but, in the end, they decide what advice to give ministers on the objectives that should be set for Scottish Water. That is the point at which the cost benefit analysis should be done, taking on board the factors to which Bill Wilson refers. Once the objective is set and the outputs that Scottish Water must deliver are clear, it is entirely right and proper for us to focus on achieving best value in delivering those outputs.

Bill Wilson: I ask Liam McArthur whether—

The Convener: Excuse me, Bill, but it is my decision who speaks, not yours. John Scott has indicated that he wants to ask a supplementary question on the issue and then we need to move on a bit.

John Scott: I want to return to surface water management plans, if that is all right, convener.

Scottish Water’s written submission talks a great deal about the importance of developing integrated surface water management plans with local authorities. Do you want to add to what you have said in your written submission, as you obviously feel strongly on the issue?

Jim Conlin: We feel that surface water management plans are the key to making the collaboration between all the authorities work. The plans can set out clearly who is responsible for what and can deal with how systems will be managed and operated. They can clearly align and highlight other benefits—that is the point that I wrongly made in answer to the first question. One issue with other benefits is that they tend to be the responsibilities of other authorities. We need a way in which all the authorities can come together and plan. We can deal with the sewerage infrastructure but, within the plans, we can take cognisance of issues such as councils’ requirements for green areas for amenity. We can work together so that we get, for want of a better expression, a bigger bang for our buck.

Geoff Aitkenhead: It is worth mentioning the carbon reduction challenge that we will all face in coming decades. To continue pumping and treating surface water as we do at present is not sustainable, so we must consider ways of managing surface water differently.

The Convener: Elaine Murray is interested in local authority responsibility, or otherwise.

Elaine Murray (Dumfries) (Lab): My question leads on from the need for integrated plans, which we have been talking about. Have you seen the letter from the Minister for Environment that proposes amendments at stage 2?

Jim Conlin: Yes.

Geoff Aitkenhead: Yes, we have.

Elaine Murray: The Government suggests certain ways in which it could clarify who is responsible for doing what. The letter states that the Government is considering imposing "an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas", but that "would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968".

Should you or local authorities be responsible for the assessment of drainage infrastructure? Who should be responsible for sustainable urban drainage systems?

Geoff Aitkenhead: Scottish Water should provide the information on the capability of our assets. We hold records of all our sewerage assets on geographic information systems, which
we can and do share with other utilities and local authorities. We also have the capability to produce models of the hydraulic capacity of those systems. We therefore know about the flooding thresholds for those systems—the point at which they reach capacity. In the context of the bill, it is important that we share that information with local authorities and that we understand the totality of the flood risk management plan, the action plans at the area level and our part in improving the situation.

Elaine Murray: You have spoken about the need for integrated plans to address surface water management issues. What is your opinion of the proposed amendments in the ministerial letter? Are they adequate, or do you want amendments that relate more specifically to integrated plans?

Jim Conlin: We would like surface water management plans to be mentioned in the bill. That is our input.

The Convener: So you want them to be mentioned in the bill.

Rhoda Grant has questions about information release.

10:30

Rhoda Grant (Highlands and Islands) (Lab): The bill gives SEPA and other lead authorities powers to get information from others in order to carry out their duties. Evidence from Perth and Kinross Council shows that the level of information sharing at the moment might not be as good as it could be. The council noted that Scottish Water says that certain information is protected under data protection legislation. What information would you be able to share under the current data protection regime? Would the bill enable you to share relevant data?

Geoff Aitkenhead: The information that is deemed to be sensitive by United Kingdom Government security advisers to Scottish Water relates to drinking water provision and the exact locations and nature of the sources of drinking water. In the context of the bill, that leads us into the management of reservoirs and dams rather than the sewerage and drainage system, which we have been discussing this morning. The information on the sewer network that Scottish Water holds is not security sensitive and is shared with other utilities and local authorities.

Rhoda Grant: Why would it be a problem to share drinking water information with other authorities? We are talking about sharing it with people who have a duty to implement flood management procedures, such as Perth and Kinross Council, not making it public.

Geoff Aitkenhead: It depends on the nature of the information that we are talking about. In some cases, the issue comes down to what the Data Protection Act 1998 has to say about customer details that we hold. In other cases, it relates to the security and emergency measures directions from UK security advisers, which guide us on what we can and cannot divulge about drinking water systems.

The Convener: I take it that the concern is about people contaminating drinking water, which might become a problem if the places where the supplies emanate from were too widely known.

Geoff Aitkenhead: That is correct.

Rhoda Grant: Does the bill do enough to ensure that the relevant information can be shared, or will that be a problem?

Geoff Aitkenhead: The information that relates to flooding is adequately covered by the bill.

Rhoda Grant: But the bill covers reservoirs as well. Could information on reservoirs be shared under the bill?

Geoff Aitkenhead: That information can be shared with local authorities. The bill focuses on issues such as inundation mapping and the impacts of dam break. Across Scotland, we own just under 400 dams, just under 300 of which are in active use as water supply sources. We have only partial inundation mapping for those dams, but we share that information with all category 1 responders, in line with the Scottish emergency response procedures.

The Convener: Perth and Kinross Council says that it is often told that information that it requests from Scottish Water is protected under data protection legislation. From what you are saying this morning, however, it seems that that should not happen often. Clearly, certain people’s understanding about what can and cannot be released is different from yours. I accept the security point but, leaving it aside, are there other data protection issues that it would make sense to resolve?

Jim Conlin: I do not think so. We are not sure exactly what the problem with Perth and Kinross Council is. The only other issue that I can think of involves the provision of customer addresses in relation to sewer flooding. However, we can deal with that by issuing postcode information rather than house addresses. I am not sure what—

The Convener: I will ask our clerks to ask Perth and Kinross Council for examples of refusals and for information on their frequency. We will have to do that extremely quickly. The minute I get that information, I will ask the clerks to get back to you for a response. I would appreciate it if you responded quite quickly. We do not have a great deal of time.
Geoff Aitkenhead: Absolutely.

The Convener: If there is an issue, it would be good to resolve it at this stage.

Thank you for answering our questions. If there is anything further that you would like to raise with us, please do so in writing as quickly as possible.

With us on our next panel, which will focus on the planning authorities, are: Paul Frankland, the civil engineering design manager from Scottish Borders Council; Jim Moodie, the lead officer of the harbours, flood and coast division of Fife Council’s transportation services; and Gordon Watson, the director of planning for the Loch Lomond and the Trossachs National Park Authority.

We have received written evidence from the witnesses, so we will not have opening statements from them. We hope to finish this evidence-taking session by 11.40 at the latest, which gives us an hour.

Rhoda Grant: How do you think that flood risk management plans will interact with local development plans? Which will take precedence?

Gordon Watson (Loch Lomond and the Trossachs National Park Authority): Overall, they will interact in a beneficial way. Generally, we want local development plans across Scotland to be more proactive than previously, and to include sustainable economic development action plans and so on. We hope that that will apply equally to flood management. At the moment, people perhaps identify development opportunities and consider flood mitigation as opposed to flood management, but we hope that the new approach will enable local development plans to take on board physical flood management projects.

The Convener: Does anyone else have a view? I should note that, if one of you says something that you all agree with, you do not all have to repeat the point. If you agree, you need only say so; that way, we will not end up with three identical answers to every question.

Rhoda Grant asked whether you feel that flood risk management plans will interact with local development plans? Which will take precedence?

Paul Frankland (Scottish Borders Council): We feel that they should be on an equal footing, and that there should be a bit of give and take. In some cases, the development of a site will be so important that it will have to inform the flood risk management plan, and it should be allowed to go ahead, with resilience measures and so on being put in place. The flood risk management plan will usually inform the development plan, but in some instances the opposite will happen.

The Convener: For instance?

Paul Frankland: When the development of a site on a flood plain is believed to be of paramount importance to the economic development of a small town. We believe that discussions would be held around that.

The Convener: Right. Who would hold the jackets?

Paul Frankland: I do not know.

The Convener: Someone would have to hold the jackets during that discussion.

Paul Frankland: Perhaps it would be the councillors.

The Convener: You do not have a view on how the issue would be resolved, unless SEPA stepped in.

Paul Frankland: No.

The Convener: Do you have any view on how it could be resolved, Jim?

Jim Moodie (Fife Council): No.

John Scott: You listened to the Scottish Water representatives. Do you have any views on the development of surface water management plans, for example, which might help to resolve such issues?

Jim Moodie: Surface water management plans will contribute to future flood risk management, but we must bear in mind the fact that Scottish Water has inherited certain liabilities from previous water and drainage arrangements. Often when we enter into discussions with Scottish Water, our legal advisers advise us that we are transgressing the bounds of responsibility, because Scottish Water already has inherited liabilities for dealing with surface water within older towns and communities that have combined systems. In new developments, sustainable urban drainage and best management practice contribute to flood risk management, because we control the forward flow of water jointly.

Rhoda Grant: Is the bill sufficient to ensure that that happens? Do other powers need to be put into the bill to ensure that it happens?

Paul Frankland: I assume that you are talking about surface water management plans. I foresaw that those plans would play an inherent part in local flood risk management plans. Scottish Water is obviously keen to include them. I would think that the bill allows for that.

Rhoda Grant: We have heard evidence of an apparent gap in the bill, because there is no duty on local authorities to implement the management plans. We have also heard that there is a duty on local authorities to carry out everything that is
within their remit, and that including a specific duty in the bill would interfere with the way that they carry out their other works. If they had a duty to implement the management plans, doing so might be given a higher priority than their carrying out their education function, for instance. Is that right? How will local authorities react to the management plans and how will they carry out their functions? Will they have an action plan for delivery?

Paul Frankland: The duties that the bill places on us are quite big—a lot bigger than the duties under the Flood Prevention (Scotland) Act 1961. Given that our constituents are concerned about flooding, we will be looking to implement stuff in the local flood management plans as quickly as possible. We do not believe that a duty needs to be placed on us, for the very reason that you suggest: putting such a duty in the bill would place flooding issues on a higher level than education and other services that the council also has a general duty to provide. We are content that the bill is sufficient as it stands.

Elaine Murray: Should a duty be placed on other authorities, such as SEPA or the Scottish ministers, to ensure that the plans can be implemented?

Paul Frankland: I was under the impression that the general duty at the start of the bill places such a duty on SEPA, the Scottish ministers and Scottish Water. We all have a duty to reduce flood risk.

Elaine Murray: Does that duty include the duty to fund local authorities and other responsible authorities adequately to undertake such work?

Paul Frankland: It suggests that the Scottish ministers would have to ensure that funding was available to allow the work to be continued.

10:45

Peter Peacock: We have heard evidence about section 16, which places a duty on SEPA to consider “natural features”. There have been arguments that the bill should define natural flooding processes, as well as natural features. It has also been argued that, if SEPA’s assessment is at a national level, that is too high a level for the purposes of informing the local delivery arrangements and plans that will be required. Do you have a view on both or either of those points? Should the bill refer to natural processes as well as natural features? What is the right level at which natural features and/or processes should be examined and mapped in detail?

Gordon Watson: I agree with the point about processes, if you are referring to river meanders, the reconnection of rivers with natural flood plains and so on. That would mean reintroducing a process. Perhaps the introduction of the term “process” would be helpful, as it provides a broader definition of natural flood management.

The resolution at which SEPA examines things is a difficult issue. The higher the resolution at which matters are considered, the more onerous the task of identifying natural features. Inevitably, there will be localised opportunities to introduce natural flood management, which might be at a higher resolution than SEPA’s initial overview. I do not quite know the answer to that question, I am afraid.

Paul Frankland: I have no concern about the word changing from “features” to “processes”.

Peter Peacock: Or adding the word “processes”.

Paul Frankland: I have no concern about adding the word “processes” either. When SEPA prepares its district plans, people from local authorities and Scottish Water will be present, too: we will all hear the discussions. District plans will inform local plans. The natural processes will be considered down at the local level. We in local authorities will look for areas where we can do the things that SEPA identifies. The link will come through between the district and local plans. Our council is keen on natural flood management techniques, and will seek to incorporate them where possible.

Peter Peacock: Under the bill, will you actually be under a duty in that regard?

Paul Frankland: Yes. Under the general duties, we will have a duty to promote sustainable flood management, part of which will mean examining all possible toolkits to reduce flood risk, including natural processes.

Peter Peacock: There have been arguments that a presumption in favour of implementing natural flood management techniques should be in the bill. The Government is resisting that, but what is your opinion, from a local authority point of view, about a presumption in favour of at least considering natural flooding processes?

Jim Moodie: In my opinion, there should not be a presumption for natural flooding control. Any strategy worth its salt will include elements of both hard engineering and soft engineering, or what you are calling natural processes, so they are part of the overall process.

Peter Peacock: There is possibly a desire for a shift in that regard. I am not saying that you should not consider hard engineering but, before you consider it as part of a package, you could consider whether natural flood management techniques could assist by taking the peaks off floods and so on. There is a suggestion that you ought to pursue natural flood management first,
and then think about hard engineering, but you are opposed to being required to think about natural flood management first.

**Jim Moodie:** It should be included, but there should not be a presumption that it is the only way to address the problem.

**Peter Peacock:** I am trying to make the distinction—it is a different point—that the presumption would be that you would be required to consider natural flood management first. You might rule it out, but you would be required at least to consider it.

**Jim Moodie:** Yes.

**Peter Peacock:** You would not be unhappy about that.

**Jim Moodie:** No, I would not be unhappy about that.

**Peter Peacock:** But you would be unhappy if you were required to use natural flood management techniques irrespective of the evidence.

**Jim Moodie:** Yes.

**The Convener:** What do the other two witnesses think about that?

**Gordon Watson:** There are always dangers in being overprescriptive in primary legislation. Different planning areas have different characteristics, which inform different solutions. I assume that further documentation that flows from the bill will provide an imperative to consider natural solutions in preparing plans and to justify instances when they are not taken up.

From a national park point of view, we would very much like natural flood management opportunities to be taken up, but I am—naturally—cautious about prescribing that in primary legislation. Further down the line, there might be perfectly good reasons why a natural flood solution is not appropriate in a given situation.

**The Convener:** I think that you have misunderstood the point. The suggestion is not that we mandate the use of natural flood management regardless of whether that is the better system, but that we ensure that all planning authorities consider natural flood management as part of the process of deciding the best way forward.

**Gordon Watson:** I think that we all take it as read that natural flood management must be considered. I have no problem with stating that explicitly in the bill, if there is a desire for that.

**Paul Frankland:** As a general duty is placed on all responsible authorities to consider sustainable flood management, and as section 16 specifically mentions "natural features" and might be amended to include "natural processes", I think that natural flood management is given quite a high priority in the bill as it stands.

**John Scott:** I have a question specifically on paragraph 1 of schedule 2, which states:

"The local authority must give notice of a proposed flood protection scheme … to every person known to the local authority … whose interest in any other land may be affected by any of the proposed operations".

City of Edinburgh Council’s submission states:

"Paragraph 1 (d) (ii) needs to be clarified, as it would appear that everyone on the flood plain downstream of the operations should be notified."

Do other local authorities share that view? If the paragraph needs to be clarified—I appreciate that none of the witnesses is from City of Edinburgh Council—what alterations should be made to it?

**Jim Moodie:** I have dealt with flood prevention schemes in Fife where we have had to notify all landowners and others who would be affected. Luckily, we had no further urban development downstream. In my opinion, if there is urban development downstream from where a flood prevention scheme is to be constructed, the individuals should be advised of the proposals.

**The Convener:** Would you automatically notify people downstream in any case? Is that what you would do even now?

**Jim Moodie:** Yes, I would.

**John Scott:** So why should City of Edinburgh Council take exception to the idea? Perhaps the council does not take exception to it, but its submission suggests that the provision should be clarified.

**The Convener:** We cannot ask these witnesses why City of Edinburgh Council has taken that view. We can ask them only for their own view.

**Paul Frankland:** My view is no different from the view that Jim Moodie has expressed.

**The Convener:** Mr Watson?
Gordon Watson: As a park authority, we would only be a consultee on such schemes.

The Convener: Jim Moodie’s position is that he would notify people downstream as a matter of course anyway, but he cannot speak for City of Edinburgh Council on why that council should have a difficulty with the provision.

Jim Moodie: At a meeting with the bill team in Stirling on Wednesday, it was explained to us that, unlike under the 1961 act, the local authority will no longer need to provide packages of drawings and scheme details to the affected parties. Under the bill, the local authority will be required simply to issue a letter. Perhaps City of Edinburgh Council’s point is about the amount of information that must be issued.

The Convener: I cannot imagine that City of Edinburgh Council is arguing that more information should be included. For most councils, any provision that resulted in their being required to provide less information would be regarded as a move forward. City of Edinburgh Council’s submission is still a bit of a puzzle. We might need to chase that up as a matter of information.

Liam McArthur and Elaine Murray have questions on funding.

Liam McArthur: Mr Frankland touched on the issue of funding in response to an earlier question. Scottish Borders Council’s written submission was not alone in raising concern about the lack of a central mechanism for allocating funding for flood risk management schemes, particularly given the costs of some of those schemes. He also mentioned the potential risk of legal challenge in that regard. The park authority appears to have different concerns about the absence of a central funding pot. Can you develop some of your concerns about funding?

Paul Frankland: We raised the point that a major part of our general duty to reduce flood risk will be to install not just schemes but smaller works. Our concern is about what the legal position will be if the funding for that is not clear and transparent and we are unable to do as much as we would like. Our ultimate goal is for the funding arrangements to be as clear and transparent as they can be, so that we can all move forward.

Liam McArthur: We have heard much from Government ministers about the historic concordat and the de-ring fencing of certain pots of money. Are you saying that you do not support the de-ring fencing of flooding funds because of the implications for your ability to deliver sizeable schemes?

Paul Frankland: I am not sure what the best funding mechanism would be. As a local authority, we just want to ensure that we know that money is coming through to cover the commitments in our local plans.

Liam McArthur: The park authority had a separate concern.

Gordon Watson: We agree with our sister national park that other funding streams could be brought to bear on natural flood management. For example, the Scottish rural development programme and rural development contracts could be used to provide support to land managers who undertake works on their land. There could be a process of offering incentives in addition to funding significant schemes that councils will be involved in. The national parks could play a role in supporting the heightened emphasis on natural flood management. We support the point that the Cairngorms National Park Authority made.

Liam McArthur: We will have an opportunity shortly to ask the Association of British Insurers about its submission, in which it suggested that the use of multiple funding streams was a riskier approach to the delivery of sustainable flood management. In your view, will that risk increase the cost of delivering various schemes or will it mean that some schemes will not be delivered at all?

Jim Moodie: In my opinion, it will mean that many schemes will not be delivered at all, because the funding will be allocated to what councils consider to be other priorities. We face that issue at the moment. I am an engineer for a council, not a planner. Our budgets are defined by accountants and asset management people who are not directly affected by flood prevention issues or functions. They might have higher priorities, such as education or social work.

John Scott: On the balance of probabilities—

The Convener: Hang on, John. Elaine Murray still has a question to ask.

Elaine Murray: I think that you heard the evidence of Scottish Water’s representatives, who talked about the capital charging of local authorities. What is your view on that?

Jim Moodie: I am sorry, could you repeat that?

Elaine Murray: Scottish Water mentioned that funding could come from a system of capital charging local authorities. Do you have any concerns about that?

The Convener: We asked Scottish Water whether it would prefer to meet the cost of the proposals through customer charges or whether it would prefer to be given capital by local authorities. Do you have a view on that?

Paul Frankland: Yes. We would be slightly concerned if all the money were given to local...
authorities, because we want Scottish Water to undertake the responsible authority role, to be a full part of the team and to take ownership and responsibility for works. Scottish Water would be better placed to do that if the money was given to it rather than to us.

**The Convener:** So you would rather not have the big cheque book.

**Paul Frankland:** No. It is true that in a large prevention scheme, Scottish Water’s involvement might not be that significant, but there will be many small areas that want to tackle flooding issues. I worry slightly that giving the funding to us might weaken the co-operation that we want to achieve. We would prefer the funding to be dealt with through Scottish Water.

**The Convener:** So you think that, psychologically, it would change the balance of power.

**Paul Frankland:** Yes.

11:00

**John Scott:** I am concerned about your concerns about the lack of funding and the other priorities for which you feel elected members might use the money, notwithstanding the fact that some of it is meant to be used for flood prevention schemes. Can you expand on that? You are almost saying that you had rather the money was not given to local authorities because—

**The Convener:** They cannot be trusted.

**John Scott:** I would not have put it so indelicately, convener, but, in essence, is that what you are saying?

**Jim Moodie:** I am saying that elected members will allocate funding to the projects that are of the greatest priority to them, and that flood management may not be one of them.

**Alasdair Morgan:** But it may be.

**Jim Moodie:** But it may be, yes.

**John Scott:** You are also concerned about possible legal challenges if flood management schemes are not implemented; you are concerned that councils would be liable. I suppose that that would all be part of the consideration.

**Jim Moodie:** It was explained to us that there is no duty on a local authority to implement flood prevention schemes. The power is, basically, permissive, so there should be no legal comeback if a scheme is not built, but the public would expect all the relevant stakeholders to address the issue.

**The Convener:** Let me put it in the plainest possible terms. Do you consider that funding for flood management should be explicitly excluded from the concordat and that it should be ring fenced?

**Jim Moodie:** I would agree with that entirely.

**Paul Frankland:** Our local administration is keen on flood prevention, so the moneys that it has allocated to flooding are reasonable.

**The Convener:** That is not what I asked.

**Rhoda Grant:** That was a diplomatic asked.

**Paul Frankland:** I am not sure which is the best way to go. I understand that, if the funding were ring fenced, it would be easier for people to see what was coming through.

**Alasdair Morgan:** Would your colleagues in other departments of the council say exactly the same thing about their particular budgets?

**The Convener:** There is a sucking of teeth from our witnesses, which sounds like welly boots.

**Alasdair Morgan:** If they do not want to answer, that is fine.

**Peter Peacock:** My question has partly been answered, but I want to pick up the point that Alasdair Morgan made. What distinguishes funding for flood management from other expenditure is the fact that it is ultimately about public health and safety. At least one of you has argued against there being an explicit duty to implement flood prevention schemes. As front-line delivery guys, you are both saying, “All we want is the cash.” Is there not a contradiction in that? Is it not the case that unless the bill contains a duty to implement flood prevention schemes there will be no guarantee that you will get the cash—for the reasons you have described?

**Paul Frankland:** As I understand it, the bill would place a duty on us to promote flood prevention schemes. It is no longer discretionary, as it was under the 1961 act; I think that it has been cranked up and is now a true duty on us. That is one of the reasons why the 1961 act has been updated.

**Peter Peacock:** With respect, we have just heard that, at the briefing that you received last week, you were told that there is no duty on councils and that, therefore, there could not be a legal challenge. You are saying that there is a duty on you to promote—

**Paul Frankland:** Flood risk management.

**Peter Peacock:** But that once you have promoted it there is no duty on you to implement any schemes; you will draft schemes and I am sure that your councils will want to implement them, but there is no legal requirement to implement them at a certain point.
Paul Frankland: That is not what I understood from the presentation on Wednesday. It depends on your definition of the general duty to reduce flood risk.

The Convener: There is obviously an issue about what exactly the position is. We need to pursue that.

Elaine Murray: The bill will not be fully implemented until 2015. Fife Council has raised concerns about the interim arrangements and how flood prevention schemes will be funded until then. Do you have anything to say about that?

Jim Moodie: There seemed to be a gap in the bill; it looked as though the 1961 act was to be repealed and that there were to be no proposals for what is to happen in the interim in respect of watercourse assessments, watercourse maintenance and biennial flood prevention reports. We wondered whether the work that we do at the moment is supposed just to stop and then start again in eight or nine years' time, but I am advised by the bill team that it is considering introducing a new section to deal with the carrying out of watercourse assessments. My understanding of a watercourse assessment is that it should identify immediate flood risks and debris collection points that could cause flooding.

The Convener: Mr Frankland, are the interim arrangements a concern for your council?

Jim Moodie: They are a concern because there is nothing in the bill to say that councils have to do anything until the management plans are in place.

Paul Frankland: They are not a concern for us. We will carry on with the assessments that we do at present, although we will tweak them slightly in line with the bill.

The Convener: It is not an issue for you.

Gordon Watson: This is a technical point. We know from our work with local authorities that they are gearing up for the bill and that they will not suddenly stop doing the work that they do. Perhaps the point can be picked up in the final draft.

The Convener: We will need to pursue the interim arrangements with ministers.

Elaine Murray wants to ask about the reclamation of costs.

Elaine Murray: Flooding sometimes occurs because private landowners have not undertaken the work that they ought to do to keep water courses clear. It has been suggested that local authorities should be able to go in and do the work and reclaim the costs from the landowner, but there is no provision for that in the bill. How much detail should the bill contain on local authorities' ability to reclaim the costs of work that requires to be done to prevent flooding from private land? Has that been an issue for flood risk management in the past?

Jim Moodie: The bill contains a mechanism to allow local authorities to recover costs when the repairs are due to damage or reinstatement of flood prevention works, but there is no mechanism to allow the authority to be reimbursed for work to clear from private land debris such as fallen trees or timber. There are instances of landowners walking away when they find that they cannot develop land because it is on a flood plain. Under the 1997 amendment to the 1961 act, the local authority has a duty to go in and clear out the water courses, which often costs thousands of pounds—it is not just a £500 job to remove some debris from a burn.

In our written submission, we express hope that the committee will get into the bill a mechanism that will give councils at least a chance of recouping some costs when they deal with private landowners.

Paul Frankland: We have not experienced a big problem with that. I support the idea, but the trouble is that we would have to show that there was negligence on the part of the landowner, and I worry that that might not be possible legally. I return to my comment that it would be useful if the bill contained a statement that landowners have a responsibility, so that when we speak to them we can explain that they should be doing something. We might never be able to get any money from them, but that would at least show them that they have a responsibility, as do property owners.

Gordon Watson: I suppose that, as in the planning system, that sort of action is the point of last resort. Perhaps there is scope for the bill to set the scene for the use of other mechanisms, such as discussion and persuasion. It is difficult in planning, never mind in flood risk management, to carry out work directly and then recoup the costs.

The Convener: Let us move on to drainage.

Alasdair Morgan: Officials who were before us last month said that they are thinking of giving Scottish Water a duty to assess infrastructure drainage, yet the Minister for Environment's letter on possible amendments suggests that at least part of the duty will be placed on local authorities, so it seems that there is some uncertainty. Where should responsibility for the assessment of infrastructure drainage lie—with Scottish Water, with local authorities, or with both?

Paul Frankland: It would be shared. If Scottish Borders Council was preparing a local flood risk management plan, Scottish Water would be sitting round the table too. We would bring all our information, it would bring all the plans and information that it has, including information on its
sewer network, and, ultimately, as lead authority, we would have to pull it all together.

Alasdair Morgan: So the assessment would be your responsibility, but Scottish Water would have to provide you with information?

Paul Frankland: Yes.

The Convener: You will have heard the exchanges about Perth and Kinross Council’s concern that it does not always receive information from Scottish Water, which has quoted data protection issues. Have you come across similar issues in Fife or the Borders?

Paul Frankland: No.

Jim Moodie: In Fife we have.

The Convener: Does it happen often or only infrequently?

Jim Moodie: Fairly infrequently. I can clarify one point that Scottish Water made about the source of water supplies. Councils already deal with the Reservoirs Act 1975, so they know where the reservoirs and water supplies are.

The Convener: I think we all know where the reservoirs are.

Alasdair Morgan: What kind of information would Scottish Water not give you? Can you give us an example?

Paul Frankland: I wonder whether it is the inundation maps that show which properties and areas would be at serious risk if a reservoir were breached.

The Convener: Perth and Kinross Council did not elaborate. We will follow that point up. I was just curious to know whether the two local authorities that you represent have come across similar issues. There has obviously been a similar issue in Fife from time to time.

Jim Moodie: We have issues with when Scottish Water terms a drainage system a water course. A water course does not fall under Scottish Water’s responsibility; it is referred to the local council as a natural water course.

The Convener: What would the data protection issues be for Scottish Water?

Jim Moodie: I do not think that it is a data protection issue; it is just a lack of provision of information.

The Convener: You are saying that information from Scottish Water is not always forthcoming.

Jim Moodie: Yes.

John Scott: I have a question about SUDS. You represent other councils, but North Lanarkshire Council raised the issue of who will maintain SUDS that are not adopted by Scottish Water. Similarly, the Society of Chief Officers of Transportation in Scotland stated in its submission that clarification about the adoption and maintenance of SUDS is required in the bill. Does the bill adequately address the adoption and maintenance of SUDS so that it is clear who has responsibility for them in all circumstances? There appear to be some question marks about that.

Jim Moodie: In my opinion, the bill does not clarify who is responsible for SUDS. Scottish Water has introduced a second edition of the “Sewers for Scotland” documentation and design manual. It restricts SUDS to only a couple of things, such as detention basins and attenuation ponds, and excludes all the other facilities, such as swales and filtration trenches.

Since 1997, best management practice on SUDS has been used in various areas in Scotland to allow development so that we can reduce flood risk, but there is still a question mark over who will adopt all the SUDS features in places other than where a council has already put in place a system in which a factor looks after, for example, an attenuation pond or a detention basin. Many are not covered by a maintenance agreement.

John Scott: So in your view there is an omission?

Jim Moodie: It is not an omission; it is a sidestep by Scottish Water to avoid taking on responsibility for SUDS.

John Scott: What should be done to address that? Are you saying that Scottish Water should be made to address it and presumably, in fairness, be given the funding to do so?

Jim Moodie: Yes.

The Convener: Mr Frankland?

Paul Frankland: I do not deal with the SUDS side of things, so I do not have anything to add.

Gordon Watson: I concur that it is an issue from a planning point of view. We require schemes with such elements to them more and more, and if only parts are being adopted, particularly considering that we are encouraging more swales and so on, the system will—

11:15

The Convener: Can you tell us what a swale is?

Gordon Watson: A swale is part of the attenuation within a scheme. A SUDS scheme might include wetland swales where water is slowed down and held—

The Convener: That still does not tell us what a swale is.
Paul Frankland: It is a nice-looking ditch.

John Scott: It is also a breed of sheep.

The Convener: Let us not get into sheep. I just want to know that it is a ditch and not something more exotic.

Jim Moodie: It is a depression in which grass is allowed to grow. As the water percolates through the grass, it takes out the heavy metals and—

The Convener: So it is a camouflaged ditch.

Jim Moodie: No. It is just a slight depression.

The Convener: So it is something that people crossing a field break their ankles in if they do not know it is there.

John Scott: Well, thank you for that.

The Convener: We have our explanation. We will move on with Elaine Murray, who obviously wants to talk about cross-border issues.

Elaine Murray: This question is more for the representative from Scottish Borders Council than the other witness. In its submission, the Macaulay Land Use Research Institute has suggested that in the implementation of the Water Environment and Water Services (Scotland) Act 2003 certain river basin management planning issues have arisen as a result of the different ways in which data are collected across the border, the different regulatory frameworks and so on. Do you agree with that view, Mr Frankland? If so, do you think that similar implementation problems will arise with cross-border flood management planning? Have you had any preliminary discussions about joint responsibilities with authorities on the other side of the border?

Paul Frankland: The Scottish Borders area is covered by what is called the Tweed catchment plan, which has been put together by an organisation called the Tweed Forum. The forum, which pulls together representatives from both sides of the border, has tried to tackle issues such as controlled activities regulations licences on one side of the river and the other. There are slight difficulties, but we are trying to resolve them and ensure that both sides understand that flexibility is needed in the area adjacent to that particular boundary.

Elaine Murray: Could some of the WEWS act implementation work that you have done be translated into this area, to solve some of the problems?

Paul Frankland: I think so. We and the Tweed Forum have been trying to manage those issues and ensure that things work smoothly.

John Scott: This might also be an issue for us, but do you know whether sufficient funding for schemes is likely to be available on the other side of the border? After all, it would be a shame if you could fund a scheme and authorities south of the border could not.

Paul Frankland: Given that not too many schemes are right next to larger schemes, I hope that the issue will not crop up. I do not know anything about funding south of the border.

The Convener: Bill Wilson has some questions on coastal flooding.

Bill Wilson: In previous evidence, Scottish Environment LINK suggested that much more consideration must be given to how we work with coastal processes to protect people and reduce flood risk. Given global warming and a predicted sea level rise of between 50cm and 5m, do you think that the bill needs to be more specific about coastal provision? With regard to developments near the coast, is there any particular height above sea level above which you would generally allow development or below which you would generally be disinclined to allow development?

The Convener: I think that Fife Council has the longest coast.

Jim Moodie: Scottish Government guidance notes suggest that a coastal flood risk assessment be carried out for any development built below a 5m contour line around the coast but, because of the variable exposure on its coastline, Fife has stipulated that, for any development below 6m, developers must produce coastal flood risk management plans.

Even before climate change and the possibility of a rise in sea level, Fife’s policy was that sea walls should allow for a 350mm rise in sea level. As a result, we already have mechanisms for triggering requests for coastal flood risk reports to allow certain developments to proceed.

Bill Wilson: Do the other witnesses wish to comment?

Paul Frankland: As I do not have that much to do with coastal matters, I will let Jim Moodie respond to that question.

John Scott: Will the bill meet the potential threat of coastal inundation?

Jim Moodie: Yes. The bill includes provisions for coastal flooding but not for coastal erosion, which is covered by the Coast Protection Act 1949. They are separate issues.

John Scott: And where the two overlap, if erosion causes flooding—

Jim Moodie: That is called coastal defence.

John Scott: Is there further legislation that deals with that?
Jim Moodie: No. In the past, under the 1949 act, we received only 45 per cent grant funding. Under the Flood Prevention (Scotland) Act 1961, we were allowed 50 per cent funding. Whether you got the maximum funding would be determined by which act you followed and the scheme that you used to tackle the issue.

John Scott: Are you content that the bill is adequate to provide protection?

Jim Moodie: I accept that the bill is adequate to deal with coastal flooding.

Liam McArthur: This may not be so much of an issue in Fife, but there is some concern about the lack of detail about tidal flows in and around parts of Orkney, which has a very real bearing on coastal flood risk. Is the nature of the Fife coastline such that the level of detail that you have on tidal flow and therefore risk is adequate, or does there need to be a requirement on SEPA to delve a bit deeper to provide a more accurate analysis of what will happen in specific locations?

Jim Moodie: It is my understanding that under the Marine and Coastal Access Bill, requirements will be placed on SEPA and other organisations to come up with data regarding coastal processes. That would affect the amount of information that is available to local authorities and developers. The marine bill will provide a sort of one-stop licence shop for someone who wants to develop something. I believe that SEPA is also carrying out an exercise to provide a coastal flood warning information system.

Bill Wilson: When we took evidence before the bill was published, the committee visited various sites. At one point we were shown a coastal housing development that was not 1m above sea level. Fife may have a different attitude from other councils. Some councils are allowing developments on the coast at well below 1m above sea level. In the light of that, should we consider global warming and sea level rises in flood planning—at least in the maps—or are you saying that that is not necessary?

Jim Moodie: It may be necessary if you are talking about a global or corporate response throughout Scotland to put something in the bill. I was speaking from a Fife perspective.

Bill Wilson: I did not mean a global response. If I understand it correctly, Fife’s approach is not to build below 5m above sea level unless there are unusual circumstances, but that does not appear to be the practice of all councils, which suggests that the measures that you are talking about may be interpreted differently by different councils. If that is the case, there might be value in recognising in the flooding bill—and therefore in the flooding maps—the likely effects of sea level rises on developments.

Jim Moodie: I agree, but it would appear that the council that you are talking about is not complying with Scottish planning policy 7 on flooding, or with the national planning policy guideline on flooding, which states the 5m contour level. That requirement is already in the policy documents.

The Convener: Thank you. That is helpful. Bill Wilson wanted to ask about reservoirs.

Bill Wilson: The bill transfers responsibility for reservoirs from local authorities to SEPA and sets out transitional arrangements. Are you comfortable with the arrangements as set out in the bill?

Jim Moodie: Fife Council has no problem with the transfer of reservoir information to SEPA. As far as I am aware, there is no transitional arrangement in place at the moment to suggest how that information is to be transferred between one authority and the other.

At the meeting that I attended in Stirling on Monday, I was advised that transferring the information might take two or three years, but that should be relatively simple for my council, because everything on the public registers and databases on reservoirs will just be transferred to SEPA.

Bill Wilson: If the task would be fairly straightforward for your council, but other local authorities need two to three years, what are they missing?

Jim Moodie: I am sorry—it was the bill team who advised local authorities that it might be two to three years before the whole transfer takes place, because a transition will have to occur.

The Convener: I do not understand why passing over information should take so long. It is obvious that you assume that we know about a bit in the middle that we do not know about.

Paul Frankland: Perhaps I can help. I took notes at the meeting. The suggestion was that the work would take 18 months because the flood and water act down south will drastically change reservoir regulations, so the intention is to wait for that to be implemented before transferring responsibility for reservoirs from local authorities to SEPA.

The Convener: So the delay in transferring responsibility will be the result of waiting for legislation at Westminster?

Paul Frankland: Yes—I hope that I got the name of the legislation right. The title “flood and water act” was used. If that is an act, I presume that it is going round down south. Given that, it was felt that waiting was better.
The Convener: I presume that information can still be passed over in anticipation of implementation of that act.

Jim Moodie: I presume so.

The Convener: That would minimise the time that is taken. Has that process begun?

Jim Moodie: It has not begun, because I am not aware that the relevant legislation has been enacted yet.

The Convener: So everybody just sits about and waits.

Paul Frankland: No—local authorities continue to be responsible for reservoirs until the bill comes into force.

The Convener: I appreciate that, but responsibility and information are two different things.

Bill Wilson: Do local authorities think that they can pass over the information very quickly? When the bill changes who is responsible and you have to transfer responsibility, will you be able immediately to pass over the information and any expertise that is required? You imply that no lead-in time is required for the transfer.

Paul Frankland: No—some time is always required for a transfer. Under the Reservoirs Act 1975, the undertakers perform more complicated tasks with reservoirs and local authorities just ensure that they are doing their job. Our role is more to do with administration, which is what SEPA will do when it takes over that role. We will pass across all the information that we have.

The Convener: That can be done easily?

Paul Frankland: Yes—I think that that can be done fairly easily, although not instantly.

Bill Wilson: I presume that some people have the expertise to take an overview of the undertakers and that expertise will remain with local authorities. Is that expertise easily transferred?

Jim Moodie: The enforcement authority is required to ensure that any measures that are identified in the interests of health and safety and public safety are taken. The 1975 act provided for panel engineers of different degrees and qualifications under the Institution of Civil Engineers, who do all the supervisory inspections and 10-year inspections. As Paul Frankland said, local authorities perform an administrative function rather than an engineering function.

Bill Wilson: Those engineers are contracted temporarily, so they are available?

Jim Moodie: They are consultant engineers from private companies.

The Convener: Has Bill Wilson covered all his reservoir issues?

Bill Wilson: I think so.

The Convener: That is the end of the panel’s session, for which I have no doubt you are grateful. I leave it to you to return to your elected members and explain some of the positions. I thank you for coming along. You are of course welcome to stay to listen to the evidence from insurers.

While the witnesses on the third panel, who represent the Association of British Insurers, take their seats, I advise the committee that we will ask the Scottish Parliament information centre to examine the differentiation between coastal erosion and coastal inundation and some of the bits and pieces of the legislation that is involved. I will also ask SPICe to chase up the Westminster legislation that has suddenly appeared on the horizon, so that we can understand the issues in relation to reservoirs a bit more clearly.

11:30

Rhoda Grant: It would be useful to pick up on expertise on that legislation.

The Convener: Yes. It is the first time that we have heard of it.

From the Association of British Insurers, we welcome Justin Jacobs, who is the assistant director of property, liability and motor, and Arthur Philp, who is the policy adviser on floods. We have received your written evidence so we will not have opening statements but will move straight to questions. I advise committee members and the witnesses that we have allocated about 35 minutes to this session. If we finish earlier, you will get an early lunch.

Liam McArthur: The witnesses may have seen the evidence from the session that the committee held with Government officials last month. I asked them about concerns that you had raised in your written evidence. You were concerned about the alignment of the different funding streams and planning horizons, and you suggested that flood risk could be better managed if funds for flood risk management were separately identified and then ring-fenced. We heard echoes of those views from the council witnesses on the previous panel. Will you elaborate on the nature of the risk? How would an increased risk play out in terms of costs to individuals, businesses, communities and councils?

Justin Jacobs (Association of British Insurers): First of all, thank you for asking us here to give evidence.
For us, two different funding issues arise: the first relates to willingness and the second to ability. As the committee heard in evidence earlier this morning, the fact that money is no longer ring fenced means that, depending on the particular pressures on them, some councils may be willing to spend even more on flood measures than they would have spent before, especially if there has been a recent flood and flooding is an issue that grabs the electorate's attention. However, other councils may feel that flood measures are less of a priority, especially if there has not been a recent flood.

What distinguishes flood expenditure from health or education expenditure is that the up-front cost is real but the payback period has a very long time horizon. People may therefore feel that the expenditure is less worth while and can be put off. Education and health expenditure, on the other hand, is real and immediate, and people feel that it is more worth while and that the payback is quicker.

The second funding issue is the ability to invest the necessary amounts, and that issue can be further split into two bits. The first is that a project might be of such national importance that it would not be reasonable or appropriate to expect one affected local authority to fund it. In the committee's inquiry into flooding and flood management earlier in the year, the possibility was raised of having a national pot for significant projects.

The second bit is that different funding mechanisms may not be sufficiently aligned. You heard this morning from Scottish Water that its funding cycle is very different from a local authority funding cycle. If efforts at joint planning were made, Scottish Water might say, "We agree with you but we don't have the money just now. We'll have to wait for the next business cycle." That might be four or six years away, which would prevent any sort of co-ordinated and managed programme that the Government had in mind.

Liam McArthur: Among the witnesses on the previous panel, there seemed to be some debate over whether councils would be susceptible to a legal challenge. You have described a higher risk in the approach that is being adopted and, in the insurance business, higher risk inevitably entails higher cost. How does that affect the way in which the ABI's members approach specific projects, and how does it affect the cost that they will pass on?

Justin Jacobs: We want to ensure that the industry can offer affordable flood insurance to all our customers who want it. The key to that is the information on flood risk that, primarily, we receive from the Scottish Environment Protection Agency. That information allows us to understand the flood risk and therefore calculate the premiums to cover the risk.

I will try to put the figures in context. If there is a one-in-100-year risk—that is one of the measures that SEPA uses—and if the average flood claim is £30,000, an insurer would have to charge a premium of £300 a year for flood insurance. However, average premiums for home insurance are only around that level—and they also cover theft, fire and many other risks. The challenge is to ensure that we can continue to offer such affordable insurance. The sooner flood projects happen and flood risk is managed, the easier it will be for us to offer more affordable insurance.

Liam McArthur: In your view, is the bigger challenge ring fencing or specifically dedicating funds, or getting better alignment of the horizons in the overarching strategy?

Justin Jacobs: It is a bit of both. We need to ensure that the money that would have been put aside for flood prevention measures is still spent on those. Ring fencing may be necessary—we listened to the earlier debate on the issue with interest. If the legal duty is sufficiently clear, it may not be necessary to ring fence the money, because the legal obligation on authorities to put in place flood prevention measures is so strong that they do that anyway.

The bill does not address the challenge of ensuring that different funding sources are aligned. To deal with the fact that individual funding cycles are slightly out of sync, we need a longer-term strategy that allows us to plan funding 10 years in advance.

Liam McArthur: You heard in the previous exchanges that there is some confusion about the presumption in favour of natural defences for which the committee pressed in its inquiry into flooding and flood management. In your view, would such a presumption present a lower or a higher risk? Would it make a great deal of difference?

Justin Jacobs: I understand that it would make no difference, as the committee's view is merely that authorities should consider natural defences, before adopting the best solution. That is a sensible approach. We do not favour one form of flood defence over another. The key issues for us are residual risk and the risk of flood defences failing. As long as those issues are addressed, from a narrow risk perspective it makes no difference to us what form of defence is used.

Funding and resourcing are a key challenge for the Government, SEPA and local authorities. The measures that we are talking about are challenging, so the right expertise, skills and resources are required to implement them.
Alasdair Morgan: Do you have any evidence that the removal of ring fencing will reduce the amount that is spent on flood prevention? Is there not a danger that ring fencing will set an upper limit on spending and lead local authorities to spend only what has been allocated to them, instead of going beyond that? Is the real problem not the allocation of funding by central Government? You have spoken about the pressures that exist and the fact that there is a long lead time before benefits are seen, but does that not apply to the allocation of funding by central Government in the first place?

Justin Jacobs: Yes. The issue is how we ensure that the right amount is allocated. Ring fencing is one way of doing that; the other is to ensure that legal responsibilities are sufficiently tight, as I mentioned. We are cognisant of the fact that flood risk is not brilliantly well understood by the public at large and we think that everyone—including the insurance industry—needs to do more to explain it. At the moment, people do not see it as a real risk unless they have experienced a flood recently, so there is not the same demand for expenditure on flood prevention as there is in areas such as health and education. That is why we are worried that its priority will slip.

Alasdair Morgan: Presumably you adjust your premiums in areas where is a flood risk. Is there not a mechanism for demand for flood prevention measures to express itself via the electorate?

Justin Jacobs: There is, but at the moment premiums are sufficiently low, thankfully, that insurers raising them by £20 or £30 would not change the equation tremendously.

Alasdair Morgan: I did not think that mine was low, but there you go.

Peter Peacock: In recent years, the effects of climate change have started to become apparent—there were big floods in England last year. Essentially, a deal has been done between the insurance industry and Government, the basis of which is that you will keep insuring if Government keeps investing. There will always be arguments about the quantity of investment.

What you have said so far has been illuminating. Would the potential for the deal that you have to maintain or strike over time with the Scottish Government be strengthened if the duty on local authorities to implement designed schemes was clarified? Would that clarification help to cement the deal or have no impact on it? Would it give you more reassurance?

Justin Jacobs: We are in the final stages of discussing a specific agreement on flood insurance with the Scottish Government. I hope that we will be able to finalise that agreement over the next week perhaps and send information about it to the committee.

A key aspect for us is having a long-term strategy and long-term thinking. I will put in context why we talk about the long term. We know that climate change will affect Scotland within a decade or two or three decades. Next year, the United Kingdom climate impacts programme will publish the latest research on how climate change will affect Scotland and the rest of the UK; we know that it will have a significant effect. Obviously, there are continuing urbanisation processes, which mean that there are more people in the cities. That presents different sorts of flood risks. There are also demographic changes; the existence of more single-person households has an impact on flood risks. We should consider all the things that are happening, look 20 to 30 years ahead, and ask how flood risks in Scotland will change. We need to consider all sorts of flooding—that has been touched on. We must consider not only traditional river flood risks, but coastal and surface water flooding, and how things will change over that period. We need to ask what the country, local authorities, Scottish Water and so on can afford to defend, and whether every person, asset, home and business can be defended. Can 99 per cent or whatever of people, assets, homes or businesses be defended? We should have a target or ambition over that time horizon, particularly if there are areas that cannot be defended. Everyone could then work together to help the people in those areas in an appropriate way.

If we have a long-term vision, funding issues will come into play and they can be resolved, because people will be able to plan over the timescale and ensure that everyone sequences plans. The Government has said to the Association of British Insurers and I, think, in evidence to the committee that the six-year plans that the bill mentions are intended to consider the much longer term and to include specific details for the six years. If that is the case, we are reassured that there will be long-term thinking, but it would be great to see such thinking enshrined in the bill.

Peter Peacock: Let us consider that longer-term concept and the practical reality. Would it help your perspective on the problem and your financial investment in dealing with the issue, which is huge, if, for example, SEPA was under a duty to have a longer-term horizon and had to begin to put investment towards that? It is probably technically difficult to bind ministers to particular financial decisions at any point in time, but it would be possible to bind SEPA to having a view on investment needs. One can argue about that. Would such an approach give you greater reassurance that the deal that you have struck can continue?

Justin Jacobs: I think that it would. The more we can ensure that there will be longer-term
thinking, the more reassured we will be that continuing to offer flood insurance is sustainable.

**Peter Peacock:** I have questions on two specific matters. First, you touched on surface water management. The Government has set out stage 2 amendments in a letter. I presume that you have seen them.

**Justin Jacobs:** Yes.

**Peter Peacock:** Do they meet your surface water management requirements? Are they heading in the right direction or do they cover exactly what you want?

**Justin Jacobs:** They are heading in the right direction. I return to a point that the committee discussed with Scottish Water. The key issue will be how different funding streams are aligned so that they can be synchronised and we do not end up with a period of inactivity because one funding stream is out of sync and is not available to release funds.

**Peter Peacock:** Okay.

Secondly, I want to return to the extent to which a local authority will be under a duty to implement the plans that have been created. Local authorities will be under a duty to help to create the plans, but if they did not implement them and flooding occurred, would they have an increased risk of being legally pursued and sued?

11:45

**Justin Jacobs:** It is not clear in the bill how the flood risk plans that SEPA produces will relate to the ones that local authorities produce and how it will be ensured that they complement rather than contradict one another. It is also not clear how the bill will ensure that local authorities implement the plans. Perhaps there is a role for SEPA or the Scottish Government in that, or perhaps local authorities should be compelled to publish a report on what they are doing so that the population at large can judge them on that. That is the situation that we would rather have, as we want to avoid talk about legal liabilities and pursuing people. That is a sign of failure and it is not what we want to create.

**Peter Peacock:** I completely agree with that but, given that the world is not always like that, will the bill result in an increased risk of councils being sued if they do not implement all aspects of the agreed plan and things go wrong?

**Justin Jacobs:** It is a statement of fact that the clearer a legal responsibility is, the clearer the potential liability is if the responsibility is not carried out.

**The Convener:** Liam McArthur has questions about coastal flood risk.

**Liam McArthur:** Colleagues will probably come in with more substantive questions. One concern for me in the Orkney context, which is probably reflected elsewhere, is that the information on tidal flows and, therefore, on the risk and impact of coastal flooding, is perhaps not as sophisticated or as detailed as it might be. Obviously, insurers need to factor in that information in assessing risk and setting premiums. Have you expressed that concern to the Government or SEPA? Should the information be tightened up?

**Justin Jacobs:** The general point is that the more uncertainty and potential risk there is, inevitably, the higher the premium will be. It is difficult to know the risk, so we have to set prices on that basis. We are reasonably confident that the provisions on starting to map out the risk in more detail will help to clarify the situation. The issue for us will then be how we can access that information in a way that will allow us to reflect it in premiums.

**Liam McArthur:** In my local experience, the ABI has been more comfortable than SEPA has with assessments of risks to development in particular areas. Do you have access to information and intelligence on flood risk to which SEPA does not have access? If so, could you helpfully share that information with SEPA?

**Justin Jacobs:** We do not have access to better flood risk information. Individual insurers have their flood claims data, which may provide them with additional experience on which to base their rates. We have said to SEPA and other bodies in the UK that we are happy discuss whether we could usefully share data with them to inform their understanding of flood risk. There may be the usual practical or legal hurdles to that, but we want to have those discussions and would enter them in a positive frame of mind.

**Liam McArthur:** That is very helpful.

**John Scott:** On dissemination of information to your customers, your written submission raises concerns about SEPA passing on flood risk warnings. Will you discuss that and say what you think could be done to improve that?

**Justin Jacobs:** Generally, we welcome flood warning measures because they help people to prepare and to take last-minute measures to protect themselves and their homes. Some insurers are beginning to be proactive on that. If they know that a major flood is coming and their customers will be affected, they make outbound calls to warn them. The companies play a role in providing advice about personal safety and how to protect valuables. However, I do not think that we have any concerns about SEPA doing that.

**Arthur Philp (Association of British Insurers):** No—we do not.
The Convener: Do you ask your members to ensure that they provide practical information to customers who live in areas where there have been flooding issues, or is that left to the individual companies?

Justin Jacobs: It is more the latter. It is not our role to tell members to do that. However, it is in insurers’ interests to ensure that customers who are at risk know what to do if that risk becomes a reality. When I got my home insurance recently, I received a leaflet telling me that the area has a high incidence of theft and setting out some measures that I could take. Similarly, if I was in a flood risk area, I might get a leaflet with five basic points to think about.

John Scott: The Scottish Government officials do not tell SEPA how that should be done, nor does the bill prescribe how it should be done. Are you none the less confident that SEPA will—whether out of the goodness of its heart or in the spirit of good practice—adequately disseminate the information to people who are likely to be flooded?

Justin Jacobs: I think that I misunderstood your previous question slightly. I thought that you were talking about when a flood is imminent.

John Scott: I was, but I suppose both—

The Convener: I am curious about both circumstances. When a flood is imminent, it might be too late to put in place some measures. However, such measures could be put in place in advance of an imminent flood in an area that has had issues with flooding before. There are two separate sets of advice: emergency advice and longer-standing advice.

Justin Jacobs: Increasingly, insurers issue both sets of advice but—as I said—I do not think that flood risk is sufficiently understood. We should explore further any ways in which SEPA could raise awareness of flood risk with our members: making that requirement for SEPA clear in the bill would be worth while.

Bill Wilson: On coastal flooding, are insurance premiums being affected by the debate over global warming? If so, how?

Justin Jacobs: That is a trend that is likely to develop, unless some of the impacts of global warming are managed effectively. Insurance works primarily on an annual contract basis. Therefore, the risk that might be present in 20 years will not necessarily affect the price today. However, we are worried about what will happen in 20 years if that risk is not managed. We do not want to be able to offer only prohibitively expensive insurance in 20 years, which is why we are doing a lot of work on the impact of climate change.

Bill Wilson: Is it likely that you might issue a warning to customers that you might not insure them five or 10 years down the line?

Justin Jacobs: We want to ensure that we never have to say that. That is part of the agreement on flooding that we are discussing with the Scottish Government. The Scottish Government is the first in the UK to consult on a climate change adaptation strategy, which we support. The idea of long-term strategies applies not only to flood risk, but to the other impacts of climate change.

The Convener: We have before us a petition that suggests that SPP7 is not being followed by some councils. As it happens, Jim Moodie from Fife Council clearly stated earlier in evidence that, if building is happening within a 5m above sea level contour line around the coast, that means that there must be councils that are simply ignoring the guidance, which substantiates the petitioner’s view to an extent.

The Government has said that, in the light of the Flood Risk Management (Scotland) Bill, it will revise SPP7 and that, because of the problems we have talked about today, it will introduce further legislation in respect of planning processes. It does not have a timescale for that work, but it has made it clear that it does not think that it would be appropriate to use the bill as a vehicle for those changes.

Do you have concerns about whether the planning process will take flood risk into account in advance of any future legislative changes, or is that not something that has been a big issue for you?

Justin Jacobs: We think that SPP7 provides quite robust and tight planning guidance in relation to flood risk, so we are supportive of it. If it is not being followed, that is a concern, but we are not aware of that.

The Convener: You are not conscious that problems are arising because people are blatantly ignoring SPP7.

Justin Jacobs: That is not an issue that we are aware of.

Liam McArthur: I can offer a specific example of something that might be a problem. The local council in my constituency did not accept the recommendations of SEPA with regard to a particular development, and the matter was referred to ministers. The ministers passed it back to the council for approval, but the development had already passed the ABI threshold of risk. Clearly, however, SEPA continued to have concerns. SPP7 was at the heart of that matter. It could be argued that the local council was overriding or ignoring aspects of the guidance, but
ministers and the ABI seemed to be comfortable with that.

The Convener: You cannot be expected to answer on an individual case, Justin, but are you aware that that kind of thing happens?

Justin Jacobs: No. I am not entirely sure what you mean when you refer to the “ABI threshold”. However, next month, we will publish draft guidance for developers on how they can ensure that their future developments are insurable. In Scotland, that guidance will suggest that developers confirm that they have followed SPP7 and that SEPA is happy with the flood risk level. We are less concerned about SEPA’s opposition to a development on technical grounds—for example, if the developer did not do the right thing at the right point in the process—than we are about its opposition on the ground that there is a substantive flood risk.

The Convener: When will that draft guidance be available?

Justin Jacobs: It will be published either late this month or, more likely, next month. It will be UK-wide, and will take into account the various planning regimes.

The Convener: Could you ensure that the committee is on the distribution list for that?

Justin Jacobs: Of course.

The Convener: We have no further questions. I thank you both for coming along. You are getting out of the meeting a little bit earlier than you might have anticipated.

11:55

Meeting continued in private until 12:34.
SUPPLEMENTARY SUBMISSION FROM SCOTTISH WATER

Thank you for your enquiry regarding the release of information to local authorities and in particular to Perth and Kinross Council and Fife Council.

I would like to assure the Committee that Scottish Water is committed to working in partnership with SEPA and all local authorities to ensure that together we address flooding issues across Scotland. I can advise that we are in regular discussion with many councils regarding our drainage area plans to ensure they have a complete understanding of our data, for example, if flooding is a result of severe weather or the operation of our sewer. As it is not clear exactly what information the enquiry refers to we will contact Perth and Kinross Council and Fife Council to clarify their particular concerns.

Scottish Water is happy to provide information that will assist local authorities fulfil their duties. However it is our policy not to provide information covered by the Data Protection Act. This refers to data that would identify customer’s personal details such as name and/or specific address of properties on Scottish Water flood register. We can however provide postcodes which we believe provide an appropriate level of detail without breaching the Data Protection Act 1998.

As Geoff Aitkenhead advised the Committee on 10 December, Scottish Water will provide all reasonable information on reservoirs. We are, however, guided by the security and emergency measures directions from UK security advisers regarding what we can and cannot divulge about drinking water systems.

I hope this response is of assistance to the Committee but please contact us again if we can provide further information.

Scottish Water
16 December 2008
SUBMISSION FROM SEPA

SEPA welcomes the opportunity to respond to the Rural Affairs and Environment (RAE) Committee following the introduction of the Flood Risk Management (Scotland) Bill, referred to hereon as ‘the Bill’, to the Scottish Parliament. This response provides feedback to the Committee covering the four specific areas for which comments were requested.

General Principles and Policies

SEPA is encouraged by the general principles of the Bill and believes that the broad areas of policy provision set out in the legislation will create a framework to deliver a more sustainable approach to flood risk management. The Bill makes policy provision in five key areas:

- coordination and cooperation in flood risk management;
- assessment of flood risk and preparation of flood risk management plans, including transposition of the EC Floods Directive (2007/60/EC) (the Directive);
- amendments to local authority and SEPA functions for flood risk management;
- a revised statutory process for flood risk management measures; and
- creating a more uniform approach to the enforcement of the Reservoirs Act 1975 (the 1975 Act).

SEPA welcomes all five policy provisions which together create the strength and flexibility that will be required to enable strategies to be adapted to the changing needs, pressures and techniques of flood risk management. The new statutory process allows for the adoption and funding of measures previously not eligible under the former legislation. It will also enable flood management planning to respond to the future impacts of climate change.

The Bill effectively transposes the EC Floods Directive, which focuses on sustainable flood management at the catchment scale as the basis for the reduction of adverse consequences of flooding on all aspects of society.

Significantly, the Bill places a general duty on all responsible authorities (including Scottish Ministers) to exercise their flood related functions with a view to reducing overall flood risk. This is the first time any such duty has existed in Scotland and will help to focus attention on flood mitigation across all areas of public life.

The role of SEPA

Under the provisions of the Bill, SEPA will become the prime organisation responsible for delivering the work required under the EC Flood Directive. Although not explicitly named as the competent authority in the Bill, by being given the role it is given in Part 3, SEPA is identified as the competent authority for the Directive.

In addition to this important overarching new role for SEPA, the Bill also introduces other significant changes for SEPA: - to our statutory duties in relation to flood risk advice for planning and development; to our role as flood warning authority (which becomes statutory, not discretionary); and to reservoir safety provisions, where SEPA will become the enforcement authority for reservoir safety in Scotland.

SEPA will assume a new strategic flood risk management role and, working with the Scottish Government and the responsible authorities, SEPA will help set the national policy framework and develop national flood risk management priorities.

Co-operation and co-ordination

Joint working between SEPA, the Scottish Government and the responsible authorities will be vital to the success of the framework that the Bill establishes. Responsible authorities must exercise their flood risk management functions and assist SEPA in preparing flood risk assessments, maps and plans.
The Bill places a duty on all responsible authorities to co-operate and share information. SEPA recognises that to establish and maintain close co-operation and co-ordination between all the responsible authorities will be a challenge. Tasks such as aligning funding streams may prove to be difficult and ultimately may require guidance and support from the Scottish Government.

The Bill requires the development of Local Flood Risk Management Plans, covering areas identified as being at risk of flooding (which may encompass a number of Local Authority areas). It will be vital to ensure local co-ordination in the development, financing and delivery of measures to reduce flood risk in these areas. Local Authorities will lead on the production of these plans, supported by SEPA via its role in the production of the overarching national (Scotland District) flood risk management plan – it is this national plan that is reported by the Scottish Government to the European Commission.

**Issues and concerns**

As stated above, SEPA welcomes and is broadly satisfied with the overall content and direction of the Bill. There are however some detailed issues that SEPA wishes to bring to the attention of the RAE Committee, including some issues which are not contained within the Bill.

**Duty to implement**

Section 29(1) of the Bill only refers to the timetable and description of an implementation plan, as opposed to placing a duty upon responsible authorities to implement the measures in a Local Flood Risk Management Plan. Whilst recognising that Part 1, Section 1 (1) of the Bill provides a general duty for all relevant authorities to “exercise their flood risk related functions with a view to reducing overall flood risk”, without a duty to implement the actual plans there may be a danger that not all of the various measures identified in the Local Flood Risk Management Plans will be realised. Ultimately, this could also potentially adversely impact on the national ‘District’ Flood Risk Management Plan submitted to Europe.

**Capacity building, recruitment and training**

Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. SEPA highlighted this in its previous evidence to the RAE Committee and it is widely recognised by the Committee, Ministers and others that this will be a severe challenge to SEPA, Local Authorities and all others involved in the delivery of the Bill.

**Funding**

No strategic road map is set out for investment in flood management over the long term. However, the District plan should set out the long-term national priorities and therefore aid the targeting of investment. The timings of the existing funding mechanisms for Local Authorities, Scottish Water and SEPA do not coincide. This may lead to problems in terms of being able to plan for and ultimately fund joint work at the appropriate times to meet future deadlines. There is also uncertainty as to the long-term maintenance of flood risk management measures and whether this will be the joint responsibility of all partners.

**Planning and flood risk**

SEPA’s current role in providing advice to planning authorities as to flood risk is maintained under the provision set out in the Bill (Section 62). However, the definition of flood risk from Part 1 of the Bill means that SEPA will now be required to advise on the likelihood of flooding and, where information is available, on the potential impacts for human health, the environment, cultural heritage and the economy in relation to planning policies and proposals.

We feel that this change in our statutory duty could be made more efficient and effective by establishing:

- a new *statutory* requirement for planning authorities to produce a strategic flood risk assessment of proposed development plans within statutory planning guidance;
- clearly defined guidance to manage expectations about the provision of future flood advice to planning authorities relative to planning applications; and
- clarity on the use of SEPA objections to development plans and planning applications relative to flood risk; SEPA should not be expected to object to a
There is an opportunity to require Strategic Flood Risk Assessment (SFRA) of development plans within the secondary legislation and associated guidance that is being developed to implement the Planning etc (Scotland) Act 2006. SEPA made representations about the importance of SFRA of development plans in its response to the draft development planning regulations and in giving evidence to the Flooding Inquiry.

SEPA strongly recommends that the ‘expectation’ that planning legislation will include a specific provision requiring local authorities to have regard to flood risk management plans when preparing development plans, should be followed through.

As the Bill requires consideration of development planning when setting objectives to manage flood risk, the intention is for flood risk management plans to include measures to avoid flood risk. Such an avoidance principle links directly to SPP7 which the memorandum anticipates will be reviewed as a result of the Bill. SEPA strongly recommends that SPP7 is reviewed and re-written to reflect the Bill (once enacted), particularly the new definition of ‘flood risk’.

**Sustainable Urban Drainage Systems**
The Bill makes no mention of Sustainable Urban Drainage Systems (SUDS) and their potential role in urban flood mitigation, particularly with respect to pluvial and sewer flooding. SUDS form part of Scottish Water’s responsibilities under the Water Environment and Water Services (Scotland) Act 2003 with which the EC Floods Directive has to align. The role of SUDS should be considered within the Bill to maximise opportunities for “source control” measures for flood mitigation.

**Sewer flooding**
Mapping sewer flooding is a technically difficult task which should, we suggest be undertaken by the expert authority in this area. SEPA would recommend that the Bill should contain a statutory duty on Scottish Water to (i) assess the risks associated with sewer flooding and (ii) undertake flood mapping for the surcharged sewer scenarios. We would suggest that the Bill should require sewer flooding to be included on the flood hazard and flood risk maps. Scottish Water would need to provide this information to Local Authorities, SEPA and other responsible authorities in order that they can undertake their respective duties under the Bill.

**Natural Flood Management**
SEPA welcomes the inclusion of the assessment of the possible contribution that natural features can make to effective flood risk management. We consider that the duty placed upon SEPA will allow a national overview of the potential of such forms of natural flood management to be produced. We would also strongly support the idea of undertaking a series of scientifically based pilot catchment studies to adequately investigate their technical effectiveness.

However, SEPA strongly recommends that Section 16 of the Bill should be re-written to read ‘natural processes’ as opposed to ‘natural features’, as it is the enhancement of the ‘process’ (i.e. the amount of flood attenuation), rather than the alteration or restoration of a feature, that will lead to a reduction in flood risk.

Article 7(3) of the EC Flood Directive recognises this when it refers to sustainable land use practices and improvement of water retention, which is an alteration to a process (which may be achieved via man-made structures/intervention/land-use change as well as by the impact of ‘natural features’). SEPA is therefore concerned that the Bill may be limiting what can be considered as a viable measure to alter, enhance or restore natural processes by the way Section 16 is currently written.

In addition, it is essential that any assessment of the effectiveness of natural features in changing flood processes is underpinned by scientific and technical proof of its capability in attenuating flow at a range of flood scenarios.
Sustainability and balancing duties
Flooding is a natural environmental process and can (in some instances) be a significant pressure on the ecological status of water bodies. We suggest therefore that under the general duty of the Bill under Part 1, Scottish Ministers, SEPA and responsible authorities should not only have regard to the social and economic impacts of exercising their flood risk related functions, but all should also have a duty to have regard to the environmental impacts of exercising their functions.

Drainage assets
Surface water management is a key issue to be addressed, especially within urban areas. As an aid to clarifying responsibilities for assessing and managing surface water flood risks, we suggest that a provision could be added into the Bill that would require Local Authorities to prepare (each 6-year Flood Risk Management Plan cycle) an assessment of the condition of the artificial drainage structures in their area. SEPA could then obtain this information from the Local Authorities via the data exchange provision already in the Bill.

Interim measures
Section 82 in the Bill allows for transitional arrangements to be set in place. However, SEPA would welcome guidance on interim arrangements between the Bill being passed (2009) and the first flood risk management planning cycle (beginning 2015). This has implications in two areas: (i) with respect to design, funding and construction of flood management measures, including flood warning schemes; and (ii) with respect to Development Plan progression in the absence of being able to refer to any Flood Risk Management Plans.

With respect to the first point, it may be assumed that these will be undertaken via the provision in Part 4 of the Bill which allows Local Authorities to undertake work outwith the context of a Local Flood Risk Management plan, provided any work undertaken does not have a detrimental impact on the objectives of the plan. It could be argued that until such times as the first plans are set (2015), Part 4 of the Bill will provide the required mechanism to undertake any such measures.

It would also be helpful if current planning legislation could be updated to refer to the Flood Risk Management (Scotland) Bill, such that flood risk assessment and mapping work carried out prior to the first flood risk management planning cycle (beginning 2015) will have to be referred to in setting Development Plans.

National security considerations
We would wish to see clarification within the Bill or through future policy and guidance giving clear direction to SEPA and other relevant authorities on security issues with respect to reservoir inundation plans, and taking account of guidance drafted by DEFRA.

RAE Committee Inquiry findings and the Bill
The Bill provides the framework for addressing the Inquiry recommendations. To assist our response, SEPA has summarised in Annex 1 our comments on how the Bill reflects each of the Committee’s recommendations. Other issues we have already outlined in section 2, above.

Co-ordination with the Water Environment and Water Services (Scotland) Act 2003 (WEWS)
This section sets out how the various duties and responsibilities placed on public bodies under WEWS can be aligned with the proposals in the Flood Risk Management (Scotland) Bill.

Integration of flood risk management and the management of the water environment is a key goal of this Bill and the associated EU Directive. By integrating the proposals in the Bill with our existing duties under WEWS, SEPA will be able to gain efficiencies in administrative arrangements, promote sustainable flood management, and make the most of the overlaps between natural flood management and protection/restoration of the water environment.

Where flood risk and the management of the water environment need to be considered together - such as in license applications or planning consents - our aim will be to provide our customers with a single, simple and transparent approach to regulation and the provision of advice, in an effective and efficient manner.
WEWS has several components that are particularly relevant to the Bill:

- WEWS already places a duty on Scottish Ministers, SEPA, Local Authorities and Scottish Water to promote sustainable flood management. In addition, every public body and office-holder must have regard to the desirability of contributing to mitigating the effects of floods. Whilst these duties will be superseded by the Bill, the policy intention was clearly that flood management is an important element of WEWS;

- The administrative system established for River Basin Management Planning under WEWS (both internally within SEPA and externally), and the systems set up to engage with stakeholders can both be used in the efficient delivery of Flood Risk Management Plans;

- Through Controlled Activity Regulation (CAR), all such activities can be managed to contribute to flood risk objectives. CAR can also be used to ensure new flood protection measures align with the objectives of WEWS. This complements the requirements under the Bill to coordinate objective setting with River Basin Management Plans;

- It’s important to stress that there should not be any conflict between flood risk management measures and WEWS objectives. Coordination of WEWS and flood risk management will ensure measures are planned with consideration of environmental impacts and that all reasonable and practical mitigation of those impacts is considered;

- The structure of the proposed planning mechanism under the Bill and WEWS are intentionally similar. Each operates on a 6-year planning cycle, with the first Flood Risk Management Plans due at the same time as the second River Basin Management Plans (December 2015). The stages that lead up to the production of the plans – namely risk assessment (characterisation), identification and reporting of significant issues, and the objective/measures setting process in draft plans and final plans - also share the same deadlines;

- River Basin Planning operates using 10 area advisory groups across Scotland, each helping to produce sub-basin plans for their catchments and coastal areas. Members of the River Basin Management Plan advisory groups include Local Authorities, Scottish Water, Scottish Natural Heritage, the Forestry Commission, representatives of land-owners, NGOs and fishery boards. Many of these members will have a role in flood risk management and we shall seek opportunities to integrate these groups with the flood risk management groups where relevant;

- The Bill requires coordination with WEWS in objective setting. This provides an opportunity to ensure public and private sector investment deliver multiple benefits, and an opportunity to ensure flood risk management measures meet the sustainability criteria of WEWS and vice versa;

- Given the points above regarding planning structures, stakeholders and objective setting, there will be significant opportunities to coordinate and integrate the planning systems to ensure maximum efficiency and synergy between these two key policy areas;

- In addition, given SEPA’s lead role in WEWS and River Basin Management Planning, and its proposed role under the Bill, SEPA is in an ideal position to ensure the two planning mechanisms are coordinated. SEPA is also well placed to ensure that a coordinated WEWS/flood risk management planning system also integrates with wider government initiatives such as climate change and sustainable rural development.

SEPA
10 November 2008
### Annex 1: Summary of RAE Committee Inquiry findings and the Bill

<table>
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<tr>
<th>RAEC inquiry recommendations</th>
<th>SEPA comment on the Bill</th>
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<tr>
<td>R1: that the Scottish Government fully consider the recommendations contained within this report before introducing its bill on flooding and flood management.</td>
<td>No comment.</td>
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</table>
| R2: that the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding. | This is partly addressed in the Bill.  
The Bill allows for the mapping and addressing of pluvial flooding. However, there are no specific funding mechanisms set out for pluvial flooding in the Bill, and pluvial flooding is not defined anywhere in the Bill or in the EC Floods Directive.  
Given that the Directive refers to ‘urban flooding’ and does not exclude any type of flood hazard from being considered (except floods from a sewerage system) and because the Bill does similar, SEPA consider that pluvial flooding will be included.  
Pluvial refers to the ‘origin’ of the flood (i.e. the generating mechanism), which in this instance is rainfall. Pluvial flooding should not be mistaken for sewer flooding, although heavy rainfall can cause an exceedence in the design capacity of sewer systems leading to localised surface water flooding. These two flood hazards can be similar and in some situations are linke, but, for the most part are separate processes.  
Although most commonly associated with urban areas, pluvial flooding can also occur in rural areas. However, the greatest impacts in terms of flood risks from heavy rainfall will most likely arise in the densely urbanised zones. |
| R3: that the Scottish Government conduct an assessment of the resilience of national infrastructure to potential storm surge events, especially given that storm surges and related coastal flooding are likely to increase in the future. | This is not addressed in the Bill.  
The Bill does not make specific provision for this but provides the framework under which it could take place.  
Scottish Government (Scottish Resilience) and SEPA have identified a programme of work to define Critical National Infrastructure (CNI) at risk from river and coastal flooding and are currently in discussion as to how best that can be progressed.  
Recommendation 3 was to conduct an assessment and although this may not have been done prior to the writing of the Bill, it is a task that SEPA consider worthwhile given the impending uncertainties associated with coastal flooding in future. SEPA expect that CNI should form part of the risk receptor categories examined under the PFRA (by Dec 2011) and will be examined further under the subsequent mapping and planning tasks. |
| R4: that the Scottish Government explore methods to ensure that the social and human costs, as well as the economic costs, of flooding can be included in future assessments of the value of proposed flood management measures. | This is addressed in the Bill.  
Part 1 of the Bill requires SEPA and responsible authorities to have regard to social and economic impacts in the exercise of their flood risk management functions.  
SEPA is unaware of any specific new tools which have been developed in this regard and recognise that accounting for such factors properly is difficult. However, similar to the findings of the |
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<td>Social Impacts of Flooding report (2007), SEPA suggests that traditional cost-benefit analysis techniques are not best suited to accounting properly for all social and human factors and believe that alternatives methods may need to be found. In setting objectives and measures to reduce flood risk, analysis of the benefits of any proposed measures (in terms of reducing the adverse consequences of flooding for human health, amongst others) is required. Such Bill provision should be regarded as a positive step in the right direction to better accounting for the intangible costs of flooding, despite a lack of specific guidance on how social and human costs might be included or prioritised.</td>
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<td>R5: that the Scottish Government establish how it can best contribute to building capacity in hydrological expertise.</td>
<td>This is not addressed in the Bill. We consider that this is a very important area. Please refer to section 2.2 in the main document for our more detailed response.</td>
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<tr>
<td>R6: that the Scottish Government adopt the catchment as the fundamental unit for flood management.</td>
<td>This is addressed in the Bill. The Bill transposes the EC Floods Directive so therefore upholds the ‘catchment approach’ defined in it. The Bill makes provision for two levels of flood management unit, i.e. the national (District) level and the sub-district level which will relate to local flood risk management plans. The Bill places a duty on SEPA to define these sub-district units and in doing so SEPA must have regard to river basins and sub-basins. Provision therefore is made in the Bill for the ‘catchment’ to be adopted as the fundamental unit for flood management if this is deemed most suitable.</td>
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<tr>
<td>R7: that SEPA should be given the role of competent authority and take the lead at a national level in flood risk management, with suitable further safeguards to its independence.</td>
<td>This is not fully addressed in the Bill. Although not explicitly named as the competent authority in the Bill, by being given the role it is given in Part 3, SEPA is identified as the competent authority for the Directive.</td>
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<td>R8: that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans.</td>
<td>This is addressed in the Bill. SEPA, Local Authorities and Scottish Water all have their roles clearly identified in the Bill. There is provision to designate others (Scottish Natural Heritage) as responsible authorities if required. The Bill places a duty upon all bodies formally identified in the Bill to cooperate in order to achieve the objectives of the Bill and the EC Floods Directive.</td>
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<tr>
<td>R9: that the Scottish Government place significantly greater emphasis on pluvial flood management in setting future objectives for Scottish Water.</td>
<td>This is not addressed in the Bill. As stated above in our response to R2, pluvial flooding is not specifically mentioned anywhere in the Bill. Scottish Water is only responsible for sewer flooding, which can be caused by either a mechanical failure of a system (e.g. a blockage) or the surcharging of a system due to an exceedance of it’s design capacity. Pluvial flooding, although related in some cases to the second sewer flood process described above, is</td>
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<td>R10: that the Scottish Government set out a national, strategic &quot;road-map&quot; for investment in flood management that looks forward over a period of at least 25 years, with provision for updating every parliamentary session.</td>
<td>technologically neither of these (as explained above at R2). Following the devastating flooding in England and Wales in 2007, the Pitt Review recognises both issues and makes strong recommendations to address these.</td>
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<tr>
<td>R11: that the Scottish Government publishes clear criteria for prioritising the funding for future flood management.</td>
<td>This is partly addressed in the Bill. The district plan should set out the road map for long-term national priorities, and therefore investment. The issue appears to be how this road map would be delivered given the complex nature of funding. Refer to para. 2.3 in the main document.</td>
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<tr>
<td>R12: that needs-based funding should be provided to local authorities in order that they can contribute to catchment flood management plans and believes the funding method adopted should embrace three distinct levels of funding</td>
<td>The Bill does not include explicit criteria for prioritising future funding for flood management. However, the Government has suggested that the first cycle of the Preliminary Flood Risk Assessment will significantly influence where effort is concentrated in terms of attempting to reduce the adverse consequences of flooding. This will in turn provide the Government with a clearer picture of where the most potentially vulnerable areas of Scotland exist and within which Local Authorities they reside. Prioritisation on this basis could also help inform national versus local need, as well as the overall level of risk.</td>
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<tr>
<td>R13: that the Scottish Government consider where there is scope for different approval processes to be established for different scales of flood management measure; that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions.</td>
<td>This is addressed in the Bill.</td>
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<tr>
<td>R14: that the Scottish Government establishes further pilot studies to assess the contribution that natural flood management measures can make at a catchment scale.</td>
<td>This is not addressed in the Bill. However, the Scottish Government has set up a natural flood management group to consider these issues. The first task of this group is setting up a project to develop a long term research strategy for natural flood management. We would stress that this should examine the impact of such features on flood processes, as currently there is a paucity of quantitative information to assess the effectiveness of such natural features on the attenuation of flood flows, especially within the context of overall...</td>
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<td><strong>R15:</strong> that the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale.</td>
<td>sustainable flood management at the catchment scale.</td>
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<td><strong>R16:</strong> that local authorities ensure that, when planning permission is granted for new developments incorporating sustainable urban drainage systems, and where Scottish Water is not adopting the system, an appropriate maintenance regime is a requirement of the planning permission.</td>
<td>This is not in the Bill. Reference to SUDS and its role in urban flood mitigation is not in the Bill; also see section 2.5 in the main document.</td>
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<tr>
<td><strong>R17:</strong> that, given the importance of land-use management, the Scottish Government should ensure it has the power to require changes to land use for flood management purposes. Such a power would have to be accompanied by a provision for landowners to be compensated.</td>
<td>This is addressed in the Bill.</td>
</tr>
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| • The Bill includes three provisions that enable changes to land use to be considered for flood management purposes:  
• changes to “improvement orders” which are usually historical orders which allow drainage of agricultural land;  
• a process for Flood Protection Schemes (FPS);  
• compulsory purchase of land for FPS. | |
| **R18:** that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas at risk of flooding. | Currently there is no requirement for Local Authorities to undertake Strategic Flood Risk Assessments (SFRA) similar to that which is done in England and Wales. SEPA is aware of only two SFRA’s in Scotland (Dumfries & Galloway Council and Loch Lomond National Park Authority). SEPA, in providing enhanced flood risk advice under the new flood risk definition, considers it vital that SFRA’s become a mandatory element of the Development Planning process – more detail on this is already outlined in section 2.4 in the main document. |
| **R19:** the Scottish Government ensure that the suggestion of enhanced reinstatement following flooding is communicated to representatives of the insurance industry and should seek to persuade the insurance industry that it is the best | This is not addressed in the Bill. |
### RAEC inquiry recommendations

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<td>way to minimise the cost implications of further flooding incidents.</td>
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**R20:** that the Scottish Government develops a flood warning strategy and, in doing so, addresses SEPA’s other eight recommendations regarding flood warning

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<tr>
<th><strong>This is addressed in the Bill.</strong></th>
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<tr>
<td>The Bill makes provision for SEPA to develop a national flood warning strategy for Scotland and provides the flexibility and power to address all other eight points raised in our previous RAE submission.</td>
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</table>

**R21:** that the Scottish Government ensures that SEPA has the necessary funding to enable it to collaborate with the Meteorological Office to provide an effective flood warning system for all types of flooding.

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<tr>
<td>SEPA fully supports the need to work more closely with the Met Office in developing improved flood forecasting for all types of flooding across Scotland.</td>
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<tr>
<td>A key recommendation of the Pitt Review following the Floods in England in 2007 is to set up a Joint Forecasting Centre for England and Wales to improve the links between meteorological and flood forecasting.</td>
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<tr>
<td>We would strongly support the setting up of a similar joint forecasting centre in Scotland between SEPA and the Met Office.</td>
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**R22:** that the Scottish Government take steps, including by making representations to the UK Government, to ensure that high-resolution radar coverage is established throughout Scotland to ensure that flood warning is as effective as possible.

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**R23:** that the Scottish Government investigates the possibility of individual property vendors providing information on previous flooding incidents associated with a particular property to potential purchasers and requiring developers to provide flood risk assessments for new developments to potential purchasers.

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**R24:** that the Scottish Government takes steps, together with SEPA, local authorities, the emergency services and the insurance industry, to consider how it can educate members of the public at risk of flooding of how they can best protect themselves and their property.

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<th><strong>This is addressed in the Bill.</strong></th>
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<tr>
<td>The Bill places a general duty on Scottish Ministers, SEPA and responsible authorities to “act with a view to raising public awareness of flood risk.” SEPA continues to raise awareness of flooding issues through our annual campaigns.</td>
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**R25:** that the fire and rescue service be tasked with coordinating all flood-related rescue activities.

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<th><strong>This is not addressed in the Bill.</strong></th>
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**R26:** the Scottish Government explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency.

| **This is not addressed in the Bill.** |
LETTER FROM MICHAEL RUSSELL MSP, MINISTER FOR ENVIRONMENT (16 DECEMBER 2008)

In their recommendation letter, the Finance Committee suggested that the RAE Committee may wish to seek clarification from the Scottish Government on a number of issues.

I appreciate that the Committee would like to discuss these issues with me, but I also thought it would be helpful to provide a written response to the Finance Committee recommendations. Please find my response attached.

Please don’t hesitate to contact me if you have any further queries, and I look forward to future discussions on these and other matters.

Michael Russell, Minister for Environment
16 December 2008

Response to the Recommendations in the Finance Committee’s report on the Financial Memorandum

Recommendation 1 - Whether the cost estimates for local authorities, which are presented as abbreviated overall totals, include costs for all the expected responsibilities and are as comprehensive and robust as possible (paragraphs 36 and 37 above).

As far as possible, the Scottish Government has considered how flood risk varies across the country and the different levels of effort that different local authorities will need to put into assessing and managing that risk.

The figures in the financial memorandum and supplementary note were based on information provided from 6 local authorities representing a range of flooding issues and circumstances, including rural, coastal and urban flooding problems. This enabled us to produce an average figure for the financial memorandum.

For the supplementary note, we included an upper cost estimate that was based on the cost estimates that were presented to us from those local authorities that have long history of tackling complex flooding issues, and in particular surface water flooding, which experience has shown requires the greatest level of assessment, planning and cooperation to address effectively.

The Scottish Government has worked closely with CoSLA and a range of local authorities to promote wide understanding of the new responsibilities set out in the Bill, including the types of tasks that fulfilling these responsibilities will entail. This has included established a network of advisory groups on the Bill and its implementation. These advisory groups include representation from a subset of local authorities that have experience of tackling common flooding problems in Scotland.

The Scottish Government has noted that the local authorities that provided evidence to the Finance committee did not include any of those that had provided information to CoSLA and the Scottish Government on the costs of implementing the Bill, which was incorporated in the financial memorandum.

Recommendation 2 - Whether the Scottish Government intends formal reporting to the Parliament on implementation of the Bill to include information on the actual costs on all public bodies (paragraph 40).

We are happy to consider this issue further.

Recommendation 3 - How the Scottish Government will be able to build the implications of the significant uncertainty about the extent of future responsibilities into the different financial planning frameworks for the different public bodies involved (paragraphs 42-44).
The Scottish Government, through its network of advisory groups on the Bill, is working with each relevant public body to ensure that responsibilities are clearly understood.

The Scottish Government is working with these public bodies to investigate options for ensuring that funding available to public bodies can be aligned to deliver the plans established under the Bill, and to the timetables set out in the Bill. This includes considering how best to align funding streams that come online at different times during the flood risk management planning cycle.

A summary of funding streams is provided below.

**Local Authorities**
Any additional funding pressures for local government would be discussed and agreed with COSLA, as part of the new process detailed in the Concordat. Funding is allocated on a three year cycle, and the next funding period will be from the 2011-2012 financial year.

**Scottish Water**
Scottish Water is funded through customer charges and government lending. The amount of money available to Scottish Water in 2010-14 to tackle flooding will be determined as part of the current price review process for 2010-14 being undertaken by the Water Industry commission.

Ministerial Objectives for Scottish Water for the period 2006-14 were set in February 2005 to be delivered over two regulatory periods, 2006-2010 and 2010-2014. These include a specific objective for Scottish Water to reduce the number of properties at risk of internal flooding. Ministers are currently considering and will shortly confirm their objectives for the 2010-2014 period.

The Scottish Government is also about to start the process to identify objectives for Scottish Water for the regulatory period commencing April 2014 and beyond. Those objectives will be set in full consultation with all stakeholders, and will take into account the new flood risk management duties placed on Scottish Water by the Flooding Bill.

**SEPA**
Additional funding pressures on SEPA would be discussed and agreed with SEPA as part of the spending review process. As with the local authorities, funding is allocated on a three year cycle and the next funding period will be from the 2011-2012 financial year.

**Recommendation 4** - Whether the current spending review period allocations to local authorities include sums to cover the responsibilities in this Bill and, if so, how these sums have been allocated among local authorities (paragraph 44). If not, the lead committee may wish to seek clarification on the mechanisms the Scottish Government will use to allocate additional funds where new responsibilities have been imposed on public bodies within a spending review period.

The total package of funding for local government sees an investment of £34.9 billion over 2008-11 - an increase of 13.1% across the period. Any additional pressures on local government, including the new responsibilities set out in the Bill, will be discussed and agreed with COSLA, as part of the new process detailed in the Concordat.

**Recommendation 5** - How the Scottish Government will ensure that future local authority funding allocations will reflect actual costs rather than averages and, specifically, how the different burdens on rural and urban authorities and those with different flood risk issues will be equitably reflected in funding (paragraphs 45 and 53).

The Scottish Government’s criteria for prioritising funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

Flood risk management plans will include information on flooding problems, and the actions needed to address these problems across the country, which will include actions in urban as well as rural areas. The expectation is therefore that flood risk assessments and flood risk management plans prepared under the Bill, which will include a nationally prioritised set of objectives and

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measures to manage flood risk, will form a valuable piece of information that can inform the allocation of funding to local authorities.

**Recommendation 6 - How the Scottish Government will distribute block grant for the capital cost of flood management measures equitably to local authorities in future (paragraph 57).**

The Scottish Government’s criteria for prioritisation of funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

The expectation is that flood risk assessments and flood risk management plans (which will include a nationally prioritised set of objectives and measures to manage flood risk) prepared under the Bill will form a valuable piece of information that can inform the allocation of funding to local authorities.

**LETTER FROM SCOTTISH GOVERNMENT AND ASSOCIATION OF BRITISH INSURERS**

**ABI AND SCOTTISH GOVERNMENT STATEMENT ON FLOODING AND INSURANCE FOR SCOTLAND**

We are writing to inform you about the agreement announced today between the Association of British Insurers (ABI) and the Scottish Government on flooding and insurance for Scotland.

This new agreement represents the first time that the ABI and the Scottish Government have directly agreed a statement on flooding that is tailored to the specific circumstances in Scotland. It confirms our shared commitment to work together to provide a long-term solution that will enable flood insurance to continue to be as widely available as possible without distorting the insurance market. To achieve this, we have agreed on a range of measures to:

- improve understanding of flood risk and raise awareness in areas where flood risks are significant;
- put in place a long-term (25+ years) strategy to reduce flood risk and encourage actions to mitigate and minimise the risks and costs of being flooded, including reinstatement of flood damaged property in a more resilient way;
- prevent inappropriate development in flood risk areas and ensure that any essential new development in medium to high flood-risk areas is flood resistant and/or resilient as appropriate;
- provide information about how to obtain flood insurance and promote access to insurance for low-income households.

These measures enable ABI members to commit to continue to make flood insurance available for the vast majority of domestic properties and small businesses until 30 June 2013. Beyond this date, it is anticipated that no such commitment will be necessary because insurance will anyway be widely available if the measures outlined above are implemented as planned. This commitment does not affect the premiums charged and policy terms which will continue to reflect the level of risk presented. It also does not apply to any new property built after 1 January 2009. The ABI encourages developers and customers purchasing a property in a new development to ensure that it is insurable for flooding and intends to publish guidance on insurance for new developments shortly.

The ABI and Scottish Government have agreed to review this statement on an annual basis to provide an opportunity to review progress together.

**ABI / GOVERNMENT STATEMENT ON FLOODING AND INSURANCE FOR SCOTLAND**

1. The Scottish Government and the Association of British Insurers (ABI) agree on the importance of managing the risk from flooding to people and property. As previous floods in Perth, Glasgow and Moray have demonstrated, flooding can have devastating impacts: it can cause loss of life, displace thousands of people, and can cause major economic and social dislocation.
2. While flood defences, effective surface water management, flood warnings and other policies can reduce the risk from flooding, this risk can never be completely eliminated. In the UK, unlike in most other countries, insurance against the impact of flooding has been a standard feature of household and many small business insurance policies since the early 1960s. This enables households and small businesses to plan for and minimise the financial cost of flooding while insurers provide effective and efficient claims services and repair teams if flooding does occur.

3. The ABI and the Scottish Government both want to ensure that the risk from flooding is managed effectively and that flood insurance remains as affordable and widely available as possible so that consumers and small businesses continue to be able to protect themselves from the financial cost of flooding. Since 2000, this has been achieved through a ‘statement of principles on flood insurance’: in the short term this commits insurers to continue to provide flood insurance under certain scenarios and the Scottish Government to manage the risk from flooding. However, we recognise that the statement of principles may distort the market, hinder the development of specialist flood insurance for the more difficult cases and limit incentives for the uptake of cost-effective resilience measures to protect individual properties.

4. The ABI and the Scottish Government have agreed to work together to provide a long-term solution that will enable flood insurance to continue to be as widely available as possible without distorting the market. To achieve this, we have identified the following measures that must be taken:

- improve our understanding of flood risk through assessing both the probability and consequences of flooding from all sources including surface water;

- work towards putting in place a long-term (25+ years) strategy to reduce flood risk; which will set out the Scottish Government’s objectives and measures at a national level, ensuring effective and prioritised allocation of resource across six year planning cycles, backed by local plans with realistic and deliverable objectives and measures and agreed outline spending plans that are aligned with funding arrangements for all responsible authorities;

- retain national planning policy so that planning authorities should prevent inappropriate development in flood risk areas, and that any essential new development in medium to high flood-risk areas is flood resistant and/or resilient as appropriate;

- raise awareness in areas where flood risks are significant, encourage actions to mitigate and minimise the risks and costs of being flooded, including reinstatement of flood damaged property in a more resilient way; and provide information about how to obtain flood insurance; and

- promote access to insurance for low-income households.

5. The ABI and the Scottish Government agree that implementing these measures over the next five years should that flood insurance continues to be as widely available as possible without the need for the statement of principles from 1 July 2013. Until that date, subject to annual reviews to confirm continuing progress and to update commitments as necessary, the ABI and Scottish Government have agreed that the statement of principles will remain in force.

6. The revised statement of principles, published on the ABI website, will apply from 1 January 2009. It remains subject to additional review in the event of any significant external shocks, such as a withdrawal of flood reinsurance. The statement of principles will not apply to any property built after 1 January 2009.

SCOTTISH GOVERNMENT
ASSOCIATION OF BRITISH INSURERS
DECEMBER 2008
SCOTTISH GOVERNMENT COMMITMENTS ON FLOOD RISK MANAGEMENT

The Scottish Government has agreed the following as part of the joint statement on flooding and insurance for Scotland:

Improving flood risk assessment

- Establish how to streamline arrangements for providing available flood risk data from the Scottish Environment Protection Agency to insurers in an appropriate format under agreed licensing and charging arrangements that enable insurers to use the data for assessing risk, underwriting, pricing and administering insurance.

- Scottish Environment Protection Agency to prepare Flood Hazard and Flood Risk Maps covering flood risk from all sources with appropriate arrangements for communicating this effectively to the public and insurers in a convenient administrative format that provides as accurate and specific data as possible whilst recognising the appropriate degree of uncertainty that attaches to the data.

- A work plan for delivery of the commitments under this section, covering the period through until 2013, will be agreed by end of March 2009 with early release to insurers of maps currently available on river and coastal flooding.

Reducing flood risk

- Scottish Government to ensure that Scotland benefits from the lessons learned in England and the action points identified in the Pitt report, wherever they are relevant.

- Scottish Government to provide data to identify locations that are expected to benefit from improved flood defences against flooding from main rivers and the sea within the next five years by January 2009 and to update this annually thereafter, data to be included is to be agreed by March 2009.

- Take forward a new Flood Risk Management Bill that ensures an appropriate regulatory environment and establishes the responsibilities and powers needed for those responsible to ensure the maximum possible social and economic resilience against all forms of flooding, covering assessment of flood risk from all sources and preparation of flood risk management plans, including transposing the EU Floods Directive.

- Scottish Government to work towards putting in place a long-term (25+ years) strategy to reduce flood risk; which sets out the Scottish Government's objectives and measures at a national level, ensuring effective and prioritised allocation of resource across six year planning cycles, backed by local plans with realistic and deliverable objectives and measures; agree outline spending plans that are aligned with funding arrangements for all responsible authorities; report annually on progress towards developing and implementing the plans.

- Produce the first version of long-term (25+ years) objectives and measures for managing flood risk at a national level in 2015, prioritised over six year planning cycles, based on available information about flood risk.

- Ensure local authorities publish local flood risk management plans, that include realistic and deliverable measures that align with national plans over the current planning cycle.

Development planning policy and building design

- Scottish Government to review the planning policy framework for flood risk to ensure that it aligns with the new Flood Risk Management (Scotland) Bill and continues to prevent inappropriate development in flood risk areas.

- Establish how to improve building design in flood risk areas; and how to encourage homeowners to take steps to protect their homes.

ABI STATEMENT OF PRINCIPLES ON THE PROVISION OF FLOOD INSURANCE
• The Scottish Government and the insurance industry have agreed that the conditions should be in place to enable the insurance market to be able to provide flood insurance to the vast majority of households and small businesses efficiently and without the specific commitments below from 1 July 2013. Thereafter, the industry will continue to work with existing customers to explore insurance options for domestic property and small business customers where the flood risk is significant and no public plans are in place to defend the property. Throughout this period, ABI members commit to making advice available to customers which will encourage them to increase the resilience of their property as part of its reinstatement, following flood damage.

Until 30 June 2013, ABI members commit to:

• Continue to make flood insurance for domestic properties and small businesses available as a feature of standard household and small business policies if the flood risk is not significant (this is generally defined as no worse than a 1.3% or 1 in 75 annual probability of flooding).

• Continue to offer flood cover to existing domestic property and small business customers at significant flood risk providing the local authority has announced plans and notified the ABI of its intention to reduce the risk for those customers below significant within five years. The commitment to offer cover will extend to the new owner of any applicable property subject to satisfactory information about the new owner.

It is important to note that:

• The premiums charged and policy terms will reflect the level of risk presented and are not affected by this commitment.

• This commitment does not apply to any new property built after 1 January 2009: the ABI encourages developers and customers purchasing a property in a new development to ensure that it is insurable for flooding. The ABI intends to publish guidance on insurance for new developments later this year.

This commitment is subject to annual review that will consider progress in resolving the areas of continuing work and implementing the Scottish Government’s commitments and to additional review in the event of any significant external shocks, such as a reduction in the availability of flood reinsurance or major changes in the UK insurance market.

Michael Russell, Minister for Environment
Justin Jacobs Assistant Director, Property, Motor and Liability, Association of British Insurers
17 December 2008
Flood Risk Management (Scotland) Bill: Stage 1

10:04

The Convener: Under agenda item 4, we have two evidence-taking sessions on the Flood Risk Management (Scotland) Bill. I welcome to the committee David Faichney, flood warning unit manager, and Chris Spray, director of environmental science, both from the Scottish Environment Protection Agency.

We have received written evidence from SEPA, so we will not have opening statements but will go straight to questions from members. First up is Peter Peacock.

Peter Peacock (Highlands and Islands) (Lab): Good morning, gentlemen. In much of the evidence that we have heard in the past few weeks, concerns have been expressed about the absence of the word “sustainability”, or of a definition of sustainability, from the bill. It has been argued that there should be an explicit reference to sustainability. Government officials argue that the whole bill is about sustainability, so the argument that the long title should explicitly mention sustainability is not upheld. What are your views? Do you agree that the bill is implicitly about sustainability, or should sustainability be mentioned explicitly in the bill?

Chris Spray (Scottish Environment Protection Agency): We regard both the bill and the directive—to which some parts play—as being ultimately about sustainable flood management. I do not think that we necessarily need the word in the bill. My colleagues tell me that it is a difficult word to define, but in any case the whole bill is about sustainable flood management. It talks to long-term planning and geographically large-scale planning, and it even talks to the benefits and costs. I am quite happy with it as it is, because the whole thing revolves around sustainable flood risk management.

Peter Peacock: Is it possible that, because the bill does not explicitly mention sustainability, your interpretation of your role and duties under the bill might be open to debate and argument in the future? If sustainability was mentioned—to the extent that it can be defined—might that put your role and duties beyond doubt?

Chris Spray: I do not think that it matters, because the legislation under which SEPA was created already requires us to take account of sustainable development in all that we do, so that is pretty well covered already. Outwith discussions on the bill, we have done quite a lot of more general work with the Government on how we define sustainable development.
Bill Wilson (West of Scotland) (SNP): Section 18(8) of the bill provides for definitions of low, medium and high probability of floods. Strictly speaking, it gives Scottish ministers the power to determine those definitions. How do you wish the low, medium and high probability of floods to be defined? To what return periods should those probabilities be linked to ensure consistency?

David Faichney (Scottish Environment Protection Agency): That is a difficult question to answer at present. The directive is clear that floods with a medium probability are likely to return once in 100 years. That can also be expressed as an annual accedence probability of 1 per cent. I think that one of the Government’s proposed amendments suggests that we talk about things in terms of accedence probabilities to be clear about low, medium and high-probability flood events.

When we consider high return period flood events, we need to think about our urban drainage systems, most of which were designed to cope with one-in-30-year return periods. We need to consider the impact of more frequent flood events on urban areas.

The planning framework in Scottish planning policy 7 regards extreme flood events as those with return periods of one in 1,000 years or more. The areas that are affected are at very low risk of flooding, but when flooding occurs, it has a high impact.

For medium probability floods, the return period of one in 100 years has been set. We are looking at a period of about one in 30 years or less for high probability and a period of between one in 200 years and one in 1,000 years for low probability.

Elaine Murray (Dumfries) (Lab): The success of the bill depends on co-operation and co-ordination between the responsible authorities and partners. As the lead organisation, how will SEPA ensure that there is co-operation and co-ordination between organisations? For example, if local authorities and Scottish Water disagree about their responsibilities or who does what, what will be your role in sorting that out?

Chris Spray: Ultimately, we regard the Scottish Government and the minister as the final arbiter, but I think that all of us who are involved would feel that we had failed in our duties if the matter got that far. Indeed, we would have failed, because we all have responsibilities to co-operate with each other and to co-ordinate our actions. We would not wish the matter to get as far as the Government.

The challenge is huge, and the legislation makes it clear that we all have a role to play in working together on the issue. The first cycle of the iterative process will be the most challenging, because a certain amount of learning will be required. There is good evidence that the more work that we have done on the flooding bill advisory group, which brings together the various relevant organisations, the better we have become at working together and understanding where we are coming from and what we have got to deliver jointly. Clearly, we have a role to play in bringing people together, but it is a facilitating role rather than an overseeing role—we do not give directions to folk, as that would be the wrong role for us to take.

We will learn as we go along. We all need to work together towards a common vision.

Elaine Murray: It has been pointed out that there must also be co-operation on river basin planning under the Water Environment and Water Services (Scotland) Act 2003. How can you ensure that flood risk management co-ordinates with river basin planning?

Chris Spray: From a policy point of view, the Water Environment and Water Services (Scotland) Act 2003 views flood management as part of the deliverables. To a certain extent, we have been waiting for that to occur, and that is what we expect to happen.

There are already water framework directive area advisory groups in the eight sub-basin districts around Scotland, and there is a national one as well as a cross-border one that involves the Tweed and the Solway, which I chair. Those groups work well. They have improved over time, as people have got to grips with their roles.

We desperately want not to roll out yet more consultative and advisory committees than we absolutely have to, as there is a danger that consultation fatigue will hit all of us. Therefore, we want to build on the work that is already being done, although the local area groups for flood risk management will be led by local authorities, with us leading the national one. We hope to take what we can from the existing situation rather than duplicate structures.

Elaine Murray: The Scottish Rural Property and Business Association was a bit concerned about SEPA having the lead role as competent authority, as it felt that you were acting as both administrator and enforcer. We have also heard about the importance of putting in place safeguards to ensure the independence of SEPA. Do you have any concerns that people might see you as not being independent and, instead, being a Government body imposing the will of ministers on other recalcitrant authorities?

Chris Spray: Sometimes we are seen as a Government body and sometimes we are not. That is partly to do with who is looking at us and partly to do with what we are dealing with.
We have some clear regulatory functions around the control of abstractions, discharges, industry and so on. However, particularly with regard to hydrology, we have a remit, under the Civil Contingencies Act 2004, to warn and inform people. We also have an important remit to report on the state of the environment.

I think that the SRPBA took a mistaken view of the pulling together of some of those roles. We are not coming into this area wearing our regulator hat. Rather, we are wearing our co-operative, co-ordinating, facilitating and expertise-sharing hat. It is true that we issue licences under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 but, alongside that, we do an awful lot around enabling regulation—I think that that is the buzzword at the moment.

Peter Peacock: It is commendable that you see your role as being more to do with bringing people together than directing people to do things. However, given the powers that you have under the bill, what would be your position if the efforts that you were making to encourage co-operation were not delivering what you believed had to happen, strategically? How could you make things happen?

10:15

Chris Spray: I said before that, ultimately, we would have to go back to the Scottish Government. There will be some tensions, especially the first time around, between our role, which is to put in place the frameworks and high-level district achievements and aims, and that of sub-district, local authority-led groups, which is to build management programmes within those frameworks. We are aware of that issue and need to work through it in a co-operative way, so that we do not appear to be putting in place frameworks that are entirely unreasonable environmentally, economically or otherwise and do not play to a local group’s priorities. The system will be built up mostly from the bottom, but we will be involved at the top level. Ultimately, we would look to the one final arbiter—the minister. However, we all have a duty to collaborate, so if we get to that point we would have failed miserably in the co-operative effort to reach an agreement.

Alasdair Morgan (South of Scotland) (SNP): In paragraph 2.2 of your written evidence, you say that Scotland "faces an acute shortage of trained hydrologists and flood risk management professionals."

I am filled with horror at the thought of yet another group of management professionals running our lives, but in evidence to the committee the Government, too, referred to a shortage of hydrologists, trained engineers and so on. Can you give us a feel for the size of the shortage? How many people are required, over what period of time? How does that figure compare with the current levels of recruitment to the professions?

Chris Spray: I may have to submit further written evidence to the committee with the exact details, as they are always changing. Of all the professions with which SEPA is involved, at the moment it has the most difficulty recruiting hydrologists and hydrogeologists. We regularly lose competent staff to consultancies, which walk in and offer people jobs—almost the same jobs, from the other side—at salaries that we cannot match. We know that local authorities are in exactly the same situation; consultants are also fighting hard. South of the border, the Environment Agency is in a poor state. In previous evidence, I noted that, according to the United Kingdom Parliament, 200 flood risk manager and engineer posts were vacant in England and Wales at one time.

We are not that far off, but some of the recruitment campaigns that we have run for hydrologists have resulted in our recruiting one person for two or three vacant places or having only six people apply for a post, only two of whom were competent to fill it. I know from talking to my local authority, Stirling Council, that it has been in similar situations. Recruitment of professionals is a real challenge for us all.

What are we doing with the Scottish Government and others to tackle the problem? In Scotland we have centres of excellence at the University of Dundee and the University of Stirling. We have talked to the universities about how they might modify their existing MSc courses to take a wide range of professionals—engineers, people involved in geographic information systems or mapping and eco-hydrologists—rather than just one type of engineer or hydrologist. We have suggested that they build on existing one-year or two-year part-time courses to turn out people who can meet our and local authorities’ needs. The initiative is at a fairly advanced stage and the universities can do what we want—all that is lacking is money. It is vital that we address the issue. Inducement money such as bursaries, rather than funding that covers the full costs of an individual’s course, may be enough to attract students. Working with the two universities, we have developed a fairly advanced potential programme.

Alasdair Morgan: What is the current production—if "production" is the correct word—of suitable people? Do we need a 50 per cent increase or a doubling of numbers? Can you give us a sense of how big the challenge is?
David Faichney: The financial memorandum suggests that SEPA will require between 40 and 60 extra staff over the next few years. Those include a maximum of between a dozen and 15 flood risk management professionals—the people responsible for flood risk assessment. We will need to bring in about three or four people a year and to work out where they will come from. However, that is the number required by SEPA alone—others will be in competition with us.

We have been looking elsewhere as well as working with universities. We understand that the Met Office is running a model to examine other ways—rather than going through the university system—of bringing in experts to join it. That involves working with school leavers, and identifying people who are ready for a career change and who can be encouraged to join the organisation and be provided with internal training. In the longer term, we need to consider at which points people will join the organisation and how we develop and retain people who have the exact skills to deliver what we require.

Alasdair Morgan: But that will presumably be counterbalanced, as the consultants you mentioned will also be recruiting more people. Everybody will be getting their own flood risk management consultant.

Chris Spray: That is correct. The one existing MSc course that is key for this field, at Stirling, will turn out only a maximum of about a dozen people in any one year. Some of them will go overseas and, as you say, the rest will disappear into consultancies, local authorities, SEPA and elsewhere. The demand will be greater than the current production by a significant amount, certainly in the first five years. After that, it might begin to level off, but an injection of cash into the relevant universities in Scotland is urgently needed to attract folk on to those courses. We in SEPA—as well as local authorities—need to build mechanisms to ensure that those people then come to work for us.

Liam McArthur (Orkney) (LD): Alasdair Morgan mentioned a concern about an explosion of additional professional managers. To what extent are you able to diversify to meet the new demand for the skills that are required? If local authorities were simply to expand the workforce by adding hydrologists and did not make reductions elsewhere, they would quickly come under severe financial and public relations pressure.

Chris Spray: That is a good point. We discussed with the guys at Stirling and Dundee universities the extent to which the courses can be made modular, so that we can tell current professionals that if they take modules 2 and 3, it will give them the skills to start working on a particular project. As David Faichney said, some of the skills relate to GIS and mapping, and the need for an understanding of hydrology is not that great as long as you have experts elsewhere to whom you can refer.

We have discussed the matter with the Convention of Scottish Local Authorities, which floated the concept of building up a central Scottish resource. We had not had such an idea, but COSLA said that if SEPA perhaps held a central resource, everyone could tap into it. I am not necessarily keen to go that way, but I can see where COSLA is coming from. I think that the universities can build on the modular approach to do exactly what you are saying—that is what we will do.

The Convener: Where do you recruit? For example, over a number of years the national health service has become accustomed to being raided by other countries that are recruiting; but, equally, it recruits in other countries. Has SEPA looked elsewhere to recruit suitably qualified staff?

Chris Spray: We increasingly do—you are right. We are slightly helped by the fact that the floods directive, and the water framework directive before it, is European legislation, so there are people in other countries who face exactly the same challenges and have the same skills.

The Convener: Because it is European legislation, however, those people will presumably be needed in their own countries to do precisely what we are doing here.

Chris Spray: That is true.

The Convener: I was thinking that SEPA might recruit from further abroad.

Chris Spray: We will certainly consider that—we have had inquiries from Australia and elsewhere. We have a slight advantage over the rest of Europe, in that Scotland is leading the way: we are the first country that is introducing legislation to put the EU framework directive in place. If we act fast, we might get people ahead of other countries—although we may lose them later on.

Peter Peacock: I will move on to the question of duties on some of the responsible authorities that are listed in the bill, which perhaps relates to my previous question and follows what Elaine Murray said. In your submission, you state:

"without a duty to implement the actual plans"

—the flood risk management plans—

"this could … potentially adversely impact on the national 'District' Flood Risk Management Plan submitted to Europe."

Will you expand on those concerns about the lack of an explicit duty to implement the plans in the bill?
Chris Spray: We want a better linkage between the beginning of the bill, which deals with the correct and understandable general duty of responsible authorities and others to reduce flood risks, and the mechanisms for producing and implementing plans. That linkage needs to be tightened up; indeed, the supplementary evidence proposes that—but the plans or another approach—I think that the link is needed. At this stage, I am not sure whether there should be an absolute duty to implement plans. That linkage needs to be encouraged and strengthened.

Catchment management planning is mentioned throughout the European Union floods directive, but my understanding is that the directive includes no duty to implement. Relying only on a general duty to reduce the risk of flooding does not tie in closely enough with all the work on producing catchment flood risk management plans; a better link is needed. At this stage, I am not sure whether there should be an absolute duty to implement plans or another approach—I think that the supplementary evidence proposes that—but the link needs to be encouraged and strengthened.

Peter Peacock: You referred to the Scottish Government’s supplementary evidence. I think that Government officials said that they want to strengthen slightly the duty to implement and that the minister gave his signature to that—I hope that I am not misrepresenting what was said. I suppose that the issue is how slight the strengthening should be. I want to be clear. Given your role, you are clear that in the great scheme of things an explicit connection to implementing plans, however that is expressed, is important in delivering what communities need.

Chris Spray: We think so. The issue is linking what the sub-district local flood risk management plans say with the district plans, which we must finally send to Europe. Such an approach would give us greater surety that we will move forward. Otherwise, I think that there would be a risk that, for all sorts of good reasons and priorities, very little would happen.

The Convener: I want to ask about the change in SEPA’s culture that the bill will bring about. At the moment, SEPA prioritises the environment for obvious reasons, but the bill will impose on it duties to protect communities, households, property and so on. How will you balance your duties come the enactment of the bill? With the existing culture, primacy is given to the environment. The River Earn in my constituency provides an example: its flood risk is put secondary to the environment. When we asked a Government official about the matter, he said that it was impossible to say how SEPA would balance its duties. I would like to hear about that directly from you.

Chris Spray: That is an interesting observation. As we speak, SEPA’s culture is changing dramatically fast. As our corporate plan shows, we have put a new emphasis on customer focus, which involves addressing not exactly the issue that you raise, but the area that you rightly highlight.

As we mentioned earlier, part of our culture is determined by our being a regulator, but we have an increasing culture as an enabling regulator that looks to planners and considers how we can help development and communities. With the growing emphasis on community partnerships and areas at local authority level, we will have to move further into such working. Therefore, seeds have already been sown in SEPA. The mere fact that we realise and are discussing what should happen will help us, but I acknowledge the conflict that you are talking about.

The Convener: It will be quite difficult to change the culture of the entire organisation quickly.

Chris Spray: I understand the challenge but do not think that that is so. We have already effected a massive change in focusing on the customer; I can give further evidence of what is involved in that.

In essence, parts of SEPA must change pretty fast. The parts of it that are already working on the water framework directive with area advisory groups already have to deliver things in partnership with a range of other stakeholders. The culture of those in the area that is already most exposed to such working must shift, and I think that it has already started to do so. However, we will certainly take on board what you have said. It is a good point.

Rhoda Grant: There is a duty under the bill for the assessments to include social impacts. Given that we have had evidence that very few tools, if any, are available for assessing social impacts, how will SEPA fulfil that requirement under the bill?

Chris Spray: Rhoda Grant is quite right that the bill includes duties to assess social and economic impacts, which are not necessarily matters that we deal with regularly at the moment. We see the main task as being to use the evidence that is already available. Some excellent work has recently been done at the University of Dundee on the social impacts of flooding, so our aim would be to build further links with Professor Alan Werritty and the folk who have done that work.

10:30

David Faichney: There is no doubt that we need to expand on those skills and to understand not just the social impacts but the economic impacts of flooding.
Some tools are already available that we are beginning to deploy to understand how effective flood warning systems can be in mitigating flood risk. Those tools take account of social and economic impacts, so that we can balance the spend on a flood warning system with the benefits that it will bring. Some of the processes and thinking behind the cost benefit work that we are starting to do on flood warning systems would be applicable to other mitigation measures, to ensure that the costs and the benefits balance. Analysis of the benefits must obviously take account of social benefits.

**Rhoda Grant:** Are you confident that you can fulfil that duty under the bill?

**David Faichney:** I am confident that the means are available to us to explore the issue externally with academics who have done work in that field. We can examine the systems that we are already using for flood warning development to identify how applicable they are, but there is a fair amount of work to be done on that.

Reducing the social impacts of flooding is about reducing the impact of flooding on communities and people as well as its impact on the environment and our cultural heritage. There is a hierarchy, and communities would come first.

**Peter Peacock:** I want to move on to natural flood management and the evidence that we have taken on SEPA’s responsibilities under section 16, which requires the organisation to map natural features. There has been discussion about whether the requirement to carry out that process at national level is the right resolution to achieve local implementation of natural flood management methods. In addition, it has been argued that not just natural features but natural processes should be considered, and that that ought to be defined in the bill. Will you give your views on both those issues?

**Chris Spray:** We were quite keen for the bill to refer to natural processes. That is mainly because we are hydrologists, so we understand and are capable of measuring processes. Many of the questions about natural flood management are about how effective such techniques are. To define effectiveness, one must say on what the techniques have an effect. The answer is on the hydrograph—the height to which a river or body of water will go over time, which obviously equates to a flood. That is influenced by all sorts of processes, such as run-off. We have always been of the view that we would prefer reference to be made to processes, but we will not lose too much sleep about the bill’s reference to features; we will work with that. If, ultimately, that means building a feature that has an influence on processes, we can work that way. The key element is that it is understood that we are talking about processes.

The question about whether the national level is the right level is interesting because, for us, the problems or challenges to do with natural flood management are really about scale and time, as the committee has picked up. At the moment, we do not know enough about how quickly or for how long different techniques would work. For example, when woodland is planted, it takes quite a while for the trees to start to have an impact. Maintenance of such features is another issue. There are many unknowns when it comes to determining how much one would have to do to have an effect down stream.

In essence, what the bill proposes seems to be a very good idea. We recognise the opportunity that it presents to define the issue and get some evidence on it at the top level. In my trees example, one would want to know, in theory, how many trees one would have to plant and over what area to get a particular reduction in a flood hydrograph. Such work can be done at an extremely high level—that is the role that we see ourselves picking up. We will examine what other measures are available and will look to studies in Europe and elsewhere to find out what is known about the effectiveness of such measures. We would definitely go global to get such information, although as we have said elsewhere, studies in Scotland are essential. That is the level at which we would operate.

I will leave David Faichney to talk about connectivity down to local level.

**David Faichney:** Section 16 is about our getting a national overview and an understanding of where there is potential for natural flood management measures; that is, where we are likely to be able to make land use changes or capture land that would enable our doing something to mitigate flood risk. That work will be done throughout the country, so it will be at a level greater than the catchment scale. Once the potential areas for natural flood management throughout Scotland and the areas of significant flood risk have been mapped, we can put the two layers together, which will allow us to decide whether opportunities exist for natural flood management where there is significant flood risk. That is the level of work that SEPA will do under section 16.

At the next layer, that work will have to be underpinned by really robust science and research. As Chris Spray said, it will be difficult to understand issues such as the scale and time that are required, whether the land is available, whether changes can be made, and whether they can be sustained for long enough to demonstrate conclusively that they are having a positive impact on the flood hydrograph. We will also need to understand how the measures will benefit the
community—or whatever else we want to protect—downstream. An awful lot of research and science will be required to provide conclusive proof such that the cost benefit decisions that we talked about earlier can be made. That will involve weighing up natural flood management measures against other measures so that we are sure, before money is spent, that we will get the most benefit from it.

Through the flooding bill advisory group, the Government has already set up a natural flood management group, which is starting to initiate research. A contract is about to be let to an organisation or company—depending on who gets it—to start work on natural flood management issues. That will involve considering what we really need to understand and what is achievable at the catchment scale to make a difference to flood risk.

Chris Spray: There are already examples in Scotland of that process working. The convener will know that when the Perth flood defences were being considered, detailed discussions were held on the extent to which the upland catchment could have an impact and help with mitigation downstream. There are similar good examples in Glasgow, where people have considered those issues. That is the sort of thinking that needs to be done: we can certainly influence that.

Peter Peacock: That is a helpful description of SEPA’s role and the level at which you will operate. I have a question that follows on from that. Once you have done the work that you describe and it has left your hands, so to speak, what imperative or force will act on those who are responsible for implementing schemes locally? Those people could say, “That’s helpful and interesting, but we’re going to do something entirely different.”

David Faichney: If research has been done and we have tools to demonstrate where natural flood management could provide a benefit, we will look to everyone who is putting together the flood risk management plan in an area to show that they have taken notice of the potential for natural flood management and have done further scoping. By that, I do not mean the high-level work that SEPA might have done nationally, but work to identify whether potential exists and to consider that in detail. I suppose that the level of detail that the authorities go into will depend on the potential for natural flood management measures. In areas such as Glasgow, where it is important to keep water above ground and capture it at source, even small parcels of land could be useful in small catchments in reducing flood risk.

Peter Peacock: Indeed. You suggest that you would hope and expect those who are responsible to do that, but what would require them to think about the issues further?

Chris Spray: I guess that the starting point will be for us to work with them to find out whether a cost benefit case can be made for such measures. The challenge in considering the cost benefit ratio is that, understandably, communities fairly often want their area to be defended right now. As I said, one problem with many catchment management measures is that it takes time before they start working, so there are long and short-term considerations. We must accept that sustainable flood management will involve considering the short term—which may mean more hard defences and better flood risk management and warning—alongside the long term, which may be more about a whole-catchment approach. Ultimately, if we say one thing, local authorities say another and we cannot reach agreement, we will have to go back to the ministerial position. That can happen at present in the planning process when development is considered, although the option is rarely used.

Peter Peacock: Would it be fair to say that you are presuming that natural flood management measures will be used? In a previous report, the committee talked about making it a requirement that there be a presumption in favour of considering—not necessarily implementing—natural flood management measures. If such measures were to be ruled out, that decision would have to be justified. In the flow of work that you have described, would it help if the bill contained a presumption that local authorities and their partners would consider such matters?

Chris Spray: “Presumption” is probably the wrong word. The bodies must consider such matters, but must do so in the context of all the existing opportunities. To talk about a presumption in favour of or against something is probably the wrong way to go about things. As I have suggested, time and geography would have to be taken into account.

The Convener: We have many issues to cover, and I do not think that we will be able to cover them in the time that is available. I am not disposed to extend the hour that we have allowed for this panel—although that is not because of the witnesses. I want to jump to issues that we will have to deal with. If other issues cannot be fitted in, we may have to write to you.

Chris Spray: We would be happy for you to do that.

The Convener: Alasdair Morgan has a question about reservoirs, and Bill Wilson has a question about flood warnings. I would like them to ask those questions, so that we have responses for our report. After those questions have been answered, we will devote the remaining time to funding, which will also be important for our report.
Alasdair Morgan: Paragraph 2.11 of SEPA's written submission is headed “National security considerations” and relates to reservoir inundation plans. Will you go into more detail on those plans?

David Faichney: From our security manager and emergency planning manager, we understand that sensitivities surround inundation plans showing what would happen if a reservoir were to fail. There are particular concerns about terrorist activity and the ability of organisations to understand quickly which reservoirs could have the biggest impacts downstream. I believe that such concerns are being thrashed out among the Department for Environment, Food and Rural Affairs, the Environment Agency and the security services in England and Wales.

Chris Spray: In my previous job at Northumbrian Water, one of my responsibilities was looking after Kielder Water. It was alarming to find that, at the height of some of the terrorist troubles, one of the cells operating out of Newcastle had details of Kielder Water.

Alasdair Morgan: You are suggesting that, if someone knew sensitive details of what would flood if a dam broke, that could make the dam a target—although, at the level at which these people operate, they might think, “It’s pretty obvious what’s going to be flooded if we blow up the dam.”

Chris Spray: I would not disagree with that.

David Faichney: The bill requires SEPA to map the areas where we think there are significant flood risks in Scotland. That will include mapping of areas downstream of reservoirs. Consideration would have to be given to the level of detail, where the details were to be held, and whether they were to be publicly available. There would be a tie-in between general maps showing the extent of possible inundations and the sort of maps that are wanted by emergency planning agencies, which would indicate the possible impact of flooding—the number of deaths, perhaps, and the number of key properties downstream, such as schools, old-folks homes, fire stations or critical national infrastructure. The agencies do not want that kind of information to be made public.

However, discussions are continuing, and it seems to me that the issues will be resolved in the revisions that are being made to the Reservoirs Act 1975 in England and Wales. That is UK legislation, and there should be a benefit to us in hearing the result of the discussions between EA, DEFRA and the security services.

Alasdair Morgan: You are fairly hopeful that the requisite information will be available to those who need it.

David Faichney: Absolutely.

Chris Spray: And that it will not available to those who do not.

Alasdair Morgan: Those who need it will include a wide range of people, not all of whom will have signed the Official Secrets Act.

David Faichney: If information has to be held separately or securely, or in different forms, there will be an impact on resourcing. We are concerned about that.

Chris Spray: We are in separate discussions with the Scottish Government about assessing for all critical national infrastructure the risk of flooding—whether that is coastal flooding, storm surges or whatever. Those discussions are separate but tie in to this one.

Bill Wilson: Various discussions have taken place on to whom SEPA should provide flood warnings, and Government officials have told us that they have not specified that. The Association of Chief Police Officers in Scotland has suggested that SEPA should notify all category 1 responders. To whom do you provide flood warnings at present, and do you expect any changes to that in the light of the bill?

10:45

David Faichney: SEPA’s primary customers for flood warnings are local authorities, the police, fire and rescue services in some instances, the telephone floodline service and the web service, through SEPA’s website. We make flood warnings available to the public through the floodline service and through professional partners such as the police and local authorities. Some local authorities cascade those flood warnings down to individual customers in their areas, such as businesses and householders. The local authorities and the police are category 1 responders. In large flood events, SEPA, as a category 1 responder itself, has to share information about the event that it is leading on—in this case floods—with all other category 1 responders through the strategic co-ordinating group structure.

Chris Spray: It is worth reassuring the committee that we are working on a new flood warning dissemination system for Scotland. It is a £7 million project. The advisory board for that includes ACPoS, the Society of Local Authority Chief Executives and Senior Managers, COSLA, and fire and rescue services. We are also going to bring the national health service on to the board. The new system will enable folk to get individual messages. It is key that everybody understands the messages and how they are produced. It is not a SEPA system; it is for all of those groups.
Bill Wilson: Does that mean that in every circumstance—apart from minor floods perhaps—those people would always be informed?

Chris Spray: As a category 1 responder, that is what we have to do. It is one of our key roles under the Civil Contingencies Act 2004.

Bill Wilson: Do you have a feedback mechanism to check that when you send those flood warnings out they are acted upon?

David Faichney: We get feedback from our key customers. We work closely with local authorities and the police during and after flood events, and we do debriefings with them for significant flood events. A few years ago, we operated cascade systems that went to the police and then on to the public, and we would carry out an annual survey to ensure that people were receiving those warnings. When that was in place, we were getting feedback that about 80 per cent of people had received and understood the warnings. However, that was a distinct group of about 200 people. It is different from what we understand is the EA’s experience, which is to work with much larger numbers. It is challenging to engage with people and to help them to understand what flood warnings are about and what they should do when they receive a warning.

SEPA’s flood warning dissemination project for our existing flood warning schemes will ensure that community engagement is at the forefront of the process. It is about ensuring that people know that they are at risk and that they are in a warning system, and that they know what to do when they receive a warning.

Chris Spray: We are working closely with the Met Office, which has for the past six months been trialling some new work on severe weather warnings. That enables the Met Office and us to give much more information about random events, such as intense rainfalls that do not necessarily build up over a long time. We aim to continue working closely with the Met Office—indeed, that is one of the committee’s recommendations—to develop that further into a sort of joint forecasting procedure.

The Convener: I want to move to funding, which is the key to much of the bill.

Peter Peacock: You indicated in your evidence that the task of aligning funding streams might prove difficult and that it may, ultimately, require guidance from the Scottish Government. You also indicated that the timing of existing funding mechanisms for local authorities, Scottish Water and SEPA are not in sync, and that funding is not in sync with your programme planning periods. There may also be uncertainty about the long-term maintenance of flood risk management. Those are clear descriptions of the problem. What do you think the solutions would be?

Chris Spray: I like the easy questions. The processes of various funding streams do not coincide, but that is just a fact of life—they were all set up for different reasons. Quality and standards III and Q and S IV do not have the same timescale as us. Some of us work to comprehensive spending review periods; others do not and we all need to recognise that. To have some centrally held funds that we could draw down—which I think was one of Scottish Water’s ideas—seems to be an eminently suitable way of going forward.

I think that, in the first year, we will have to muddle through. As I said, it is an iterative process and we are at the start-up point. As we go forward, we need to embed the funding so that aligning it is high up on the agenda in the next Q and S period and so that local authorities can plan for it as well. The role that SEPA plays is less of an issue for us, but others need to acknowledge that funding alignment is a challenge. We and others should not miss that challenge.

Peter Peacock: Do you regard funding alignment as an interim issue until such time as there is much greater clarity about the planning processes and schemes that are coming on stream five or 10 years down the road? Is the idea of the centrally held fund simply to smooth the apparent differences in funding streams and when they might switch on and off currently? Does it have no other purpose?

Chris Spray: You are right that it will be an interim issue, because we are being parachuted into a new set of timescales to which no one was previously working. We must realise that. The current planning period runs to 2015, so by the time we are looking to the next six-year period, a lot of folk will be able to think about the matter.

Scottish Water’s option for raising funds is to raise them from customers. Its money-raising powers are controlled fairly well by the Water Industry Commission for Scotland and by the Office of Water Services. That is why I think that a centrally held fund from which we could draw down funding would allow us to get smoothly through the first period and into a much better-planned future.

Peter Peacock: I follow that. What time horizon ought we to have for planning what will sometimes be major items of expenditure in Scottish and, certainly, local authority terms? We have had evidence from the Association of British Insurers, Scottish Water and others that it should be 25 years and, in a committee report, we talked about long horizons, but in the answer that you have just given, you mentioned a 12-year horizon. What is your feel for the longer-term planning lead?
In evidence, Government officials said that because of your overview of the system, SEPA would have a role in advising ministers about the longer-term or medium-term financial requirements that might arise, but there is in the bill no requirement on you to do that. Will you comment on that?

**Chris Spray:** There is a six-year planning cycle. As I said, we are in one at the moment, so let us think about how we will do the next one. We should look 20 or 25 years ahead. The Scottish Government has given us a steer to consider the strategic needs for flooding in that time period so that we can start building in what we know about climate change, and so that we can set priorities—whether it is coastal flooding, which areas it affects and what we need to look for. That will also start us looking to longer-term natural flood management.

That is why we have two different timescales. It is important to get a vision or road map for 25 years because it will allow people to understand the key issues and it will enable us to bring together climate information from SEPA and the Met Office and to consider how the Government’s key economic priorities fit in. We will put all of that together.

Can you remind me of what your second question was?

**Peter Peacock:** That is a good question—you should give me notice of such requests. My second point was that the Scottish Government has indicated that it expects you to advise ministers as part of the normal exchange of information with them, but you are not under any obligation to do so because there is no duty on SEPA to provide a strategic view of funding such as you describe.

**Chris Spray:** I must admit that I had not realised that we did not have such a duty. I am not being arrogant; we expect to work closely with the Scottish Government. Our role is not in telling it where finances go but in creating the road map for the future.

**Peter Peacock:** The role is about the quanta of cash and big schemes that are required. It is strategic.

**Chris Spray:** That is right—the role is very strategic. The costs of a single flood scheme are huge. I was recently considering a flood scheme for Hawick with Scottish Borders Council. We are talking about £50 million at a snip. There are a lot of places the size of Hawick scattered around Scotland with greater or lesser demands and needs right now. The amounts of money are large, but we need to project a long way into the future.

**David Faichney:** The flood risk management planning process, as fed from the local plans up through the district plans, should set out where all the priorities are across Scotland. It should give us an idea of the hierarchy of those priorities—what is top of the list and where the big spends are. You will not be able to achieve all the priorities over one or two cycles; it will be many cycles before they are all achieved. There is a need to understand the relative benefits of projects nationally, and it will be very difficult to convey that at local level and to explain how the money that will be used to fund them is going to come from the bottom up. That will be a bit of a challenge.

Mr Peacock mentioned the maintenance of structures. Some of the Scottish Government’s proposed amendments, including those on surface water management, will help if we understand where our assets are and who owns them. It will also help to have clarity about the ownership and roles of the various different structures. The Government’s proposed amendments are an important first step.

**Peter Peacock:** Mr Spray mentioned Hawick, and there are many other such schemes, which you have to an extent to aggregate with your knowledge of what is needed and what is coming up.

There has also been mention of a hierarchy. Will that become evident in the course of your work, so that it can then be debated and discussed? Overall figures will emerge, and SEPA will be able to say what it thinks ought to be the next major sets of schemes, strategically and nationally. That will allow ministers to make their decisions.

**Chris Spray:** That would be very good. The current system is not like that. It is reactive to the demands that are—understandably—made in various areas about what the next key priorities should be. We need to get above that.

We must also consider the increasing conflict between the legacy of decisions that were made a century or two centuries ago, which have determined where some of our communities now are, and changing flow patterns and climate patterns, which might determine that some communities are simply unsustainable 50 years hence—and I say that in the sense of buildings existing as bodies of bricks and mortar. That debate is better started now, informed by the correct data, so that we can make the right decisions 50 years down the line. Let us start thinking that way now.

**Peter Peacock:** You are not looking for powers to remove settlements, are you?

**Chris Spray:** I am not asking for that. However, let us consider the options for the south-east of England. The Essex coast is retreating at a rate of 12m a year. Luckily, that is not the case up here.
We must recognise that there are some serious questions, but if we think about them now, we can plan into the future.

Liam McArthur: I take you back to the discussion about the proposal for a central pot of money. If I understand correctly, part of the purpose of that would be to smooth the transition and to provide some certainty. There has been quite a debate with many local authorities about whether or not re-ring fencing or having a central pot would be beneficial. From your point of view, and considering the job that you need to do, would certainty be provided if local authorities had such a ring-fenced pot from which they would be expected to draw resources for flooding?

Chris Spray: The real challenge for local authorities is around what to do in the current comprehensive spending review round. That is why we have spoken more about smoothing the differences in funding streams, rather than all the funding going into a central pot. I am not sure whether or not a central pot is needed in the long term. If we can plan, we might not need that. However, the allocation needs to stack up against the correct bit of demand. At the moment, we are in a very difficult transitional period, which is why we need the smoothing money. The debate on central funding might re-emerge in the future but, at the moment, we can probably plan ahead and plan that debate out, so to speak.

The Convener: There are some outstanding issues relating to the planning process, and we will follow up on them as soon as possible after the meeting, so that we can get responses from you. I am not disposed to extend this evidence session any longer.

I thank you both for coming along to the committee—not for the first time, and not for the last time either. You are of course welcome either to sit and listen to the minister’s evidence or to leave at this point—as you prefer.

11:00

I welcome to the meeting Mike Russell, who is the Minister for Environment, and his officials. Judith Tracey is the flooding policy team leader and Dr Stuart Greig is a senior flooding policy officer.

We understand that some difficulties exist this morning and that you will forgo an opening statement, so we will go straight to questions. The timescales—including that for taking evidence—are quite challenging, so if anything is outstanding at the end of the hour and 10 minutes that we have allocated to evidence, we will follow it up with a written request for a response, which we hope would be dealt with as expeditiously as possible.

Elaine Murray: I commiserate with the minister on his ill health. Something seems to be going round the Parliament—I blame the First Minister for introducing the illness to the rest of us.

The Minister for Environment (Michael Russell): I am sure that I can rely on Dr Murray not to take unfair advantage of me.

Elaine Murray: I will not. The mind boggles.

We have received evidence from Scottish Water, the ABI and—[Interruption.] Excuse me for coughing.

Michael Russell: You are not sounding too good yourself.

Elaine Murray: I had the illness two weeks ago.

Michael Russell: Shall we just call it a day?

Elaine Murray: We received evidence from Scottish Water and the ABI that we require a long-term strategy for flood risk management over perhaps 25 or 50 years. When the minister’s officials were asked about that on 19 November, they said that the six-yearly planning process could cope with that. The ABI would like the bill to require a long-term strategy. Does such a proposal have merit?

Michael Russell: Nothing in the bill prevents the creation of a long-term strategy. In fact, much in the bill encourages such a strategy. I know that you have talked to SEPA, among others, about that.

To an extent, the process has not only started but is well under way. Scoping what will happen with flooding in Scotland as a result of climate change is a long-term process. We do not know all the answers, but we are beginning to see some of the questions and issues. When SEPA starts putting together its first plan, it will not do that with a six-year horizon that limits it; it will look much further forward. SEPA will consider what needs to be done in the first period, but it will also have an idea of where things are going.

The bill encourages long-term thinking; it does not limit that. It joins things up. It replaces the Flood Prevention (Scotland) Act 1961, which is very prescriptive about what can and cannot be done, and opens up a range of much wider possibilities. That is exactly what we need at a time of change.

It is almost impossible for me, you or anybody in the room to say that we know what will happen with flooding in five, 10, 15 or 20 years. We need to put together all the tools, the planning abilities and our thinking and to work forward from that. The bill achieves that. I am not worried about the timescale. We have the right tools for the job, which will work well.
Elaine Murray: You do not think that wording is needed to encourage partners to look a bit further over the horizon.

Michael Russell: No. The debate has clarified and will continue to clarify many issues. Such wording is not needed, because the whole process focuses on moving Scotland forward on sustainable flood management.

Bill Wilson: Unsurprisingly, I will return to sustainable flood management. What are your views on the concern that the bill does not mention sustainable flood management? Does the bill contain a sufficient presumption in favour of natural flood management?

Michael Russell: Absolutely. Two points are involved. As the committee has taken evidence, it has debated the question whether the long title should refer to sustainable flood management. The committee will understand that I must defer to lawyers on such matters, and they say firmly that a bill’s title is a description and not an aspiration. The title of the bill is therefore a description, but I fully accept that the aspiration is to have a system of sustainable flood management. Everything in the bill points towards that and towards ensuring that flood management is sustainable and that we are adopting a progressive policy. That is inherent and clear in the bill, and I want it to continue to be clear. I am afraid that we cannot change the long title; our legal advice is very firm on that.

Bill Wilson: Presumably, the aspiration could be mentioned elsewhere in the bill.

Michael Russell: Section 1 includes the promotion of sustainable flood management.

Bill Wilson: There is a concern that people have been working in a particular way for some time now, so we need actively to encourage engineers and planners into a new way of working. When Scottish Water estimated the cost of development, it did not seem to include either environmental or social costs. Is it possible for the bill to include a method of ensuring that, when new developments are considered in the future, the costs of environmental and social benefits or disbenefits must be estimated?

Michael Russell: SEPA’s evidence this morning is that it is increasingly focused on the economic and social costs of flooding. Rhoda Grant asked a specific—and very good—question about that. That is where the focus lies, and SEPA is leading the way. However, I do not get the impression that any of the people who are involved in flood management require to be motivated to think about such matters. They are very much up to speed with and focused on them.

We have to be absolutely clear that the bill is trying to join up various resources, abilities and organisations to focus on the task in hand, and we are trying to ensure that we do that entirely within the context of a positive environmentalism that should permeate all our policies in Scotland. The bill achieves that, although if you think that amendments could be made to the bill that would strengthen that focus, I am open to considering them.

Peter Peacock: You have referred to an issue, that, as I recall, formed part of the debate that we had in Parliament some months back. There is a presumption in favour of natural flood management methods, and I suspect that there has been a bit of confusion about what that means. To be clear, it is not that natural flood management must be used in all circumstances in which it is possible to use it. It is more about creating the imperative that it must be considered and, if it is not used, that must be justified. You indicated that there is a double benefit, not just for flood management but for habitat creation, for example. Would you consider lodging an amendment to the bill to make it clear that natural flood management must be considered? I am relaxed about the wording.

Michael Russell: The bill is already pretty clear about that. I can be positive about this, although there is a slight caveat. The positive nature of our approach to the bill is to make sure that the toolbox contains a range of tools. The 1961 act was too prescriptive; it was an act for another time. We now want to offer people a range of tools to mix and match as they wish, but the key tool among them all is natural flood management. We entirely accept that; that is how it should be.

However, you are right to say that natural flood management is not the solution to every flooding problem, and that must be borne in mind. I have a slight resistance to your idea because, if we have an extremely heavy rainfall event in an urban setting, natural flood management will almost certainly not be the answer. Other engineering solutions are in place, or need to be put in place, to deal with such events.

Natural flood management should, however, be in the toolbox. If I might put it this way, it should be the first tool that is considered. If there is a measure that will encourage that view to continue to strengthen, we will look at it.

Peter Peacock: That is helpful.

Bill Wilson: Our concern is that natural flood management is not the current culture. That is part of the reason why I asked about the cost benefit issue. If we can, we should ensure that the costs of the environmental and social benefits and disbenefits are included in the calculations.

Michael Russell: I disagree with you: natural flood management is increasingly the culture, and
I suspect that, by the time that the bill is fully implemented in 2010, it will be if not the only show in town—I do not think that natural flood management is the only show in town—then at the centre of things. You have heard that opinion from SEPA and a range of other organisations, and there will be a duty to choose natural flood management. It is important, and everyone involved in flooding now understands that.

Perhaps Judith Tracey could say a word or two to reassure you even further, should that be possible.

Judith Tracey (Scottish Government Environmental Quality Directorate): There is a requirement on SEPA, when it sets objectives and measures, to take specific account of environmental benefits among all the benefits that result from a particular measure. It has to take into account the potential adverse consequences of flooding on human health, the environment, cultural heritage and economic activity. Therefore, the environment is clearly part of everything that a flood risk management scheme will address.

Bill Wilson: My concern comes from having heard that, when Scottish Water calculated cost, it had no system for including the cost of environmental damage or social disbenefit. I want to be reassured that, when future possible flood prevention developments are compared, the potential costs, such as environmental and social disbenefits, will be included as part of the cost estimate. That will give a fair comparison between natural and alternative methods of engineering.

Michael Russell: It is important that, as Scottish Water’s actions under both the developed plan for 2010 to 2014 and the new plan for 2014 onwards go ahead, that point is drawn to its attention. It is probably best to include that in the ministerial instruction to Scottish Water, and I can perhaps assure you by saying that I need to discuss that point with my ministerial colleagues who deal with Scottish Water. We can take a belt-and-braces approach to that.

The Convener: By now, you will have picked up the fact that the committee has some concerns about whether there can be a sufficiently robust culture change in the various organisations to encompass what the bill wants to achieve. I put a question to SEPA this morning about its ability to decide between what are perceived to be competing priorities—the priority mandating its concern about the environment and water quality and the new priority that relates to safety from flooding of communities, households and property. At the moment, it tends to prioritise one over the other. Are you confident that there is enough in the bill to ensure that SEPA shifts that culture by 2010?

Michael Russell: I find that SEPA is ever more aware that it has to balance all its actions by considering their social and economic cost and its own environmental and regulatory duties. We have seen a development in SEPA’s culture. It recognises that balance, and its work and innovations in planning show that. The bill will reinforce the fact that SEPA as an organisation will always have to make intelligent choices about its work, and I do not see anything in the bill that contradicts SEPA’s primary environmental and regulatory duties. The two priorities will go hand in hand.

I know that there is constant talk about culture change, which is important. However, a dispassionate observer would agree that there has already been a culture change in SEPA. That process will continue.

The Convener: So you would be interested to hear of specific examples of where SEPA’s priorities may be questionable.

Michael Russell: I am always interested in those examples.

The Convener: That is an invitation to committee members to let the minister know about any problems in their own areas.

Michael Russell: The chair of SEPA will be interested in those, too, as he is focused on the issue.

The Convener: Okay. Rhoda Grant has questions about planning and flood risk management processes.

Rhoda Grant: My question is on the interaction between flood risk management plans and local development plans. We have heard in evidence that local authorities will have regard to flood risk management plans in their development plans but that they will still consider economic developments despite what is in a flood risk management plan. Where do the different plans fit together? Should the bill emphasise that local authorities need to make flood risk management plans part of their development plans?

11:15

Michael Russell: Section 24 in part 3 makes specific reference to development plans. However, I would place the issue in a slightly wider context. Clearly, development planning must take account of flood risk. If it does not, something will go badly wrong at certain stages. There is therefore an inextricable link between development planning and flood risk planning. The existing planning system recognises that because it applies special provisions to building on a flood plain. Development planning and flood risk planning must therefore go hand in hand. The development
of local flood plans must take account of development activities, and vice versa.

**Rhoda Grant:** We are considering a petition as part of our evidence taking on the bill. The petitioners state clearly that the current planning policy guidelines are not being adhered to by some local authorities, which continue to plan for developments on flood plains. [Interruption.] Sorry, that cough is catching.

**Michael Russell:** I would just like to say that it is not my fault.

**Rhoda Grant:** I hold you responsible.

**Michael Russell:** It seems to be spreading like wildfire.

**Rhoda Grant:** Yes.

Although the existing legislation does not seem to work, there appears to be nothing in the bill to strengthen the link between flood risk management plans and development plans by forcing local authorities to ensure that the flood risk plans take precedence over development plans.

**Michael Russell:** There is a clear set of provisions on building on flood plains, but we must recognise that such building is sometimes necessary. For example, brownfield and other development land beside the River Clyde is on a flood plain. Clear regulations apply in such circumstances, and there is a clear procedure to be followed. We expect it to be followed and we believe that it is being followed. People tend to say that no building or developments should take place on flood plains. Regrettably, that is not possible. We therefore want to ensure that such developments are done within the planning system and that we have much more regard to ensuring that buildings on flood plains are resilient in relation to flooding. A lot of good work has been done on that. I am keen to encourage that approach, particularly with insurers.

**Rhoda Grant:** We had evidence from SEPA about the huge cost of even small flood alleviation schemes. Economic development has been used as an excuse to build on flood plains. However, what is the balance? How does a flood alleviation scheme costing the public purse £50 million—that figure was quoted for one scheme—fit in with economic development?

**Michael Russell:** That is an interesting and important question that local authorities and SEPA should sometimes ask. The balance has shifted greatly over the years in other countries. For example, Japan spent substantial sums on flood defences, even during the second world war, but it now spends far less on them because it does not believe the task can be adequately undertaken. We must constantly balance what is taking place, keeping the tool of natural flood management very much in mind as well, to hark back to an earlier question. One of the strong lessons from the bill is that the era of saying, “We will build a wall,” is well and truly over. It has been substantially over for some time and, frankly, the bill is putting it to death.

**The Convener:** Elaine Murray has follow-on questions on flood risk management plans.

**Elaine Murray:** We have spoken about the need to join up resources and so on. Currently, Scottish Water goes through the Q and S process and consults every four years. It then draws up its scheme of priorities for investment for the next four years. Do you intend to take any action to try to align flood risk management plans with Scottish Water’s business plans? There are also issues around funding streams, which we may come on to.

**Michael Russell:** I heard Chris Spray’s earlier evidence on the issue. It is right that we take certain actions over a period of time. However, we have identified the problem involved. Perhaps Dr Greig would like to say a word or two about that.

**Stuart Greig** (Scottish Government Environmental Quality Directorate): We have set up advisory groups on the bill and its implementation. Scottish Water is well represented on those groups, one of which has started to look closely at the issue of aligning funding streams. We understand the problems around aligning the CSR and quality and standards, given the different timelines involved.

Under the process set out in the bill, however, an assessment of the areas in Scotland most vulnerable to flooding will be carried out early on, and that information will be available in time to inform the Q and S IV process. Although we might not have all the information on specific measures and objectives, we will have an understanding of where certain problems might arise. That will allow us to undertake some advance planning. Indeed, that principle of basing advance planning on available information will be at the heart of each of the iterative cycles that we need to take forward.

**Elaine Murray:** The funding of the local plans—[Interruption.] I think that my cough is more to do with last night’s partying than the cold.

**The Convener:** I advise the minister that the Labour Party’s Christmas party was last night.

**Michael Russell:** That is not responsible for the way that I am feeling.

**Elaine Murray:** Given that one of Scottish Water’s principal funding sources is customer charges, if Scottish Water is required to provide funding the general customer will have to come up with some of that money. Obviously, the other
source of funding would be local authorities. Is it expected that flood risk management projects involving Scottish Water will be funded through customer charges, or will funding be directed through local authorities?

**Stuart Greig:** We are discussing that issue with Scottish Water, but it is most likely that we will continue to fund investment through current routes rather than look to local authorities to provide money to Scottish Water. That said, if local authorities want to develop, say, urban drainage management measures, they can use their own money for that and easily share the funding with Scottish Water. We will take a flexible approach that accommodates different sources of funding but, as I say, we will probably want to retain the current funding routes. A lot of work is being carried out on that and there are things that we can do to make the process work better, but I do not think that we need to change it significantly.

**Michael Russell:** A hallmark of the bill is its emphasis on collaborative effort. All the organisations that have been referred to, as well as many others, will be involved in the process. Obviously, those organisations will have their own funding priorities, but we are looking for collaboration. After all, the essential point behind the bill is that the work cannot be carried out by one organisation alone.

**Elaine Murray:** Scottish Water has a national pot, but what about local authority contributions? When an authority’s local plan is established, it will want to bid for Government funding. What might be the process for identifying that funding?

**Michael Russell:** The committee is well aware of how funding has been allocated in the present spending round, so I will not labour the point. Essentially, for schemes that were already known about, resources were applied under an agreement with COSLA on folding money for flooding into the local authority settlement. Allowances were also made for schemes in development, and a proportion of funding was distributed to deal with properties at risk.

The allocation of further funding in other spending reviews will be a matter of negotiation with COSLA. The process has been—and, I hope, will continue to be—perfectly responsible, productive and positive, and it will be up to local authorities to say how all that should happen. We have made it absolutely clear that, as the concordat allows, there can in exceptional circumstances be discussions about other resources that might be required. No one has had such a discussion with us, and we are waiting to see what happens.

As I think Dr Murray will be aware, part of the issue is long-term planning. An awful lot of schemes have been discussed at great length—indeed, she and I can think of one particular scheme immediately—but no plans have been drawn up, no cost estimates have been made, no drawings have been done and no hydrologists have been engaged. People in a number of places in Scotland have asked me, “What about the resources for such and such a scheme?” when, in fact, no such scheme exists. Perhaps, as they draw up plans and think about the various possibilities, local authorities will be able to identify areas that might require small, medium or large-scale schemes and roll all that into the process. The bill team officials have worked very closely with local authorities—which, after all, know where the needs arise—on the issue, and the mapping that will be carried out will create a long-term pathway for ensuring that everything that needs to be done in Scotland continues to be done.

**The Convener:** Peter Peacock’s questions on the duty to implement flood risk management plans follow on from those remarks.

**Peter Peacock:** The ultimate aim of the technicalities around the bill is to provide better protection for homes, public buildings, public services and so on in flooding incidents. In the evidence that we have received, a lot of people, from agencies, non-governmental organisations, local authorities and so on, have expressed surprise that, although they are obliged to work with others to come up with flood risk management plans, there is no explicit duty to implement those plans. Your officials have indicated that you are beginning to think about promoting a link between the general duty to make plans and the specific duty to implement them. Can you tell us more about your intentions in that regard? Will the duty to implement the plans be explicit, or will the existing situation merely be tweaked?

**Michael Russell:** The context in which I will address those questions is one in which, for the first time ever, we have legislation that creates a general duty for local authorities and others to take responsibility for flood management, just as they take responsibility for education, road maintenance and so on. That is a big step forward.

The context is also one in which the Government’s relationship with local authorities is positive and—I hope—trusting, with the Government encouraging local authorities to do the things that they have a democratic duty to do.

I have heard the evidence to which you refer—for example, I heard SEPA talking about the matter this morning—and I am prepared to try to find ways of tightening up the bill in that regard. However, I do not think that we should be saying to people that they must implement their plans in a certain way. Local authorities have a duty to draw
up their plans and then to work out how they want to ensure that they are put in place.

There is a democratic check and balance. If the administration in a local authority refused to implement a plan of action that it had identified as being necessary to protect lives and property, it would not last very long. First, there would be an electoral price to pay, and, secondly, the bill provides for the minister to intervene in such a circumstance and say that the local authority must take the actions that it has a duty to take, under its general duties.

The bill tells local authorities what they need to do and lets them get on with it. That strikes me as being the ideal way in which to work with people. However, in light of the concerns that have been expressed, we will continue to try to find ways in which it can be tightened slightly in that regard.

**Peter Peacock:** I welcome that indication, but I will reserve my position on the matter until I see the details.

You and I have political differences about the nature of the concordat, but we should put them to one side because, in a sense, that is not relevant to this argument, as the concordat is an instrument of current Government policy and, as you might—or might not—accept, the Administration will change at some point.

**Michael Russell:** At some point, I am sure, but not yet.

**Peter Peacock:** Nevertheless, a subsequent Government might have a different policy. Therefore, in the interests of good governance over the long term, it is important to move beyond a view that considers only current policy and to ensure that the bill delivers a way of ensuring that certain things will happen. Do you accept that point?

**Michael Russell:** I do not accept it as an absolute, because all legislation expresses Governments’ views and reflects the way in which those Governments see the world politically. However, I accept that we have to create a piece of legislation that is fit for purpose in the longer term.

**Alasdair Morgan:** You suggested an analogy with local authorities’ duty to maintain roads. If I damage my car in a pothole I can sue the local authority, but I will not be able to sue the local authority if it has not implemented a flood risk management plan. Indeed, Fife Council told us that your officials have assured it that it would not be open to legal challenge. Do you accept that difference between the two situations?

**Michael Russell:** I would not necessarily accept it; I will have to think a little more about it. You seem to have stretched the analogy a little farther than it ought to have been stretched.

The general duty to protect against flooding is a considerable step forward in legislation. In those circumstances, it provides a considerable protection for citizens in each local authority.

Going to the extent of saying, “Once we have the plan, we have to implement it!” is a step that we do not need to take. Furthermore, in terms of my view of our relationship with local authorities, we should not take it, although I accept that if there is concern about how the plans are to be implemented we should continue to look at the matter. I have given that assurance to Mr Peacock.

11:30

**Alasdair Morgan:** Okay. I take the point. My view is that you cannot give people a guarantee against flooding in the same way as you can with roads—there is a difference in the level of guarantee that can be given.

**Michael Russell:** There are difficulties in giving any guarantee on flooding. We know quite a lot about roads: we know where they go and how they should be constructed. In flooding, there are still some uncertainties. As a committee, you have discussed those issues as part of your inquiry and, again, in your consideration of the bill. Not least of the uncertainties in terms of pluvial flooding is where the rain falls.

**The Convener:** One question that follows on from that concerns the process of co-operation and co-ordination. The local authorities, SEPA and Scottish Water have flagged up to us their concerns, particularly about the potential misalignment of roles. Who, ultimately, will crack the whip and say what gets done and when? There is still some uncertainty about who will hold what responsibility. Will SEPA’s role include the resolution of those issues or will you—or another minister—do that?

**Michael Russell:** The committee helpfully flagged up that issue in its inquiry into flooding. I recollect that from giving evidence to you. As a result of what you said, we took the issue on board when we drafted the bill, which strengthened the provision. The minister has an interventionist role, should that be required. That provision has been included in the bill as a result of questions that the committee asked.

The roles are quite clear. SEPA’s role is entirely clear. The drafting of the bill has a certain elegance to it in terms of how it sets out the responsibilities. There is the national plan—well, two river basin plans, with a third one in the corner of the Borders that needs to be tweaked slightly, but we will not worry too much about that. There are also the catchment area plans, although we are not entirely sure how many of those there will
be. That said, as they develop, things will become absolutely clear.

Furthermore, there is the process of mapping, by which the information is built up. Once the plans are in place, there is the responsibility of ensuring that they are implemented in some way or another.

The responsibilities are clear. The only slight vagueness relates to Scottish Water. As Dr Murray and other members indicated, once its flooding spending priorities and timescale of spending are aligned, the matter becomes entirely clear. In the end, the buck stops, as it has to stop, with the minister. If things are not happening, the minister will have to ensure that they do happen.

The Convener: A slight concern for us is that although you say things are clear, local authorities and Scottish Water are not taking quite the same position; they are telling us that they do not feel that it is clear. They say that they are not entirely certain who has responsibility for taking the lead on specific tasks. Although your clarity on the matter is not in doubt, lack of clarity continues to be an issue for local authorities and Scottish Water. The issue will have to be looked at.

Michael Russell: I take on board the fact that I have a role to spread clarity. We will certainly endeavour to do so.

The Convener: Thank you.

Peter Peacock will lead our questioning on funding.

Peter Peacock: There is a range of areas that we could get into; I will try to address some of them. Elaine Murray made the central point that also arose in the evidence that we heard from SEPA earlier this morning: like many others, including Scottish Water, SEPA made it clear that it sees merit in the long-term strategic view being taken. You have told us that you agree with that view. An allied issue is the need for an element of understanding—publicly and nationally—on the costs over a long period of time. What is your view of SEPA’s role in all this? It has set out its view; do you share it? Is the view absolutely and explicitly agreed? Can you help me to understand whether SEPA has a duty under the bill to provide ministers with the kind of advice that it set out fully this morning?

Michael Russell: Allow me to make several points about funding in response to that.

It is clearly understood that the means by which we have resolved to go forward is for local authorities to spend the money on flood management. There are other models: south of the border, the Environment Agency takes full responsibility for spending the money. That approach was a possibility for us, but from the beginning of the process of thinking about the bill—some of you were at the flooding summit that we held in Perth well over a year ago—it was absolutely clear that the vast majority of organisations in Scotland did not want that to be our approach. Instead, they wanted local authorities to be the key players. The implication is that the resources will be spent by local authorities. Therefore, in the spending review, we rolled up in the local authority settlement the money that is available in Scotland—the record sum of £42 million a year—on the basis of the formula that I outlined, which is well known to you.

If you accept that local authorities are the delivery mechanism, some other things flow from that. What other resources are required in relation to flooding and how should they be spent? I am thinking of flood warnings and flood alerts, the provision of which is a role that SEPA has undertaken. I have to say that it carries out that role, which will continue to be important, extremely well.

Given that the role of the responsible authority—the authority with the national responsibility—is a role that SEPA should take, I accept that it should say to Government a variety of things about money. I heard the witnesses from SEPA mention one of those things this morning—the alignment of finances and how that should be managed. That is an entirely legitimate area for discussion and we need to examine it closely.

On the question of the research that needs to be undertaken into flooding, there is no point in a body such as SEPA carrying out its role if it cannot make recommendations and access research. Some money is spent on a national basis in relation to management, and that is SEPA money as well.

When we accept that there is a front-line delivery role and a national role in drawing up the plan—obviously, that is in the bill—we begin to understand much more clearly the lines of responsibility in relation to money. I do not foresee any difficulty with accruing the figures in the accounts and bringing together on an annual or triennial basis the money that is spent by Scottish Water, the Scottish rural development programme and other bodies to create an overall total for spending on flooding. It is a different argument to say that the money should start from a central pot and be distributed by Government. That is not what has been decided, so we are not operating in that way.

We are clear about how the money should be spent. I have read the committee’s deliberations in the past month to six weeks. If the local authorities had said, "We do not want to spend this money. We want to give it back to the Government, which can make all the decisions on it," that would run
counter to the bill and what we are doing. If COSLA had said that I would be honour-bound to consider the matter, but it has not said that and nor have the local authorities. In those circumstances, we are proceeding on the basis that the money will remain part of the local authority settlement and that the decisions will be made by local authorities.

I ask Dr Greig to comment.

Stuart Greig: There are two provisions that address the point about SEPA not having a duty and where the information on costs might come from. When it produces district plans, SEPA has to undertake a cost benefit analysis. It will not do such work on individual schemes—local authorities are well placed to do that—but it will undertake a cost benefit analysis of the plan, and that will provide information on the costs. Because it is a long-term plan, the analysis will give an understanding of the long-term costs and benefits, and that information will be made available to ministers.

The bill requires SEPA to set out an outline implementation strategy for the plan. Local authorities will be responsible for detailed planning of implementation, but SEPA has to produce an overview outline implementation strategy, which could consider specific issues such as recommendations on how things can be done better to make the plan work and be more easily delivered.

Those specific provisions allow for some of the things Peter Peacock suggests.

Peter Peacock: I accept what you say. I suppose my answer to the minister might be that, notwithstanding that, there is a need to be quite explicit. Given climate change and the need to protect communities, we have to have an open and clear debate about what it will cost. SEPA clearly thinks that it can play a role in that.

If we can find a mechanism to require such information to be in the public domain, we will be clearer about the decisions that are made on the basis of it, about the hierarchy of projects that SEPA talked about and about whether the £42 million is still correct. I am quite relaxed about local authorities spending the cash. The opinion has been expressed that we should firm up the bill to ensure that SEPA is clear about its strategic role in advising ministers about financial needs. It has also been suggested that the bill should require ministers to have regard to that when they are thinking about distributing cash to local authorities.

Michael Russell: You are addressing transparency about what we spend on flooding management in Scotland. The most negative debate would be reduced to, “You’re no spending enough.” “Aye, we are.”

The money that is being spent is clearly going into recognised schemes that we all know are required. You know about the schemes in Elgin and other parts of Moray, and about a range of others in places such as Edinburgh, Glasgow, Renfrew and Argyll.

I would be happy if a system were developed that showed what is being spent and what the plans expect to be required, in the context of a series of variable estimates. There are no absolutes in this situation—I will give you an interesting example involving coastal flooding. It is possible to construct a series of estimates for what coastal flood defences might be required in various parts of the Western Isles—they would be on an enormous scale—and equally possible to make a smaller estimate on the basis that some of the current problems have been caused by bad engineering in the past; I refer to the issues with the South Ford causeway.

I would be happy if a range of estimates was made and there was transparency about resources. If we could find a way in the bill to ensure that that happens—we must remember that it is about structures and regulations, not specific sums of money—I would be happy with that.

Peter Peacock: I welcome that and look forward to seeing how it might develop. I am not talking about specific sums of money, which is to do with detailed decision making during any particular financing period.

Concerns have been expressed about whether ministers should be required to think about certain issues when they consider how to allocate the available money, so that they ensure that the big schemes that might require to be done in a particular time period are financed with help from the centre, through the distribution mechanism. I accept that it is difficult to tie ministers’ hands—although we might try—but do you accept that there might be some benefit in setting out in statute the kind of considerations that ministers ought to take into account when they decide how to meet national priorities?

Michael Russell: The bill already does that to some extent. Its very construction covers the existing need, the social and economic considerations, the way in which flood risk management has to build and develop, and how it must be a collaborative activity that takes account of development planning—we heard that question earlier. The criteria that should be applied are in the bill. If we go further than that we will be pretty close to telling a local authority that it has to have a local plan and telling it how to implement it. There is an element of flexibility on that in the bill, which recognises that there are various tools in the box, including natural flood management.
We are pretty close to what you are saying, although on this as on all other matters I stress that there is no such thing as a perfect bill or a perfect piece of drafting. If issues are not adequately covered in the bill, we will debate and discuss them. We are constantly aware of the issue of transparency.

11:45

Peter Peacock: Scottish Water’s activities are, to some extent, regulated by the Water Industry Commission. We have heard concerns that although Scottish Water might be under a duty to think about acting sustainably—as we heard in evidence last week—the WIC is not under a similar duty and it is possible that Scottish Water, in seeking to fulfil its duties, will operate under one set of criteria while the WIC, in helping to regulate pricing and charging, will not embrace the full range of considerations as Scottish Water has to, so its actions might be more limited than would otherwise be the case. Do you think there is a case for examining the operating instructions to the Water Industry Commission or what governs them, to try to ensure alignment?

Michael Russell: As I said in my response to Dr Wilson, there is a case for discussing the instructions to the Scottish Water Industry Commission with the responsible ministers. I do not need to remind you, Mr Peacock, that the Scottish Government has the word “sustainable” tattooed in the middle of its objectives. I do not think that any part of Government should operate in any other way but a sustainable one—and every part of Government should know that.

Peter Peacock: I readily accept that you have a tattoo somewhere that says “sustainability”, but that is not the point—we need to know what the law says. If there is a disagreement in terms of the law, and requirements are placed on the Water Industry Commission, would it not be as well to tighten that up now while we have the chance, rather than leave the matter open to any doubt?

Michael Russell: I agree—that is why we are discussing instructions to the Water Industry Commission. I return to the point that I believe that every part of Government would want to look at its actions and ensure that it is operating sustainably—that includes the WIC as well as everyone else.

The Convener: I do not know whether there is anything left for Elaine Murray to ask.

Elaine Murray: Peter Peacock has covered a lot of the issues that the Finance Committee raised in its report. Scottish Government officials apparently confirmed to the Finance Committee that information on the costs that are incurred by various public bodies in delivering their new responsibilities could be included in the formal mechanism that the bill provides for reporting to Parliament. The committee wondered whether the Government intended to report formally to Parliament on the implementation of the bill and to include the costs in that.

Michael Russell: All three of us have said the same thing: we will look at it.

Liam McArthur: The Association of British Insurers raised concerns in its evidence to the committee about the need for a long-term strategy. It also suggested, in relation to the higher risk from multiple unaligned funding streams, that flood risk could be better managed if funds for flood risk management were separately identified and ring fenced for that purpose.

We have just received, before your arrival, what will no doubt become the historic concordat between the Government and the ABI. It appears—as an early success of your mission to spread clarity—that the issue of the long-term strategy has been addressed within it, but from the cursory glance that I have been able to give it I cannot see where the issue of multiple funding streams and unaligned funding streams has been addressed. Perhaps, as part of your mission to spread clarity, you could explain where that may have been addressed.

Michael Russell: I shall take it as a challenge to spread clarity to you, Mr McArthur. The historic concordat with the ABI, which I am pleased to be able to bring to fruition today, certainly considers the long-term window. We do not accept the point of ring fencing—I think I have made that clear in what I have said here; we accept the democratic right of bodies and organisations to spend the resources that they have. I am in favour of transparency in relation to those resources so that we know where the money is coming from and what the totals are, and where it is being spent. We will do our best to achieve that, but we have made a decision—not just in this area but in every area—that we should rely on local authorities to make their own decisions, and we will stick with that.

The Convener: Bill Wilson has questions on coastal inundation, which is no surprise to the rest of us.

Bill Wilson: We heard evidence from SEPA earlier that 12m of Essex is being lost each year, and it referred to the possibility of our having to abandon some settlements in Scotland as sea levels rise. In view of that evidence, will you consider the possibility of prohibiting developments below a certain height above sea level? I mean in coastal areas; I am not talking about throughout the country. The ABI stated that its members use SEPA’s maps and information
when they determine the possibility of insuring new developments. Will you instruct that those maps allow for climate change in the coming 20 or 30 years?

**Michael Russell:** On the second point, I can see no reason why there should not be an estimate of possible climate change effect, although it is hard to make that estimate precisely.

On the first point, I am reluctant to give a blanket answer that we should prohibit development of any description. There are circumstances in which development in such areas is required, is desired by people and is a good thing. We must weigh the advantages and disadvantages carefully. Nobody can be in any doubt that development in an area that is at risk of constant inundation would be foolish. Nobody would want to do that. However, in other circumstances, if suitable defences can be found, development is the right thing to do. It would be foolish to talk about abandoning settlements or starting to name settlements and point the finger at them. People have lived and continue to live in areas that are at risk in a variety of ways and we must help them to do so if at all possible. I know some of those areas extremely well. In those circumstances, I want to help people adapt to change, rather than throw in the towel.

**Bill Wilson:** I accept that not every development should necessarily be prohibited. To take a simple example, if a farmer chooses to build a byre 10cm above sea level, that is his decision and it is hardly the end of the world.

**Michael Russell:** You are refining your question. You began by saying—

**Bill Wilson:** Okay, I spoke broadly. I am thinking of more significant developments, such as housing developments. The sea level rise may be 50cm, which we might be able to cope with, or it might be 5m, which we would have considerable difficulty coping with. A presumption against developing new settlements at, say, less than 1m above sea level would be a sensible precautionary move.

**Michael Russell:** Every planning authority is aware of such issues—they need to be aware of them. I cannot imagine a planning authority in Scotland that is not aware of the climate change issues. Authorities that have affected areas will want to bear those issues in mind but, at the end of the day, it will be their decision. I would be surprised if any major new settlement was planned in Scotland at 10cm above sea level. I would certainly not purchase property there.

**Bill Wilson:** Right—I will move on. A concern has been expressed to me that conflict might arise between the bill and the Coast Protection Act 1949. Are you aware of that concern and, if so, do you have any comments on it?

**Michael Russell:** That sounds like a concern on which Judith Tracey will be more than well informed.

**Judith Tracey:** Section 36 would place a duty on all public bodies to have regard to district and local flood risk management plans when exercising any functions that affect a flood risk management district. Under the Coast Protection Act 1949, local authorities are the competent authority on coast protection. In future, when an authority plans any coast protection work, it will have to take into account its flood risk management function. Therefore, the two could not possibly be in conflict.

**The Convener:** Alasdair Morgan has a couple of questions about reservoirs and hydrologists, so we may as well move on.

**Alasdair Morgan:** My first question is on national security, which I know is an issue that is dear to the minister's heart. SEPA told us that it wishes to have clarification on security issues in respect of reservoir inundation plans. Discussions seem to be on-going with DEFRA on that. People who are involved in flood management need to know what is likely to be flooded if a reservoir has a problem, but DEFRA seems to be unwilling to spread that information about, on national security grounds.

**Michael Russell:** It is even unwilling to give that information to ministers—officials get told such things more than ministers. Judith Tracey will, no doubt, have a response on that, although I am aware of the problem and that it is difficult to crack. I should make the serious point that our work on reservoirs is being done hand in glove with DEFRA—we think that that should be the case. That has been useful to us because aspects of reservoir legislation in Scotland need tidying up for two reasons. The first is that advantageous changes have occurred south of the border and the second is that the proposed floods and water bill south of the border will have a major impact on reservoir legislation and on the issues that the member raises. We are considering whether it would be appropriate to have a legislative consent motion on aspects of that proposed bill. However, a decision on that is some time away—it will certainly not happen in the present parliamentary session.

People who followed the Renfrewshire incident earlier this year will have realised that reservoir legislation in Scotland needs sharpening up. I have been concerned about the matter for some time. How best we sharpen up the approach is the issue. The bill is only the start of the process.

**Judith Tracey:** National security has been extensively discussed since the issue came up when the Water Act 2003 conferred on ministers a
power to acquire inundation maps. The power has not yet been enacted, for the simple reason that there has been much discussion about who should see the maps, how they should be stored and who should have access to them. Much discussion has focused on security, and inundation maps have not yet been produced in England and Wales.

Agreement has been reached with the security services that category 1 responders should have access to the inundation maps. I think that it was agreed that that will happen in a controlled environment. Maps will not be handed out to everyone; the people who produce them will hold them and give access to the equivalent of strategic co-ordinating groups in Scotland, for civil contingencies and emergency planning purposes. The maps will not be distributed more widely.

Alasdair Morgan: How does that affect timescales for planning that must be done in the event of a legitimate emergency?

Judith Tracey: That is a bit of a moot point, given that the inundation maps have not yet been produced. Some larger reservoir undertakers have produced inundation maps for their own purposes, so that they know where the water would go. I think that it has been agreed that they will make their maps available to the English equivalent of our strategic co-ordinating groups, to be used for emergency planning purposes.

In Scotland, the general approach is to have a generic emergency plan, which can be used in all circumstances and can be adapted to a particular emergency.

Alasdair Morgan: Is the current situation satisfactory?

Michael Russell: I do not think that it is satisfactory, which is why we have strengthened the approach by including reservoirs in the bill and are considering moving our legislation forward, in line with legislation in England and Wales.

I was particularly concerned by the incident in Renfrewshire, which involved a reservoir that was in a category lower than the category that would be reported and had the potential to cause damage. The weakness in the reservoir was not anticipated—it seems that something had gone wrong with the maintenance. In such circumstances it is clear that the legislation in Scotland needs sharpening up. That is why reservoirs are in the bill, but we have more to do in that regard.

I understand the security issue and I appreciate its sensitivity. We need to resolve it in the Scottish context as soon as possible, with the assistance of DEFRA. To be fair, DEFRA is being positive in giving such assistance.

Alasdair Morgan: When might inundation maps be available—at least to someone—for all major reservoirs in Scotland?

Judith Tracey: We informed the committee that we intend to lodge an amendment on on-site plans. Such plans are likely to require maps that show where the water would go. If the amendment is agreed to at stage 2 and the bill is subsequently passed, I imagine that it will take a year or two to produce plans.

Michael Russell: Mr Morgan is a fair-minded man and will realise that the emergency services in areas that are served by large reservoirs are aware of the issues and factor into their thinking the possibility of difficulties with dams or similar structures. What the emergency services have is not as good as a full inundation map, but it is not nothing; we are assured that they are prepared for such circumstances.

Alasdair Morgan: My second question is about the difficulty that various people have flagged up to us about the current shortage—which may get worse—of hydrologists and other trained engineers. The shortage will be affected by the fact that other countries are due to implement similar measures and by the fact that such engineers seem to be easily attracted by private firms to act as consultants. Presumably the demand from those firms will increase. How will we address the current shortage, which will get worse in the very near future?

12:00

Michael Russell: It strikes me that SEPA gave a positive answer to that question earlier. Positive engagement is taking place with universities, trainers and others to ensure future supply. We are looking at retraining people with other engineering skills. I am in contact with my opposite numbers in the education portfolio to encourage them and to highlight the opportunities. We should also tell people that, for the foreseeable future, there will be major opportunities to become an hydrologist. It strikes me that if anyone in the room is thinking of retraining, that would be a good opportunity.

Alasdair Morgan: Thank you, but I will not take up the option just yet.

As always, cash seems to be an issue on the education side. Where does the budget for such retraining lie? Will it need to be funded by education in competition with other priorities?

Michael Russell: I am not sure that there is a major cash issue, as that issue has not been central to our thinking. It should be possible for small amounts of resource to be found from flooding research and other areas if new courses
need to be provided. However, I think that the issue is getting the individuals rather than the cash.

**The Convener:** That completes our questions to the minister. We have given him mercy for the final 10 minutes as we will now move on to a different agenda item. I thank the minister and his officials for their attendance.
SUPPLEMENTARY SUBMISSION FROM SEPA

[Questions asked by the Committee are in bold, the background to questions is in italics]

Probability

In its submission to the Committee, Mountain Environments suggest that for “flood risk assessments, the description of a flood which has occurred should always include the estimated return period of that flood.” Lanarkshire Council was also concerned about the definition of high, medium and low flood probabilities, and asks whether these might usefully “be linked to return periods to ensure national standards.”

In discussions with the ABI on the 10 December, the Committee noted differences in return periods between SEPA’s flood risk maps and the return period that ABI uses in their assessments.

Section 18 (8) of the Bill a low, medium and high probability of a flood is defined as:
- “low probability” (or “extreme event”) means such probability as may be specified as such by the Scottish Ministers by order,
- “medium probability” means such probability (involving a return period of 100 years or more) as may be specified as such by the Scottish Ministers by order,
- “high probability” means such probability as may be specified as such by the Scottish Ministers by order

Q1 How would SEPA wish high, medium and low floods to be defined, and what return periods these probabilities should be linked with as standard to ensure consistency?

The EC Floods Directive (and the Flood Bill) requires consideration of high, medium and low probability floods. Low probability floods are described in Chapter 3 of the Directive as ‘extreme event scenarios’ while medium floods are categorised as having a return period equal to or greater than a 100 year event. There is no specific guidance on what may constitute a high probability (frequency) flood event other than they have to be considered ‘where appropriate’.

To ensure consistency with current flood risk design standards for planning purposes as set out in SPP7, the ‘medium probability’ flood should equate to 0.5% Annual Probability (AP) (or 200-year return period event). The recommended design standard for flood prevention schemes in recent years has also conformed to the 0.5% AP standard.

SEPA considers that ‘low probability’ events (extreme events) are more extreme than the 200-year (0.5% AP) flood. A flood event, such as that associated with a reservoir failure, would be classed as an ‘extreme event’.

‘High probability’ events could fall within the range between the Mean Annual Flood (1 in 2 year event statistically) and the 200-year flood, although this range appears rather large. Design standards for drainage assets both above ground and below, for many years now have used the 1 in 30-year design standard. This may provide a useful benchmark for consideration of how to define a high probability flood.’

Discussion and agreement with Government (and partner bodies involved in planning and engineering processes) on what level of “future-proofing”, resilience and protection we wish to achieve would be extremely helpful.

Planning

In their submission SEPA request greater “clarity on the use of SEPA objections to development plans and planning applications relative to flood risk; SEPA should not be expected to object to a planning authority on flood risk grounds where an adverse impact solely relates to matters regulated by another statutory body.”
Q2 Could SEPA elaborate on this and state how they would like their objections to development plans and planning applications to be used?

This refers to how SEPA proposes to provide advice to local authorities, which of course are the lead bodies in making land use planning decisions, given the new definition of flood risk in the Bill.

Currently SEPA objections to development plans and planning applications are founded in SPP7 – Planning and Flooding. Following the “avoidance” principle and sticking to the risk framework set out in SPP7 maintains the sustainable approach to planning and flooding that must underpin flood risk management plans. Objections by SEPA to development plans and planning applications are based on SPP7 and are a clear indication of the presence of an unacceptable flood risk.

SEPA’s objections should be used to ensure that no inappropriate development takes place on floodplains i.e. to prevent further development which would have a significant probability of being affected by flooding or which would increase the probability of flooding to existing settlement or elsewhere.

The Scottish Government is presently consolidating the 19 Scottish Planning Policies (SPPs) into a single document. It is vital that key elements of SPP7 are retained and developed to enable us to play a more effective planning role under the reformed planning system and this ensure our assessments are effective.

We are also reviewing how we respond to flood risk consultations within SEPA as part of the Government’s “Delivering Planning Reform” initiative.

We will develop clearly defined guidance on the provision of advice to planning authorities on planning applications and development plans and on how SEPA will liaise with other relevant statutory bodies where comment is required on flood impacts to human health, cultural heritage or economic activity.

For SEPA staff to be able consistently, timeously and effectively to provide robust flood risk advice, it is essential that the expectations of those receiving the advice and its force are very clear. Whilst not perfect, SPP7 has provided a framework hitherto. It is essential that for the future a suitably robust framework exists.

The Committee agreed to consider public petition PE1207 – a review of SPP7 - planning and flooding, as part of its Stage 1 scrutiny. Petition PE1207 suggests that planning guidance SPP7, which is intended to prevent development which would have a significant probability of being affected by flooding, may not be being followed appropriately. The ABI submission also highlights the importance of “ensuring that the planning system prevents inappropriate developments in flood risk areas”.

Government officials have stated that the intention would be to revise SPP7 in light of the Bill and to introduce further guidance revising planning processes to strengthen the link between flood risk management planning and local development plans. No timescale has been suggested for this and officials have stated that such provisions would not naturally fall within this Bill.

Local authorities suggested in evidence on 10 December that there may be conflict between development plans and flood risk management plans and that it was unclear how this would be resolved or which would take precedence, which would suggest that legislation to clarify this situation could be useful.

Q3 How does SEPA think that flood risk management plans will interact with development plans in practice?

Strengthening the link between flood risk management plans and development plans is key to meeting the objectives of the Bill, i.e. delivering sustainable approaches to managing all forms and consequences of flooding.

Under the Bill, all responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk. The planning and development responsibilities of the Local Authorities are potentially the most powerful way of reducing overall flood risk. By carrying out
strategic flood risk assessments of their area, local authorities will be able to zone land according
to flood risk and ensure that future developments are not exposed to unacceptable flood risk and
that both sustainable flood and sustainable land use management are achieved.

Development plans should take due consideration of both district and local flood risk management
plans.

Where conflicts occur between the objectives in development plans and in flood risk management
plans, guidance will need to be established on how to integrate the requirements and purposes of
the two processes.

Q4 Does SEPA consider that local authorities are currently adhering to the requirements in
SPP7 not to develop in areas at high risk of flooding?

In SEPA’s experience adherence to SPP7 can vary across local authorities.

In some cases it appears that flood risk is not given due weight on development plan allocations
when balanced with other locational factors. This can cause considerable delays and frustrations
when planning applications come forward for these sites and the flood risk issues have to be fully
addressed at this late stage.

Issues may arise where a Local Authority allocates sites in development plans that are either
within, or partially within, areas at high risk of flooding, thereby establishing the principle of
development on these sites.

Some planning authorities choose to deal with flood risk issues by attaching conditions to a
planning application. SEPA considers this approach is not the most appropriate nor is it in
accordance with SPP7 as it implies that flood risk can be dealt with once the principle of
development (and often the exact siting and design) has been established.

Some local authorities are reluctant to consult SEPA on flood risk issues, whilst others consult
extensively. There may be a link here as to how seriously flood risk issues are being considered.
Clarity, simplicity, robustness and consistency seem the best way forward.

Q5 Does SEPA consider that planning provisions to resolve this issue within the Bill might
be useful?

Yes.

Strengthening the Bill or including provision in secondary legislation and revised planning policy
would be helpful and therefore is in our view essential.

The opportunity should be taken to require strategic flood risk assessment (SFRA) of development
plans within the secondary legislation and associated guidance that is being developed to
implement the Planning etc. (Scotland) Act 2006.

A duty upon planning authorities to give timely and full consideration to flood risk when dealing with
development plans and/or planning applications would be very useful.

This would help ensure that flood risk issues are given due consideration when allocating sites in a
development plan (rather than at the planning application stage). SEPA would advocate that this
should be achieved through a Strategic Flood Risk Assessment.

This would also help ensure that flood risk considerations are used when considering the principle,
siting, potential infrastructure needs and consequentials and specific design of a development
rather than using conditions.

*In evidence to the Finance Committee Angus Council expressed concern about the way in which
SEPA will conduct national planning work and then local authorities will apply their local expertise
to their area plans. Angus Council suggested that this could cause some delay in clarifying costs
and expressed concern that, “The local authority may in consequence be heavily constrained by
and obliged to the financial consequences of decisions made by the unelected authority.”*
Q6 To what extent does SEPA consider that local authorities will (or will not) be bound by the District (national) flood risk management plans developed by SEPA?

The District and local flood risk management plans will need to be prepared in parallel. The deadline for the completion of the local plans is six months after the completion of the District plan (or such other date as the Scottish Ministers may direct) and as such the expectation is for a two-way interaction between each set of plans as they are developed. It is not envisaged that the preparation of the District plan will delay the preparation of Local plans.

The District flood risk management plans developed by SEPA will be high level plans that set the national and strategic framework for flood risk management in Scotland. They will be informed by local flood risk management plans and will identify Scotland’s priorities for objectives and measures. District plans prepared by SEPA will be approved by Ministers.

SEPA and the responsible authorities have a duty to collaborate in carrying out their flood risk management planning duties under the Bill.

We would also hope that if the issue is one of elected status or accountability, local authorities will continue to set considerable store by the protection from flood risk of their electorate and indeed protection of the environmental asset base of their areas generally. We remain ready and willing to support local government to ensure that it has the quality of advice needed and will work very closely with it to discharge our duties and theirs.

Maps

Q7 Finally, members would be interested to know to what extent coastal flood maps take into account climate change - for example does SEPA produce model maps based on a series of possible outcomes (i.e. different sea levels) as a result of climate change?

SEPA’s current flood maps do not take climate change into account. The flood outline shown on the Indicative River and Coastal Flood Map (Scotland) is based on a level of flood risk (flood probability) estimated under current climate conditions.

The flood hazard and flood risk maps of potentially vulnerable areas required by the Bill for 2013 will need to take account of potential future risks. These will include climate change and a methodology will need to be developed for these maps to account for future trends.

Mapping flood risk at our coast under a range of climate change scenarios would also be helpful in understanding those areas most susceptible to increased risk in the future. Such maps would be useful in flood risk management planning and raising awareness of future risks.

We consider this approach and the tasks entailed to be desirable, considerable and essential in order to provide a robust service for the future.
I refer to your call for evidence regarding the above and attach a copy of the report to the Council’s policy committee which dealt with the issue. An extract of the minute is also attached.

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE - 13 MARCH 2008

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND- ABERDEENSHIRE COUNCIL’S RESPONSE TO CONSULTATION

Purpose of Report

This report asks the Committee to endorse the proposed response to the Scottish Government on the above consultation document.

Background

The Scottish Government is proposing to introduce a Flooding Bill later this year to modernise the flood risk management system in Scotland which is regarded as outdated and dealt with in a piecemeal fashion.

At present there are a large number of key players dealing with flooding from various sources and this leads to confusion. It is also generally felt that there is a lack of co-ordination between the different powers and duties under different legislation.

The Government’s draft proposals are intended to develop a more co-ordinated, integrated and streamlined approach to flood management through a national approach, delivered at a local level.

On 15 February 2008 the Scottish Government published a consultation document entitled “The Future of Flood Risk Management in Scotland” and invited comments from interested parties on its contents, by 23 April 2008. The consultation document, which is available on the Government website, http://www.scotland.gov.uk/Consultations, poses a number of questions and the proposed responses are contained in Appendix A to this report.

Proposals

To endorse the proposed response to the Scottish Government’s consultation document “the Future of Flood Risk Management in Scotland”, as contained in Appendix A to this report.

Discussion

The proposals set out by the Government are designed to establish a framework within which sustainable flood risk management will operate more effectively than at present. They are intended to ensure a modern risk based approach, complemented by a streamlined decision making process.

The term “sustainable flood management“ is used frequently throughout the consultation document and is defined as follows. “Sustainable flood management provides the maximum possible social and economic resilience against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”

The main piece of legislation relating to flooding is the Flood Prevention (Scotland) Act 1961, which was written for previous local government structures. It does not interact well with the newer duty to promote sustainable flood management, required under the Water Environment and Water Services Act 2003.

The 1961 Act places emphasis on large scale engineering measures rather than considering catchment wide solutions. It does not address all types of flooding, and the statutory processes which it contains in relation to the promotion of Flood Prevention Schemes do not integrate well with planning procedures and the recently introduced Controlled Activities Regulations. (All
engineering works in or in the vicinity of rivers, lochs and wetlands now require authorisation under these latter regulations.)

Another problem is the lack of integration of water industry infrastructure and other drainage and flooding infrastructure. With the split from local authorities of Water Services, there are difficulties when flood alleviation measures require the upgrading of sewers which are not in Scottish Water’s future works programmes. Surface water has also become a grey area with local authorities being responsible for water on the road surface and Scottish Water becoming responsible once it enters their sewers. There may also be issues with poorly maintained SUD systems discharging from private ground to drainage systems.

To overcome the above and other deficiencies, a number of changes are proposed in the new Flooding Bill and the key features are summarised in the subsequent paragraphs.

The most significant is the identification of a lead (or as it is termed “competent”) authority to fulfil a strategic, coordinating role in flood risk management throughout Scotland. It is proposed that this role be undertaken by SEPA.

Informal Government consultations previously undertaken indicated that there was no support for a single flooding authority, as creation of a new body would require functions of existing bodies to be dis-aggregated and thus be very resource intensive. They concluded that setting up a framework with a lead authority providing a strategic overview and local authorities undertaking the important supporting role of implementing measures and engaging with stakeholders at a local level, was the best way forward.

SEPA is already heavily involved in flooding and water/environmental quality regulation work, and has the technical and operational capacity to take on these additional functions. It also has the ability to adopt both a national perspective and to reflect regional and local issues.

The competent authority’s duties will include the preparation of high level Area Flood Risk Management Plans, covering single large catchments or multiple smaller catchments, which will set the framework for flood risk management in Scotland. These plans would summarise significant flood risks, map flood hazards and risks, set objectives to manage flood risk and set out broad measures to address flood risk. The plans will also be required to prioritise flood risk at a national level and integrate with other aspects of land and water management.

In preparing these plans, the competent authority will be required to consult and collaborate with local authorities and other stakeholders.

Area Flood Risk Management Plans (AFRMP’s) must be completed and submitted to the European Commission by December 2015 as required by the EC Flood Directive which came into force in December 2007. There are also intermediate deadlines within the Directive for the components of the AFRMP’s.

At a second tier level, the competent authority will require local authorities to prepare detailed Local Flood Risk Management Plans (LFRMP’s) for single small catchments. These will translate the strategic objectives from the AFRMP’s into locally focused sets of measures to address flood risk.

In preparing these secondary plans, local authorities will have to assess catchment characteristics, undertake detailed appraisals of flood risk, consider management options, prioritise implementation measures and establish funding and timescales for works. It is anticipated that the latter two requirements may form part of an asset management strategy.

The LFRMP’s will also be able to inform local authorities’ development plans and help planning authorities to make informed judgements on flood risk to complement the advice already given by SEPA.

None of these functions are new to Aberdeenshire Council which already undertakes flood risk assessments for “at risk” areas, but the proposals will require a more rigorous and formalised approach in the future.
At a third tier level, the detailed design and implementation of measures identified in the LFRMP’s will be undertaken by an appropriate organisation. This could be local authorities for engineering works, Forestry Commission for upland planting or Scottish Water for urban drainage infrastructure improvements.

The identification of areas of significant flood risk will be a collaborative process between the competent and responsible authorities, and it is proposed that the Bill will impose a duty on all parties to collaborate on flooding matters. This collaboration will include dealing with cross authority boundary situations. (The term “responsible” authority is defined as including Scottish Water, Local Authorities, SNH, Forestry Commission and possibly other bodies still to be identified.)

This proposed structured hierarchical approach is considered sound. It should ensure that the national and catchment focused approach to flood risk management planning is underpinned by local co-ordination and delivery of measures by those bodies with direct experience of implementing measures on the ground. It must, however, be recognised that there will be staffing and financial implications for the Council, as described in sections 7 and 9 below, which must be addressed.

The consultation document proposes that the existing duties on local authorities, introduced through the Flood Prevention and Land Drainage (Scotland) Act 1997 amendment, of assessing, managing and maintaining watercourses and publishing biennial reports on flooding action will remain. A standardised format for the presentation and content of biennial reports may however be developed and this is welcomed.

It is proposed that local authorities will have powers to carry out flood risk management measures for the protection of any land or property. This would enable them to implement measures agreed in LFRMP’s, and is supported. The 1961 Act covers the alleviation of flooding on non-agricultural land only, and so the extension to include any land is a notable and worthwhile change.

The current process for the approval of Flood Prevention Schemes is complicated, with overlaps between the statutory confirmation, planning, and most recently introduced Controlled Activities Regulation (CAR) requirements, which result in long lead-in times for projects.

It is proposed to simplify matters by either retaining a statutory process for the approval of flood risk management measures, but with Ministerial confirmation carrying deemed planning permission, or by removing entirely the Ministerial confirmation process.

There are pros and cons for both options but overall the first option is preferred for consistency of approach throughout the country.

The final major change is a proposal to transfer responsibility for the enforcement of the Reservoirs Act 1975 from local authorities to a single enforcement authority. It is proposed that this be either SEPA or a separate new authority.

There are 19 reservoirs in Aberdeenshire falling under the Act, only one of which, in Haddo Country Park, is controlled by the Council.

A single national body would ensure consistency of approach and have more strength to implement enforcement powers, and is therefore supported. The appointment of SEPA to fulfil this role would be consistent with practice in England and Wales where the Environment Agency is the enforcement authority, and this option is considered to be the preferred choice.

**Area Implications**

The proposals contained in the consultation document will have an equal effect on all Areas of the Council.

**Policy Implications**

The proposals, if implemented, will introduce a new more structured approach to flood management involving wider community participation and greater collaboration with other agencies and will necessitate a review of existing policies and procedures.
Staffing Implications

The preparation of local flood risk management plans is expected to involve a considerable amount of additional staff time. There will also be a staff resource requirement for local authorities if it is decided to remove the Ministerial confirmation process and undertake the scrutiny and approval role of flood risk management measures independently in-house.

There is a concern that it will prove difficult to recruit additional staff with sufficient technical experience in flooding to perform these functions in a period of exceptionally high demand.

The proposed transfer of duties from local authorities to a single authority for the enforcement of the Reservoirs Act 1975 may result in some small savings in staff time.

Sustainability Implications

The proposals are built round a desire to develop a sustainable approach to flood management, with an objective being to strike a balance between current needs and those of future generations.

Financial Implications

- Up until 2007/08, funding for Flood Prevention Schemes has been ring fenced, and authorities have been able to apply to the Scottish Government for funding of 80% of the capital cost of such schemes. From 2008/09 onwards, this funding is no longer ring fenced, but has been allocated as part of the block capital grant settlement. In reality, all of the funding for 2008/09 and 2009/10, plus the majority of the funding for 2010/11 has been allocated on the basis of previously committed schemes, and is still ring fenced. However, the Government envisages that the future allocation of this money will be based on the level of significant flood risk in each authority. This will mean that for future flood prevention measure

- The Government is expecting that responsible authorities, including local authorities, will ensure that their investment plans are aligned with the measures and objectives agreed through the flood risk management process. This will require councils to make a clear commitment to making funding available to implement measures at the Local Flood Risk Management Plan development stage. It is anticipated that this could happen through the internal Asset Management process.

- The new duties involved in preparing flood risk management plans and, if adopted undertaking the scrutiny and approval role, will have cost implications in terms of additional staff time. It is not possible to quantify these costs at present.

Consultation

The Director of Finance has been consulted and his comments are included in section 9.1 above.

The Director of Law and Administration has also been consulted and is satisfied with the contents of the report.

The Director of Planning and Environmental Services has been consulted and her comments are covered within the report and accompanying appendix.

Officers from the Flood Prevention and Coastal Protection Unit of Transportation and Infrastructure and from the Planning Policy and Environment Section of Planning and Environmental Services have also been consulted and their comments are included throughout the document.
Recommendation

The Committee is recommended to:-

Endorse the proposed response to the Scottish Government’s consultation document “the Future of Flood Risk Management in Scotland”, as contained in Appendix A to this report.

Director of Transportation and Infrastructure
Report prepared by W. R. Murdoch
28 February 2008

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND - RESPONSE TO SCOTTISH GOVERNMENT’S CONSULTATION DOCUMENT

Sustainable flood management

Q1- Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

The definition is helpful in the sense that it provides an understanding of the issues which need to be considered when undertaking sustainable flood management planning. These issues are clarified further by the series of more explicit associated objectives and principles which attempt to set out in more detail what is trying to be achieved. One small criticism perhaps is the omission of any reference to the opportunities for enhancement to habitats and, hence, biodiversity that SFM can bring.

Q2- Do you think the definition is clear and simple to understand?

The wording is considered reasonably comprehensive and simple to understand, whilst retaining a degree of flexibility in interpretation.

Appointment of Competent Authority

Q3- Do you agree with the conclusion as set out in paragraph 3.17?

Essentially yes. There does seem to be a need for a lead authority to provide a strategic overview and to ensure that there is a focused and consistent approach to flood management throughout the country. It must be clear however that the important roles which local authorities can play in engaging communities and in implementation of measures must be maintained. There must also be a mechanism for ensuring a fair and equitable distribution of funding across the country based on need rather than political bias.

Q4- Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

Yes, for reasons given in answer to Q3 there should be a single lead authority. SEPA seem best placed, based on skills and experience, to fulfil this role. They already deal at national level with flood risk assessment and with river catchment management planning and the extension to include this role should be relatively straightforward. The roles and responsibilities of the respective authorities must however be very clearly defined to avoid confusion and duplication of effort.

Flood risk planning

Q5- Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not, what alternative do you propose?

Yes, developing a hierarchical approach seems a reasonable way forward with a broad brush overview at national level drilling down to catchment and project level action locally. The development of these plans, which it is hoped will provide far more accurate information than the existing flood maps, should prove to be of considerable assistance to planners in informing the decision making process in relation to controlling development in flood risk areas.
Q6- Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

If deemed necessary fall back powers could be included but better to allow partners to come to a mutual agreement on choice of lead authority by themselves. There may be occasions, say due to resource issues, that one may be in a better position to be lead authority than the other.

**Responsible authorities**

Q7- Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, these are considered to be the main partners.

Q8- Which other bodies should be identified as responsible authorities?

It is assumed that SEPA is omitted because it will be identified as the Competent Authority and that it doesn’t actually implement measures anyway.

There will be occasions however when landowners could be considered as responsible authorities and a mechanism for including them or a body representing them, such as the National Farmers Union or Landowners Federation, might be appropriate.

Though not a responsible authority, the Insurance Industry can play an important role in identifying issues, providing advice and as drivers of change. It is felt therefore that it should have a recognised role somewhere in the process.

**Flood risk planning participation**

Q9- Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

There is absolutely no doubt that authorities must work together to produce plans if the Bill is to succeed. An effective forum involving all responsible authorities has already been developed through the Flood Advisory Groups, and it seems reasonable that sub groups of these bodies be established to produce the management plans. It may however be appropriate, given their wider strategic role, that SEPA takes over leadership of the Flood Advisory Groups.

Q10- Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

Yes, the establishment of stakeholder forums should be sufficient to capture ideas and communicate proposals.

**Approving the plans**

Q11- Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

If the River Basin Management Planning process works, it makes sound sense to adopt a tried and tested process for consistency and ease of understanding. Officers from the Council’s Planning and Environmental services have been engaging with SEPA from the beginning of the RBMP process. However, even though the approach and principles appear sound, until a RBMP is prepared and its outcomes incorporated into the development plans, it is difficult to say if it will have been a complete success.

Q12- Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Yes, they do so already with Flood Prevention Schemes and the proposal is only really an extension of the current process. The fact that Ministers are accountable to the Scottish Parliament should ensure that the process is fair and transparent which will be of paramount importance in ensuring the success and credibility of the approach.
Managing urban drainage

Q13- Do you think that integrated urban drainage plans should be included as part of a local Flood Risk Management Plan?

Yes, without a doubt. Dealing with flooding from surface water run-off and sewers must form part of any management plan which hopes to achieve effective results. SUDS and flood routes are expected to be essential components of most integrated urban drainage systems. There is however a major issue surrounding the ongoing maintenance of SUDS with Scottish Water being very reluctant to adopt many kinds of SUDS, presumably because of potential practical difficulties and future cost. Like other responsible authorities, they will have a duty to comply with good practice in flood risk management planning and this needs to be emphasised. It may be that the Government could do more to ensure that Scottish Water are adequately financed and equipped to be more supportive of SUDS. However, to achieve successful integration, Scottish Water will have to be more compromising and accommodating in the way that they operate, than has hitherto been the Council’s experience.

The planning system

Q14- Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

Yes, but development plans ought to be heavily influenced by Flood Risk Management Plans and this should be emphasised through documents such as SPP7. It makes little sense to allow development in areas identified as being at risk unless there are very exceptional circumstances.

Simplifying procedures- option 1 (Ministerial route)

Q15- Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Yes, the effective removal of one set of procedures with an overlap of processes, associated administrative burdens and potential duplication of public inquiries must speed up the overall delivery process to some extent. It may however be necessary to modify the requirements of the confirmation process to ensure that all aspects/requirements normally included in the outline planning process are covered.

Q16- Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Strictly speaking Ministerial confirmation should not be necessary for features which do not require planning permission but it is assumed that approval would be for the whole package and it would not be unreasonable for them to include the said features as part of the package.

Q17- Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

The Council has only very limited experience of this process, but is not aware of any reason why the current timescales cannot at least be maintained or, better still, improved upon.

Simplifying procedures- option 2 (local authority route)

Q18- Do you think the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Though this would have the advantage that most decision making would be at a local level, there could be complications when proposed measures cross Council boundaries. There is also a potential loss of consistency of approach and transparency which a single central body is better placed to ensure. There is also a concern that local authorities will not have, or be able to recruit,
sufficient experienced staff to independently scrutinise proposals. However, a local process could raise greater awareness of Local Flood Management Plans.

**Q19- What would be the appropriate timescales for notification and response?**

It is assumed this question relates to advertisement and consultation timescales and, if so, a total period of say 3 months would be considered sufficient.

**Q20- Would it be appropriate for such a process to carry deemed planning consent?**

Yes, this would be part of the streamlining process to speed up delivery of measures.

**Q21- How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?**

This could be a major stumbling block, as experienced flood engineers are already in short supply. “Pooling” of engineers across areas may be a partial solution but it is thought that drawing in expertise from consultants will also be necessary, if only to fill the voids created by pool engineers working in other authorities. An alternative might be for local authorities to go together and appoint a term consultant as specialist flooding advisor to undertake the entire scrutiny/approval role for the whole of Scotland.

**Q22- Are there any additional alternatives to the options outlined above which would simplify procedures?**

The Council is not aware of any.

**Flood measures beyond the 1961 Act**

**Q23- Do you consider local authorities powers are sufficient to take necessary action to avert danger to life and property?**

Yes, powers are considered sufficient to act to avert danger. The real problem, in many cases, is in identifying who is responsible for what, especially when the recovery of costs is involved or when further costly action is required to avoid a repetition occurring. Improved clarity of responsibilities is therefore essential.

**CAR authorisation**

**Q24- Do you agree that streamlining the CAR and flooding/planning process can be managed through better guidance?**

Yes, it should be possible to progress CAR authorisation in parallel with confirmation to further reduce timescales for delivery. This could best be achieved by ensuring collaboration and compromise between local authorities/appropriate organisations and SEPA at an early stage in the statutory process, so that measures being promoted are broadly consistent with the needs of SEPA in terms of CAR provisions. The CAR approval process should then be a simple “rubber stamping” exercise.

**Q25- Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?**

Not really, coordination and simplification of the confirmation, planning and CAR processes to minimise timescales is probably as far as it is possible to go. It will though be necessary for SEPA to operate in a spirit of co-operation rather than as regulators, which is the role with which they are likely to be more familiar.

**Q26- Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the government should consider?**

None really come to mind. However, there may be a case for distinguishing between the treatment of measures arising from flood risk management plans and unforeseen minor flooding measures, with a very localised impact, which can occur from time to time. For example, could a simple
assessment matrix be developed, to take account of the number of properties affected, the cost (which could be subject to a de minimis value), habitat impacts etc., which, if a threshold was met, would allow a small measure to be implemented without recourse to the full and lengthy approval process.

**Duties under 1961 Act**

**Q27-** Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

A standard format would be desirable but it should avoid creating excessive preparatory work which might be of limited value.

**Delivering sustainable flood management**

**Q28-** Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The proposals will lead to a more structured approach to flood management. However, they will not be without considerable resource implications for local authorities and there will be an expectation that measures identified through the agreed management plans will be delivered on the ground. Local authorities will therefore have to commit to using funding provided for flooding measures even though it will not be ring fenced. However, key to the overall success will be the demonstration that a fair and equitable system of allocating funding across the whole of Scotland has been adopted by the Government, based on genuine priority need rather than political party allegiance.

**Q29-** Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

Placing a duty on local authorities to promote specific measures seems a bit heavy handed. Having a duty to promote sustainable flood management through a pro-active collaborative approach is considered to be both sufficient and strike an acceptable balance.

**Reservoir safety**

**Q30-** Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Yes, for consistency of approach and standards and to overcome a disproportionate burden on some local authorities. A single national body would have more strength whenever enforcement powers had to be implemented.

**Q31-** If so, should it be SEPA or another as yet unidentified body?

SEPA is considered to be the most appropriate body and it is not felt that there is a need to create yet another organisation. The proposal would be consistent with practice in England and Wales where the Environment Agency is the enforcement authority.

**Q32-** Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

The proposal that SEPA should produce inundation maps showing the consequences should a dam fail seem sensible, as many small undertakers/owners would have neither the financial resources nor technical expertise to carry out the work themselves.
Q33- Do you agree that enforcement powers should be extended and post incident reporting included as an additional requirement?

Yes, the enforcement powers of the current Act are somewhat limited and the proposal to extend the powers of enforcement are welcome.

Feedback from incidents is always useful and can provide pointers which may help develop solutions to avoid repetitions in the future.

Q34- Views on Crown application and any other comments?

Yes, it is believed that the Act should be extended to cover Crown property. It is every bit as essential, in terms of the safety of those living downstream, that reservoirs belonging to the Crown are subject to the same rigorous inspection, maintenance and enforcement regime, as those in non-Crown control.

Other issues

(i) No indication is provided of how Flood Prevention Schemes, currently under development or arising in the intervening period between now and the completion of the flood risk management plans following implementation of the new Bill, will be handled. Some guidance on this matter is required.

(ii) For catchment wide sustainable solutions to work effectively there will be occasions when it will be necessary to use agricultural land for storage of water or as escape routes for excessive flows. One solution would be to acquire such areas, by CPO if necessary, but this would leave local authorities with the burden of having to maintain these areas in perpetuity for very infrequent, though important, benefit. It would be preferable if legal agreements could be established to allow areas to be used for flooding but with landowners retaining ownership so that the ground can be used for normal agricultural purposes at other times. Guidance is therefore required on a mechanism for obtaining grants of servitude or the equivalent for specific designated areas of ground which may be used infrequently for flood storage/overspill, and for compensating landowners both for accepting the initial burden and for subsequent crop/grazing losses resulting in disturbance and loss of income.

EXTRACT

ABERDEENSHIRE COUNCIL - INFRASTRUCTURE SERVICES COMMITTEE

WOODHILL HOUSE, ABERDEEN, 13 MARCH, 2008

Present: Councillors P J Argyle (Chair), W A Agnew, G J Clark, M A Ford, I Gray (as substitute for Councillor J B Cox), A G Howie, J M M Humphrey, F McRae, I J Mollison, S Pratt (as SNP member), A Ross, D M Storr and J Webster.

Apologies: Councillors J B Cox and I S Tait.

Officers: Director of Planning and Environmental Services, Director of Transportation and Infrastructure, Head of Development Management and Building Standards, Head of Planning Policy and Environment, Head of Environmental Health and Waste Management, Head of Consumer Protection and Support Services, Head of Transportation, Head of Roads, Head of Operations, Head of Property, Area Planning Officer (Kincardine and Mearns), Support Services Manager (P&ES), Support Services Manager (T&I), Landscape Services Manager (T&I), Chief Internal Auditor, Principal Accountant (Transportation and Infrastructure), Head of Law and Administration (Mr G Davidson) and Committee Officer.

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND – ABERDEENSHIRE COUNCIL’S RESPONSE TO CONSULTATION

There had been circulated a report dated 28 February, 2008 by the Director of Transportation and Infrastructure which asked members to consider and endorse the proposed response to the Scottish government consultation on the future of flood risk management in Scotland. Members
were advised that there had been an amended response to question 14 of the consultation and this was tabled to the Committee.

The Committee agreed to endorse the response to the Scottish Government’s consultation document on the Future of Flood Risk Management in Scotland as contained in the report, subject to the amended response to question 14.

Aberdeenshire Council
3 November 2008

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND (ACPOS)

I refer to your correspondence dated 1 October 2008 in connection with the above subject, which has been considered by members of the Operational Policing Business Area, and can now offer the following by way of comment.

Members are content with the measures proposed in the Flood Risk Management (Scotland) Bill, but would like to offer the following observations and recommendations:

Section 59

It is noted that a new Criminal offence of intentionally or recklessly damaging any flood defence is created. We are of the view that the legislation should make clear that SEPA and the appropriate Local Authority can report offences direct to the Procurator Fiscal.

Section 64

It is recommended that this section is strengthened to place a specific duty on SEPA to notify appropriate Category 1 responders when flooding is predicted, imminent or likely to occur. We would also recommend that in this event, SEPA are identified as the 'lead responder', in terms of the Civil Contingencies Act 2004 as enacted by the 2005 Regulations. The appropriateness of a transfer of responsibility from one lead responder to another would as the incident/situation develops follow agreed Strategic Coordinating Group arrangements.

Section 66 (1)

It is recommended that the word 'may' at line 35 is replaced by 'must' to reflect their responsibility as 'lead responder,' as identified in the recommended amendment to Section 64, above.

Section 67

ACPOS recommends that this section is re-drafted to reflect the statutory responsibilities of the Fire and Rescue Services, by virtue of the Fire (Additional Functions)(Scotland) Order 2005 and the Maritime Coastguard Agency, to respond to fast water rescue and the saving of life.

The Police will of course continue to assist other Category 1 responders in any flooding incident and will usually coordinate the activities of such a response. However, we would wish to highlight the potential ambiguity of sub-section (3), which may give the impression that it is a Police function to protect life and property in the event of a flooding incident, when the Police have neither the equipment nor training to carry out this role.

I trust that the foregoing is of assistance to you.

ACPOS
4 November 2008
SUBMISSION FROM ASSOCIATION OF COMMUNITY COUNCILS FOR THE LOCH LOMOND AND TROSSACHS NATIONAL PARK

With reference to the above Bill, we have the following two comments.

Firstly, it is stated on page 32 of the Bill that a National Park Authority is not a planning authority. In the Loch Lomond and Trossachs National Park the planning authority is the National Park. Should National Parks be designated as a responsible authority, especially as the Loch Lomond and Trossachs NP is a planning authority?

Secondly, the Bill takes little note of communities involvement in the planning and implementation of flood risk management. If sustainable flood risk management is to be considered then land owners and communities should be given a major role in the preparation of flood risk management plans and local authorities should work in partnership with communities. This partnership approach should be carried out through appropriate community groups e.g. Community Councils or in the case of the Loch Lomond and the Trossachs National Park, the Association of Community Councils.

ACC Executive Committee
10 November 2008

SUBMISSION FROM CALLANDER COMMUNITY COUNCIL

With reference to the above Bill, we have the following comments.

The overall approach of the Bill to take a more sustainable approach to flood management is very welcome, Callander Community Council has been promoting this approach for many years. We however feel that there could have been a better explanation of what sustainable flood risk management involves.

We would like to see much more formal involvement of communities in the whole process. The Bill mentions a partnership approach, this needs to include communities, they own the land. We also would like to see some mention of how landowners and communities will be compensated if there are compulsory changes to land management.

We would also like clarity in who has the main responsibility for flood protection, is it the local authority (mentioned in the Bill) of is it the householder (mentioned in SPP7)?

Callander Community Council
10 November 2008

SUBMISSION FROM CITY OF EDINBURGH COUNCIL

The Council welcomes this Bill and it is considered that this will go along way in achieving the aims of ensuring that all organisations involved in flood risk management effectively co-ordinate their activities. However the attempts to streamline the approval process in relation to Flood prevention Schemes is disappointing and the process in relation to deemed planning consent is too vague. However there are a number of issues that should be looked at in further detail before your consultation is concluded.

- Part 2 - It is noted that the Bill addresses the flooding of all land and not only non-agricultural land as detailed in the 1961 Act. The Bill should not lead to demands being made on local authorities to protect agricultural land, but that it has to be included in flood maps and plans.

- Part 3 – This proactive approach is welcomed. But the Scottish Government should give consideration to providing guidelines on the level of Consultation required. The Council did provide an indication of increased costs anticipated based on that described in the
consultation paper ‘The Future of Flood risk Management’, however given that the level of detail required is more apparent it is considered that the figures given should very much be treated as a lower bound.

- Part 4 – Section 54 – The Bill, explanatory note and policy memorandum continue to refer only to deemed planning permission. As the May report to the Planning Committee states (para 3.20 – response to questions 15 & 16), other ‘planning’ consents may be required in order to implement a flood prevention (protection) scheme e.g. listed building and/or conservation area consent (required for the demolition of unlisted buildings located within a conservation area). If such consents are required the benefit of streamlining the process by directing that planning permission for development is deemed to have been granted is lost. Such applications can attract objections; require consultation with Historic Scotland and, in certain circumstances, referral to Ministers before consent(s) can be issued. The Planning (Listed Buildings & Conservation Areas) (Scotland) Act 1997 contains no provision for deemed listed building consent or conservation area consent. The provisions of the Act however do not fetter a Council’s (or Ministers) ability to grant planning permission, but neither does it remove the need to secure such consents. Given that flood protection schemes are essentially promoted to protect urban land and buildings, listed building consent and/or conservation area consent is likely to be a feature of most schemes. For this reason the suite of documents should make reference to the need to secure other ‘planning consents’ consents – reference could be made in para 164 of the Explanatory Note and in the section headed Statutory process at para 133 onwards

- Part 4 - Section 59 - The Bill should make it clear that it is an offence to damage any flood protection work, including Schemes constructed under the 1961 Act

- Part 6 – Sections 71 & 72 Sections 71 and 72 do not give any direction on how compensation is to be assessed as the corresponding wording within the 1961 Act (“shall pay compensation equal to the amount of depreciation or damage”) is not included in the Bill. A direction on how compensation is to be assessed must be included in the Bill. The opportunity should be taken to consider if the previous 1961 Act compensation basis (as mention above) should be replaced with compensation based more in line with that relating to statutory compensation used for other public authority schemes including roads. Compensation for depreciation or damage for most other schemes is assessed with reference to the Land Compensation (Scotland) Act 1963 and later Acts and all associated case law.

- Schedule 2 – It is considered that the opportunity to further streamline the process has not been fully realised. It is noted that any person can object to the proposals and that no attempt has been made to exclude trivial matters. It is noted that Scottish Ministers will consider the nature of objections but that there is no provision to compel objectors to provide details of their objection. For example on the Braid Burn Flood Prevention Scheme a number of objectors did not provide details, which made negotiations very difficult. It became apparent that their objective was merely to delay the work commencing on site for as long as possible. Indeed there are no rules to establish when it might be necessary for Ministers to call an Inquiry. It is also noted that it would be necessary to hold an Inquiry even were there only one objector. It is recommended that SEPA in paragraph 6(1) to ensure that any proposals are compatible with the FRMP under development.

- Schedule 2 Paragraph 1 (d) (ii) needs to be clarified, as it would appear that everyone on the flood plain downstream of the operations should be notified.

- The bill does not include any measures relating to streamlining the CAR Process as was suggested in your consultation paper "The Future of Flood Risk Management".
Comhairle nan Eilean Siar has submitted a response to the Scottish Government’s consultation document – ‘The Future of Flood Risk Management in Scotland’, and a copy of this is attached. The Comhairle has nothing further to add to our response in respect of the Rural Affairs and Environment Committee’s call for evidence. Although the Western Isles are affected by coastal flooding to some degree, we have nothing further to add to submissions made by other local authorities with responsibilities for areas where flooding is of a more prominent issue.

Sustainable Flood Management (SFM)

Q1. Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

Note: The Flood Issues Advisory Committee (FIAC) defined sustainable flood management as: “Sustainable flood management provides the maximum possible social and economic resilience (ability to recover quickly and easily) against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”

The definition of sustainable flood management taken together with the overall objectives and principles of SFM is helpful in that it describes the wider consideration and inclusiveness that will be required to address flood management.

SFM should aim to reduce the risks of flood damage by better integration between an improved flood warning system, the use of planning policy to avoid further unsuitable development, increased investment in flood alleviation and improved guidance on climate change adaptation.

Q2. Do you think the definition is clear and simple to understand?

The definition itself is clear, but in order to simplify understanding it should be used together with illustrations of SFM principles and an indication of those bodies involved in its implementation.

The Competent Authority

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

The Scottish Government should retain overall responsibility for flood risk management but a competent body could act on its behalf and have a national remit for implementing the Floods Directive. However, the local implementation and engagement role that can be played by statutory local authorities and other ‘voluntary’ bodies such as in the case of coastal flooding, multi-stakeholder local coastal partnerships, should not be understated. Due account should be taken by the planning process and that the local implementation of the principles of Awareness, Avoidance, Alleviation and Assistance should be adequately funded by the Scottish Government.

Consideration should be given to Catchment Strategy Planning for SFM, but that catchments should be within realistic boundaries, e.g. the Western Isles is included in the RBMP West Highland AAG, but Comhairle nan Eilean Siar has no interest in SFM designed for the Scottish mainland. It does however, have considerable experience and knowledge of mainly coastal SFM issues within the Western Isles.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

Yes, SEPA has already gained considerable experience of this type of approach through River Basin Management Planning, however, the principles of stakeholder engagement, transparency and the democratic process should be adhered to.
Flood Risk Management Planning

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

Yes, a hierarchical approach will be an effective way of delivering flood management planning in Scotland. This approach will ensure standardization and knowledge transfer between designated single large catchments. The Western Isles area has its own distinct boundary and is covered by a single local authority. Also, the local authority leads the multi-stakeholder ICZM partnership; the Outer Hebrides Coastal Marine Partnership.

For the preparation of Local Flood Management Plans, more and better quality data is required than available at present. The SEPA Indicative Flood Maps provide a basis against which any potential risk from flooding can be identified, but takes no account of built structures such as coast protection or culverts; it does not allow for storm surge or tidal run; and we are led to believe that a probability range of +/- 1m is assumed. It would be useful for both planning authorities and developers if more accurate information was available as is possible through LIDAR studies.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

If the Western Isles is designated as the single large catchment area, the situation of having two local authorities within the area will not arise. If however, the catchment is based on the RMBP West Highland area, this could be more problematic in terms of equitable funding across local authority boundaries given the transfer of flood risk management funding to the local government settlement.

 Responsible Authorities

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, their involvement as responsible bodies would be seen as essential for the effective delivery of area and local flood risk management plans.

Q8. Which other bodies should be identified as responsible authorities?

Other bodies that should be involved in flood risk management, but it may not be necessary for them to be listed by statute, are, for example, landowners including community and SGRPID, crofting and farming organisations, community councils, flood action groups, port authorities, etc.

Participative Planning Process

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

A Flood Advisory Group has not been established for the Western Isles. However, the Outer Hebrides Coastal Marine Partnership (CoastHebrides) was set up by Comhairle nan Eilean Siar in the summer of 2006. The partnership has a Forum consisting of members representing statutory, business, environmental, and community groups (including flood action groups), and has a coordinator employed by the Comhairle. The Forum meets quarterly and is involved in climate change impacts and adaptation, and coastal erosion and flooding issues among other coastal zone management topics.

As coastal flooding has more impact than fluvial in the Western Isles, CoastHebrides, or a sub group, would be the preferred organisation for responsible bodies to work with to produce plans.
Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

Yes, however the experience of the RMBP Area Advisory Groups, similar in many respects to the flood risk management proposals, shows that it is difficult to retain active participation of business and community members and this issue requires to be addressed.

Approving the Plans

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Yes, the general approach of stakeholder participation in planning should be adopted. However, lessons can be drawn from the RMBP process which is in comparatively early stages and still has to produce plans. Ways should be found to retain true stakeholder participation and interest in the process. Although, flooding is a far more emotive issue and has more impact on people’s lives than RMBP, and encouraging community involvement will be important.

Novel methods of retaining interest should be trialed and evaluated such as use of visualizations generated by GIS, use of video to show experience of other areas (and/or countries), and ‘Planning for Real’ methods to name a few.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Yes, as Ministers are accountable to the Scottish Government and the democratic process, this will be essential.

Managing Surface Water & Urban Drainage

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

Yes. Although the problems associated with the rapid increase in hard drained surfaces quickly channeling surface water into water courses is not so problematic within the Western Isles there remains the need to co-ordinate all drainage planning to ensure flood risk is managed and so potential reduced.

The Planning System

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

FRMPs should certainly inform the preparation of development plans. At present the identification of sites for inclusion in development plans is guided by the SEPA Indicative Flood Maps, however these have limitations and the responsibility falls on the developer to provide Flood Risk Assessments to show how any flood risk might be ameliorated. As the information to be provided by FRMPs will be more detailed and set out specific measures to address flood risk it would seem to make sense that planning authorities should have regard to them in preparing development plans.

Simplifying Procedures – Option 1 Ministerial

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Yes, but it is suggested that the application to Ministers for consent would require to be reviewed and follow more closely the process and steps in a S36 application under the Electricity Acts) i.e.
1) enhanced requirements on the detail to be submitted at application stage to include as mandatory, plans, elevations, cross sections, details of materials (It is expected that this level of detail would in any event be required for Environmental Impact Assessment screening.) (Currently an FPS application only requires to include a description of: all permanent elements of the scheme, e.g. embankments, floodwall, storage areas etc ; all land affected by the above operations ; land where entry or temporary works will be required.)

2) Scottish Ministers undertake consultation with statutory bodies (SEPA, SNH, Planning Authority; Scottish Ministers (At present SGRIPID only encourages authorities to consult the planning authority, SEPA, SNH and Historic Scotland)

3) Carry out an assessment

4) Local Authority (developer) seeks to resolve objections; Public Local Inquiry for outstanding objections and then Deemed Consent.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Yes; Process should address totality of a scheme under one application.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

Refer to response to Q15 above. Timescales would require to be adjusted to take account of enhancements to the consenting process

Simplifying Procedures – Option 2 Local Authority

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

In light of the local authority being the Developer (for what are likely to be larger schemes with local pressure groups for and against), and the party best placed to negotiate solutions to address objections, it is considered that there is strong merit in the consenting process being placed within the remit of the Scottish Government. Apart from allaying public concerns re the authority being both developer and consentor, it addresses the fact that a local authority process will, where there is a substantial body of objection or statutory consultee objection, lead in any event to the application being called in by Scottish Ministers;

Furthermore, flood prevention schemes, while falling within the definition of development, serve a different objective to most land use planning applications in that they are schemes generally seeking to protect developed land (as opposed to dealing with land use related to new development).

Q19. What would be the appropriate timescales for notification and response?

As Q18 above.

Q20. Would it be appropriate for such a process to carry deemed planning consent?

Yes provided the scope of the application is sufficient to assess the planning issues.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed be addressed?

Assuming an increased number of projects being undertaken given the increased scope of scheme types and implementation bodies; technical expertise in terms of engineers, hydrologists and experienced planners may be difficult to resource. This may be the case whether reliance is placed on consultants or in employing additional local authority staff. There is already considerable pressure on both consultants’ and councils’ technical staff.
Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

Examples could be made available to demonstrate good practice which would assist in reducing the need for all schemes to be designed from first principles.

Q23 Do you consider local authorities’ powers are sufficient to take necessary action to avert danger to life and property?

During an emergency situation there is the need for a clear chain of command. It is usually the Police who decide what action is required to safeguard against danger to life and property and then get others to undertake the work and to carry the costs. However, difficulties can arise in determining who is actually responsible for costs being allocated by the local authority at a later date. Clear rules on costs would help, especially if the decision maker is initially responsible for costs which are to be recovered at a later date.

CAR (Controlled Activities Regulations) Authorisation

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Yes.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Nothing further to add. The proposals are designed to simplify, streamline and co-ordinate sustainable flood risk management in Scotland. If SEPA is to be appointed as the single competent authority with a national remit to implement the Floods Directive and local authorities having primary responsibility for flood alleviation and the planning process, the proposals should better integrate planning and CAR processes.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

None.

Duties Under the Flood Prevention (Scotland) Act 1961

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

The 1997 amendment to the Flood Prevention Act places duties on local authorities to publish biennial reports on flooding of non-agricultural land in their area. These reports detail occurrences of flooding over the previous two year period together with detail of the measures taken to prevent or mitigate such flooding. The Act only covers flooding from watercourses and does not cover flooding which is tidal in nature.

The biennial reports be used to inform the Preliminary Flood Risk Assessment and their format should be designed for that purpose. Consideration of the recording of instances of coastal flooding in the reports should be given.

Delivering Sustainable Flood Management

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The sea and coast is the predominant landscape feature of the Western Isles and much of the coasts are very low-lying and infrastructure such as roads and buildings are vulnerable to winter storms, erosion and flooding.
The great storm of January 2005 had a devastating effect on the community living in the islands. Five people from one family died while trying to escape from rising flood water during winds in excess of 120 m/hour. The term ‘storm surge’ was almost unheard of before, but is now in everyday usage. The storm caused damage to houses, roads, ports and other infrastructure, to a value of over £20m, and much of this damage has or still is being repaired. Further, this has had a detrimental effect on community resilience and confidence, and there is a need among the general public to know about the risk of reoccurrence of such storms especially in view of projected climate change and to develop adaptation strategies to protect their communities against the effects of rising sea levels, flooding and erosion.

We are encouraged by the proposed flexibility for local authorities to develop a range of flood management measures which, in the case of the Western Isles, will be mainly coastal in nature and not just based on traditional flood prevention schemes. An example of this type of approach is the proposed CoastAdapt project. The Comhairle is lead partner in an application to the Northern Periphery Programme for a 3-year project entitled “The Sea as Our Neighbour: Sustainable Adaptation to Climate Change in Coastal Communities and Habitats on Europe’s Northern Periphery” (CoastAdapt). An excerpt from the application states;

“Coastal communities are particularly vulnerable to climate change because, in addition to changes in the climate, they are also exposed to sea level rising and storm surges. With extreme events predicted to occur more frequently, the importance of preparing for climate change is being recognised by coastal municipalities/local authorities across the northern periphery. Most national governments have prepared a climate change programme, but because of the magnitude of the problem and the site-specific consequences, local authorities have an important role to play in climate change adaptation. Some of the concerns mentioned by communities willing to adapt are the lack of resources, not only in terms of trained staff and awareness raising (i.e., to gain political support), but also the need for more detailed local data and information on the likely impacts of climate change as well as tools, techniques (e.g. frameworks), and examples of best practices. For example, practical methods supporting decision-makers in making complex choices are not readily available. CoastAdapt will address these existing gaps by providing decision makers with the best evidence base and tools that are needed for making decisions about climate change adaptation at the local scale.”

The Comhairle supports the principles of Sustainable Flood Management which address problems faced by communities, whether physical such as the efficacy of building hard sea defences or long-term viability of protecting low-lying ground from flooding; or social such as people having the capacity to make informed judgement and decisions, or officials in local government having the knowledge to enable effective policies to be enacted.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

The proposals will involve a new approach to flood risk management in Scotland and although the local authorities will have a statutory duty to prepare Local Flood Risk Management Plans that coordinate the delivery of measures to address flood risk, the success of this process will be dependant on the cooperation and collaboration of all responsible authorities. The new legislation proposes a more inclusive and flexible approach to flood risk management planning and will permit the opportunity for the development of local solutions to suit local conditions.

The new system will take time to become established and will be dependant on sufficient resources being made available to local authorities and other responsible authorities. Review and evaluation of the process should be undertaken to ensure successful implementation is realised through better flood preparedness and prevention. In order to assist with this, the development of key success indicators should be undertaken at an early stage in the process.
Reservoir Safety

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Yes, the reasons for change set out in the consultation document are appropriate to the experience and circumstances prevailing within the Western Isles. A single enforcement body would exercise duties and powers in a more uniform and efficient way than at present.

Q31. If so, should it be SEPA or another as yet unidentified body?

Yes, as SEPA is already an established regulatory body, they would be most appropriate to assume full responsibility for enforcement of the Reservoirs Act.

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

We agree with the proposal that reservoirs should be assessed as part of a preliminary flood risk assessment under the Floods Directive and where there is risk of significant hazards, SEPA would be required to map that risk. Where appropriate, there should be cross referencing with bodies undertaking local emergency planning measures.

Q33. Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Yes, in the event of non-compliance by a reservoir undertaker with recommendations made by the supervising engineer, enforcement powers should be available to the new enforcement authority, but only in so far as is reasonable in the interests of safety based on potential risk.

Post incident review and reporting as an evaluation of incident response is important to identify and correct weaknesses in order to learn from and avoid repetition of mistakes, and should be included as an additional requirement.

Q34. Views on crown application and any other comments?

Where the situation exists that the Crown controls or plans to control reservoirs, the same prescriptions should be in force as for those controlled by others.

Other Issues

Consideration should be given to interim arrangements for the implementation of flood risk management schemes that may be necessary during the establishment of the new legislation and subsequent process.

Comhairle nan Eilean Siar
6 November 2008

SUBMISSION FROM DUMFRIES AND GALLOWAY FIRE AND RESCUE SERVICE

I am writing on behalf of the Scottish Chief Fire Officers and Chief Fire Officers Association Scotland (CFOAS) in response to the Rural Affairs and Environment Committee call for evidence in respect of the Flood Risk Management (Scotland) Bill.

In March 2008 CFOAS presented written and oral evidence to the Flood Management Inquiry. This evidence focused upon two gaps in Scotland’s flood response arrangements. Both gaps were particularly evident in the multi agency responses to the major floods that affected many parts of
the UK in 2007. Both have featured strongly in the findings of Sir Michael Pitt’s report of the events, currently being considered by the English Parliament.

It is 16 months since the floods of 2007 highlighted, among other things, the fundamental shortfalls, in response gaps relating to the Fire and Rescue Service. We would suggest that the Flood Risk Management (Scotland) Bill provides a timely opportunity for Scottish Ministers to define arrangements to be put in place to address these gaps.

It was particularly gratifying to note the Flood Management Inquiry Committee’s recommendations included a reference to one of the gaps, namely the coordination of flood related rescue activities (recommendation 25). It is particularly disappointing to note that this recommendation does not feature in the Bill.

Scottish Chief Fire Officers recognise that the Bill is primarily focused upon flood planning, prevention and protection activities albeit part 5 relates to warning schemes that could be described as relating to response arrangements. We also recognise that it could be argued that the Fire and Rescue response arrangement gaps fall within the Resilience (Civil Contingencies) remit.

Scottish Chief Fire Officers firmly believe that the Flood Risk Management (Scotland) Bill should include reference to the Flood Management Inquiry recommendation relating to the Fire and Rescue Service flood rescue coordination role and in addition should clarify the services’ role in responding to some categories of inland water rescue.

The timing of the Bill will also enable Scottish Ministers to address two important enhancements to Scotland’s multi agency flood response arrangements at an early opportunity.

We would welcome the opportunity to present more detailed evidence on our position on these issues as required to the Committee in due course. Please let me know if I can be of further assistance in these matters.

Dumfries and Galloway Fire and Rescue Service
7 November 2008

SUBMISSION FROM GLASGOW CITY COUNCIL

General

The content of the Bill is generally welcomed as a way forward for the development and delivery of a catchment wide comprehensive integrated surface water management strategy.

1(2) c

While the co-operation with responsible authorities is welcomed, the co-ordination of funding will be necessary for the development and implementation of projects. Current timescales for Q&S IV do not sit well with those for the development and implementation of the local flood risk management plans.

The development of the Business Case for Q&S IV requires to commence towards the end of 2013. By the conclusion of this Scottish Water will require to have identified, and costed to within 5%, all the capital works it intends to undertake in the period 2014 to 2022. At the time of the development of this Business Case SEPA will have just concluded their Flood Risk and Hazard Mapping and will be less than halfway through the timescale for the development of District Flood Risk Management Plans. The conclusion of Local Flood Risk Management Plans by May 2016 will still be over two years from conclusion.

Glasgow City Council is concerned, therefore, that the above timing and rigid nature of Scottish Water’s funding, does not allow the inclusion of key integrated flood management works within the Scottish Water programmes.
9(6)

Reference is made to lakes within the definition of a sub-basin. In the Scottish context lochs would be more appropriate with one exception.

13

The potential impact on properties and communities should be recognised when the locations of vulnerable areas is published.

18(8)(a)

The valuation of the probability is not clear but it should be compatible with SPP7 to avoid any confusion. However there is conflict between these two documents that should be addressed.

23(3)

The flood risk management plans are to be approved by Ministers by 22 December 2015 and this commences a six year cycle. The Bill recognises the importance of the development process in delivering key aspects of future flood risk management. It is essential, therefore that the Scottish Government considers the alignment of associated development plans and programmes to ensure as far as practical that they all focus and compliment similar issues.

As noted in comments to Section 1(2)c Scottish Water’s Q&S programme is currently out of line in relation to both funding and development of their programmes.

38(1)(b)

Both SEPA and any responsible authority are required to provide “assistance” to the lead authority. This will require adequate staff and funding resources to be available to meet this request. This is particularly relevant for SEPA and Scottish Water who will require to address and support the parallel development of local FRM plans by several lead authorities. Similarly, dependent on the configuration of catchments, a local authority may require to meet the simultaneous demands of more than one lead authority.

61

The definition of a watercourse continues to be very wide. Under the current legislation Glasgow City Council has experienced some difficulties in establishing the extent of their responsibilities from the existing watercourse definition. The proposed legislation will to do little to alleviate this position. Given the requirement for co-operative working and the development of integrated solutions it is essential that a clear understanding of areas of responsibility is established at the outset. Consequently, the definition needs to be revisited to prevent similar confusion in the future.

**Funding**

A significant burden is being placed on the various authorities with associated costs in producing and collating the information, maps and documents in the first instance then maintaining and updating the information for the scheduled reviews as well as the general administration of new procedures. The document states that it is expected that Local Authorities make a contribution to the development of the strategy and its associated maps and documentation. The costs the Scottish Government considers are required for doing so are set out in the Financial Memorandum. These appear to address only the provision of staff resources and do not address the very significant capital cost that will be involved in developing the information, tools and initial projects proposals that will be required for the Flood Risk Management Planning process.

In the on-going development of the Metropolitan Glasgow Strategic Drainage Plan, Glasgow City Council has required to expend significant capital funding to provide computer modelling,
submissions from highland council

the highland council wish to comment and the details are given below.

- overall the highland council welcomes the scottish government’s proposals to modernise the approach to flood risk management for scotland. in particular the council welcomes the proposal to simplify the procedure for flood prevention schemes and the associated planning process.

- the highland council are concerned that flood prevention schemes and measures may be delayed during the period before the new bill and the flood risk management plans (frmp) are implemented. the council recommend that flood protection schemes which are in progress, or developed before the frmp is in place, will feed into the frmp and go through the new approval process without having to wait. the council recommend that sepa are involved in the confirmation process in the interim period.

- local authorities will have to publish information, accept representations over a 3 month period, consult snh/sepa/etc 1 year prior to frmp, and then finalise the local flood risk management plans (lfrmp) along with the frmp in 2015. these are then reviewed every 2 to 3 years. the highland council have concerns about the short timescale, workload, resource, and cost implications of these requirements.

- the highland council are content that the current local authority duties and responsibilities for the reservoirs act will transfer from local authorities to sepa.

- the guidance document to the bill, produced by the government, contains averaged costs for the 32 local authorities. the highland council are concerned that there is no detailed guidance for the likely cost to the highland council, and are seeking clarification of the costs, including a breakdown and itemisation of the quoted averaged global costs.

- there are some apparent omissions from the financial memorandum which are of concern to the highland council:-

  - under current legislation the council have a duty to access watercourses. these watercourses generally relate to urban, built up areas. under the proposed bill the council will have a duty to assess all watercourses – rural and urban. the ‘extra’ cost for the wider watercourse assessment does not appear to be included in the financial memorandum.

  - the measures in the proposed bill can be varied by future regulation, ministerial direction and guidance. it is unlikely that these unknown future changes are included in the costs.

  - if the proposed bill is successful - as intended - in simplifying and accelerating the procedures for flood protection then it is likely there will be increasing pressures to deliver such schemes. this will increase the financial pressures on the council’s budget.

the highland council will be seeking clarification on the significant additional funding implications associated with implementing the flood risk management (scotland) bill.

highland council
11 november 2008
SUBMISSION FROM THE MACAULAY INSTITUTE

We have focussed our response on issues where we feel our ongoing research under RERAD’s Programme 3 on Environment, Land Use and Rural Stewardship provide some indications about whether, and under what circumstances, the principles in the Bill could be implemented. Please note that as this is ongoing research it is not always possible to be definitive in our responses.

We have tried to keep our response very brief but we would be delighted to supply a fuller written submission, or provide spoken evidence if that would be useful.

General comments on flood risk and flood risk management:

Research on public and stakeholder perceptions of flood risk highlights a number of conceptual issues that could influence the ‘policy logic’ of this Bill.

Put simply, risk management needs to be seen as a negotiated relationship between the responsible authorities and those who need to protect themselves against future risk and take action when faced with imminent flood hazard. It is important that the responsible agencies do not assume an ‘information deficit’ approach whereby the public make ‘poor’ or ‘irrational’ decisions on the basis of ignorance or lack of information. Rather, our research suggests that members of the public often have quite sophisticated and complex ways of making decisions and deciding whether to alter their behavior. Therefore, whilst communicating information about flood risk management is vital, it has to be put in the context of how different people might interpret and act on this information; which sources of information are seen to be believable and relevant to them; and how different people ‘read’ maps. None of this is ‘self-evident’ and there could be serious consequences if the emergency services and responsible authorities make assumptions about how the public might respond to flood risk management strategies without basing this on how people actually behave.

Another piece of ongoing research has highlighted how the public’s perception of risk and risk management is strongly influenced by their attitudes to how water is managed and the reputation of the agencies doing the management. The follow up survey of willingness to pay for flood management options has shown that soft engineering to protect downstream settlements was seen as much more useful than public insurance; although half the sample was willing to pay for either of these options. The analysis has shown that individuals’ beliefs about how the policy options meet the governance values (efficiency, solidarity, sustainability, safety and naturalness) explain perceived usefulness of flood risk management options.

Consistency & Coordination with RBMP

Our findings from research on river basin management planning as developing across Scotland suggests that there will considerable difficulties in ensuring consistency and coordination. Consistency and coordination will be helped by having common responsible authorities and we have already recommended that SEPA adapt their information system developed for WFD to include flood risk management issues as well. However, our research has shown that even within RBMP there are difficulties in consistency and coordination.

Firstly, the current approach has tended to report on individual pressures on the environment and appropriate measures for each pressure. However, this approach makes it difficult to see how multiple pressures may interact and/or how a measure to improve one issue might actually have an unintended consequence on another aspect of the water environment. The need to move from a single issue to a systems approach is recognized, but it appears that the way the plans are being developed and the information systems underpinning them, actually makes it difficult to do this ‘joined up’ approach. Therefore, trying to expand the system to take account of flood management as well as the WFD criteria is going to be an additional challenge (although it is also an additional motivation to do this joining up process).
Secondly, water management takes place in a complex, congested and often confusing policy arena, with a plethora of global, European, UK, Scottish, regional and local policies, regulations and guidance documents. The aim to coordinate these policies, particularly to join up RBMP with flood management, is positive. However, research on RBMP and development planning shows that there are many impediments to achieving this coordination. These range from different organizational remits and cultures through to simply not having enough time to think beyond the immediate and pressing operational tasks to be done. Coordination will not just happen – it will have to be resourced and actively promoted, preferably through the use of ‘champions’ who see this coordination role as important to delivering the potential of joined up environmental management. Again, such coordination will require both resources and high profile support, as too often coordination becomes a ‘luxury’ to be pursued over and above the demands of the ‘day job’. It is telling that the language in this draft Bill talks of coordination but not of integration, as coordination is the first rung of the partnership ladder, and does not require shared objectives or shared authority or governance structures. This may suggest the Bill recognizes the difficulties in going beyond coordination – however we caution that even coordination can be difficult to achieve. Another unanswered question is how FRM plans will link up with catchment management and coastal management plans, as these are not always well integrated within RBMP at the moment.

Thirdly, it is not entirely clear to us from this Bill how cross-border flooding incidents might be handled. Under RBMP, additional guidance and a policy statement from DEFRA and Scottish Government had to be developed during 2007, but there are still ongoing challenges in reconciling the different ways in which data is collected and recorded by the agencies; the different regulatory frameworks and different advisory networks. Again, the FRM implementation can learn from the progress being made, but this is likely to remain a difficult issue to resolve. As the Borders are one area at flood risk, this is of some concern.

Fourthly, our research suggests that members of the advisory groups, let alone members of wider interested stakeholder groups and the public, have struggled to make sense of the characterization reports and associated data. Despite having a consultation on the characterization report and its methodology and the significant water management issues, many are still unsure of how judgments (on the state of the environment, the potential measures and the appropriate objective to be achieved) were made. This is partly the challenge of how to communicate complex technical data to a range of busy people. However, it is also to do with the consequences of the decisions made on the basis of this information – as such these characterizations are interpreted in a ‘political’ manner and resisted where they seem to suggest a perceived bias against a sector or geographical area. Flood risk management is also likely to be a contentious and contested issue, with perceived winners and losers, and as such it is vital that: (1) the characterization stages are well understood and (2) the planning cycle includes a process of building shared understandings of the problem and a shared vision of how to resolve these. This will have to be done within a context of living with uncertainty, as there will always be limitations to our ability to predict how our natural and human systems will behave.

Two final practical lessons that have arisen from RBMP so far are issues of phasing and issues of developing and maintaining capacity. The Bill suggests, sensibly, that the FRM planning cycle mirrors the RBMP cycle to allow coordination. The experience of RBMP is that the cycle is actually quite tight, particularly the phasing of the draft plan, consultation and finalization of the plan for ministerial sign off. As it is advisable to mirror the statutory RBMP cycle, it is important that flood risk management planners learn from the RBMP experience and set earlier informal milestones to ensure there is sufficient time to ‘have regard’ to public input as the Bill states. Equally, much of this learning is done by a few key individuals within the responsible authorities and it is important to put in place contingency plans for the inevitable changes in personnel that will occur. Having a funded, explicit process of monitoring progress and lessons learnt throughout the planning process can help retain this institutional memory; as can ensuring that experienced individuals in the flood risk management community mentor new staff in the responsible agencies.

Advisory Groups

We are pleased to see public consultation being enshrined in the Bill but we would encourage the Bill to make clear that active involvement requires an ongoing dialogue not formulaic written consultation processes. The interpretation of ‘active involvement’ under the Water Framework
Directive is starting to be discussed as there is little guidance on what active involvement means in practice. The ‘costs’ of active involvement (time, opportunity costs, travel expenses), as borne by the stakeholder groups, must be seen to be outweighed by benefits of this involvement – generally seen as having an influence on the decisions made. However, our work on the River Basin Management Planning process illustrates a fundamental clash of expectations whereby the Scottish Government are very clear that the national and advisory groups are there to advise, but the representatives of public, membership and private organizations are seeking to influence, not only advise on, the outcome of the process. This finding suggests that the planning coordinators’ attempts to develop a culture of partnership delivery could be undermined if stakeholders decide that their costs are not being adequately rewarded and disengage.

Other relevant findings from RBMP research suggest that whilst all stakeholders have access to the planning process, some have more influence than others. This is partly to do with the amount of resource an organization is able or willing to put into the planning process – so making provision for payment of travel expenses is welcomed to help ‘level the playing field’ for stakeholders from more remote parts of Scotland. Influence is also related to how well the organizations are able to use multiple processes to advance their interests – those agencies and organizations with national and wide ranging remits have more opportunity to discuss relevant issues than those with a very limited issue or geographically based remit. In a related way, the more an individual or organization is engaged with the science and policy communities, the more quickly they can digest and engage with the data (see 2.4 above).

We support the use of sub-district advisory groups to bring the planning and management process closer to the spatial scale that better matches that used by land managers and households to think about their environment. It is not clear from the draft Bill whether these sub districts will match the 10 existing area advisory groups used under RBMP process. On the one hand, it could be advisable to do this, to help with coordination, and in which case we would suggest changing the name to area advisory group to make this connection explicit. However, a counter argument could be that our research has suggested that some of the area advisory groups do not share a common sense of place or common goal. This may be because the area is too large or heterogeneous to be a sensible management unit. Therefore, the sub-district advisory groups could be set up independently of the existing area advisory groups, at a more appropriate scale, so long as there was ongoing exchange of information between the two processes.

Regardless of the decision regarding the relationship between RBMP and FRM sub groups, our research suggests that ensuring the information flow between the geographic sub groups is essential. The role of the national group with regard to providing strategic direction to the area advisory groups should be well designed from the start as part of the communication planning process. Coordination between subgroups and from sub group to national group has not been as transparent to the other stakeholders involved in the process as some would have liked.

To generate public interest in flood risk management and planning, there will need to be an effort to make the information relevant, salient and comprehensible to the intended users and this will require investment in proper science communication processes as well as ongoing dialogue (see 1.2 above). Utilizing existing local governance networks (e.g. community councils, rural partnerships, community development trusts), where they are working well, can assist with getting involvement beyond the usual suspects. Using a locally trusted source of advice and information is often the most effective way of passing on information. However, many local bodies will need to be resourced to take on any additional dissemination and/or community animation role. This finding is particularly important with regard to residents in potentially vulnerable areas who may not have much experience of working with SEPA.

Macaulay Institute
On behalf of colleagues from Catchment, Integrated Land Use Systems and Socio-economics within the Macaulay Institute.
11 November 2008
SUBMISSION FROM THE MET OFFICE

The Met Office provided written and oral evidence to the RAE Committee’s inquiry into flood risk management in Scotland. We welcomed the report to the Scottish Government and are pleased to update our evidence to the Committee in its role to lead scrutiny of the Scottish Flood Risk Management Bill.

Our earlier evidence advised the Committee of planned changes to the National Severe Weather Warning Service (NSWWS). These changes were successfully introduced and we are confident that the updated service will continue to better inform the end user of potentially severe or extreme weather events. In addition to these changes, the Met Office has driven through advances in science and technology to deliver an Extreme Rainfall Alert Service (ERAS), specifically tailored to the needs of the emergency response community. Although still being trialled, the ERAS has already had a positive impact in planning mitigation activities for urban (surface water) flooding. The trial is due to finish in January 2009. To exploit this enhanced capability on a UK-wide basis we are hopeful that funding will be forthcoming to fully support an operational service, together with research activity to further develop that capability. Although urban flooding is not specifically defined in the Bill, we believe the ERAS would, if implemented, provide improved lead times and more accurate warnings of the likelihood of flooding to the responder community (R.2&R.9). Met Office plans to increase the resolution of our operational forecast model will continue to improve our weather forecasting capabilities. We expect the 1.5km model described in our earlier evidence to be fully implemented by the middle of 2009.

The Met Office placed great emphasis in our previous evidence on the need to work closely with SEPA to ensure science developments and respective skill sets in both meteorology and hydrology were combined to provide better flood warnings at extended lead times. The Met Office welcomed the RAE Committee’s recommendation to the Scottish Government that the Bill should reflect the importance of effective collaboration (R.21). The Pitt Review of the flooding in England and Wales in 2007 also recognised the benefits that closer working between the Met Office and the Environment Agency (EA) would bring to flood risk management in England and Wales. The Met Office and the EA have taken this key recommendation forward in its consideration to form a joint flood forecasting centre. The Met Office would welcome the opportunity to work with SEPA in a similar arrangement to ensure Scotland also takes best advantage of advances in developing sciences and technology, and their integration.

Investment in flood management looking forward over 25 years or more (R.10) requires a profound understanding of the impact of climate change. The Met Office is ideally placed to provide advice and information to planners and developers of Flood Management Plans. However it should be noted that our understanding of climate change continues to develop. Review and updating of plans in the light of the new information as recommended (R.10) should therefore include the best science available at the time of the review.

The Met Office
11 November 2008

SUBMISSION FROM MOUNTAIN ENVIRONMENTS CONSULTANCY

With reference to the above Bill, we have the following comments:

- General (page 1) - The overall approach of the Bill to take a more sustainable approach to flood management is very welcome however the lack of an explanation of what sustainable flood risk management is could result in a different approach by the responsible organisations. The Bill needs to better define the details of sustainable flood risk management.
- Responsible authorities (Page 3) – should National Parks be included as a responsible authority, especially the Loch Lomond and Trossachs NP which is the Planning Authority for that area?
- Flood risk assessments (Page 4) – the description of a flood which has occurred should always include the estimated return period for that flood.
SUBMISSION FROM NETWORK RAIL

Summary

- Network Rail welcomes this bill and, in particular, the co-ordinating role of Scottish Environment Protection Agency;
- We believe this co-ordinating role of SEPA should be extended to co-ordinating input from interested parties into local flood management plans;
- SEPA and local authorities should seek Network Rail’s consent before they exercise their powers of entry and to manage flood risk, under this bill, where the operational railway is affected.

Network Rail comments on particular clauses

Clause 23- Flood Risk Management Plans, Clause 28- local flood risk management plans, Clause 42- District flood risk advisory groups

Network Rail welcomes this bill and, in particular, the co-ordinating role of Scottish Environment Protection Agency as set out in this bill. Network Rail looks forward to inputting into SEPA’s flooding risk assessment and management plan.

However, Network Rail does not have sufficient resources to input individually into all local flood risk management plans. Network Rail therefore would like the information contained in its national management plan to be cascaded down to a local level by SEPA and via district flood advisory groups.

Network Rail considers that transport infrastructure providers and operators, including Network Rail, should be represented on district flood advisory groups.

Clause 49- General power to manage flood risk, Clause 54 Deemed planning permission

Local authorities should seek Network Rail’s consent before they exercise specific powers to manage flood risk or proceed with a flood protection scheme in areas that will affect the operational railway.
Clause 62- Advice to planning authorities and others as to flood risk

Network Rail would welcome advice from SEPA in relation to flood risk on the operational railway that is not already covered by its flood risk assessments and management plans.

Clause 67- Consultation on Clause 66 and 67

Network Rail would like to be consulted on decisions by SEPA and Scottish Ministers on whether flood warning systems should be provided or altered in areas where the operational railway could be affected by flooding.

Clause 68- powers of entry

To ensure the safe running of the railway and to protect the health and safety of authorised persons, the consent of Network Rail should be sought by SEPA before powers of entry are granted onto operational railway property.

Network Rail
11 November 2008

SUBMISSION FROM NORTH LANARKSHIRE COUNCIL

The council welcomes the Scottish Government's commitment to support SEPA and the responsible authorities by working to ensure that adequate resources are provided for the new challenging roles set out in the Bill. While estimates of costs are provided in the Financial Memorandum to the Bill there is recognition that it is difficult to estimate the total cost of the new duties. If the costs exceed the estimates the council would seek reassurance that the new duties will be fully funded.

The new streamlining of procedures for taking forward flood protection schemes is welcomed.

In many existing urban areas the functioning of the road drainage system is integrated with the combined sewers and the sewer system cannot be considered in isolation. Although modern developments are built with separate drainage systems, in urban areas these often feed back into a combined system at the development boundary. The proposal to place new statutory duties for flood risk management on Scottish Water is welcome as is the inclusion of flooding from sewers due to excess hydraulic loading.

The report on flooding in the East of Glasgow in 2002 highlighted that there is no primary legislation covering the run-off from non-paved areas in an urban setting. While the Government has indicated that ultimate responsibility for avoiding or managing flood risk still lies with land and property owners, these owners may have limited options to improve drainage within their property to deal with flooding. Since Scottish Water for understandable reasons will not accept land drainage into the sewer system existing property owners may have no means to deal with the surface water. Where pluvial flooding is minor in nature this means that the cost of protecting such property may considerably exceed the value of the property/land.

Recognition that there needs to be a balance between flood risk management and environmental protection is important. While there may be scope for coincidental environmental and flood management benefits through co-ordination with the 2003 Water Environment & Water Services (Scotland) Act the potential for conflict between these two objectives should not be discounted. The 2003 Water Environment & Water Services (Scotland) Act should not have superiority over the proposed legislation and where conflict arises there should be a mechanism to reconcile such conflict.
The council acknowledges the important role of development planning in managing flood risk. In respect of Sustainable Urban Drainage Systems that are not to be adopted by Scottish Water there are concerns from a planning perspective over the practicality of enforcing the maintenance of non-adopted Sustainable Urban Drainage Systems in the long term.

The 2003 COSLA Flood Report highlighted that management of flood risk associated with of culverted watercourses may require access via manholes which may have been covered or built over by landowners. Legislation is required to prevent this occurring and to address current difficulties this respect.

North Lanarkshire Council
11 November 2008

SUBMISSION FROM PERTH AND KINROSS COUNCIL

Introduction
Perth & Kinross Council would like to welcome the move to improve flood risk management within Scotland, as well as the opportunities and flexibility offered in the draft Bill.

Perth & Kinross Council makes the following comments regarding the call for evidence relating to the Flood Risk Management (Scotland) Bill:

General Comment on Responsibilities with Regard to Flooding
The Bill does not highlight what the responsibilities of the householder/landowner are in relation to flooding. Consideration should be given to the addition of a statement noting that the prime responsibility for flooding rests with the householder/landowner. Whilst we understand that this may not have been explicitly laid down within current legislation, the new Bill should at least acknowledge that it does not remove the existing primary responsibilities of the householder/landowner.

Comments on Guidance Notes

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<th>Page</th>
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<th>Comment by Perth &amp; Kinross Council</th>
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<tbody>
<tr>
<td>3</td>
<td>-</td>
<td>11</td>
<td>This section notes that the Bill covers five main areas but further down (at section 12) the Bill is noted as being in 8 parts.</td>
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<tr>
<td>7</td>
<td>-</td>
<td>-</td>
<td>Refers to Article 3(2)b but when you refer to the Bill itself this seems to have been omitted.</td>
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Comments on the Flood Risk Management (Scotland) Bill

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<tr>
<td>1</td>
<td>1</td>
<td>-</td>
<td>This places a general duty on SEPA, Scottish Ministers and responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk. This cannot be achieved without adequate funding mechanisms being in place.</td>
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<tr>
<td>1</td>
<td>1</td>
<td>1(1)</td>
<td>The definition of a flood does not include a flood solely from a sewerage system. It is strongly recommend that Scottish Water’s duties are enhanced under this legislation. In particular we would recommend the revision of Sewers for Scotland to bring about improvements in the storm water capacity within new sewage and drainage systems.</td>
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<td>4-5</td>
<td>3</td>
<td>9-12</td>
<td>It is important that local authorities be given the right to agree the preliminary flood risk assessments.</td>
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| 9    | 2    | 18(8)(a) | Under this section a medium probability flood is defined as having a 1:100 year return period. This does not tie up with the current 1:200
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<tr>
<td>13</td>
<td>3 25</td>
<td>It is important that local authorities be given the right to input directly to flood risk management plans.</td>
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<td>12-15</td>
<td>3 25, 26 &amp; 27</td>
<td>Will there be any public right of objection to flood risk management plans or local flood risk management plans?</td>
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<tr>
<td>16</td>
<td>3 29(4)(b)(ii)</td>
<td>It is noted that the local flood risk management plan is to include a description of the arrangements for funding and implementation. There needs to be some clarity from the Scottish Government over funding.</td>
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<td>20</td>
<td>3 37</td>
<td>Provides SEPA with a power to obtain information. This should perhaps be strengthened to a duty as it is important that SEPA use these powers.</td>
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<tr>
<td>20/21</td>
<td>3 37/38</td>
<td>Will the powers to obtain information, documents and assistance help Local Authorities and SEPA obtain information from Scottish Water which they often say is protected under data protection legislation?</td>
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<tr>
<td>21</td>
<td>3 37(4)</td>
<td>Provision of information from Responsible Authorities needs to be clarified. Does it include information provided by developers as there may be copyright issues associated with this?</td>
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<td>23</td>
<td>3 42</td>
<td>Will the District Flood Advisory Groups sit above the existing FLAG groups and who will determine the group make up and role?</td>
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<td>25</td>
<td>3 45</td>
<td>What purpose will these reports from the Scottish Ministers serve, e.g. are they just a monitoring tool, and what will be incorporated within them? It is assumed that part of the reason for the reports will be used as evidence to show our compliance with the EC Directive.</td>
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<tr>
<td>26</td>
<td>4 49(1)(a)</td>
<td>This section notes that &quot;a local authority may do anything&quot; - this requires to be clarified.</td>
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<td>27</td>
<td>4 49(2)(a) &amp; (b)</td>
<td>There needs to be more clarity in the definitions of what constitutes a 'flood protection scheme' and 'any other flood protection works'. See also the definition of 'flood protection work' in section 84. In short, what determines a scheme under Schedule 2 and what doesn't?</td>
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<td>26-30</td>
<td>4 49,52,53 &amp; 56</td>
<td>There is concern that the previous reference to non-agricultural land has now been removed. As a result, the Council may inherit a responsibility to maintain agricultural flood banks. This raises concerns that an unfair financial burden will be placed on the Council and other Councils with a high proportion of agricultural land.</td>
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Additional Note – The use of the word ‘protection’ is cause for concern as it gives the impression that full protection against flooding will be afforded by schemes or works. This should be changed to ‘mitigation’ or ‘reduction’. |

| 27  | 4 49(2)(d) | These agreements or arrangements that may be entered into should have to reflect the overall aims of the local flood risk management plans. |
| 29  | 4 56(1) | The definition of ‘from time to time’ should be clarified. Does this
section mean there is no longer a duty to maintain watercourses?

What is the definition of ‘flooding of land’? Surely flooding of certain areas of land, e.g. empty fields, will not present a problem?

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<td>4</td>
<td>57</td>
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<tr>
<td>Recovery of expenses for repairs/reinstatements to flood protection work done under Section 49. What does this extend to?</td>
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| Does this include:
| • Where works have been carried out to remove fallen trees from a burn due to flood risk and the landowner has subsequently neglected remaining trees and allowed them to fall into the burn. Does this allow local authorities to recover expenses for having to re-clear the burn?
| • Where the capacity of a culvert system has been maintained by regular cleansing and a utility then puts a pipe through the system, reducing capacity – can the local authority then claim costs for having to remove the pipe and restoring the system?
| What is the mechanism for recovering expenses? |

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<td>Does this offence extend to those who deliberately obstruct existing flood mitigation schemes, e.g. depositing material to prevent gate closures or to those persons who cut padlocks from flood gates and re-open them during a high flood risk period?</td>
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<tr>
<td>This section repeals the Flood Prevention (Scotland) Act 1961 but there appears to be no transitional arrangements in place for the interim period before the flood risk management plans are confirmed. For example, what happens if a local authority wishes to promote a flood scheme before the completion of the flood risk assessments (in 2011), the flood maps (in 2013) and the flood risk management plans (by 2015)?</td>
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<td>The definition of ‘watercourse’ should be clarified.</td>
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<tr>
<td>31</td>
<td>5</td>
<td>62(3)</td>
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<tr>
<td>Advice provided by SEPA is only given if they hold relevant information. This should be extended to a duty to ensure SEPA gathers the necessary information to allow them to comment.</td>
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<td>35</td>
<td>6</td>
<td>68(2)</td>
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<tr>
<td>Powers of entry - local authorities will require the same powers of entry as SEPA to allow them to collect information to inform their local flood risk management plans.</td>
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<td>Has there been a date set for transfer of reservoirs responsibilities to SEPA?</td>
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<td>SEPA has been given powers to obtain information about Land. These powers should be extended to local authorities.</td>
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<td>44</td>
<td>8</td>
<td>84(1)(a)</td>
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<td>Does ‘maintenance’ include watercourse maintenance?</td>
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<tr>
<td>50</td>
<td>8</td>
<td>Schedule 2</td>
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<td>What initiates the hearing mechanism and is there not a risk of a 3rd Party right of appeal through the Human Rights Act in relation to whether such a hearing could be considered fair if the Local Authority raise a scheme and then give it permission through a hearing?</td>
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<td>Schedule 2</td>
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<td>Note It is noted that the previous reference to limits of deviation for a flood protection scheme appear to have been removed. What then</td>
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happens if a flood scheme proposal requires to be altered after approval? Does the process begin again?

General Comments

- Strategic Environmental Assessment – Will every individual flood risk management plan require an SEA? Environmental Impact Assessment - there needs to be more guidance on when an EIA is required and how they will link to SEA’s.
- Finance remains a major concern for Local Authorities. Without it they will be unable to implement the local flood risk management plans. There needs to be more clarity on funding for flood measures and how it will be distributed among local authorities.
- The definition of flooding in the Bill implies that overland flow must be considered. However at present very few landowners take cognisance that their land is causing major flood risk. The Bill should therefore include powers for local authorities to require landowners to mitigate the effects of runoff in relation to flood risk.
- There is concern that failure to implement a local flood risk management plan for any reason, e.g. lack of funding, landowner agreement, etc, may lead to litigation in the event of flooding. Is this the intention of the Scottish Government?

Perth and Kinross Council
11 November 2008

SUBMISSION FROM DR JOHN RIDDELL

Introduction

The writer is a Chartered Civil Engineer with nearly forty years of experience of all aspects of flooding. He is an independent consultant providing advice on a wide range of flooding issues including flood risk assessments and investigations into flooding incidents. He has had involvement with many flood alleviation schemes, including the Perth, White Cart, Water of Leith, Forres and Elgin schemes, assisting both promoters and objectors. He is a former member of groups established to provide advice on flooding to Scottish Ministers and is a current member of the Flooding Bill Advisory Group. Based on that quite extensive experience the writer would wish that the Rural Affairs and Environment Committee give consideration to the following comments. These are made on a personal basis and primarily reflect the writer’s experience of meeting persons affected by flooding.

Repeal of Flood Prevention and Land Drainage (Scotland) Act 1997

Following the major flooding that affected many parts of Scotland in the early 1990s successive Scottish administrations have introduced measures to reduce flood risk to persons and property. The writer considers that those which have had the greatest impact are (i) the introduction of planning guidance requiring the assessment of flood risk for new development and (ii) the duty placed on local authorities to maintain watercourses in certain situations. The duty to maintain came from the Flood Prevention and Land Drainage (Scotland) Act 1997, which amended the Flood Prevention (Scotland) Act 1961, and arose from concern about the difficulty of ensuring watercourses, and in particular culvert inlets, were kept clear of debris. Since the passage of the 1997 Act the writer considers that many potentially damaging flooding incidents have been avoided by the very pro-active approach taken by all of Scotland’s local authorities through the introduction of effective programmes of watercourse inspection and maintenance.

The new Bill proposes to remove this quite specific duty. The writer understands that the duty, and it is a duty not a power, is considered to be unnecessary given the general power to be placed on responsible authorities to manage flood risk. The writer does not agree with this view. The writer considers it unlikely that local management plans will go down to the detail required to achieve the objectives of the maintenance section of the 1997 Act, nor can the writer accept that the proposed duty to implement plans will be as robust in ensuring that maintenance work such as removing dumped mattresses from burns will actually take place. Section 4B of the 1997 Act is quite specific in its requirements and over a decade has served its purpose well. The writer would invite the
Committee to give serious consideration to the retention of a duty to maintain watercourses in relation to responsible authorities.

SEPA

The Bill proposes that SEPA be the competent authority in relation to flooding in Scotland. If the Committee is fully satisfied with the Government’s view that SEPA rather than a new independent flood management authority is the best approach to co-ordinating flood management in Scotland the writer would suggest that the Committee also be fully satisfied that an environment protection agency will be able to give the required priority in terms of resources, management direction, and staff experience to the protection of people, homes and property from flooding. Within SEPA flooding must be accepted as a first priority for the Agency as it has a direct impact on people, businesses and infrastructure much greater than all of the other areas for which SEPA has a responsibility. The situation must not be allowed where for example resources initially allocated to flooding are later diverted by SEPA to some other area of interest.

The writer would thus urge the Committee to examine closely the internal funding arrangements for SEPA’s flooding powers and duties, particularly those new responsibilities resulting from the Bill, and whether the agreed allocated funds should be ‘ring fenced’, and to consider whether flooding should be a direct main board responsibility, ie a senior member of the management team responsible only for flooding rather than through the multi-interest head of science post as at present. The writer would also suggest that there is a need for SEPA to have at least one member on both its main board and each regional board with good knowledge and experience of flooding, and would hope that the Committee would concur. The Scottish people now expect flooding to be taken very seriously, they expect flood risk management to be given a high priority by government, and it is therefore essential that the designated competent authority has the capacity, corporate capability and corporate will to meet these aspirations.

Responsibility

The writer attended the flooding issues consultation meeting chaired by the Minister in Galston, East Ayrshire, in April 2008. On the platform were representatives of the Scottish Government, the local authority, SEPA, Scottish Water, SNH and the Meteorological Office. As local residents raised concerns about local flooding incidents none of these representatives were prepared to say ‘that is my overall responsibility, I will get it sorted’.

In the writer’s experience of investigating many flooding incidents the strongest view that has always come through from those affected is the demand for a single agency to take responsibility for flooding, for a ‘one stop shop’ for all flooding issues, and for an end to the present confusion caused by multiple agencies. When your home is flooded you really are not interested whether it was caused by, for example, a sewer (Scottish Water), a blocked culvert (the local authority) or an inadequate warning (SEPA, Met Office). You want one authority to say, yes it was my failure and I will ensure it does not happen again. Better still, you want one authority, easily contactable and accountable, to say you will not be flooded!

The writer asks the Committee to envisage a situation after the Bill is enacted and a flood occurs that results in homes and possessions being destroyed, as will happen at some point. Affected and angry residents call a meeting. It is attended by the Minister for Rural Affairs and the Environment and the chief executives of the local authority, SEPA and Scottish Water. Which of these four will take responsibility for the flooding? If the answer is going to start with ‘well, it all depends’ has the Bill really taken us any further forward?

John Riddell
6 November 2008
Summary

- This submission aims to provide information on the economic benefits of sustainable flood management, and highlight some key issues in relation to coastal flooding and sea level rise.
- As such it aims to supplement the submission provided by Scottish Environment LINK. As active members of the LINK group, we fully support LINK’s recommendations.
- Part 1 general duties are welcome, but we remain concerned over the lack of clarity to ensure that sustainable approaches to flood management are on the face of the Bill.
- Part 3 on Flood risk assessments, maps and plans provides for the meeting of the requirements of the EU Floods Directive, and proposes a new framework for the management of floods through a system of flood risk management plans. It also provides for consultative arrangements, which are welcome. There is some scope to strengthen the flood risk management planning to reflect the aspiration to achieve catchment flood management.
- Provisions for natural flood management should be reviewed and strengthened, ensuring recognition that natural approaches to flood management are a cost-effective means of providing flood protection and multiple benefits to society and the environment.
- There is currently no duty on local and responsible authorities to implement measures on the ground. We see this as a major weakness of the Bill.
- The Committee should support the general principles of the Bill as well as commending the engagement of stakeholders in the development of this legislation.

In addition, RSPB Scotland recommends:

- The legislation should aim to ensure that sea level rise is addressed in appropriate manner and that vulnerable communities, as well as Natura and other important biodiversity sites are offered adequate protection.
- The issue of landowner compensation should be adequately addressed in the Bill and land managers be appropriately rewarded for the management of land for flooding.
- Managed realignment should be realised as a feasible option for the management of coastal flood risk and sea level rise, and that provisions are made for the assessment of the potential for managed realignment around the coastal areas and estuaries in Scotland.

We also recommend that the Committee considers the economic information provided in the Annex of this submission in support of the new framework for sustainable flood management, and particular in relation to the multiple benefits of natural flood management. This submission was prepared by RSPB Scotland and sent to the Finance Committee on behalf of Scottish Environment LINK.

Introduction

RSPB Scotland welcomes the opportunity to submit written evidence to the Rural Affairs and Environment Committee on Stage 1 consideration of the Flood Risk Management (Scotland) Bill 2008. This Bill is a complex piece of legislation, which is set to overhaul flooding policy in Scotland. The legislation prepared in open and transparent manner. The Committee should commend the Scottish Government for its approach to stakeholder engagement in the development of this legislation. The new framework is a big improvement to the reactive approach that is still taken by local authorities in Scotland. The Bill should allow for better planning and design of more cost-effective solutions to flooding. This is particularly important as the problem of flooding is predicted to get worse in future due to climate change. However, as stated and discussed in the submission by Scottish Environment LINK, the legislation could be improved in a number of key areas as part of the Stage 2 process.
Coastal flooding and sea level rise

The legislation aims to address all forms of flooding—including coastal and estuarine flooding. However, it is unclear how changes in sea level due to climate change will fall within the new framework. Whilst sea level rise has not been seen as a major problem in Scotland due to isostatic rise, a new report on coastal flooding suggests that sea level rise and coastal flooding is becoming a serious issue which is likely to get worse in future.

The Scottish Executive’s Review of levels of protection offered by flood prevention schemes showed that for South east Scotland sea level rise could be as much as 60cm by 2080, taking into account the natural uplift of the Scottish coast.

However, this estimation of uplift has recently been put under scrutiny in a study of coastal flooding by Dundee University, which suggests that the uplift of land due to the melting of Scottish ice sheets has been over-estimated and potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20cm higher in the Clyde estuary and 28cm higher in Moray and Aberdeenshire than previously estimated. It is also likely that the net sea levels in the Firth of Forth had shifted from a net fall to a net rise since the 1970s.

Managed realignment as an option for flood defence

Managed realignment is one of the methods of achieving a sustainable and cost-effective approach to sea level rise and flood defence. Inter-tidal habitats play an important role in absorbing wave energy and reducing wave height. Hence, they reduce the capital and maintenance costs of fixed flood defences. Indicative estimates suggest that with an 80-metre wide strip of saltmarsh in a combination with a 3-metre high seawall will provide the same defence standard as a 12-m high wall at a much-reduced cost. Whilst the technique of managed realignment and tidal exchange are widely used in England, no such techniques have yet been carried out for the purpose of coastal flood management in Scotland.

Managed realignment is seen as having at least 3 widely recognised benefits. These include more efficient allocation of flood defence resources, reduction in flood risk and restoration of intertidal habitat. Additionally, other benefits include contribution to WFD objectives, achievement of conservation and biodiversity targets, adaptation to climate change and increased tourism potential for the area.

Realignment in estuaries can also provide significant water storage, reducing the height of flood peaks and surge tides thus reducing pressure on existing flood defence structures. The scale of this effect is dependent on the size of the habitat created and its position within the estuary. For example a scheme at Alkborough will create 140ha of inter-tidal habitat in the upper Humber Estuary but at very high tides much larger areas will be flooded, providing enough storage to significantly reduce flood risk in Hull and the surrounding area.

Offsetting the loss of intertidal habitats

Managed re-alignment provides the only tool for offsetting losses of intertidal habitat to ‘coastal squeeze’, where rising sea levels force the intertidal zone up the shore, bringing it, in many cases, hard up against sea defences such as embankments and walls. RSPB Scotland is concerned over the slow progress in investigating and addressing the impacts of coastal squeeze. We would recommend that SNH is given a role under the Bill to ensure adequate protection is afforded to Natura and other important biodiversity site against sea level rise and coastal squeeze.

The costs and benefits of natural approaches to flood management

The natural approach to flood management can be applied in inland and coastal areas. In inland areas it involves a range of techniques, such as floodplain restoration, upland gullies forestation, and river meander restoration; all of which aim to either reduce the rainfall run-off from the river catchment, or to store water. In coastal areas, natural approaches are largely confined to managed realignment, or regulated tidal exchange. In both cases there are costs associated with
such dramatic changes in land use, in particular associated with the loss of existing activities on the land which is to be used as part of a flood management project. These issues need to be carefully considered, trading off the value of that activity against the value that can be gained through natural flood management. It is also important to remember that whilst the costs are likely to impact on one or only a few individual farmers/landowners, the benefits are likely to be felt by whole communities. The benefits are wide-ranging and go beyond the reduction in flood risk (see table 1). Crucial to the implementation of natural flood management policy is therefore the issue of compensation to landowners, as well as open communication with stakeholders and land managers. Further discussion of these crucial economic issues is provided in the Annex of this submission, which was also used for a Scottish Environment LINK submission to the Finance Committee.

Summary of recommendations

We therefore recommend that in relation to future flood management, the Committee seeks to ensure:

- The natural approach to flood management is recognised as cost-effective solution in flood risk management
- The issue of landowner compensation is adequately addressed in the Bill and land managers are appropriately rewarded for the management of their land for flooding
- Important Natura 2000 sites are adequately protected against sea level rise and coastal flooding and habitat compensation is put into operation where there is evidence of intertidal habitat loss
- Managed realignment is realised as a feasible option for the management of coastal flood risk and sea level rise
- The economic benefits of the new approach to flood management are fully recognised

Annex- Financial implications of the Flood Management (Scotland) Bill 2008

Submission by the Freshwater Taskforce of the Scottish Environment LINK to the Finance Committee 11 November 2008

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Finance Committee on the Flood Risk Management (Scotland) Bill 2008. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

A critical part of introducing the new Bill is estimating and evaluating the costs and the benefits of the new approach to be introduced under the Bill. The new approach aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aim to deliver environmental and other benefits.

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because, traditionally, only the cost-benefit of hard engineering option was considered, and not the cost-benefit analysis of a range of different options. In addition, the cost-benefit analysis was also only carried out for easy-to-quantify monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analyses.

The real benefit in introducing the new framework for flood risk management is in the assessment of a variety of options, delivery of multiple benefits and the provision of long-term solutions. In this submission we would like to highlight the multiple benefits that would result from the new framework for flood management, in particularly looking at the benefits of natural approaches to flood management and long-term planning. Where Scottish data are not available, figures from England or other countries are used as indicated.
Benefits of long term planning

Strategic planning for flood defence allows for the most cost effective solutions for each catchment to be found. It also helps identify areas where flood mitigation is difficult and where development should be avoided. Planning is particularly important given that flooding is likely to increase in frequency due to climate change. By linking flood risk management with land use planning, it will be possible to avoid new development in areas at high risk of flooding, and so reducing the need for expensive flood protection measures. Avoiding building on floodplains and high flood risk areas remains the cheapest, long-term option for flood management.

Climate change

The UK Climate Impacts Programme (CIP) predicts how climate might change over time, and concludes that winters will become wetter, and summers drier, but the intensity and frequency of summer storms may increase. For example, a medium-emission climate change scenario predicts that a 1 in 100 chance flood in any year is expected to become a 1 in 70 chance flood in any year by the 2020s, and to a 1 in 40-60 chance flood in any year by the 2080s. Therefore floods, which are currently considered ‘extreme’, will become more frequent in future. The sustainable approach to flood risk management provides effective means of planning for these changes and a framework for sustainable adaptation.

The costs of setting up the new framework for flood management

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Although we cannot calculate the potential cost saving from sound planning for the future, there are many examples of the costs of the lack of integrated flood management planning, especially in areas where development was allowed to take place on floodplains and now they must be defended at very high cost.

Costs and benefits of traditional hard defences

Costs of hard defences

Traditional flood defence measures are very expensive. The present value of Scotland’s current flood defences is £1.3 million/kilometre.

Maintenance and replacement costs are also high for hard defences. round 38% of the annual capital cost is required to maintain the defences, which is a very large additional expense. This is reflected by the Environment Agency (EA), in England, spending more of its flood risk management budget on maintenance in 2006-07 (38% of the budget) than on flood defence construction and replacement (36% of the budget). Additionally, hard defences generally need to be replaced after fifty - sixty years.

With the anticipated changes in climate and the frequency and severity of flooding events, these costs are likely to increase in future.

Benefits of traditional hard defences

The benefits of traditional hard defences are likely to be limited to the single purpose, which is flood defence. The evaluation is usually based on the analysis of the number of homes/businesses protected from flooding.
Multiple benefits of natural flood management

There are multiple benefits that result from the habitat creation that accompanies many forms of sustainable flood management, and in particular through natural flood management. These can be categorised as ecosystem services – aspects of ecosystems that can be consumed and/or utilised to produce human well-being. The four main categories of ecosystem services, and examples of the types of services that would arise from an increase in habitats and biodiversity are:

- Provisioning (fresh water, food)
- Regulating (water purification)
- Supporting (nutrient cycling)
- Cultural (tourism/recreation, aesthetic, sense of place)

These benefits are summarised in Table 2 at the end of this document. The value of these services is usually very site specific, and dependent on variables such as the availability of other sites providing similar services and the population that enjoys the services. Because they are difficult to value they are often neglected in traditional cost-benefit analyses. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis. We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options.

Costs and benefits of natural flood management

It is difficult to generalise about the cost of sustainable and in particular natural flood management measures as the measures vary widely. It is also worth noting that this is a new area of economic research, with a number of European research projects due to report shortly. Some of these research projects are particularly relevant, and include the economic assessment of the benefits of flood warning, and the evaluation of multiple benefits/ecosystem services in cost-benefit analysis.

Despite this, it is clear that sustainable flood management measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure. Some examples of the lower cost of sustainable defences are given here.

Managed realignment

Managed realignment is widely practiced as a coastal flood management measure in England by the Environment Agency (EA) and elsewhere in Europe, and is still a new concept in Scotland. The costs provided in this submission are therefore largely based on research carried out in England.

Managed realignment schemes are often less costly over time than hard defences as they require less maintenance. The height needed for embankments is generally lower due to the retreat inland, and erosive pressure is lessened due to the buffering action of the intertidal habitat created in front of the embankment. No defences might be required at all if the retreat is to a contour. In 1998 the EA estimated that the difference in costs, for building new seawalls, with 30 metres of saltmarsh in front of the seawall cost £800 per metre as opposed to £5,000 per metre without saltmarsh.

Freiston Shore is an example of the potential benefits to be gained from managed realignment. The realignment of the flood defence walls saved almost a million pounds in costs – the cost was £2 million compared to the £2.47 million estimated for maintenance/replacement of the walls. This greater cost effectiveness was achieved without even taking into account the significant environmental benefits gained from creating 65 hectares of intertidal habitat. Another additional benefit was the improved recreation value of the site. By 2008 almost 60,000 people were visiting Freiston Shore each year compared with approximately 11,000 people before the realignment.
The nature reserve on the site supports an estimated 6 full time equivalent jobs in the local community and also provides a valuable place for local people to exercise and relax.

The use of wetlands

Often sustainable flood management includes restoration of wetland to store or slow water flow. The Scottish Rural Development Plan indicates the likely costs of wetland creation and management. Table 1 displays the rates landholders are paid for creating and/or managing wetlands.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Annual payment</th>
<th>Present value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of open grazed or wet grassland for wildlife</td>
<td>£111.00/ha</td>
<td>£2,043/ha</td>
</tr>
<tr>
<td>Management of Wetland</td>
<td>£90.00/ha</td>
<td>£1,656/ha</td>
</tr>
<tr>
<td>Creation, restoration and management of wetland</td>
<td>£227.00/ha</td>
<td>£4,178/ha</td>
</tr>
<tr>
<td>Management/restoration of lowland raised bogs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Mgt. £40.00/ha</td>
<td></td>
<td>£736/ha</td>
</tr>
<tr>
<td>Grazing Mgt. £83.00/ha</td>
<td></td>
<td>£1,528/ha</td>
</tr>
<tr>
<td>Creation and management of water margins and enhanced riparian buffer areas</td>
<td>£294.00/ha</td>
<td>£5,491/ha</td>
</tr>
<tr>
<td>Management of flood plain</td>
<td>£39.00/ha</td>
<td>£718/ha</td>
</tr>
</tbody>
</table>

These wetlands are being created or managed for wildlife benefits, and as such are likely to cost more than wetlands that are created simply for flood management. This means they wetlands created and managed for biodiversity are likely to be more expensive than a less managed wetland. However, these costs are still lower than the cost of hard flood defences.

Estimating the value of natural flood management

Whilst this area of economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding. As a general guideline, Defra flood appraisal guidance recommends the use of £175 or £300/ha per year for the environmental benefits of managing water levels. This gives a present value of £3,221 to £5,521 per hectare. Other figures, derived from “meta-analyses” of the economics valuation literature, suggest that benefits from grazing marsh is likely to be even higher, around £290-360/ha per year, or a present value of £4,785 - £7,177/ha.

To minimise the risk of double counting, generally ecosystem services are estimated together in one benefit valuation. One exception might be carbon storage, which is a service with a global impact. The UK government’s shadow price of carbon is currently £26.52/t, and increases each year. The value of carbon sequestration over time is potentially high. A recent analysis of the proposed Wallasea Island realignment assumed that one tonne of carbon was sequestered per hectare of intertidal habitat created.

In light of the multiple benefits it will probably be appropriate to seek funding from more than the traditional flood defence sources. Scottish Ministers have a role to play in ensuring that adequate funding is made available to deliver SFM on the ground, and to reward farmers and foresters for managing their land for the benefit of flood management and climate change adaptation. This may require integrated funding streams.
5. Conclusions

The benefits of sustainable flood management, and in particular the natural component of flood management are many fold. We believe that sustainable flood management provides cost-effective means of protecting communities from flooding, whilst also providing additional benefits for the environment and the society. It therefore makes an economic sense to invest now on implementing a framework for the management of flood risk that will provide long-term solutions and ultimately reduce the future costs of flood protection. This is particularly important in the light of changes in weather and the predicted increases in flooding associated with climate change.

Table 2: Natural Floodplain Functions and Societal Values, (Department of Water Resources California, May 2005)

<table>
<thead>
<tr>
<th>Natural Floodplain Functions</th>
<th>Human Services and Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain Natural Channel Processes</td>
<td>Protection of life and property</td>
</tr>
</tbody>
</table>
| Maintain natural dynamic channel processes and equilibrium | • Avoided structure and content losses  
  • Avoided crop losses  
  • Avoided income losses  
  • Avoided damage to public infrastructure and services  
  • Avoided emergency response and recovery costs  
  • Avoided flood insurance administration costs  
  • Avoided hospitalization and related health care costs  
  • Avoided physical, financial and emotional disruption of lives  
  • Avoided loss of life  |
| Manage Flows | Avoided flood/sediment control infrastructure costs |
| Conduit Flows | Value of flow-related goods and services |
| Spread and retain surface and subsurface water | • Recreational boating  
  • Commercial navigation |
<p>| Moderate speed, force, depth and timing of flows | Avoided habitat enhancement/replacement costs |
| Maintain base flows | |
| Reduce frequency and duration of low surface flows | |
| Maintain sediment balance | |
| Maintain connectivity between channel and floodplain | |
| Maintain Water Supply | Value of goods and services produced with |</p>
<table>
<thead>
<tr>
<th>Promote groundwater recharge and storage</th>
<th>additional water supplies</th>
</tr>
</thead>
<tbody>
<tr>
<td>x</td>
<td>Agricultural</td>
</tr>
<tr>
<td>x</td>
<td>Municipal and industrial</td>
</tr>
<tr>
<td>x</td>
<td>Environmental</td>
</tr>
</tbody>
</table>

Avoided water supply infrastructure costs

Avoided habitat enhancement/replacement costs

<table>
<thead>
<tr>
<th>Natural Floodplain Functions</th>
<th>Human Services and Values</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maintain Water Quality</strong></td>
<td></td>
</tr>
<tr>
<td>Filter nutrients and impurities from runoff</td>
<td>Value of goods and services produced with improved water quality</td>
</tr>
<tr>
<td>Process organic wastes</td>
<td>x Agricultural</td>
</tr>
<tr>
<td>Moderate water temperature fluctuations</td>
<td>x Municipal and industrial</td>
</tr>
<tr>
<td></td>
<td>x Environmental</td>
</tr>
</tbody>
</table>

Avoided water treatment infrastructure costs

Avoided damage to plumbing, fixtures and appliances

Avoided habitat enhancement/replacement costs

<table>
<thead>
<tr>
<th>Maintain Soil Quality</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention of particulates, compounds and elements</td>
<td>Value of goods and services produced with improved soil quality</td>
</tr>
</tbody>
</table>

Avoided soil treatment costs

Avoided habitat enhancement/replacement costs

<table>
<thead>
<tr>
<th>Maintain Air Quality</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon sequestration (removal of atmospheric carbon by vegetation)</td>
<td>Value of goods and services produced with improved air quality</td>
</tr>
</tbody>
</table>
Vegetation humidifies atmosphere and moderates air temperatures | Improved property values  
| Value of improved health and comfort  
| Avoided damage caused by poor air quality  
| Avoided habitat enhancement/replacement costs  

| Maintain Plant and Animal Habitats | Value of goods and services associated with habitats  
| Maintain characteristic and diverse plant and animal communities |  
| Provide habitat interspersion and connectivity | • Natural products  
| • Aquaculture  
| • Recreation  
| • Hunting and fishing (sport and commercial)  
| • Open space/aesthetics  
| • Environmental studies  
| • Cultural resources  
| Provide breeding and feeding grounds |  
| Protect habitat for species of special concern |  
| Maintain ecological succession | Improved property values  
| Enhanced economic development  
| Preservation values (existence, option and bequest)  
| Avoided habitat enhancement/replacement costs  

RSPB  
11 November 2008

**SUBMISSION FROM THE SOCIETY OF CHIEF OFFICERS OF TRANSPORTATION IN SCOTLAND (SCOTS)**

SCOTS is a society made up of Chief Officers from the 32 Scottish Local Authorities with the aim of giving policy advice on a national basis for issues relating to land use, development and physical environment.

SCOTS wish to comment and the following provides their advice on those areas within the Bill that require to be considered further:

Overall SCOTS welcomes the Scottish Government’s proposals to modernise the approach to flood risk management for Scotland. SCOTS welcome many of the proposals but have responded here with the intention of being constructive and with an overall aim to achieve the much needed changes to the current legislation.
Responsibilities have been clearly defined within the legislation except for land and property owners who have the ultimate responsibility for avoiding or managing flood risk. Setting it within the Bill or providing firm clear guidance would play an important role in educating the general public on their responsibility.

Co-ordination

- The Bill may facilitate the co-ordinated working approach but SCOTS note that it does not enforce but relies on co-operation and co-ordinated working.
- Page 31 Section 60 Repeals the Flood Prevention (Scotland) Act 1961 but there appear to be no transitional arrangements for flood protection schemes. SCOTS recommend that flood protection schemes that are in progress or developed before the Flood Risk Management Plans (FRMPs) are in place will feed into the FRMPs and go through the new approval process without having to wait. Also that SEPA may need to be involved in the procedures for these schemes during the interim period.
- Page 23 Section 42 Within the District Flood Risk Advisory Groups (DFRAGs) SCOTS recommend that there be a terms of reference signed up to by all parties to facilitate co-ordinated response and working arrangements

Flood Risk Assessment

- If the flood risk assessment maps are to be as accurate as possible then the collection of the data required must begin as soon as possible. This data collection will also place an additional burden on Local Authorities resources and SCOTS are concerned that these may not be accurately represented within initial the calculations of costs in the accompanying Financial Memorandum.
- Any re-assessment of these maps in 2010 should have input from Local Authorities as these have the people who have experienced the impacts of flooding on the ground
- SEPA must start to initiate their responsibilities and duties with Local Authorities now to ensure a co-ordinated effort in establishing not only what data will be required to inform the Preliminary flood Risk assessments and subsequent maps but essentially to ensure a pro-active and effective working relationship

Hazard Maps

- Page 8/9 Sections 17 and 18. The definition and requirements for the hazard maps are extensive and SCOTS consider it is possible that the timescales for producing an accurate and detailed map are insufficient and the timescale may only allow a very broad overview. This will reduce the purpose and effectiveness of these initial maps.
- SCOTS consider it is essential that these maps look at the impact and effect of all constrictions to the flow of water such as bridges, banks and culverts. These constrictions have a backwater effect in relation to a potential hazard which will affect the flows and water levels in watercourses and rivers.
- SCOTS recommend that the impact of overland flow/run-off be included in the mapping and for example includes the flow from farmer’s fields particularly where there is potential to affect property
- SCOTS consider that in identifying vulnerable areas on these maps that there may be a potential of blighting the land or property. This may have the consequence of affecting Flood Insurance in Scotland.
- Past experience shows that if there is not a definition of what constitutes low/medium or high probability it could be interpreted differently by different bodies. It may be possible to define these more closely by reference to return periods, climate change, rainfall etc

Flood Risk Management Plans (FRMPs)

- Page 1 section1 (2)(c)SCOTS consider the FRMP process needs to emphasise the co-operative approach rather than coercive to ensure success.
- Page 11 section 23 To be successful there needs to be close partnership working in the framing of the FRMPs. The objectives and measures needs the co-operation of Local
Authorities who have to implement the plans within the Local LFRMPs. Consideration should be given to a memorandum of understanding.

- Page 11 Section 23 4 (a) and (b) The competent authority will have to agree timescales, funding and implementation with the responsible bodies. Co-operation will be important to ensure the plans can be delivered.

Local Flood Risk Management Plans (LRMPs)

- The cost and workload involved in pulling together and implementing these LRMP plans are not clear to Local Authorities but it is anticipated they are likely to place significant burden on resources and workload for most Local Authorities.
- There are significant extra cost implications for Local Authorities in the collection of the information required not only to inform the LFRMPs but also to help SEPA inform the FRMPs which are apparent in the financial memorandum.
- Page 15 sections 29 to 33 The timetable for implementing the LFRMP and solutions on the ground is short. The Local Authority duties for LFRMPs will be constrained by the short timescales and there may be difficulties for some authorities to complete the necessary work.
- In view of the short timescales it is recommended by SCOTS that work on the FRMPs and LFRMPs and assessments start as soon as possible. In that case there appears to be a funding/resource gap between now and 2010 in regard to how these plans will be completed and implemented

District Flood Risk Advisory Groups and Sub-District Flood Risk Advisory Groups

- There needs to be clarification of the Roles of SEPA and Local Authorities within these groups
- It is not clear if the cost to Local Authorities or other responsible bodies for the Advisory Groups is contained within the financial memorandum.
- Careful organisation will be required as the organisation of SEPA into regions does not mirror the Local Authority areas.

Local Authority Functions

- The duty for Local authorities to assess watercourses will be extended to ‘rural’ as well as the current ‘urban’ watercourses. Local Authorities will have an increased financial and resource responsibilities. It is not clear if the cost of this increased responsibility is contained within the estimates given in the financial memorandum.
- The definition of a watercourse as defined on page 31 Item 61 – SCOTS recommend that the definition be clarified to say whether it specifically extends to Sustainable Urban Drainage Schemes (SUDS), forest drains, agricultural land drains etc. There are potential problems for example SUDS schemes which adopted and maintained by a Third Party or Scottish Water. It is possible that these are intended to be dealt with by Sec49 and Sec57 and this should be clarified either in the Bill or the guidance.
- Page 30 section 57 Recovery of expenses – whilst this is welcomed by SCOTS there is need for guidance and an explanation of the mechanism in which such a process would be undertaken. SCOTS recommend that it would extend to not only things developed within the LFRMPs but also to existing works carried out prior to this Bill
- Page 30 section 59 (4) (a) SCOTS recommend that the information on fines for damage to Flood Protection Works needs to be expanded to include all existing flood protection work.

Flood Warning

- SCOTS consider it is essential that flood warning be extended to sub-districts and smaller river systems where there is significant flood risk and adequate warning can be given.
Reservoirs

- Page 38, part 7: Local Authority owned reservoirs will have to identify area of catastrophic failures and this should be made clearer within the bill.

Flood Protection Schemes – Procedures Schedule 2

- The FRMPs and LFRMPs will be agreed to in co-operation with SEPA. The consideration of the Controlled Activities Regulations should be incorporated into the process so that the implementation and maintenance of works can be dealt with more efficiently at a reduced overall cost for administration and licensing.
- There is an opportunity for simplification of the CAR process within this Bill. For instance the CAR licensing timescales are much longer and not in step with either the Planning or the Bill’s procedures.
- CAR needs to be applied uniformly across all regions and SCOTs recommend this Bill helps to ensure consistent co-ordination.

Regulations & Policy

- Policy documents and regulations for example SPP7 and the building regulations will have to be amended to make it comparable with the aims of the Bill and both the FRMPs and LFRMPs.

NOTES

Flood prevention studies presently undertaken have varied climate change strategies and figures therefore it would be prudent to produce guidance to ensure a co-ordinated approach to adjustments for climate change, this may need to be reviewed as and when UKCIP is reviewed.

SCOTS
11 November 2008

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

South Lanarkshire Council welcomes the introduction of the Flood Risk Management (Scotland) Bill and the principle of creating a ‘framework’ as a means of developing solutions to reduce and manage flood risk.

We note that the Rural Affairs and Environment Committee are concerned with the General Principles of the Bill and South Lanarkshire Council’s response is intended to reflect our concerns, where appropriate.

Bill as Introduced

Part 1 General Duty, Direction and Guidance

The general duty placed upon SEPA, Scottish Ministers and responsible authorities to reduce overall flood risk cannot be achieved without sufficient funding being made available.

Part 2 Principal Expressions

Paragraph 88 of the Policy Memorandum makes reference to land and property owners’ responsibility. However, our view is that it would have been helpful in this section to state to the general public that they have principal responsibility for protecting their property/land and/or maintaining their watercourses to assist in reducing the risk of flooding.
Part 3  Flood Risk Assessments, Maps and Plans

Flood Risk Assessments

We agree that flood risk assessments are required and SEPA is best placed to proceed with these, however, there is some concern that sufficient detail will be available for public inspection by 22 December 2011.

Flood Risk Maps and Plans

We support the development of these useful aids to assessing and managing future flood risk. It is noted, however, that SEPA can request responsible authorities to gather and provide information with regards to flood risk and other unspecified data. A Local Authority as a responsible authority can only supply this information should sufficient funding be available.

S18 Flood Hazard Maps – high, medium, low probability should these be linked to return periods to ensure national standards?

Local Flood Risk Management Plans

Again we support the development of Local Flood Risk Management Plans, as there is already evidence of this type of working in the Greater Glasgow area and the proposals appear to provide the necessary ‘framework’.

However, there are significant costs associated in preparing the supporting modelling studies to assist in its development.

There needs to be clarity on what is available financially and how it will be distributed.

Part 4  Flood Risk Management : Local Authority Functions

We welcome the wide ranging options available to a Local Authority to manage flood risk in its area.

S49 to S57 However, it is disappointing to note that the powers to recover costs with regards to lack of maintenance by riparian owners / land owners does not exist in Sections 49 through 57

Could the proposed Bill be amended to accommodate this requirement?

S56 Now that the definition of non-agricultural land has been removed and Flood Risk defined as per Part 2 S3, will there be a standard table / model available to assess the financial consequences? And ensure a standard continuity of response throughout the country.

S61 Definition of a watercourse

Could this definition clarify if this includes SUDS Ponds/Basins and ancillary apparatus maintained by Third Parties.
Could the definition clarify if this includes farm tile drains affecting property?

Part 5  SEPA : Other Flood Risk Management Functions

Flood Warning

Flood Warning is an exceptionally useful aid in the Flood Risk Management process and it should be a strategic aim to extend and refine Flood Warning systems particularly in those major urban conurbations with watercourses.
Part 6  Powers of Entry and Compensation
Noted that these Powers appear adequate to assist in implementing the Bill

Part 7  Reservoirs
Noted and welcomed as the present Enforcement Authority

Part 8  General
Noted

Schedule 1  Parts 1 and 2
No comments

Schedule 2  Flood Protection Schemes : Procedure
SEPA is a statutory consultee, however, there is no mention of attempting to reduce the timescale from a maximum of 4 months for a Complex CAR licence to say 2 months or less. This matter should be seriously considered as the proposed Bill progresses through Parliament.

Schedule 3  Minor and Consequential Modifications
No Comments

Schedule 4  Index
As per Part 2 it would be helpful if Riparian Owner / Land Owner was defined and referenced to this Schedule

Additional Comments
1. Transitional arrangements should be specified when repealing the Flood Prevention (Scotland) Act 1961 (as amended) to the Flood Risk Management (Scotland) Bill
2. SPP7 Requires to be amended to take account of the new Bill
3. It would be useful to have National Guidelines for Climate Change uplift. Although this is mentioned, it does not state any figures, will the Regulations state such Guidelines?

South Lanarkshire Council
11 November 2008
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

27th Meeting, 2008 (Session 3)

Tuesday 18 November 2008

Present:

Jackie Baillie (Deputy Convener) Derek Brownlee
Joe FitzPatrick James Kelly
Alex Neil Jeremy Purvis
Andrew Welsh (Convener) David Whitton

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Financial Memorandum of the Flood Risk Management (Scotland) Bill from—

Jim Conlin, Regulation Manager, Scottish Water;

David Faichney, Flood Warning Unit Manager, and Chris Spray, Director of Environmental Science, Scottish Environment Protection Agency;

Jeff Green, Head of Roads, Angus Council;

Robert Hopewell, Supervisory Engineer (Flooding and Structural Design), North Ayrshire Council.
On resuming—

**Flood Risk Management (Scotland) Bill: Financial Memorandum**

**The Convener:** Item 4 is evidence taking on the financial memorandum to the Flood Risk Management (Scotland) Bill. The committee agreed to carry out level 3 scrutiny of the memorandum, which means that as well as seeking written evidence, we will take oral evidence from affected organisations and the Scottish Government bill team.

I welcome to the committee: Jim Conlin, regulation manager at Scottish Water; David Faichney, flood warning unit manager at the Scottish Environment Protection Agency; Chris Spray, director of environmental science at SEPA; Jeff Green, head of roads at Angus Council; and Robert Hopewell, supervisory engineer at North Ayrshire Council. I invite questions from members. Jackie Baillie and Derek Brownlee have been designated to lead on the bill, but other members may intervene by catching my eye.

**Jackie Baillie:** Welcome to the committee, gentlemen. I will start with a general question to all the witnesses before moving on to one that relates specifically to local government. You will have seen the supplementary information that we received from the Minister for Environment in a letter dated 7 November. Are you happy that the approach taken in getting the range which you refer is the common and prevailing theme in all the submissions that we have read. That presents us with a difficulty, as certainty will not emerge until the preliminary round of flood risk assessments has been undertaken. In its written submission, Angus Council made a proposal for how those will be addressed in subsequent block grant settlements. Paragraph 329 of the financial memorandum and paragraph 45 of the minister’s response are of particular concern, as they seem to leave the issue open. Our concern is reflected in the written evidence submitted by Scottish Borders Council and one other authority, whose name has slipped my mind.

**Chris Spray (Scottish Environment Protection Agency):** We are happy with the position that the Scottish Government has set out in the latest information that it has provided. The key element will be the result of the flood risk planning preliminary studies. When we have the information from those, we will have a much better understanding of the way forward. The deadline for completion of the studies is the end of the comprehensive spending review, but we will learn as we go and will be in constant consultation with not just Government but local authorities, which will play a key role in determining what the result looks like.

**Jim Conlin (Scottish Water):** Scottish Water is happy that the approach taken in getting the range of costs has been sensible. We have included in our submission the assumptions that we made. The question is how those are built into future funding. The committee is aware that we are funded directly through customer charges. We are currently submitting the business plan for our next regulatory period, which covers 2010 to 2014. Usually, we are given capital expenditure funding for specific projects, but the fact that the initial assessment is still to be gone through means that we cannot put down funding against specific projects. We intend to submit our estimates on the basis that we will draw down funding based on the results of the flood risk assessments. That is the only way of doing it that we can think of without having further detail.

**Robert Hopewell (North Ayrshire Council):** North Ayrshire Council is obviously pleased with the minister’s supplementary evidence, because it gives us a certain amount of confidence about the funding arrangements. However, I draw the committee’s attention to paragraph 327 of the financial memorandum, which states:

> “The first set of flood risk management plans will be produced in 2015. These plans will identify the measures to be taken forward in the subsequent 6 year period”.

We can see no detail on how funding will be allocated from 2011 up to 2015, and the financial memorandum is vague even on funding from 2015. I thought that the supplementary evidence might draw out a bit more detail on that, but it does not seem to do so.

**Jeff Green (Angus Council):** The uncertainty to which you refer is the common and prevailing theme in all the submissions that we have read. That presents us with a difficulty, as certainty will not emerge until the preliminary round of flood risk assessments has been undertaken. In its written submission, Angus Council made a proposal for how to deal with the revenue implications of the bill in the financial settlement, given that the implications will not be known with certainty until we are some way through the process.

However, local government is especially concerned about the capital funding implications of interventions that may arise as a consequence of the bill and implementing the measures to which the bill will ultimately lead when it is enacted and how those will be addressed in subsequent block grant settlements. Paragraph 329 of the financial memorandum and paragraph 45 of the minister’s response are of particular concern, as they seem
The need for those was brought to light by the flooding in Kilbirnie on 1 August this year, and we are being pressed by local members and the public to answer questions on the matter.

David Faichney (Scottish Environment Protection Agency): SEPA was particularly happy to see the two different scenarios that the Government has developed to show the level of uncertainty about the outcomes of the preliminary flood risk assessments and the range of activities that may be associated with those. Will we discover after the preliminary assessment that the flood risk in Scotland is pretty much what we think it is—the assessed risk from coastal and river flooding that is on our flood maps—or will further investigation demonstrate a greater risk from pluvial flooding, groundwater flooding or a combination of types of flooding in urban areas? The scenarios cover a range of outcomes, which gives us confidence that there is a bit of latitude depending on the result of the assessments.

Jackie Baillie: I will focus predominantly on questions on local government, but the rest of the witnesses should not think that they will get off the hook, because my colleague Derek Brownlee is worse than I am.

The witnesses rightly point out that there are different phases to the bill’s implementation, the first of which falls within this spending review period. The Government estimates that preliminary flood risk assessments and other preparatory tasks will cost local government something like £1.92 million. The obvious first question is whether that estimate is sufficient. If it is not, what was wrong with the methodology that the Government used to arrive at that figure?

15:15

Jeff Green: It is difficult to state with any certainty whether it is sufficient, given the uncertainty that will exist until the preliminary assessments are conducted. I understand that the scenarios that have been mentioned were developed to try to cover a spectrum of possible outcomes. The minister himself makes the point that to some extent the costs will not be known until the process has been worked through.

One point that is unclear to me and possibly to people from other authorities is that although the financial memorandum and the other supporting documents talk about averages, it is inevitable that huge differences will exist between needs in different authorities’ areas. I have detailed knowledge only of the position in my authority, which has seven burgh towns that are all vulnerable to flooding, be it coastal flooding along the Angus coast at Monifieth, Camoustie, Arbroath and Montrose or flooding in the inland burgh towns of Kirriemuir, Brechin and Forfar. Their vulnerabilities differ and their needs differ.

A risk lies in reading “metropolitan” for “urban”. I acknowledge that the major Scottish cities have their own needs, but the risk is that the large number of moderately sized towns throughout Scotland will suffer from having smaller-scale issues than the metropolitan centres.

In so far as those uncertainties exist, the cost estimates are probably robust. The question that remains is how the distribution of funding among the authorities will reflect their needs.

The Convener: I know exactly what you mean about Angus.

Chris Spray: We recognise that concern. In our written answer to question 4, we said that the second scenario, which we investigated in great detail, would allow us to look at more than just the metropolitan areas—that is the term that Jeff Green used—and at other urban areas. We identified a great list of such areas. I concur with Jeff Green’s concerns.

Robert Hopewell: In our experience, one problem is achieving the reduction in risk that the public expect from the Parliament and local authorities. Traditionally, we have tried to reduce the risk to properties—primarily to buildings themselves—and worried later about gardens and suchlike, whereas the public have the high expectation that if there is any water round about their homes, that should be treated as flooding and local authorities should do something about it.

It is difficult to explain to people the high water table that we are experiencing, the amount of saturation in the ground and why water is lying where they have never seen it lying before. Having said that, it is probably lying only where it lay 20 or 30 years ago, although people have forgotten that.

In general, the public expect us to deal with water and to remove it safely away from them. It is difficult to quantify where we are going with that. One of the first tasks in producing flood risk management plans will probably be to determine exactly what we are expected to deal with.

Jackie Baillie: Several local authorities have reported to us that they feel that they have insufficient funds to implement the bill not just in the long term, but in the immediate phase. What discussions has local government had with the Scottish Government about the variations in the required funding, particularly for the immediate phase? Is that built into the local government settlement? Do you expect additional funding up to 2011?

Robert Hopewell: We expect additional funding. Our finance people do not think that the funding is built into the current local government
settlement. I am a member of the Society of Chief Officers of Transportation in Scotland’s sub-group on flooding. All of us expect additional funding from the Scottish Government to meet the costs.

**Jeff Green:** I endorse Mr Hopewell’s comments. The grant-aided expenditure settlement does not address the bill’s costs, which I understand are identified as being additional and are not currently met through the settlement.

**Jackie Baillie:** I will stick with expectations. Both authorities were right to mention capital expenditure, which is expected to increase and to be available, although you expressed some dubiety about who will ultimately be responsible for it. Where will the capital come from and when will it be available?

**Jeff Green:** The present scenario—the status quo under the legislation currently in force—is that support grants are available from central Government. Such grants are triggered if a flood prevention order—an FPO—is confirmed. A number of authorities have flood prevention schemes for which the capital works have gone beyond that stage, and that is reflected in those authorities’ block settlements within the current settlement period, which goes up to 2011. However, some authorities, such as Moray Council and Angus Council, are developing schemes that do not yet benefit from having confirmation of a flood prevention order. It remains unclear how the costs of projects or schemes that secure consent within this settlement period will be met under the current legislation. It is even less clear, to me at least, how such cases will be dealt with after the implementation of the new act—in the new era, if you like. Local authorities are nervous that if the capital costs of possible future schemes have to be met from existing resources, it will put huge demands on them, especially the smaller ones. Those demands will have to be met alongside authorities’ other financial commitments.

**Jackie Baillie:** You are going through a strategic planning exercise, so would it be fair to say that you are identifying new risks? You expect not only a capital budget but an increasing capital budget, because of those new risks.

**Jeff Green:** We are moving from an era of reaction to flooding issues to an era of proaction. In addition, our wider remit covers not only non-agricultural land, as before, but all land, and it covers fluvial flooding, pluvial flooding, coastal inundation and climate change. Given that a proactive approach will be taken to all those issues, it is almost inevitable that measures will be identified, through the flood risk management process, that have not been identified before. A high proportion of those measures, unidentified as yet, will be capital intensive.

**Robert Hopewell:** I totally agree with Mr Green. Many proactive local authorities have put forward not only large capital flood prevention schemes but other schemes for which a need was seen perhaps three, four, five or even 10 years down the line. Such information, together with estimates, has been given to Scottish Government officials. The Garnock valley scheme, one of the latter types of scheme, seems to have become a bit lost. We hope to make progress with it next year, starting work on planning, but until the new legislation comes in there will be a hiatus before we know exactly how far we can go with it.

I will pick up on issues that Mr Green raised. When we consider what happened in the floods in England and in the flood in Kilbirnie earlier this year, we may find that, in the monsoon-type conditions that we have experienced, some areas are at a high risk of flooding in a way that we were not previously aware of. At the moment, some areas are known to be at high risk of flooding, but the wrong type of rainfall pattern may cause serious flooding in other areas too. The Castlepark area in Irvine has always suffered from localised flooding but, because we do not have the mapping that will be done under the first set of plans, we do not yet know whether a concentrated storm might put the area at higher risk than some of the areas where we are targeting money at the moment. That is a worry.

**David Faichney:** The European floods directive, the requirements of which are transposed into the new bill, will change the way in which we consider flood risk in Scotland. Not only will we consider where the water goes and what level it goes to, but we will map the depth, velocity and flow paths of the water. We will also consider the impact of flooding on cultural heritage, human health, the environment and economic activity. Those aspects will add to the cost of putting together flood risk management plans. The elements in them that must be reported on are much more extensive than we have a handle on at present.

**The Convener:** Local authorities have been around for a long time. How big is the knowledge gap or, to put it the other way round, how complete is our knowledge? What are the knowns and unknowns with regard to the projects that must be completed? Are local authorities up to date with what they must do?

**Robert Hopewell:** Probably one of the better examples in that regard comes from when the Flood Prevention and Land Drainage (Scotland) Act 1997 came into being. We did our first report, for which we engaged a consultant. We got information from local officers and other people that we did not have a problem on Arran, so we concentrated on reporting on the mainland. That was fine until a year later, when there was a
deluge in Arran and many areas were flooded. When we spoke to people on the ground, they told us that the area had a history of flooding going back 100 years. We asked why we did not know about that and the answer was that people on the island dealt with the problem themselves.

That is not the case any more. Over the past four of five years, people have become aware of climate change and flooding legislation and know that the council has a responsibility and that we should promote flood prevention schemes. That is why we have done a lot of work on Arran and carried out quite a bit of research there as well.

**Chris Spray:** To back that up, I think that it is clear that we live in what is a rapidly changing scenario. Our data on river flows and climate change variables show that our rivers' winter maximum flow is between 60 and 80 per cent higher than it was in the 1960s. Year on year, there are massive increases in the number of severe weather warnings and severe flood warnings that SEPA puts out. Traditionally, we have had a good handle on river and valley flooding, and latterly and increasingly we have a good handle on coastal flooding, but we are now looking at the more complex issues that are hitting our urban areas. I accept that it is not just in the big metropolitan areas that that is happening. Urban areas are being further hit by the fact that one of the changes involves an increase in short-duration, high-intensity rainfall events, which easily and quickly make a real impact on such areas.

**Jeff Green:** The local authority environment was different prior to 1996. In those days, regional councils' expertise in water engineering, if I can call it that, was vested mainly in people who dealt with water as distinct from engineering staff who dealt with other infrastructure items. Following local government reorganisation, water services became something else, which evolved into Scottish Water. To generalise, which it is always dangerous to do, the expertise in the water services field moved away to be with what is now Scottish Water. In the interim, local authorities have re-established some expertise through need, but the resource implications of the Flood Risk Management (Scotland) Bill are significant not only in financial terms but in terms of having a distribution of staff with the necessary expertise, skills and background. In its written evidence, SEPA makes the point that there is an issue in Scotland around sourcing staff in the relevant organisations, many of which are represented at this meeting, to address the challenges that the bill will present us with.

**The Convener:** It strikes me that there is an immediate short-term problem. If we battle with nature, it tends to win. Floods must be dealt with immediately, but the solutions are not short term but long term. I suspect that the issue is capital expenditure. Where are people with that battle? How much more is there to do?

**Jeff Green:** We have a number of schemes. I have written information on that with me that might help the committee in due course. For the schemes in Angus that we have in mind, we attempted to quantify the implications of the new bill's proposals in revenue cost terms. That information might assist the committee. I could leave it with the clerk, if that is in order, convener.

**The Convener:** That would indeed be helpful.

15:30

**Jim Conlin:** Scottish Water believes that this will be an on-going area of investment. As Chris Spray has pointed out, things are changing rapidly. Although we do our best to design systems that work in future, we are always going to find that things change and move on.

We are also moving away from putting everything underground, because such an approach requires bigger pipes, bigger pumping stations and bigger tanks. Our new approach, which centres on flood routing and flow across the land and through towns, will involve looking at new areas of planning and, for example, thinking about the layout of our towns and cities. Such plans will have to change as time moves on, and those changes will in turn require us to change how we deal with surface water, how we approach flood risk management plans and so on. This area will continue to develop; we will never reach a point at which we can say, "We've dealt with flooding," and simply put the issue to one side.

Some sewerage systems are hundreds of years old and will have to be augmented and improved. That will take a long time because, as a number of submissions have pointed out, they cannot all be dealt with in one six-year period. In fact, all that can be done in the initial period is to identify the priority work that will have to be carried out in the next period, when the priority work that needs to be done in the subsequent period has to be identified and so on.

**The Convener:** That is what I meant by nature fighting back just when you think that you have won.

**David Faichney:** The bill as drafted provides a framework that will allow us to plan 30 to 50 years ahead. Under European requirements, we report on a six-year cycle, which means that every six years we have to put together a national flood risk plan, which indicate our priorities for Scotland, and local flood risk management plans, which allow those priorities to be implemented at a local level. Because we are not sure what our priorities will be
in 20 years’ time, we have to keep working along that path and consider the longer term instead of looking for the quick fix.

Jeremy Purvis: What proportion of local authority flood prevention schemes have been funded and have reached such a state of readiness that the flood prevention order that Mr Green referred to can be made?

Robert Hopewell: Scottish Government officials will have that information; I can speak only about what is happening in North Ayrshire. We have constructed coastal flood prevention schemes at Largs and Saltcoats and are intending to take forward the upper Garnock valley scheme, which will serve Kilbirnie, Glengarnock and Dalry. We hope that, after that, we will be able to take forward the scheme at Kilwinning in two phases.

In Irvine, the area that is prone to flooding is already protected by a flood prevention scheme, but it was constructed 15 years ago outwith the terms of the Flood Prevention and Land Drainage (Scotland) Act 1997. Given the effects of climate change, the scheme now obviously offers a lot less protection than it did when it was built, and we are looking to upgrade it.

We are also considering some minor coastal flooding schemes on the mainland. This year, our intention has been to complete our coastal studies in preparation for schemes and to carry out a full coastal study of Arran, which I think would identify a number of areas at reasonably high risk of coastal flooding.

Jeremy Purvis: It is probably more appropriate to address this question to ministers, but the written evidence that we have received makes it abundantly clear that councils do not have the capital resources to deliver the schemes that they have already proposed. In that context, many of my constituents might well be filled with dread at what is happening in North Ayrshire. We have given it to the Government and its officials have pored over it, as have its consultants.

The Convener: There are plenty of demands on SEPA’s revenue and capital. How easy—or difficult—is it for you to prioritise?

David Faichney: It is difficult to understand the flood risk across Scotland and to get a picture of where our national priorities will be. We need to understand what the current and future flood risk is likely to be in order to prioritise things. First, we need good scientific and mapped data. The European directive requirements in the bill tell us that we have to produce detailed maps to show the risk in areas where we think we have a significant flood risk. Having done that, we then have to think about how to deal with the risk. It is a bit like building a house: before you start to build, you have to ensure that the plans and permissions are in place and that the architects have had a right good look at things. We have to ensure that our priorities are in place and that we understand current and future risks.

Jeremy Purvis: In the minister’s supplementary evidence, the number of additional staff is projected at between 40 and 55. Will they be permanent SEPA staff?

Chris Spray: Yes.

Jeremy Purvis: How does the £9.5 million staffing costs for the 40 additional staff or the £14.18 million for the 55 additional staff relate to the on-going costs that are set out in the financial memorandum? The costs on SEPA are shown as reducing dramatically to £3.34 million.

David Faichney: We took a look at what SEPA’s tasks would be. I refer not only to the project tasks of delivering a flood risk management plan, but our on-going tasks. The flood risk management plans need to be reviewed every six years and cycled again. Local authorities have to put together flood risk management plans for areas where there are significant flood risks. SEPA has to oversee that process to ensure that it is happening and that authorities have all the tools, equipment and data to give a sound basis for their flood risk management decisions.

There is an on-going process in which about 10 staff across Scotland will be involved to enable the
flood risk management planning groups and advisory groups to come together, meet, produce and review plans under the six-year cycle. In addition, around 10 staff will be involved in the better understanding of flood risk. They will focus on flood risk in areas and ensure that we better understand the different flood risks that result from groundwater, coastal, pluvial and fluvial flooding, and then ensure that the plans are best understood. Those 10 staff may not be in place ad infinitum, but they will be needed for a number of years until we have a good grip of the flood risk in Scotland.

The other staff are associated with flood risk management planning. We need to understand the relative merits of all the different measures that are considered in the flood risk management plans. We need to balance whether a flood defence scheme should go forward as against a flood warning scheme, a managed retreat, a decision not to build on an area, or the use of natural flood management techniques. We have to balance all those measures and be robust in our understanding of them. We have not put forward a great many staff for that work, but the number includes one or two hydroecologists who understand the benefits of natural flood management.

The bill is very clear that we have to implement sustainable approaches to flood management in Scotland; it is not all about building defences. How do we have the argument about whether to build a defence or to have natural flood management if we do not have the science and understanding of catchments? It is about building up understanding of the hydrogeomorphology of coastal and river areas, and of understanding the impacts of the hydrogeomorphology of coastal and river catchments? It is about building up understanding we do not have the science and understanding of defence or to have natural flood management if we do not have the argument about whether to build a Scotland; it is not all about building defences. How do sustainable approaches to flood management in Scotland.

The Convener: How many of the people that you have mentioned are experienced flood practitioners? I believe that they are a scarce commodity. Does that mean that they will command higher salaries?

Chris Spray: I am not sure about commanding higher salaries, but they are a scarce commodity, as you rightly point out. We highlighted in our earlier evidence that we need to work with—and we are already talking to—the universities at Stirling and Dundee to get an innovative programme for training hydrologists. A lot of them are hydrological mappers, if you like, and they need a basic understanding of hydrology on to which can be put mapping, management, and geographical information systems skills. It is a challenge and we are already talking to the Scottish Government and the universities about how we can meet it.

The challenge is also faced throughout the United Kingdom. In a recent answer to Parliament, the Environment Agency reported that it had 200 vacant flood management posts across the UK.

Jeremy Purvis: I have one final point. Scottish Borders Council’s submission is clear that there is a much greater expectation that it will deliver more flood prevention measures, and it is concerned that there is no clarity with regard to future funding to deliver the schemes that it already wants to deliver. We will have 40-odd well qualified people telling someone that their property is about to flood, that their property is flooding, and then why their property flooded in the first place, but no work will have been done on prevention. I suspect that SEPA will not say that that is not the best use of resources.

The committee has been asked to look at the scenario in which flood risk management “could rely more heavily on local flood risk management plans, which would be driven by current local understanding of flooding problems”, but that is a bureaucrats’ charter under which work is not being done.

The Convener: Who would like to deal with that?

Robert Hopewell: That highlights the difference between the flood risk management plans that are at SEPA’s level for identifying the areas that are at risk of flooding, and the local flood risk management plans that will mainly lie with the local authorities or groups of local authorities, to identify areas that are at a higher risk and implement measures to reduce that risk. I was going to say “eliminate that risk”, but we do not eliminate flood risk.

Jeff Green: The onus has to be on understanding the problem. We cannot promulgate efficient and cost-effective solutions unless we properly understand the problem. To
that extent, I agree with SEPA about the creation of local flood management plans being subsequent to the creation of flood management plans.

Delivering solutions, whatever they might be, also has to be adequately resourced. The funding of solutions is a capital issue, which comes back to my opening remarks about the adequacy of that provision. You cannot have one without the other. Whether the balance is right is difficult to say without clarity on the capital provision to deliver interventions.

15:45

**Chris Spray:** I agree with Jeff Green. The key thing is to understand flood risks and the effectiveness of the necessary measures. The issue of delivery is one for local authorities, which must weigh up their own priorities.

**David Whitton:** Earlier, you mentioned staffing issues. Given that there is a shortage of flood practitioners, might we end up with a situation in which local authorities and SEPA are competing for the same graduates?

Mr Hopewell told us that the good people of Arran were able to say, "We could have told you there was going to be a flood, because it happens all the time." Surely it is better to focus on recruiting locally rather than centrally.

**David Faichney:** Not all the new staff will be flood practitioners. They will be involved with managing flood risk, but some of them will be catchment flood management planning people, whose job is to engage with local authorities, set up meetings and allow things to happen. Those people are not flood engineers.

**David Whitton:** That is exactly my point. They are there to set up meetings about flood risk. However, if the local authorities employ flood practitioners who have local knowledge that has been gained from time on the ground and discussions with experienced people such as Mr Hopewell, surely it will be possible to develop local flood plans more quickly and efficiently. I would be interested to hear what the representative local authorities feel about everything being centralised in SEPA.

**Robert Hopewell:** We have discussed that issue. We are quite happy for SEPA to carry out a function at a level that is appropriate for it. In our submission to the consultation on the bill, we expressed reservations about SEPA being named as the single competent authority and said that local authorities should also be named as competent authorities—the directive does not require there to be only one. To my mind, that issue has been resolved, and we are now happy with the way in which the matter has been set out. SEPA will do work at a certain level, using whatever resources are required, and then local authorities will step in with their local flood risk management plans and expertise.

You make a good point about everyone fighting for the same scarce resources. You were talking about flood practitioners, but the same thing applies to civil engineers, as there is a shortage of qualified engineering staff. The situation has improved a little because of the recession, which has brought about a downturn in business and caused one or two consultants to shed staff. However, with the Olympics, the Commonwealth games and all the other on-going construction projects, local authorities have found it difficult to engage properly trained and qualified civil engineers.

**Jeff Green:** There is certainly a role for a national—although that word is not in the legislation—flood risk management plan, which is SEPA’s role, and there is also a role for local flood risk management plans, which would fall within the local authorities’ domain. The devil is in the detail, however, and none of us is clear about how much detail SEPA’s flood risk management plan will go into at a local level, and how much work will need to be done at that level by the local authorities. We have expressed concerns about the fact that, if the national plan is too detailed, it will be too prescriptive to allow local solutions to be developed. On the other hand, if the national plan is too broad, it will not give much guidance in relation to the production of the local management plans. A lot of work needs to be done to get the right balance between what is done at the national level and what is done at the local level.

On the issue of local knowledge, the production of flood risk management plans at both levels will require the gathering of intelligence. Inevitably, that will include intelligence that is extremely local and, to some degree, anecdotal.

**The Convener:** Mr Spray, I noticed that you were shaking your head at one point.

**Chris Spray:** I will let my colleague talk about that point. Before I do, however, I would like to respond to Mr Whitton’s point about us and the local authorities chasing the same resource. He is absolutely right. We have had discussions with COSLA—and both we and COSLA have had discussions with the Scottish Government—about where best to site that resource. If it is best that SEPA holds a central hydrological resource, so be it, although that would not be my wish. We realise that there is nothing to be gained by everyone chasing a limited resource of hydrological specialists. The point about local expertise is also important.
David Faichney: On the relationship between the national plan and the local plans, SEPA will have a role as a national co-ordinator and facilitator. It needs to produce a plan that shows the national policy framework and gives an overview of flood risk management priorities. However, SEPA will not do that on its own; it will agree on priorities in collaboration with local authorities and the Government. The national plan, which will be sent to the European Commission, will be made up of all of the elements that are in the local plans.

The Convener: Is that really a recipe for co-ordination? SEPA, Scottish Water and local authorities all face the same problem but they are all operating in different ways. Is the situation co-ordination or competition? How can you organise the situation better?

Chris Spray: There must be co-ordination and partnership working, not competition. As we have worked on the bill with the Scottish Government, that has become more and more apparent. The flooding bill advisory group, in particular, has been a good forum for that debate.

Jim Conlin: The bill sets out a framework and, as everyone has said, is aimed at ensuring that there is partnership working and co-operation. If we are not going down the route of having one organisation that deals with flooding, we will have to find a way of working together efficiently and effectively to deliver the outcomes.

Previously, we have suggested that we might end up with bodies that are akin to drainage boards, such as the metropolitan Glasgow strategic drainage partnership, on which we work with local authorities and SEPA. Such boards could also deal with the need to share expertise between authorities, as staff could be seconded to the board. That is an example of the sort of framework that will have to be set up in order to deliver the national priorities. Although it might introduce an element of uncertainty, that is the only way in which the plans can be effectively delivered.

James Kelly: Last week, in Ayr, we heard some interesting points about infrastructure and the economy. Witnesses spoke about the importance of implementing flood risk management plans so that floods do not adversely affect the local economy. Concerns were raised about the fact that projects need to be commenced far in advance of when they might be needed because of the significant time between identifying projects and flood prevention measures being in place. What are the cost implications of such lengthy lead times?

Jeff Green: Flooding works have a significant gestation period: the time between identifying need and there being tangible works on the ground can be significant. The fact that flood prevention orders will grant deemed planning consent will avoid a two-system approach for promoting schemes. At present, schemes require flood prevention orders and all that is associated with them. They also require planning consent, which replicates some of the flood prevention order process. The granting of an order and the gaining of planning consent tend to be sequential, which accounts for some of the gestation period. I hope that through better co-ordination and co-operation, and by bringing together those processes under the new flood prevention order requirements, delivery might be accelerated. Time will tell.

Robert Hopewell: Local flood risk management plans must start at the same time as flood risk management plans, although local flood risk management plans will not be driven by flood risk management plans until a couple of years down the line. However, I do not see any reason why local flood risk management plans cannot start based on available knowledge. SEPA will produce the Scotland-wide, all-encompassing plans, but many local authorities have similar knowledge to SEPA. Most of our studies and assessments have been made available to SEPA for incorporation into the next round of flood risk maps. Both plans must proceed at the same time.

David Faichney: There will not be duplication. Knowledge of flood risk lies with local authorities. They know the history of local flooding and have done mapping and modelling work. That applies especially in the Glasgow area and in some other metropolitan areas. It is a matter of gathering that information and ensuring that we are not duplicating effort and doing something that has already been done. The floods directive is clear that the preliminary flood risk assessment process should be carried out using readily available or easily derivable information.

Joe FitzPatrick (Dundee West) (SNP): The panel will be aware that the financial settlement is very tight. If there is to be a shift in funding, cuts will be required in some areas to fund other areas. Does anyone believe that there is scope for a major reduction in spend on flood prevention in order to fund tax cuts?

Jeff Green: I think that the panel's answer is no.

The Convener: That was a short, sharp answer. Derek Brownlee has the final questions.

Derek Brownlee (South of Scotland) (Con): I will start by returning to the allocation of responsibilities between SEPA, Scottish Water and local authorities. There is an element of flexibility under the floods directive, and the bill adopts a direction of travel that is not necessarily
the only one on the table. Speaking for your respective organisations, are you aware of alternative scenarios being costed? For example, have the cost implications of a major shift of responsibility from SEPA to local authorities been considered, either by local authorities or by SEPA? Has such a change been thought through, to your knowledge?

Chris Spray: I am not aware of that. A very effective flooding bill advisory group has been dealing with matters. I think that the Government has employed an independent consultant to study what we have done. The Government might be in a better position to comment on whether any completely different models have been assessed in detail.

Derek Brownlee: The question might be more appropriately directed to ministers, but it is important, given the concern about the cost of the bill and assessing whether the proposals are the most cost-effective way to implement the responsibilities.

On an allied issue, can any of the panel point to provisions in the bill that will give rise to costs that are beyond the scope of the European directive—the usual gold-plating criticism that is levied when directives are transposed—or are the bulk or even all of the costs directly attributable to the directive obligations that will be transposed?

16:00

David Faichney: We have been directed by the Scottish Government to present to it the costs that are directly attributable to the bill. In our first pass over the legislation, back in the early summer and before we took our estimate to the Government, we were thinking about information and gaps in skill bases. We thought that SEPA would have to develop a skills base and monitoring network to understand flooding better in the areas where we do not have monitoring stations. However, those costs have been stripped out, because they are not directly attributable to the bill. We are being carefully guided by the Government, and the financial memorandum is based on our costs that are directly attributable to the bill.

Derek Brownlee: So whether we assume that the lower or higher range of cost estimates in the financial memorandum—or anything in between—is accurate, your view is that the costs are directly attributable to the implementation of the directive and do not include additional costs that the Scottish Government is adding during transposition.

Chris Spray: The only rider to that is the reservoir costs, because the opportunity is being taken in the bill to integrate, upgrade and update them. That is not a specific aspect of the European directive, although it plays well into it because, as we saw recently with some reservoirs that were in danger of overtopping, there is an element of flood risk. However, that is the only addition.

Derek Brownlee: That does not sound like a particularly significant part of the costs. Is it possible to quantify it?

Chris Spray: We estimate the cost as five staff, based on what we have learned from the Environment Agency—it has taken the reservoir audit role from local authorities south of the border—our recent experience with the reservoir in Renfrewshire and where the gaps are. We estimated the cost specifically for ourselves; the Government has figures for others.

Jim Conlin: We highlighted in our submission that we assessed and put forward other costs—related to the pit review and requirements to upgrade systems—in our business plan, but they are not directly related to the flooding legislation.

The operating costs for Scottish Water and local authorities when we move to more sustainable forms of drainage and flood management are not yet fully understood. We will be operating systems that we have not operated before, so the operating costs will be different. Whether the costs go up or down is not the issue—in the first instance, it is a question of assessing the difference.

Jeff Green: The financial memorandum estimates average costs of £5,000 per authority, which, given the number of authorities, leads us to the figure of £150,000 or thereabouts for enforcing the Reservoirs Act 1975. That is a realistic estimate of the enforcement duties that currently are imposed on local authorities that will transfer across to SEPA. The costs identified in the memorandum are relatively modest; the actual sums will depend on the number of reservoirs that local authorities have in their area.

Robert Hopewell: Two areas are not properly addressed in the financial memorandum: coastal flooding and the surface water sewer network. The memorandum covers the cost of work that may have to be done to install new systems to reduce flood risk, but there is already an extensive and often unrecorded surface water sewer network, especially in towns and other urban areas, while coastal defences throughout the country were built in Victorian times and are often in poor condition. Councils incur substantial capital costs in maintaining even adequate flood defences, and most councils cannot consider renewing their coastal defences. Those two areas have perhaps been overlooked.

The Convener: The Victorians taught us a great lesson about looking to the future, which we seem to have forgotten.
Derek Brownlee: It is not inconceivable that SEPA and Scottish Water will be given statutory duties but no funding to fulfil them. If central Government does not meet the costs in full—whatever they are—what action will your organisations take to balance the books?

Chris Spray: In relation to the current spending round, we have to deliver on our duties by December 2011. We are content that we can do that within our current allocation, although we will have to consider our priorities and look to find as many efficiencies as possible in relation to our existing duties under the water framework directive, which are similar both in timing and in stakeholder engagement, such as our work with councils on river basin planning. We will look to gain more efficiencies from that.

Given that we lead on the matter and have to provide data to our colleagues at Scottish Water, the critical thing for us is that we are assured that we can do the work within our own resources, working with the Scottish Government to prioritise what we deliver.

In the future, we will look to debates on comprehensive spending reviews, as we normally do.

Jim Conlin: In constructing Scottish Water’s costs in relation to the bill, we assumed that we will be funded by the normal route—in other words, we will reclaim the money through customer charges—and we will put that in our draft business plan. The way in which we spend customers’ money is set for us by the minister and our regulators, so we expect to receive targets and ministerial direction. If there is a statutory requirement on Scottish Water to do something, we can recover the cost through our charges. Those charges are set by the Water Industry Commission for Scotland, which is also involved in the process.

That approach is based on the assumption that the best way to raise money is through customer charges, but the Government will have to keep that under review. At present, Scottish Water often contributes part of the cost of local authority capital schemes, but it might be better and more efficient for the local authority to fund the entire scheme rather than for Scottish Water to raise its part of the capital allowance through customer charges. We expect that that will continue to be discussed.

Derek Brownlee: My final question is for all the witnesses. We heard about the range of possible costs. The bill requires ministers to report annually on the costs that your organisations bear as a result of the legislation?

Jeff Green: There is no reason why we could not do that. Indeed, our written evidence proposes that that avenue could be taken in auditing the demonstrable costs that arise as a consequence of the bill. We would need to make provision at the beginning of the financial year so that our data recording reflected that, but that could be done.

Chris Spray: I do not foresee any problems with that. We will try to make as many efficiencies as possible by melding things into our existing systems, but there is no reason why we could not do what you suggest.

The Convener: As we have reached the end of our questions, I thank all our witnesses—Jeff Green, Robert Hopewell, Jim Conlin, Chris Spray and David Faichney—for their controlled flow of information and their reservoir of experience. We all look forward to future developments.

16:10
Meeting continued in private until 17:23.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

28th Meeting, 2008 (Session 3)

Tuesday 25 November 2008

Present:

Jackie Baillie (Deputy Convener) Derek Brownlee
Joe FitzPatrick James Kelly
Alex Neil Jeremy Purvis
Andrew Welsh (Convener) David Whitton

Flood Risk Management (Scotland) Bill: The Committee took evidence on the
Financial Memorandum of the Flood Risk Management (Scotland) Bill from—

Bob Irvine, Head of Water, Air, Soils & Flooding and Water Industry Divisions,
David Reid, Head of Finance Programme Management Division, and Judith
Tracey, Head of Flooding Policy Team, Scottish Government.
Flood Risk Management (Scotland) Bill: Financial Memorandum

14:07

The Convener: Item 2 is further consideration of the financial memorandum to the Flood Risk Management (Scotland) Bill. We are joined by officials from the Scottish Government. I welcome to the committee Bob Irvine, head of the water, air, soils and flooding division and the water industry division; David Reid, head of the finance programme management division; and Judith Tracey, head of the flooding policy team.

I invite questions from members. Jackie Baillie and Derek Brownlee have been designated to lead on the bill, but any other member who wishes to ask questions is welcome to do so and should try to catch my eye. I ask Jackie Baillie—

Jackie Baillie (Dumbarton) (Lab): You are getting ahead of yourself. Derek Brownlee was going to go first.

Derek Brownlee (South of Scotland) (Con): I was happy to cede to Jackie Baillie.

Last week, we heard from the various organisations that we had before us last week about the range of potential costs of the bill. We all understand why there is a range of costs, but the Scottish Environment Protection Agency and Scottish Water, for example, seem to take views on the likely cost that are at opposite ends of the range. What degree of certainty do you have about where within that range the likely pattern of costs will emerge?

Bob Irvine (Scottish Government Climate Change and Water Industry Directorate): It is always risky to sit in this seat and say, “It all depends.” I hope that our memorandum and supplementary evidence explain why there is a range of costs. I hope that those factors will begin to be understood in the first stage of the implementation of the bill, which is a pretty detailed examination of the real nature of flood risk in Scotland. We will be able to get a better assessment of the continuing costs from that.

The slight difference in view is perhaps due to the fact that Scottish Water has a more discrete view of its responsibilities than SEPA does. Scottish Water already runs the sewerage system and, although it has quite a lot to do to refine its understanding and build a much better database, it has a set of competences and understandings. SEPA, by and large, faces a significant new set of responsibilities, although the bill builds on and develops some of its existing responsibilities. I suppose that that is quite a significant challenge,
so prudence and precaution tell it to look to the higher end of the figures.

Perhaps Judith Tracey would like to add something about how the organisations have approached the dialogue that we have had with them.

**Judith Tracey (Scottish Government Environmental Quality Directorate):** I am not sure that there is much more that I can add. We had extensive discussions with all the organisations. We held meetings with them and held workshops with SEPA to try to work through their responsibilities and ensure that they were all clear on their roles under the bill so that they could come up with clear cost estimates. The figures that are in the financial memorandum and the supplementary information are based on that work.

**Derek Brownlee:** It is not necessarily a problem to present us with a range of figures. We realise that, when there are uncertainties, it is only prudent to indicate them. However, let us take an analogy—admittedly quite a laboured one—with what the Bank of England does on inflation. It not only produces forecasts of what the upper and lower ends of the rate of inflation might be but identifies where it expects the rate to be within a degree of probability. Given the work that you have done, is it not feasible to give us the upper and lower cost estimates and tell us what you think the cost is most likely to be? Is it simply not possible for you to do that?

**Bob Irvine:** It is possible. Our best guess is that the cost will probably be in the middle range, possibly tending towards the upper range, although I cannot say whether that assessment has a 75 per cent probability. Certainly, there are significant challenges for all the organisations. The challenge for them will be to ensure that we implement the bill in the most economic and efficient way. However, given the level of the challenge and the timetable that will be imposed on the organisations, the cost will probably be at the upper end of the range rather than way down at the bottom. As I said in my first answer, there is an it-all-depends element to the figures.

**Derek Brownlee:** Another element of uncertainty that has been raised in a number of submissions and which we discussed last week is whether it will be possible for you to get the numbers of competent staff that will be needed to undertake the work that the bill will require. That is a pretty fundamental issue, not only with the finances but with the underlying policy—I will not stray into policy. Are you absolutely confident that the staffing that is likely to be required to achieve what the bill sets out is not only attainable but attainable at the level of indicative costs that has been given?

**Bob Irvine:** We are confident about the level of indicative costs. There are a number of things that we and other organisations must begin to do now on recruitment. Last week, SEPA described to the committee a couple of discussions that it is having with higher education institutions. If we do that type of thing now, the resource will be available. The figures show that a wide variety of skills is required. A lot of attention is paid to the issue of hydrographers, who are a scarce resource across the United Kingdom. However, other complementary skills and experiences exist. Steps and actions can begin to be taken now to ensure that people are in place to deliver the bill's requirements as and when it becomes law.

14:15

**Derek Brownlee:** In formulating the bill, what consideration did you give to the issue of competition with other jurisdictions for staff, particularly specialist staff? That is only partly within your control, but surely it will be a significant factor in whether you achieve the bill's objectives.

**Bob Irvine:** I am not sure that we would think in terms of competition with other jurisdictions. The reality is that there is an employment market in the UK and across Europe for the skills in question. As I have said before, SEPA and local authorities must engage properly in that market. The Government can support them in that, and we can enter into a dialogue with the Scottish Further and Higher Education Funding Council and higher education institutions to ensure that employment needs are properly registered as we go forward.

**Judith Tracey:** When we were developing the policy, we paid close attention to existing skill sets in organisations and tried to ensure that the responsibilities that we placed on them were based on the skills that they had. SEPA already has a lot of experience in flood risk mapping, for example, which ties in with its high-level role of pulling together that sort of information. The need to work with existing skills in the organisations concerned was one reason why we went along the lines that we did in developing the policy.

**Derek Brownlee:** Given that there is a range of potential costs, if the bill is passed and you move into the implementation stage, what actions will you take to monitor total costs and the balance of costs between the organisations on which they will ultimately fall?

**Bob Irvine:** A set of implementation and advisory groups has been set up to support the development of the policy and the underlying understanding. That will be the primary route through which we shall assess how progress is being made and whether there are continuing resource or skill shortages that are proving difficult
for one or all of the organisations; it will also be the basis of reporting to ministers. The bill proposes a more formal cycle of reports to Parliament, and any issues that materialise will be highlighted in those reports. It is recognised that there will be significant engagement between all the parties and the Government throughout the bill’s implementation.

Derek Brownlee: On the reporting to Parliament, I think that SEPA, Scottish Water and the local authority representative—although it must be said that he did not speak on behalf of all local authorities—indicated at last week’s meeting that it was feasible to report on the costs that would be incurred because of the responsibilities. If I read your statement correctly, your view is that that would be feasible.

Bob Irvine: Absolutely, yes.

Jackie Baillie: I will ask a couple of general questions and then focus on issues that the local authorities raised with us. I have gone through this process myself with another bill, so I know that the financial memorandum should, of course, be the best estimate of the total cost of the bill’s implementation. Notwithstanding what you said, it would be useful to know why those costs are not in the financial memorandum. The financial resolution on the bill will give effect to the financial memorandum, which contains figures that you acknowledge are not accurate, because you sought further estimates.

Bob Irvine: We hope that the figures were as accurate as they could be when they were presented. The purpose of the supplementary evidence was to register the further work that had gone on in the interim to refine the policy and develop the detailed provisions in the bill, which allowed us to identify and quantify some of the uncertainties. Those are the best estimates that we have.

I am not sure whether you are also talking about the cost of implementing schemes, which is a consideration for local authorities.

Jackie Baillie: I will come to that, but I was asking specifically about the bill process and the requirements on financial memoranda that are set out in the Parliament’s standing orders. I am curious about why the cost exercise that you undertook, which was valuable in producing new estimates, was not undertaken before you submitted the financial memorandum.

Judith Tracey: We went through the exercise before we submitted the financial memorandum. However, after we had submitted the financial memorandum, we were in a position to start considering in more detail areas that had been in development right up until the bill was introduced. I am thinking in particular about work on how we would carry out preliminary flood risk assessments, policy on which was developing right up until the bill’s introduction. There was a cut-off point in our discussions with local authorities, SEPA and others, so we thought that it would be helpful to return to the issue when we were in a position to refine the cost estimates.

The cost estimates that are in the supplementary information have not changed since the financial memorandum was published; we have just provided additional information.

Jackie Baillie: I think that everyone acknowledges that it might have been helpful to have provided the information earlier—I suppose that I am making a point about the process. As you said, the bill is all about the preparation of plans and the assessment of flood risk. That is all very welcome, but you are creating an expectation that capital to deal with the risks that are identified will somehow be available—and available in increased quantities. Is that a reasonable expectation?

Bob Irvine: To an extent. It is for ministers to decide how to allocate resources. It is perhaps naive to say that we expect that, if the process identifies a significantly greater quantum of flood risk than has been identified so far, a fair question about resources must be put to ministers and the Parliament. A view will be taken on that in the process, as and when that is appropriate.

As you know, some of the anxiety of local authorities attaches to the fact that the process of supporting flood prevention or protection schemes has changed this year as a result of the concordat with local government and the removal of ring fencing from a number of funds that were previously held centrally. However, the new arrangements do not seem to have inhibited flood-related activity on the ground so far. A significant amount of activity—probably more than in any recent year—is going on this year and next year. Dialogue and discussion will continue between the Convention of Scottish Local Authorities and ministers on how best to approach such issues, and the concordat allows for matters to be raised on an interim basis.

A significant part of the next comprehensive spending review will be consideration of the challenges for local authorities on flooding and how best to support authorities.

Jackie Baillie: Has work been done on sizing the pot or determining how funding will be distributed? In the past, grants of 80 per cent were available. How will you prioritise? Is that work for another day?

Bob Irvine: Quite a lot is known about a number of schemes that are in preparation. Ministers have
indicated that we have a view on projects that are in gestation in this and the next spending review period and that, broadly, we expect those to be given priority within the overall approach. In the following period, the process that the bill puts in place will enable us to form a view on the resource requirements and on what schemes or proposals should have priority. That will be the subject of continuing discussions with COSLA.

**Jackie Baillie:** Local authorities have expressed concern about the variations that are likely to come about as a result of the plans and assessments that are being made. The views of landlocked local authorities on the extent of flood risk are different from those of authorities with huge coastlines. How will you ensure that funding is distributed equitably, based on risk?

**Bob Irvine:** That will be the subject of future discussion with COSLA. We took some account of the issue in the spending review, based on information from the most recently available SEPA maps. As the process moves forward and is refined, we may get a better idea of the relative flood riskiness—if that is the right word—of authorities. I expect that that will be a significant input into discussions with COSLA. At the moment we have no hard, defined, prescriptive parameters for those discussions—we simply recognise that they need to take place. Local authorities share that recognition.

**Jackie Baillie:** That is clearly the case, judging from the number of questions that local authorities had about mechanisms.

My final question relates to the assumption that urban areas will require more resources than rural areas. What is your definition of “urban” in that context? What evidence backs up the assumption?

**Bob Irvine:** I look to Judith Tracey for a definition of “urban”.

**Judith Tracey:** An urban area is not necessarily a large metropolitan area—it is any town area with flooding problems in addition to coastal and pluvial flooding, which are recognised. Any urban area that has problems with surface water run-off and pluvial flooding caused by drainage comes within the definition—it does not necessarily refer to Glasgow or Edinburgh, as opposed to much smaller towns. Small towns can have the same problems with surface water drainage as large towns.

**Jackie Baillie:** That is helpful clarification.

**The Convener:** The bill relates to the flood risk management planning process, rather than flood risk measures. What will we get from the work and spending that are proposed? Is that the final stage, or merely the first stage of a programme? What will the end product be?

**Bob Irvine:** It will be a series of flood risk maps, flood hazard maps and flood risk management plans that cover the entirety of Scotland, as well as discrete areas and districts of Scotland. The plans will present a view of flood risks and how they are best managed. The production of plans is a cyclical process that is required by the European Union floods directive—plans must be refreshed on a six-yearly basis. The process will give us not only a longer-term view of how flood risk can be managed across Scotland and the relative priority of particular areas of risk but a view on how risk has changed, either because of measures that have been introduced or because of climate change and other developments that have an impact on the way in which water behaves in catchments. It will present a continuing and continually updated view of flooding across Scotland at all levels, national and local, that is significantly beyond our present understanding of the issues.

14:30

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** If I heard you correctly, Mr Irvine, you said that you were monitoring spend on local flood-related activity. How are you doing that?

**Bob Irvine:** We intend to do it through the advisory groups that we have set up, which will continue in some shape or form as we begin to implement the bill. We expect that levels of resources and resource requirements and commitments will be set out in the flood risk management plans as they are prepared and authorised. As I have said, we will use that information as a basis for reporting to Parliament as the bill requires.

**Jeremy Purvis:** That is helpful, and it would also help if you were able to provide the committee with the current picture. I believe that you said that a significant amount of work—probably more than in previous years—was going on. It would also be helpful to see that evidence. Are you including the schemes approved under the previous funding mechanism with the plans that are being developed?

**Bob Irvine:** Yes. Those schemes are at various stages of preparation and gestation: some are being built, others are being tendered and so on. If it would help, we can certainly share with the committee our list of the activity that we understand is happening in various local authorities throughout Scotland.

**Jeremy Purvis:** That would help, because it would allow us to see what structure will be in place when the bill is implemented. As you know, although some local authorities had not prepared
bids for the previous funding, they had still developed their plans and they are concerned that if they do not meet the criteria that are set out in the bill, there might be a considerable hiatus before some of those plans can be implemented. As a result, that information would be helpful.

**Bob Irvine:** We are happy to send that to the committee.

**Judith Tracey:** We have quite close relationships with the people working on flood risk management in all the local authorities and they provide members of the team with reasonably regular updates of their plans, what they want to do in future and so on. Of course, when the grant scheme was in place, such meetings were more formal, because local authorities were required to tell us about, for example, how their plans would fit in with the scheme. However, we have kept up those contacts, because they provide very useful information and because we like to keep in touch with what local authorities are developing.

**Jeremy Purvis:** Now that the grant scheme is no longer in place, do you have a mechanism that allows you to see the profile of such activity?

**Judith Tracey:** The local authorities give us that information. We ask authorities for information and they provide useful biennial reports on flood risk in their areas. However, our face-to-face and other general contact with local authorities also provides us with a profile of the flood risk management measures that they are implementing.

**Jeremy Purvis:** It would be helpful to know what happened when the grant scheme was in place and what happens now.

**The Convener:** As there are no other questions from members or final comments from our witnesses, I thank Bob Irvine, David Reid and Judith Tracey for their attendance. Their evidence is much appreciated.
In their recommendation letter, the Finance Committee suggested that the RAE Committee may wish to seek clarification from the Scottish Government on a number of issues.

I appreciate that the Committee would like to discuss these issues with me, but I also thought it would be helpful to provide a written response to the Finance Committee recommendations. Please find my response attached.

Please don't hesitate to contact me if you have any further queries, and I look forward to future discussions on these and other matters.

Michael Russell, Minister for Environment
16 December 2008

RESPONSE TO THE RECOMMENDATIONS IN THE FINANCE COMMITTEE’S REPORT ON THE FINANCIAL MEMORANDUM

Recommendation 1 - Whether the cost estimates for local authorities, which are presented as abbreviated overall totals, include costs for all the expected responsibilities and are as comprehensive and robust as possible (paragraphs 36 and 37 above).

As far as possible, the Scottish Government has considered how flood risk varies across the country and the different levels of effort that different local authorities will need to put into assessing and managing that risk.

The figures in the financial memorandum and supplementary note were based on information provided from 6 local authorities representing a range of flooding issues and circumstances, including rural, coastal and urban flooding problems. This enabled us to produce an average figure for the financial memorandum.

For the supplementary note, we included an upper cost estimate that was based on the cost estimates that were presented to us from those local authorities that have long history of tackling complex flooding issues, and in particular surface water flooding, which experience has shown requires the greatest level of assessment, planning and cooperation to address effectively.

The Scottish Government has worked closely with CoSLA and a range of local authorities to promote wide understanding of the new responsibilities set out in the Bill, including the types of tasks that fulfilling these responsibilities will entail. This has included established a network of advisory groups on the Bill...
and its implementation. These advisory groups include representation from a subset of local authorities that have experience of tackling common flooding problems in Scotland.

The Scottish Government has noted that the local authorities that provided evidence to the Finance committee did not include any of those that had provided information to CoSLA and the Scottish Government on the costs of implementing the Bill, which was incorporated in the financial memorandum.

**Recommendation 2** - Whether the Scottish Government intends formal reporting to the Parliament on implementation of the Bill to include information on the actual costs on all public bodies (paragraph 40).

We are happy to consider this issue further.

**Recommendation 3** - How the Scottish Government will be able to build the implications of the significant uncertainty about the extent of future responsibilities into the different financial planning frameworks for the different public bodies involved (paragraphs 42-44).

The Scottish Government, through its network of advisory groups on the Bill, is working with each relevant public body to ensure that responsibilities are clearly understood.

The Scottish Government is working with these public bodies to investigate options for ensuring that funding available to public bodies can be aligned to deliver the plans established under the Bill, and to the timetables set out in the Bill. This includes considering how best to align funding streams that come online at different times during the flood risk management planning cycle.

A summary of funding streams is provided below.

**Local Authorities**

Any additional funding pressures for local government would be discussed and agreed with COSLA, as part of the new process detailed in the Concordat. Funding is allocated on a three year cycle, and the next funding period will be from the 2011-2012 financial year.

**Scottish Water**

Scottish Water is funded through customer charges and government lending. The amount of money available to Scottish water in 2010-14 to tackle flooding will be determined as part of the current price review process for 2010-14 being undertaken by the Water Industry commission.

Ministerial Objectives for Scottish Water for the period 2006-14 were set in February 2005 to be delivered over two regulatory periods, 2006-2010 and 2010-2014. These include a specific objective for Scottish Water to reduce the
number of properties at risk of internal flooding. Ministers are currently considering and will shortly confirm their objectives for the 2010-2014 period.

The Scottish Government is also about to start the process to identify objectives for Scottish Water for the regulatory period commencing April 2014 and beyond. Those objectives will be set in full consultation with all stakeholders, and will take into account the new flood risk management duties placed on Scottish Water by the Flooding Bill.

**SEPA**

Additional funding pressures on SEPA would be discussed and agreed with SEPA as part of the spending review process. As with the local authorities, funding is allocated on a three year cycle and the next funding period will be from the 2011-2012 financial year.

**Recommendation 4 - Whether the current spending review period allocations to local authorities include sums to cover the responsibilities in this Bill and, if so, how these sums have been allocated among local authorities (paragraph 44). If not, the lead committee may wish to seek clarification on the mechanisms the Scottish Government will use to allocate additional funds where new responsibilities have been imposed on public bodies within a spending review period.**

The total package of funding for local government sees an investment of £34.9 billion over 2008-11 - an increase of 13.1% across the period. Any additional pressures on local government, including the new responsibilities set out in the Bill, will be discussed and agreed with COSLA, as part of the new process detailed in the Concordat.

**Recommendation 5 - How the Scottish Government will ensure that future local authority funding allocations will reflect actual costs rather than averages and, specifically, how the different burdens on rural and urban authorities and those with different flood risk issues will be equitably reflected in funding (paragraphs 45 and 53).**

The Scottish Government’s criteria for prioritising funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

Flood risk management plans will include information on flooding problems, and the actions needed to address these problems across the country, which will include actions in urban as well as rural areas. The expectation is therefore that flood risk assessments and flood risk management plans prepared under the Bill, which will include a nationally prioritised set of objectives and measures to manage flood risk, will form a valuable piece of information that can inform the allocation of funding to local authorities.
Recommendation 6 - How the Scottish Government will distribute block grant for the capital cost of flood management measures equitably to local authorities in future (paragraph 57).

The Scottish Government’s criteria for prioritisation of funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

The expectation is that flood risk assessments and flood risk management plans (which will include a nationally prioritised set of objectives and measures to manage flood risk) prepared under the Bill will form a valuable piece of information that can inform the allocation of funding to local authorities.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 2, No. 48       Session 3

Meeting of the Parliament

Thursday 22 January 2009

Note: (DT) signifies a decision taken at Decision Time.

**Flood Risk Management (Scotland) Bill:** The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) moved S3M-3163—That the Parliament agrees to the general principles of the Flood Risk Management (Scotland) Bill.

After debate, the motion was agreed to (DT).

Accordingly the Parliament resolved—That the Parliament agrees to the general principles of the Flood Risk Management (Scotland) Bill.

**Flood Risk Management (Scotland) Bill:** Financial Resolution: The Minister for Environment (Michael Russell) moved S3M-2814—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Flood Risk Management (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).

Accordingly the Parliament resolved—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Flood Risk Management (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.
**Flood Risk Management (Scotland) Bill: Stage 1**

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-3163, in the name of Richard Lochhead, on the Flood Risk Management (Scotland) Bill.

14:57

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** The Flood Risk Management (Scotland) Bill will comprehensively modernise flood risk management in Scotland for the first time in over four decades. I thank the Rural Affairs and Environment Committee for its diligent scrutiny of the bill, which is reflected in the detailed stage 1 report that we are discussing today, and for its support for the general principles of the bill.

The first recommendation in the committee's report rightly highlights the advantages of pre-legislative scrutiny. The committee's inquiry on flooding and flood management played an important part in the development of the bill. Although the scope of the inquiry was wider than the remit of the bill, I hope that a number of its recommendations are reflected in the bill. The thoroughness with which the committee has examined the bill and reflected on the views of a wide range of stakeholders will be extremely helpful as we move towards stage 2.

Many of the committee's recommendations are in line with the Government's thinking on areas where the bill needs to be strengthened. I am confident that our proposed stage 2 amendments will go a long way to meeting the majority of the committee's remaining concerns.

Research on climate change tells us that flooding could become more frequent and more severe. We must act now to minimise the impact of future flooding on Scotland's people, services, environment and economy.

Before Christmas, we saw yet again the problems that heavy rainfall can cause in many parts of Scotland. Four people were rescued from vehicles in flood water in Greenock and, just over a week ago, Jedburgh was on high alert and householders were putting sandbags in place when the Jed Water rose to peak levels. Thankfully, no one was seriously injured as a result of those events, but they remind us of the risks that flooding can pose to both people and property. Even today, the weather is fitting for the theme of the debate, as a flood warning has been in force in the Dumfries area and several flood watches have been issued in other areas of Scotland.

Historical records show an upward trend in average rainfall for each year. Scotland became 20 per cent wetter between 1961 and 2004, and the figures show an increase of almost 70 per cent in winter rainfall in northern Scotland.

We recognise that flooding cannot be eliminated, but experience tells us that well-coordinated actions can significantly reduce the likelihood of flooding and its harmful impacts. We have introduced the bill to make a series of important changes to how flood risk will be managed in Scotland. Our aim is to ensure that the people of Scotland benefit from a modern, sustainable approach to flood risk management.

The bill will deliver flood management at a catchment scale, which will allow local authorities and others to take the best possible approach to managing flooding in their area. Options will range from traditional defences to improved flood warning and natural flood management measures where appropriate.

The preparation of new national flood risk assessments and flood maps will improve our understanding of the likelihood and consequences of flooding from rivers, the sea, extreme rainfall events and, of course, groundwater. The new assessments will be complemented by flood risk management plans, which will ensure that the most sustainable and cost-effective measures to manage flooding are planned for and delivered.

It would be difficult for me to describe in detail all the provisions in the bill, but I will mention some highlights. For the first time in Scotland, the bill will place a duty on specific public bodies—including local authorities, the Scottish Environment Protection Agency and Scottish Water—to act with a view to reducing overall flood risk.

The bill will transpose the European directive on the assessment and management of flood risks in a way that suits Scotland's flood risk management needs. SEPA will be responsible for the directive and for preparing national assessment maps and plans to manage flooding. That work will be undertaken in close collaboration with local authorities, Scottish Water and other stakeholders. Local authorities will also be responsible for preparing local flood risk management plans to accompany the national plans.

To ensure that schemes that are identified in plans are implemented as promptly as possible, the bill repeals the Flood Prevention (Scotland) Act 1961. In its place, the bill creates a new streamlined process for approving flood protection schemes.
Dam failures are extremely infrequent, but they can have major consequences, including loss of life. The bill will transfer enforcement responsibilities under the Reservoirs Act 1975 from local authorities to SEPA. That will ensure that reservoir operators and the public benefit from a new and more consistent approach to reservoir safety enforcement. Reservoir safety will also be strengthened by the introduction of a compulsory post-incident reporting system.

As I am sure we all agree, flood warning is crucial to keeping the public informed of flooding events. The bill updates SEPA’s responsibilities for flood warning and places a duty on SEPA to make flood warning information available to all Scotland’s citizens.

During the bill’s development, we have taken a series of steps to engage actively with the public, key stakeholders and experts in flood risk management, as has the Rural Affairs and Environment Committee. In addition to the formal public consultation process that was undertaken in spring 2008, we established consultative groups to advise us on the bill’s development and implementation. Those groups involved representatives from a wide variety of organisations and stakeholders, including local authorities, conservation groups and NFU Scotland.

We held additional stakeholder workshops and a series of public meetings across Scotland to gather information that allowed us to refine our initial proposals and to obtain information from people who have felt the impact of flooding in their communities. At those meetings, we heard at first hand the views of individuals who have been affected by flooding and the problems that they have had to overcome. We have listened to and learned from their experiences of the physical and emotional impacts of flooding.

I will touch on key points in the Rural Affairs and Environment Committee’s stage 1 report and discuss the main amendments that the Government intends to lodge at stage 2.

The bill provides a framework for delivering sustainable flood risk management, so I announce that we intend to amend the long title to include the word “sustainable”. That amendment will ensure that the long title fully reflects the provisions and I am sure that it will attract cross-party support.

The committee expressed concern that the flood risk management planning process could be delayed by a shortage of experienced staff. We, too, would be concerned if such a shortage hindered improvements to flood risk management. However, many experienced flood risk management practitioners already operate in local authorities, SEPA and the private sector, and we must build on that strong foundation. Together with SEPA, we are engaging with further education institutions on the issue. The Minister for Environment and I will work with our opposite numbers in the education portfolio to consider how we can best fill the potential skills gaps.

The committee repeated its flooding inquiry recommendation that targeted funding be provided to local authorities for flood protection schemes. We appreciate the committee’s concern, but I am afraid that we do not agree that the current funding arrangements for local government could compromise the bill’s implementation. As we have said, the total package of funding for local government was worked out and agreed with the Convention of Scottish Local Authorities. It provides investment of £22.8 billion from 2008 to 2010, which is an increase of 9.9 per cent on 2007-08 figures. However, we will continue to discuss local authority funding with COSLA and we will carefully consider any requests to change the funding arrangements to support the bill’s implementation.

Duncan McNeil (Greenock and Inverclyde) (Lab): Yesterday, the Local Government and Communities Committee heard that there are also capacity problems in Scottish Water, which has a significant role to play in addressing the flooding issues that plague my constituency. Will the cabinet secretary discuss with Scottish Water both the short-term and the long-term capacity problems that it faces?

Richard Lochhead: We will listen to Scottish Water’s views on the issue that the member raises, as Scottish Water has an important role to play in making the bill a success.

The Rural Affairs and Environment Committee recommended that we strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans; we will lodge an amendment that does just that. We have also taken on board the committee’s concern that the bill needs to be clearer about who is responsible for assessing and managing drainage infrastructure. We intend to lodge amendments to add more explicit responsibilities for assessing drainage features, including sustainable urban drainage systems, and to give Scottish Water specific responsibility for assessing sewage flooding.

We are considering how to accommodate the committee’s recommendation that responsible authorities be required to consider what contribution natural flood management approaches could make to reducing flood risk. Although we believe that the bill already ensures that natural flood management measures will be considered fully, we will look to develop an
amendment that ensures that the most sustainable approach is always the one taken.

In addition to the amendments that I have mentioned, we intend to lodge an amendment that will add an enabling power to the bill that could be used to require reservoir undertakers to produce reservoir plans. Those plans would set out the on-site steps that operators would take to mitigate any harmful impact from an uncontrolled release of water.

I have given a rapid account of the bill’s main features and the key changes that we expect to introduce at stage 2. We have, of course, been considering the whole range of the committee’s recommendations and the points raised in evidence. In light of those, we will seek to amend the bill in other, more minor ways.

We recognise that legislation on its own will not achieve all the improvements in flood risk management that we seek. Effective implementation of the legislation is essential, and we are already working with local authorities, SEPA, Scottish Water and others to put in place the appropriate regulations, guidance and resourcing to take that forward. We will write to the committee shortly to provide more detail on our response to its recommendations.

Through the bill, Scotland is leading the way in introducing a modern, first-class system of flood risk management. The bill will deliver vital improvements to how we manage flooding and make a real and long-term difference to the lives of people in Scotland. It will also ensure that Scotland is well placed to adapt to the challenges that the years and decades ahead will bring. We must protect families and businesses from threats that we believe may be round the corner. The bill is about making Scotland a safer place and protecting our environment at the same time. I know that it will be welcomed by the whole of Scotland, especially those communities that have felt the devastating impact of flooding in recent years. I commend the committee’s report, this debate and our motion to the Parliament.

I move,

That the Parliament agrees to the general principles of the Flood Risk Management (Scotland) Bill.

15:08

Roseanna Cunningham (Perth) (SNP): I am grateful to the cabinet secretary for the concessions that he has already made. Those concessions are important, because the Rural Affairs and Environment Committee has been involved in discussions about flooding for a long time. We first issued a call for written evidence back in September 2007, when we were embarking on our inquiry into flooding and flood management. The report on that inquiry was published in May 2008. The bill was introduced to Parliament in September 2008, so we were able to exert considerable influence on it in the first place.

The report on our inquiry contained 26 key recommendations, many of which—although not all—were taken up by the Government. It will not surprise members that a number of the recommendations in the stage 1 report on the bill are reiterations of views to which the committee had already come after its previous extensive inquiry.

We approached stage 1 on the basis that we need not revisit in detail issues on which we had made recommendations in our earlier report and which had already been adopted in the bill—for example, the recommendation that lead responsibility should lie with SEPA. There seemed no point in going back over that story. We also had the benefit of an early indication of Government amendments that are likely to be lodged at stage 2, which allowed us to anticipate certain developments while we were still at stage 1 and was of enormous benefit—so much so that in our stage 1 report we recommend that, where possible, that should become standard practice. Such advance notice will not always be possible, but it was extremely beneficial to us and would also help other committees as they take evidence at stage 1.

I thank everyone who was involved in the process—the clerking team, my colleagues on the committee, in particular members who were new to the committee in September and October, and all the witnesses who gave us their time and attention throughout the process, not least ministers and their officials.

The key recommendations of our stage 1 report include the broad recommendation that the Parliament agree to the general principles of the bill. Members will realise that it would be impossible for me to go through all 38 additional recommendations. I will pick out key areas of debate, on some of which the cabinet secretary has already conceded. He and the Minister for Environment should be aware that, on the issues on which we are still pressing the Government for change, the committee was unanimous.

The lack of an explicit duty on responsible authorities to implement measures on the ground is a potential weakness in the bill, so committee members will have been pleased to hear the cabinet secretary’s concession in that regard. A local authority official told us in evidence that officials were already aware that the provisions of the bill were “permissive”, which suggested to us that it was likely that a local authority that did not implement measures would avoid legal challenge. We were concerned that if there was a view that
the duty on local authorities was permissive, some councils might take a minimalist view of their duties. Therefore, the cabinet secretary’s concession is well received.

I am also grateful for the decision to include the word “sustainable” in the long title. There was considerable discussion in the committee about the matter, and the recommendation on sustainability in our inquiry report was carried into our stage 1 report. However, we accepted the minister’s logic when he told us that to define “sustainable” in the bill would not be helpful, because our understanding of the term will change and evolve. We have come together on the issue, which is important.

The committee understands that there is a desire to encourage greater use of natural flood management techniques, including the use of flood plains, wetlands and woodlands where that is appropriate. In our inquiry report, we argued for a presumption in favour of natural flood management, but it became clear that the word “presumption” was almost a barrier to consideration of the issue. We thought that that view was based on a misunderstanding, because we always accepted that the presumption could and would often be rebutted and overturned. We were concerned that, unless there was more explicit direction, the current culture, in which there seems to be a bias towards hard solutions, would be difficult to overcome.

The Minister for Environment (Michael Russell): As I stressed in evidence to the committee, I do not believe that there is a presumption in favour of hard solutions. There has been such an approach, but it is changing rapidly and our concession to the committee’s recommendation, whereby the most sustainable solution will always be sought, will allow us to take forward the reality of what is beginning to take place.

Roseanna Cunningham: The committee has never taken the view that there is a presumption in favour of hard solutions; we were concerned about the culture among professionals. We thought that if we were to shift the culture away from the default option of hard solutions, there must be a stronger drive towards encouraging natural solutions. That is why we made three recommendations in that regard in our report. We understand that the word “presumption” presents a barrier and we accept that a different approach can be considered. I hope that the minister will consider adopting the mechanism that we suggested or propose an alternative measure that would achieve the same end. It is about changing the culture.

On long-term planning, our inquiry report called for a 25-year road map for investment, with provision for regular updating. That general approach was commended during stage 1 by a number of witnesses. Scottish Water agreed that a nationally prioritised list of flooding schemes would help in its forward planning. Chris Spray, from SEPA, said:

“We should look 20 or 25 years ahead.”—[Official Report, Rural Affairs and Environment Committee, 17 December 2008; c 1313.]

The committee took the view that SEPA could therefore be expected to produce a long-term strategic assessment as well as the district-level plans that are already provided for. That would give us a clear hierarchy of plans and would involve longer-term priorities for 12 and 24-year periods coming before the Parliament at least once in each four-year session.

It is inevitable that a key part of any debate about any policy in any Parliament under any Government will be about the vexed issue of funding. Our stage 1 recommendation follows on from a clear recommendation in the inquiry report. We remain uneasy about the method of funding allocation. I take on board what the cabinet secretary said this afternoon, but we hope that he will consider how to ensure that the strategic priorities are implemented in practice.

We raised concerns about the skills base in our inquiry report and we continue to be concerned about it because additional staff will be required. As I understand it, 55 new staff will be needed for what happens in Scotland and there are currently 200 vacancies in the Environment Agency south of the border, so we are still concerned about the potential for a skills gap. I have been saying, “Perhaps, instead of putting your daughter on the stage, Mrs Worthington, it might be an idea to send her to university to study hydrology or some related profession.”

Coastal flooding has the potential to cause even greater devastation than fluvial and pluvial flooding. It is a big threat to infrastructure round our coast. It is essential that the most accurate predictions are available, and we have made a recommendation on that because of our concerns about the future.

I reiterate that our recommendations were unanimous and that we sought a Government response on a number of issues before stage 2—indeed, we have had a Government response on significant issues already this afternoon, for which we are grateful. I also reiterate that the committee has come to the process with a highly detailed understanding of the issue—more so than is usually the case—and that its recommendations are not capricious or arrived at without careful consideration. We hope that the positive response that we got this afternoon will continue, because
that will make a good bill better. We commend the bill to Parliament.

15:17

Sarah Boyack (Edinburgh Central) (Lab): The Labour Party supports the principles of the bill and is happy to support the Government’s motion. The Flood Risk Management (Scotland) Bill is one of those that we would have introduced had we been in government.

The Government has an opportunity because there is broad consensus across the parties on the need for the bill. As Roseanna Cunningham pointed out, there has been a lot of discussion on the bill and its principles in the Parliament, which is a very good thing. The committee’s inquiry into flood prevention was a model of pre-legislative consultation. It was targeted and gave the public and all the organisations involved the chance to air and get to grips with some of the fundamental principles that we now see in the bill.

There are still issues that we would like to be addressed in the bill, such as the conflict of interest between SEPA’s new role and its existing responsibilities. It is still crucial to consider how the bill will operate and the impact that it will have on people and organisations. One of the key challenges is the confusion and buck passing that members of the public and businesses still face when they deal with flooding incidents. It is fundamental that, when the bill is enacted, people understand everybody’s role and where responsibility lies.

There are a number of issues that need to be addressed and a number of holes in the bill. We want to examine the gap between flood risk management plans and implementation. I heard what the cabinet secretary said on that in his speech, and we will examine the detail carefully when he makes proposals to the committee at stage 2. There are also outstanding problems with funding. They are not getting better; in fact, problems are beginning to escalate throughout the country.

The next point that I was going to make concerned our interest in strengthening the bill’s provisions on sustainability, so I welcome the cabinet secretary’s commitment to change the bill in that regard and to amend its long title. That brings us back to the point of the exchange between Roseanna Cunningham and Michael Russell, which was that the problem is the existing culture. We need to move away from the business-as-usual solutions. Hard engineering solutions are picked not necessarily because they are best but because they have historically been used. In some places, natural flood mechanisms are superior and are the right way to go. The change to the title of the bill will help to change the culture and will send out a strong message.

That change needs to be followed through elsewhere in the bill with a presumption in favour of sustainable flood management measures, on which an informed discussion is needed at stage 2. In planning, there is a presumption in favour of development unless the development plan provides good reasons why a development should not go ahead. Given the need to future-proof the impact of measures that will be in place for years to come, the detail of the sustainable flood risk management requirement and how Scottish Water is involved in that will be important. Those who were members of the Parliament during the passing of the Water Environment and Water Services (Scotland) Act 2003, which established an independent regulator for Scottish Water, will remember the endless discussions that we had on environmental considerations and sustainability. Such discussions will probably move centre stage if we make sustainable development a key overarching principle of the bill, given that that is not how economic regulation works. The Cabinet Secretary for Rural Affairs and the Environment will remember our committee discussions on that.

Another crucial issue is the gap between the creation and implementation of flood management plans. Partly, the issue is ministers’ reluctance to place a duty clearly on councils in case that duty supersedes other legal duties. The problem is that the lack of such a duty provides a get-out clause for local authorities. We are not convinced by that argument, which we think is an excuse. In the current financial climate, in which councils are incredibly cash-strapped, clarity on their duties is essential for them as well as the public. That issue needs to be looked at.

We also think that SEPA and Scottish ministers should be under a duty to ensure that the objectives of flood risk management plans are met. Again, clarity on what different organisations are responsible for is crucial. A long-term strategy on flood prevention priorities would be helpful for central Government as well as for local authorities. Such a strategy would help to inform decision making. If, in making planning decisions, local authorities are conscious of future priorities, we will begin to ensure that we get the right decisions. We need to move away from business as usual. We need a long-term shift.

The bill still provides for no real assessment of human and economic issues in relation to flooding. The Scottish Government needs to provide guidance to responsible authorities so that such issues are factored into their assessments.

On funding issues—I lose the opportunity in the short time that I have been given this afternoon—the Finance Committee was very
It is apparent that local authorities are not coping with the current system. Last year, for example, the minister reassured me that the City of Edinburgh Council’s previous funding commitment for flood prevention was included in its grant-aided expenditure. I understand that the council has written to ministers about the central Government’s decision to change the system that had been put in place. Because changes have had to be made to the flood prevention scheme, costs have gone up so the estimate that was included in GAE is already out of date. Funding for the scheme that the council is now trying to put in place is short in future years—

The Deputy Presiding Officer: Thank you, Ms Boyack.

15:23

John Scott (Ayr) (Con): I begin by declaring an interest as a farmer and as a member of NFU Scotland. On a personal note, I thank the clerks for their help thus far in preparing the reports on which today’s debate is based. I also thank the minister for his intimation of the amendments that he intends to lodge at stage 2, which we generally welcome.

Scottish Conservatives welcome the introduction of the Flood Risk Management (Scotland) Bill. We believe that climate change is now happening and that it will most probably result in increasing precipitation and rising sea levels. With 3.6 per cent of Scotland’s 2.5 million properties currently at risk, now is the time to act.

I will speak to some of the recommendations in the Rural Affairs and Environment Committee’s stage 1 report. Recommendation 3 notes the need “to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans”.

It is self-evident that action must follow the production of plans. We do not believe that that is clear enough in the bill, as Sarah Boyack has already noted.

On recommendation 6, Scottish Conservatives very much support the view that assessments of human and social costs must be used in the production of flood risk maps. Such assessments must be carried out as a matter of urgency to allow SEPA to take account of them in the production of its flood risk assessment, which is due in December 2011.

Recommendation 7 notes the need for the Government to resolve conflicts of interest between SEPA’s existing role and its future role under the bill. We believe that the issue needs to be addressed urgently and that the Government should produce guidance to avoid slippage in the production of flood risk maps by December 2011.

Recommendation 8 notes the self-evident need to align funding streams, while recommendation 36 rightly draws further attention to Conservative concerns that despite the production of flood risk maps and management plans, and the minister’s assurances today, sufficient funding might not be available to implement those plans. Dangerously, the lack of a clear and binding duty in the bill to implement plans once they have been produced—although it may be that that issue is to be addressed—combined with a lack of targeted funding to carry out the work, puts at risk the effective implementation of the bill and, in doing so, also puts at risk householders and landowners. The Government must clarify its position during stage 2.

Recommendation 32 deals with coastal flooding—a topic that Bill Wilson was keen on—which will, for the foreseeable future, present a greater risk to property and people than will fluvial flooding. Although the incidence of fluvial and pluvial flooding events will increase, with the result that property and the lives of individuals might suffer damaging effects unless appropriate action is taken, coastal flooding is on a different scale of risk, in that it could have catastrophic consequences. Combined with sea level rise, tidal surges have the potential to inflict huge damage on property and infrastructure in the east and west of Scotland. The Government and SEPA must examine those existing but growing threats extremely carefully.

Turning to less apocalyptic matters, the Conservatives welcome and believe in the need to move to a more sustainable and natural approach to upstream and downstream flood risk management. I am intrigued by the possibility of taking the tops off floods by using natural flood management techniques and by developing the concept of hydraulic roughness, wherever possible.

The strategic placing of forestry along watercourses and flood plains would create leaky dams that could hold back floods. If such defences were intelligently sited, they would also enhance biodiversity. In my view, the placing across flood plains of strips of woodland as narrow as 25m wide would produce a damming effect and enhance the environment without significantly reducing agricultural output. The Forestry Commission’s evidence in that regard was extremely valuable. However, such land use, especially if it became more extensive, could reduce the viability of farming and other enterprises. It is therefore important that individual businesses are not damaged or disadvantaged by contributing to the public good in that way, so adequate compensation must be paid to reflect any loss of land.
The Conservatives also believe that recommendation 27, which invites the Government to retain the obligation on local authorities to cleanse, repair and maintain watercourses, is important and should be addressed. I welcome the minister’s comments on the matter.

The Conservatives believe that much more needs to be done to gather information about potential flooding risks and to disseminate it to the public. Ways must also be found to allow the emergency services to be more proactive in managing flood risk, as well as floods that occur.

We welcome the bill, which offers a route map to the provision of greater protection against flooding of all types in Scotland. The bill’s aim to reduce the risk of flooding will need to be adequately funded: its purpose must not be thwarted as a result of inadequate funding. However, those are matters for future budgets and debates. In the meantime, we support the principles of the bill and look forward to lodging constructive amendments at stage 2.

15:29

Liam McArthur (Orkney) (LD): The Scottish Liberal Democrats warmly welcome and firmly support the bill. The Cabinet Secretary for Rural Affairs and the Environment’s proposed amendment to its long title is a further and welcome enhancement. As with any bill at stage 1, we want to improve certain aspects of it. However, the general principles are absolutely sound, and I acknowledge the early efforts of the Scottish Government to address concerns that have been raised.

As Sarah Boyack and Roseanna Cunningham observed, the cabinet secretary’s task was made easier by the work that the Rural Affairs and Environment Committee undertook for its flooding inquiry last year. It is not false modesty to suggest that that had absolutely nothing to do with me, as I was still serving my time on the Finance Committee. Bringing such pre-legislative scrutiny to bear has significant benefits. I welcome Richard Lochhead’s comments in that regard.

I pay tribute to previous and current Rural Affairs and Environment Committee members, and express my thanks to the clerks, the Scottish Parliament information centre and other support staff, as well as the many individuals and organisations that provided written and oral evidence during our consideration of the bill. That information has provided a solid basis for us to take forward our scrutiny of the bill in the months ahead. It is against that positive background and support for the principles and thrust of the bill that I raise the following concerns, which were addressed in the committee’s report.

The issue of skills rightly received much attention during the committee’s evidence sessions and has done so again this afternoon. It is recognised that the passing of the bill will result in greatly increased demand for specialist flood management staff, notably hydrologists. The bill’s financial memorandum suggests that SEPA will require 55 new specialist staff. That must be viewed in light of the 200 vacant positions in the Environment Agency south of the border and the demands that will inevitably come from Scotland’s local authorities for people with many of the same skills. The problem will become more acute as demand Europe-wide intensifies and the world of consultancy proves too alluring to resist for newly qualified and experienced people. I know that the minister acknowledges that problem but, as our report makes clear, the committee “is not at all convinced by the Minister’s reassurance that the steps being taken to recruit and retrain will ‘ensure future supply’.”

Notwithstanding Mr Lochhead’s remarks today, I hope that the Government will redouble its efforts to get to grips with an issue that cannot simply be left to SEPA and local authorities to resolve, and which threatens seriously to undermine the ability of ministers and responsible authorities to deliver effective flood risk management.

The skills issue also has a bearing on concerns that were raised with and by the committee about whether “a cultural shift in favour of considering natural flood management techniques” can be achieved. The committee wrestled with whether a presumption in favour of natural techniques and processes was desirable. As Roseanna Cunningham reflected, there is confusion about what such a presumption would mean in practice. However, it is clear that without access to the broader range of skills sets, it is perhaps unreasonable to expect local authority officials to gravitate towards considering—far less employing—such techniques. I agree with the convener that ministers must reflect further on that point and come forward with proposals that firmly underscore the need for natural flood management options to be properly considered, and for reasons to be given where such options are found not to be appropriate.

Legislation of the bill’s scope and complexity takes time to introduce and bed down. We are right to be ambitious. We also need to be clear and resolute about our longer-term objectives for flood risk management. However, flood risk management plans will not be ready and in place until 2015, and we cannot lose sight of what is...
expected and required between now and then. Scottish Government officials admitted to the committee that interim arrangements have not been finalised. As a result, it should come as no surprise to the minister, or anyone else, that local authorities across the country are questioning their role and responsibilities in the meantime.

Jim Moodie from Fife Council, who made quite an impression on the committee, referred to the lack of interim arrangements and suggested that that was

“a concern because there is nothing in the bill to say that councils have to do anything until the management plans are in place.”—[Official Report, Rural Affairs and Environment Committee, 10 December 2008; c 1273.]

I accept that it would be a foolish, not to say short-lived, council administration that sat on its hands and did nothing in the face of a demonstrable flood risk in its area, but I hope that the minister will accept the need to clarify the position on interim arrangements.

The minister will recall the funding concerns that a number of local authorities raised, not only with the Rural Affairs and Environment Committee but with Finance Committee colleagues. I know that Jeremy Purvis will, as a member of the Finance Committee, and a constituency member from a part of the country that has been badly affected by flooding in the recent past, elaborate on some of those concerns in his remarks.

Returning to the evidence from Mr Moodie of Fife Council, he observed that the lack of a clear funding mechanism

“will mean that many schemes will not be delivered at all, because the funding will be allocated to what councils consider to be other priorities.”

He added, rather courageously perhaps:

“Our budgets are defined by accountants and asset management people who are not directly affected by flood prevention issues or functions.”—[Official Report, Rural Affairs and Environment Committee, 10 December 2008; c 1270.]

While Mr Moodie doubtless had his work cut out to make his peace with his colleagues once he got back over the bridge that afternoon, his candour suggests that assurances from ministers about funding may still fall on deaf ears.

The minister will have observed that the stage 1 report includes a section on coastal flooding, to which we will need to return in more detail at stage 2. In particular, the question of how SEPA takes proper account of data on climate change impacts and local tidal patterns, including tidal surges, in reaching its conclusions will be important.

Banning development on land below a certain point above sea level is not always practicable, and mitigation still has a role to play. However, as the Association of British Insurers and others agreed, development and planning decisions need to be better aligned.

This is a good bill that can be made better. This afternoon, ministers have again shown a willingness to listen and respond. I hope that that will continue over the coming months.

The Deputy Presiding Officer: Speeches are to be of six minutes, and there will be no warning before the end. I have already told one member that they will not be called, and I will probably have to cut back the time for the last two members in the open debate. I ask members to stick to their six minutes, please.

15:35

Angela Constance (Livingston) (SNP): I am grateful for the opportunity to speak in today’s debate, and I extend a warm welcome to residents of Burnside village, near Broxburn, in my constituency, who join us in the public gallery. My constituents’ lives were turned upside down by severe flooding last August. I am grateful to the Minister for Environment, Mike Russell, for visiting Broxburn and seeing at first hand the destruction and devastation.

I wish to read an extract from a letter that I received from an elderly couple who lost their home and 95 per cent of its contents, as I believe that their experience and recommendations are highly relevant to this debate. Mrs Ross wrote:

“It has taken me 3 months to be able to put some thoughts on this experience on paper. I do so with the hope that those who read it and are involved in considering the funding or provision of flood prevention measures will be made more aware of what a traumatic and life changing event such an experience can be.”

She went on to say:

“flooding of the severity experienced in August ... demands a co-ordinated response”.

I whole-heartedly welcome the bill’s aim to improve interagency co-operation in flood risk management plans. After the flooding in Broxburn, I certainly had to knock some agency heads together. I particularly welcome the requirement for risk management measures to consider the social as well as the economic impact of flooding.

The stage 1 report interested me in that it touched on the point that there is no precise, absolute defining line between what is deemed risk management and what is deemed flood rescue. I note that the Rural Affairs and Environment Committee recommended that amendments should be forthcoming to deal in particular with fire and rescue services taking the
lead on flood rescue and with enabling the police to be more proactive at an earlier stage.

I will quote Mrs Ross again:

"I had no idea if and when the water would stop rising. I had no idea how we were going to get out of the house. I had no idea what priority the emergency service had given my call. I felt we were completely isolated and alone left to cope the best way we could."

I appreciate and understand that the bill has specific purposes in mind but, when we debate and discuss, and legislate on and regulate the assessment and management of flood risk, I urge us to take a whole-process approach that includes flood rescue and aftercare. I appreciate that local authorities already have duties and responsibilities, but I feel strongly that we need national leadership on what constitutes best practice.

My constituents have often compared their experiences to that of a bereavement, given their inability to function in the immediate aftermath due to shock. I am talking about able people not being able to deal with the practicalities. They have described mood changes and depression, as well as repeated nightmares of being trapped in a home with rising water levels. I take this opportunity to stress the importance of practical assistance, good advice—about contamination, for example—follow-up procedures and good aftercare.

I will quote Mrs Ross once more:

"It would have been like a gift from heaven if someone from the council or social services had phoned to ask if we were ok or to offer some help."

If the bill is passed, I will be pleased that local authorities will be empowered to proceed with flood management initiatives, where agreement exists between all those involved, without having to go through a lengthy statutory process. I appreciate the Scottish Government’s approval of a £5 million flood defence scheme in Broxburn. West Lothian Council is actively looking at how to extend the scheme and truncate the implementation period. In that regard, I make a plea to the minister: can anything be done about European Union procurement rules, which slow processes down to a standstill at times? Like other councils, West Lothian Council is also considering early warning systems.

On a personal note, I add my thanks to Graham Hedger, the flood prevention officer at West Lothian Council, and to Lothian and Borders Fire and Rescue Service, particularly the retained fire crews, and other emergency services for the professionalism and care that they showed to my constituents.

15:40

Peter Peacock (Highlands and Islands) (Lab): Like others, I am pleased to take part in the debate and pleased to offer my support for the bill’s general principles. All parties in the chamber agree with the bill’s objective of ensuring that there is better flood protection for our communities and individual families.

We know that flooding is on the increase because of climate change, as the minister set out, and we know that current flooding legislation is outdated and that the procedures are too slow. Failure to take action on that would just enhance the kind of misery and devastation that Angela Constance has set out, which are the consequence of flooding events.

For the most part, the bill’s provisions are fine, but they are complex, and will require a lot of explaining. I very much welcome the new role for SEPA in taking a national lead in flooding matters and I welcome planning on a river catchment basis, which is sensible. I welcome, too, the national overview, combined with the local delivery of community protection. I welcome the identification of responsible authorities and making their responsibilities clear, although perhaps a bit more work needs to be done on that. I also very much welcome the deemed planning consent provision, because current procedures are far too cumbersome and duplicative, which means delay and frustration for everybody involved.

Despite all those welcomes, I believe that the bill can be strengthened. The Rural Affairs and Environment Committee has argued that SEPA’s role could be strengthened, so that it is obliged to take a long-term strategic view of flooding needs and priorities throughout the country and to produce a strategic assessment for six years ahead and one for the subsequent years up to 24 years ahead. However, it is important not just that SEPA is obliged to do that and that it does it, but that ministers have regard to what SEPA says. We will then have a national view that will not only aid public understanding of the issues and aid public debate, but assist ministers to decide the quantum of cash that will be required and give them a clue about how to distribute it.

The bill could also be strengthened with regard to sustainability. I welcome the minister’s concession on that today.

Mary Scanlon (Highlands and Islands) (Con): Will the member take an intervention?

Peter Peacock: With respect, I will not, because I have a lot to get through in a short time.

I draw members’ attention to Roseanna Cunningham’s point about strengthening the natural flood management provisions. That is no
panacea for flooding problems, but natural flood management can make a significant contribution. If we take the peaks off floods by using natural flood management, we will be able to ease the hard engineering that will also often be required. There is a double benefit from natural flood management techniques, because not only do they protect people from flooding to a greater extent, they enhance countryside habitats.

As Roseanna Cunningham said, the committee made its recommendations to secure a cultural shift. Having been in a local authority for many years, I know that the skills sets of local authorities tend to be in engineering, which tends to foster the view that engineering solutions are the limit of what we need to think about. We need to change that culture, which is why the committee recommended that SEPA and councils should consider the contribution that natural flood management techniques can make.

There is scope to improve provisions so that councils can use their best endeavours to implement flood risk management plans. I welcome the minister’s indication that he will lodge an amendment on that. I look forward to seeing the wording, because that amendment needs to be explicit and powerful—I hope that it will be. However, flood prevention is not just about a dialogue or a deal between councils and the Government. Citizens and communities have rights, too, and they need the certainty that what is agreed for their communities will be implemented.

I would like further reassurance that the ability of Scottish Water to play its full part in the provisions of the bill will not be compromised. That relates to the role of the Water Industry Commission for Scotland. The minister has indicated that there is scope for a conversation to take place with the WICS to clarify matters. It is important that we put beyond doubt the fact that Scottish Water can act in the spirit of the bill to find sustainable flooding solutions without being compromised by the provisions and powers of the WICS.

The committee made specific recommendations about the funding approach. I was sorry to hear the minister’s comments on that, and I hope that there is still time for him to reconsider. It would be dreadful if implementation of the bill’s good provisions was frustrated because of a lack of finance and a failure to target finance in the way that the committee clearly believes will be necessary. The committee’s report offers the Government another opportunity to think about that. I hope that it will do so before stage 2.

It is hugely important that we make progress on flood management and speed up the associated processes. The bill is welcome—

**Mary Scanlon:** Will the member give way?

**Peter Peacock:** I cannot, as I am in my final minute.

I have indicated that the committee looks forward to seeing the stage 2 amendment; although we reserve the right to try to strengthen the bill if they do not do what we want them to do.

The timescales are tight. I urge the Government to give as much advance notice of the details of the amendments as possible, so that the committee can properly consider them before the legislation is finalised.

Before closing, I wish Mike Russell every success in his acting debut tonight—actually, it is not his debut, as we know that he has been acting successfully for many years.

15:46

**Dave Thompson (Highlands and Islands) (SNP):** The bill is a welcome and long overdue measure to overhaul some seriously outdated legislation and ensure that it reflects the situation that we face in today’s world of global warming, climate change and increased flooding risk.

In the Highlands, we faced a particularly disastrous flooding situation only two years ago. The flooding was so severe that the A9 was described as being more like a river than a road, and 40 people had to be rescued by the Royal National Lifeboat Institution in Ross-shire. Those people were rescued not from the sea but from their own homes in Dingwall. The coastguard even had to be called out to help to rescue four farm workers and a herd of cattle near Cannich, almost 20 miles inland.

In Inverness, more than 1,000 homes and businesses are threatened by flooding, and the potential costs of damage are estimated at around £77 million. Inverness was devastated by flooding in 1989 and 1990. The railway bridge collapsed in the 1989 storm. In 2002, Inverness was hit again—roads were closed and train services were suspended. Things were so bad that the police advised people not to travel to the Highland capital after several areas were left under water. Around 200 guests at the Thistle hotel had to be rescued in dinghies after they become marooned in water up to 5ft deep.

The bill will be welcomed by many, including future guests at the Thistle hotel. Indeed, it has already received a warm welcome from the Association of British Insurers, which is very much in favour of clearly defining the roles of local authorities and Scottish Water.

It is particularly encouraging that flood management will be listed in the core priorities of local government. That is real progress towards
ensuring that flood management receives the prominence that it deserves.

The Association of British Insurers also approves of revising the building regulations to ensure that buildings in flood risk areas are resilient to flood damage. I agree with that, but the association could help by issuing advice on those matters to owners and tenants of such properties.

The NFUS has some reservations about the bill and the move away from hard-engineered flood prevention and protection to a more integrated flood risk approach using natural flood management. It says that the legislation must recognise the agricultural productivity or economic value of flood plains and that any proposed measures must be fully costed to properly assess their economic impact as well as environmental and social benefits.

The NFUS has also expressed deep concern about proposals to divert money from the Scottish rural development programme. It proposes either that funding for flood management should come from a different budget or that SRDP moneys should be increased commensurate with flood management requirements. Just yesterday, we had a debate on the common agricultural policy health check, which highlighted many of the problems facing agriculture and the SRDP. I ask the minister to consider the NFUS view sympathetically.

Less than two weeks ago, I was invited by the Glen Urquhart land use partnership—GULUP—to view the flood alleviation works on the River Enrick. Following a series of floods in the 1990s, which caused hundreds of thousands of pounds-worth of damage to homes and businesses in the glen, it was agreed that all agencies and the community would work together to find a long-term solution. A consultants’ report led to the publication of an integrated catchment management plan in 2002 and £600,000 of European funding under the strategies and actions for flood emergency risk management programme. An updated report in July last year acknowledged the work that had been done in the upper catchment area of the river but concluded that the river remains unstable and warned that flood events might still create problems downstream.

It would cost about £100,000 to resolve the situation but, unfortunately, the £600,000 of European funding has been taken up by a report on the flood risk assessment of the Enrick, the employment of a project officer by Forest Enterprise and some works on the upper catchment of the river, which leaves insufficient money to complete the job to stabilise the river downstream. Identifying another source of capital funding to pay for that has proven difficult for GULUP. The original five-year restoration programme never had a full programme commitment from the agencies concerned—Highland Council and SEPA—and much of the money was spent on the survey work that I mentioned.

There are a number of lessons to be learned from GULUP’s experience. First, we must ensure that agencies engage in co-operation and joint working. Secondly, we need to ensure that there is financial commitment from those agencies. Thirdly, we must ensure that bodies such as GULUP receive help in identifying suitable funding sources. Finally, we must ensure that money that is allocated to flood risk management is not eaten up by consultants’ fees, leaving next to nothing for the works that need to be done.

15:52

Des McNulty (Clydebank and Milngavie) (Lab): One characteristic of the environment portfolio and of the work of the Rural Affairs and Environment Committee is that some of the legislation that emerges is complex and requires detailed consideration by members and experts from a variety of specialisms. I hope that, through that process of consideration, we end up with well-considered and well-wrought legislation. That was certainly the case with the Water Industry (Scotland) Bill and the Water Environment and Water Services (Scotland) Bill. The new Flood Risk Management (Scotland) Bill is operating in the same kind of territory. As other speakers have done, I welcome the approach that the Government has adopted not just in the content of the bill but in responding to the consultation, listening to the voices from the Rural Affairs and Environment Committee and adapting the legislation.

When I was a member of the committee, I visited the east end of Glasgow to find out about some of the metropolitan drainage issues. Along with the rest of the committee, I visited Elgin, where we saw that flooding did not bypass the town and had been a chronic problem for many years. In general, flooding has a disastrous impact on communities—and not just when it occurs, because of the blight with which it can afflict communities by preventing necessary developments. The bill will address many of the issues that were highlighted by the committee in its inquiry report on flooding and flood management, which was informed by those visits and by expert witnesses.

I want to highlight several issues that members have raised. Roseanna Cunningham talked about the committee’s suggestion in its inquiry report that there should be a presumption in favour of natural flood management techniques. The committee was trying to suggest that it would be
preferable to give more weight to natural flood management over hard engineering approaches; it was not trying to say that we should always go for one rather than the other. As Peter Peacock suggested, we need to create a change of culture and to get people to consider natural flood management as an alternative, or sometimes as an adjunct, to hard engineering approaches. That was the committee’s intention and I hope that we can get that properly into the bill.

I welcome the inclusion in the bill of the promotion of sustainability. That measure was also included in the Water Industry (Scotland) Bill, which created Scottish Water, and the Water Environment and Water Services (Scotland) Bill. There is consistency of approach.

The committee identified the management of pluvial flooding as an issue. I am not sure that pluvial issues can be dealt with in the bill, but the Government must consider them in other legislation that it will need to introduce, particularly with regard to roads and planning. Some of the committee’s conclusions should feed into not only the Flood Risk Management (Scotland) Bill, but other legislation and guidance.

**Michael Russell:** I want to emphasise the point that the member has just made. It is important to recognise that under the planning system, for example, the use of certain porous materials in building roads and patios and in other areas can make an enormous contribution. Methods to contain flooding exist outwith the bill, but we are conscious that they need to be joined up with other legislation and regulations.

**Des McNulty:** That is right. That also fits in with the use of sustainable urban drainage schemes. We need greater clarity about who has responsibility for the initiation and maintenance of such schemes.

The committee argued that strategic flood risk assessment should always be compatible with development and structure plans to avoid such plans contradicting one another. I hope that there will be an interface between the bill, once it is passed, and the regulations that will be introduced under the Planning (Scotland) Act 2006, to ensure that different legislative bodies co-ordinate and plan their activity more effectively.

Funding was probably the committee’s major concern, and it remains unresolved. I do not understand how a formula-based system for the allocation of resources for flooding, which of necessity gives organisations a population-based share, is directly compatible with a needs-based allocation scheme for flood risk management, which must inevitably fit the amount of money to the needs of the scheme. A population-equivalent system will not always work.

However well we anticipate flood risks, we will be overtaken by exceptional circumstances—that is the lesson of flooding. We need to find a system that allows the Government to intervene when necessary with the resources to deal with flood-risk problems as they arise. We can plan in advance, but it is important that we have mechanisms in place so that we can adapt.

I think that my time is up, Presiding Officer.

**The Deputy Presiding Officer:** It certainly is.

15:58

**Murdo Fraser (Mid Scotland and Fife) (Con):** I suppose that it is inevitable in a debate such as this that much time is taken up by members from different parts of the country raising issues of concern in their areas. Let me not disappoint anyone by departing from that trend.

Tayside, most of which falls within my Mid Scotland and Fife region, is one of the areas in Scotland that has been hard hit by flooding in recent years. The River Tay and its tributaries cover a massive area, and flooding in recent years has caused disruption to Highland Perthshire communities such as Kenmore, Dunkeld, Aberfeldy and Dalguise. Virtually every year in recent memory we have seen flooding in summer and winter, or indeed in both. Property has been damaged and roads have been closed—including the A9, which is the major arterial route to the north—as has the Perth to Inverness railway.

When we have periods of sustained rainfall, people in huge swathes of rural Perthshire and Angus are in near-constant fear of flooding due to heavy rains swelling the river system. We need flood prevention schemes and improvements in places such as Birnam, Bankfoot, Coupar Angus, Dalguise and Scone. Communities and towns in Angus also face the threat of flooding. Last year, Kirriemuir was badly hit, and I understand that Angus Council has proposed a flood prevention scheme in Brechin, which is absolutely essential if the town is to be given greater protection.

I will address three specific points in the bill. The first is the question of responsibility for risk management, which is covered by recommendation 7 in the Rural Affairs and Environment Committee’s stage 1 report. It is evident that a clearer line of responsibility is needed in flood risk management. The Scottish Government, local authorities and SEPA must all have clearer and better defined roles.

Two years ago, the new flood prevention scheme at Milnathort in Kinross-shire failed, which resulted in flooding and damage to properties in the area. At the time, the then Scottish Executive and Perth and Kinross Council blamed each other.
for the failure. The disruption and distress that the flooding ordeal caused residents were made no better as politicians argued about who was to blame and who was to sort out the damage. Parliamentarians can well understand such frustration, but it shows why it is so important that the bill tries to resolve such issues. I was pleased to hear what the cabinet secretary said about that subject when he opened the debate.

The second issue that I will address is the cost of works that are required to prevent flooding, and the cost of flooding repairs. That issue is dealt with in paragraphs 178 to 185 in the stage 1 report, and it is also covered in recommendation 26, which mentions giving power to local authorities to recover expenses from landowners. Part of the problem is that the use of the word “landowner” conjures up an image of a wealthy individual who lives in a large house or castle and has very deep pockets. In reality, that image is far from the reality in modern Scotland. The great majority of landowners are farmers, and, given the current situation with farming, very few of them have large amounts of spare money to spend.

A good example is a recent flood that occurred along the River Tay. The river flood banks were swept away, and farmland and property were flooded. The farmer who owns the land was legally responsible for repairing the flood banks and obtained an estimate for the work, which ran into six figures. That is a massive cost for anyone to meet, and he ended up in a situation in which the repair bill exceeded the market value of the land. It was clearly uneconomic for the farmer, in those circumstances, to pay the cost of repairing the embankments entirely by himself. Even if he had repaired them, there was a danger that flooding would have occurred again in another two or three years, with the farmer having to pay an identical repair bill.

We have to consider those issues carefully and think about how we support and assist individuals in those circumstances, rather than simply taking the approach—which, it appears from the committee report, the bill is in danger of adopting—of saying that we should fine people who are not meeting their responsibilities. We need to accept that there is an economic issue that needs to be addressed.

My final point is on an issue that I have raised in the past: the extraction of gravel and silt from river beds. It is time that the situation was reviewed. As a result, every time a river floods, river banks are swept into the river bed, the silt and gravel are not extracted, and the water levels rise. That exacerbates the problem the next time that a flood takes place.

I appreciate that environmental issues need to be considered and that the salmon fishing industry has a major interest in the Tay that needs to be preserved. However, I have no doubt that by not extracting silt and gravel from river beds we are making the situation worse. Flood banks are being swept into the river bed and have to be replaced with material from elsewhere, instead of that material being removed from the river bed, as happened previously. We need to look again at that situation. The legislation is welcome, but it needs to be improved if we are to protect parts of Scotland from the danger of flooding.

16:04

Ian McKee (Lothians) (SNP): I was brought up to revere—as I imagine many other members in the chamber were—the inspiring story of Hans Brinker, the young son of a sluicegate operator in Holland. While playing one day, young Hans noticed a small breach in one of the sea dykes, and, realising that the situation could soon turn into a significant flood unless prompt action was taken, he blocked the gap with his finger. Hans remained in that position all night, risking his life in the process, until he was relieved of his task by adults the next day.

Imagine my distress—at this point, those of a sensitive disposition might wish to put their hands over their ears—when I learned that Hans never existed. The story was simply a figment of the vivid imagination of the American writer Mary Elizabeth Mapes Dodge, who had never even visited Holland when she wrote the story. In such a brutal, cruel way are one’s childhood illusions shattered.

Not only did Hans never exist, but the sea eventually reclaimed much of the land that was previously protected by dykes. When man tackles water, water often wins in the end. Rather than employing simplistic methods involving fingers in dykes to protect us from the risk of flooding, we need to put our fingers in our pockets or wallets and spend the money that is necessary to give us the protection that we desire.

Financial investment is important, but it is not the whole story, and protection from flooding also involves many other aspects. For example, we heard earlier about the difference in emphasis between so-called hard protection, such as the dykes in Holland, and softer measures such as the maintenance and development of wetlands and relief routes. Also, when measures have been
deemed necessary and their nature determined, they need to be put into effect as quickly as possible.

Here in Edinburgh, the risk of flooding is mainly fluvial rather than due to threatened incursions of the sea. Around 500 Edinburgh homes were damaged by serious flooding in 2000, including some around Bonnington Mills, Warriston, Stockbridge, Murrayfield, Roseburn, Westfield Avenue, Ford’s Road, Stenhouse Mill, Chesser Loan and Longstone Road. The Water of Leith also nearly burst its banks during the exceptionally heavy rainfall in January 2008.

In 2001, the estimated cost of protecting homes and businesses along the Water of Leith was £9 million, but today, following one delay after another and several inquiries, the cost might be as high as £54 million, and that might not be the end of it. The delays and cost increases are unsatisfactory, and whatever else we do, we need to speed up the process so that we can attend to a problem when it rears its head.

On the broader topic of flood risk management in Scotland, I welcome the long overdue step to update laws that have existed for nearly 50 years and which have now been overtaken by events. Flood policy needs to be brought into line with the European directive on the assessment and management of flood risks, and it is vital that we achieve much more effective interagency cooperation. Furthermore, we need to pay much more attention to the social as well as the economic cost of floods. Angela Constance spoke eloquently on that subject.

One element of the bill that greatly interests me is the proposal to amend the Reservoirs Act 1975 so that the Scottish Environment Protection Agency takes over from local authorities as the relevant enforcement authority for the whole nation. Another important provision enables Scottish ministers to make regulations on the reporting of incidents that might affect the safety of large raised reservoirs. We have been fortunate in Scotland, but tragedies in other countries and the risk of terrorist activities highlight the need for a co-ordinated supervisory regime, and that is what the bill gives us. The issue of reservoir safety is far too important to the country for it to be left in the hands of a multiplicity of local authorities. Here in Lothian, Threipmuir, Harlaw and Harperrig reservoirs are vital components of the flood protection scheme, so it is satisfying that they will come under SEPA’s watchful eye.

Finally, the bill’s requirement for a mapping exercise to be undertaken to identify areas that are at risk of flooding will produce for the first time a document that can be checked when someone is considering buying a house. That will reduce the risk that they will purchase a house that subsequently turns out to be at risk from flooding and uninsurable.

We might not have a small boy to plug a hole in our dyke, but the bill offers an even better alternative and commands my support.

16:09

Rhoda Grant (Highlands and Islands) (Lab): I was not a member of the Rural Affairs and Environment Committee when it undertook its inquiry into flooding, so to some extent I was playing catch-up when the committee began its scrutiny of the Flood Risk Management (Scotland) Bill. However, it became apparent that the evidence that we took on the bill had a striking resemblance to the evidence that the committee had received during its inquiry. Many of the recommendations in the committee’s report on the bill are strong echoes of the previous recommendations on flooding, although they are not the same. The Government has taken on board some of the committee’s previous recommendations, and I hope that it will act on the new recommendations as well.

When I first read through the bill, I was struck by the possibility that, in concentrating on drawing up flood risk management plans, it could result in a hugely bureaucratic process. There is not enough about the management of risk in the implementation of the plans.

It was argued in evidence that local authorities would implement plans through current mechanisms, but that simply does not go far enough. The bill must contain more specific duties to ensure that local implementation is prioritised. I am glad that the issue will be considered, because, at worst, the plans could simply sit on the shelf, gathering dust, until they are required to be reviewed. As the recommendation in paragraph 39 of the committee report argues, the bill “should be amended to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans.”

Moreover, the bill contains no powers to ensure that development plans have regard to the flood risk management plan. If development plans, which are probably our most important means of managing and reducing flooding, are not forced to have regard to flood risk management plans, the whole exercise will be worthless.

Evidence that we received suggested that a balance has to be struck between flood risk management and other issues such as economic development and social need. That is true, and forcing development plans to have regard to flood risk management plans would not be detrimental to that balance. Instead, it would put flooding on the same footing as other issues that need to be
taken into account when development plans are being drawn up. A duty to have regard to the flood risk management plan would also ensure that any development in a flood risk area would have to incorporate flood alleviation measures—

**Mary Scanlon:** Will the member give way?

**Rhoda Grant:** Very briefly.

**Mary Scanlon:** As someone who has been struck off the list of speakers, I appreciate that.

Does the member share my concern that Moray Council’s £168 million budget will be seriously affected by the bill’s financial proposals and that, in paying for its flood alleviation schemes, it will be worse off by £23 million a year?

**Rhoda Grant:** I agree. In fact, many councils expressed great concern about financing and suggested that the Government hold a pot of money to help small councils that might find themselves in difficulty.

Time is short, so I will move on swiftly. The bill requires authorities to have regard to social and economic impacts in carrying out their functions. The committee heard that tools for measuring the social and human costs of flooding are not widely available and that, at the moment, no best practice guidance is being used. As Angela Constance made clear, anyone who has witnessed flooding knows of its high social and human cost. Press reports show that major flooding often forces families into temporary accommodation for a long time. Paragraph 59 of the committee report therefore recommends that the Government produce guidance on measuring social and human costs. That work needs to be undertaken urgently. Given that the initial flood risk assessments will be required in December 2011, guidance needs to be in place sufficiently in advance of that date to enable SEPA to fulfil its requirements under the bill.

On deemed planning permission, the committee addressed the issue in its inquiry and is glad that it has been allowed for in the bill. However, I am concerned that the consultation process is not properly laid out in the bill; indeed, the bill might well not be the best place for those provisions. That said, the bill should allow for ministerial guidance to be provided on the consultation process for measures that have deemed planning permission. Complaints have already been made about the planning process, and the bill has to ensure that people are treated as stakeholders and can engage with the process as early as possible. After all, bodies that carry out consultations must listen as well provide information on what they want to do.

In fact, that approach is even more important, given the fact that the lead organisation is not democratically elected. If a council does not consult adequately, the electorate has the last word at the ballot box; the same does not hold true for a Government-appointed organisation, which will naturally look to Government instead of constituents for a lead. Paragraph 177 makes the extremely important recommendation that consultation on proposed flood prevention schemes be “in line with best practice”.

I am confident that the committee’s recommendations can improve the bill and ensure that it is more than a paper exercise. I urge the Cabinet Secretary for Rural Affairs and the Environment to accept them in their entirety.

16:14

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** This has been a hugely impressive debate on a very serious issue that affects constituency MSPs, regional MSPs and all those who are concerned about the future of Scotland’s environment.

Roseanna Cunningham’s excellent speech provided the context for all our speeches. Although I support the bill and wish it considerable success, I will touch on concerns about a potential inconsistency at the heart of the bill with regard to funding.

The bill has at its heart an evidence-based and needs-based approach to flood alleviation and management, yet, by and large, the funding formula takes, as Roseanna Cunningham and Des McNulty indicated, a population-based approach. How that is managed between the Scottish Government and COSLA is crucial to the success of the bill. I hope that there may still be scope during the passage of the bill for further discussions with COSLA, in the context of the concordat, on whether there may be an innovative solution that could provide challenge funding for local authorities, which will find it increasingly difficult to match need with spending from their own capital budgets.

**Michael Russell:** I will clear up a misconception. Mr McNulty made a comment about the population basis of the formula, which the member has repeated. The agreement with COSLA is simple. The allocation of money was done on a threefold basis, and was agreed with COSLA, which negotiated the formula. The money was allocated on the basis of, first, schemes that were already known about and, secondly, schemes that were in the pipeline; only thirdly was it allocated on a population basis to do with actual flood risk.
The Belwin formula, under which money is brought forward, and the SRDP are not population based. The formula that is being used is not a crude, population-based formula.

Jeremy Purvis: I would have hoped that the minister might have made those remarks in his summing-up speech rather than taking time out of a member’s speech.

Let me get to the point, which is directly related to the position of Scottish Borders Council. I am aware of the points that the minister made in his intervention because he wrote to me in May last year about the three criteria. However, the criteria jar slightly with the evidence received by the Finance Committee. That committee received information in November—after its scrutiny of the financial memorandum—which highlighted 16 schemes, including the one in Broxburn, in Angela Constance’s constituency, with a total capital value of £282 million. Those schemes are protected within the three-year settlement.

The Government is aware that there are two schemes in the Scottish Borders Council area—in Selkirk and Galashiels—which have a cost of up to £20 million. The Government is also aware of the pressures in Jedburgh, which the cabinet secretary acknowledged in his opening speech. It would be impossible for an authority the size of Scottish Borders Council, with an overall annual budget of £200 million, to deliver such capital projects without central Government support; it is simply inconceivable that that would be possible.

That is the difficulty that communities will have when they see the good intentions of the bill, which cannot be achieved without the continuing momentum of investment from central Government to support local authorities on a needs basis. The premise of the bill is that better information will deliver better flood management, but seeing on a map that their area is likely to be flooded, as also happened in Broxburn, is a member’s concern.

I was the victim of the Presiding Officer’s guillotine this morning with regards to timing—I will not be a victim again now.

The Presiding Officer (Alex Fergusson): Indeed, you will not.

Alasdair Morgan (South of Scotland) (SNP): My instinct is very much to regret the increasing complication of everyday life that is implicit in the bill. I do not apologise for regretting the need for more planners, more plans and more specialists to tell us what we need to do—the bureaucracy to which Rhoda Grant referred. I suspect that that feeling is general, except among people whose offspring want to be planners. However, if we want to reflect the reality on the ground—which is often wet—doing nothing is not an option. Even without the European directive, the complexity of modern life combined with climate change means that such plans and specialists are a necessary part of society, despite my scepticism.

Murdo Fraser made an interesting point about removing silt from river beds, which is relevant in some places and worthy of further investigation.

Peter Peacock talked about the Rural Affairs and Environment Committee’s recommendation 10, which is on the governance of Scottish Water. The concern is that although sustainable flood management measures might be much more cost effective in the long term, the current system of regulating Scottish Water under the Water Industry Commission for Scotland will drive Scottish Water in the opposite direction. Many members know that, in previous years, Scottish Water’s excuse for the fact that its activities often ran on a tramline was that what it did and planned was governed by directives from the Water Industry Commission. The concern is that unless that relationship is altered—I am not sure of the mechanism for it—flood management might be influenced by the short-term costs on Scottish Water rather than by long-term considerations.

There is room for debate about how precise we should make the requirements on local authorities to implement plans. When he gave evidence, the
Minister for Environment said that no Government can give a guarantee against flooding. We accept that—perhaps only King Canute could do it—but any assurance that he can give us on the responsibility to maintain watercourses, for example, might help.

**Michael Russell:** When I gave evidence to the committee, the member expressed an interest in that issue, which I assure him we take seriously. I have considered the questions that he asked and the evidence that the committee heard. We are preparing to lodge an amendment that will require local authorities to provide a schedule of maintenance works. That will take care of the supervision of watercourses, because local authorities will know where they are and a duty to work on them will exist.

**Alasdair Morgan:** I am grateful for that—a listening Government is exactly what we need.

John Scott mentioned coastal flooding and tidal surges. The committee’s discussions tended to centre on planning and how to prevent further building in areas that are liable to those phenomena, but we did not discuss to a great extent how we protect existing coastal properties from them. Finding the solution to that is much more difficult and I noticed that John Scott offered no solution.

Issues have been raised in relation to recommendation 36, which expresses the committee’s concern

“that a lack of funding could seriously stifle … effective implementation”

of plans. An issue exists, but members need to consider it in context. The plans for which the funding will be needed will not be produced until December 2015. I am not sure how many of us will be in the Parliament at that time. Some members have overstated the immediacy of the problem.

A potential lack of specialist staff is an issue, and it might be accentuated by the attraction into the system of yet more consultancy firms, which are almost as bad as planners. When I was interrogating a witness about staff recruitment, the convener helpfully used her prerogative to intervene and asked:

“Could I characterise the position as keeping your fingers crossed?”

The civil servant’s response was:

“Yes and no, I suspect.”—[Official Report, Rural Affairs and Environment Committee, 19 November 2008; c 1188.]

That does not fill one with confidence and, of course, the bill is the result of an EU directive that—despite the reservations that I presume John Scott has—will eventually come into force throughout the EU and will therefore create Europe-wide demand for such specialists. Who knows whether other European countries—our 26 neighbours, which may shortly be joined by Iceland—will increase their supply of specialists? Depending on how our currency progresses in a downward direction, we may lose more people than we gain from that European flow.

I am not suggesting that the Government go down the route of Soviet-style workforce planning—that has never worked, and I do not suppose that it ever will. Nor would I ever say that we should tell our universities and colleges just how many hydrologists they should produce—perish the thought that they should do something that we want in return for all the funding they are given—but there is an issue that needs to be addressed, and if someone has in their family a young person with a degree in the appropriate science plus modern languages, they may be on to a good thing. I look forward to considering the bill at stage 2.

**16:26 Helen Eadie (Dunfermline East) (Lab):** I congratulate the Rural Affairs and Environment Committee on its work on stage 1 of the bill. This has been a really interesting debate. Every member in the chamber will have represented, be aware of and vividly recall constituents’ cases on the issue.

As a lifelong supporter and advocate of the benefits of the EU, I warmly welcome the fact that yet again—as Alasdair Morgan stated—we are dealing with legislation driven by the EU, which has placed an obligation on the Scottish Government to take forward its proposals. I note from the committee’s report that the EU floods directive must be implemented by November 2009; it seems that the bill is on track to achieve that.

Like Angela Constance, I note recommendation 4 of the committee’s report on its inquiry into flooding and flood management, which states that the Scottish Government should ensure

“that the social and human costs, as well as the economic costs, of flooding can be included in future assessments of the value of proposed flood management measures.”

I welcome the requirement that SEPA and responsible authorities have regard to social and economic impact in the exercise of flood risk management functions. I note from the committee’s stage 1 report that flood risk management plans must set objectives with regard to the cost and benefits of flood management measures, including benefits to human health, the economy and the environment, but there does not seem to be an agreed method
for incorporating social and human costs into flood risk management assessments, maps and plans.

I share others' concerns about funding issues. Recommendations 11 and 12 of the committee's report highlight the inability to foresee what measures will be identified in flood risk management plans. The bill does not include clear criteria for prioritising funding of future flood management or influence the three levels of funding that are set out in recommendation 12, although those issues may be addressed by the proposed amendments that the cabinet secretary mentioned in his opening speech. Ministers need to reflect on all the speeches that have been made today, especially those of my colleagues Peter Peacock and Des McNulty, because policy and legislation are meaningless unless they are matched by adequate financial resources.

I agree with Dr Ian McKee's point about softer measures such as agreeing wetlands—he was right to say that the water inevitably wins. We need only look at the constituency of my friend and colleague Marilyn Livingstone MSP, which neighbours mine, where the sea reclaimed so much land at East Wemyss, threatening homes and businesses, when I was the roads and transportation spokesperson for Fife Council, with a remit that included coastal erosion and flooding matters. Angela Constance cited the example of her constituent Mrs Ross; I want to ensure that my constituents are spared the sort of misery that Mrs Ross described so well.

I was pleased to read in the written evidence submitted to the committee by the Association of British Insurers that it is discussing with the Scottish Government a statement of principles for flood insurance.

Michael Russell: That statement was published—signed—on the day I gave evidence to the committee in December.

Helen Eadie: Thank you, minister. The ABI identified various measures that the Scottish Government needed to take, and it seems that the Government will take them. The ABI said clearly that the planning system should prevent “inappropriate development in flood risk areas”.

I welcome the ABI's approach. As the minister knows to his pain, I have tried ad nauseam, through 150 parliamentary questions and other interventions, to represent the concerns of my constituents in St David's Bay—the neighbouring town to where I live—who have been up in arms because the Government has signed off planning permission on a site that SEPA has designated as being at high risk of flooding. It beggars belief that a Government can put future generations of home owners in the path of certain harm.

I do not know whether it will be possible for me to lodge an amendment to the bill that would address the issue, but I will certainly lodge amendments if I can. I was especially pleased to read in the briefing from SPICe for today's debate that there might be an opening in that regard in relation to recommendation 18 in the committee's report, on flooding and flood management, which I will consider carefully.

When we legislate we have a duty to make people feel safe, but the current Government does not seem to be sufficiently sensitive to the issue—given that it accepted without question the reporter's view on the recent development proposal from Eadie Cairns. I hasten to add that I have no relationship whatever with that company. Perhaps the construction of the flats will be delayed, given the current economic situation. Every cloud has a silver lining.

I also agree with the ABI that there should be clear thinking on "plans for more accurate identification of flood risk" and on the responsibility of everyone involved, including developers and public agencies, to communicate to the public and insurers the risk of flooding from all sources, although I was surprised that the ABI thought that not enough work had been done in that regard.

16:32

Jim Hume (South of Scotland) (LD): I declare an interest in farming and my past directorships of NFU Scotland.

I have witnessed at first hand several floods. Living as I do in the verdant valley of the Yarrow, it is not uncommon to wake up and find that it looks more like the valley of the Nile. The worst flood that I remember happened in October 1977, when Selkirk lost its bridge and there was much damage to property and loss of livestock but no human loss, which was lucky. Last year I watched as the family dog disappeared into a 12ft-deep torrent of water rushing by the house, which had been a lazy burn of 6in only 10 minutes earlier. It was lucky that the dog swam out.

Liberal Democrats acknowledge that flooding is a tangible danger in the south of Scotland and many other parts of the country and welcome the renewed focus on flood management. We are committed to the bill, as Liam McArthur made clear, which presents an opportunity to introduce a more sustainable, integrated approach to flood management. As Liam McArthur said, the process was begun by Ross Finnie in the previous session of the Parliament. We are glad that there has been progress.
Almost 100,000 Scottish homes and 7,000 Scottish businesses are vulnerable to inland and coastal flooding. It is estimated that the annual average cost of damage from flooding is about £20 million, which could rise by 115 per cent by 2080. The economic cost should be the force behind the change that is needed to achieve a more sustainable approach to flooding.

Sustainable flood management offers a long-term solution, but there will still be a place for the hard defences that were mentioned by many members, including Roseanna Cunningham, the convener of the Rural Affairs and Environment Committee. Hard engineering defences should be considered alongside softer engineering options. Many villages and towns in Scotland, including those in the south, are located on flood plains and are vulnerable to flooding. Soft engineering can reduce the need to build ever higher flood defences to protect such vulnerable communities.

The adoption of sustainable measures to tackle flooding will require a strategic approach in which consideration is given to the catchment as a whole, including water environment and land use interests. Responsibilities will have to be shared, not only between authorities but between rural communities and other groups.

Hawick has long suffered from flooding. Murdo Fraser mentioned gravel, which is an issue there: water does not flow under one of the two arches of the main bridge because the river is so full of gravel.

Towards the end of last year, Tavish Scott and I viewed the devastating effects of flooding in the Bowmont and Kale valleys near Kelso—as did Mr Russell, I believe. We saw the destruction that was caused to roads, bridges, homes and businessness. Further to the south-west, flooding disrupted the white sands area of Dumfries last week, as it seems to do regularly, and more is expected again tonight. The River Annan also caused problems for people when it burst its banks recently.

John Scott mentioned wood planting to alleviate floods. That comes at great expense—my farm has been involved in such an initiative—and we must not underestimate the power of water to move even trees and fences.

I am concerned that flood risk management plans will not have to be in place until 2015. Jeremy Purvis mentioned that local authorities are uncertain what their rights and responsibilities will be under the bill. The cabinet secretary and Liam McArthur also mentioned that. SEPA would inherit responsibility for Scotland’s national flood management under the bill, but its role may not be fully implemented until 2015. In evidence to the committee, Scottish Government officials said that they have not finalised any interim arrangements, which has led some local authorities to question their flood management remit in advance of SEPA taking full responsibility. I echo the concerns that Jeremy Purvis, Sarah Boyack and Liam McArthur expressed about local authority funding.

Richard Lochhead mentioned that the bill will require SEPA and local authorities to assess whether natural features such as flood plains, woodlands or wetlands can be incorporated into flood risk management, but once the assessment has been carried out there will be no obligation on the authorities to incorporate natural defences into their plans and the bill does not presume that such defences should be preferred to other methods. Roseanna Cunningham, the committee’s convener, mentioned that we need a cultural shift in favour of considering natural flood management techniques, as did Sarah Boyack.

Dave Thompson mentioned the Scottish rural development programme. I will not go on about it, but it is an issue—it is a pot that seems to be being dragged in all directions.

Alasdair Morgan and Liam McArthur mentioned skills. There may be opportunities, but it looks as though we have a skills gap that will have to be addressed.

The introduction of a Flood Risk Management (Scotland) Bill is welcome, but some matters still need clarification. I hope that, once the bill has progressed through stages 2 and 3, the final outcome will be a piece of legislation that builds on the good work that Ross Finnie did, so that truly sustainable flood management strategies that reduce the impact of flooding on Scotland’s economy, species and habitats can be implemented with the proper finance behind them.

16:38

Nanette Milne (North East Scotland) (Con): I can sum up the mood of the Parliament no better than by quoting Scottish Environment LINK, which “welcomes the Rural Affairs and Environment Committee’s Stage 1 Report and its recommendations to strengthen the provisions of the Bill in a number of key areas. The primary legislation must be strong and robust enough to underpin effective implementation of flood risk management plans. The benefits of getting this right and reducing the risk of flooding in a sustainable way will not only help to improve and restore the status of the water environment, but will also reduce the economic and social costs of flooding.”

I am sure that none of us can disagree with that.

There is no doubt that flooding and flood prevention have moved up the political agenda as we face up to the impact of climate change. Media coverage of several recent episodes of severe flooding north and south of the border has let us see something of the devastation that it causes
not only physically but emotionally: people who experience it remain ever fearful of a recurrence, as Angela Constance highlighted by referring to her constituents’ experiences in West Lothian.

SEPA’s flood risk map, which was published in 2007, indicates that nearly 100,000 properties in Scotland are at risk of flooding. It is predicted that floods that are currently considered extreme are likely to become more common, as are water surges that threaten coastal defences and cause surface flooding that is likely to overwhelm our urban drainage systems. There is an urgent need for long-term planning with an emphasis on sustainable flood management, which makes the bill welcome, if long awaited.

By establishing a framework for assessing flood risk, mapping flood hazard and risk, and developing risk management plans, the bill aims to reduce the adverse consequences of flooding. It also transposes the EU floods directive into Scots law in anticipation of the deadline for doing so, which is November this year. Our party fully supports the bill and has given a commitment to work constructively with the Government to take it forward at speed. We are pleased with its provisions, as John Scott said, but they can and must be improved.

We are happy to support the recommendations that were unanimously agreed by the Rural Affairs and Environment Committee in its stage 1 report. They take due cognisance of what the many expert witnesses said in evidence during the committee’s painstaking scrutiny of the bill, and as my party’s environment spokesman—although I am not a member of the committee—I congratulate the committee on a thorough piece of work. I agree that its pre-legislative inquiry was impressive, and I am sure that it influenced the bill significantly.

There is a clear need to update and simplify the plethora of existing flood-related legislation, much of which, as the Government’s policy memorandum states, “is outdated and does not reflect the way that government and local services are now delivered in Scotland.”

The main provisions in the bill have been ably discussed by others this afternoon so, rather than repeat what they said, I will simply endorse some concerns that were expressed to the committee. Like others, I am pleased that the Government has responded positively to the committee’s recommendation by agreeing to amend the long title of the bill to include a reference to sustainability.

Funding is clearly a major issue. Local authorities and others are worried that funding streams for the lead and responsible authorities are not currently in alignment. As Dave Thompson stressed, NFU Scotland is deeply concerned about the possibility that money might be diverted from the Scottish rural development programme to flood management or to compensate farmers who lose valuable agricultural land as a consequence of natural flood management. The NFU believes that it is essential that the Government provides either an alternative source of funding or an increase in SRDP moneys that is commensurate with flood management requirements.

Alasdair Morgan highlighted the fears of SEPA and others that a lack of capacity in the recruitment and training of hydrologists and other specialists could seriously endanger the effective implementation of the bill. There is also concern that its implementation might be affected by the absence of a binding duty on responsible authorities to implement flood risk management plans and by the lack of a targeted funding stream for flood risk management.

Another concern is that the current prioritisation by Scottish Water of more immediate short-term cost options in assessing what form of flood prevention work to undertake could result in the benefits of more costly, but more sustainable, natural flood management techniques being overlooked. The cabinet secretary’s commitment to look at that issue is welcome.

Finally, Scottish Water’s worry that surface water management planning does not feature in the bill must also be considered as part of a co-ordinated approach to flood risk management. However, I appreciate that such issues might not come within the remit of the bill.

I have merely skimmed over some of the issues that the committee considered in depth. Clearly, as the committee recommended in its stage 1 report, some provisions need to be improved before stage 3, and the cabinet secretary’s indication that he will address some of those issues at stage 2 is welcome.

The human cost of flooding can be devastating because of the damage it does not only to homes and possessions but to emotional wellbeing, so anything that the Government can do to prevent flooding and to mitigate its effects is to be welcomed. I am pleased and relieved that we now have legislation on the table and, along with my colleagues, I look forward to supporting the general principles of the bill at decision time.

16:44

Elaine Murray (Dumfries) (Lab): As Angela Constance and others have said, there can be few more distressing and frightening experiences than the serious flooding of one’s home. Unfortunately, an increasing number of residents are suffering
that experience as a result of climate change, and the trend is likely to continue.

Murdo Fraser referred to the frustration experienced by members who have tried to represent constituents who have suffered as a result of flooding but found that none of the agencies involved seems to have responsibility for solving the problem. In Eaglesfield, Annan and Langholm in my constituency, sewers have been unable to cope with pluvial flooding, so constituents have experienced a particularly unpleasant form of flooding.

As others have mentioned, the Whitesands in Dumfries floods fairly regularly when the freshwater river, swollen by heavy rainfall, meets the tidal surge from the Solway—indeed, that happened earlier this afternoon, although it was not one of the worst floods in the area. It is extremely frustrating that action has not been taken to solve the problem and that opportunities have not been taken to secure funding to solve it, even though it has been a problem for decades, if not centuries. I hope that the Government will give us an indication of interim arrangements that can be put in place, because I do not want the necessary measures to be put off again until 2015, when the flood risk management plans come into effect.

We welcome the bill, which seeks to introduce responsibility for assessing flood risk and planning for its avoidance, but believe that it would benefit from some strengthening. We welcome the fact that the Government has said that it is willing to take action in some areas but, as Rhoda Grant and Sarah Boyack stressed, we want to ensure, in particular, that plans are implemented.

Roseanna Cunningham, Sarah Boyack and Peter Peacock mentioned the need to take a long-term view of priorities for investment. We would like SEPA to be tasked with looking forward over 24-year periods and planning what programmes of events need to be developed nationally. As well as helping to inform local authorities, that work could be used by ministers during spending reviews to establish how much money is needed for flood prevention.

As others have said, we need to ensure that flood risk management plans are not just drawn up but implemented. The Government has indicated that it will make some changes to the bill as regards local authorities’ responsibilities, but we might need to consider placing duties on SEPA and on ministers to ensure that the objectives of flood risk management plans are met. I am not saying that we should commit either SEPA or ministers to funding every flood prevention plan that is prepared in Scotland, but we must ensure that action is taken following the production of plans.

All committee members are disappointed that our recommendation on funding seems not to be regarded favourably by ministers. In its report on flooding of May last year, the committee was highly critical of the Government’s approach, and it has repeated its criticism in its stage 1 report on the bill. Members of all parties have raised the same issue. Jeremy Purvis, Mary Scanlon—whose intervention Rhoda Grant agreed with—Des McNulty and Helen Eadie are just a few of the members who have concerns about funding. Funding is central to whether the bill will work.

It is a matter of not just cash but other resources, such as human resources, as Roseanna Cunningham and Liam McArthur said. The bill’s objectives could also be thwarted by a lack of hydrologists, whose expertise will be necessary in the production of the proposed plans. We know that the planning process in Scotland has been affected by the shortage of local authority planners, which has sometimes thwarted the intentions of legislation that the Parliament has passed. Let us learn from the problems that we have experienced as a result of a lack of appropriate professionals in local authorities, and let us do what we can to ensure that the right people with the right skills are in our authorities to implement the bill’s provisions.

Several members said that they are disappointed that no progress has been made on assessment of the human and economic costs of flooding. We appreciate that those are difficult matters to assess, but authorities will need guidance from the Scottish Government so that they can factor such considerations into their assessments. They need to receive such guidance in sufficient time to allow them to take account of it when they draw up their plans.

There is also a concern about the need to strengthen the bill’s provisions to ensure that natural flood prevention methods are taken into account. Roseanna Cunningham discussed a presumption in favour of natural solutions, but there were concerns that that might be taken to mean that no one could use hard engineering solutions, even when it was appropriate to do so. Although we appreciate that hard engineering solutions are sometimes appropriate, we want there to be a cultural shift, as Peter Peacock and Des McNulty said, so that councils consider the use of longer-term natural solutions.

I welcome the cabinet secretary’s announcement that he will take on board the suggestion of some environmental non-governmental organisations that the long title should be altered to include “sustainable”.

Compensation was mentioned, and Murdo Fraser spoke about landowners’ concerns that they might have to pay large amounts of money
for flood prevention work. The committee agreed that private landowners should not be required to pay for flood management on their land when the cost has been determined by responsible authorities. Local authorities have sometimes however to go on to land in order to repair field drains or water courses that have become blocked because someone has not bothered to look after them. We feel that the local authority should be empowered to make a claim for the cost to the public purse of undertaking such work.

As John Scott said, the committee felt that the duty on local authorities to cleanse and maintain watercourses should be maintained, but it should perhaps be tempered by a section that says that that should not be in conflict with their flood prevention duties.

There are several issues to do with planning consent. Helen Eadie illustrated a problem with the current planning system, and there may be opportunities to address planning issues in areas that are likely to be flooded. We are happy that the cabinet secretary indicated that the Government will take on board issues that the Association of British Insurers raised about the maintenance of sustainable urban drainage systems, and we look forward to the Government’s amendment on sewerage flooding at stage 2.

Generally, we are happy with the bill, but we look forward to the amendments. I wish the minister success in his acting debut, and I wonder what part he is playing: is he in “The Tempest”, or is he the villain in “Babes in the Wood”?

The Presiding Officer: Let us find out.

16:52

The Minister for Environment (Michael Russell): I will not talk about acting this evening; I will devote myself to the subject at hand. However, I understand that some tickets are still available for the performance at the Tall Ship in Glasgow at 8 o’clock tonight.

This has been a positive and important debate, but I start with one particular contribution that summed up the real issue. It is not the minutiae of legislation or the speed of the planning process, although a lot of work needs to be done on that. It is not even the details of the COSLA-agreed formula on funding, which I will come to. The issue is the suffering and distress of individuals, and sometimes the loss of life. Often property can be destroyed, which also causes distress. That was brought home to me last year, when I visited Angela Constance’s constituents in Broxburn after launching the Scottish Flood Forum. I shall come to that valuable organisation in a moment.

The debate, the bill and all our work is about people. We must keep our focus on those people and how they are affected by flooding. Anyone who has visited those who are affected by flooding knows that one theme is constant. Those who have been flooded out of their homes, sometimes for months or years on end, always say that when the rain starts, they begin to feel scared again. We must reinforce a feeling of reassurance that the tasks that we undertake will be effective.

There will always be flooding. Some properties will always be affected by flooding. It cannot be eliminated, but there are actions that we can take to reduce the risk of flooding, which is precisely what we will do.

The constant theme of the debate has been that we have a good bill here. The environment organisations say that the bill is good. The political parties say that the bill is good. Our job is to work together to make that good bill substantially better. We are trying to do so and I am pleased that we have been able to move forward on a range of issues today, just as we were able to move forward after the Rural Affairs and Environment Committee’s report on flooding. We accepted a large number of that report’s recommendations and integrated them into our thinking on the bill.

However, genuine differences remain. I start with finance. I have heard the issue discussed today in terms that I do not recognise. The formula is entirely clear. It is not a formula that has been imposed by the Government. It was negotiated with COSLA and has been agreed with COSLA. The formula is in three parts. First, existing flood schemes that were under way when the formula came into effect at the start of the last financial year were honoured. Secondly, schemes that had been published—that is schemes that were in the process of going through—were honoured. Thirdly, the rest of the money was divided, not on a crude population basis, but on the basis of properties at risk according to the SEPA flood map. That is the formula that operates now and local authorities, through COSLA, acceded to it; indeed, they suggested it.

The formula is not set in stone, however, and, in any new funding round it is possible that it will be developed or changed. It is the outcomes that are more important than anything else. Once we have better information and are more confident about what measures to use to address flooding problems, the funding pattern might well be able to change.

It is important to recognise that the current allocation of money was made on the basis of what local authorities asked for and had in place. I must say to Mr Purvis, with the greatest respect—and not falling out with him politically—that there was no Selkirk scheme. No authority had brought
forward or published a Selkirk scheme. It has been admitted by Dr Murray—and I am grateful to her—that there was no Dumfries scheme. One had never been published. There was no agreed scheme, and the local authority had not come forward with one. Local authorities must come forward with their schemes and we will consider them.

Sarah Boyack: The scheme that I am concerned about, in Edinburgh, was under the wire in that respect. I ask the minister to investigate the matter and to report back to the city council. I would be grateful to have a meeting with the minister, if that would help. What he is trying to say would be helpful to us in Edinburgh.

Michael Russell: I would be happy to have a meeting about that, and I have repeatedly said that we are open to discussion about existing schemes that have changed in their nature. I am not making any guarantees, but I am open to discussion. It is important that we understand what the financial provisions are and how they operate. They are not crude provisions made solely on the basis of population; they are fairly sophisticated provisions made in negotiation with COSLA. I am happy to continue discussing the matter, but those are the facts.

Let me say a word or two about what we are trying to do. A great deal of work has been done so far. The Rural Affairs and Environment Committee produced a very good report and we are in active participation, debate and co-operation with the committee. At stage 2, we will continue that process. As the bill progresses, the Government will continue, I hope, to foster that feeling of consensus about what we are trying to achieve, and that will help us, along with the committee, to make a good bill better still.

We also wish to focus on some things that, although not central to the bill, are important. The support that the Scottish Government is giving to the Scottish Flood Forum is very important. The National Flood Forum has been of enormous benefit to people south of the border and the Scottish Flood Forum, funded by the Scottish Government, is now firmly established and is providing support to communities and individuals who are threatened by flooding. Those members who have constituents with such problems should talk to the forum.

Some further issues are germane. One is that of insurance, which was raised by Helen Eadie. The agreement with the Association of British Insurers is now in place. After 150 parliamentary questions from and three meetings with Helen Eadie—in one of them, I think that we were talking about different cases, which would explain a great deal—I have not been able to satisfy Helen Eadie. [Laughter.] It does happen. In those circumstances, I would welcome it if Helen Eadie lodged an amendment, so that some higher court can eventually decide on the issue that she has raised, which is important. If we do not build on flood plains, we severely limit certain types of development—and we would have to evacuate half the central belt. If that is the effect of the amendment that Helen Eadie wishes to lodge, I will allow the argument to speak for itself.

The issue of emergency response was raised in the debate. That does not come under the bill, but the provisions for flood mapping and the transposition of the European directive will help to inform the whole process of emergency response. There will be a sharper, more effective emergency response on flooding because we will be able to deal with it more accurately with respect to where it takes place.

I am conscious of the shortage of time, Presiding Officer, but let me deal with one or two other issues. We are having serious discussions with Scottish Water about how its plans dovetail with the bill. It is one of the bodies that is responsible for delivery. I am sure that its methodology and actions will develop as a result of the bill.

The central concern of some members was about a lack of skills. Alasdair Morgan’s and Roseanna Cunningham’s suggestion that all young people should train as hydrologists was an interesting one. I cannot manufacture hydrologists out of nowhere. I do not deny that there is a shortage of hydrologists, but the bill will require not only the skills of hydrology but those of cartography, engineering and, importantly, environmentalism. Not all the solutions under the bill lie in the realm of hydrology. I encourage those who are keen to work in those other areas to work with us on the bill.

I commend the bill to Parliament and I look forward to stage 2, when everybody will work to make this good bill better.
The next item of business is consideration of motion S3M-2814, in the name of John Swinney, on the Flood Risk Management (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Flood Risk Management (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.—[Michael Russell.]

The Presiding Officer: The question on the motion will be put at decision time.
Dear John,

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – RESPONSE TO STAGE 1 REPORT

I should like to take this opportunity to thank the Committee for its scrutiny of the Flood Risk Management (Scotland) Bill, and for its support for the general principles, of the Bill.

I am pleased to attach the Scottish Government’s response to this report, which I am confident will go a long way to meeting the Committee’s remaining concerns.

Stage 2 amendments will be lodged by the 25th February, and a summary of those amendments that specifically address points raised in Committee’s stage 1 report will be provided at that time.

February 2009

Roseanna Cunningham MSP
Minister For Environment
Pre-legislative scrutiny

**Recommendation 1**: The Committee recommends to the Parliament the advantages of pre-legislative scrutiny where time permits, both as a method of influencing Scottish Government policy and as an aid to effective Stage 1 scrutiny. [Paragraph 23]

The well considered conclusions of the RAE Committee’s pre legislative scrutiny of the Bill were timely and helpful. The concise written and oral submissions to the Committee provided an important source of information for both the Committee and the Scottish Government. As highlighted in the RAE Committee report, a number of recommendations made by the RAE Committee in its inquiry report are reflected in the Bill. The Scottish Government believe that this reflects the attention given to the Committee findings and the strength of the Scottish Government’s own consultation exercises during the preparation of the Bill.

**Scottish Government amendments**

**Recommendation 2**: The Committee asks the Scottish Government to note that it is always helpful for the lead Committee to receive advance notice of proposed Government amendments to legislation before oral evidence commences during Stage 1 scrutiny and asks the Scottish Ministers to consider making this standard practice whenever possible. [Paragraph 31]

The Scottish Government agrees that Committees and Parliament should be informed of proposed Government amendments as early as possible during stage 1. As the Committee recognises, it might not always be possible to do this in advance of oral evidence sessions, but the Scottish Government certainly understand that it would be helpful to the Committee’s consideration of any Bill.

The Scottish Government would like to thank the Committee for taking account of information provided by the Scottish Government when formulating their Stage 1 report.

**Part 1: General duty, practice and guidance**

**Recommendation 3**: The Committee agrees that the Bill should be amended to strengthen the link between the duty to reduce flood risk and the
implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans [Paragraph 39].

During the preparation of the Bill and through the course of its passage through stage 1, the Scottish Government has continued to liaise closely with stakeholders and relevant public bodies. Concerns were raised by various parties that the duty to act to reduce overall flood risk (Section 1) should be stronger and more closely linked to the objectives identified in flood risk management plans. The Scottish Government therefore supports this recommendation and is considering an amendment to address this point.

Part 2: Principal expressions

Responsible authorities

Recommendation 4: The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers’ powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these organisations directions or guidance, must be undertaken in accordance with the general duty to reduce overall flood risk. [Paragraph 44]

The Scottish Government supports this recommendation and consideration is being given to an amendment to address this point.

Recommendation 5: In order to allow this Committee (or its successor) to influence the selection of responsible authorities named in subordinate legislation, the Committee recommends that it be consulted on Scottish Government proposals to lay any order designating responsible authorities under section 1 before the instrument is laid. [Paragraph 50]

The Scottish Government is committed to undertaking a thorough consultation exercise before making a designation order identifying additional responsible authorities, which could include informing the Committee of the Government’s proposals and intentions.

Social and economic impacts of exercising functions

Recommendation 6: The Committee recommends that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs, recognising that any such guidance should be consistent with the advice set out in the HM Treasury Green Book. Such guidance should be available sufficiently far in advance of the deadline for SEPA’s production of initial flood risk assessments (December 2011) to allow SEPA to take it fully into account. The guidance will then also inform the work of SEPA and responsible authorities in the production of flood risk management plans. [Paragraph 59]
The Scottish Government has prepared an implementation plan for all work required to support the Bill, and guidance on assessing human and social costs of flooding will be an important part of this work. All work in this area will be undertaken in close partnership with SEPA, local authorities, Scottish Water and others, and will be delivered to meet key deadlines set out in the Bill. To support this and other implementation work, the Scottish Government has set up advisory groups with representation from parties involved in implementing the Bill and stakeholders.

*Roles and responsibilities of lead and responsible authorities*

**Recommendation 7:** The Committee re-iterates its inquiry report recommendation that there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill at the earliest possible opportunity. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA. [Paragraph 69]

The Scottish Government strongly supports the principle that there should be no conflicts between SEPA's existing responsibilities and its new role under the Bill. In fulfilling its responsibilities as an environmental protection agency, SEPA is already required to balance environmental protection with public protection and the promotion of sustainable development.

The Scottish Government has discussed this issue extensively with SEPA and local authorities, and we have not identified any examples of where SEPA have hindered important flood risk management work in pursuit of environmental issues. Similarly, we have not identified any situations where SEPA has promoted environmental protection over the needs of protecting the public from flooding.

Additional information on this matter, including case studies, is set out in a supporting supplementary note (Annex C): *Supplementary evidence- RAE committee stage 1 report: recommendation 7.*

The Scottish Government would welcome any further evidence from the Committee on this matter, including, for instance, examples of where a conflict between SEPA's responsibilities has hindered important action to manage flood risk.

The Management Statement between SEPA and the Scottish Government forms the broad framework within which SEPA operates. It sets out the rules and guidelines relevant to the exercise of SEPA's functions, duties and powers. The Statement is reviewed regularly and, given the Committee's concerns in this area, the Scottish Government will commit to ensuring that SEPA's new responsibilities for flood risk management, including any
implications for SEPA’s existing responsibilities, will be taken into account in the next review. In the interim period, consideration will be given to issuing Ministerial guidance to clarify any issues around how SEPA exercises existing functions alongside new functions set out in the Bill.

**Recommendation 8:** The Committee strongly recommends that the Scottish Government takes steps to align the timing of funding streams for the lead and responsible authorities as early as possible in the Bill’s implementation. [Paragraph 76]

The Scottish Government has prepared an implementation plan for all work required to support the Bill, and working to ensure that funding streams are appropriately aligned or coordinated will be an important part of this work. All work in this area will be undertaken in close partnership with SEPA, local authorities, Scottish Water and others, and will be delivered to meet key deadlines set out in the Bill. To support this and other implementation work, the Scottish Government has set up advisory groups with representation from parties involved in implementing the Bill and stakeholders.

*Sustainable flood risk management*

**Recommendation 9:** The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.

The Committee considers that another means of ensuring the promotion of sustainable flood risk management is to strengthen the link between the general duty in section 1 to reduce flood risk in a manner that promotes sustainable flood risk management and the implementation of the flood risk management planning process in Part 3. As highlighted above, Stage 2 is likely to afford further opportunity for consideration of this important issue. [Paragraphs 81 and 82]

The Scottish Government supports the need for more prominence to be given to sustainability and intend to lodge amendments at stage 2 to address this issue, including amending the long-title of the Bill to include reference to sustainability.

To deal with situations where different measures could provide the same flooding benefits, consideration is being given to a stage 2 amendment that would ensure that the most sustainable option is adopted.

The Bill expressly allows Scottish Ministers to issue guidance on any matter pertaining to the Bill, and the Scottish Government fully intend to issue guidance on sustainable flood risk management.

**Recommendation 10:** The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when assessing what form of work to undertake. This is likely to be
incompatible with Scottish Water’s duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing. [Paragraph 92]

The Scottish Government supports the principle that Scottish Water must be in a position to meet its responsibilities under the Bill and to do so through short to long term planning. Scottish Water is already under a duty to promote sustainable development and the Government has given it extensive guidance on how to approach that duty. The Government keeps this guidance under review.

Scottish Water's investment programmes are drawn up in extensive discussion with the stakeholders, including SEPA, and meet a range of environmental drivers and improvements in the quality of service. However, the Government is clear that the new duties imposed on Scottish Water by the Bill, which include acting with a view to reducing flood risk, and acting to do so in the way best calculated to contribute to sustainable development, will ensure that Scottish Water can fulfil its obligation under the Bill. Furthermore, Ministers are responsible for setting Scottish Water’s objectives, and in doing so, Ministers can provide a clear direction as to what investments are expected. The Financial regulation of Scottish Water is operated independently by the Water Industry commission who, through its periodic determination of charges, must ensure that Scottish Water is funded to deliver the Ministerial objectives. The Government see no need to change these arrangements.

**Recommendation 11:** The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools place sufficient emphasis on these benefits and should therefore be adopted by local authorities. [Paragraph 97]

The Scottish Government has prepared an implementation plan for all work required to support the Bill, and developing guidance on cost-benefit analysis is an important part of this work. All work in this area will be undertaken in close partnership with SEPA, local authorities, Scottish Water and others, and will be delivered to meet key deadlines set out in the Bill. To support this and other implementation work, the Scottish Government has set up advisory groups with representation from parties involved in implementing the Bill and stakeholders. The development of methods to enable environmental benefits to be measured alongside economic and social considerations will be an
important part of this work, and the intention will be to draw on the most recent developments in this area.

**Part 3: The flood risk management planning process**

**Long term planning**

**Recommendation 12:** The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water’s planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.

The Committee recommends that this strategic assessment should also provide an outline of longer-term priorities for 12 and 24 year periods based on SEPA’s projections of future flood risk, and that it should be laid before the Parliament at least once during each parliamentary session. Given the long-term nature of such an undertaking, to ensure that it is adhered to by successive administrations this should be a legislative requirement. [Paragraphs 107 and 108]

The Scottish Government strongly supports the principle that flood risk management planning must include a long-term, strategic vision for Scotland.

The Bill already requires SEPA to produce district level flood risk management plans that will set the national and strategic framework for Scotland. The Bill does not specify how far ahead SEPA should look when preparing a district flood risk management plan. The intention is for the plan to look as far ahead as necessary to accommodate a long-term strategy, which could be 25 to 50+ years. Once long-term priorities are identified, SEPA, in collaboration with local authorities and Scottish Water, must identify which actions can be taken forward in a 6 year cycle, or a combination of 6 year cycles. The Scottish Government therefore do not consider that an amendment is required to address this recommendation.

Ministers would, of course, have regard to the district and local flood risk management plans when considering funding allocations to responsible authorities. However, the Scottish Government believe it would be inappropriate for Parliament to place a statutory duty on Ministers to have regard to such plans, as it would risk elevating them above any of the other responsible authority functions that Ministers need to take into consideration when determining spending priorities over a 3 year cycle. It is for Ministers, in co-operation with the responsible authorities, to allocate funding across a wide range of Governmental in order to meet agreed national and local priorities.
**Recommendation 13:** The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process. [Paragraph 115]

The Scottish Government can assure the Committee that SEPA must have regard to views of those represented on district and sub-district advisory groups, which will include local authorities, when preparing assessments under section 16.

Like all other aspects of the Bill, our intention is to work closely and collaboratively with SEPA, local authorities, Scottish Water and others during the implementation of the Bill, and the Scottish Government has established an implementation strategy and advisory groups to support this work. One of these advisory groups is specifically focusing on natural flood risk management. These groups will provide a forum for discussing and agreeing technical aspects of how Section 16 will be undertaken. A key consideration will be the provision of information at the right level to support subsequent steps in the planning process.

The Scottish Government can also assure that Committee that the assessment under section 16, combined with the establishment of objectives and measures in flood risk management plans, will provide a valuable guide to where local authorities will need to undertake more detailed assessments of natural flood management options.

**Recommendation 14:** In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to “natural processes” as well as “natural features”. [Paragraph 116]

The Scottish Government has worked very closely with stakeholders as regards the changes sought by them to section 16. Careful consideration will be given to the wording of amendments and whether or not it is appropriate to refer to terms such as "natural processes". The Scottish Government will aim to address concerns that it should be clearer that what seem regarded as “processes” are included.

**Recommendation 15:** The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a
contribution but are not proceeded with, authorities must set out the reasons for that decision. [Paragraph 117]

The Scottish Government supports the principle that natural flood risk management measures should be considered, and selected, where they will contribute to managing flood risk. Although the Scottish Government believes that the Bill supports this principle, we also recognise the points raised in relation to a need for a cultural shift towards considering a broad range of flood management measures.

To deal with situations where different measures could provide the same flooding benefits, consideration is being given to an amendment that would ensure that the most sustainable option is adopted. The purpose of this amendment would be to clarify that where there is a choice between, for instance, a natural flood management option and a more traditional engineering option, the most cost effective option that provides for the greatest long term benefits, including environmental benefits, should be adopted.

Local flood risk management plans and local development plans

Recommendation 16: The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use other upcoming legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation “that a full flood risk assessment should be a prerequisite for the granting of planning permission for individual development areas at risk of flooding”. [Paragraph 128]

Planning legislation (The Town and Country Planning (Development Planning) (Scotland) Regulations 2008) requires planning authorities to have regard to a list of plans and strategies, for example river basin management plans and regional transport strategies, during the preparation of their local development plans and strategic development plans. It is the intention of the Scottish Government to bring forward a proposal to add flood risk management plans to this list once the Bill is enacted. This approach will keep the requirement to consider other plans and strategies together in the appropriate set of Regulations where planning authorities will expect to find them.

Regulations also identify SEPA as a "key agency" for the purposes of development planning. As such, planning legislation places a duty on planning authorities to engage with SEPA at key points in the plan preparation process and on SEPA to co-operate with the authority.

Where flood risk is an issue, planning authorities already have a statutory duty to consult SEPA on planning applications. In commenting on an application, SEPA may advise that an assessment of flood risk should be prepared and the planning authority has the power to require applicants to submit such an
assessment. The authority has also to consider SEPA’s comments made in response to the assessment before determining the application. This approach allows the planning authority and SEPA to exercise judgement on the risk posed to the proposal before requiring the applicant to pay for an expensive consultant’s study. The need for a flood risk assessment is therefore something which the planning authorities are best placed to decide.

SEPA’s indicative flood risk maps provide a valuable source of information for planning authorities when they are considering where an assessment of flood risk is necessary. The flood risk/hazard maps prepared under the Bill will provide SEPA and planning authorities with better information on flooding, including information on different flood scenarios and information on different sources of flooding.

Surface water management

Recommendation 17: The Committee recommends that the Bill should be amended to require the production of surface water management plans. [Paragraph 136]

The Scottish Government agrees that integrated surface water management is vital in flood risk management. The Bill requires that flood risk management plans prepared by SEPA and local authorities include coordinated sets of actions to manage surface water drainage. Surface water management will therefore be an integral part of the flood risk management plans prepared under the Bill.

The Scottish Government is however considering an amendment to clarify that flood risk management plans will include actions to deal with surface water flooding.

Recommendation 18: The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2. [Paragraph 140]

The Scottish Government agrees that responsibilities for maintaining sustainable urban drainage systems (SUDS) are an important issue. However, the issue of maintenance goes much wider than flood risk management.

SUDS cover a range of techniques that are used to mitigate the effects of run-off and pollution. Common approaches focus on the following:

- Good housekeeping: likelihood of pollutants reaching the environment can be reduced by improving pollution control.
- **Source controls:** these approaches promote the control of run-off at, or adjacent, to the source. They include the use of permeable or porous surfaces.

- **Site controls:** these approaches focus on actions to deal with run-off from upstream locations, and include detention basins and small ponds.

- **Regional control:** these include ponds and wetlands and other large features that act to collect run-off from upstream areas.

Appropriately designed, constructed and maintained SUDS contribute to various aspect of surface water management, including:

- improving water quality by removing pollutants from diffuse sources;

- reducing peak flows to watercourses or sewers and potentially reducing flooding;

- improving amenity through the provision of public open space;

- improving wildlife habitat and biodiversity.

The Scottish Government expects SUDS to feature in all substantial developments. Suitable SUDS should be designed and agreed in the planning process. As part of its statutory duty for public sewerage, Scottish Water must adopt and maintain SUDS in public places, provided that they are designed and constructed to suitable standards. Where the SUDS are planned for purposes additional to drainage, the present arrangements allow for a flexible approach in which other bodies such as local authorities may adopt SUDS or share the costs with Scottish Water. For instance, where the need for flood protection above 1 in 30 design standard is identified, there is scope for agreements on funding, design, construction, and maintenance of SUDS, or flood routing to be reached.

For SUDS in private curtilage, responsibility falls on property owners, although local authorities may adopt these SUDS if they believe it would be in their best interest to do so. This could include agreeing a commuted sum from the developer(s) towards the cost of maintenance before granting planning permission.

The current approach relies on partnership working between all parties, and the development planning system provides a framework for early discussions, negotiations and agreements to be reached. It is envisaged that flood risk management planning will provide a complementary framework in which agreements on flooding-related maintenance and design matters can be discussed and agreed.

The Scottish Government believes that any legislative action to alter the current arrangements must be considered within the wider context of
development planning and protection of the water environment. As these issues are outside the scope of the Bill, the Scottish Government does not intend to take forward any amendments in this area. However, to ensure that all parties fully understand their respective roles in the use of SUDS, the Scottish Government is committed to preparing a guidance document on the role of SUDS in flood risk management. This guidance would include a summary of current responsibilities, the legal instruments available to all parties and an overview of the key steps from preliminary planning discussions through to agreeing and implementing flood risk management plans.

**Recommendation 19:** The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government’s Stage 1 response before Stage 2 commences. [Paragraph 143]

The Scottish Government can clarify its intention to take forward the following amendments in this area.

(i) A duty on local authorities to identify and map bodies of surface water and sustainable urban drainage systems in their area. This would include mapping the infrastructure used to convey surface water run-off. The duty would exclude sewers, thus avoiding duplication of effort in relation to drainage infrastructure under the responsibility of Scottish Water. The provision would give local authorities flexibility to determine the scale at which to map.

(ii) A duty on SEPA to identify and map structures and other features which contribute to managing flood risks from bodies of surface water. This assessment would build on existing national datasets, including data on flood prevention schemes built under the 1961 Act, and it would take into account information provided by local authorities. SEPA would be required to make this information publically available, which would contribute to raising public awareness of important structures that should not be damaged.

(iii) A duty on Scottish Water to assess where floods from a sewerage system could occur. SEPA would be responsible for setting data formats after consultation with Scottish Water and local authorities (and other responsible authorities). This would ensure that data from different sources is developed in partnership and ultimately integrated to improve understanding of flooding problems.

**Interim arrangements**

**Recommendation 20:** The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements
will be issued to local authorities in its written Stage 1 response. [Paragraph 148]

Interim arrangements will be one of the Scottish Government’s priority tasks once the Bill is enacted. The Scottish Government has already taken steps to talk directly to local authorities on this matter, and guidance will be issued to local authorities at the earliest practicable opportunity. The Scottish Government is committed to delivering a smooth transition to the new flood risk management regime by using powers under section 82 of the Bill to make transitional or savings provisions by Order.

No recommendation 21

Water Environment and Water Services (Scotland) Act 2003

Recommendation 22: The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act. [Paragraph 158]

The Scottish Government Bill requires coordination and integration of work under the Water Environment and Water Services (Scotland) Act 2003 and the Bill (Section 41), and the Scottish Government can confirm that we would expect information on this coordination and integration to form part of the annual report laid before parliament. Furthermore, the Bill allows for integration of the annual reports under the 2003 Act and the Bill (Section 45).

Stakeholder engagement

Recommendation 23: Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act. [Paragraph 162]

The Bill provides for a flexible approach to establishing advisory groups and undertaking wider public engagement. The intention is to allow existing groups to be used wherever appropriate.

SEPA is required to undertake a full consultation exercise on the steps it intends to take in relation to participation and consultation. This will provide an opportunity to examine options for advisory groups and steps that can be taken to ensure consultation fatigue is avoided.
Cross-border flood risk management

**Recommendation 24:** The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government. [Paragraph 168]

The Scottish Government can confirm that there will be separate regulations to deal with the cross-border areas, and we would expect those regulations to set out the mechanisms for ensuring co-ordinated cross-border implementation. The annual report laid before parliament would include information on the cross border measures in the same way as any other part of Scotland.

**Part 4: Local authority functions**

**Deemed planning permission**

**Recommendation 25:** The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance. [Paragraph 177]

The Scottish Government are currently preparing a timetable of all implementation work required to support the Bill. All implementation work, including guidance on the consultation process to be followed for flood protection schemes, would be developed in close partnership with SEPA, local authorities, Scottish Water and others. To support this and other implementation work, we have set up advisory groups with wide representation from the responsible authorities, Environment Link, NFU Scotland, Scottish Flood Forum and other stakeholder groups.

**Recovery of local authority expenses**

**Recommendation 26:** The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for (1) recovery of expenses, (2) the grounds on which authorities may fine landowners, and (3) what those fine levels should be. [Paragraph 185]

The Scottish Government has identified three specific points, which have numbered and commented on below.

(1) Like any other civil liability, recovery of expenses under section 57 of the Bill would be through the normal civil courts if the landowner refused to pay; (2) the Bill does not require negligence on the part of landowners but it does require the need to repair to have arisen from the actions of the landowner...
There is no general duty on all riparian landowners to maintain watercourses in order to reduce flood risk. Unless such a duty were created, it would be difficult to create a general power to reclaim money from riparian landowners for the costs of maintenance work on watercourses, because liability would have to depend on the extent to which the individual landowners would have had an obligation to do the work themselves. It is particularly difficult to establish exactly what responsibility, if any, landowners have to manage natural processes such as the silting up of rivers and burns and the accumulation of natural blockages (such as fallen trees and other debris).

If a general duty on riparian landowners was created, there would be severe logistical difficulties for local authorities in identifying who those landowners were in urban areas. The boundaries of development plots are usually referenced in the deeds to streets, not watercourses, and are delineated by a boundary fence. Such fences are usually set back from any riverbank. In some cases, the property does extend to include the watercourse and is therefore riparian and the position of the fence is simply convenient. However, in most cases the property boundaries do not extend to the watercourse and the position of the fence reflects the boundary set out in the deeds. In such cases, the riparian owners are the owners of the strip of land adjoining the watercourse; this strip is usually undeveloped and its ownership may be difficult, if not impossible to trace.

It is because of these difficulties that local authorities were given the duty to maintain watercourses when the Flood Prevention (Scotland) Act 1961 was amended by the Flood Prevention and Land Drainage Act 1997, and are funded to do so as part of the local government settlement.

**Duty to cleanse, repair and maintain watercourses**

**Recommendation 27:** The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and in line with flood risk management plans. [Paragraph 190]

The Scottish Government agrees that ensuring waters are free from obstructions and that appropriate repair works are identified and undertaken is important to protecting people from flooding. The Scottish Government intend, therefore, to lodge an amendment that will clarify local authorities’ duties in this area. Instead of a simple duty to assess watercourses, local authorities will have a duty to identify where maintenance of watercourses would assist in reducing flood risk and to prepare a schedule of maintenance
works that would form part of the flood risk management planning process. This schedule of works will be made publicly available. The Scottish Government believe that this amendment will address the concerns raised by the Committee.

Part 5: SEPA: Other flood risk management functions

Flood warning

Recommendation 28: The Committee is encouraged by SEPA’s work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken. [Paragraph 195]

The Scottish Government supports this recommendation and will continue to provide the necessary assistance to facilitate these collaborations.

Emergency services response to flood warning

Recommendation 29: The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill’s scope allows. [Paragraph 203]

The Scottish Government appreciates the Committee’s concern in this area and is happy to explore ways of ensuring the appropriate response from the emergency services.

Communicating with the public is a key part of local civil protection. The Civil Contingencies Act requires Category 1 responders to:

- increase public awareness by publishing risk assessments and emergency plans;
- make arrangements to warn and inform the public when an emergency happens;
- make arrangements to provide information about the progress of an emergency and to provide advice on actions to take.

All Category 1 responders (which include the emergency services) have responsibilities for communicating with the public and must agree which of them will take the lead in delivering messages about particular types of emergency. The Scottish Government has produced guidance for Strategic Co-ordinating Groups and Category 1 responders under the ‘Preparing...
Scotland’ banner. This guidance ‘Warning and Informing Scotland – Communicating with the Public’ was issued in 2008.

Given that this duty is within the Civil Contingencies Act, the Scottish Government does not believe that it is appropriate or necessary to duplicate it in the Flood Bill, which is concerned with flood risk management, and not emergency responses to flooding.

It will however, be important to establish and manage links between civil contingencies work and flood risk management. The Scottish Government believe that the flood risk management planning process, including the use of advisory groups, will provide a mechanism to ensure that actions to manage risk are appropriately coordinated with actions to respond to flooding.

**Part 7: Reservoirs**

**Transfer of responsibilities**

**Recommendation 30:** The Committee requests a summary of the impact of the provisions of the UK Flood and Water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill’s introduction. [Paragraph 212]

The Floods and Water Bill in England and Wales is still at an early pre-consultation stage. The Scottish Government can assure the Committee of its commitment to provide information on any implications of this legislation on flood risk management in Scotland. An area that could have a direct impact on Scotland would be amendments to the Reservoirs Act 1975, which applies to Great Britain. The Scottish Government are working closely with Defra on all relevant elements of the proposed Floods and Water Bill.

**Reservoir inundation maps**

**Recommendation 31:** Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA’s request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues. [Paragraph 217]

National Security is a reserved matter, and the Scottish Government will work closely with the Government at Westminster to ensure these issues are addressed.

**Coastal flooding**

**Recommendation 32:** The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government’s response prior to Stage 2. [Paragraph 225]
Climate change is an important consideration in flood risk management, and the Bill requires consideration of climate change in the preparation of flood risk assessments, maps and plans. However, the inherent uncertainties surrounding climate change mean that it would be impossible to specify predicted climate change conditions and their influence on flooding probabilities. The Scottish Government will, however, continue to work with SEPA and local authorities to ensure that appropriate approaches to assessing and accommodating climate change are adopted as the Bill is implemented.

Metrics to measure the likelihood of flooding (e.g. return periods, flooding probabilities) will be set in regulations and the Scottish Government will work with all parties involved to ensure that these are set at an appropriate level. An important consideration will be ensuring that the approaches adopted complement approaches currently in use, including the flooding probabilities that support national planning policy.

**Resource implications**

**Hydrologists and other specialist staff**

**Recommendation 33:** Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister's reassurance that the steps being taken to recruit and retrain will "ensure future supply".

The Committee is deeply concerned that a marked shortage in skilled staff may impact both on the effectiveness of Scotland’s new flood risk management process, and the time taken for implementation. [Paragraphs 231 and 232]

The Scottish Government understand the importance of specialist staff to support the implementation of the Bill, and the Minister for the Environment will actively engage with colleagues in Education on this matter. The Scottish Government is committed to taking any steps it can to build capacity across the range of specialism required to deliver sustainable flood risk management, which includes engineering, hydrology, environmental scientists, flood risk managers and experts in landscape and river sciences.

**Financial implications**

**Recommendation 34:** The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government...
to ensure that future memorandums to Bills are the best possible final estimate at the point of introduction. [Paragraph 237]

The Scottish Government would like to assure the Committee that the Financial Memorandum was based on the best information available at the time the Bill was lodged. The information presented in the Financial Memorandum was prepared in close consultation with the bodies that would be affected by the Bill.

The Scottish Government will continue to ensure that all Financial Memoranda reflect the best possible understanding of the financial implications at the point of introduction, and that this information is based on discussions with those affected by the legislative proposals.

**Recommendation 35:** The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible authorities in the run-up to implementation and reports these costs to this Committee and its successor. [Paragraph 240]

The Scottish Government is already committed to providing the Parliament with an annual report on the implementation of the EC Directive, and the scope of this document would not preclude inclusion of information on implementation costs.

**Recommendation 36:** The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee’s inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above. [Paragraph 249]

The previously ring-fenced Flood Prevention and Coast Protection Grant (£42m, capital) was rolled-up into the Local Government Finance Settlements for 2008-11, as part of the 2007 Spending Review discussions. All flood prevention schemes that were either underway or had started the Statutory process by November 2007 were honoured, and funding distributed to local authorities accordingly. The rolling-up of ring-fencing gives local authorities more freedom and flexibility to manage their resources. It is for local authorities to allocate their total resources to meet local needs and circumstances as well as fulfilling their statutory obligations and the jointly agreed set of national and local priorities including the Scottish Government’s key strategic objectives and manifesto commitments.

Together with our local government partners, the Scottish Government is reviewing the distribution of local government funding, and this will include a review of those former ring-fenced grants that have been rolled-up. This will be done to inform the next 3 year local government finance settlement in 2011-12.
It would not be appropriate to speculate what will come out of the review at this time.

**Recommendation 37:** The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above or in annual reports laid before Parliament. [Paragraph 255]

As set out in the response to recommendation 37, there is at present no funding for particular flood risk management projects. The previously ring-fenced Flood Prevention and Coast Protection Grant (£42m, capital) was rolled-up into the Local Government Finance Settlements for 2008-11, as part of the 2007 Spending Review discussions.

It would be impossible, therefore, to identify separately the flood risk management money within the local government settlement as this would run counter to the removal of ring fencing of individual budgets.

Information on Scottish local authority income and expenditure, and outstanding debt and local taxes is already prepared annually and reported to parliament.

The Scottish Government will continue to discuss local authority funding with CoSLA, and will consider carefully any requests to change the funding arrangements to support implementation of the Bill.

**Recommendation 38:** The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme. [Paragraph 261]

The Scottish Government intend to investigate a range of funding related issues through its implementation programme for the Bill, including the role of the Scotland Rural Development Programme. All implementation work is being developed in close partnership with SEPA, local authorities, Scottish Water and others, including NFU Scotland.
SUPPLEMENTARY EVIDENCE - RAE COMMITTEE STAGE 1 REPORT: RECOMMENDATION 7

Recommendation 7: The Committee re-iterates its inquiry report recommendation that there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill at the earliest possible opportunity. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA. [Paragraph 69]

The Scottish Government strongly supports the principle that there should be no conflict between SEPA’s existing responsibilities and its new role under the Bill. In fulfilling its responsibilities as an environmental protection agency, SEPA is required to balance environmental protection with public protection and the promotion of sustainable development.

The Scottish Government has discussed this issue extensively with SEPA and local authorities, and we have not identified any examples of where SEPA have hindered important flood risk management work in pursuit of environmental issues. Similarly, we have not identified any situations where SEPA has promoted environmental protection over the needs of protecting the public from flooding.

To assist the committee in its deliberations on this matter, the Scottish Government has liaised with SEPA to prepare some case studies demonstrating how SEPA balance environmental protection with wider responsibilities for protecting people and promoting sustainable development.

The case studies are based on SEPA’s role as the enforcement authority for the Controlled Activity Regulations (CAR). These regulations promote the sustainable use of Scotland water’s and the protection of their ecological condition. Under these regulations, SEPA issue licences for activities that can affect the ecological condition of Scotland’s waters.

SEPA began authorising engineering works under CAR in 2006, with the regulations coming fully into affect in April 2007. Over the intervening period, SEPA’s records indicate that they have received 70 applications for sediment removal, including dredging. Eleven of these applications have been for flood management purposes. Only one application has been refused, which was for sediment removal for fishery management. This is currently subject to an appeal to Scottish Ministers.
Case Study 1: Sediment Removal from the Barry Burn, Carnoustie

Proposal

Angus Council applied to SEPA for a Controlled Activity authorisation to dredge a 1.4 Km section of the Barry Burn. The main reason Angus council were seeking to undertake this work was to remove accumulated sediment that was believed to have affected the performance of a Flood Protection Scheme and contributed to flooding in August 2008. A consultancy report backed up this view.

Environmental factors considered by SEPA

SEPA undertook an environmental assessment that suggested that the proposal to dredge a 1.4Km section of the Burn would lead to a deterioration in its ecological condition.

Social, economic and other factors considered by SEPA

Where the potential for a deterioration in ecological condition is identified, SEPA is required under Scottish and EC statute to determine if:

- the positive impacts to human health, safety and sustainable development outweigh the negative ecological consequences;

- those positive impacts of the proposal can not be achieved by a significantly better environmental option;

- and if all practical and reasonable mitigation is in place.

In this case, SEPA were able to liaise with the applicant to identify an alternative proposal that would significantly reduce the negative environmental impacts, whilst still providing an adequate level of flood protection to the local community.

Decision

SEPA liaised with the Council to agree an amended proposal that ensured the performance of the flood protection scheme wasn’t compromised, while minimising the deterioration in the ecological condition of the watercourse. This resulted in an amended scheme for 700 metres of sediment removal and 290 metres of dredging.

SEPA imposed a time limit on the licence in recognition of the fact that, ultimately, a more sustainable longer term option for protecting the Carnoustie Flood Protection Scheme from sediment accumulation should be sought. This approach ensured that important short terms works took place, while also providing for the development of a longer-term and more sustainable approach.
Case Study 2: White Cart Flood Protection Scheme, Glasgow

Proposal

The White Cart Flood Protection Scheme was a major flood management initiative taken forward by Glasgow City council in 2008. The proposal encompassed a series of flood management measures, including flood walls, dredging and creating areas to store flood waters. A Controlled Activity authorisation was required for many of the works.

Environmental factors considered by SEPA

In considering the CAR application for the White Cart Flood Protection Scheme, SEPA concluded that large parts of the proposal would have an adverse environmental impact on affected watercourses, including a significant adverse impact on a 2.5Km stretch of the Auldhouse Burn, reducing its ecological condition from ‘good’ to ‘moderate’.

Social, economic and other factors considered by SEPA

Where the potential for a deterioration in ecological conditions is identified, SEPA is required under Scottish and EC statute to determine if:

- the positive impacts to human health, safety and sustainable development outweigh the negative ecological consequences;

- those positive impacts of the proposal can not be achieved by a significantly better environmental option;

- and if all practical and reasonable mitigation is in place.

SEPA considered a variety of factors in determining whether to authorise the works on the basis of overriding social or economic considerations. SEPA concluded that the construction of this scheme would:

- reduce flooding risk in a heavily populated urban area through the south side of Glasgow and reduce the risks to human health associated with flood events (approximately 1709 residential properties and 49 commercial properties are currently at severe risk from a 1 in 200 year event).

- Significantly reduce the public safety risks from a flood event; and

- Reduce future economic costs of dealing with an extreme flood event (which includes insurance costs, damage to buildings and infrastructure and the financial impact on businesses). The cost benefit assessment for the entire White Cart Scheme indicated that the benefits would be worth in excess of £57 million.
**Decision**

For the reasons outlined above, SEPA considered that the benefits of the activity to human health, human safety and the local economy outweighed the environmental damage that the scheme would cause, and a CAR licence was issued.
The ABI is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. They control assets equivalent to a quarter of the UK’s capital. They are the risk managers of the UK’s economy and society. Through the ABI their voice is heard in Government and in public debate on insurance, savings, and investment matters.

The ABI welcomes the Flood Risk Management (Scotland) Bill. We also welcome the positive tone of the Committee’s report. Its recommendations address many of the ABI’s key concerns in this area.

The key areas of the report we particularly welcome are:

- **The need for a long-term strategy to deal with the impact of climate change** (Recommendation 12). Such a strategy, supported by aligned and sufficient funding regimes (Recommendations 8 and 36); regular reporting to Parliament; and legislation to ensure that this is adhered to by future administrations (Recommendation 12), would represent meaningful progress in dealing with the real challenges faced as a result of climate change.

- **The need for clarity and certainty over responsibilities and duties to tackle flooding.** Recommendations 3, 10 and 26 set out clear roles for Local Authorities and Scottish Water. This will streamline the process of flood management in Scotland and lead to a more effective and efficient system.

- **The importance of tackling all forms of flooding.** The Committee recognises the importance of surface water flood management. Recommendation 17 advises that the Bill should be amended to require the production of surface water management plans.

- **Revising Building Regulations to ensure buildings in flood risk areas are resilient to damage by flooding.** The ABI has long called for development and planning decisions to take flood risk into account and are, therefore, very supportive of Recommendation 16, suggesting the Bill make the necessary changes to planning legislation.

- **Helping people better understand flood risk.** We are keen to work with other organisations, such as SEPA, to help improve awareness of flood risk, as suggested in Recommendation 28.

Insurers are committed to providing insurance to as many people in Scotland as possible. The implementation of many of the recommendations in the Committee’s report would enable insurers to continue to provide more people with more affordable flood insurance, based on a clear framework and commitment to reducing flood risk.

**Association of British Insurers**

January 2009
Submission to Scottish Government Rural Affairs and Environment Committee with reference to the Flood Risk Management (Scotland) Bill.

The Commission has noted with interest the Rural Affairs and Environment Committee’s Stage 1 Report recommendations on the Flood Risk Management (Scotland) Bill. In particular we note the concerns expressed by the Committee under Recommendation 10 that:

“The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when assessing what form of work to undertake. This is likely to be incompatible with Scottish Water’s duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill.”

We would like to reassure the Committee that the Commission strongly favours setting prices in a framework that recognises the long-term nature of the water industry. Both the operations/asset management and the financing of the industry need to be considered over the longer term. The customer interest is for an efficient and sustainable industry over the long term and the existing regulatory framework incentivises Scottish Water to achieve this.

A case in point is the work being carried out in Glasgow under the auspices of the Metropolitan Glasgow Strategic Drainage Partnership (MGSDP). The Commission has consistently welcomed the approach being taken to identify long term solutions in Glasgow which address inter-related drainage issues that require a multi-stakeholder solution. Such schemes take time to plan and deliver and therefore require funding over a number of successive regulatory periods. We have made it clear in our publications that that there is no issue with achieving long term funding commitments of this type through the current regulatory mechanisms. Indeed, Scottish Water is progressing on this basis.

The Commission has also initiated and supported the development of long term strategic approaches to addressing unsatisfactory sewage discharges and water resource planning to meet the Water Framework Directive. This work has progressed throughout the 2006-10 regulatory period and is providing clarity on the most effective and efficient solutions to addressing the requirements. In many cases the required intervention has been different to that initially thought necessary. Effective asset management planning will lead to better outcomes both for the customer and for the environment.

Additionally, the Commission has sought to ensure that Scottish Water does not favour short term capital intensive solutions over longer term sustainable solutions. We have encouraged Scottish Water to examine their proposed programme of works, for example the water treatment works programme, to establish the scope for low cost and sustainable solutions which deliver the required outputs without the need for major investment. The Drinking Water Quality regulator has worked closely with Scottish Water to identify such opportunities and we support this approach.
Under Section 29E of the Water Services etc. Scotland Act, the Commission is now able to allow non-household customers who reduce the costs that Scottish Water incurs in serving them to be rewarded with lower prices. This should lead (and actually is already leading) to more innovative solutions being introduced. A change in how a customer uses water or handles the drainage of its site may avoid the need for more expensive and carbon-intensive civil engineering solutions. This incentive for innovation aligns the interests of all stakeholders in the Scottish water industry.

Delivering the proposed requirements arising from the Flood Risk Management Bill will inevitably involve Scottish Water in working with a number of stakeholders to identify the optimum long term solutions. The committee should be assured that, where components of the identified solutions are the responsibility of the water customer to finance, the existing regulatory mechanism will ensure that suitable financing is provided.

We would be happy to discuss these matters further with the Committee if required.

Alan D A Sutherland
Chief Executive
Water Industry Commission for Scotland
3 March 2009
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

FLOOD RISK MANAGEMENT (SCOTLAND) BILL

LETTER FROM INSTITUTE OF INFRASTRUCTURE AND ENVIRONMENT, UNIVERSITY OF EDINBURGH

Flooding Bill Stage 1 Report – Suggested Minor Alteration

I am a Research Fellow at The University of Edinburgh and I am currently working together with my line manager, Dr Miklas Scholz, as part of a wider research consortium on the EU Interreg IV-B EU project Startegic Alliance for Water Management Actions (acronym SAWA) where our contribution is the development of a data base of water bodies (e.g. sustainable flood retention basins, large SUDS and reservoirs) which may have a role to play in complying with the EU Flood Directive. We are focusing predominantly on sustainable flood retention basins, which include reservoirs as most of them have engineered inlets and outlets, and can therefore be managed to contain flood waters. It has become apparent from our research that there are approximately 400 large water bodies in central Scotland, which could be managed to contribute to flood water control by slowing down the rate of release of rainfall from upland areas of catchments.

As the flooding bill stands, and I quote from the draft bill:

"9. (4) d (iv) the effectiveness of any existing artificial flood protection structure"

"16.1 SEPA must, by such date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district. Our team has assessed 183 of the 400 identified water bodies to date and 110 of these were originally built as reservoirs. The current wording of provisions 9(4) and 16(1) would not include these structures as they are man made and can therefore be considered artificial. Our research shows that the reservoirs in Scotland whether currently used for drinking water, or other purposes, are typically kept at full capacity with the spillways operating continuously. These reservoirs are therefore having little influence on the rate of runoff in catchments, which is often a factor in river flooding.

The large number and the very high hydraulic capacity of this existing infrastructure offers a valuable and cost effective way of assisting flood management and a modification of these provision (9.4(d) and 16.1) to include any existing engineered structure such as reservoirs and artificial features with the potential to be modified for flood control within a catchments may be beneficial. The use of existing infrastructure will involve increased management costs for organisations such as Scottish Water as infrastructure managers. We have noted that the committee has discussed this (Committee Recommendation 10) and we believe that a sustainable long term solution
may be to develop a funding system that rewards the managers for their contribution to flood defence. In return there is the potential for significant capital savings in flood defences and enhancement of the multi-friction role for the reservoir system.

Our research project is EU funded and we are working on a database of the potential of using existing infrastructure to adapt to the challenge of climate change. We therefore have a vested interest, but all of our work will be in the public domain and freely available to anyone undertaking research into flooding or who may need a database of structures. We hope that our research will be of assistance to SEPA and the other stakeholders when they start the flood planning process. Our team undertakes fundamental research on the classification of flood retention structures and whether these can be used as part of a sustainable flooding strategy. The SAWA project is intended to produce guidance documents and decision support tools, which will be freely available to all, and are intended to assist in the flood risk management process required by the Flood Directive. We therefore do not stand to make any commercial gain from this as a topic.

We would welcome the opportunity to provide additional information or present our interim findings to the committee. We genuinely believe that this existing infrastructure could play a significant role in helping protect Scotland’s communities and environment and contribute to a more sustainable Scotland. We look forward to hearing from you.

Institute for Infrastructure and Environment
University of Edinburgh
4 March 2009
Dear Jamie

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – RESPONSE TO STAGE 1 REPORT
DELEGATED POWERS

I am writing following publication of the Subordinate Legislation Committee’s (SLC) stage 1 report to the Rural Affairs and Environment Committee on delegated powers in the Flood Risk Management (Scotland) Bill. This letter provides an update to the response that was sent to the SLC in November 2008 on action being taken as a result of the SLC’s recommendations.

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Powers to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

The Committee queried why these functions (of specifying flood risk related functions) are not subject to the general duty in section 1.

I have considered this section again and am happy to amend the Bill such that the general duty in section 1 applies to these powers.

Section 2(1) – Directions and guidance

The Committee queried why the function (of giving directions and guidance) is not subject to the general duty in section 1 and whether the Scottish Government is willing to consider amending the Bill to provide that the direction-making power is exercisable only after consulting with SEPA and/or responsible authorities.
I have considered this power further and I am happy to amend the Bill so that the general duty in section 1 applies to directions and guidance issued by Ministers.

I am also happy to amend the Bill to require the Scottish Ministers to consult SEPA or the relevant responsible authorities, as appropriate, before making directions.

**Section 5(c) – Power to designate “responsible authorities”**

The Committee recommended amending the Bill so that this power is subject to an obligation to consult with affected organisations.

I am happy to amend the Bill so as to require the Scottish Ministers to consult SEPA, existing responsible authorities, the bodies or office holders they intend to designate and such other people as they consider appropriate before making an Order under section 5(c).

**Section 9(2) – SEPA to prepare flood risk assessments**

The Committee previously asked the Scottish Government to explain the circumstances in which it envisages using the delegated power to direct SEPA to prepare a flood risk assessment before the deadline in the Flooding Directive (22 December 2011).

I have considered this section further and am happy to amend the Bill so as to remove the flexibility for Ministers to direct for the flood risk assessment to be prepared prior to December 2011.

**Section 10(1)(a) – Flood risk assessments: review**

The Committee previously asked the Scottish Government: to explain the circumstances in which it envisages using the delegated power to direct SEPA to review and update each flood risk assessment before the deadline in the Flooding Directive (22 December 2018); and to consider making the power subject to a requirement to consult SEPA.

I note that the Committee now considers this direction making power acceptable in principle. However, I remain concerned that to require formal consultation before this power could be used would risk introducing further delays into an already tight timetable of deadlines. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. I therefore consider that this section should remain unchanged.

**Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts**

The Committee made a recommendation to consider making this power (to direct the date by which a document identifying potentially vulnerable areas and local plan districts is to be submitted to the Scottish Ministers) subject to a requirement to consult SEPA before its exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.
Section 14(1) – Potentially vulnerable areas and local plan districts: review

The Committee made a recommendation to consider making this power (to direct the date by which a document identifying potentially vulnerable areas and local plan districts must be reviewed and updated) subject to a requirement to consult with SEPA before its exercise.

I have looked once more at this point, and still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features

The Committee made a recommendation to consider making these powers (to direct the dates by which an assessment of the contribution of alterations of natural features must be carried out and reviewed) subject to a requirement to consult with SEPA before their exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 18(4)(b), (5)(b) and (6)(b) – Flood hazard maps

The Committee recommended that the Scottish Government should consider making these powers (to direct SEPA to include in flood hazard maps information on coastal floods, flooding from groundwater and floods from sewerage systems) subject to a requirement to consult with SEPA before their exercise.

I am happy to amend the Bill so as to make these powers subject to a requirement to consult with SEPA before their exercise.

Section 23(2) – SEPA to prepare flood risk management plans

The Committee made a recommendation to consider making this power (to direct the date by which SEPA must submit a flood risk management plan) subject to a requirement to consult with SEPA before its exercise.

I have looked once more at this point, however, I still do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I remain concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.
Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

The Committee recommends that this power should be subject to a requirement to consult with local authorities and other appropriate bodies including SEPA and Scottish Water.

I have reconsidered this power and am happy to amend the Bill to require the Scottish Ministers to consult SEPA, responsible authorities (which include local authorities and Scottish Water) and any other persons they consider appropriate before they make regulations.

The Committee also queried whether it is within the vires of this proposed delegated power to make provisions as to the structure of such plans and the procedural steps that must be taken in the course of their preparation. Section 29(6) would be used to make provision about the content of plans, whereas provisions about form and procedure would more naturally fall under the regulation making power in section 35(1).

Section 44(1) – Power to give effect to Community obligations etc.

The Committee asked the Government to consider amending the Bill to provide that this power to modify Part 3 is subject to affirmative rather than negative procedure in light of the presumption in favour of affirmative procedure where a provision in a Bill enables primary legislation to be amended or repealed by subordinate legislation.

As the response submitted to the Committee in November confirmed, I am happy to amend the Bill to provide that this power should be subject to affirmative, rather than negative, procedure.

Section 52(4) – Power to amend flood protection scheme making process

The Committee asked the Government to consider amending the Bill to require consultation with affected parties (especially local authorities) before the exercise of this power.

As the response submitted to the Committee in November confirmed, I am happy to amend the Bill to require consultation with affected parties before the exercise of this power (to amend the procedure for making flood protection schemes).

Section 77 (inserting new section 12ZA of the Reservoirs Act 1975) – Incident reporting

I note that the Committee is content, in principle, with this delegated power and that affirmative procedure is the appropriate level of parliamentary scrutiny.

Section 82(1) – Ancillary provision

The Committee recommends that the Scottish Government give further consideration to agreeing that any modification of primary legislation should be subject to affirmative procedure and that it would reconsider this power after stage 2 following notification of the outcome of the Government's further consideration.

I am giving this issue further consideration.
Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

The Committee has reported that it considers the delegated power to be acceptable in principle and that negative procedure is the appropriate level of parliamentary scrutiny.

ROSEANNA CUNNINGHAM MSP
MINISTER FOR ENVIRONMENT
Dear Maureen

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – STAGE 2 AMENDMENTS

You will be aware that the Scottish Government is today lodging its stage 2 amendments on the Flood Risk Management (Scotland) Bill.

I consider a number of the amendments to be either detailed or technical in nature and, for this reason, I have prepared a paper which I hope will assist the Committee in understanding exactly what the key amendments do and seek to achieve. The paper includes some background information and a description of the amendment, or set of amendments.

The paper covers amendments that will discussed at the first stage 2 debate, as well as other amendments that are closely linked to amendments that will be discussed at the first stage 2 debate.

I look forward to seeing the Committee again on 4 March.

ROSEANNA CUNNINGHAM MSP
MINISTER FOR ENVIRONMENT
Flood Risk Management (Scotland) Bill

Information on stage 2 amendments

**Purpose**

This paper has been prepared by the Scottish Government to give members of the RAE committee additional information on the key Scottish Government stage 2 amendments. The paper includes some background information on the amendment, and a description of the amendment, or set of amendments.

The paper covers:

- amendments that will discussed at the first stage 2 debate (4th March 2009); and
- other amendments that are closely linked to amendments that will be discussed at the first stage 2 debate.

Some additional information on amendments that will be discussed at subsequent stage 2 debates has been provided where it is felt that this information will assist the Committee in their preparations for these debates.

The Scottish Government will aim to provide the committee with further information on key amendments that will be discussed at future stage 2 debates.

For some amendments, a brief summary of the amendments has been provided. In other cases, a summary of how the revised text of the Bill would appear has been provided.
# RAE Committee stage 1 report recommendations

The table below shows the links between Scottish Governments amendments and the RAE committee recommendations.

<table>
<thead>
<tr>
<th>Stage 1 recommendation</th>
<th>Topic numbers used in this paper</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 3:</strong> The Committee agrees that the Bill should be amended to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans</td>
<td>1</td>
</tr>
<tr>
<td><strong>Recommendation 9:</strong> The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.</td>
<td>2, 1, 3</td>
</tr>
<tr>
<td><strong>Recommendation 11:</strong> The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate.</td>
<td>2</td>
</tr>
<tr>
<td><strong>Recommendation 13:</strong> The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process.</td>
<td>10, 11</td>
</tr>
<tr>
<td><strong>Recommendation 14:</strong> In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to “natural processes” as well as “natural features”.</td>
<td>10</td>
</tr>
<tr>
<td><strong>Recommendation 15:</strong> The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision.</td>
<td>10, 1, 3</td>
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<td><strong>Recommendation 17:</strong> The Committee recommends that the Bill should be amended to require the production of surface water management plans</td>
<td>5, 6, 7</td>
</tr>
<tr>
<td><strong>Recommendation 27:</strong> The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and in line with flood risk management plans.</td>
<td>8</td>
</tr>
<tr>
<td><strong>Recommendation 27:</strong> The Committee invites the Scottish Government to explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill’s scope allows.</td>
<td>12</td>
</tr>
</tbody>
</table>
1. Achieving objectives set out in plans

Background
Stakeholders expressed concerns in their Stage 1 evidence about the omission of a duty to implement flood risk management plans. The Scottish Government, in their evidence session with the Committee stated that consideration was being given to expanding section 1 to include a specific reference to achieving objectives set out in plans. The RAE Committee has recommended (recommendation 3) in their stage 1 report that the Bill should be amended to create a more explicit link between the general duty in section 1 to act with a view to reducing flood risk and the implementation of flood risk management plans.

Amendment
This amendment would require the Scottish Ministers, SEPA and responsible authorities to exercise their flood risk related functions with a view to achieving the objectives set out in the flood risk management plan for the district in which they are exercising their functions. This duty applies as part of the general duty to act with a view to reducing overall flood risk and to exercise functions so as to secure compliance with the Directive.

In section 1, page 1, line 13, at end insert—

<( ) so far as such exercise affects a flood risk management district, act with a view to achieving the objectives set out in the flood risk management plan for that district as approved under section 27,>

2. Sustainable flood risk management – general

Background
The RAE Committee recommended in their stage 1 report that the Bill should be amended to include more specific references to sustainability. The Scottish Government has indicated to the Committee that the whole of the Bill is consistent with the principles of SFRM as they are currently understood.

However, to clarify this position the Scottish Government has taken forward a series of amendments to include more specific references to sustainability or factors related to sustainability.

Amendment
This amendment would insert the word sustainable into the long title.

In the long title, page 1, line 1, after <and> insert <sustainable>

Amendment
This amendment would require the Scottish Ministers, SEPA and the responsible authorities to have regard to the environmental impact of the exercise of their flood risk related functions.

In section 1, page 1, line 14, after <social> insert <, environmental>
Amendment

This amendment would place a duty on the Scottish Ministers, SEPA, and responsible authorities to act in the way best calculated to manage flood risk in a sustainable way when exercising their flood risk related functions.

In section 1, page 1, line 16, at end insert—

<( ) act in the way best calculated to manage flood risk in a sustainable way.>

3. Sustainable flood risk management – objectives and measures

Background

The RAE committee raised concerns in their stage 1 report that the current wording of the Bill would not result in selection of natural flood risk management techniques wherever they are practicable. The Scottish Government was asked to consider an amendment that would provide that, where natural flood management approaches are assessed as being able to make a contribution to managing flood risk, but are not proceeded with, SEPA and the responsible authorities must set out reasons for that decisions.

The Scottish Government has indicated to the Committee that special attention should not be given to any particular flood risk management measures and that consideration should be given to all potential flood risk management measures. This could include traditional engineering, flood warning, awareness raising, natural flood management techniques or steps to avoid flood risk through development planning and management.

Ultimately, all measures should be selected based on their suitability to particular circumstances, and to ensure that this is the case, the Bill includes a series of factors that must be considered when selecting objectives and measures, including climate change, costs and benefits, environmental objectives of WEWS and the assessment of natural flood risk management undertaken under Section 16.

Amendment

This amendment would require SEPA, when identifying measures to achieve objectives, to identify those measures that it considers will achieve the objectives in the most sustainable way.

In section 23, page 11, line 33, after <objectives> insert <in a way which it considers is most sustainable>

Amendment

When setting objectives and measures, the Bill currently requires consideration of the benefits in terms of reducing the potential consequences of flooding or ‘otherwise’. ‘Otherwise is intended to capture all potential non-flooding related benefits, which could include environmental, social or economic benefits. This amendment would replace the reference to ‘otherwise’ with a requirement to consider other social, economic or environmental benefits that may be derived from implementing a measure.
In section 24, page 12, line 13, leave out from <(in) to end of line 16 and insert <that are likely to be derived from implementing proposed measures, including—

(i) the benefits in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and

(ii) any other environmental, social, and economic benefits.>

Amendment

This amendment would set out examples of structural and non-structural measures. The examples would not be an exhaustive list, and other measures would fall into these categories.

Flood protection work (defined in Section 84) includes any operation on land for the purpose of protecting land from flooding, including any construction, alteration, improvement, repair, maintenance, demolition or removal, and the sowing, or planting of vegetation or forestry. Flood protection work therefore includes those measures that are commonly referred to as natural flood management measures.

In section 24, page 12, line 28, leave out subsections (2) and (3) and insert—

<(2A ) For the purposes of subsection (1)(b)—

(a) a measure is structural if it involves flood protection work, and

(b) non-structural measures include flood warning, awareness raising and the preparation and review of development plans.

( ) In subsections (1)(a)(viii) and (2A)(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.>

4. Adopting a catchment focused approach

Amendment

This amendment would restrict SEPA to using river basins, sub-basins or coastal areas when identifying areas that would be used in the preparation of local flood risk management plans.

In section 13, page 6, line 6, after first <areas> insert <(consisting of one or more river basins, sub-basins or coastal areas)>.

5. Scottish Water to prepare information on sewerage flooding

Background

To support the preparation of flood hazard and risk maps, SEPA will require information on sewerage flooding. Information on sewerage flooding will also be an important consideration when selecting and coordinating measures to manage pluvial flooding.
Amendment

The amendment would require Scottish Water to prepare information on sewerage flooding for all areas identified as potentially vulnerable to flooding. Scottish Water would also be required to prepare information for other areas identified by SEPA. SEPA, after consultation with Scottish Water and the responsible authorities, would be responsible for determining the form of the data. This would ensure that appropriate steps can be taken to ensure the information prepared by Scottish Water can be combined or integrated with other information, for instance information on pluvial flooding. The assessment must be prepared by a date specified by Scottish Ministers and may include other information set out in regulations.

After section 15, insert—

<Assessment of flood risk from sewerage systems

Scottish Water to assess flood risk from sewerage systems

(1) Scottish Water must, for each potentially vulnerable area and any other area identified by SEPA, prepare an assessment—

(a) identifying where in the area it considers that a flood is likely to originate from a sewerage system,

(b) estimating the volume of sewage which is likely to be released in the event of such a flood, and

(c) containing such other information as the Scottish Ministers may specify in regulations.

(2) An assessment under subsection (1) must be prepared by such date as the Scottish Ministers may direct.

(3) Before identifying an area for the purposes of subsection (1), SEPA must consult—

(a) Scottish Water, and

(b) any other responsible authority which has functions exercisable in or in relation to the area.

(4) An assessment prepared under subsection (1) must be in such form as SEPA may determine.

(5) In determining the form of an assessment under subsection (4), SEPA must seek to ensure that the assessment will integrate with information relating to flood risk held by—

(a) itself, and

(b) any responsible authority which has functions exercisable in or in relation to the area for which the assessment is prepared.

(6) Before determining the form of an assessment in accordance with subsections (4) and (5), SEPA must consult the persons mentioned in subsection (5)(b).

(7) Scottish Water must, if requested, provide a copy of an assessment to SEPA or a responsible authority.

(8) Scottish Water must, for each potentially vulnerable area and each area for the time being identified by SEPA—
(a) by such date as the Scottish Ministers may direct, review and where appropriate update the assessment prepared under subsection (1) for that area,

(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) review and where appropriate update the latest assessment reviewed under this subsection for that area.

(9) Subsections (4) to (7) apply to the updating of assessments as they apply to their preparation.

(10) Before making regulations under subsection (1)(c), the Scottish Ministers must consult—

(a) SEPA,

(b) Scottish Water, and

(c) such other responsible authorities as they consider appropriate.

6. Local authorities to prepare maps of bodies of surface water

Background

To improve understanding of flood risks and the preparation of plans to tackle these problems, local authorities will require reliable information on the location of rivers, watercourses and other bodies of water, including structures that convey surface water run-off to improve Sustainable Urban Drainage Systems can contribute to the management of flood risk. Information on the location of these systems is an important part of developing an integrated approach to managing flooding in urban environments.

Amendment

This amendment would require local authorities to prepare maps of bodies of water and sustainable urban drainage systems in their area. The definition of bodies of water includes lochs, rivers, streams, watercourses, and the definition of watercourses includes drains, ditches culverts, and artificial watercourses. This means that urban drainage infrastructure would be included. It is not intended that local authorities should have to map every single watercourse in their area. The provision therefore gives local authorities discretion about the scale at which they identify and map.

After section 15, insert—

<Bodies of water etc.: mapping and assessment

Local authorities to prepare maps of bodies of water etc.

(1) Every local authority must prepare a map which shows (or more than one map which, taken together, show) relevant bodies of water and sustainable urban drainage systems in its area.

(2) Each map must—

(a) be prepared by such date as the Scottish Ministers may direct,
(b) be prepared at a scale that the authority considers most appropriate, and
(c) contain such information and be in such form as the Scottish Ministers may
specify in regulations.

(3) A local authority must, from time to time, review and where appropriate update the
map (or maps) prepared for its area under subsection (1).

(4) A local authority must make available for public inspection the map (or maps)
prepared under this section for the time being applicable to its area.

(5) In this section and section 56—

“relevant body of water”—

(a) means—

(i) a body of surface water other than a stretch of coastal water, or
(ii) a body of underground water forming part of a watercourse (but
not including a watercourse which is wholly underground), but

(b) does not include sewers and drains which drain into sewers,

“sustainable urban drainage system” has the meaning given in section 59(1) of
the Sewerage (Scotland) Act 1968 (c.47).

7. Coordination of efforts to manage surface water

Background

A coordinated approach to surface water management is critical to managing flood risk. The
Bill requires that flood risk management plans prepared by SEPA and local authorities
include coordinated sets of actions to manage surface water drainage. Surface water
management will therefore be an integral part of the flood risk management plans prepared
under the Bill.

The RAE committee recommended in their stage 1 report that the Bill should include
reference to the preparation of ‘surface water management plans’. The Scottish Government
have indicated that this is not necessary as the district and local plans will need to include
measures to tackle surface water management issues.

Amendment

This amendment would mean that SEPA would be required to consider the management of
surface run-off water and urban drainage when setting objectives and measures.

In section 24, page 12, line 17, at end <including the management of surface run-off water
and urban drainage>

Amendment

This amendment would require local authorities to consider, when preparing the
implementation part of local flood risk management plans, how the functions of those
organisations involved in measures to manage surface water and urban drainage will be
coordinated.
In section 29, page 16, line 10, at end insert—

<(  ) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to surface run-off water or urban drainage, and>

8. Maintenance of bodies of surface water

Background

For many watercourses, local authorities will be aware of ongoing issues that require intermittent maintenance interventions. In these cases, the preparation of a schedule of planned clearance and repair works, including information on when further assessments of maintenance should be undertaken, is an important tool for organising and planning clearance and repair works. Many local authorities already prepare these schedules.

The draft Bill removed the explicit duty to maintain watercourses set out in the Flood Prevention (Scotland) Act 1961 (as amended by the Flood Presentation and Land Drainage (Scotland) Act 1997). This was because the Scottish Government viewed this duty as being within the overarching duty set out in Section 1, which required local authorities to act with a view to reducing overall flood risk. The RAE committee recommended that a more explicit duty should be introduced.

Amendment

This amendment would require local authorities to assess where a body of surface water could give rise to a risk of flooding, and where this is the case, to consider whether clearance or repair works could reduce this risk. Clearance and repair works are defined to mean – removing obstructions from a body of surface water (e.g. shopping trolleys), removing objects or material that are a significant risk of becoming obstructions (e.g. trees that are at risk of falling into a river) and repairing artificial structures that form part of the bed or banks of a body of surface water (e.g. repairing a flood wall).

Local authorities would also be required to prepare a schedule describing those clearance and repair works, including information as to the timing of the next assessment. The schedule must be made publicly available. The amendment includes an enabling power for Scottish Ministers to set out in regulations other information to be included in the schedule.

Assessment etc. of relevant bodies of water

(1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—

assess the relevant bodies of water (other than canals) in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or outwith its area, and

(ba) where—

(i) a body of water gives rise to such a risk, and

(ii) the authority considers that clearance and repair works would substantially reduce that risk,
prepare a schedule of those clearance and repair works.

(1A) In subsection (1)(ba), clearance and repair works are works that consist of any or all of the following—

(a) removing obstructions from a body of water,
(b) removing things that are at significant risk of becoming such obstructions,
(c) repairing artificial structures which form part of the bed or banks of a body of water.

(1B) A schedule prepared under subsection (1)(ba) must—

(a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,
(b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.

(1C) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(ba) for the time being applicable to its area.

(2) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any relevant body of water in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.

(3) Subsection (2) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

Amendment

This amendment would place a duty on local authorities to do the works set out in the schedules they have prepared so long as they will not affect the implementation of a local flood risk management plan.

After section 51 insert—

<Clearance and repair works

Duty to carry out clearance and repair works

A local authority must carry out the works described in a schedule prepared by it under section 56 if it considers carrying out the works—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
(b) will not affect the implementation of the measures mentioned in paragraph (a).>
9. Information on measures to manage flood risk

Background

There is no single set of information or maps which show where flood defences exist. There are records of flood prevention schemes constructed under the 1961 Act but these do not cover privately constructed or older defences.

Better and more freely available information on flood protection schemes and flood risk management measures would help ensure that the public can be made aware of structures and features that have an important flood management function. This could help avoid inadvertent damage to or removal of walls and other structures that help manage flooding.

Information on flood risk management measures would also assist SEPA and local authorities when preparing plans to address flooding problems, and help in the preparation of flood hazard and risk maps.

Amendment

This amendment would place a duty on SEPA to prepare a map showing artificial structures and natural features that, if removed, would significantly increase the risk of flooding from a body of surface water, which includes rivers and the sea. Artificial structures include flood walls, embankments etc, and natural features include wetlands or flood plains. SEPA is responsible for determining whether the removal of a structure or feature could significantly increase flood risk. In doing so, SEPA must consult relevant local authorities since the local authorities are well placed to understand the importance of artificial structures etc within their areas. The information must be made publicly available.

After section 15, insert—

<Artificial structures and natural features: mapping and assessment

SEPA to prepare maps of artificial structures and natural features

(1) SEPA must, for each flood risk management district, prepare a map—

(a) showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water,

(b) indicating, in relation to each structure or feature, whether it was constructed or altered under section 49 of this Act or section 2 of the 1961 Act, and

(c) containing such other information as the Scottish Ministers may specify in regulations.

(2) Each map must be prepared—

(a) by such date as the Scottish Ministers may direct,

(b) at the appropriate scale, and

(c) in such form as the Scottish Ministers may specify in regulations.

(3) SEPA must, from time to time, review and where appropriate update the map prepared under this section for each flood risk management district.
Before preparing or updating a map under this section, SEPA must consult every local authority whose area (or part of whose area) is in the flood risk management district to which the map relates.

SEPA must make available for public inspection the map prepared or updated under this section for the time being applicable to each flood risk management district.

10. Section 16- Natural flood risk management

Background

Natural flood risk management includes a subset of flood risk management techniques that aim to contribute to reducing flood risk by restoring or enhancing natural landscape features and important landscape (including hydrological) processes.

To date, only limited information on the effectiveness of natural flood management has been obtained. However, available information suggests that some techniques show promise. The Scottish Government is in the process of developing a long-term research strategy to obtain information on the effectiveness of natural flood risk management.

The RAE Committee recommended that the Scottish Government should consider reference to natural process as well as natural features.

This RAE committee recommendation was discussed at length with stakeholders, and it was concluded that including a reference to ‘natural processes’ would not be practicable. This was based on the following observations:

- There was no consensus on what the phrase ‘natural processes’ meant. The most common interpretation was that ‘natural process’ included any processes that were uninterrupted by human activities.

- Applying the above interpretation of the phrase ‘natural processes’ it was recognised that ‘natural processes’ were very uncommon in Scotland’s landscape at the scale at which flooding needs to be managed, i.e. across catchments. For instance, land drainage is an important process, but it would be unfeasible to consider returning land drainage characteristics across a catchment to a natural state.

- To restore processes across catchments, you must first restore landscape features and characteristics.

Based on these observations, it was concluded that any amendments to Section 16 should emphasise the importance of taking a process-focused approach to investigating natural flood management options.
Amendment

This amendment would make a series of changes to Section 16, including adding a requirement on SEPA to consider ‘characteristics of river basins and coastal areas’ instead of just natural features. The amendment also includes some examples of what are included under the definition of natural features and characteristics, including features and characteristics which can assist in retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation). The examples provided focus on process related characteristics, e.g. slowing the flow of water.

The amendment would include introduction of a statutory date by which the assessment must be prepared (22 December 2013, or such other date as the Scottish Ministers may direct).

16   SEPA to assess possible contribution of alteration etc. of natural features and characteristics

(1) SEPA must, by 22 December 2013 or such other date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in a flood risk management district could contribute to the management of flood risk for the district.

(2) For the purposes of subsection (1), natural features and characteristics include such features and characteristics which can assist in retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation), those which contribute to the transporting and depositing of sediment, and the shape of rivers and coastal areas.

(3) SEPA must—

   (a) by such date as the Scottish Ministers may direct, review and where appropriate update its assessment under subsection (1), and

   (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) review and where appropriate update the latest assessment reviewed under this subsection.

(4) Each assessment under subsection (1), and each assessment updated after review under subsection (3), must—

   (a) take into account the flood risk assessment, any flood hazard maps and flood risk maps and any flood risk management plan for the time being applicable to the flood risk management district, and

   (b) refer to a map—

       (i) at the appropriate scale prepared for the purposes of the assessment, and

       (ii) showing where alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in the district could contribute to management of flood risk for the district.

(5) SEPA must make available for public inspection copies of—
(a) any assessment under this section for the time being applicable to each flood risk management district, and
(b) the map to which the assessment refers.

11. Supplementary information in local plans

Background
The RAE committee asked the Scottish Government to consider whether the information prepared under Section 16 would be sufficiently detailed to oblige local authorities to consider the incorporation of natural flood management into local flood risk management plans.

The Bill requires that the local plans are consistent with the district plans prepared by SEPA and are based on the objectives and measures set out in those plans. Local flood risk management plans will include information to supplement the information set out in the plans prepared by SEPA, including supplementary information on objectives and measures.

Amendment
This amendment sets out examples of the type of supplemental information that should be incorporated in local plans, namely maps and further information on measures. Maps could include detailed maps to assist in the planning or coordination of measures to manage surface water. Further information on measures could include further, more detailed, information on measures to manage surface water or natural flood management opportunities/measures that have been set out in the district plans.

In section 29, page 15, line 33, after <plan> insert <including such—

(i) maps, and

(ii) further information about the measures summarised under paragraph (a),>

12. Emergency response to flooding

Background
The RAE committee recommended that “the Scottish Government explore ways of ensuring that the appropriate emergency service acts to manage flood risk, including introducing amendments so far as they are within the scope of the Bill”.

The primary legislation dealing with emergency responses to flooding is the Civil Contingencies Act 2004. This Act requires all ‘category 1 responders’, which includes the emergency services and SEPA, to:

- increase public awareness by publishing risk assessments and emergency plans
- make arrangements to warn and inform the public when an emergency happens
- make arrangements to provide information about the progress of an emergency and to provide advice on actions to take.
Given that this duty is within the Civil Contingencies Act, the Scottish Government does not believe that it is appropriate or necessary to duplicate it in the Flood Bill, which is concerned with flood risk management, and not emergency responses to flooding.

It will however, be important to establish and manage links between civil contingencies work and flood risk management. The Scottish Government believe that the flood risk management planning process, including the use of advisory groups, will provide a mechanism to ensure that actions to manage risk are appropriately coordinated with actions to respond to flooding.

Amendment

This amendment requires SEPA to consider plans published under the Civil Contingencies Act 2004 when establishing objectives and measures. The Bill already includes a provision requiring all public bodies and office holders to have regard to flood risk management plans. This provides for an important two way interaction between flood risk management and emergency responses.

In section 24, page 12, line 20, at end insert—

<( ) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c.36) relating to the district,>
1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 23 Schedule 1
- Sections 24 to 52 Schedule 2
- Sections 53 to 84 Schedule 4
- Section 85 Schedule 3
- Section 86 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Rhoda Grant

79 In section 1, page 1, line 10, after <risk> insert <so as to achieve the objectives set out in any flood risk management plan approved under section 27>

Peter Peacock

66 In section 1, page 1, line 10, after <must> insert—

<(  ) so far as is practicable, and in so far as responsibility for implementation lies with each of them, seek to secure the implementation of the current measures identified in each local flood risk management plan (as finalised under section 31) within the timetable specified in relation to each measure by virtue of section 29(4)(a)(i), and (  )>

Roseanna Cunningham

1 In section 1, page 1, line 13, at end insert—

<(  ) so far as such exercise affects a flood risk management district, act with a view to achieving the objectives set out in the flood risk management plan for that district as approved under section 27,>

Roseanna Cunningham

2 In section 1, page 1, line 14, after <social> insert <, environmental>

Liam McArthur

80 In section 1, page 1, leave out lines 15 and 16

Roseanna Cunningham

3 In section 1, page 1, line 16, at end insert—

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act in the way best calculated to manage flood risk in a sustainable way,

Elaine Murray

81 In section 1, page 1, line 21, after <co-ordinate> insert <and integrate>

Roseanna Cunningham

4 In section 1, page 1, line 22, at end insert—

For the purposes of co-operating with each other under subsection (2)(c), the Scottish Ministers, SEPA and responsible authorities may enter into agreements with each other.

Roseanna Cunningham

5 In section 1, page 1, line 25, after <under> insert <this Part (other than subsections (1) and (2) of this section),>

Section 2

John Scott

82 In section 2, page 2, line 23, at end insert <;

and must, before 22 December 2010, give guidance to SEPA and responsible authorities as to their duty under section 1(2)(a).>

Roseanna Cunningham

6 In section 2, page 2, line 28, at end insert—

Before giving a direction under subsection (1), the Scottish Ministers must consult—

(a) the person to whom the direction is to be given, and

(b) such of the following persons as they consider appropriate—

(i) SEPA, and

(ii) responsible authorities.

After section 2

Peter Peacock

83* After section 2, insert—

<Guidance on sustainable flood risk management

(1) The Scottish Ministers may give guidance to SEPA and responsible authorities as to the meaning and achievement of sustainable flood risk management.

(2) SEPA and responsible authorities must have regard to such guidance in relation to the exercise of their flood risk related functions.

(3) Before giving guidance under this section, the Scottish Ministers must consult SEPA.>
Section 5

Roseanna Cunningham

7  In section 5, page 3, line 12, at end insert—

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

(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.>

Section 9

Roseanna Cunningham

8  In section 9, page 4, line 10, leave out from <or> to end of line 11

Roseanna Cunningham

9  In section 9, page 5, line 3, leave out <of> and insert <and characteristics of any river basin or coastal area in>

Roseanna Cunningham

10  In section 9, page 5, line 3, leave out from <(for) to end of line 5

Roseanna Cunningham

11  In section 9, page 5, leave out lines 13 to 16 and insert <, “natural features and characteristics” has the same meaning as it has for the purposes of section 16(1) (see section 16(1A))>

Section 13

Roseanna Cunningham

12  In section 13, page 6, line 6, leave out <geographical>

Roseanna Cunningham

13  In section 13, page 6, line 6, after first <areas> insert <(consisting of one or more river basins, sub-basins or coastal areas)>

After section 15

Roseanna Cunningham

14  After section 15, insert—
Scottish Water to assess flood risk from sewerage systems

(1) Scottish Water must, for each potentially vulnerable area and any other area identified by SEPA, prepare an assessment—
   (a) identifying where in the area it considers that a flood is likely to originate from a sewerage system,
   (b) estimating the volume of sewage which is likely to be released in the event of such a flood, and
   (c) containing such other information as the Scottish Ministers may specify in regulations.

(2) An assessment under subsection (1) must be prepared by such date as the Scottish Ministers may direct.

(3) Before identifying an area for the purposes of subsection (1), SEPA must consult—
   (a) Scottish Water, and
   (b) any other responsible authority which has functions exercisable in or in relation to the area.

(4) An assessment prepared under subsection (1) must be in such form as SEPA may determine.

(5) In determining the form of an assessment under subsection (4), SEPA must seek to ensure that the assessment will integrate with information relating to flood risk held by—
   (a) itself, and
   (b) any responsible authority which has functions exercisable in or in relation to the area for which the assessment is prepared.

(6) Before determining the form of an assessment in accordance with subsections (4) and (5), SEPA must consult the persons mentioned in subsection (5)(b).

(7) Scottish Water must, if requested, provide a copy of an assessment to SEPA or a responsible authority.

(8) Scottish Water must, for each potentially vulnerable area and each area for the time being identified by SEPA—
   (a) by such date as the Scottish Ministers may direct, review and where appropriate update the assessment prepared under subsection (1) for that area,
   (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) review and where appropriate update the latest assessment reviewed under this subsection for that area.

(9) Subsections (4) to (7) apply to the updating of assessments as they apply to their preparation.

(10) Before making regulations under subsection (1)(c), the Scottish Ministers must consult—
   (a) SEPA,
   (b) Scottish Water, and
(c) such other responsible authorities as they consider appropriate.>

Roseanna Cunningham

15 After section 15, insert—

<\textit{Bodies of water etc.: mapping and assessment}\n
\textbf{Local authorities to prepare maps of bodies of water etc.}\n
(1) Every local authority must prepare a map which shows (or more than one map which, taken together, show) relevant bodies of water and sustainable urban drainage systems in its area.

(2) Each map must—

(a) be prepared by such date as the Scottish Ministers may direct,

(b) be prepared at a scale that the authority considers most appropriate, and

(c) contain such information and be in such form as the Scottish Ministers may specify in regulations.

(3) A local authority must, from time to time, review and where appropriate update the map (or maps) prepared for its area under subsection (1).

(4) A local authority must make available for public inspection the map (or maps) prepared under this section for the time being applicable to its area.

(5) In this section and section 56—

“relevant body of water”—

(a) means—

(i) a body of surface water other than a stretch of coastal water, or

(ii) a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but

(b) does not include sewers and drains which drain into sewers,

“sustainable urban drainage system” has the meaning given in section 59(1) of the Sewerage (Scotland) Act 1968 (c.47).>

Roseanna Cunningham

16 After section 15, insert—

<\textit{Artificial structures and natural features: mapping and assessment}\n
\textbf{SEPA to prepare maps of artificial structures and natural features}\n
(1) SEPA must, for each flood risk management district, prepare a map—

(a) showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water,

(b) indicating, in relation to each structure or feature, whether it was constructed or altered under section 49 of this Act or section 2 of the 1961 Act, and

(c) containing such other information as the Scottish Ministers may specify in regulations.
(2) Each map must be prepared—
   (a) by such date as the Scottish Ministers may direct,
   (b) at the appropriate scale, and
   (c) in such form as the Scottish Ministers may specify in regulations.

(3) SEPA must, from time to time, review and where appropriate update the map prepared under this section for each flood risk management district.

(4) Before preparing or updating a map under this section, SEPA must consult every local authority whose area (or part of whose area) is in the flood risk management district to which the map relates.

(5) SEPA must make available for public inspection the map prepared or updated under this section for the time being applicable to each flood risk management district.

Section 16

Roseanna Cunningham
17 In section 16, page 7, line 33, leave out <such> and insert <22 December 2013 or such other>

Rhoda Grant
67 In section 16, page 7, line 34, after <of> insert <natural flooding processes and>

Roseanna Cunningham
18 In section 16, page 7, line 34, after <features> insert <and characteristics of any river basin or coastal area>

Roseanna Cunningham
19 In section 16, page 7, line 35, leave out <(for example flood plains, wetlands or woodlands)>

Roseanna Cunningham
20 In section 16, page 7, line 36, at end insert—
   <(1A) For the purposes of subsection (1), natural features and characteristics include such features and characteristics which can assist in the retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation), those which contribute to the transporting and depositing of sediment, and the shape of rivers and coastal areas.>

Elaine Murray
68* In section 16, page 7, line 36, at end insert—
   <( ) The Scottish Ministers may give guidance as to what constitutes a “natural flooding process” for the purposes of subsection (1).>
Rhoda Grant

In section 16, page 7, line 36, at end insert—

<(  ) In making an assessment under subsection (1) SEPA must seek the views of—
   (a) any local authority within the area of the flood risk management district,
   (b) any national park authority within the area of the flood risk management district,
   and
   (c) Scottish Natural Heritage,
   and take into account any such views.>

Roseanna Cunningham

In section 16, page 8, line 7, leave out second <the> and insert <any>

Roseanna Cunningham

In section 16, page 8, line 8, leave out first <the> and insert <any>

Roseanna Cunningham

In section 16, page 8, line 13, after <features> insert <and characteristics of any river basin or coastal area>

Roseanna Cunningham

In section 16, page 8, line 13, leave out <there> and insert <in the district>

Section 18

Roseanna Cunningham

In section 18, page 9, line 34, at end insert—

<(  ) Before giving a direction under subsection (4)(b), (5)(b) or (6)(b), the Scottish Ministers must consult SEPA.>

Roseanna Cunningham

In section 18, page 9, line 40, after <more> insert <(or an annual probability of occurrence of not more than 1%)>

Section 19

Liam McArthur

In section 19, page 10, line 25, leave out from <referred> to end of line 27 and insert <that are protected areas under the Birds Directive (Council Directive 79/409/EEC), are special areas of conservation under the Habitats Directive (Council Directive 92/43/EEC), or are SSSIs under Part 2, Chapter 1 of the Nature Conservation (Scotland) Act 2004 (asp 6),>
Section 23

Roseanna Cunningham
27 In section 23, page 11, line 33, at end insert <in a way which it considers is most sustainable>.

Peter Peacock
85 In section 23, page 11, line 33, at end insert—

<(4A) In setting objectives and identifying measures under subsection (4), SEPA must consider the assessment of the potential contribution of the alteration (including enhancement) and restoration of natural features and characteristics of a river basin or coastal area to the management of flood risk for the district.

(4B) In identifying measures under subsection (4)(b), SEPA must identify measures which it considers are the most sustainable.

(4C) Where measures identified under subsection (4B) are different to those considered under subsection (4A), SEPA must give reasons for selecting such alternative measures.>

Schedule 1

Peter Peacock
70 In schedule 1, page 45, line 11, leave out from <before> to end of line 12 and insert—

<(i) before the plan is next reviewed under section 28,

(ii) in the 6 years following that review,

(iii) in the 18 years following that review, or

(iv) in some other period.>

Section 24

Bill Wilson
86 In section 24, page 12, line 12, at end insert <including social, environmental and economic costs,>

Roseanna Cunningham
28 In section 24, page 12, line 13, leave out from <(in) to end of line 16 and insert <that are likely to be derived from implementing proposed measures, including—

( ) the benefits in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and

( ) any other environmental, social, and economic benefits,>

Roseanna Cunningham
29 In section 24, page 12, line 17, at end insert <including the management of surface run-off water and urban drainage>
Roseanna Cunningham

30 In section 24, page 12, line 20, at end insert—

<( ) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c.36) relating to the district,>

Roseanna Cunningham

31 In section 24, page 12, line 28, leave out subsections (2) and (3) and insert—

<(2A) For the purposes of subsection (1)(b)—

(a) a measure is structural if it involves flood protection work, and

(b) non-structural measures include flood warning, awareness raising and the preparation and review of development plans.

(2B) In subsections (1)(a)(viii) and (2A)(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.>

Section 25

John Scott

87 In section 25, page 13, line 22, leave out <considers> and insert <or the Scottish Ministers consider>

Section 27

Peter Peacock

71 In section 27, page 14, line 26, at end insert—

<(1A) In considering whether to approve a particular flood risk management plan, the Scottish Ministers must have regard to the other flood risk management plans to be approved within the same timescale and in particular to whether—

(a) the measures identified in the plans (taken together) as being for implementation before each plan is next reviewed under section 28, and

(b) the priority to be given to each such measure within that period, constitute an appropriate national implementation programme.

(1B) If the Scottish Ministers conclude that, taken together, those measures do not constitute an appropriate national implementation programme they must—

(a) under subsection (1)(a), approve the plan with any modifications necessary, or

(b) under subsection (1)(b), reject the plan and direct SEPA under subsection (4) to make such modifications of the plan as are necessary,

to ensure that the relevant measures in the set of flood risk management plans due to be approved within the same timescale as the plan in question do constitute such a programme.
(1C) Subsection (1B) does not affect the Scottish Ministers’ other powers to approve, reject or make, or direct SEPA to make, modifications of a flood risk management plan under this section.

After section 28

Peter Peacock

After section 28, insert—

Strategic assessment and interim strategic assessment

(1) SEPA must, as soon as practicable after a set of flood risk management plans for any period are approved under section 27, prepare and submit to the Scottish Ministers a report under this subsection (“a strategic assessment”).

(2) A strategic assessment must include a national implementation programme setting out—

(a) the measures identified in each flood risk management plan (as approved under section 27) as being for implementation before the plan is next reviewed under section 28, and

(b) the proposed priority to be given to implementing each such measure.

(3) A strategic assessment must also include an estimated—

(a) cost of, and

(b) timescale for,

implementing each such measure.

(4) A strategic assessment must also set out the measures identified in each flood risk management plan as being for implementation in each of the periods mentioned in paragraph 1(c)(ii) to (iv) of schedule 1.

(5) A strategic assessment to which subsection (6)(b) or (c) applies must also include an assessment of the progress made in implementing the national implementation programme set out in the previous strategic assessment.

(6) A strategic assessment relating to the set of flood risk management plans to which—

(a) section 23(3) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set is approved,

(b) section 28(2) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set is approved,

(c) paragraph (b) of section 28(1) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set to be approved by the end of each period of 6 years mentioned in that paragraph is approved.

(7) Where by virtue of subsection (6)(c) no strategic assessment is due to be laid before the Scottish Parliament within any period between two ordinary general elections (as scheduled to take place under or by virtue of section 2 of the Scotland Act 1998), SEPA is to prepare and submit to the Scottish Ministers (by such date as the Scottish Ministers specify) a report under this subsection (“an interim strategic assessment”).

(8) An interim strategic assessment must contain—
(a) such of the information contained in the previous strategic assessment as remains relevant at the time the interim strategic assessment is prepared, and

(b) an assessment of the progress made in implementing the national implementation programme set out in the previous strategic assessment.

(9) An interim strategic assessment must be laid before the Scottish Parliament by the Scottish Ministers on such date within the period mentioned in subsection (7) as the Scottish Ministers consider appropriate.

Section 29

Roseanna Cunningham

32 In section 29, page 15, line 33, after <plan> insert <including such—

(i) maps, and

(ii) further information about the measures summarised under paragraph (a).>

Roseanna Cunningham

33 In section 29, page 16, line 10, at end insert—

<(  ) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to surface run-off water or urban drainage, and>

Section 36

Peter Peacock

73 In section 36, page 20, line 22, at end insert—

<(  ) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for any period, have regard to the national implementation programme covering that period.>

Peter Peacock

74 In section 36, page 20, line 22, at end insert—

<(  ) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for any period, have regard to flood risk management plans and local flood risk management plans as they relate to that period.>

After section 36

Rhoda Grant

75 After section 36, insert—

<Town and Country Planning (Development Planning) (Scotland) Regulations 2008

(1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426) are amended as follows.
(2) In regulation 1(1) (citation, commencement and interpretation) insert at the appropriate place in alphabetical order the following definitions—

“flood risk management plan” means a flood risk management plan approved under section 27 of the Flood Risk Management (Scotland) Act 2009;”;

“local flood risk management plan” means a local flood risk management plan finalised under section 31 of the Flood Risk Management (Scotland) Act 2009;”.

(3) After regulation 3(1)(e) (information and considerations) insert—

“(ea) any flood risk management plan relating to the strategic development plan area;”.

(4) After regulation 10(1)(f) (information and considerations) insert—

“(fa) any local flood risk management plan relating to the local development plan area;”.

Section 37

Roseanna Cunningham

34 In section 37, page 20, line 31, after <10,> insert <(SEPA to prepare maps of artificial structures and natural features),>

Roseanna Cunningham

35 In section 37, page 20, line 31, after <10,> insert <16,>

After section 38

Roseanna Cunningham

36 After section 38, insert—

<Power of local authorities to obtain information

(1) A person mentioned in subsection (2) must, on being requested by a local authority, provide the authority with such information in its possession or under its control as the authority may reasonably seek in connection with its functions under sections (Local authorities to prepare maps of bodies of water etc.) and 56.

(2) Those persons are—

(a) SEPA, and

(b) any other responsible authority which has flood risk related functions exercisable in or in relation to the local authority’s area.

(3) Where SEPA or, as the case may be, a responsible authority cannot agree with the local authority on whether information is being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.>
Section 42

Roseanna Cunningham

37 In section 42, page 23, line 27, after <features> insert <and characteristics>

Section 43

Roseanna Cunningham

38 In section 43, page 24, line 26, after <features> insert <and characteristics>

Section 46

Roseanna Cunningham

39 In section 46, page 26, line 2, at end insert <unless the document is—
   (a) a map prepared under section (Local authorities to prepare maps of bodies of water etc.), or
   (b) a schedule prepared under section 56(1)(ba)>

Section 48

Roseanna Cunningham

40 In section 48, page 26, line 20, leave out <“river basin” has the same meaning> and insert <“body of surface water”, “loch”, “river basin” and “watercourse” have the same meanings>

Roseanna Cunningham

41 In section 48, page 26, line 20, at end insert—
   <“sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers, other watercourses and, as the case may be, lochs to a particular point in a watercourse or loch,>

Roseanna Cunningham

42 In section 48, page 26, line 21, leave out from <has> to end of line and insert <means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water.>

After section 51

Roseanna Cunningham

43 After section 51, insert—
Duty to carry out clearance and repair works

A local authority must carry out the works described in a schedule prepared by it under section 56 if it considers carrying out the works—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
(b) will not affect the implementation of the measures mentioned in paragraph (a).

Section 56

Roseanna Cunningham

44 In section 56, page 29, line 28, at end insert <(or when directed to do so by the Scottish Ministers)>

Roseanna Cunningham

45 In section 56, page 29, line 29, leave out <watercourses> and insert <relevant bodies of water (other than canals)>

Roseanna Cunningham

46 In section 56, page 29, line 30, leave out <watercourse> and insert <body of water>

Roseanna Cunningham

47 In section 56, page 29, leave out lines 32 to 35 and insert—

<(ba) where—

(i) a body of water gives rise to such a risk, and
(ii) the authority considers that clearance and repair works would substantially reduce that risk,

prepare a schedule of those clearance and repair works.

(1A) In subsection (1)(ba), clearance and repair works are works that consist of any or all of the following—

(a) removing obstructions from a body of water,
(b) removing things that are at significant risk of becoming such obstructions,
(c) repairing artificial structures which form part of the bed or banks of a body of water.

(1B) A schedule prepared under subsection (1)(ba) must—

(a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,
(b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.
(1C) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(ba) for the time being applicable to its area.

Elaine Murray

76 In section 56, page 29, line 32, leave out from <consider> to end of line 35 and insert <cleanse, repair and otherwise maintain the watercourse and any apparatus ancillary to it in a due state of efficiency.>

Roseanna Cunningham

48 In section 56, page 29, line 37, leave out <watercourse> and insert <relevant body of water>

Roseanna Cunningham

49 Move section 56 to after section 15

Section 60

Roseanna Cunningham

50 In section 60, page 31, line 8, leave out <Flood Prevention (Scotland) Act 1961 (c.41)> and insert <1961 Act>

Section 61

Elaine Murray

77 In section 61, page 31, line 10, at end insert—

<“cleanse” means the removal of mud, silt, debris or other obstructive matter in the ordinary course of good maintenance,>

Roseanna Cunningham

51 In section 61, page 31, leave out lines 24 to 31

After section 61

Peter Peacock

78 After section 61, insert—

PART

FLOOD RISK MANAGEMENT: SCOTTISH WATER FUNCTIONS

Scottish Water

(1) The Water Industry (Scotland) Act 2002 (asp 3) is amended as follows.

(2) In section 29B(4), before paragraph (a) insert—

“(za) the Commission must have regard to Scottish Water’s duty under section 51(A),”.

15
(3) In section 29D(4), for section “51(1)” substitute “sections 51(1) and 51A”.

(4) After section 51, insert—

"51A Sustainable flood risk management
Scottish Water must, in exercising its functions, act in a way best calculated to
promote sustainable flood risk management.”.

(5) In section 56A(3), for “section 51(1)” substitute “sections 51(1) “and 51A”.

Section 68

Roseanna Cunningham

52 In section 68, page 34, line 37, at end insert—

<(  ) section (SEPA to prepare maps of artificial structures and natural features)
(preparation of maps of artificial structures and natural features).>

Roseanna Cunningham

53 In section 68, page 35, line 2, after <features> insert <and characteristics>

Roseanna Cunningham

54 In section 68, page 35, line 9, at end insert—

<(  ) any land for the purposes of preparing, reviewing or updating a map under section
(Local authorities to prepare maps of bodies of water etc.),
(  ) any land for the purposes of assessing a body of water under section 56,>

Roseanna Cunningham

55 In section 68, page 35, line 16, at end insert—

<(  ) any land for the purposes of carrying out works under section (Duty to carry out
clearance and repair works), and>

Section 71

Roseanna Cunningham

56 In section 71, page 37, line 15, at end insert—

<(  ) the carrying out of works under section (Duty to carry out clearance and repair
works), or>

Section 79

Roseanna Cunningham

57 In section 79, page 41, line 31, leave out <section 16 or Part 5> and insert <this Part>
Move section 79 to after section 67

Section 84

In section 84, page 43, line 34, at end insert—
<“the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c.41),>

In section 84, page 44, leave out line 3 and insert—
<(b) the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area,>

Schedule 4

In schedule 4, page 54, line 12, at end insert—
<the 1961 Act Section 84(1)> 

In schedule 4, page 54, line 17, at end insert—
<body of surface water Section 48(1)> 

In schedule 4, page 55, line 6, at end insert—
<relevant body of water Section (Local authorities to prepare maps of bodies of water etc.)(5)> 

In schedule 4, page 55, line 14, at end insert—
<sub-basin Section 48(1)> 

In schedule 4, page 55, line 15, leave out <61> and insert <48(1)> 

Long Title

In the long title, page 1, line 1, after <and> insert <sustainable>
Flood Risk Management (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted.

Groupings of amendments

General duty: objectives and measures
79, 66, 1

General duty: environmental, economic and social impact
2, 82

Consistency between purposes of flood risk related functions and other duties
80

General duty: managing flood risk sustainably
3, 83, 65

General duty: co-operation
81, 4

Flood risk related functions
5

Directions: consultation
6, 25

Responsible authorities: consultation
7

Flood risk assessments: deadline for preparation
8
Natural features and natural characteristics
9, 10, 11, 17, 67, 18, 19, 20, 68, 69, 21, 22, 23, 24, 85, 35, 37, 38, 40, 41, 42, 53, 57, 58, 88, 61, 63, 64

Local plan districts
12, 13

Scottish Water: duty to assess flood risk from sewerage systems
14

Bodies of water and watercourses: local authority duties
15, 36, 39, 43, 44, 45, 46, 47, 76, 48, 49, 77, 51, 54, 55, 56, 62

Notes on amendments in this group
Amendment 47 pre-empts amendment 76

SEPA: duty to prepare maps of artificial structures and natural features
16, 34, 50, 52, 59, 60

Flood hazard maps: definition of “medium probability”
26

Flood risk maps: protected areas, conservation and SSSIs
84

Objectives and measures: sustainability etc.
27, 28

Strategic assessment (including use in funding decisions)
70, 71, 72, 73, 74

Objectives and measures: assessment of costs
86

Objectives and measures: surface run-off water and urban drainage
29, 33

Objectives and measures: civil contingencies
30

Objectives and measures: structural and non-structural measures
31

Flood risk management plans: consultation
87

Local flood risk management plans: supplementary part
32

Strategic development plans and local development plans
75
Water Industry Commission: Duty to have regard to sustainable flood risk management functions
78
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

EXTRACT FROM THE MINUTES

7th Meeting, 2009 (Session 3)

Wednesday 4 March 2009

Present:

Rhoda Grant (Committee Substitute) Liam McArthur
Alasdair Morgan Elaine Murray
Peter Peacock John Scott (Deputy Convener)
Maureen Watt (Convener) Bill Wilson

Apologies were received from Karen Gillon.

Flood Risk Management (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27.

Amendment 85 was agreed to (by division: For 5, Against 3, Abstentions 0).

The following amendments were disagreed to (by division)—
79 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
66 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
83 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote).

The following amendments were moved, and with the agreement of the Committee, withdrawn: 80, 81, 84 and 70.

The following amendments were not moved: 82, 67, 68 and 69.

Sections 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 17, 19, 20, 21, 22 and schedule 1 were agreed to without amendment.

Sections 1, 2, 5, 9, 13, 16, 18 and 23 were agreed to as amended.

The Committee ended consideration of the Bill for the day, schedule 1 having been agreed to.
10:02

The Convener: Agenda item 2 is consideration of the Flood Risk Management (Scotland) Bill at stage 2. Members should have in front of them their copy of the bill and a copy of the marshalled list and the groupings.

I welcome the Minister for Environment and her officials to the meeting, and I welcome the minister to her new role. As the previous convener of the committee, she is well versed on the bill, so it will not come as a complete surprise to her.

Section 1—General duty

The Convener: Group 1 is on general duty: objectives and measures. Amendment 79, in the name of Rhoda Grant, is grouped with amendments 66 and 1.

Rhoda Grant (Highlands and Islands) (Lab): The amendments in the group take the same direction. The bill as it stands does not contain a provision to implement the flood risk management plans. When we were taking evidence, it became apparent that such a duty was needed, and that became recommendation 3 of the committee’s stage 1 report. Amendment 79 is simple and straightforward, but without any duty to implement, the bill would be mainly a paper exercise.

I move amendment 79.

Peter Peacock (Highlands and Islands) (Lab): As Rhoda Grant said, all three amendments in the group seek to strengthen responsibility for implementing flood risk management plans. Each seeks to do so in a slightly different way, but they are not mutually exclusive and they could work together.

Amendment 66 seeks to place a duty on the responsible authorities “so far as is practicable, and in so far as responsibility for implementation lies with each of them” to secure within a specific timetable the implementation of local flood risk management plans, whereas amendments 79 and 1 focus on district plans. Amendment 66 is measured and reasonable. It may bear most heavily on local authorities, but it would give some assurance to local people that those authorities are under a duty to seek to secure the objectives of the plans that they helped to establish without tying the hands of the responsible authorities. The securing of objectives would be sought “as far as is practicable”,
which would leave a degree of discretion locally. The amendment reflects the committee’s unanimous findings in its stage 1 report, which specifically recommended at recommendation 3 that all local authorities should be required to “use their best endeavours to deliver the objectives of flood risk management plans”.

I hope that the committee will support amendment 66.

The Minister for Environment (Roseanna Cunningham): Good morning, everybody.

I agree with Rhoda Grant and Peter Peacock that it is important that the objectives and measures that are set out in flood risk management plans are delivered on the ground. Although the preparation of maps and plans is an important part of flood risk management, it is, of course, the works that make the difference. If we do not implement the works, we will not secure the achievements that we want that will make the difference to flood risk management throughout Scotland.

Section 1 places a general duty on Scottish ministers, the Scottish Environment Protection Agency and responsible authorities to exercise their flood risk-related functions with a view to reducing overall flood risk and so as to secure compliance with the floods directive. Amendment 1 will ensure that those parties will also be required to “act with a view to achieving the objectives set out in the flood risk management plan ... as approved under section 27”.

I understand that Mr Peacock would like a specific reference to be made to local flood risk management plans. I want to stress two important points. First, although the duty in amendment 1 is linked to the objectives that are set out in the flood risk management plans that SEPA has prepared, the objectives that are set out in those plans will be the same as those that are set out in the local flood risk management plans. Therefore, the general duty will also apply to the local flood risk management plans.

Secondly, section 23 stipulates that measures must be identified to achieve objectives. Therefore, the new duty links across to measures and to the implementation parts of local flood risk management plans that set out how the measures will be implemented.

Amendment 1 therefore directly addresses recommendation 3 in the committee’s stage 1 report. I am confident that the duty, alongside other provisions in the bill, will ensure that flood risk management is placed on a level playing field with other local authority responsibilities.

Rhoda Grant’s amendment 79 is, in effect, an alternative to amendment 1. The aim of both amendments is to strengthen the link between the duty to reduce overall flood risk and delivering the objectives that are set out in flood risk management plans. I am sure that amendment 1 will have the impact that Rhoda Grant seeks to obtain with amendment 79. However, her amendment would narrow the duty to reduce overall flood risk by limiting that to the achievement of objectives. It could detract from the aim of ensuring that responsible authorities act so as to reduce overall flood risk, even if that does not yet relate to an objective that has been specified in a plan.

Peter Peacock’s amendment 66, which is also an alternative to my amendment 1, would have a slightly different consequence. It would create a duty to implement the measures in local flood risk management plans, but as drafted, it would not leave much flexibility for local authorities or others to take account of changing circumstances. We have deliberately crafted the flood risk management planning process to allow for an element of flexibility to cover necessary changes in priorities, such as a need to focus on emergency work during major flooding incidents or to take account of new data that should, rightly, result in the implementation of particular measures being postponed or abandoned. The bill is about sustainable flood risk management. It would not be particularly sustainable for a local authority to continue to pursue an obsolete measure purely because there was a legal requirement for it to be implemented.

There is also the risk that placing such a specific duty on local authorities to seek to implement the measures in a local flood risk management plan would elevate flooding above all the other areas in which a local authority must provide a service and in which no similar duty exists. By focusing on reducing flood risk and achieving the objectives of district plans, amendment 1 provides for a more reliable and flexible approach.

In its report, the committee expressed concern about the possibility of local authorities implementing flood risk management measures that differ greatly from those that are set out in local flood risk management plans. Elsewhere in the bill, there are already restrictions that are intended to ensure that local authorities cannot circumvent the flood risk management planning process and pursue a different and possibly less sustainable agenda. Section 49 specifies that local authorities can use their powers to reduce flood risk only to implement the measures that are set out in local flood risk management plans. The only exceptions are in cases of emergency and where the work that is being done will not affect the implementation of the local plan. When considered
together with the existing general duties in section 1, those provisions provide a flexible way of ensuring that plans are implemented. Preserving flexibility in the context of the bill is one of our key concerns.

I ask Rhoda Grant to withdraw amendment 79 and request that amendment 66 not be moved.

Alasdair Morgan (South of Scotland) (SNP): If I understood Mr Peacock correctly, he said that all three amendments could be agreed to. I was surprised by that suggestion. The bill is a bit opaque at the best of times, but if we changed section 1 by agreeing to all three amendments it would become even more so.

On a more serious note, the minister made a point that we addressed during the discussions on our stage 1 report. Clearly, the bill places one particular duty on local authorities. However, if we concentrate only on making flood risk management an enforceable duty, disregarding all the other duties on local authorities, and the next committee that is considering a particular duty does the same, everything will become a priority, which means that nothing will be a priority. That is a step too far. The minister has made a good case for her amendment and I intend to vote for it.

Bill Wilson (West of Scotland) (SNP): Local democracy is an important issue in this context. Councils must be able to say what their priorities are at a particular time. I do not want us to be in the position of telling councils that they can have no flexibility in determining their priorities.

The minister mentioned flexibility, which is another big issue for me. We are in the middle of a period of climate change and do not know to what extent flooding patterns will change. If we tie matters down too tightly, we may find that in six or 10 years’ time we have a slightly different expected pattern of flooding and that councils need to implement different sets of priorities or plans. I, too, will support the minister’s amendment.

John Scott (Ayr) (Con): I note the intentions behind the three amendments. Having listened to the arguments for each amendment and the minister’s detailed explanation, I think that maintaining flexibility is the most important issue. As Bill Wilson said, we may face unforeseen and uncertain circumstances during the lifetime of the bill. In this instance, I am happy to support the minister’s amendment.

Rhoda Grant: I will not withdraw amendment 79, because it does not interfere with what the minister is trying to do; indeed, I think that it strengthens it. I press amendment 79.

The Convener: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

There is a tie, so I use my casting vote against the amendment.

Amendment 79 disagreed to.

Amendment 66 moved—[Peter Peacock].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

Again, there is a tie. I use my casting vote against the amendment.

Amendment 66 disagreed to.

Amendment 1 moved—[Roseanna Cunningham]—and agreed to.

10:15

The Convener: Group 2 is on general duty: environmental, economic and social impact. Amendment 2, in the name of the minister, is grouped with amendment 82.

Roseanna Cunningham: Members will be relieved to hear that I will not speak at the same length as I spoke on the previous group of amendments.

The bill places a duty on the Scottish ministers, SEPA and responsible authorities to consider the economic and social impacts of exercising their flood risk-related functions. Alongside
socioeconomic considerations, the environment is one of the three pillars of sustainability. Amendment 2 will ensure that environmental impacts are considered alongside the social and economic impacts.

The purpose of amendment 82, which John Scott lodged, appears to be to ensure that guidance on considering the social, economic and environmental impacts of exercising functions is issued. The matter is important and I recognise that the committee has asked the Government to issue guidance on how cost benefit analysis will ensure that all social and economic impacts and benefits are assessed. I reiterate the previous minister’s commitment to issuing guidance on that.

Any guidance must be issued at a time that will provide the maximum benefit to all the parties that are involved. The guidance must be developed in full partnership with the bodies that will implement the bill. I am concerned that a statutory requirement to issue guidance by a predetermined date under section 1(2)(a) would cut across that important work. However, I understand that the committee’s concern is to ensure that guidance on the social, economic and environmental impacts of exercising functions is issued in a timely manner. I therefore ask John Scott not to move amendment 82, as we will lodge a stage 3 amendment that makes it clear that guidance on the social, economic and environmental impacts of exercising functions must be issued within two years of the relevant provision’s commencement.

I move amendment 2.

John Scott: As the minister noted, amendment 82 would implement recommendation 6 in the committee’s stage 1 report, which was “that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs” in a timely fashion. My amendment would give at least a year’s notice of the need to produce guidance.

I am prepared to accept that amendment 82 might be too prescriptive. I am happy that the minister will lodge a stage 3 amendment to address the committee’s recommendation 6, so I will not move amendment 82.

Roseanna Cunningham: I thank John Scott for reconsidering the need for his amendment and I reiterate the commitment to lodge a suitable amendment at stage 3 in the terms that I described.

Amendment 2 agreed to.

The Convener: Group 3 is on consistency between purposes of flood risk-related functions and other duties. Amendment 80, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur (Orkney) (LD): Amendment 80 is in essence a probing amendment. We have discussed duties and functions in considering previous amendments. Section 1(2) makes a link to the duty that is set out in section 1(1) to exercise the flood risk-related functions. Through amendment 80, I seek to probe with the minister the thinking behind section 1(2)(b), the wording of which creates confusion in relation to the general duties. I would welcome the minister’s clarification of the intention behind that wording.

I move amendment 80.

Roseanna Cunningham: Amendment 80 would remove a vital qualification in the opening words of section 1(2)(b) that will ensure that the general duties—to promote sustainable flood risk management; to act with a view to raising public awareness of flood risk; and to act to contribute to sustainable development—are exercised only so far as they are consistent with the purposes of flood risk-related functions. The qualification is essential to ensure that the general duties work with flood risk-related functions under other legislation.

The flood risk-related functions in the bill are about managing flood risk, but section 1(3) allows the Scottish ministers to designate other functions as flood risk-related functions. Those might be relevant to managing flood risk, but they are unlikely to be intended primarily to deal with flooding. It is important to ensure that the general duties do not prevent responsible authorities from carrying out functions that are intended for other purposes. For instance, it would be appropriate for Scottish Water to exercise its flood risk-related functions under part 3 with a view to raising public awareness of flood risk, but it might not be appropriate to expect Scottish Water to raise awareness of flood risk when exercising its drinking water functions. In short, it is essential that flooding-related duties do not prevent bodies from exercising their other functions properly. The opening words of section 1(2)(b) are a safeguard to ensure that that situation is avoided.

For those reasons, I urge the member to withdraw amendment 80.

Liam McArthur: On that basis, I seek to withdraw the amendment.

Amendment 80, by agreement, withdrawn.

The Convener: Group 4 is on general duty: managing flood risk sustainably. Amendment 3, in the name of the minister, is grouped with amendments 83 and 65.
Roseanna Cunningham: During stage 1, as I know, there was a lot of discussion about sustainable flood risk management. The adoption of a sustainable approach to the management of flooding is central to the Government’s agenda for modernising flood risk management, and sustainable flood risk management is at the heart of the bill. The bill includes a series of substantive provisions that translate concepts and principles that are at the heart of sustainable flood risk management. For instance, the bill sets out a framework for collaborative working and stakeholder engagement; establishes a long-term and catchment-focused planning process; provides for consideration of non-flooding benefits when identifying measures; and ensures that the broadest range of measures are within the flood practitioner’s toolkit.

Amendment 3 will supplement the existing duty to promote sustainable flood risk management by requiring the Scottish ministers, SEPA and responsible authorities to “act in the way best calculated to manage flood risk in a sustainable way” when exercising their flood risk-related functions. Amendment 3 will retain rather than replace the duty to promote sustainable flood risk management. We believe that the promotion of sustainable flood risk management, which we take to include engaging with stakeholders and landowners, is an important part of sustainable approaches to managing flood risk.

Amendment 65 will change the long title so that it states that the bill makes provision about the sustainable management of flood risk. That will ensure that the long title fully reflects the provisions and purpose of the bill, which is what I think the committee wants.

Amendment 83, in the name of Peter Peacock, sets out some new provisions in relation to issuing guidance on the meaning and achievement of sustainable flood risk management. I am confident that those are unnecessary, and that they could be more limiting than the provisions that already exist. Section 2, as it is currently drafted, already gives Scottish ministers powers to issue guidance and directions on any matter that relates to the exercise of flood risk-related functions. Sustainable flood risk management is clearly one of those functions, and I intend to issue guidance on the meaning of that and its role in the implementation of the bill. The bill requires SEPA and the responsible authorities to have regard to any such guidance.

Amendment 6, which I will discuss later, requires Scottish ministers to consult SEPA and responsible authorities before issuing directions or guidance. For those reasons, I ask the member not to move amendment 83.

I move amendment 3.

Peter Peacock: I welcome amendments 3 and 65. Amendment 83, as the minister said, gives Scottish ministers powers to issue guidance on the specific question of sustainable flood risk management. There is, as the minister indicated, a welcome change to the long title of the bill, which makes clear that the bill is about sustainable management of flood risk.

There are many interpretations of what sustainable flood risk management means, and as new thinking, technologies and experimentation emerge over time, the definition will no doubt change. Making provision for guidance on the specific meanings and achievement of sustainable flood risk management rather than seeking to define it in the text of the bill is, in general, a sensible approach; the committee made that point in its stage 1 report.

The minister argued that she would already have powers under the bill to issue guidance on that point. However, it is important to be explicit about the meaning and achievement of sustainable flood risk management, and amendment 83 empowers ministers to take care of that over time. Similar provisions are included in other pieces of legislation such as the National Parks (Scotland) Act 2000, the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004.

Amendment 83 gives effect to the unanimous recommendation of the committee in its stage 1 report, which asked for the issue of sustainability to be linked to guidance. I hope that the committee will agree to the amendment.

Alasdair Morgan: It seems that amendment 83 somewhat overeggs the custard. The minister has come back and agreed to our recommendation, including the reference to sustainability, and she already has powers under section 2 with regard to issuing guidance in relation to the bill. It seems, therefore, that the matter is covered. We should not complicate legislation any more than is necessary.

Roseanna Cunningham: I want to press amendment 3. Although I understand where Peter Peacock is coming from in making his arguments, everything that he seeks will already be contained within the bill.

Amendment 3 agreed to.

The Convener: Group 5 is on general duty: co-operation. Amendment 81, in the name of Elaine Murray, is grouped with amendment 4.
Elaine Murray (Dumfries) (Lab): Amendment 81 simply inserts the words, “and integrate” into line 21 of the first page. It takes the same direction as amendment 4, in the name of the minister, which inserts into the text of the bill the capability of the responsible authorities to enter into agreements with each other.

I intend to press my amendment, because it is important not just to work together, but as far as is practical—which is the wording of the bill—to integrate the authorities’ respective functions. That could apply not only to such things as integrated funding streams for certain sorts of work, but to the integration of the authorities’ functions with other functions under related directives, such as the water directive. It does not in any way negate the minister’s amendment, but it strengthens the provisions in the bill.

I move amendment 81.

10:30

Roseanna Cunningham: Co-operation and collaboration will be key to the successful implementation of the bill. The bill already includes a general duty to collaborate and a series of more specific duties to consult and agree on important matters. Amendment 4 will make it clear to the bodies involved in managing flood risk that collaboration includes entering into agreements. That could include agreements on the joint exercise of functions or on the sharing of costs.

I appreciate the intention behind Elaine Murray’s amendment 81, but concerns arise over how the word “integrate” would be construed. The integration of functions would be difficult to achieve in practice. For instance, how exactly would one expect SEPA and local authorities to integrate functions? Would it involve merging duties, staff, systems and procedures? What would integration mean, beyond co-operation or co-ordination?

The bill includes further provisions that are intended to ensure that co-operation and co-ordination underpin the implementation of the bill. For example, section 31(1)(b) includes provisions for all parties to agree, before a local flood risk management plan is finalised, on how measures will be implemented.

I accept in principle that there is a clear need for close co-operation and collaboration. The bill makes provision in section 41 for integrating with the Water Environment and Water Services (Scotland) Act 2003.

I cannot accept amendment 81 at this stage, but I ask Elaine Murray to consider withdrawing it while we consider the issue further for stage 3 with a view to finding a workable solution to the substantive points that she raises. I understand what she is aiming for, and we could perhaps have a useful conversation before stage 3.

Elaine Murray: I have listened to the minister, and we will have an opportunity to revisit the issue at stage 3. I am therefore happy to seek leave to withdraw amendment 81.

Amendment 81, by agreement, withdrawn.

Amendment 4 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Group 6 is on flood risk-related functions. Amendment 5, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The Rural Affairs and Environment Committee agreed with the view of the Subordinate Legislation Committee that the general duty to act with a view to reducing flood risk should apply to the Scottish ministers when they exercise their powers to designate flood risk-related functions and to issue directions and guidance under part 1. That is being done by adding functions under section 1(3) and section 2 to the definition of flood risk-related functions for the Scottish ministers. I trust that amendment 5 meets with the committee’s original wishes.

I move amendment 5.

Amendment 5 agreed to.

Section 1, as amended, agreed to.

Section 2—Directions and guidance

The Convener: Amendment 82 was debated with amendment 2.

John Scott: The minister will lodge an amendment at stage 3, so I will not press amendment 82.

Amendment 82 not moved.

The Convener: Group 7 is on directions: consultation. Amendment 6, in the name of the minister, is grouped with amendment 25.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation Committee’s view that the bill should require Scottish ministers to consult bodies before giving them directions in relation to the exercise of their flood risk-related functions, as defined in section 1. I am happy to amend the bill so that the bodies to be directed are consulted before a direction is given.

Amendment 6 will ensure that SEPA and responsible authorities will also be consulted where they are not being directed but where the
Scottish ministers consider it appropriate to consult them.

Section 18 specifies the information that must be shown in flood hazard maps when SEPA produces them. The committee agreed with the Subordinate Legislation Committee’s view that Scottish ministers should have to consult SEPA before giving it directions on the content of those maps. I have considered that point and I am happy to amend the bill accordingly. Therefore, amendment 25 requires Scottish ministers to consult SEPA before directing it to include in flood hazard maps information on coastal flooding, ground water flooding and flooding from a sewerage system.

I trust that the amendments meet the committee’s wishes. In referring to amendment 6 earlier, I indicated that it applied to directions or guidance, but I clarify that it applies to directions only.

I move amendment 6.

Amendment 6 agreed to.

Section 2, as amended, agreed to.

After section 2

Amendment 83 moved—[Peter Peacock].

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

Against
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

Again, there is a tie. I use my casting vote against the amendment.

Amendment 83 disagreed to.

Sections 3 and 4 agreed to.

Section 5—Responsible authorities

The Convener: Group 8 is on responsible authorities: consultation. Amendment 7, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation Committee’s view that Scottish ministers should consult widely before making an order to designate new responsible authorities. I am therefore happy to amend the bill, so that before a new responsible authority can be designated, Scottish ministers have to consult SEPA, responsible authorities, the public bodies or office-holders that are to be designated as responsible authorities and such other persons as are considered appropriate. I hope that that meets the committee’s wishes.

I move amendment 7.

Amendment 7 agreed to.

Section 5, as amended, agreed to.

Sections 6 to 8 agreed to.

Section 9—SEPA to prepare flood risk assessments

The Convener: Group 9 is on flood risk assessments: deadline for preparation. Amendment 8, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Section 9(2) sets the deadline for preparation of the first flood risk assessments as 22 December 2011, or an earlier date that the Scottish ministers may set by direction. The flexibility to set an earlier date was originally included because it might have been helpful to produce flood risk assessments early. However, the Subordinate Legislation Committee queried the need for ministers to be able to set deadlines for SEPA to produce flood risk assessments in advance of deadlines set in the European floods directive. It has now become clear that it will not be practicable for the first flood risk assessments to be delivered before 2011, so there is no longer any need for the flexibility to change the date under section 9. Amendment 8 therefore removes the ability of the Scottish ministers to set an earlier date.

I move amendment 8.

Amendment 8 agreed to.

The Convener: Group 10 is on natural features and natural characteristics. Amendment 9, in the name of the minister, is grouped with amendments 10, 11, 17, 67, 18 to 20, 68, 69, 21 to 24, 85, 35, 37, 38, 40 to 42, 53, 57, 58, 88, 61, 63 and 64.

Roseanna Cunningham: This extensive group of amendments reflects the long and detailed conversations that have taken place on natural flood management, which has been a key topic of discussion for the committee. There are a lot of points for me to address, so I will have to spend a little time on the group. I ask members to bear with me.
Amendments 9 to 11, 17 to 24, 35, 37, 38, 40 to 42, 53, 57, 58, 61, 63 and 64 relate directly to the assessments of natural features that will be made under section 16. I will lodge separate amendments to later sections that deal with wider issues concerning the role of natural flood risk management and its relationship to sustainable flood risk management. I will refer to those amendments when I address the amendments that committee members have lodged.

We all appreciate that the evidence base supporting the use of more natural approaches to managing flooding is still limited and evolving. However, available information suggests that a number of techniques show significant promise. Furthermore, we should aim to take advantage of the added benefits that can be gained from adopting more natural approaches to managing flooding, which include environmental and social benefits.

The Government is in the process of developing a long-term research strategy to co-ordinate investment in improving our understanding of natural flood management techniques. We have also set up a stakeholder group to advise the Government on natural flood management. Those important steps will contribute to the cultural shift that, as the committee has rightly highlighted, must occur.

The Scottish Government has worked closely with stakeholders on considering the role of natural flood management and the committee’s recommendations on section 16. The amendments to which I will speak have been drafted in close consultation with stakeholders, including SEPA, Scottish Natural Heritage and Scottish Environment LINK.

Amendments 18, 23 and 24 mean that the assessments that will be prepared under section 16 will consider not only natural features but how alterations or restoration of natural characteristics of river basins and coastal areas could contribute to managing flood risk. The reference to river basins indicates that the emphasis is clearly on taking a catchment-based approach.

Amendments 19 and 20 replace the examples of natural features that are set out in the bill with a new set of examples that covers natural features and characteristics of river basins and coastal areas. In setting out those examples, we have given particular consideration to ensuring that they express some of the key concepts and aims of natural flood management, including using natural features and characteristics to assist in the retention or slowing of flood water. I stress that the examples that are set out in the amendments are not intended to form an exhaustive list. In compiling them, the Government liaised closely with key stakeholders, including Scottish Environment LINK and SEPA.

Amendment 17 sets a date—December 2013—by which assessments must be prepared. That date has been chosen to ensure that assessments can be co-ordinated with other important steps in the flood management process and with work that is being carried out under the Water Environment and Water Services (Scotland) Act 2003.

Amendments 21 and 22 are consequential on the introduction of a date and ensure that, when preparing an assessment, SEPA will give consideration to those maps and plans that are available when the assessment is made.

Amendments 9, 10, 11, 37, 38 and 53 are consequential amendments that ensure that the new terminology that is introduced in section 16 is applied elsewhere in the bill, including in section 9, which deals with flood risk assessments.

Amendment 35 gives SEPA the power to obtain information, documents and assistance under section 16 when it is preparing an assessment.

10:45

Amendments 57 and 58 make consequential changes to section 79, which as introduced would give SEPA a more limited power to obtain information when performing its functions under section 16. The new wider-ranging power will ensure that SEPA can obtain not only information about land but any other information or assistance to support the preparation of assessments, which could include seeking assistance from local authorities.

Amendment 40 applies to the bill the same definitions of a body of surface water, a loch and a watercourse as are used in the Water Environment and Water Services (Scotland) Act 2003. That is part of the integration that I mentioned.

Amendment 41 amends the definition of a sub-basin.

Amendment 42 changes the definition of a wetland to include wetlands that do not depend directly on bodies of surface water or groundwater for their water needs. That will ensure that all wetland features, including rainwater-fed wetlands that might help to slow run-off, are captured by the definition of wetland in the bill. We are trying to include as much as possible.

Amendments 61, 63 and 64 make consequential changes to the index of defined terms in schedule 4.

Amendment 88, which Rhoda Grant lodged, would amend the definition of flood protection.
work for the whole bill by replacing the reference to
"the sowing or planting of vegetation or forestry"
with a reference to
"the alteration … or restoration of natural features".
Amendment 88 would make the definition slightly narrower than that in the bill.

The amendments that I have lodged to section 16 will ensure that
"the alteration … or restoration of natural … characteristics of any river basin or coastal area"
are recognised as flood protection measures when they contribute to managing flood risk. I am confident that those amendments, combined with the definition of flood protection work, which covers
"any work of construction, alteration, improvement, repair, maintenance, demolition or removal",
will be wide enough to encompass
"the alteration … or restoration of natural features and characteristics of any river basin or coastal area".

For those reasons, I do not support Rhoda Grant’s amendment 88 and I ask her not to move it.

Amendment 67, which Rhoda Grant lodged, and amendment 68, which Elaine Murray lodged, would require SEPA to consider natural processes and give the Scottish ministers the option to give guidance on what constitutes a natural flooding process. As I have said, the Government liaised closely with key stakeholders on the topic, including Scottish Environment LINK, SEPA, SNH and the Forestry Commission Scotland, and it quickly became clear that there is no consensus on what is meant by a natural flooding process. The simple fact that flooding is a naturally occurring phenomenon leads me to conclude that any attempt to define a natural flooding process would result in a lengthy and potentially unproductive exercise. It is difficult to identify examples of how a natural flooding process—however people choose to define it—could be restored without first physically altering a feature or characteristic of the landscape. The amendments that I have lodged will ensure that the assessments that are done under section 16 focus not only on well understood aspects of natural flood management but—critically—on catchment characteristics, which must be at the heart of adopting a more natural approach to flood management. For those reasons, I do not support amendments 67 and 68, which I ask Rhoda Grant and Elaine Murray not to move.

Amendment 69 was lodged by Elaine Murray. I agree fully that the assessments that are prepared under section 16 should be subject to consultation with local authorities, other responsible authorities and other key organisations, including SNH. That is why the bill requires SEPA to have regard to the advice of advisory groups when preparing assessments. I assure the member that the bodies that her amendment names will need to be involved in the preparation of assessments and that SEPA will be required to have regard to their advice. To initiate a separate consultation exercise would risk undermining the important role that is envisaged for advisory groups. For those reasons, I do not accept amendment 69. The bill already makes adequate provision in that respect, therefore I ask the member not to move the amendment.

Amendment 85, which was lodged by Peter Peacock, does not relate to the content of assessments that are prepared under section 16. Instead, it relates in part to how the information that is gathered from assessments is used when SEPA sets objectives and measures to manage flood risk for inclusion in flood risk management plans. I would first like to clarify that the bill already requires SEPA to have regard to section 16, along with various other important factors, when it identifies objectives and measures.

The other aspects of Peter Peacock’s amendment would require SEPA to select the most sustainable measures and to give reasons for selecting measures that are inconsistent with things that are identified through assessments that are made under section 16. On the first point, I will later discuss a proposed Government amendment that will require SEPA to select measures that will achieve objectives in the most sustainable way. On the second point, I fully support the principle that SEPA should be required to set out reasons for selecting particular measures and I believe that that principle should apply to all measures, not only to those that relate to section 16.

I ask Peter Peacock not to move amendment 85, on the understanding that I will bring forward an amendment at stage 3 to require SEPA to set out the reasons behind the selection of measures.

I move amendment 9.

Rhoda Grant: Having listened to the minister’s comments, I am happy not to move amendment 67, because the Government’s amendment 18 has the same purpose.

On amendment 69, the minister said that she believes that the matter has been taken care of. I think that there is an issue with our numbering—amendment 69 is mine.

The Convener: Amendment 69 is in Rhoda Grant’s name, not Elaine Murray’s.

Rhoda Grant: The numbering has caused confusion.
I heard what the minister said about the point being covered by other amendments and other parts of the bill, but I am not convinced of that—it is important that the authorities that are listed in amendment 69 are involved. However, given the way that voting has gone, I will not move amendment 69, although I will re-examine the bill and perhaps come back with an amendment at stage 3 if I am still not convinced by what the minister has said.

I heard what the minister said about the aims of amendment 88 being met by the bill, but I do not believe that the amendment would pull back what is available under the bill. The bill states that natural features and “the sowing or planting of vegetation or forestry” are allowed. My amendment would widen that definition, and I do not think that it would have a detrimental effect, so I will move it.

Elaine Murray: Unfortunately, Rhoda Grant and I were transposed at some point, which has caused a bit of confusion.

My amendment 68 obviously relates to guidance. Like many of the amendments, amendment 68 addresses substantial concerns that were raised with the committee. I am sure that the minister will remember from her previous role that there were substantial concerns about the need for a cultural change so that natural processes are understood and used wherever possible. I am still of the opinion that guidance would be helpful to responsible authorities. I appreciate, as Rhoda Grant indicated when she said that she would not move her amendment 67, that the phrase “natural flooding process” is perhaps not appropriate because of the proposed new wording of the sections concerned.

Given that stage 3 is still to come, I am inclined not to move my amendment 68 and to review the amended sections to see whether instructions on giving guidance are required.

Peter Peacock: I welcome all the minister’s amendments in the group and my colleagues’ comments on them. I will focus on amendment 85. As the minister rightly acknowledged, natural flood management was one of the issues that got the most attention during the committee’s flooding inquiry and in its stage 1 report. There is no doubt that the committee is attracted to using more natural approaches to flood risk management. Those approaches might be more sustainable than hard engineering solutions, with the additional benefit that they can create or restore habitat, which relates to other aspects of Government policy. The committee argued that, where natural approaches can be used to remove the peaks of floods and reduce the need for hard engineering solutions downstream, they should be considered—I stress the word “considered”.

The stage 1 report is clear that natural flood management techniques will not work in every circumstance and are therefore not a panacea. The committee was equally clear that, as others have mentioned, a change of culture is required in the consideration of future flood management approaches. If we have a system for developing flood risk management plans that is dominated by engineers—estimable people though they are, and I include John Scott in that—we should not be surprised if the subsequent debate is dominated by engineering solutions or arrangements for flood management.

Recommendation 15 in the committee’s stage 1 report calls for measures that are likely to cause the shift in culture that the committee feels to be necessary, but which are not prescriptive about the use of natural flood management techniques. The committee wants to “require responsible authorities to consider what contribution natural flood management approaches could make”, and recommends that “Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision.”

Amendment 27, which the minister mentioned and which we will debate later, is the Government’s way of addressing the issue. However, it does not go far enough and it is not explicit enough. Amendment 85 would deliver the committee’s unanimous recommendation, and I hope that it embraces the purpose of the Government’s amendment 27.

Amendment 85 is both reasoned and reasonable and I urge the committee to support it. It seeks to ensure that natural flood management techniques are considered, but it would not require action using those techniques to be taken above any other action. Under amendment 85, when the contribution that natural techniques could make was considered and it was decided not to use them, the reasons for the decision would have to be set out. The amendment would not require natural flood management techniques always to prevail, which is an understandable concern of the Government. It would provide for the necessary considerations to bring about the change in culture to which the committee has referred.

I noted the minister’s comments about the intention to return at stage 3 with an amendment to take care of the reporting aspects. I welcome that, but it does not deal with the central point of amendment 85—of which reporting is a part—which is the requirement to consider natural
approaches, although not necessarily to implement them. I stress that point, which would give discretion to SEPA and local bodies.

**Bill Wilson:** Amendment 88 would replace the phrase

"the sowing or planting of vegetation or forestry"

with different wording. It occurred to me that the amendment might exclude commercial forestry, as it might not qualify as the alteration or enhancement of, or the restoration of, a natural feature. Under the bill as it stands, commercial forestry would be included. As we are hoping to expand commercial forestry substantially, that might be a slightly negative effect.

**Rhoda Grant:** I argue strongly that a tree is a natural feature, whether it is privately or publicly owned.

**Bill Wilson:** I was not really considering whether the trees are privately or publicly owned. Commercial forests are natural in the sense that they are trees, but they might not be considered a natural feature in the sense of being part of the historic landscape or a collection of species that are part of the historic ecosystem. Therefore, they might not be considered to be entirely natural. To take an extreme example, most people would accept that the plantations in the flow country were not a particularly natural feature. Of course, I am not proposing planting in blanket bog—that is merely an example of a case in which commercial forestry might be considered not to be natural.

**The Convener:** Rhoda, you can come in again, but I do not want a dialogue to start.

11:00

**Rhoda Grant:** I apologise. I saw a dialogue taking place and was quiet for a moment.

Amendment 88 would not preclude commercial forestry at all. The planting of the flow country may have been a planning abomination, but a tree is a natural feature regardless of where it is planted, so even if it was part of commercial forestry, it would be considered a natural feature.

**Liam McArthur:** The committee deliberated the presumption in favour of natural processes and features for quite a while, and the evidence that we took indicated that there was confusion about the implications of that presumption. Peter Peacock’s amendment 85 would get round some of those difficulties. I acknowledge the intention of amendment 27 and what the minister said about amendments that she may lodge at stage 3, but amendment 85 would implement a central recommendation from the committee’s stage 1 report. It would facilitate the cultural shift for which we called; it would not prescribe or proscribe particular approaches but would ensure that hard engineering is not the approach with which local authorities and SEPA naturally kick off the debate about flood risk management.

**Elaine Murray:** I am minded not to move amendment 68, but Bill Wilson’s comments reflect the need for guidance and the misunderstanding that might exist about what constitutes natural processes. Clearly, there is a range of approaches, from the use of a totally natural system in its normal, natural condition to the use of soft engineering solutions to promote a natural solution to a problem. His comments about the proscription of commercial forestry illustrate the need for guidance. I ask the minister to reflect on that when she considers stage 3 amendments, because the committee is clearly confused, even after all its discussions about the issue over the weeks. It is important that such confusion does not remain after the bill has completed its passage through the Parliament.

**Alasdair Morgan:** It strikes me that the amendments that we are already making to section 16, coupled with amendment 27—which the minister intends to move later today or on another occasion—probably implement the committee’s recommendations. It is open to members to revisit the matter once the bill has been republished at the end of stage 2. There are so many amendments to section 16 that members may have some difficulty in taking in their scope and trying to combine them in their minds, therefore I will not support amendment 85.

**John Scott:** I am inclined to support amendment 85. Natural flood management was central to the committee’s report and, if amendment 85 would help to deliver that, it is important. Notwithstanding the minister’s intention to introduce amendments at stage 3, amendment 85 is worthy of support.

**Roseanna Cunningham:** Committee members have raised a number of points and there have been some interesting conversations.

On amendment 85, I have already indicated that I would be prepared to lodge a stage 3 amendment to require SEPA to set out the reasons behind its selection of measures. We will come to other amendments that deal with other aspects of amendment 85, but I point out that section 24 already requires SEPA to consider section 16 in setting objectives and measures.

Many provisions in the bill interrelate with one another, and amendments to one section are not necessarily the only amendments that relate to a particular issue. I said right at the start that there are other amendments that relate to natural flood processes and I have said clearly that the Government has been guided all the way through
the process by our consultation with a wide variety of stakeholders. Therefore, the amendments that we have lodged are not capricious in any way.

I am a little concerned about amendment 88. We deliberately drafted the definition of flood protection work to be as wide as possible. Amendment 88 would remove part of rather than add to the definition of flood protection work and might restrict the definition, which we would not like to happen. We must take great care not to make things more restrictive. The key is to be as open and flexible as possible in our approach to the bill.

Amendment 9 agreed to.

Amendments 10 and 11 moved—[Roseanna Cunningham]—and agreed to.

Section 9, as amended, agreed to.

Sections 10 to 12 agreed to.

Section 13—SEPA to identify potentially vulnerable areas and local plan districts

The Convener: Group 11 is on local plan districts. Amendment 12, in the name of the minister, is grouped with amendment 13.

Roseanna Cunningham: It is clear that ensuring that a catchment-focused approach to managing flood risk is adopted is an important part of improving flood risk management. The existing provision in the bill would have supported the adoption of a catchment-focused approach, but we have listened to the committee’s and stakeholders’ concerns about that requirement not being clearly conveyed in the bill. Amendments 12 and 13 will require SEPA to use river basins, sub-basins and coastal areas in identifying the areas for which local flood risk management plans have to be prepared. I want to clarify that the plans that are prepared by SEPA will be based on flood management districts that are formed from groups of river basins and coastal areas, which means that catchments will underpin flood risk management at the district and local levels.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Roseanna Cunningham]—and agreed to.

Section 13, as amended, agreed to.

Sections 14 and 15 agreed to.

The Convener: We shall stop for a short comfort break and so that people can recharge their coffee cups. We are managing quite well, although perhaps those will be famous last words.
feed directly into other assessments and maps prepared under the bill. For instance, the information will make an important contribution to the flood hazard and risk maps prepared by SEPA. Ultimately, the information will help to identify the right combination of measures to tackle pluvial and sewer flooding.

Amendment 14 is fundamental to our ability to address such issues on an integrated basis. I think that the issue was also raised in the committee’s recommendations. I am confident that amendment 14 will lead to significant improvements in how we tackle surface water and sewer flooding.

I move amendment 14.

Amendment 14 agreed to.

The Convener: Group 13 is on bodies of water and watercourses: local authority duties. Amendment 15, in the name of the minister, is grouped with amendments 36, 39, 43 to 47, 76, 48, 49, 77, 51, 54 to 56 and 62. If amendment 47 is agreed to, I will not be able to call amendment 76, as it will have been pre-empted.

Roseanna Cunningham: I will speak to amendments 15, 36, 39, 43 to 49, 51, 54 to 56 and 62. For obvious reasons, this group will take some time to deal with, so I apologise in advance for speaking at length.

The bill will give local authorities responsibilities for preparing plans to manage flood risk. Those plans need to co-ordinate actions across catchments and within urban centres. Local authorities will need reliable information on the location of bodies of water and sustainable urban drainage systems to allow them to co-ordinate their actions.

Amendment 15 requires local authorities to prepare maps of bodies of water and sustainable urban drainage systems in their area. It is not intended that local authorities should be required to map every body of water in their area, so the provision will give local authorities discretion about the scale at which they identify and map. The amendment also gives Scottish ministers powers to set out in regulations other information for inclusion in the map as well as the form of the information. The map must be reviewed from time to time and updated as necessary.

Amendment 36 ensures that SEPA and the responsible authorities provide local authorities with information so that they can carry out their duty to map and assess bodies of water when requested.

Part 3 places a duty on local authorities to make information public and to publicise the availability of the information. Amendment 39 removes the need to advertise the publication of maps of bodies of water and schedules that are prepared under section 56. We do not want local authorities to have to publicise the availability of maps, because the maps are preliminary documents and their main purpose is to provide information to feed into the main assessments, maps and plans. It would place a disproportionate burden on local authorities if they had to advertise those too.

The maintenance of watercourses is an important function that local authorities have been carrying out since the passage of the Flood Prevention and Land Drainage (Scotland) Act 1997. It is imperative that that important work is continued; it is also essential that it is co-ordinated with other flood management work that is set out in the flood risk management plans.

Amendment 45 removes the duty to assess watercourses to determine whether they could give rise to flood risk, and replaces it with a duty to assess “bodies of water”, excluding canals. As described earlier, bodies of water are now defined in the bill. Canals are excluded from the duty because British Waterways is responsible for the maintenance and improvement of canals throughout the United Kingdom. Canals will still be taken into account for flood risk management purposes under other sections of the bill.

Amendments 46 and 48 are consequential on amendment 45. They remove the term “watercourse” and replace it with the term “body of water” in section 56. In addition, amendment 49 moves the whole of section 56 to immediately after section 15, so that it sits with the new duties on local authorities to prepare maps of bodies of water.

The new term “bodies of water” replaces the term “watercourses” throughout part 3 as a result of a number of amendments, and therefore the definition of watercourse is no longer required. Amendment 51 removes the definition of watercourse from section 61.

Where local authorities determine that a flood risk exists, they must consider whether clearance or repair works could reduce that risk. That ensures that the assessments are focused on those matters that can be addressed by clearance and repair works. The bill gives local authorities responsibility for determining when that assessment should be made, and each authority, acting reasonably as a public authority must always do, will decide how frequently an assessment must be made. Amendment 44, however, allows the Scottish ministers to direct local authorities on when the assessment should be made. In most cases, we expect local authorities to retain responsibility for determining when an assessment is undertaken.

Given the important nature of maintenance works, I believe that, wherever possible, the work
should be planned. I understand that many local authorities already prepare schedules of maintenance works. Amendment 47 requires local authorities to prepare schedules for clearance and repair works, where those are defined to mean removing obstructions such as shopping trolleys from a body of surface water; removing objects or material that are at significant risk of becoming obstructions, which can include trees that fall into a river; and repairing artificial structures that form part of the bed or banks of a body of water, such as a flood wall.

I clarify that local authorities have a broad range of powers to undertake other flood protection works, including emergency works, and I stress that the new duty to prepare schedules and act on the work that is identified in those schedules does not prohibit local authorities from undertaking other maintenance-related flood management work.

After listening carefully to the committee’s concerns about the replacement of the duty to undertake maintenance works by the overarching duty to reduce overall flood risk, I have lodged amendment 43, which requires local authorities to carry out the works that are described in such schedules. To ensure co-ordination with other flood risk management works, that duty will apply only where it will contribute to, or not affect, the flood risk management works, that duty will apply schedules. To ensure co-ordination with other flood risk management works, that duty will apply only where it will contribute to, or not affect, the implementation of measures that are described in local flood risk management plans.

Section 68 provides a local authority, or any person who is authorised by a local authority, with the power to enter land to carry out its functions. Amendments 54 and 55 expand the purposes for which those powers of entry may be exercised under section 68 to include performance of the new duty to prepare maps of bodies of water, the existing duty to assess watercourses—which are to become “bodies of water”—and the new duty to carry out clearance and repair works.

In addition, amendment 56 extends the duty to compensate a person who has sustained damage as a result of scheme operations carried out by or on behalf of a local authority and related activity to include damage sustained as a result of the duty to carry out clearance and repair works.

Amendment 62 is a technical amendment, which inserts “relevant body of water” into schedule 4 and identifies in which section the term is interpreted for the purposes of the bill.

The amendments address the concerns that the committee expressed and I trust that they will be supported. They deal in full with the issues that are covered in amendments 76 and 77, so I ask Elaine Murray not to move those amendments.

I move amendment 15.

Elaine Murray: The intention behind amendments 76 and 77 is to address recommendation 27 in the committee’s report, that “the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained”.

As the minister said, amendment 47 and amendment 76 address the same issue—indeed, amendment 76 will be pre-empted if amendment 47 is agreed to. I suspect that the purpose of amendment 77 would be satisfied by the proposed new wording in the bill. If the other amendments in the group are agreed to, amendment 76 will fall and I will not move amendment 77.

Amendment 15 agreed to.

The Convener: Group 14 is on SEPA: duty to prepare maps of artificial structures and natural features. Amendment 16, in the name of the minister, is grouped with amendments 34, 50, 52, 59 and 60.

Roseanna Cunningham: No single set of maps shows where flood defences exist. There are records of flood prevention schemes that were constructed under the Flood Protection (Scotland) Act 1961, but those records do not cover privately constructed or older defences. There is also little information about structures or natural features that play a key role in flood risk management but were not intended for that purpose.

Such information is important for the purposes of mapping flood risk and preparing flood risk management plans, and a lack of information could have direct, harmful consequences. The collection of information on structures that do not form part of formal flood protection schemes but play an important role in protecting communities from flooding will help to ensure that local authorities, through development management, or SEPA, through its regulatory role for the water environment, can intervene before plans to alter or remove structures are taken forward.

Amendment 16 will place a duty on SEPA to prepare maps

“showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water”.

Bodies of surface water include rivers, lochs and the sea. SEPA will be responsible for determining whether the removal of a structure or feature could significantly increase flood risk. In doing that, the agency will be required to consult relevant local authorities. The maps must show whether structures or features were constructed by local authorities as part of a flood prevention scheme under the 1961 act or under the new powers to manage flood risk under part 4 of the bill. The maps must also include other information that is
specified in regulations by the Scottish ministers, and they must be publicly available.

Amendments 34 and 52 are consequential amendments and will extend SEPA’s powers to obtain information and assistance and its powers of access in relation to the new duty. The powers will help to ensure that SEPA will have all the tools that are necessary to prepare and validate important information. Amendments 50, 59 and 60 are consequential on amendment 16 and will move the definition of the 1961 Act, so that it will apply to the whole bill.

The mapping exercise will prove valuable to people who are responsible for managing flooding as well as to the general public. I trust that the amendments will be supported.

I move amendment 16.

Amendment 16 agreed to.

Section 16—SEPA to assess possible contribution of alteration etc of natural features

Amendment 17 moved—[Roseanna Cunningham]—and agreed to.

Amendment 67 not moved.

Amendments 18 to 20 moved—[Roseanna Cunningham]—and agreed to.

Amendments 68 and 69 not moved.

Amendments 21 to 24 moved—[Roseanna Cunningham]—and agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Flood hazard maps

The Convener: Group 15 is on flood hazard maps: definition of “medium probability”.

Amendment 26, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: We can probably all agree that the language that is used to describe the likelihood of flooding can be confusing. For example, discussion of return periods can give the false impression that only one 50-year flood will occur in any given 50-year period. In recent years, it has become common practice to describe the likelihood of flooding in terms of flood probabilities rather than in terms of return periods. Amendment 26 allows for a medium-probability flood to be defined in terms of a probability of occurrence. The current reference to return periods is also retained, thus ensuring flexibility in the terminology that is used. The amendment will ensure that the bill reflects the current terms that are used by practitioners in the field of flood risk management, which will ultimately aid future engagement with the public on this important matter.

I move amendment 26.

Amendment 26 agreed to.

Section 18, as amended, agreed to.

Section 19—Flood risk maps

The Convener: Group 16 is on flood risk maps: protected areas, conservation and sites of special scientific interest. Amendment 84, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: An amendment in my name yet again finds itself in splendid isolation. It deals with an issue that I raised during the evidence-taking session with the minister. The bill covers sites that are designated under the habitats and birds directives, but only those that are associated with protection of the water environment under the water framework directive. It potentially excludes the mapping of flood risk and damage to sites that do not depend on water, including a number of important terrestrial sites and woodlands. Nationally important sites are also excluded from the current assessment. Amendment 84 would avoid that potential anomaly, thus ensuring appropriate protection against damage for all designated sites.

I move amendment 84.

Roseanna Cunningham: I thank Liam McArthur for his explanation of amendment 84. I note that his intention is to ensure more extensive coverage of protected areas in the flood risk maps produced under section 19.

Unlike areas that are currently covered by section 19(2), the areas that would be identified by amendment 84 do not necessarily have anything to do with water-dependent habitats and species. There is a risk that the amendment could result in our failing to prioritise sufficiently the special protection of water-dependent habitats and species, as envisaged by the floods directive. For that reason, we cannot agree to remove section 19(2)(d)(v).

However, I appreciate the points that Liam McArthur raises, and I fully understand the importance of protecting all of Scotland’s key habitats and species. I also acknowledge that flood management works could place non-water-dependent sites at risk.

We will consider the issue further before stage 3, to see whether we can find an alternative form
of wording to address the points that Liam McArthur raises. The regulation-making power in section 19(2)(f) could also be used to deal with the issue.

I ask the member to withdraw amendment 84, but we will come back at stage 3 with something to deal appropriately with the concerns that he has raised.

Liam McArthur: I am happy to withdraw amendment 84 on that basis.

Amendment 84, by agreement, withdrawn.

Section 19 agreed to.

Sections 20 to 22 agreed to.

Section 23—SEPA to prepare flood risk management plans

The Convener: Group 17 is on objectives and measures: sustainability etc. Amendment 27, in the name of the minister, is grouped with amendment 28.

Roseanna Cunningham: As already outlined, the sustainable management of flood risk is at the heart of the bill. A key part of taking a sustainable approach is considering all options that are available to manage flood risk. In many cases, the most powerful tool available is to avoid flood risk in the first place, possibly through development management. Other approaches include building defences, raising awareness and looking at more natural approaches to managing flood waters. In all cases, measures must be selected based on their suitability to particular circumstances. In urban areas, it can be important to use permeable paving or other source control measures to reduce surface water run-off. In rural areas, restoring wetlands or forests may be appropriate. I can see that Bill Wilson is pleased at the mention of permeable paving.

Section 24 sets out the factors that I believe must be considered when making an informed decision about the most appropriate approaches to managing flood risk. Those factors include climate change, costs and benefits, environmental objectives under the Water Environment and Water Services (Scotland) Act 2003, development management, and the assessment of opportunities for natural flood risk management undertaken under section 16.

SEPA is responsible for identifying objectives and measures for inclusion in flood risk management plans. That work would be undertaken in close collaboration with local authorities and other responsible authorities.

Amendment 27 will require SEPA to identify measures that it considers will achieve the objectives in the most sustainable way. The same objectives and measures form the basis for local flood risk management plans, so amendment 27 also means that local flood risk management will be targeted at the most sustainable measures.

As was discussed in an earlier debate, amendment 27 achieves the same result as would proposed section 23(4B) that amendment 85 seeks to insert into the bill. That explains my reference to duplication when we discussed amendment 85.

I am confident that amendment 27 will address the committee's concern that the bill should place greater emphasis on sustainability.

Amendment 28 deals with the scope and content of cost benefit analyses. When setting objectives and measures, the bill currently requires SEPA to consider the benefits from reducing the potential consequences of flooding. The use of the word "otherwise" is intended to capture all potential non-flooding-related benefits, which could include environmental, social or economic benefits. Amendment 28 will replace the term "otherwise" with an explicit requirement to consider other social, economic or environmental benefits that might be derived from implementing a measure.

In addition to clarifying what should be considered as part of a cost benefit analysis, amendment 28 will help to ensure that the benefits that can be gained from adopting more natural flood management measures are fully considered. I am also confident that the amendment, in combination with the amendment that requires SEPA to select the most sustainable measures, will promote a shift towards considering and adopting more natural approaches to managing flood risk. I urge the committee to support the amendments.

I move amendment 27.

Peter Peacock: The minister has made it clear that amendment 27 interplays with my amendment 85. If amendment 85 is passed today, I recognise that a change will have to be made at stage 3 because of the duplication that might occur if amendment 27 is also passed. I have no objection to amendment 27, which I will support.

I make it clear that I intend to press amendment 85, but I am more than happy to have discussions both about what the minister said she is prepared to discuss before stage 3 and about the other point that amendment 85 addresses, which is that natural flood management should be considered as well as reported on. I leave that offer on the table for discussion prior to stage 3 to see whether we can find a satisfactory, mutually agreed solution. I intend to press amendment 85 when we get to that point.
Roseanna Cunningham: Obviously, the way forward is to have a conversation with Peter Peacock after the committee has agreed the amendments to try and tease out some of the interplay that exists. We are potentially duplicating provisions in the bill.

Amendment 27 agreed to.

Amendment 85 moved—[Peter Peacock].

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Scott, John (Ayr) (Con)

AGAINST
Morgan, Alasdair (South of Scotland) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 85 agreed to.

Section 23, as amended, agreed to.

Schedule 1

Matters to be included in flood risk management plans

The Convener: Group 18, which is on strategic assessment, is the final group for today. Amendment 70, in the name of Peter Peacock, is grouped with amendments 71 to 74.

Peter Peacock: Amendments 70 to 74 are designed to give effect to the committee’s stage 1 report recommendations on strategic planning for flood risk management and funding. During its consideration of flooding issues during the past year or so, the committee received a lot of representations about the adequacy of and means of planning national priorities for flood protection and how those priorities are funded. The amendments seek to strengthen provisions in the bill and give effect to the committee’s recommendations. I hope that the amendments achieve the right balance in requiring ministers and SEPA to consider and form views about short, medium and long-term priorities, without tying ministers’ hands to specific funding allocations and decisions at any moment in time.

Amendment 70 seeks to set out in statute what the committee recommended unanimously at recommendation 12 of its stage 1 report. Amendment 71 seeks to have ministers formally consider the national picture and whether the plans that are being developed for their approval across the country constitute an appropriate national implementation programme. If ministers do not so conclude, amendment 71 seeks to give them flexibility to modify plans or direct SEPA to make modifications.

11:45

Amendment 72 seeks to give effect to the committee’s unanimous recommendation on SEPA, as set out in recommendation 12, which reflected the evidence that was given to the committee on the need for a long-term, strategic view of flood risk management and funding requirements. The amendment seeks to ensure that there is an assessment of the schemes under consideration nationally, and that priority is given to implementing them and estimating the costs and timescales involved. The amendment also seeks to provide for a review of progress on an existing plan. The creation of a national strategic assessment would allow a much more informed and open national debate about flood risk management and provide a firmer basis for ministers’ consideration of priorities.

Recommendation 12 states:

“SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority … and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water’s planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities.”

Amendment 72 also provides for Parliament to be informed and for there to be better-informed scrutiny of the Government’s attention to those important issues over time.

Amendments 73 and 74 cover the same territory. If amendment 71 or 72 is approved, I will move amendment 73 at the appropriate time, but if neither is approved, I will move amendment 74. Amendment 74, which can stand on its own, seeks to give effect to the committee’s recommendations on funding. It would create a duty on ministers to “have regard to flood risk management plans and local flood risk management plans” in allocating funding to SEPA or any responsible authority.

The minister does not say how ministers must allocate cash or how much funding they must give, because that is ultimately a matter for them. However, the wider public need to be assured that, in considering funding, the ministers will have had regard to the various plans that exist. The amendment seeks to give assurance that ministers will, over time, be required to think about
the issues, particularly the priority that they give to the important issues of community and individual safety arising from flooding. After all, the purpose of the bill is to try to reduce the trauma that all too many people have experienced from their home or community being flooded.

The minister may well argue, as I have done in the past, that she will of course have regard to the plans, as any reasonable minister would, and that they do not need the proposed new duty. However, it is clear to me that the duty is needed to give some assurance over time that successive ministers will be required to have regard to these important issues. The minister may also argue that the duty may lift consideration of the issues to which I have referred above other funding considerations. I make it clear, though, that amendment 74 does not say that ministers should not have regard to anything else in making funding decisions. Clearly, ministers must consider a range of matters and amendment 74 would not prevent them from doing that. It would just require ministers to have regard to a particular set of issues in the decisions that they make—nothing more and nothing less. I do not believe that that would be desperately onerous because it would leave ministers considerable scope, while ensuring that they cannot ignore flood funding among wider considerations.

I move amendment 70.

Alasdair Morgan: I find Mr Peacock’s arguments unpersuasive, particularly the latter one. Within a couple of minutes he argued in both directions. He argued first that it was necessary for ministers to have regard to particular functions in allocating funding and so on; then he said that that necessity would not remove any duty on ministers with regard to other functions because ministers would clearly consider them in any event. Either ministers will have to look at what SEPA does in allocating its budget or they will not. Mr Peacock’s suggestion seems to fly in the face of common sense about what ministers do when they sit down and allocate a budget. Do they just pick a figure out of the air, or do they look at what SEPA has to do? I suggest that they do the latter and have regard, without it being written in any statute, to SEPA’s panoply of duties. It is contradictory to argue that we can introduce a section that says that ministers must have regard to one particular duty and argue at the same time that it is not at all necessary for them to have regard to any other duties because they will clearly do that in any case. I found Mr Peacock’s argument unpersuasive and I think that he must feel the same.

Bill Wilson: My concern is that amendment 70 would remove flexibility and require a long-term specification of what should be done. If global warming changes the climate, trying to be so specific that far ahead might remove local authorities’ flexibility.

In respect of the interim assessment report that Peter Peacock would like there to be if there was not going to be a full assessment within a session of Parliament, the problem could presumably be resolved by having an interim assessment and then having a full assessment a matter of months later under the new Government. We seem to be packing a lot of assessments in there. Was the original idea of the six-year period not to ensure that we were not overly compacting our assessments? I wonder whether the latter part of amendment 72 is getting away from the original idea. I am also concerned that, in the first part of amendment 72, Peter Peacock might be removing some power from the local authorities. If the local plans inform the national plans, should it not be for the local authorities to determine the immediate priorities in the local plans? Perhaps Peter Peacock can answer that question when he addresses those points.

I will not repeat Alasdair Morgan’s comments, but I have some sympathy with his views on amendments 73 and 74.

Elaine Murray: I am a little surprised by some of the comments made by other members, because my recollection of our discussion of the stage 1 report is that we were concerned about the need for future planning, for SEPA to be able to assess priorities over a fairly long timeframe and for that work to inform funding decisions. As Peter Peacock made clear, this is not an argument about ring fencing—we have had arguments about that, but the amendments do not mention anything to do with ring fencing. They are about requiring a financial assessment to be made, so that when in future cycles ministers are considering the comprehensive spending review and how bodies such as SEPA and local authorities need to be funded to undertake flood prevention work, such information is available. There seems to be a slight nervousness about the intent, which surprises me a little, given the discussions that we had at stage 1.

John Scott: A distillation of all that I have heard is that these amendments are unnecessary; they would introduce more plans and more bureaucracy. SEPA already caters for these issues in its planning and there is no need for amendments 71 or 72 or the other amendments in the group.

Roseanna Cunningham: This is an interesting group of amendments and, as Peter Peacock might imagine, there has been a lot of discussion about them.
Before I turn to the amendments, I will clarify a few points about the nature of the flood risk management process that is created by the bill.

The bill requires SEPA to set out priorities for measures to manage all known flood risk and, based on that, identify which measures fall within a current cycle and which do not. In identifying priorities, SEPA will clearly need to set out a long-term list of priorities covering multiple six-year cycles. The bill does not specify the length of SEPA’s long-term look, as it was felt that that could be unduly restrictive.

On amendment 70, I appreciate the committee’s concerns that the bill needs to be more explicitly focused on long-term planning. In principle, I can see that advantages could be gained from amending schedule 1 to set out more clearly that SEPA must look across six-year cycles. However, I am concerned that stipulating 18 years could be overly prescriptive at this stage. Until we know the full extent of the flood risk across Scotland, it is impossible to gauge whether 12 years, 24 years or longer is a sensible timeframe. I therefore ask Peter Peacock to withdraw amendment 70 on the basis that we will lodge an amendment to schedule 1 at stage 3 that will make it clearer that SEPA must indicate whether a measure in a flood risk management plan will be implemented before the plan is reviewed, in the following six years or at some other period that must be identified in the plan.

Amendment 71 provides for ministers to look at all the flood risk management plans that are prepared by SEPA to ensure that, together, they form an appropriate national implementation programme. Amendment 72 requires SEPA to produce a strategic assessment of flood risk, which will include the setting of priorities, and to provide an estimated cost and timescale for the implementation of each measure. I believe that the amendments are unnecessary, as the requirements for high-level strategic plans and implementation strategies are already present in the bill.

Although the bill specifies that SEPA must prepare and submit a plan for each flood risk management district, in practice there is likely to be only one district plan, which will cover the majority of Scotland’s landscape. There will also be one or two significantly smaller plans that will specifically cover the cross-border areas, one of which is unlikely to include any significant flooding issues. Those will be prepared in co-operation with the Department for Environment, Food and Rural Affairs and the Environment Agency. That means that the main district plan, which will be prepared by SEPA, will constitute a national strategic implementation strategy; there will not be lots of separate plans prepared by SEPA. Scottish ministers will be expected to consider together the district-level plan and the cross-border plans that are prepared by SEPA and to consider whether, in combination, the plans appropriately address flooding issues throughout Scotland.

Scottish ministers are under the same general duties as SEPA and the responsible authorities under section 1. Those include the duty to act to reduce overall flood risk and—as a result of amendment 1—the duty to act with a view to achieving the objectives in flood risk management plans. The approval of plans is a critical role for ministers and one in which they must comply with those overarching duties. That means that implementation throughout Scotland will already be a key consideration for ministers. By building in an extra layer of additional plans and strategies, the amendments would add an unnecessary and undesirable administrative burden. For those reasons, I do not believe that amendments 71 and 72 are necessary, and I ask that they not be moved.

Amendments 73 and 74 relate more specifically to the funding of flood risk management plans. Amendment 73 would require ministers to have regard to the national implementation programme that is set out in amendment 72 when making any funding decisions in relation to SEPA and responsible authorities. Amendment 74 is, in effect, an alternative approach—as Peter Peacock said—that would require ministers to have regard to flood risk management plans and local flood risk management plans in making funding decisions. I ask members to look at section 36, which bears directly on that issue.

The bill already requires SEPA to take costs into account in selecting measures for flood risk management plans. Plans will also have to include information about how those measures will be prioritised. Prioritisation cannot be done without taking account of the costs and benefits of measures. Therefore, in drafting a flood risk management plan, SEPA will already have to have information about costs and, in approving the plan, ministers will have to take that cost information into account.

SEPA and ministers have a duty to act with a view to reducing overall flood risk. As I mentioned earlier, as a result of amendment 1, they will also have to act with a view to achieving the objectives in district plans. Ministers will therefore have to have regard to the district and local flood risk management plans in considering funding allocations to responsible authorities. However, the Government believes that it would be inappropriate for Parliament to place a statutory duty on ministers to have regard to such plans, as that would risk elevating them above any of the other functions of SEPA and responsible
authorities, which ministers need to take into consideration in determining spending priorities over a three-year cycle.

If ministers have to have regard to flood risk management functions, but there is no specific requirement to have regard to any other functions, that raises the consideration of flood risk management above everything else. That needs to be thought about. It is for ministers, in cooperation with the responsible authorities, to allocate funding across a wide range of Government responsibilities in order to meet agreed national and local priorities.

For those reasons, I believe that amendments 73 and 74 are also unnecessary and ask that they not be moved. However, as I know that the committee has considerable concerns, which I appreciate, about what could be seen as a lack of information on funding in the plans that are prepared by SEPA, the Government will undertake to look at that again and consider whether the district plans should provide more specific information on the overall costs of measures.

I will also consider introducing an amendment at stage 3 to widen the scope of the annual report that must be laid before Parliament on the implementation of the European directive to cover the bill more generally, which would mean that information on local plans would have to be considered. I hope that Peter Peacock will therefore reconsider his amendments.

12:00

**Peter Peacock:** I will be brief. I was astonished by Alasdair Morgan’s accusation that I am facing both ways, given that he proceeded to do exactly the same. It might just be in the nature of the discussion that we sometimes have to look in different directions to find the true direction in which we want to travel. I am afraid that Alasdair is heading in the wrong direction.

It is entirely appropriate to say that a minister should have regard to the various matters that I have set out. We could argue that, if ministers are going to have regard to those matters anyway, there is no harm in a requirement to do so being in the bill. A requirement on ministers to have regard to those matters would give an assurance to the wider public. I do not share Bill Wilson’s views about flexibility and leaving local authorities with freedoms. I understand his point about amendment 72, but I do not think that it would have the effect that he has concerns about.

In the light of the minister’s comments about amendment 70, I will seek to withdraw it. However, I simply disagree with her about amendments 71 to 74. I note what she says about strengthening the provisions on funding, with a possible stage 3 amendment on what goes into the plans and the annual reports. I welcome that, but I disagree with her other arguments and therefore intend to move amendments 71 to 74 when the time comes.

Amendment 70, by agreement, withdrawn.

Schedule 1 agreed to.

**The Convener:** That ends today’s consideration of the Flood Risk Management (Scotland) Bill. The committee will continue its stage 2 consideration of the bill next week, when the target will be to reach the end of section 61. I thank all members and the minister for their attention to what is a detailed bill.
Dear Maureen Watt MSP
Convener
Rural Affairs and Environment Committee
c/o Clerk to the Committee
Room T1.01
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Maureen

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – REMAINING STAGE 2 AMENDMENTS

You will be aware that the Scottish Government has lodged its remaining stage 2 amendments, from section 29 to the end of the Flood Risk Management (Scotland) Bill.

Some of these amendments are either detailed or technical in nature and, for this reason, I have prepared another paper which I hope will assist the Committee in understanding exactly what the key amendments do and seek to achieve. The paper includes some background information and a description of the amendment, or set of amendments.

The paper covers amendments that will discussed at the remaining stage 2 debates.

I look forward to seeing the Committee again on 11 March.

ROSEANNA CUNNINGHAM MSP
MINISTER FOR ENVIRONMENT
Flood Risk Management (Scotland) Bill

Information on Stage 2 amendments

Purpose
This paper has been prepared by the Scottish Government to give members of the RAE committee additional information on the remaining key Scottish Government stage 2 amendments. The paper includes some background information on the amendment, and a description of the amendment, or set of amendments.

1. Register of flood protection schemes

Background
There is currently no single set of local authority records which show where existing flood prevention schemes are located, or would identify new flood protection schemes.

Better and more freely available information on schemes would help ensure that the public can be made aware of structures and features that have an important flood management function. This could help avoid inadvertent damage of removal of walls and other structures that help manage flooding. Better and more easily searchable data on proposed schemes would help ensure that prospective purchasers of land were properly informed about future operations.

Information on schemes would also assist SEPA when preparing plans to address flooding problems, and help in the preparation of flood hazard and risk maps.

Amendment 1
This amendment would place a duty on each local authority to create and update a register of existing and planned flood protection schemes. The information would be made publicly available.

After section 53 insert—

<Registers of flood protection schemes

(1) Every local authority must keep a register of flood protection schemes.
(2) A local authority must enter into its register—
   (a) details of each relevant scheme including—
       (i) a summary of the operations described in the scheme,
       (ii) a description (by reference to a map) of the land affected by those operations, and
       (iii) a note of the date on which notice of the scheme is first published under paragraph 1(1)(a) of schedule 2,
   (b) a note of the following in relation to each such scheme—
(i) any decision made under paragraph 4(1), 5(1), 7(4), or 9(1) of schedule 2,
(ii) the fact that notice has been given to the Scottish Ministers under paragraph 5(5) of that schedule including whether any relevant objector is a local authority or a National Park authority,
(iii) the fact that notice has been given of proposed modifications under paragraph 7(5)(a) or 9(3)(a) of that schedule,
(c) where such a scheme is confirmed with modifications, the information specified in paragraph (a)(i) and (ii) in relation to the modified scheme, and
(d) a note of any suspension of the operation of such a scheme under paragraph 12(6) of schedule 2,

(3) For the purposes of subsection (2)(a), a relevant scheme is a scheme—
(a) proposed by the local authority, or
(b) in relation to which it is notified under paragraph 1(1)(f)(iii) of schedule 2.

(4) A local authority may remove information from its register relating to a scheme if the scheme is rejected under paragraph 4(1)(b), 7(4)(c) or 9(1)(c) of schedule 2.

(5) A local authority must amend its register to reflect any decision of a sheriff under paragraph 12(7) of schedule 2 to quash a scheme recorded in its register in whole or in part.

(6) Where a local authority enters information in its register about a scheme in relation to which it notified another local authority under paragraph (1)(f)(iii) of schedule 2, it must notify that authority of the information entered.

(7) A local authority must make available its register for public inspection and may charge a reasonable fee for doing so.

After section 53 insert—

<Registers of flood protection schemes: information about schemes under 1961 Act
A local authority must enter into its register details of every flood prevention scheme made by it under the 1961 Act including—
(a) a summary of the operations to which the scheme relates, and
(b) a description (by reference to a map) of the land affected by those operations.

After section 53 insert—

<Registers of flood protection schemes: regulations etc.
(1) The Scottish Ministers may by regulations make further provision about the keeping of registers under section (Registers of flood protection schemes)(1) including, in particular, provision as to—
(a) the content of a register,
(b) the time by which information must be entered into a register,
(c) the circumstances in which information may or must be removed from a register, and
(d) the time by which notice must be given under section (Registers of flood protection schemes)(6).

(2) Regulations under subsection (1) may also—

(a) make further provision about the availability of registers under section (Registers of flood protection schemes)(7) including, in particular, provision as to the form and manner in which registers are to be made available,

(b) make provision—

(i) requiring local authorities to make available their registers to a person specified in the regulations,

(ii) as to the form and manner in which the registers are made available to the person,

(iii) requiring local authorities to inform the person of any change to their registers as soon as reasonably practicable or within a period specified in the regulations, and

(iv) requiring the person to make available information from local authorities’ registers for public inspection.

(3) References in this section and sections (Registers of flood protection schemes) and (Registers of flood protection schemes: information about schemes under 1961 Act) to a local authority’s register are references to the register of flood protection schemes kept by the authority.

2. Reservoirs- on site reservoir plans

Background

The purpose of the Reservoirs Act 1975 is to provide a legal framework to ensure the safety of “large raised reservoirs”, which are reservoirs that hold at least 25,000 cubic metres of water above natural ground level. Most of the 1975 Act extends throughout Great Britain, however in terms of modernising these provisions, Scotland is slightly behind England and Wales as Defra has already introduced a direction making power allowing the Secretary of State to require on-site reservoir plans to be produced by reservoir undertakers. The Environment Agency has produced guidance on the preparation of reservoir plans.

An on-site reservoir plan is intended to ensure that reservoir undertakers have arrangements in place to (i) understand the implications of an uncontrolled release of water and (ii) on-site arrangements to contain or limit the potential effects of an incident, which could including works to delay failure or minimise damage. A reservoir plan provides a vital link between the dam undertaker and the emergency response services. This plan should not be confused with an off-site plan or other form of emergency response plan, which would be covered by the provisions of the Civil Contingencies Act 2004 and would be the responsibility of the Category 1 responders, including the emergency services and SEPA.

The following amendments provide flexibility for any future legislative change by allowing for regulations to apply to any reservoir, as opposed to only large raised reservoirs.

Amendment 2a
This amendment inserts an enabling power into the 1975 Act to allow Scottish Ministers to make provision in regulations for the preparation of reservoir flood plans. These plans would set out the action which the undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. SEPA would be responsible for the enforcement of these plans.

Provision is made for:

- establishing criteria for determining which reservoirs will require plans;
- introducing a requirement to produce plans for reservoirs which meet the criteria;
- specifying the form and content of plans;
- providing for the approval of plans;
- creating offences;
- providing enforcement powers;
- consultation requirements;
- future regulations to be subject to affirmative procedure.

After section 77 insert—

<Flood plans

After section 12B of the 1975 Act, insert—

“12C Flood plans: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.

(2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) The regulations may, in particular—

(a) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,

(c) specify the form in which a flood plan is to be prepared,

(d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,

(e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(f) require the flood plan to be produced or submitted to the enforcement authority by such time as—

(i) the regulations specify, or
(ii) the authority or Scottish Ministers may direct,

(g) make provision about the approval of flood plans,

(h) make provision for the review and updating of flood plans,

(i) provide for a register of flood plans to be established and maintained,

(j) make provision for the publication, or distribution of copies, of—

   (i) a list of reservoirs in relation to which a flood plan must be
       prepared by virtue of the regulations,

   (ii) flood plans, and

   (iii) reports,

(k) make provision in connection with the testing of flood plans,

(l) require the undertaker of a reservoir to take action set out in the flood
    plan relating to the reservoir in the event of an emergency,

(m) provide that the enforcement authority may, in circumstances specified
    in the regulations, do anything that another person is required to do
    under the regulations and may recover the costs of doing so from that
    person,

(n) confer powers of entry on the enforcement authority in connection with
    its functions under the regulations,

(o) make provision in connection with paragraphs (m) and (n) amending this
    Act (other than this section) or applying this Act with modifications,

(p) create offences,

(q) provide that any offence created is triable—

   (i) only summarily, or

   (ii) either summarily or on indictment,

(r) provide for any offence created which is triable only summarily to be
    punishable on conviction by a fine not exceeding level 5 on the standard
    scale,

(s) provide for any offence created which is triable either summarily or on
    indictment to be punishable—

   (i) on summary conviction, by a fine not exceeding the statutory
       maximum,

   (ii) on conviction on indictment, by a fine.

(4) Before making regulations under subsection (1), the Scottish Ministers must
    consult—

   (a) SEPA,

   (b) undertakers of reservoirs for which they consider a flood plan will
       require to be prepared under the regulations,

   (c) the Institution of Civil Engineers, and

   (d) such other persons as they consider appropriate.
(5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Amendment 2b

This amendment alters the incident reporting enabling power to allow it to apply to any reservoirs which meet criteria, rather than just large raised reservoirs.

In section 77, page 39, line 22, leave out <large raised reservoirs> and insert <reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations>.

3. Sub-district advisory groups

Background

Advisory groups will play an important role in ensuring a fully coordinated approach, with clear opportunities for stakeholder engagement. The Bill provides for two levels of advisory groups, district and local. District groups advise on district flood risk management plans while sub-district groups advise on both district and local flood risk management plans. The Bill provides for wide-ranging membership and requires SEPA to undertake a consultation exercise on the steps it will be taking to ensure participation in the flood risk management process.

The RAE committee and some stakeholders raised concerns that the Bill did not specify who would be included on sub-district advisory groups.

Amendment 3

This amendment means that SEPA, in setting up sub-district advisory groups, would need to ensure representation of the following interests - responsible authorities, SNH, national parks and other person that have an interest in flood risk management. This replicates the interests that must be represented on the district advisory group.

In section 43, page 25, line 9, at end insert—

<( ) In determining the remit and membership of a sub-district advisory group, SEPA must seek to ensure appropriate representation of the interests of—

(a) every responsible authority which has functions exercisable in or in relation to the sub-district,

(b) Scottish Natural Heritage,

(c) where any part of the sub-district has been designated as a National Park, the National Park authority for the National Park, and

(d) such other persons as appear to SEPA to have an interest in flood risk management for the sub-district.>
2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 23  Schedule 1
Sections 24 to 52  Schedule 2
Sections 53 to 84  Schedule 4
Section 85  Schedule 3
Section 86  Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 24

Bill Wilson

86 In section 24, page 12, line 12, at end insert <including social, environmental and economic costs,>.

Roseanna Cunningham

28 In section 24, page 12, line 13, leave out from <(in)> to end of line 16 and insert <that are likely to be derived from implementing proposed measures, including—

( ) the benefits in terms of reducing the potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and

( ) any other environmental, social, and economic benefits,>

Roseanna Cunningham

29 In section 24, page 12, line 17, at end insert <including the management of surface run-off water and urban drainage>.

Roseanna Cunningham

30 In section 24, page 12, line 20, at end insert—

<( ) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c.36) relating to the district,>

Roseanna Cunningham

31 In section 24, page 12, line 28, leave out subsections (2) and (3) and insert—

<(2A) For the purposes of subsection (1)(b)—

(a) a measure is structural if it involves flood protection work, and>
(b) non-structural measures include flood warning, awareness raising and the preparation and review of development plans.

(2B) In subsections (1)(a)(viii) and (2A)(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.>

Section 25

John Scott
87 In section 25, page 13, line 22, leave out <considers> and insert <or the Scottish Ministers consider>

Section 27

Peter Peacock
71 In section 27, page 14, line 26, at end insert—

<(1A) In considering whether to approve a particular flood risk management plan, the Scottish Ministers must have regard to the other flood risk management plans to be approved within the same timescale and in particular to whether—

(a) the measures identified in the plans (taken together) as being for implementation before each plan is next reviewed under section 28, and

(b) the priority to be given to each such measure within that period,

constitute an appropriate national implementation programme.

(1B) If the Scottish Ministers conclude that, taken together, those measures do not constitute an appropriate national implementation programme they must—

(a) under subsection (1)(a), approve the plan with any modifications necessary, or

(b) under subsection (1)(b), reject the plan and direct SEPA under subsection (4) to make such modifications of the plan as are necessary,

to ensure that the relevant measures in the set of flood risk management plans due to be approved within the same timescale as the plan in question do constitute such a programme.

(1C) Subsection (1B) does not affect the Scottish Ministers’ other powers to approve, reject or make, or direct SEPA to make, modifications of a flood risk management plan under this section.>

After section 28

Peter Peacock
72 After section 28, insert—
Strategic assessment and interim strategic assessment

(1) SEPA must, as soon as practicable after a set of flood risk management plans for any period are approved under section 27, prepare and submit to the Scottish Ministers a report under this subsection (“a strategic assessment”).

(2) A strategic assessment must include a national implementation programme setting out—
   (a) the measures identified in each flood risk management plan (as approved under section 27) as being for implementation before the plan is next reviewed under section 28, and
   (b) the proposed priority to be given to implementing each such measure.

(3) A strategic assessment must also include an estimated—
   (a) cost of, and
   (b) timescale for,
   implementing each such measure.

(4) A strategic assessment must also set out the measures identified in each flood risk management plan as being for implementation in each of the periods mentioned in paragraph 1(c)(ii) to (iv) of schedule 1.

(5) A strategic assessment to which subsection (6)(b) or (c) applies must also include an assessment of the progress made in implementing the national implementation programme set out in the previous strategic assessment.

(6) A strategic assessment relating to the set of flood risk management plans to which—
   (a) section 23(3) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set is approved,
   (b) section 28(2) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set is approved,
   (c) paragraph (b) of section 28(1) applies must be laid before the Scottish Parliament by the Scottish Ministers no later than 3 months after the last plan in the set to be approved by the end of each period of 6 years mentioned in that paragraph is approved.

(7) Where by virtue of subsection (6)(c) no strategic assessment is due to be laid before the Scottish Parliament within any period between two ordinary general elections (as scheduled to take place under or by virtue of section 2 of the Scotland Act 1998), SEPA is to prepare and submit to the Scottish Ministers (by such date as the Scottish Ministers specify) a report under this subsection (“an interim strategic assessment”).

(8) An interim strategic assessment must contain—
   (a) such of the information contained in the previous strategic assessment as remains relevant at the time the interim strategic assessment is prepared, and
   (b) an assessment of the progress made in implementing the national implementation programme set out in the previous strategic assessment.

(9) An interim strategic assessment must be laid before the Scottish Parliament by the Scottish Ministers on such date within the period mentioned in subsection (7) as the Scottish Ministers consider appropriate.
Section 29

Peter Peacock
125 In section 29, page 15, line 32, at end insert—

<(  ) an assessment of the potential contribution that alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area within the local plan district could make to flood risk management within the district,>

Roseanna Cunningham
32 In section 29, page 15, line 33, after <plan> insert <including such—

(i) maps, and
(ii) further information about the measures summarised under paragraph (a),>

Elaine Murray
123 In section 29, page 16, line 2, at end insert—

<(  ) Where the summary under subsection (3)(a) includes reference to the contribution that natural features and characteristics could make to flood risk management within the local plan district, information included under subsection (3)(b)(ii) must include the lead authority’s detailed assessment of the contribution those features and characteristics could make to the management of flood risk within that district.>

Roseanna Cunningham
33 In section 29, page 16, line 10, at end insert—

<(  ) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to surface run-off water or urban drainage, and>

Peter Peacock
126 In section 29, page 16, line 12, at end insert—

<(4A) Subsection (4B) applies where the implementation of any current measure is not to involve the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area within the local plan district.

(4B) The implementation part must explain why that implementation is not to involve such alteration or restoration.>

Roseanna Cunningham
90 In section 29, page 16, line 16, at end insert—

<(  ) Before making regulations under subsection (6), the Scottish Ministers must consult—
(a) SEPA,
(b) every responsible authority, and
(c) such other persons as they consider appropriate.>

Section 30

Roseanna Cunningham  
91 In section 30, page 16, line 38, leave out <a local> and insert <the relevant>

Roseanna Cunningham  
92 In section 30, page 16, line 40, after second <the> insert <local flood risk management>

Section 34

Bill Wilson  
89 In section 34, page 19, line 23, at end insert—

<(  ) In pursuance of subsection (1), those authorities may use any means of working together (including, for example, a joint board established by the Scottish Ministers under section 62A of the Local Government (Scotland) Act 1973 (c.65)).>

Section 36

Peter Peacock  
73 In section 36, page 20, line 22, at end insert—

<(  ) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for any period, have regard to the national implementation programme covering that period.>

Peter Peacock  
74 In section 36, page 20, line 22, at end insert—

<(  ) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for any period, have regard to flood risk management plans and local flood risk management plans as they relate to that period.>

After section 36

Rhoda Grant  
75 After section 36, insert—

<Town and Country Planning (Development Planning) (Scotland) Regulations 2008

(1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426) are amended as follows.

(2) In regulation 1(1) (citation, commencement and interpretation) insert at the appropriate place in alphabetical order the following definitions—
““flood risk management plan” means a flood risk management plan approved under section 27 of the Flood Risk Management (Scotland) Act 2009;”.

““local flood risk management plan” means a local flood risk management plan finalised under section 31 of the Flood Risk Management (Scotland) Act 2009;”.

(3) After regulation 3(1)(e) (information and considerations) insert—

“(ea) any flood risk management plan relating to the strategic development plan area;”.

(4) After regulation 10(1)(f) (information and considerations) insert—

“(fa) any local flood risk management plan relating to the local development plan area;”.

Peter Peacock

127 After section 36, insert—

<Town and Country Planning (Scotland) Act 1997

After section 37(2) of the Town and Country Planning (Scotland) Act 1997 (c.8) insert—

“(2A) Where an assessment has been carried out under paragraph 1(1) of schedule 5 to the Town and Country Planning (Development Planning Procedure) (Scotland) Regulations 2008 (SSI 2008/432), that assessment is, for the purposes of subsection (2), a material consideration.”>

Section 37

Roseanna Cunningham

34 In section 37, page 20, line 31, after <10,> insert <(SEPA to prepare maps of artificial structures and natural features),>

Roseanna Cunningham

35 In section 37, page 20, line 31, after <10,> insert <16,>

Section 38

Roseanna Cunningham

93 In section 38, page 21, line 31, leave out <other>

Roseanna Cunningham

94 In section 38, page 21, line 31, after <not> insert <SEPA, a responsible authority or>
After section 38

Roseanna Cunningham

36 After section 38, insert—

<Power of local authorities to obtain information

(1) A person mentioned in subsection (2) must, on being requested by a local authority, provide the authority with such information in its possession or under its control as the authority may reasonably seek in connection with its functions under sections (Local authorities to prepare maps of bodies of water etc.) and 56.

(2) Those persons are—

(a) SEPA, and

(b) any other responsible authority which has flood risk related functions exercisable in or in relation to the local authority’s area.

(3) Where SEPA or, as the case may be, a responsible authority cannot agree with the local authority on whether information is being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.>

Section 42

Roseanna Cunningham

37 In section 42, page 23, line 27, after <features> insert <and characteristics>

Section 43

Roseanna Cunningham

38 In section 43, page 24, line 26, after <features> insert <and characteristics>

Roseanna Cunningham

95 In section 43, page 25, line 9, at end insert—

<( ) In determining the remit and membership of a sub-district advisory group, SEPA must seek to ensure appropriate representation of the interests of—

(a) every responsible authority which has functions exercisable in or in relation to the sub-district,

(b) Scottish Natural Heritage,

(c) where any part of the sub-district has been designated as a National Park, the National Park authority for the National Park, and

(d) such other persons as appear to SEPA to have an interest in flood risk management for the sub-district.>
Section 46

Roseanna Cunningham

39 In section 46, page 26, line 2, at end insert <unless the document is—

(a) a map prepared under section (Local authorities to prepare maps of bodies of water etc.), or

(b) a schedule prepared under section 56(1)(ba)>

Section 48

Roseanna Cunningham

40 In section 48, page 26, line 20, leave out <“river basin” has the same meaning> and insert <“body of surface water”, “loch”, “river basin” and “watercourse” have the same meanings>

Roseanna Cunningham

41 In section 48, page 26, line 20, at end insert—

<“sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers, other watercourses and, as the case may be, lochs to a particular point in a watercourse or loch,>

Roseanna Cunningham

42 In section 48, page 26, line 21, leave out from <has> to end of line and insert <means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water.>

Section 49

Elaine Murray

128 In section 49, page 27, line 10, at end insert—

<( ) apply to the Scottish Ministers for a land management order (see section (Land Management Orders)),>

After section 49

Elaine Murray

129 After section 49, insert—

<Land management orders

Chapter 3 (land management orders) of Part 2 of, and schedule 3 (land management orders and related orders: procedure) to, the Nature Conservation (Scotland) Act 2004 (asp 6) apply, with these modifications—>
(a) any reference to land which is, which forms part of, or which is contiguous to a site of special scientific interest is to be construed as a reference to land on which the local authority considers it necessary to carry out—
   (i) operations to which a flood protection scheme relates (see section 52 of this Act), or
   (ii) other flood protection work,
(b) any reference to SNH is to be construed as a reference to a local authority acting in pursuance of section 49 of this Act,
(c) any reference to the conservation, restoration or enhancement of any natural feature specified in an SSSI notification, or to the carrying out of operations for such conservation, restoration, or enhancement, is to be construed as a reference to—
   (i) the carrying out of operations to which a flood protection scheme relates, or
   (ii) other flood protection work,
(d) any reference to a management agreement is to be construed as a reference to an agreement or arrangement under section 49(2)(d) of this Act between the local authority and the owner or occupier of the land to which the land management order relates.

After section 51

Roseanna Cunningham

43 After section 51, insert—

<Clearance and repair works

Duty to carry out clearance and repair works

A local authority must carry out the works described in a schedule prepared by it under section 56 if it considers carrying out the works—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
(b) will not affect the implementation of the measures mentioned in paragraph (a).>

Section 52

Roseanna Cunningham

96 In section 52, page 28, line 11, at end insert—

<( ) Before making an order under subsection (4), the Scottish Ministers must consult—
   (a) every local authority,
   (b) such bodies appearing to them to be representative of the interests of local authorities as they consider appropriate,
   (c) SEPA,
   (d) Scottish Natural Heritage,
After section 53

Roseanna Cunningham

After section 53, insert—

<Registers of flood protection schemes

(1) Every local authority must keep a register of flood protection schemes.

(2) A local authority must enter into its register—

(a) details of each relevant scheme including—

(i) a summary of the operations described in the scheme,
(ii) a description (by reference to a map) of the land affected by those operations, and
(iii) a note of the date on which notice of the scheme is first published under paragraph 1(1)(a) of schedule 2,

(b) a note of the following in relation to each such scheme—

(i) any decision made under paragraph 4(1), 5(1), 7(4), or 9(1) of schedule 2,
(ii) the fact that notice has been given to the Scottish Ministers under paragraph 5(5) of that schedule including whether any relevant objector is a local authority or a National Park authority,
(iii) the fact that notice has been given of proposed modifications under paragraph 7(5)(a) or 9(3)(a) of that schedule,

(c) where such a scheme is confirmed with modifications, the information specified in paragraph (a)(i) and (ii) in relation to the modified scheme, and

(d) a note of any suspension of the operation of such a scheme under paragraph 12(6) of schedule 2.

(3) For the purposes of subsection (2)(a), a relevant scheme is a scheme—

(a) proposed by the local authority, or

(b) in relation to which it is notified under paragraph 1(1)(f)(iii) of schedule 2.

(4) A local authority may remove information from its register relating to a scheme if the scheme is rejected under paragraph 4(1)(b), 7(4)(c) or 9(1)(c) of schedule 2.

(5) A local authority must amend its register to reflect any decision of a sheriff under paragraph 12(7) of schedule 2 to quash a scheme recorded in its register in whole or in part.

(6) Where a local authority enters information in its register about a scheme in relation to which it notified another local authority under paragraph 1(1)(f)(iii) of schedule 2, it must notify that authority of the information entered.

(7) A local authority must make available its register for public inspection and may charge a reasonable fee for doing so.>
After section 53, insert—

<Registers of flood protection schemes: information about schemes under 1961 Act

A local authority must enter into its register details of every flood prevention scheme made by it under the 1961 Act including—

(a) a summary of the operations to which the scheme relates, and

(b) a description (by reference to a map) of the land affected by those operations.>

After section 53, insert—

<Registers of flood protection schemes: regulations etc.

(1) The Scottish Ministers may by regulations make further provision about the keeping of registers under section (Registers of flood protection schemes)(1) including, in particular, provision as to—

(a) the content of a register,

(b) the time by which information must be entered into a register,

(c) the circumstances in which information may or must be removed from a register, and

(d) the time by which notice must be given under section (Registers of flood protection schemes)(6).

(2) Regulations under subsection (1) may also—

(a) make further provision about the availability of registers under section (Registers of flood protection schemes)(7) including, in particular, provision as to the form and manner in which registers are to be made available,

(b) make provision—

(i) requiring local authorities to make available their registers to a person specified in the regulations,

(ii) as to the form and manner in which the registers are made available to the person,

(iii) requiring local authorities to inform the person of any change to their registers as soon as reasonably practicable or within a period specified in the regulations, and

(iv) requiring the person to make available information from local authorities’ registers for public inspection.

(3) References in this section and sections (Registers of flood protection schemes) and (Registers of flood protection schemes: information about schemes under 1961 Act) to a local authority’s register are references to the register of flood protection schemes kept by the authority.>
Section 55

Roseanna Cunningham

100 In section 55, page 29, line 21, after <land> insert <(other than Crown land within the meaning of section 80(7)(a))>

Section 56

Roseanna Cunningham

44 In section 56, page 29, line 28, at end insert <(or when directed to do so by the Scottish Ministers)>

Roseanna Cunningham

45 In section 56, page 29, line 29, leave out <watercourses> and insert <relevant bodies of water (other than canals)>

Roseanna Cunningham

46 In section 56, page 29, line 30, leave out <watercourse> and insert <body of water>

Roseanna Cunningham

47 In section 56, page 29, leave out lines 32 to 35 and insert—

<(ba) where—

(i) a body of water gives rise to such a risk, and
(ii) the authority considers that clearance and repair works would substantially reduce that risk,

prepare a schedule of those clearance and repair works.

(1A) In subsection (1)(ba), clearance and repair works are works that consist of any or all of the following—

(a) removing obstructions from a body of water,
(b) removing things that are at significant risk of becoming such obstructions,
(c) repairing artificial structures which form part of the bed or banks of a body of water.

(1B) A schedule prepared under subsection (1)(ba) must—

(a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,
(b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.

(1C) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(ba) for the time being applicable to its area.>
Elaine Murray

76  In section 56, page 29, line 32, leave out from <consider> to end of line 35 and insert <cleanse, repair and otherwise maintain the watercourse and any apparatus ancillary to it in a due state of efficiency.>

Roseanna Cunningham

48  In section 56, page 29, line 37, leave out <watercourse> and insert <relevant body of water>

Roseanna Cunningham

49  Move section 56 to after section 15

Section 57

Roseanna Cunningham

101  In section 57, page 30, line 6, leave out <under section 49> and insert—

   <(a) under section 49, or
       (b) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act,>

Elaine Murray

130  In section 57, page 30, line 6, after <49> insert <, or any cleansing, repairs or maintenance of watercourses required under section 56,>

Section 59

Roseanna Cunningham

102  In section 59, page 30, line 25, leave out from <in> to <Part> in line 26 and insert—

   <(i) in exercise of any of its functions under this Part, or
       (ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act>

Section 60

Roseanna Cunningham

50  In section 60, page 31, line 8, leave out <Flood Prevention (Scotland) Act 1961 (c.41)> and insert <1961 Act>

Section 61

Elaine Murray

77  In section 61, page 31, line 10, at end insert—
“cleanse” means the removal of mud, silt, debris or other obstructive matter in the ordinary course of good maintenance.

Roseanna Cunningham

103 In section 61, page 31, line 17, leave out <has the meaning given in> and insert <means—

(a) the holder of a licence under section 6(1) of the Electricity Act 1989 (c.29),
(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (c.44),
(c) the Civil Aviation Authority,
(d) a holder of a licence under Chapter 1 of the Transport Act 2000 (c.38),
(e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c.21), and
(f) any other person who is a statutory undertaker within the meaning of section 214(1) of>

Roseanna Cunningham

104 In section 61, page 31, line 19, at end insert—

<( ) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,>
Section 68

Roseanna Cunningham

105 In section 68, page 34, line 35, at end insert—

  <(  ) section 9 (preparation of flood risk assessments),
   (  ) section 10 (review and updating of flood risk assessments),>

Roseanna Cunningham

52 In section 68, page 34, line 37, at end insert—

  <(  ) section (SEPA to prepare maps of artificial structures and natural features)
   (preparation of maps of artificial structures and natural features),>

Roseanna Cunningham

53 In section 68, page 35, line 2, after <features> insert <and characteristics>

Roseanna Cunningham

54 In section 68, page 35, line 9, at end insert—

  <(  ) any land for the purposes of preparing, reviewing or updating a map under section
   (Local authorities to prepare maps of bodies of water etc.),
   (  ) any land for the purposes of assessing a body of water under section 56,>

Roseanna Cunningham

106 In section 68, page 35, line 15, leave out <under section 49> and insert—

  <(i) under section 49, or
   (ii) in accordance with a flood prevention scheme confirmed under section 4 of
   the 1961 Act>

Roseanna Cunningham

55 In section 68, page 35, line 16, at end insert—

  <(  ) any land for the purposes of carrying out works under section (Duty to carry out
   clearance and repair works), and>

Section 71

Roseanna Cunningham

56 In section 71, page 37, line 15, at end insert—

  <(  ) the carrying out of works under section (Duty to carry out clearance and repair
   works), or>

Roseanna Cunningham

107 In section 71, page 37, line 15, at end insert—
<(ca) the variation or revocation of an improvement order under section 53, or>

Section 72

Roseanna Cunningham

108 In section 72, page 37, line 34, at end insert—

<( ) Subsection (2)(b) does not apply where the damage has been sustained in consequence of circumstances falling within section 71(2)(ca).>

Section 74

Roseanna Cunningham

109 In section 74, page 38, line 20, leave out <as soon as practicable> and insert <no later than 28 days>

Section 77

Roseanna Cunningham

110 In section 77, page 39, line 22, leave out <large raised reservoirs> and insert <reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations>

Roseanna Cunningham

111 In section 77, page 39, line 23, at end insert—

<( ) provide that the enforcement authority or another person—
(i) may specify the criteria, and
(ii) is to determine whether a reservoir meets the criteria,>

Roseanna Cunningham

112 In section 77, page 39, line 33, at end insert—

<( ) confer powers of entry on the enforcement authority in connection with its functions under the regulations,>

Roseanna Cunningham

113 In section 77, page 40, line 12, leave out <an order> and insert <regulations>

Roseanna Cunningham

114 In section 77, page 40, leave out line 15 and insert—

<( ) undertakers of reservoirs to which they consider the regulations will apply,>
In section 77, page 40, line 17, at end insert—

<(  ) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.>

After section 77

After section 77, insert—

<Flood plans

After section 12B of the 1975 Act, insert—

“12C Flood plans: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.

(2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) The regulations may, in particular—

(a) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,

(c) specify the form in which a flood plan is to be prepared,

(d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,

(e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(f) require the flood plan to be produced or submitted to the enforcement authority by such time as—

(i) the regulations specify, or

(ii) the authority or Scottish Ministers may direct,

(g) make provision about the approval of flood plans,

(h) make provision for the review and updating of flood plans,

(i) provide for a register of flood plans to be established and maintained,

(j) make provision for the publication, or distribution of copies, of—

(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
(ii) flood plans, and

(iii) reports,

(k) make provision in connection with the testing of flood plans,

(l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,

(m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,

(n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,

(o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,

(p) create offences,

(q) provide that any offence created is triable—

(i) only summarily, or

(ii) either summarily or on indictment,

(r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(s) provide for any offence created which is triable either summarily or on indictment to be punishable—

(i) on summary conviction, by a fine not exceeding the statutory maximum,

(ii) on conviction on indictment, by a fine.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,

(c) the Institution of Civil Engineers, and

(d) such other persons as they consider appropriate.

(5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Section 79

Roseanna Cunningham

In section 79, page 41, line 31, leave out <section 16 or Part 5> and insert <this Part>
Roseanna Cunningham
58  Move section 79 to after section 67

Section 81

Roseanna Cunningham
117  In section 81, page 43, line 7, leave out <the members> and insert <a member>

After section 81

Derek Brownlee
124  After section 81, insert—

<Annual financial impact report>

(1) As soon as is practicable, and no later than six months, after the end of a relevant period the Scottish Ministers must prepare and lay before the Scottish Parliament a report containing the information specified in subsection (2).

(2) That information is—

(a) the costs—

(i) incurred by the Scottish Administration, SEPA and each of the groups of bodies mentioned in subsection (9); and

(ii) estimated by the financial memorandum to be incurred by the Scottish Administration, SEPA and each such group of bodies, in implementing this Act in the relevant period to which the report relates;

(b) the total costs—

(i) incurred by the Scottish Administration, SEPA and each of the groups of bodies mentioned in subsection (9); and

(ii) estimated by the financial memorandum to be incurred by the Scottish Administration, SEPA and each such group of bodies, in implementing this Act in the period from Royal Assent to the end of the relevant period to which the report relates;

(c) the difference between the figure listed for each of the Scottish Administration, SEPA and the groups of bodies mentioned in subsection (9) by virtue of—

(i) subsection (2)(a)(i); and

(ii) subsection (2)(a)(ii); and

(d) the difference between the figure listed for each of the Scottish Administration, SEPA and the groups of bodies mentioned in subsection (9) by virtue of—

(i) subsection (2)(b)(i); and

(ii) subsection (2)(b)(ii).

(3) The difference identified by virtue of—

(a) subsection (2)(c) must be stated as an amount; and
(b) subsection (2)(c) or (d) must be stated as a percentage of the relevant figure in the financial memorandum (unless the relevant figure in the financial memorandum was zero).

(4) Subsection (5) applies where—

(a) any difference stated as mentioned in subsection (3)(a)—
   (i) is between £1 million and £5 million (but only where the relevant figure in the financial memorandum was zero); or
   (ii) exceeds £5 million;

(b) any difference stated as mentioned in subsection (3)(b) is—
   (i) less than 95%; or
   (ii) greater than 105%.

(5) The report must—

(a) explain the reason for the difference; and

(b) set out any action the Scottish Ministers propose to take as a result of the difference arising (or the reason for no action being proposed).

(6) In preparing the report the Scottish Ministers must—

(a) invite SEPA and the groups of bodies mentioned in subsection (9) to provide them with such information as the groups of bodies consider relevant; and

(b) take account of any relevant information provided to them by SEPA or those groups of bodies (whether in response to an invitation under paragraph (a) or otherwise).

(7) Where the financial memorandum provided information in relation to other bodies, individuals or businesses further broken down by body or person, the report may do likewise.

(8) Where the financial memorandum did not provide a cost in relation to any relevant period, the costs to be provided by virtue of subsection (2)(a)(ii) or (b)(ii) must be (or, as the case may be, include) the relevant figure for the most recent relevant period for which the financial memorandum did provide a cost.

(9) The groups of bodies are—

(a) responsible authorities; and

(b) other bodies, individuals and businesses.

(10) The Scottish Parliament may (no earlier than whichever is the later of the end of six years after Royal Assent or any period covered in the financial memorandum) by resolution agree that no further reports require to be prepared or laid under subsection (1).

(11) For the purposes of subsection (10) a period is not covered in the financial memorandum if the only cost arising in that period is identified in the memorandum as an ongoing cost.

(12) In this section—

“relevant period” means—

(a) the period between Royal Assent and the end of the first full financial year after that date;
(b) each subsequent financial year;

“financial memorandum” means the last financial memorandum published to accompany the Bill for this Act (and where that memorandum was a supplementary financial memorandum, means that memorandum as read with any previous financial memorandum).

Section 83

Roseanna Cunningham

118 In section 83, page 43, line 27, at end insert—
<br>( ) regulations under section 44(1),>

Section 84

Roseanna Cunningham

59 In section 84, page 43, line 34, at end insert—
<br>“the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c.41),>

Rhoda Grant

131 In section 84, page 44, line 3, at beginning insert <the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area, including>

Schedule 4

Roseanna Cunningham

60 In schedule 4, page 54, line 12, at end insert—
<br>the 1961 Act Section 84(1)>

Roseanna Cunningham

61 In schedule 4, page 54, line 17, at end insert—
<br>body of surface water Section 48(1)>

Roseanna Cunningham

62 In schedule 4, page 55, line 6, at end insert—
<br>relevant body of water Section (Local authorities to prepare maps of bodies of water etc.) (5)>

Roseanna Cunningham

63 In schedule 4, page 55, line 14, at end insert—
<br>sub-basin Section 48(1)>
In schedule 4, page 55, line 15, leave out <61> and insert <48(1)>

In schedule 3, page 53, line 18, at end insert—

*Civil Aviation Act 1982 (c.16)*

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.

In schedule 3, page 53, line 23, at end insert—

*Electricity Act 1989 (c.29)*

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

In schedule 3, page 53, line 29, at end insert—

*Gas Act 1995 (c.45)*

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

In schedule 3, page 54, line 3, at end insert—

*Transport Act 2000 (c.38)*

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

In the long title, page 1, line 1, after <and> insert <sustainable>
Flood Risk Management (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated.

Groupings of amendments

**Objectives and measures: assessment of costs**
86

**Objectives and measures: surface run-off water and urban drainage**
29, 33

**Objectives and measures: civil contingencies**
30

**Objectives and measures: structural and non-structural measures**
31

**Flood risk management plans: consultation**
87

**Local flood risk management plans: supplementary and implementation parts**
125, 32, 123, 126

**Local flood risk management plans: consultation etc.**
90, 91, 92

**Local flood risk management plans: joint working**
89

**Development plans and individual planning decisions**
75, 127

**Sections 38 and 81: minor drafting points**
93, 94, 117
Sub-district advisory groups: representation
95

Land management orders
128, 129

Flood protection schemes: consultation
96

Registers of flood protection schemes
97, 98, 99

Acquisition of land: exemption of Crown land
100

Recovery of expenses, damage to flood protection work and powers of entry: schemes under 1961 Act
101, 102, 106

Recovery of expenses: maintenance of watercourses
130

Statutory undertakers and undertakings
103, 104, 119, 120, 121, 122

Water Industry Commission: Duty to have regard to sustainable flood risk management functions
78

Powers of entry: flood risk assessments
105

Compensation: variation and revocation of improvement orders
107, 108

Reservoirs: timescale for transitional arrangements
109

Reservoirs: incident reporting
110, 111, 112, 113, 114, 115

Reservoirs: flood plans
116

Annual financial impact report
124

Power to give effect to Community obligations etc.: parliamentary procedure
118

Natural features and natural characteristics
131
Amendments already debated

**General duty: managing flood risk sustainably**
With 3 - 65

**Natural features and natural characteristics**
With 9 - 35, 37, 38, 40, 41, 42, 53, 57, 58, 61, 63, 64

**Bodies of water and watercourses: local authority duties**
With 15 - 36, 39, 43, 44, 45, 46, 47, 76, 48, 49, 77, 51, 54, 55, 56, 62

*Notes on amendments in this group*
Amendment 47 pre-empts amendment 76

**SEPA: duty to prepare maps of artificial structures and natural features**
With 16 - 34, 50, 52, 59, 60

**Objectives and measures: sustainability etc.**
With 27 - 28

**Strategic assessment (including use in funding decisions)**
With 70 - 71, 72, 73, 74
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2009 (Session 3)

Wednesday 11 March 2009

Present:

Rhoda Grant (Committee Substitute)  Liam McArthur
Alasdair Morgan                 Elaine Murray
Peter Peacock                  John Scott (Deputy Convener)
Maureen Watt (Convener)        Bill Wilson

Apologies were received from Karen Gillon.

Flood Risk Management (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 86, 28, 29, 30, 31, 32, 33, 90, 91, 92, 34, 35, 93, 94, 36, 37, 38, 95, 39, 40, 41, 42, 43, 96, 97, 98, 99, 100, 44, 45, 46, 47, 48, 49, 101, 102, 50, 103, 104 and 51.

The following amendments were disagreed to (by division)—

71 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
72 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
125 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
123 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
126 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote)
74 (For 4, Against 4, Abstentions 0; amendment disagreed to on casting vote).

The following amendments were moved and, with the agreement of the Committee, withdrawn: 87, 89, 75, 128 and 130.

Amendment 76 was pre-empted.

The following amendments were not moved: 73, 127, 129 and 77.

Sections 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 39, 40, 41, 44, 45, 47, 49, 50 and 51, schedule 2 and sections 53, 54 and 58 were agreed to without amendment.

Sections 24, 29, 30, 37, 38, 42, 43, 46, 48, 52, 55, 56, 57, 59, 60 and 61 were agreed to as amended.

The Committee ended consideration of the Bill for the day, section 61 having been agreed to.
Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 11 March 2009

[F]THE CONVENER opened the meeting at 10:01]

Flood Risk Management (Scotland) Bill: Stage 2

The Convener (Maureen Watt): I welcome everyone to the eighth meeting in 2009 of the Rural Affairs and Environment Committee. I remind everyone to switch off their mobile phones and pagers because they have an effect on the broadcasting system.

Apologies have been received from Karen Gillon, who is a long-term absentee from the committee. Rhoda Grant is substituting for Karen while she is on maternity leave.

The main item of business to be considered in public is stage 2 of the Flood Risk Management (Scotland) Bill. The committee will also consider an update on European Union issues before moving into private to consider the rural housing inquiry report.

Sections 1 to 23 and schedule 1 to the bill were agreed at last week’s meeting, so we begin today’s consideration at section 24. The aim for today is to consider up to the end of section 61. Members should have in front of them copies of the bill, the marshalled list and the groupings.

I welcome the minister and her officials.

The Minister for Environment (Roseanna Cunningham): Good morning.

Section 24—Flood risk management plans: objectives and measures

The Convener: Group 1 is on objectives and measures: assessment of costs. Amendment 86, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson (West of Scotland) (SNP): The aim of the bill is to produce a more sustainable form of flood management. In order to do that, we have to move away from considering only financial costs and towards considering environmental and social costs. That is what amendment 86 seeks to ensure.

I move amendment 86.

The Convener: That was short and sweet.

Bill Wilson: I could go on for five minutes.

The Convener: No, that was a good start. I hope that we continue in that vein.

Roseanna Cunningham: I think that I can be as short and sweet. Amendment 86 is quite closely aligned to the Government’s thinking in relation to benefits. For that reason, I am happy with the principle underlying the amendment. However, the Government may require to introduce a consequential amendment to section 24. On that basis, I am happy to support amendment 86 and to come back at stage 3 with the appropriate consequential amendment.

The Convener: Bill Wilson, do you want to press or withdraw amendment 86?

Bill Wilson: I will press the amendment.

John Scott (Ayr) (Con): I think that the minister was offering to deal with the issue via a later amendment if you withdraw amendment 86.

Bill Wilson: As I understood it, the minister was saying that the amendment was acceptable.

Roseanna Cunningham: I accept the amendment. I simply made the point that we will have to come back with a consequential amendment at stage 3.

Amendment 86 agreed to.

Amendment 28 moved—[Roseanna Cunningham]—and agreed to.

The Convener: Group 2 is on objectives and measures: surface run-off water and urban drainage. Amendment 29, in the name of the minister, is grouped with amendment 33.

Roseanna Cunningham: The management of surface water flooding presents particular challenges, not least of which is the need to coordinate closely the work of local authorities and Scottish Water. Floods are defined in the bill so as to include flooding from all sources, which means that surface water flooding must be included in flood risk assessments, maps and, critically, flood risk management plans. Surface water management will therefore be an integral part of the flood risk management plans that are prepared under the bill.

I have considered the concerns that the committee raised at stage 1, particularly the recommendation that the bill should include a requirement to prepare surface water management plans. As I have outlined, the bill as drafted will require consideration of surface water management alongside other forms of flooding. It is essential that different sources of flooding are considered together if we are to deliver an integrated approach to managing flooding. A separate set of plans to tackle surface water
management would not only add an extra, undesirable administrative burden, but have the potential to cut across the flood risk management planning structure that the bill will create. As it is clear that flooding from different sources can interact, it would be inappropriate to consider one type of flooding in isolation. Amendment 29 will make it clear that the Scottish Environment Protection Agency must consider the management of surface run-off water and urban drainage when setting objectives and implementing measures.

Amendment 33 relates to local flood risk management plans. Section 29 will require local flood risk management plans to contain an implementation part that describes who is to be responsible for implementing the measures that are set out in the plan and when the implementation will take place. Amendment 33 will require the implementation part of local plans also to describe how the different bodies that are involved would co-ordinate their functions when implementing measures. The amendment will also require particular attention to be paid to co-ordinating the implementation of measures to manage surface run-off water and urban drainage.

Amendments 29 and 33 will help to deliver a collaborative approach to managing surface run-off water. I am confident that they address the committee's concerns on that, so I trust that they will be supported.

I move amendment 29.

Amendment 29 agreed to.

The Convener: Group 3 is on objectives and measures: civil contingencies. Amendment 30, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee raised a concern at stage 1 that the emergency services tend to wait for a flood to become an emergency, rather than take positive action once SEPA has issued a flood warning. The Civil Contingencies Act 2004 requires category 1 responders, including the emergency services and SEPA, to put in place plans to deal with emergencies. Category 1 responders also have a duty to assess the risk of an emergency and to plan. In Scotland, there are eight strategic co-ordinating groups, which are led by the chief constable in the area and local authority chief executives. The groups plan and prepare for dealing with a wide variety of emergencies. The plans that they produce show how the emergency services will respond to an emergency situation such as a serious flooding event. The plans are exercised regularly and all groups have experience of dealing with different types of emergencies.

Emergency plans in the strategic co-ordinating group areas are based on duties in the Civil Contingencies Act 2004, including those on communicating with, warning and informing people. The plans include details of which organisation will take the lead in delivering messages about particular types of emergency. To ensure that everything runs smoothly during a flooding event, it is therefore important to establish and manage links between the emergency plans and flood risk management. Amendment 30 will create a direct link between the emergency planning and flood risk management planning processes. I am confident that it will provide an appropriate mechanism to ensure that actions to manage flood risk are co-ordinated appropriately with actions to respond to flooding.

I move amendment 30.

Amendment 30 agreed to.

The Convener: Group 4 is on objectives and measures: structural and non-structural measures. Amendment 31, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: As I have outlined, a key part of taking a sustainable approach is to consider all the options that are available to manage flood risk, and then to select the measures that are most appropriate to a particular range of circumstances. The bill as introduced requires SEPA to consider structural and non-structural measures when setting objectives and measures. Amendment 31 clarifies what should be considered as structural and non-structural measures. All flood risk management measures fall into one of those categories.

Structural measures are described in the amendment as "flood protection work". Section 84 states:

"flood protection work means any operation on land for the purpose of protecting any land from flooding".

Examples of such operations include:

"work of construction, alteration, improvement, repair, maintenance, demolition or removal"

and

"the sowing or planting of vegetation".

The definition and the examples that are provided have been carefully considered to ensure that they cover not only traditional engineering work but also all work that falls under the banner of natural flood management. For instance, reconnecting flood plains involves manipulating the land, including by removing embankments; realigning river channels involves altering land; and creating wetlands or forests typically involves altering or improving land and the sowing or planting of vegetation.

Non-structural measures are all other measures, including flood warnings, non-structural land
management operations, awareness raising and the preparation and review of development plans.

The amendment will provide clarification to all those bodies that are responsible for implementing the bill on the range of flood management options that should be considered.

I turn to the culture shift that is needed to move us away from a single focus on traditional engineering. That culture shift towards sustainable flood risk management will not happen overnight—we would probably all agree with that—but I believe that the bill, accompanied by the steps that I am already taking to invest in the research base underpinning natural flood management, will support the changes that are necessary for delivering a modern and sustainable approach to managing flood risk.

Natural approaches aim to work with the sources and pathways of water as it drains from our landscape. Those are undoubtedly complex elements of the environment to model and understand, and those complexities mean that we might never have the same level of confidence in the more natural approaches to managing flood risk as we have in traditional defences. However, the potential benefits that can be delivered through adopting more natural approaches—those of reducing flood risk and those of restoring the natural character of Scotland’s landscape—mean that we must focus on those approaches wherever we believe that we can make a difference.

While it is vital that those who are responsible for managing flooding continue to employ traditional engineering solutions, it is imperative that those same organisations take all practical and reasonable steps to manage the sources and pathways of floodwaters by adopting more natural flood management measures.

I am confident that amendment 31, in combination with other aspects of the bill that I have already described—and together with the amendments to require SEPA to select the most sustainable measures to achieve objectives, as discussed last week—will contribute to those important endeavours.

I move amendment 31

Amendment 31 agreed to.

Section 24, as amended, agreed to.

Section 25—Flood risk management plans: publicity of drafts etc and consultation

The Convener: Group 5 is on flood risk management plans: consultation. Amendment 87, in the name of John Scott, is the only amendment in the group.

John Scott: The amendment simply seeks to give ministers the opportunity, should they wish to use it, to advise SEPA in case SEPA has forgotten to consult someone. It gives ministers the option to intervene, if they wish, at an earlier stage in proceedings. That is it, in a short and sweet way.

I move amendment 87.

10:15

Roseanna Cunningham: Amendment 87 would amend section 25 by giving the Scottish ministers a role in deciding who should be consulted on a draft flood risk management plan before the plan is submitted. That was clearly John Scott’s exposition. The difficulty that we have with that is that it would be difficult for the Scottish ministers to advise on who should be consulted on a plan before they had considered its scope and content, so there is a slight timing issue with the amendment.

Section 26 allows ministers to direct the Scottish Environment Protection Agency to take action on consultation and publication once a plan is submitted. However, I appreciate that it might be more helpful to set that out more clearly in the bill and, if John Scott agrees to withdraw amendment 87, I will lodge an amendment at stage 3 that will do that but will iron out the slight technical issues that arise from the drafting of amendment 87.

Amendment 87, by agreement, withdrawn.

Section 25 agreed to.

Section 26 agreed to.

Section 27—Flood risk management plans: approval and publication

Amendment 71 moved—[Peter Peacock].

The Convener: The question is, that amendment 71 be agreed to. Are we agreed?

Members:

No.

The Convener: There will be a division.

FOR

Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST

Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

I use my casting vote for the first time today, and vote against the amendment.

Amendment 71 disagreed to.
Section 27 agreed to.
Section 28 agreed to.

After section 28
Amendment 72 moved—[Peter Peacock].

The Convener: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

It is a tie again, so I use my casting vote against the amendment.

Amendment 72 disagreed to.

Section 29—Local authorities to prepare local flood risk management plans

The Convener: Group 6 is on local flood risk management plans: supplementary and implementation parts. Amendment 125, in the name of Peter Peacock, is grouped with amendments 32, 123 and 126.

Peter Peacock (Highlands and Islands) (Lab): Amendment 125 follows on directly from amendment 85, which I moved last week and to which the committee agreed. It seeks to make similar provision in relation to local authorities and local plans on natural flood management and would require local authorities to undertake an assessment of the potential for natural flood management in local flood risk management plans. That would add further information to the national assessment of natural flood management that SEPA would carry out under section 16 and deal with the issue of scale that the committee raised in its stage 1 report.

Assessment under amendment 125 would be based on SEPA’s national assessment but would have the advantage that local authorities would be able to identify further scope for potential natural flood management within their local areas. Therefore, it would provide the level of detail required for the consideration of natural flood management at a more local level. That detail would also help local authorities to work with farmers and other landowners on plans and help to assess the costs that are associated with natural flood management. That, in turn, would assist with determining compensation to farmers and other land managers for changed land use. That is similar to what amendment 74 may also help to do.

Amendment 126 would simply require that, if an assessment showed that natural flood management techniques could play a part but were not used, the reason for that would be explained.

I support amendment 32, even though it does not go as far as I would like it to go to ensure that the level or scale of the assessment of the potential for natural flood management is appropriate. The interpretation of “further information” is wide and does not directly deal with the issue of scale that the committee’s stage 1 report tried to address. Perhaps the minister would reflect on that before we get to stage 3.

I move amendment 125.

Roseanna Cunningham: During last week’s stage 2 discussions, I spent some time describing the links between the flood risk management plans prepared by SEPA and the flood risk management plans prepared by local authorities. As I said then, the objectives and measures described in the plans prepared by SEPA will form the basis of local flood risk management plans. However, that does not mean that the process will be top-down, with local authorities having to work within constraints set unilaterally by SEPA. Instead, the intention is for the SEPA and local authority plans to be prepared in parallel, with local authorities, Scottish Water and others directly informing the content of SEPA’s plans. Advisory groups will play a key role in that process.

Likewise, the plans prepared by local authorities will not simply be a description of the relevant objectives and measures set out in the plan prepared by SEPA. Instead, it is expected that local plans will contain further and more detailed information on the measures that they will take. The plans will of course include a description of how the measures will be implemented.

Amendment 32 sets out examples of the type of supplemental information that should be incorporated in local plans—namely maps and further information on measures. The term “maps” could include detailed maps to assist in the planning or co-ordination of measures to manage surface run-off water; and the term “further information” could include more detailed information on ways to measure surface run-off water, or on measures that will use natural flood risk management techniques to alter, enhance or restore natural features or characteristics in the local plan district.
I believe that amendment 32 directly addresses one of the questions raised by the committee at stage 1 on the level of detail expected from the assessment prepared under section 16, and on the requirement on local authorities to prepare their own assessment of how restoring natural features and characteristics could contribute to lowering flood risk.

Amendment 32 clarifies that local authorities will be expected to set out further information on all measures, including measures that relate to restoring or enhancing natural features. It is also likely that some measures will focus on data-gathering efforts. Obtaining detailed information on opportunities to reduce flood risk through the adoption of more natural approaches would be an important part of that work.

Amendment 32 applies to all measures identified in the plans prepared by SEPA. It will therefore require local plans to include further information about natural flood risk management measures alongside further information on measures to avoid flood risk through development management or through management of surface water run-off.

Amendments 123 and 125 are similar in scope and intent. They would require lead local authorities to carry out assessments of natural features and characteristics. However, as there are no follow-up provisions on how those assessments would tie into other elements of the flood risk management process, it is difficult to understand what the information generated is intended to achieve. For instance, because neither amendment refers to measures, there is nothing to ensure that the assessments would have any effect on the flood-protection work that would be carried out by local authorities.

Elaine Murray’s amendment 123 would impose a new duty on lead authorities to assess the contribution that natural features and characteristics could make to flood risk management in the local plan district, but that would not be an assessment of how enhancing or restoring those natural features or characteristics could be used to manage flood risk.

Peter Peacock’s amendment 125 would, in effect, create a new duty on the lead local authority to undertake an assessment of the potential contribution that restoring natural features and characteristics could make to the management of flood risk in a local plan district. However, section 16 of the bill already includes a requirement on SEPA to prepare such information for the flood risk management districts. Local authorities will be involved in that work. Clearly, amendment 125 would therefore create duplication. It would impose an unnecessary administrative burden on the bodies that would have to carry out the duplicate assessment.

It is important to consider where the assessments envisaged by amendments 123 and 125 would sit within the overall flood risk management planning process. The preparation of local plans is the last stage in each six-year flood risk management planning cycle. By the time those plans are finalised, flood risk assessments will have been carried out, the options will have been considered and flood risk management measures will have been selected to deliver objectives. It does not appear logical to carry out yet another assessment at the end of the planning process.

I understand that the amendments are intended to ensure that the assessment prepared by SEPA under section 16 is complemented by a more detailed assessment to support the identification of measures. Local authorities will already feed in their contributions to the section 16 assessments through the advisory groups. Furthermore, the bill does not specify the level of detail that SEPA should go into when preparing assessments under section 16 and there would be nothing to prevent SEPA and local authorities from collaborating on assessments with different levels of detail depending on flood risk management needs.

For the reasons that I have set out, I believe that the amendments lodged by Elaine Murray and Peter Peacock are not only unnecessary but risk creating parallel or duplicate processes in the bill. As a result, I urge the committee not to support them. That said, I want to ensure that the assessment prepared by SEPA under section 16 forms an integral part of flood risk management. For that reason, I am willing to work with Elaine Murray and Peter Peacock on developing an amendment at stage 3 that makes a clearer link between measures described in local flood risk management plans and section 16 assessments. I therefore ask Peter Peacock to withdraw amendment 125 and Elaine Murray not to move amendment 123.

Before examining the detail of Peter Peacock’s amendment 126, I stress again that there will be a close link between the plans prepared by SEPA and those prepared by local authorities. In short, there will not be two sets of independent plans; indeed, the bill states clearly that local plans must be consistent with the plans prepared by SEPA. Advisory groups will clearly play a key role in ensuring that the plans are closely co-ordinated.

Amendment 126 is similar in purpose to amendment 85. As a result of that amendment, which the committee agreed to at last week’s meeting, SEPA will be required to set out reasons for not including measures for altering or restoring natural features and characteristics identified through the assessment prepared under section 16. As I have already committed to working with
Peter Peacock on finding some way of resolving the interplay—and, as we all agreed, duplication—between amendment 85 and the other amendments that relate to objectives and measures, I find it difficult to understand what amendment 126 is trying to achieve. Indeed, I am very concerned that it will create another layer of unnecessary burden and bureaucracy for local authorities. Local authorities will, of course, have discretion in how they implement measures, but that does not mean that local plans can pursue alternative objectives and measures.

Finally, as I have previously stressed, the bill is about sustainable flood risk management, which means considering all the options that are available to manage flood risk, including flood warning, managing sewerage systems, raising awareness and avoiding flood risk through development control. Given the broad range of measures that are available to those responsible for reducing flood risk, requiring local authorities to explain why measures set out in the implementation part of a local flood risk management plan do not involve the restoration of natural features and characteristics seems unduly burdensome. For instance, why would a local authority need to consider natural approaches to flood management when setting out measures to tackle sewerage flooding or to raise awareness of flooding problems?

I believe that the bill, as amended by amendments agreed to at last week’s meeting, will ensure that information is prepared on why measures are selected, including information on why opportunities to restore natural features and characteristics are not being pursued. For those reasons, I urge Peter Peacock not to move amendment 126.

Elaine Murray (Dumfries) (Lab): Section 29 requires the lead authority to prepare a flood risk management plan consisting of a summary part and an implementation part. Amendment 123, which is linked to what SEPA is already required to do at a national level, seeks to require the authority to include in the plan a more detailed assessment of the contribution that natural processes can make and of how such processes can be used. Assessment would allow better costing of the use of natural processes compared with other techniques. Local knowledge could be incorporated into the national assessment, and minds would be concentrated on the contribution that natural processes can make. Identification of areas in which natural processes might be important would enable early consultation with farmers, land managers and foresters on possible schemes and compensation payments.

The minister said that there was no relationship between the assessments that are proposed in amendment 123 and any measures that might be taken. If amendment 123 is agreed to, further amendment at stage 3 could take account of that issue. She also said that local authorities will feed into the assessment that will be done under section 16. If that is so, what I am proposing would not place a huge additional burden on local authorities, which will have to do the work anyway.

I appreciate that amendment 32 is intended to achieve similar objectives, but the provision in that amendment is insufficiently detailed to achieve the culture change that is required.

Alasdair Morgan (South of Scotland) (SNP): During the stage 1 debate, I remember having a general gurk about the increasing complexity of modern life as a result of legislation that Governments have passed, although I accept that legislation to deal with flood management is probably necessary.

We should be careful to legislate only to the extent that is absolutely necessary. The minister said that amendments 123, 125 and 126 would overcomplicate the situation and probably duplicate provisions that are in the bill. Overcomplication and duplication of any kind will increase bureaucracy and costs to local authorities that are already overburdened with duties and finding it difficult to fulfil all the statutory obligations that we have put on them. It is difficult to justify the imposition on authorities of more, unnecessary duties, especially given that it would bring no discernible advantage.

Peter Peacock: I heard the minister’s detailed arguments. However, amendment 32 does not go far enough, although I am happy to support it.

It was helpful of the minister to set out the difficulty that amendments 123, 125 and 126 would potentially cause in relation to follow-up. However, that should not prevent us from agreeing the amendments. As Elaine Murray said, we can address such issues at stage 3.

On the point that Alasdair Morgan made, which the minister also made to some extent when she talked about the duties that are imposed on SEPA in section 16, there is a danger that SEPA’s
assessments might be at quite a high level, although they will be helpful. That is why the more local approach that is advocated in amendments 123, 125 and 126 would complement, rather than duplicate SEPA’s work. The additional assessment would provide a greater degree of detail, which would enable local authorities to interact with all the land users with whom they would require to interact. That would be a helpful part of the local process.

On the point about bureaucracy, this bill is by its nature extremely bureaucratic. I am not sure that the proposed approach would add significantly to that. We are about to consider extraordinarily bureaucratic amendments about a register for flood management schemes; amendments 123, 125 and 126 offer a light touch by comparison.

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

Again, there is a tie, and I vote against the amendment.

Amendment 123 disagreed to.

Amendment 32 moved—[Roseanna Cunningham]—and agreed to.

Amendment 126 moved—[Peter Peacock].

The Convener: The question is, that amendment 126 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

There is a tie, so I vote against the amendment.

Amendment 126 disagreed to.

The Convener: Group 7 is on local flood risk management plans: consultation etc. Amendment 90, in the name of the minister, is grouped with amendments 91 and 92.

Roseanna Cunningham: Before I speak to the group, I reiterate my offer to discuss with Elaine Murray and Peter Peacock a potential stage 3 approach to the issues that they have identified, notwithstanding the fact that their amendments have not been agreed to.

Section 29(6) allows the Scottish ministers to specify additional matters for inclusion in local flood risk management plans. The committee agreed with the Subordinate Legislation Committee’s view that the bill should require Scottish ministers to consult local authorities and other appropriate bodies before making regulations under section 29(6). I am happy to amend the bill to that effect.

Amendment 90 will require the Scottish ministers, before making regulations under section 29(6), to consult

"(a) SEPA,
(b) every responsible authority, and
(c) such other persons as they consider appropriate."
I trust that the amendment meets the committee’s recommendation.

I turn to amendments 91 and 92. Co-ordinating the publication and consultation exercises for the plans that are prepared by SEPA and the plans that are prepared by local authorities will be essential to delivering an integrated flood risk management planning process. The bill, as drafted, could result in the draft plans that are prepared by local authorities being published for consultation up to six months after the flood risk management plans that are prepared by SEPA. The amendments will ensure that the local plans and the plans that are prepared by SEPA are published at the same time. That is achieved by amending section 30(1) to ensure that the deadline for publishing the supplementary part of a local flood risk management plan is tied to the period covered by the plans that are prepared by SEPA.

I move amendment 90.

Amendment 90 agreed to.

Section 29, as amended, agreed to.

Section 30—Local flood risk management plans: publicity and consultation

Amendments 91 and 92 moved—[Roseanna Cunningham]—and agreed to.

Section 30, as amended, agreed to.

Sections 31 to 33 agreed to.

Section 34—Local flood risk management plans: joint working

The Convener: Group 8 is on local flood risk management plans: joint working. Amendment 89, in the name of Bill Wilson, is the only amendment in the group.

Bill Wilson: The bill will require considerable co-operation between local authorities. Amendment 89 makes it clear that local authorities can use any means possible to work together, including structures that already exist.

I move amendment 89.

Roseanna Cunningham: Like Bill Wilson and, I am sure, the rest of the committee, I believe that close collaboration, including, where appropriate, joint working, will be essential to delivering the bill. That is particularly true when measures need to be co-ordinated across catchments that cross local authority boundaries.

The bill includes a series of provisions that are intended to support collaborative working. Those include the requirements to establish advisory groups under sections 42 and 43, and the overarching duty in section 1 to co-ordinate the exercise of flood risk-related functions. Last week, I committed to looking again at amendment 81, in the name of Elaine Murray, on integrating functions. Furthermore, amendment 4—a Government amendment that was agreed to last week—makes it clear that SEPA and the responsible authorities “may enter into agreements” to support the exercise of their flood risk-related functions.

On amendment 89, I recognise the potential role of joint boards, but I am not convinced that adding a reference to a particular aspect of the Local Government (Scotland) Act 1973 is necessary, because the powers in that act, including the power to create joint boards, will be available anyway. Local authorities are experienced in creating and using boards, such as those to manage bridges and to oversee the joint delivery of police services.

Local authorities have wide-ranging powers to support joint or collaborative working. They include powers for one authority to exercise functions on behalf of another authority; powers for authorities to discharge their functions jointly; and powers to establish joint committees to discharge the functions of several authorities. Those general powers will apply to all the local authority functions under the bill, so cross-referring to them is unnecessary. In many cases, those powers might provide a simpler and more flexible framework for joint working than the creation of a board.

The proposed reference to one power would have little—if any—legal effect, but it could create confusion, because it would apply only to the preparation of local plans and not to all the other functions of local authorities under the bill. However, as co-operation and co-ordination are central to the bill, if Bill Wilson is willing to withdraw amendment 89, I will commit to issuing guidance to local authorities and the other bodies that are responsible for implementing the bill on how the powers that are available under other legislation might be exercised to support a collaborative and partnership-focused approach to flood risk management. I ask him not to press his amendment.

Bill Wilson: Ministerial guidance would meet the same objectives as would agreeing to amendment 89, so I am happy to withdraw it.

Amendment 89, by agreement, withdrawn.

Section 34 agreed to.

Section 35 agreed to.

Section 36—Duty to have regard to flood risk management plans and local flood risk management plans

Amendment 73 not moved.
Amendment 74 moved—[Peter Peacock].

The Convener: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Grant, Rhoda (Highlands and Islands) (Lab)
McArthur, Liam (Orkney) (LD)
Murray, Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)

AGAINST
Morgan, Alasdair (South of Scotland) (SNP)
Scott, John (Ayr) (Con)
Watt, Maureen (North East Scotland) (SNP)
Wilson, Bill (West of Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0.

The vote is tied, so I vote against the amendment.

Amendment 74 disagreed to.

Section 36 agreed to.

After section 36

The Convener: Group 9 is on development plans and individual planning decisions. Amendment 75, in the name of Rhoda Grant, is grouped with amendment 127.

Rhoda Grant (Highlands and Islands) (Lab): Amendment 75 would ensure that, when drawing up local or strategic development plans, a planning authority had regard to flood risk management plans, giving them the same statutory impact as have regional transport strategies and housing strategies, which are mentioned in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (SSI 2008/426).

The amendment also takes into account the committee's recommendation 16, which was that amendments

"should require local development plans to take account of flood risk management plans."

I move amendment 75.

10:45

Peter Peacock: Amendment 127 deals with individual planning applications. In its evidence to the committee's inquiry into flooding issues last year, SEPA said that a planning application should not be decided on before the completion of a flood risk assessment that has been determined to be required. The amendment would put beyond doubt or interpretation the fact that a flood risk assessment is a material consideration when it meets the test that is set out in the amendment.

When the minister speaks, I rather anticipate that she might suggest that advice from SEPA is already a material consideration. However, if that is the case, it is open to interpretation. If she does so argue, I urge her to set out clearly why that is the case and why amendment 127 would not offer clarification. I look forward to hearing what she has to say before I decide whether to press my amendment at this stage. I shall, of course, be absolutely delighted if she says that the amendment is perfect in every respect, but that would be a first.

Roseanna Cunningham: Section 36 requires all public bodies to have regard to flood risk management plans. That duty requires planning authorities to take account of flood risk management plans when they prepare development plans. In our view, there is no gap in the bill at present that could result in development plans being prepared without reference to flood plans.

The Scottish Government has committed to introducing a proposal to update the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 once the bill is enacted to reflect the changes that it brings about. That work will focus on adding flood risk management plans to the list of plans and strategies to which authorities must have regard when preparing local development plans and strategic development plans.

It is likely that further consequential amendments to the development planning regulations might be required as a result of the bill and other legislation. Rather than taking forward separate amendments to the new planning legislation, such as amendment 75, we suggest that it would be preferable to make those changes in a single amending statutory instrument so as to limit the volume of planning legislation and avoid potential confusion for planning authorities.

Amendment 127 appears to replicate an existing duty. It would require planning authorities to have regard to assessments carried out under paragraph 1(1) of schedule 5 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432) when determining an application for planning. However, the amendment, as drafted is technically defective because paragraph 1(1) does not involve the carrying out of assessments.

If amendment 127 is intended to ensure that when SEPA has been consulted and has made comments on an application for planning permission, the comments must be considered by the planning authority, it is not necessary, because
planning authorities already have to take account of advice from SEPA. That is because regulation 25 of the regulations will prevent the planning authority from determining a planning application until it has given consultees, such as SEPA, time to respond.

On that basis, I ask Rhoda Grant to withdraw amendment 75 and Peter Peacock not to move amendment 127.

The Convener: Does Rhoda Grant want to press or withdraw her amendment?

Rhoda Grant: I beg the committee’s indulgence and ask the minister to give me an assurance that when the statutory instrument that will amend the planning legislation is drawn up, the aims of amendment 75 will be included in that instrument.

Roseanna Cunningham: I have no difficulty in giving that assurance.

Amendment 75, by agreement, withdrawn.

Amendment 127 not moved.

Section 37 — Power of SEPA to obtain information, documents and assistance

Amendments 34 and 35 moved — [Roseanna Cunningham] — and agreed to.

Section 37, as amended, agreed to.

Section 38 — Power of lead authorities to obtain information, documents and assistance

The Convener: Group 10 is on sections 38 and 81: minor drafting points. Amendment 93, in the name of the minister, is grouped with amendments 94 and 117.

Roseanna Cunningham: As the convener indicated, the amendments deal with minor drafting points of the kind that arise at stage 2. Amendments 93 and 94 clarify that lead authorities cannot serve notices on SEPA or responsible authorities to require them to provide information. Section 38(3) already has the same effect, but the current wording is less explicit.

Lead authorities will not need the power to serve formal information request notices on SEPA or responsible authorities because they have wider powers to seek information and assistance from such bodies. SEPA and responsible authorities also have general duties to co-operate under section 1.

Amendment 117 is a technical amendment to correct a minor typographical error in section 81.

I move amendment 93.

Amendment 93 agreed to.

Amendment 94 moved — [Roseanna Cunningham] — and agreed to.

Section 38, as amended, agreed to.

The Convener: I suggest that we suspend for a couple of minutes to recharge our cups.

10:51

Meeting suspended.

10:56

On resuming —

After section 38

Amendment 36 moved — [Roseanna Cunningham] — and agreed to.

Sections 39 to 41 agreed to.

Section 42 — District flood risk advisory groups

Amendment 37 moved — [Roseanna Cunningham] — and agreed to.

Section 42, as amended, agreed to.

Section 43 — Sub-district flood risk advisory groups

Amendment 38 moved — [Roseanna Cunningham] — and agreed to.

The Convener: Group 11 is on sub-district advisory groups: representation. Amendment 95, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Advisory groups will play a central role in ensuring that flood risk management is founded on co-operation and collaboration. The intention had been to leave the membership of sub-district advisory groups as flexible and open as possible, thereby ensuring that the make-up of the groups reflected local needs, but I have listened to concerns that have been raised by some organisations, stakeholders and the committee that the bill does not go far enough to specify who should be represented on sub-district advisory groups.

Amendment 95 means that SEPA, in setting up sub-district advisory groups, will need to ensure representation of the following interests: responsible authorities, Scottish Natural Heritage, national park authorities and other persons with an interest in flood risk management. That replicates the interests that must be represented on the district flood risk advisory group under section 42 and will ensure that all key parties are involved.

I move amendment 95.

Amendment 95 agreed to.
Section 43, as amended, agreed to.

Sections 44 and 45 agreed to.

Section 46—Availability of documents for public inspection

Amendment 39 moved—[Roseanna Cunningham]—and agreed to.

Section 46, as amended, agreed to.

Section 47 agreed to.

Section 48—Interpretation of Part 3

Amendments 40 to 42 moved—[Roseanna Cunningham]—and agreed to.

Section 48, as amended, agreed to.

Section 49—General power to manage flood risk

11:00

The Convener: Group 12 is on land management orders. Amendment 128, in the name of Elaine Murray, is grouped with amendment 129.

Elaine Murray: Amendments 128 and 129 deal with provisions for the management of land for flood risk management carried out by individual land managers. Local authorities would be permitted to enter into agreements with farmers, land managers and foresters, and compensation could be provided where land is used for flood risk management purposes. The bill currently allows responsible authorities to enter into voluntary agreements with landowners but, if such agreements cannot be reached, time-consuming and costly alternatives, such as compulsory purchase, might need to be undertaken.

The proposed amendments would create two parallel procedures to enable local authorities to undertake flood risk management works in the absence of agreement by the landowner. Furthermore, there is no indication of which processes are meant to be used under which circumstances. That cuts across one of the original recommendations by the committee in its flooding inquiry report, which was that we should streamline the process for undertaking flood risk management works.

It might help if I clarified a couple of points on the nature of flood protection work under the bill and state how it differs from the old-style flood protection schemes under the Flood Prevention (Scotland) Act 1961.

Section 49 gives local authorities the power to do anything to manage flood risk in their area—there is no restriction on the measures that a local authority can take to manage flood risk. That means that local authorities are not restricted to hard engineering in the same way as they were under the 1961 act—that was one of the main things that we wanted to move away from.

To ensure that flood risk management can be taken forward in the most efficient manner possible, the bill places no restrictions on how local authorities should take forward particular measures. For example, a local authority can enter into agreements with landowners about changing the way in which land is managed. In most cases, we would expect any land management methods to be undertaken in co-operation with the landowner but, if a local authority could not proceed by agreement, it could include land management operations in a flood protection scheme. In order to undertake a flood protection scheme, a local authority must follow a statutory process, at the end of which the local authority will be able to carry out certain work on land.

Under section 68, any person who is authorised by a local authority may enter any land on which flood protection scheme operations, associated temporary works, emergency flood protection work or maintenance operations are to be carried out. Section 71 obliges local authorities to compensate anyone who sustains damage as a result of scheme operations or subsequent maintenance that is carried out by or on behalf of the local authority, and any question of disputed compensation will be determined by the Lands Tribunal for Scotland. In effect, that means that, if a local authority completes the statutory process, it
will have the coercive powers that are required for it to enter land to carry out scheme operations and will be required to compensate the landowner accordingly. Those powers relate not only to one-off flood protection works but to on-going maintenance.

In addition, section 68 will give powers of entry to a local authority to maintain flood protection work that it previously carried out without the need to go through the scheme process again. Therefore, there will be the same incentive for landowners to agree to changes in land use that there would be if local authorities could issue a land management order.

I appreciate that it may be helpful to clarify the breadth of operations that local authorities can carry out under section 49, and I am happy to lodge an amendment at stage 3 to achieve that. That clarification will deal with Elaine Murray’s wish to ensure that there is a mechanism to implement changes in how land is managed over the long term without the need for the two different processes that her amendments would introduce.

I ask Elaine Murray to withdraw amendment 128 and not to move amendment 129 on the basis that we will lodge an amendment at stage 3 that will put beyond doubt the fact that the operations that local authorities can carry out under section 49 extend beyond hard engineering measures to include other land management techniques and work that falls under the banner of natural flood management.

The Convener: I invite Elaine Murray to wind up and to say whether she wants to press amendment 128.

Elaine Murray: I would like to read the Official Report of the meeting and reflect further on what the minister has—

The Convener: I am sorry to stop you, but John Scott wants to comment.

John Scott: I am sorry that I did not make it clearer that I wanted to speak.

I have a huge amount of sympathy with what Elaine Murray is trying to achieve, but I accept what the minister said about local authority provision. I welcome the fact that the minister will lodge an amendment at stage 3, because there is a lack of provision in the bill for compensating farmers. I declare an interest in that respect, although I would never be a beneficiary of such compensation.

There is a lack of long-term funding in the bill, and it will be difficult for farmers in negotiations to pursue matters through the Scottish Land Court if they do not agree with a local authority. Something more must therefore be done in the bill to allow the process to be gone through more quickly than it might be gone through if people have to go through the protracted Scottish Land Court hearings process too. I look forward to seeing the amendment that the minister proposes to lodge at stage 3.

Liam McArthur (Orkney) (LD): I shall be brief. I share many of Elaine Murray’s concerns but think that the parallel processes that the minister referred to would be unlikely to serve the interests of anyone involved. The minister’s willingness to lodge an amendment at stage 3 is welcome in that regard.

Roseanna Cunningham: In response to John Scott’s concerns, I should reiterate that the Lands Tribunal for Scotland, which is specifically mentioned in the bill, is not the same as the Scottish Land Court.

I am not sure that our stage 3 amendment will necessarily satisfy what John Scott is looking for in respect of compensation, and he may wish to consider a proposal for stage 3 if he has a concern about that. It could be difficult to put specific compensation provisions in the bill in the way that he may be suggesting, so it would be useful to have a conversation with him about what he is really looking for. I have resolved to lodge an amendment at stage 3 that will deal with Elaine Murray’s amendments, but it will not necessarily resolve John Scott’s concerns, about which there would need to be a further conversation.

The Convener: I invite Elaine Murray to wind up.

Elaine Murray: I was called a little early before.

In my amendments, I was attempting to find a system in which land management orders could be used for the purpose of flood risk management to permit appropriate compensation to be offered to landowners and to allow payments to farmers for the use of their land as wetlands or flood plains while in use for farming. LMOs could also incorporate other features of land management, such as soil management, erosion control and keeping winter stubble to reduce winter run-off.

As I said earlier, I would like to reflect on the Official Report of the meeting and what the minister has said. I would also like to consider any further Government amendments that are lodged at stage 3. I will not press amendment 128, although I still wish to pursue the matter in some way at stage 3.

Amendment 128, by agreement, withdrawn.

Section 49 agreed to.

After section 49

Amendment 129 not moved.
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Sections 50 and 51 agreed to.

After section 51

Amendment 43 moved—[Roseanna Cunningham]—and agreed to.

Section 52—Flood protection schemes

The Convener: Group 13 is on flood protection schemes: consultation. Amendment 96, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: The committee agreed with the Subordinate Legislation Committee’s recommendation that the Scottish ministers should consult local authorities and their representatives prior to amending schedule 2 by order. Amendment 96 will place a duty on the Scottish ministers to consult local authorities and various bodies that would receive direct notification of flood protection schemes prior to the making of an order under section 52(4). We think that will satisfy the Subordinate Legislation Committee.

I move amendment 96.

Amendment 96 agreed to.

Section 52, as amended, agreed to.

Schedule 2 agreed to.

Section 53 agreed to.

After section 53

The Convener: Group 14 is on registers of flood protection schemes. Amendment 97, in the name of the minister, is grouped with amendments 98 and 99.

Roseanna Cunningham: Amendments 97 to 99 insert a new provision into the bill. The bill requires local authorities to send direct notification of a proposed flood protection scheme to anyone who has an interest in land that might be affected by the scheme or on which scheme operations would be carried out. Local authorities are also required to make documents that relate to a proposed scheme available to anyone who wants to inspect them.

Such an approach should ensure that existing owners and tenants receive notification of proposed schemes, but it is unlikely that anyone who is considering or negotiating the purchase of land would receive notification. Although schedule 2 provides for other forms of notification, such as an advertisement in the local press, it would be relatively easy for a prospective purchaser to remain in ignorance until the purchase had been completed and the local authority bulldozers turned up, especially if he or she was not based locally at the time of the purchase.

The problem might not seem new, given that there has never been a register of flood prevention schemes under the Flood Prevention (Scotland) Act 1961, but prospective purchasers would have found out about a proposed scheme under the 1961 act because an application for planning consent would have shown up in the local authority search. Section 54 will allow for “deemed planning permission” for future flood protection schemes, so there will be no need for a planning application, which will remove a mechanism that would make purchasers aware of what might happen.

Amendment 97 will place a duty on each local authority to create a register of flood protection schemes that it is taking forward and schemes that are being taken forward by another local authority but involve operations in its area. The local authority must make the register available for public inspection and may make a reasonable charge for doing so.

Section 59 will create a new criminal offence of “intentionally or recklessly” damaging flood protection work that was carried out by a local authority, and amendment 102, if agreed to, will extend the offence to include schemes that were constructed under the 1961 act. In that context, amendment 98 will require local authorities to include on their registers details of schemes that they made under the 1961 act. The approach will help to ensure that purchasers are aware that the land that they intend to buy includes part of a flood prevention scheme, which they cannot knowingly damage or alter without committing an offence.

Amendment 99 allows ministers to make regulations that set out, among other things, the content and availability of a register. It allows ministers to require that the contents of registers are shared with specified third parties to facilitate searches of local authority registers to be made alongside other searches of various kinds that relate to the purchase of a property. This is one bureaucratic measure that we feel must be inserted into the bill for the sake of protecting individuals who set out to purchase land.

I move amendment 97.

11:15

Rhoda Grant: On a point of clarification, if someone is selling a piece of land or property, will they have to disclose certain things to potential buyers? At present, people have to disclose issues such as antisocial behaviour and noisy neighbours. If someone does not disclose something prior to concluding a sale, will they be in breach of the conditions of sale? Is the amendment required for that purpose?
Peter Peacock: I express my deep disappointment at what the minister said—it removed my one opportunity to rant about excessive bureaucracy.

Bill Wilson: You could go ahead anyway.

Peter Peacock: No.

Roseanna Cunningham: I am sorry but, talking to my advisers, I missed that interchange.

The Convener: Peter Peacock was going to have a rant at you about bureaucracy, but he cannot do that because of what you said.

Roseanna Cunningham: Oh, that was it. Perhaps this is an occasion on which I was able to predict what Peter Peacock might say as opposed to his predicting what I might say.

Rhoda Grant’s point is reasonable. The issue is that, if the disclosure is not made, a purchaser would have to pursue things by way of civil proceedings. Anyone who knows anything about the workings of the civil courts knows that that can be a long and arduous process. The way that we have set out the provision makes the issue much sharper and harder, and the things that might otherwise happen will not happen.

The provisions are designed to protect individuals and ensure that they do not buy land without realising the scale of the issues involved. In such cases, people might inadvertently do something that damages flood protection works.

John Scott: Essentially, the aim is to make potential purchasers aware of existing burdens.

Roseanna Cunningham: Absolutely.

The Convener: It looks like a necessary piece of bureaucracy.

Amendment 97 agreed to.

Amendments 98 and 99 moved—[Roseanna Cunningham]—and agreed to.

Section 54 agreed to.

Section 55—Acquisition of land

The Convener: Group 15 is on acquisition of land: exemption of Crown land. Amendment 100, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: I will be brief. Amendment 100 seeks to exclude all Crown land from the power of local authorities compulsorily to acquire land under section 55. The amendment will not prevent local authorities from acquiring such land; they will have to do so by agreement. I move amendment 100.

Peter Peacock: There is something deeply ironic in it falling to Roseanna Cunningham of all people to move an exemption for the Crown. It demonstrates the burden of high office and collective responsibility; having been there, I empathise deeply with her. Her speech in moving the amendment was one of the shortest and least convincing that I have heard from her, which leads me to wonder whether the minister was using some sort of code. The dilemma for me is now to do what she suggests we should do or do what I think might be in her heart.

Roseanna Cunningham: I am not saying a single other word.

Amendment 100 agreed to.

Section 55, as amended, agreed to.

Section 56—Assessment of watercourses etc

Amendments 44 to 46 moved—[Roseanna Cunningham]—and agreed to.

Amendment 47 moved—[Roseanna Cunningham].

The Convener: If amendment 47 is agreed to, amendment 76 will be pre-empted.

Amendment 47 agreed to.

Amendment 48 moved—[Roseanna Cunningham]—and agreed to.

Section 56, as amended, agreed to.

Amendment 49 moved—[Roseanna Cunningham]—and agreed to.

Section 57—Recovery of expenses

The Convener: Group 16 is on recovery of expenses, damage to flood protection work and powers of entry: schemes under 1961 act. Amendment 101, in the name of the minister, is grouped with amendments 102 and 106.

Roseanna Cunningham: I will be relatively brief. Under section 59, any person who intentionally or recklessly damages any part of a flood protection scheme will commit an offence. However, that will leave flood prevention schemes that were built under the Flood Prevention (Scotland) Act 1961 without similar protection. It is unreasonable to treat damage to scheme works as criminal in one case but not in another purely because of the date when the works were completed. Amendment 102 will therefore extend the criminal offence in section 59 to damage to schemes that were constructed under the 1961 act. The offence will not be retrospective and will apply only to damage that is done after the section comes into force.
Similar issues arise with sections 57 and 68(2), which deal with local authorities’ ability to recover expenses and their powers of entry. Without amendment 101, local authorities will be unable to recover from a landowner or occupier the cost of repairing and reinstating 1961 act scheme works when damage is caused by that person’s actions. Similarly, amendment 106 will enable local authorities to enter land to maintain scheme works that were constructed under the 1961 act.

I believe that amendment 102 represents the first criminal offence that I have created.

I move amendment 101.

Amendment 101 agreed to.

The Convener: Group 17 is on recovery of expenses: maintenance of watercourses. Amendment 130, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: Amendment 130 would make it clear that if a landlord was not maintaining watercourses such as field drains adequately, such that a flooding risk was created, the local authority could claim its expenses for cleansing, repairing or maintaining the watercourses to prevent flooding. My interest in the matter arises from some of my constituents’ experience of the current legislation. Their homes were flooded due to inadequate maintenance of watercourses on private land and because the local authority was unable or unwilling to act to prevent the flooding of their properties.

The amendment reflects concerns that Jim Moodie of Fife Council expressed to the committee. He said:

“The bill contains a mechanism to allow local authorities to recover costs when the repairs are due to damage or reinstatement of flood prevention works, but there is no mechanism to allow the authority to be reimbursed for work to clear from private land debris such as fallen trees or timber. There are instances of landowners walking away when they find that they cannot develop land because it is on a flood plain. Under the 1997 amendment to the 1961 act, the local authority has a duty to go in and clear out the water courses, which often costs thousands of pounds—it is not just a £500 job to remove some debris from a burn.

In our written submission, we express hope that the committee will get into the bill a mechanism that will give councils at least a chance of recouping some costs when they deal with private landowners.”—[Official Report, Rural Affairs and Environment Committee, 10 December 2008; c 1274]

I am interested in the minister’s comments on whether the wording of the bill allows local authorities to reclaim for that type of work. Whether I press the amendment will depend on her on-the-record comments.

I move amendment 130.

Roseanna Cunningham: At the risk of watching John Scott beginning to fizz gently, I must say that we have considerable sympathy with Elaine Murray’s sentiments. Amendment 130 would extend local authorities’ cost-recovery power to cover “any cleansing, repairs or maintenance of watercourses required under section 56”.

We accept that it is anomalous that local authorities can recover the cost of repairing and reinstating scheme works from the owner or occupier of the land when the damage was caused by the action of that person, but that authorities cannot recover the cost of maintaining watercourses when the need for maintenance was caused directly by the actions of the owner or occupier of the land.

As several amendments have already been made to section 56 and associated provisions, we would like to come back at stage 3 with an amendment to local authorities’ powers to recover expenses that ties in with the new requirements for local authorities to produce and implement schedules of clearance and repair works. I therefore ask Elaine Murray to withdraw amendment 130, on the basis that we will introduce a suitable amendment at stage 3.

John Scott: I associate myself with Elaine Murray’s remarks, which were entirely reasonable. If an amendment is introduced at stage 3 that better defines the intention, I will in all probability be likely to accept it. Such legislation might encourage landowners to be more neighbourly than they have perhaps been, as Elaine Murray suggested. There is an absolutely reasonable obligation that they should be so.

Elaine Murray: I thank the minister and John Scott for their comments. The intention of my amendment 130 is not to make landowners responsible for flood prevention schemes that were determined by somebody else, but to make them responsible for dealing with situations in which their inaction causes or might cause distress to other people. As the minister has indicated her willingness to introduce an amendment for that purpose at stage 3, I seek to withdraw amendment 130.

Amendment 130, by agreement, withdrawn.

Section 57, as amended, agreed to.

Section 58 agreed to.

Section 59—Damage to certain flood protection work

Amendment 102 moved—[Roseanna Cunningham]—and agreed to.

Section 59, as amended, agreed to.
Section 60—Repeal of Flood Prevention (Scotland) Act 1961

Amendment 50 moved—[Roseanna Cunningham]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Interpretation of Part 4

Amendment 77 not moved.

The Convener: Group 18 is on statutory undertakers and undertakings. Amendment 103, in the name of the minister, is grouped with amendments 104 and 119 to 122.

Roseanna Cunningham: I will be brief. Amendments 103, 104 and 119 to 122 are technical amendments that will enable the same bodies that are treated as statutory undertakers for the purposes of the Flood Prevention (Scotland) Act 1961 to continue to be treated as statutory undertakers under the bill. The effect will be that the protection that is given to statutory undertakers from interference with their property and undertakings under section 51 will apply to the bodies that are listed in amendment 103.

I move amendment 103.

Amendment 103 agreed to.

Amendments 104 and 51 moved—[Roseanna Cunningham]—and agreed to.

Section 61, as amended, agreed to.

The Convener: That ends today’s consideration of the Flood Risk Management (Scotland) Bill, dead on time—I congratulate you all on that. The committee will continue its stage 2 consideration next week, when the target will be to reach the end of the bill. I thank the minister and her team.

11:30
Meeting suspended.
3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 23  Schedule 1
Sections 24 to 52  Schedule 2
Sections 53 to 84  Schedule 4
Section 85  Schedule 3
Section 86  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 61

Peter Peacock

78* After section 61, insert—

<PART
FLOOD RISK MANAGEMENT: SCOTTISH WATER FUNCTIONS

Scottish Water: sustainable flood risk management

(1) The Water Industry (Scotland) Act 2002 (asp 3) is amended as follows.

(2) In section 29B(4), before paragraph (a) insert—

“(za) must have regard to Scottish Water’s duty under section 51A,”.

(3) In section 29D(4), for section “51(1)” substitute “sections 51(1) and 51A”.

(4) After section 51, insert—

“51A  Sustainable flood risk management
Scottish Water must, in exercising its functions, act in a way best calculated to
manage flood risk in a sustainable way.”.

(5) In section 56A(3), for “section 51(1)” substitute “sections 51(1) “and 51A”.

John Scott

132  After section 61, insert—

<Scottish Water charges scheme: specification of period

(1) The Water Industry (Scotland) Act 2002 (asp 3) is amended as follows.

(2) In section 29B, at the end of subsection (2) insert “(having regard in particular to the
dates by which Scottish Water must carry out its functions under Part 3 of the Flood
Risk Management (Scotland) Act 2009)”.

SP Bill 15-ML3  1  Session 3 (2009)
Peter Peacock

After section 61, insert—

<Scottish Water: consultation on statements regarding charges

(1) The Water Industry (Scotland) Act 2002 (asp 3) is amended as follows.

(2) In section 29D(5)—

(a) the word “and” immediately following paragraph (b) is repealed, and

(b) after paragraph (c) insert “, and

(d) in so far as the content of the statement may affect Scottish Water’s ability to carry out its functions under Part 3 of the Flood Risk Management (Scotland) Act 2009, the Scottish Environment Protection Agency.”.

After section 67

John Scott
Supported by: Liam McArthur, Peter Peacock

After section 67, insert—

<PART
FIRE AND RESCUE AUTHORITIES: FLOOD RISK MANAGEMENT FUNCTIONS

Duty to prepare strategy

(1) Each relevant authority must prepare a strategy with a view to reducing overall flood risk in its area.

(2) A strategy must identify—

(a) property held by category 1 and 2 responders—

(i) for the purposes of reducing overall flood risk, or

(ii) which the authority considers could be reasonably used to reduce flood risk,

(b) the human resources available to category 1 and 2 responders with a view to reducing overall flood risk,

(c) proposals for the deployment of that property and those human resources with a view to reducing overall flood risk,

(d) how the authority proposes to co-operate with—

(i) category 1 and 2 responders, and

(ii) any other person the authority considers appropriate, with a view to reducing overall flood risk,

(e) any other steps the authority proposes to take with a view to reducing overall flood risk.

(3) In preparing a strategy, the relevant authority must have regard to—

(a) any current flood risk management plan for any flood risk management district in the relevant authority’s area,
(b) any current local flood risk management plan for any local plan district in the relevant authority’s area,
(c) such other matters as the Scottish Ministers may specify by regulations.

(4) Before finalising a strategy, a relevant authority must submit a draft of it for approval to the Scottish Ministers; and the Scottish Ministers may specify a date by which a relevant authority must submit a draft to them.

(5) A relevant authority—
(a) may from time to time, and
(b) must, when directed to do so by the Scottish Ministers,
prepare a revised strategy; and subsections (2) to (4) apply to the revised strategy as they do to the strategy.

(6) In this section—
“relevant authority” has the same meaning as in section 6 of the Fire (Scotland) Act 2005 (asp 5);
the references to category 1 and 2 responders are to be construed by reference to Schedule 1 to the Civil Contingencies Act 2004 (c.36).

Section 68

Roseanna Cunningham

105 In section 68, page 34, line 35, at end insert—
<(  ) section 9 (preparation of flood risk assessments),
(  ) section 10 (review and updating of flood risk assessments),>

Roseanna Cunningham

52 In section 68, page 34, line 37, at end insert—
<(  ) section (SEPA to prepare maps of artificial structures and natural features)
(preparation of maps of artificial structures and natural features),>

Roseanna Cunningham

53 In section 68, page 35, line 2, after <features> insert <and characteristics>

Roseanna Cunningham

54 In section 68, page 35, line 9, at end insert—
<(  ) any land for the purposes of preparing, reviewing or updating a map under section (Local authorities to prepare maps of bodies of water etc.),
(  ) any land for the purposes of assessing a body of water under section 56,>

Roseanna Cunningham

106 In section 68, page 35, line 15, leave out <under section 49> and insert—
<(i) under section 49, or
(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act>

Roseanna Cunningham

55 In section 68, page 35, line 16, at end insert—

< ( ) any land for the purposes of carrying out works under section \( \text{(Duty to carry out clearance and repair works)} \), and>

Section 71

Roseanna Cunningham

56 In section 71, page 37, line 15, at end insert—

< ( ) the carrying out of works under section \( \text{(Duty to carry out clearance and repair works)} \), or>

Roseanna Cunningham

107 In section 71, page 37, line 15, at end insert—

< (cb) the variation or revocation of an improvement order under section 53, or>

Section 72

Roseanna Cunningham

108 In section 72, page 37, line 34, at end insert—

< ( ) Subsection (2)(b) does not apply where the damage has been sustained in consequence of circumstances falling within section 71(2)(cb).>

After section 72

John Scott

135 After section 72, insert—

<Payment schemes

Flood risk management agreement or arrangement: payment scheme

(1) The Scottish Ministers are, by regulations, to establish a scheme for the making of payments by them to an owner or occupier of land who has entered into an agreement or arrangement with them which (in accordance with criteria set out in the scheme) meets the conditions set out in subsection (2).

(2) Those conditions are—

(a) that the natural features and characteristics of the land are to be maintained in a manner which—

(i) is intended to reduce flood risk, and

(ii) is consistent with any current flood risk management plan and any current local flood risk management plan applying to the land, and
(b) such other conditions as the Scottish Ministers consider appropriate.

(3) For the purposes of subsection (2)(a), the maintenance of natural features and characteristics includes the alteration (including enhancement) or restoration of those features and characteristics.

(3) The scheme may include provision for the recovery of payments where an owner or occupier fails to maintain the land in a manner which (in accordance with criteria set out in the scheme) is unsatisfactory.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,
(b) Scottish National Heritage,
(c) responsible authorities, and
(d) such other persons as they consider appropriate,

on a draft of a scheme.

(5) The Scottish Ministers must—

(a) publish a scheme established by virtue of this section, and
(b) publicise that fact,

in such manner as they consider appropriate.

Section 74

Roseanna Cunningham

109 In section 74, page 38, line 20, leave out <as soon as practicable> and insert <no later than 28 days>

Section 77

Roseanna Cunningham

110 In section 77, page 39, line 22, leave out <large raised reservoirs> and insert <reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations>

Roseanna Cunningham

111 In section 77, page 39, line 23, at end insert—

< ( ) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,>
In section 77, page 40, line 12, leave out <an order> and insert <regulations>

In section 77, page 40, leave out line 15 and insert—
<(  ) undertakers of reservoirs to which they consider the regulations will apply,>

In section 77, page 40, line 17, at end insert—
<(  ) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.>

After section 77

After section 77, insert—

<Flood plans

After section 12B of the 1975 Act, insert—

“12C Flood plans: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.

(2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) The regulations may, in particular—

(a) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,

(c) specify the form in which a flood plan is to be prepared,

(d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,

(e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(f) require the flood plan to be produced or submitted to the enforcement authority by such time as—

(i) the regulations specify, or
(ii) the authority or Scottish Ministers may direct,

(g) make provision about the approval of flood plans,

(h) make provision for the review and updating of flood plans,

(i) provide for a register of flood plans to be established and maintained,

(j) make provision for the publication, or distribution of copies, of—

(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,

(ii) flood plans, and

(iii) reports,

(k) make provision in connection with the testing of flood plans,

(l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,

(m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,

(n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,

(o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,

(p) create offences,

(q) provide that any offence created is triable—

(i) only summarily, or

(ii) either summarily or on indictment,

(r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(s) provide for any offence created which is triable either summarily or on indictment to be punishable—

(i) on summary conviction, by a fine not exceeding the statutory maximum,

(ii) on conviction on indictment, by a fine.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,

(c) the Institution of Civil Engineers, and

(d) such other persons as they consider appropriate.
(5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament."

Section 79

Roseanna Cunningham

57 In section 79, page 41, line 31, leave out <section 16 or Part 5> and insert <this Part>

Roseanna Cunningham

58 Move section 79 to after section 67

Section 81

Roseanna Cunningham

117 In section 81, page 43, line 7, leave out <the members> and insert <a member>

Section 83

Roseanna Cunningham

118 In section 83, page 43, line 27, at end insert—

<( ) regulations under section 44(1),>

John Scott

137 In section 83, page 43, line 28, at end insert—

<( ) regulations under section (Flood risk management agreement or arrangement: payment scheme)(1),>

Section 84

Roseanna Cunningham

59 In section 84, page 43, line 34, at end insert—

<“the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c.41),>

Rhoda Grant

138 In section 84, page 44, line 1, after <alteration,> insert <restoration, enhancement,>
In section 84, page 44, line 3, at beginning insert <the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area, including>.

Schedule 4

In schedule 4, page 54, line 12, at end insert—

<Roseanna Cunningham>

<the 1961 Act Section 84(1)>  

In schedule 4, page 54, line 17, at end insert—

<Roseanna Cunningham>

<body of surface water Section 48(1)>  

In schedule 4, page 55, line 6, at end insert—

<Roseanna Cunningham>

<relevant body of water Section (Local authorities to prepare maps of bodies of water etc.)(5)>  

In schedule 4, page 55, line 14, at end insert—

<Roseanna Cunningham>

<sub-basin Section 48(1)>  

In schedule 4, page 55, line 15, leave out <61> and insert <48(1)>.

Schedule 3

<Roseanna Cunningham>

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.>

<Roseanna Cunningham>

Paragraph 1(1)(xi) of Schedule 16 to the Electricity Act 1989 (licence holder deemed to be statutory undertaker) is repealed.>
In schedule 3, page 53, line 29, at end insert—

<Gas Act 1995 (c.45)

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

In schedule 3, page 54, line 3, at end insert—

<Transport Act 2000 (c.38)

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

In the long title, page 1, line 1, after <and> insert <sustainable>
Flood Risk Management (Scotland) Bill

3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated.

Groupings of amendments

Scottish Water: flood risk management functions
78, 132, 134

Fire and rescue authorities: flood risk management functions
133

Powers of entry: flood risk assessments
105

Compensation: variation and revocation of improvement orders
107, 108

Flood risk management: agreement or arrangement with an owner or occupier of land
135, 137

Reservoirs: timescale for transitional arrangements
109

Reservoirs: incident reporting
110, 111, 112, 113, 114, 115

Reservoirs: flood plans
116

Power to give effect to Community obligations etc.: parliamentary procedure
118

Definition of “flood protection work”
138, 131
Amendments already debated

**SEPA: duty to prepare maps of artificial structures and natural features**
With 16 - 52, 59, 60

**Natural features and natural characteristics**
With 9 - 53, 57, 58, 61, 63, 64

**Bodies of water and watercourses: local authority duties**
With 15 - 54, 55, 56, 62

**Recovery of expenses, damage to flood protection work and powers of entry: schemes under 1961 Act**
With 101 – 106

**Sections 38 and 81: minor drafting points**
With 93 - 117

**Statutory undertakers and undertakings**
With 103 - 119, 120, 121, 122

**General duty: managing flood risk sustainably**
With 3 - 65
Present:
Rhoda Grant (Committee Substitute)    Liam McArthur
Alasdair Morgan                      Elaine Murray
Peter Peacock                        John Scott (Deputy Convener)
Maureen Watt (Convener)              Bill Wilson

Also present: Christine Grahame

Apologies were received from Karen Gillon.

**Flood Risk Management (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 105, 52, 53, 54, 106, 55, 56, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 57, 58, 117, 118, 59, 138, 60, 61, 62, 63, 64, 119, 120, 121, 122 and 65.

The following amendments were moved and, with the agreement of the Committee, withdrawn: 78, 133 and 135.

The following amendments were not moved: 132, 134, 137 and 131.

Sections 62, 63, 64, 65, 66, 67, 69, 70, 73, 75, 76, 78, 80, 82, 85 and 86 were agreed to without amendment.

Sections 68, 71, 72, 74, 77, 79, 81, 83 and 84, schedules 4 and 3 and the long title were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 18 March 2009

[THE CONVENER opened the meeting at 10:02]

Flood Risk Management (Scotland) Bill: Stage 2

The Convener (Maureen Watt): I welcome everybody to the ninth meeting in 2009 of the Rural Affairs and Environment Committee. I remind everybody to switch off their mobile phones and pagers, as they impact on the broadcasting system.

Apologies have again been received from Karen Gillon, who is a long-term absentee from the committee. She is on maternity leave, and Rhoda Grant is substituting for her. Christine Grahame has said that she will join us for items 4 and 5.

The first and main item of business is stage 2 consideration of the Flood Risk Management (Scotland) Bill. The committee will also consider two items of subordinate legislation before moving into private to consider further the rural housing inquiry report.

Sections 1 to 61 of, and schedules 1 and 2 to, the Flood Risk Management (Scotland) Bill have already been agreed. The aim for today is to complete consideration of the bill at stage 2. Members should have in front of them copies of the bill, the marshalled list and the groupings.

I again welcome the Minister for Environment and her officials. It seems that she has never left the committee.

After section 61

The Convener: The first group of amendments is on Scottish Water: flood risk management functions. Amendment 78, in the name of Peter Peacock, is grouped with amendments 132 and 134.

Peter Peacock (Highlands and Islands) (Lab): Amendment 78 seeks to deal with concerns that were raised in the committee’s flooding inquiry and the stage 1 committee report, which featured a recommendation on the matter.

We have heard concern that the Water Industry Commission for Scotland may not be able to take full account of the need for Scottish Water to act in the most sustainable way. That may happen if the commission’s powers to regulate with a view to securing a good price for water consumers conflicts in any way with the need for Scottish Water to act in the most sustainable way.

As the convener knows, we have recently received correspondence from the Water Industry Commission for Scotland. The commission believes that the existing regulatory powers do not impinge on its ability to act in support of Scottish Water’s duties on sustainability, but I noted the underlying assumption in the letter that supporting Scottish Water to act in the most sustainable way may always bring cost benefits. That may be the case in many instances, but it is not necessarily the case in all instances.

We also heard evidence from Scottish Water that it felt under pressure always to secure the most cost-effective way of making its contribution. For Scottish Water, cost is a major factor—perhaps the major factor—in investment decisions. The committee has expressed concern about that in the past. The previous Minister for Environment accepted, to an extent, that issues remain to be addressed and said that the Government was in discussions on the question of instructions to the Water Industry Commission to clarify matters.

The purpose of amendment 78 is to make the matters clear in law. The amendment would place the Water Industry Commission under a clear duty to “have regard to Scottish Water’s duty under” proposed section 51A, under which Scottish Water would have to “act in a way best calculated to manage risk in a sustainable way.”

I understand that amendment 78 may contain a drafting flaw and that the proposed changes could be placed more effectively in a different section—that could be rectified at stage 3. Before deciding whether to press amendment 78, I want to hear what the minister says about the action that the previous minister said was under way. It would also be useful to know the Government’s plans for guidance to the Water Industry Commission and Scottish Water on these matters. If the minister gives me sufficient reassurance, I will not press amendment 78 today.

Amendment 134 seeks to reflect the changed role of the Scottish Environment Protection Agency that will result from the bill’s becoming law. SEPA has a clear role in the improvement of flood risk management so it will be important that it is part of all appropriate considerations. The Water Industry (Scotland) Act 2002 requires the Scottish ministers to issue Scottish Water and the Water Industry Commission with a statement of policy on charges under a charge scheme. Under that scheme, the Scottish ministers must consult a
range of bodies but, as I understand it, SEPA is not currently included. Amendment 134 seeks to ensure that SEPA will be a statutory consultee.

The policy intention of amendment 134 is clear, but again I will listen carefully to the minister and, if there is a better proposal to meet that policy intention, I will not press the amendment today. However, I reserve the right to bring amendments 78 and 134 back at stage 3.

I move amendment 78.

The Convener: I invite John Scott to speak to amendment 132 and the other amendments in the group.

John Scott (Ayr) (Con): Thank you—but I will speak only to amendment 132.

Amendment 132 is, in essence, based on paragraphs 71 to 76 of this committee's stage 1 report and on our recommendation 8, which is that the Government

"align the timing of funding streams".

In its submission to the committee, Scottish Water strongly made the point that the current planning processes do not fit in with the six-year planning cycles proposed in the bill. Scottish Water’s planning cycles are four-year cycles, and it is currently considering the period beyond the existing planning cycles but before the implementation of the bill. The funding streams therefore need to be aligned.

Amendment 132 seeks to amend the Water Industry (Scotland) Act 2002. At the moment, charging is applied over a four-year period, but amendment 132 will specify a period and make the Government have regard to the Flood Risk Management (Scotland) Bill, once enacted.

I want to hear what the minister says before I decide whether to press amendment 132, but a change is essential given the intensity of the argument that Scottish Water made to the committee on the need to align funding streams for future programmes.

Alasdair Morgan (South of Scotland) (SNP): There is one point that Mr Peacock might address when he sums up. I take his point about the location but the wording of the amendment.

Despite the Water Industry Commission’s assertions about its requirements, there is no doubt that some uncertainty exists, as Scottish Water said in its evidence. The previous Minister for Environment seemed to accept that point when he gave evidence, so I am interested to hear whether the current minister intends to propose alternative wording in this or another part of the bill to address the committee’s clear concern in its stage 1 report.

The Minister for Environment (Roseanna Cunningham): I apologise for the time that I will take in speaking to all three amendments, but they raise serious issues, and serious concerns have been expressed. The framework for the economic regulation of Scottish Water might seem complex, but it was carefully designed and has a logical structure, which I want to ensure that all committee members follow all the way through.

I share the committee’s wish to ensure that Scottish Water’s functions under the bill are properly taken into account in the process of determining its charges. It is important that Scottish Water is properly funded to undertake its role, and an important aspect of that is the charge determination process that the Water Industry Commission undertakes. However, the amendments would add nothing to the existing duties on the commission in the charge determination process.

Members might find it helpful if I talk first about the funding of Scottish Water and the commission’s role in determining and setting charges under the Water Industry (Scotland) Act 2002. Sections 29A to 29G of that act provide for how charges are determined. To determine maximum charges for a period that ministers define, the commission considers the cost of all the core functions that Scottish Water must perform in that period, together with the requirements of any guidance or applicable directions that ministers have given Scottish Water.

Under section 56A of the 2002 act, ministers issue a direction to Scottish Water that sets standards of service in the exercise of its functions for the period for which charges are determined. That direction can identify a time by which those standards of service must be achieved. It also sets investment objectives that guide Scottish Water’s investment programme—investments are
designed to improve the system in order to achieve the directed standards.

The definition of core functions in the 2002 act is broad and includes the basic functions of providing water and sewerage services. When the bill is passed, the definition will include all Scottish Water’s flood risk-related functions under the bill. That means that the 2002 act will require the cost of performing flood risk-related duties to be taken into account when charges are set.

The Scottish Government has published a draft direction that sets investment objectives for Scottish Water for the next charging period—2010 to 2014. That direction includes requirements that relate to Scottish Water’s duties under the bill, which the commission will have to take into account when it sets charges.

Once the commission has determined the overall cost of performing the core functions, it decides what proportion of that may be passed on to Scottish Water’s customers through the determination of maximum charges. The key point to bear in mind is that the framework in the 2002 act ensures that Scottish Water receives sufficient funding to perform all its core functions, which will include the sustainable flood management functions and the required standards of service in the direction from ministers.

Amendment 78 would place a duty on Scottish Water to act in the way that is best calculated to promote sustainable flood risk management when exercising its functions, which would duplicate what section 1 provides for. The amendment would also impose a duty on the commission to have regard to the new flood risk management duty when determining maximum charges in a charging period. The bill already contains a similar duty, and the commission will have to have regard to the requirements of the duty on Scottish Water when setting maximum charges. The amendment is therefore unnecessary.

10:15

I am also concerned that identifying one specific function in the manner proposed is inconsistent with the general structure of the regulatory framework, which requires a balance to be struck in how different Scottish Water functions and responsibilities are exercised.

I am aware that the commission has written to the committee to address concerns that have been raised in some quarters that economic regulation favours non-sustainable approaches. In that correspondence, the commission has clarified that less traditional approaches may well be the better economic option in a number of areas. The commission may challenge Scottish Water’s investment proposals when that is the case and determine the revenue requirement accordingly. Scottish Water is under a duty to act in the way best calculated to contribute to the achievement of sustainable development—and that duty will apply to its functions under the bill.

Ministers have issued guidance to Scottish Water on its sustainable development duty and will review it regularly. It may be appropriate to revise the guidance to take account of the new duties imposed by the bill. As with all ministerial guidance to Scottish Water, including any that is issued as a result of the bill, the commission is under a duty to take it into account.

Scottish Water is also under a duty to undertake its functions at the lowest reasonable cost. The commission will apply that test to all its investment and cost proposals, including those relating to flood risk management. It is an important test and will ensure that the most economic and sustainable proposals will be developed—Scottish Water’s customers would not expect anything else from that organisation. I am therefore confident that flood risk management functions will be important considerations for the Water Industry Commission for Scotland, Scottish Water and the Scottish ministers. For those reasons, I invite the member to withdraw amendment 78.

Amendment 132 requires ministers to have regard to the dates by which Scottish Water must carry out its functions under part 3 of the bill when they set the charging period under section 29B of the 2002 act. Ministers set the charging period under section 29B(2) with reference to a number of different factors. Performance of functions under other enactments, such as the bill, is a relevant factor, as are other important functions under other statutory instruments.

In reality, many investments can be delivered only in more than one charge period. The investments that form part of the metropolitan Glasgow drainage plan are a case in point and, if I recall rightly, when the committee was in Elgin it was made clear that the investment there would cover more than one charge period. Scottish Water’s investment plans recognise that and the commission takes account of those factors when it assesses the revenue requirements.

The commission will be obliged to consider the cost implications of any functions related to flood risk during a charging period. That will be done alongside consideration of other critical dates, and I cannot see any advantages in requiring ministers to have particular regard to flood risk management dates when setting the charging period. I cannot therefore support amendment 132, but I assure John Scott that we are working with Scottish Water and others to ensure that flood risk management plans are aligned with other spending cycles, including Scottish Water’s
investment cycle. There are already examples of how its investment cycle can be aligned with other cycles, such as the river basin planning cycle. I therefore invite John Scott not to move amendment 132.

I turn back to Peter Peacock and amendment 134, which concerns the statement of policy on charges that ministers make under section 29D of the 2002 act. The amendment would require the Scottish ministers to consult SEPA before issuing the statement, in so far as it affected Scottish Water's performance of its functions under part 3 of the bill.

The statement made under section 29D deals only with the principles that should apply to charges made by Scottish Water to its customers. Those principles include, for example, a requirement for Scottish Water to charge the same in all parts of the country and to establish arrangements for those who have difficulty paying. The statement does not make reference to or provision for the performance of particular functions or the achievement of particular investment projects or activities. As Scottish Water receives funding to perform all its core functions and to achieve the standards of service directed by ministers, the content of the statement will not affect the performance of those functions.

The bodies that must be consulted on the statement are those that have responsibilities concerning Scottish Water's relationship with its customer. SEPA has no such responsibilities, so there would be no occasion to consult it and the amendment would be redundant. Furthermore, it would not be appropriate to single out flooding and SEPA as a special case for consultation. Scottish Water performs a number of important functions, all of which must be considered and balanced appropriately. For those reasons, I cannot support amendment 134 and ask Peter Peacock not to move it.

I accept that committee members have considerable concerns about the relationship between the bill and the functions of the Water Industry Commission for Scotland and Scottish Water, and I am willing to discuss those concerns further prior to stage 3. A considerable amount of work is already being done on a number of the issues to which the amendments relate. I undertake to continue discussions with members before stage 3 if they think that that is appropriate.

Peter Peacock: I am grateful to the minister for her comments. Some of the arguments that she set out are quite complex, and I would like to reflect on them once I have seen the Official Report. I note that she considers that the WIC is required to consider all the core functions of Scottish Water in its work and determinations, that guidance is available, and that directions have been issued to Scottish Water on some of the matters that we are debating. From the minister's comments, I also understand that there are draft further directions.

In view of those comments and the assurance that we can have further discussions before stage 3, I am happy not to press the amendment until I have had a chance to reflect on the issues that have been raised.

Amendment 78, by agreement, withdrawn.

John Scott: Like Peter Peacock, I accept the minister's explanation and welcome her assurance that there are on-going discussions with Scottish Water about how to align funding streams. For that reason, amendment 132 is unnecessary.

Amendment 132 not moved.

Amendment 134 not moved.

Sections 62 to 67 agreed to.

After section 67

The Convener: The next group is on fire and rescue authorities: flood risk management functions. Amendment 133, in the name of John Scott, is the only amendment in the group.

John Scott: Amendment 133 is about learning the lessons from the flooding in England in 2007, which showed that a co-ordinated approach to flood rescue is needed in Scotland. In its evidence to the committee, the fire and rescue service argued cogently that it is best placed to play that co-ordinating role in Scotland. In addition, the Pitt inquiry in England made recommendations similar to those that are proposed in the amendment. I am grateful to Liam McArthur and Peter Peacock for supporting the amendment today.

It is important that provision is made in the bill for the fire and rescue service to play a co-ordinating and planning role before and after flooding events. In my view, waiting for a review of the Civil Contingencies Act 2004 is not a good alternative, as there is a current and urgent need to plan and co-ordinate rescue responses, and a review of civil contingencies legislation may be several years away. I look forward to hearing what the minister and my colleagues have to say on the amendment.

I move amendment 133.

Liam McArthur: I echo John Scott's comments. Amendment 133 deals with an issue that was raised in evidence to the committee. There is a fit with requirements under civil contingencies legislation. However, the point was made that we seem to be well covered once we are up to our waists in water but not in relation to the potential threat of finding ourselves in that situation. The
amendment seeks to address that issue and makes sensible changes that will ensure that data are collected and the risk is properly managed.

Elaine Murray (Dumfries) (Lab): I have considerable sympathy for amendment 133. I appreciate that it was made clear when the bill was introduced that it covered not civil contingencies but flood risk management planning. However, the likelihood of flooding is increasing with climate change, so addressing the issue has become more urgent. If it is possible to do that through the bill, it is worth considering doing so, if it will be several years before the Civil Contingencies Act 2004 is reviewed.

Alasdair Morgan: Most of us have had meetings with our fire and rescue authorities to discuss our concerns, and I am sure that most of us sympathise with what amendment 133 is trying to achieve. However, I have a little concern about the amendment, although, not being a draftsman, I am not sure whether my concern is valid.

Subsection (1) of the proposed new section that the amendment would insert asks the authority to “prepare a strategy with a view to reducing overall flood risk”.

It strikes me that that is a somewhat wider duty than one might expect a fire and rescue authority to carry out. Proposed subsection (2) tries to narrow it down, but that might be shutting the stable door after the horse has bolted. Although the committee sympathises with the amendment’s objective, proposed subsection (1) might not be the way to achieve it. I will listen to what the minister and John Scott say about that.

Peter Peacock: Amendment 133 is helpful. As Liam McArthur said, it would help to improve the advance co-ordination of the emergency response to flooding. I remember vividly that, when we were in Elgin to take evidence about the effects of flooding, people recounted their difficulty in understanding who was responsible for what. At subsequent meetings, we also heard evidence that the emergency services’ responsibilities kick in at different points.

The amendment tries to provide some clarity on those matters and to fill an apparent gap in the predetermined procedures. The issue is important for people who experience flooding. I am glad that John Scott has lodged the amendment and I am happy to support it. If the minister has a better way of achieving its objective, I will be happy to listen to her, but the objective must be achieved because it is clear that more needs to be done. I hope that we will agree to the amendment, but I will listen to the arguments and reserve my position for stage 3 if necessary.

Bill Wilson (West of Scotland) (SNP): I have a lot of sympathy for the principle behind amendment 133. The committee’s inquiry into flooding and flood management raised concerns about the lack of co-ordination between when a flood warning is issued and when flooding occurs. The committee called for action to be taken to address that problem.

I take Alasdair Morgan’s point that the amendment overstates, or does not quite achieve, its objective, but the principle is good and I hope that we can find a way to ensure that the problem is solved.

John Scott: The concern that Alasdair Morgan expressed is due to overenthusiastic drafting on my part. Neither I nor—I believe—the fire and rescue service ever intended that the service should take responsibility for “reducing overall flood risk”; it would seek only to co-ordinate flood risk management planning and the response to flooding. That is a drafting error, for which I apologise. I welcome my colleagues’ comments.

Roseanna Cunningham: Amendment 133 is clearly intended to implement a recommendation that the committee made in its stage 1 report, which it originally made in its report on the flooding and flood management inquiry. However, I remind members that, when the committee took evidence for that inquiry, it knew that any recommendations on civil contingencies would not be implemented in the Flood Risk Management (Scotland) Bill, because it knew from the outset of the inquiry that the bill would not cover that aspect.

10:30

Amendment 133 looks to ensure that the appropriate emergency service acts proactively to manage flood risk. Our concern is—we spotted the slightly overstated aim—that the amendment goes well beyond the committee’s recommendation and instead proposes an additional flood risk management planning process. Although I accept that that is inadvertent, nevertheless that is what it proposes because it requires fire and rescue authorities to prepare a strategy for reducing flood risk in their area. That strategy would include many of, if not all, the things that we are already providing for in the bill.

I am happy to continue to explore ways of ensuring the appropriate response from the emergency services, but there are several reasons why amendment 133 would create problems, not least its drafting difficulty. The drafting is very wide, because the proposed strategy is not a simple co-ordination of flood rescue assets in the event of flooding. The amendment would require fire and rescue authorities to develop and co-ordinate strategies well beyond their legal and
practical competence and would involve their being drawn into all sorts of discussions far beyond their professional expectations—I do not think that they would be particularly interested in such discussions. The proposed new role would also overlap massively with SEPA’s role in the context of the bill and with that of local authorities in developing flood risk management plans.

Even if the scope of the amendment were reduced simply to cover the co-ordination of flood risk assets, our initial view is that existing legislation more than adequately covers what we understand to be the intended requirement. The Civil Contingencies Act 2004 and related regulations impose a series of duties on responders, including duties to assess the risk of an emergency occurring, to maintain plans for the purposes of responding to an emergency and to co-operate with other responders in the form of a strategic co-ordinating group. Civil contingencies legislation already enables category 1 responders, such as the fire service, to make arrangements with one another for the discharge of their duties jointly, for one responder to perform those duties on behalf of another or indeed for lead category 1 responders to be identified, as would be the case under amendment 133—the power already exists for that to be done. Those arrangements more than adequately cover the requirement to co-ordinate flood rescue assets, but, importantly, they allow co-ordination to be undertaken as local circumstances require and by using the common approach to local emergencies that the Civil Contingencies Act 2004 intended.

In addition, under the Fire (Additional Function) (Scotland) Order 2005 (SSI 2005/342), each fire and rescue authority in Scotland already has a specific duty to make provision for the purpose of rescuing people who are trapped, or likely to become trapped, by water and to protect them from serious harm in the event of serious flooding in its area. In that way, we are already more prepared than they are in England, where such a specific duty is still being discussed as part of the Pitt review considerations.

Taken together, those arrangements provide a sufficiently robust legislative framework to enable the level of planning and co-ordination that responding to local emergencies, such as flooding, requires. If amendment 133 is agreed to, we are concerned that it would put in place a potentially confusing arrangement that might turn out to be a waste of public money and could misdirect firefighter resources from the service’s current front-line duties.

I accept that the real concern behind amendment 133 is to link the issuing of a flood warning with the appropriate responses from the emergency services, but it would be better to look at actions on the ground rather than introducing further legislation. The gap appears to be operational, not legislative. I agree that it is important to ensure the correct response from all emergency services. I mentioned the Pitt report down south, which was undertaken in the light of the experience of summer 2007. Its intention is to improve flood rescue capability in England and Wales so that a comprehensive emergency response can be deployed by and co-ordinated among all flood rescue service providers, including all public, private and voluntary organisations.

As we believe that the outcome of that project will be extremely useful in informing procedures in Scotland, we plan to revisit the issue when it concludes—this summer, we think. We will do so in consultation with Scotland’s eight strategic co-ordinating groups to ensure that we take on board the views not just of a single category 1 responder but of all flood rescue service providers.

The problem is that the issue is right at the interface between the bill and the Civil Contingencies Act 2004, and we are trying to find some way of plugging a perceived gap. It is also, I should add, at the interface between my head and a brick wall. Given that, as you might imagine, I am not particularly keen on brick walls, I have asked my officials to speak directly to officials on the civil contingencies team to find out whether something stronger that addresses the interface issue in a way that works for both the bill and the 2004 act can be put together timeously for stage 3.

For all those reasons, I ask the member to withdraw amendment 133.

John Scott: I thank the minister for that long explanation of why she is prepared to bring something forward at stage 3. Obviously, I welcome that but, given the evidence that we have received from the fire and rescue service, I find it strange that she feels that this is not about legislative requirements but about better implementation and operational practice on the ground. I am torn between knowing whose view to accept, but, on balance, and with no disrespect to the minister, I have to say that I find the fire and rescue service’s view more compelling. Nevertheless, given that the minister is prepared to address the matter at stage 3, I am happy to withdraw amendment 133. In doing so, I want to take forward the spirit of the committee’s report and the views that my colleagues have so eloquently expressed.

Amendment 133, by agreement, withdrawn.

Section 68—Powers of entry

The Convener: The next group is on powers of entry: flood risk assessments. Amendment 105, in
the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Amendment 105 seeks to extend the powers of entry available to SEPA under section 68 by allowing the agency to enter land in connection with preparing, reviewing or updating flood risk assessments under sections 9 and 10. I believe that that power will ensure that SEPA can access land to check the accuracy of information underpinning the flood risk assessment. It is essential that that information is reliable, given that it will be used to identify parts of Scotland that are potentially vulnerable to flooding.

I move amendment 105.

Amendment 105 agreed to.

Amendments 52 to 54, 106 and 55 moved—[Roseanna Cunningham]—and agreed to.

Section 68, as amended, agreed to.

Sections 69 and 70 agreed to.

Section 71—Compensation

Amendment 56 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on compensation: variation and revocation of improvement orders. Amendment 107, in the name of the minister, is grouped with amendment 108.

Roseanna Cunningham: Section 53 allows improvement orders under the Land Drainage (Scotland) Act 1958 to be varied or revoked where they affect land on which operations to be carried out under a flood protection scheme are undertaken.

Amendment 107 provides that

“A local authority must compensate any person who has sustained damage”

as a result of

“the variation or revocation of an improvement order under section 53”.

Amendment 108 is a technical amendment. To ensure that amendment 107 will work, it disappplies a restriction on the circumstances in which compensation is payable. The two amendments together ensure that any depreciation in the value of a person’s interest in land or disturbance to their enjoyment of land as a result of changes to an improvement order is compensated for.

I move amendment 107.

Amendment 107 agreed to.

Section 71, as amended, agreed to.

Section 72—Compensation: supplementary

Amendment 108 moved—[Roseanna Cunningham]—and agreed to.

Section 72, as amended, agreed to.

After section 72

The Convener: The next group is on flood risk management: agreement or arrangement with an owner or occupier of land. Amendment 135, in the name of John Scott, is grouped with amendment 137.

John Scott: I begin, as seems to be the way of things today, by apologising for a drafting error in amendment 135. An unintentional double negative has crept into what should be subsection (4) of the new section that the amendment would introduce—the subsections are misnumbered.

Notwithstanding the foregoing, amendment 135 encourages farmers and landowners to support natural and sustainable flood management schemes. It seeks to implement recommendation 38 in the committee’s stage 1 report. The proposal to create an annual funding stream for good works that give a public benefit is not new. Such an approach already exists under schemes such as the Scotland rural development programme and through cross-compliance in some other schemes, including the less favoured area support scheme.

Amendment 135 suggests that, once flood risk plans have been developed, the likelihood and magnitude of the need for natural flooding defences will have been evaluated; so, too, will the potential income that could be lost to or forgone by farmers and landowners. A scheme needs to be developed to encourage farmers to carry out and maintain the natural flood defences that we are all keen to create—"maintain" is the key word. It will be more cost effective to spend money on promoting and maintaining natural flood prevention techniques than on hard engineering solutions, and doing so will encourage farmers’ and landowners’ buy-in to proposals that we all wish to succeed.

It has been suggested to me that the SRDP might not be the best vehicle for funding such a scheme, as it is already underfunded. Perhaps funding could be delivered by local authorities as part of the cost of the overall schemes that they and other bodies might, or will be obliged to, bring forward.

Alasdair Morgan: In view of the stance that Mr Brownlee, in particular, has been taking in the chamber with regard to the costs of bills, does Mr Scott have any figure in mind for the budget for his proposed provision?
John Scott: I have to admit that I have not, although I thank Alasdair Morgan for his intervention.

On how such a scheme would work for a piece of land that is likely to be flooded infrequently—for example once every 20 or 30 years—the compensation payment for that would be very small. At the other end of the scale is land that is now likely to be flooded annually, whereas before it was not. If that would change the existing farming or land use practice, the compensation for that loss of land should be much greater. A complicated matrix or equation balancing potential damage against the public benefit needs to be worked out—possibly by organisations such as the Macaulay Land Use Research Institute or the Scottish Agricultural College. I look forward to hearing the minister’s views on the amendment.

I move amendment 135.

10:45

Peter Peacock: I understand entirely the reasons behind John Scott’s amendment. However, I suspect that the amendment has another couple of drafting errors, so I am not sure that it can be agreed to today. There is also a concern that, as John Scott acknowledged, ministers might be forced to take funds for one particular group of landowners and occupiers from the SRDP, which might put pressure on funds that might be available for other suitable good purposes. I caution that a lot of work needs to be done on the matter. I stress that we need to recognise the requirement to ensure that society can fund those people who make some sort of sacrifice to assist the better management of flooding.

Elaine Murray: Like Peter Peacock, I sympathise with the intention behind the amendment. We have had a number of stabs at approaching the issue in various parts of the bill. As Peter Peacock said, there are some concerns about the wording of the amendment. For example, the agreement is entered into with the local authority, not Scottish ministers, which means that there is probably a drafting error in subsection (1) of the proposed new section that the amendment would introduce.

I agree that it would not be appropriate to put additional pressures on the SRDP. However, the alternative suggestion of placing the burden on local authorities would put pressure on their budgets. That is not reflected in the financial memorandum, so I would be concerned about that approach, too.

We need to address the issue, but I am not convinced that amendment 135 is appropriate—or correctly worded.

Roseanna Cunningham: I appreciate that John Scott has concerns about whether land managers will receive adequate funding or compensation for flood risk management work undertaken on their land without having to go through a lengthy negotiation process in order to receive it.

Amendment 135 would require Scottish ministers to make regulations establishing a grant scheme for payments to owners or occupiers of land who agree to maintain, alter, enhance or restore natural features and characteristics of their land in order to manage flood risk. I am not convinced that the amendment is necessary, and I am particularly concerned that it cuts across existing funding mechanisms. For instance, the Scottish Government already operates a grant scheme that serves the same purpose, which comes under the SRDP and is called rural development contracts—rural priorities. Within rural priorities, there is a package of options that targets flood risk management. Where land is identified by local authorities as being within the areas where natural flood risk management can make a difference to lowering flood risk and bring other benefits, land managers can apply for funding for options in the sustainable flood management package.

I acknowledge that the package might not yet include every management option that could potentially contribute to achieving sustainable flood risk management. Nevertheless, the framework is already in place and, of course, SRDP payment rates can be reviewed to reflect higher likely frequency of funding for such measures.

The current SRDP covers from 2007 to the end of 2013, at which time a new programme will have to be agreed with the European Commission. The Scottish Government is happy to work with stakeholders to develop a full suite of options to address sustainable flood risk management, which can be accommodated within the current SRDP through a modification to the programme or can form part of the next programme.

An independent review of the SRDP is under way. It will consider the impact of the economic downturn on the rural economy and identify lessons learned from the first year of operation. We are taking this opportunity to review and potentially refine the priorities and objectives as well as the delivery mechanisms.

I draw the committee’s attention to the commitment that I gave Elaine Murray last week to amend the bill to clarify that the general power of local authorities to manage flood risk under section 49 includes land management operations. That power would also allow local authorities to enter into agreements and would provide monetary compensation to landowners in relation...
to the management of their land. It would cover
the full range of natural flood management
techniques that are available.

Those elements provide a co-ordinated model
for flood risk management operations. The SRDP
provides incentives to land managers for
management that will contribute to reducing flood
risk.

Section 49 provides the means for local
authorities to enter directly into agreements with
landowners and to compensate them for any costs
that they incur. Where agreements cannot be
reached, flood protection schemes can be used to
provide local authorities with coercive powers to
take forward flood risk management work.

Amendment 135 would create a separate route
for direct payments and agreements between
ministers and landowners. That would cut out the
local authorities, which would usually be able to
decide how to implement flood risk management
measures that are set out in the flood risk
management plans for their areas. The
amendment risks creating parallel funding routes,
parallel processes, delays and confusion among
landowners. The creation of a separate funding
scheme would result in confusion about where to
access funding for managing land in terms of
reducing flood risk, potentially lengthening the time
that it takes for land managers to access funds.

Finally, as other members have indicated, there
are technical problems with amendment 135 as it
stands. In particular, the second proposed new
subsection (3) appears to allow for payments to be
recovered if the recipient complies with the
scheme conditions, which seems to run counter to
the intention behind the amendment. Also, in
proposed new subsection (4), a new body appears
to have crept into being. I assume that the
member meant to refer to Scottish Natural
Heritage and not “Scottish National Heritage”,
which is not a body that exists at present—

John Scott: Yes.

Roseanna Cunningham: Of course, he could
lodge another amendment to set it up. That is
always a possibility.

I suppose that the intention was to allow for
recovery of payments if the recipient did not
comply with scheme conditions. That would make
a lot more sense.

For those reasons, I ask the member to
withdraw amendment 135 and not to move
amendment 137. I also ask him to keep in mind
the on-going discussions on Elaine Murray’s
amendment, which we discussed last week.

John Scott: I thank the minister for her
comprehensive dismissal of my amendment. I am
swayed by her arguments.

On the basis of the on-going discussions on
section 9 and Elaine Murray’s amendment, I am
prepared to withdraw amendment 135. Notwithstanding the inadequacies of the
amendment, I hope that the discussions will cover
the elements of compensation that still need to be
dealt with. Landowners and farmers will undoubtedly suffer loss of income as a result of
natural flood management schemes. I take the
minister’s assurances that she will look after those
interests effectively.

Amendment 135, by agreement, withdrawn.
Section 73 agreed to.

Section 74—Transitional arrangements

The Convener: The next group is on reservoirs:
timescale for transitional arrangements. Amendment 109, in the name of the minister, is
the only amendment in the group.

Roseanna Cunningham: Section 74 makes
transitional arrangements to support the transfer of
reservoir enforcement responsibilities from local
authorities to SEPA. The transfer of registers and
documents to SEPA from local authorities forms
an important part of the transfer of enforcement
responsibilities.

As drafted, the bill requires local authorities to
hand over to SEPA their registers of reservoirs
and other reservoir-related documents “as soon as
practicable” after section 73 comes into force and
SEPA takes over as the enforcement authority
under the Reservoirs Act 1975. Amendment 109
will replace the obligation to hand over information
“as soon as practicable” with an obligation to hand
over information within “28 days” of the
commencement date.

The intention is to avoid any problems that could
be encountered as a result of the slow transfer of
important information between local authorities
and SEPA. Local authorities will be expected to
prepare in advance to transfer information,
because they will know that they have to meet the
deadline.

I move amendment 109.
Amendment 109 agreed to.
Section 74, as amended, agreed to.
Sections 75 and 76 agreed to.

Section 77—Incident reporting

The Convener: The next group of amendments
is on reservoirs: incident reporting. Amendment
110, in the name of the minister, is grouped with
amendments 111 to 115.

Roseanna Cunningham: Section 77 will insert
new section 12ZA into the Reservoirs Act 1975,
which will enable the Scottish ministers to introduce a statutory system for reporting incidents that affect safety at reservoirs. As drafted, the power would allow an incident reporting system to be introduced only for large raised reservoirs. Although the 1975 act focuses on large raised reservoirs, some of those are in remote areas and may present very little risk downstream. On the other hand, some smaller reservoirs present higher risks because homes and important infrastructure are downstream of them. Those risks were illustrated in October last year by an incident at the Maich Fishery reservoir, which is too small to be classified as a large raised reservoir under the 1975 act. Heavy rainfall there created a high risk of dam failure, and the council, the local police, the fire and rescue service and SEPA had to take measures to address the risk and prevent damage to people and property. In light of the risks that some smaller reservoirs can present, it is appropriate to ensure that the requirements to produce incident reports can cover smaller reservoirs as well as large raised reservoirs.

Amendments 110, 111 and 115 will revise the enabling power so that regulations can be used to create a more risk-based incident reporting regime. Amendments 110 and 111 will allow incident reports to be required for any reservoirs that meet criteria that are set in regulations. Those criteria could be based on risk and set by the Scottish ministers, SEPA or a body such as the Institution of Civil Engineers. As with reservoir plans, a lot of work is required to develop a risk-based incident reporting regime. Extensive input will be required from SEPA, reservoir engineers and reservoir undertakers, which is why the power to make regulations to introduce incident reports is already subject to extensive consultation requirements and the affirmative procedure.

Amendment 115 will allow different criteria to be set to identify high-risk and low-risk reservoirs and different incident reporting requirements to be applied in different cases, possibly according to the nature of the incident or the level of risk that the reservoir poses.

Amendment 114 is a consequential amendment that will require the Scottish ministers to consult all reservoir undertakers whose reservoirs would be covered by incident reporting requirements.

Amendment 112 will allow regulations to provide SEPA with powers to enter land in connection with its role in enforcing incident reporting requirements. SEPA might need such powers of entry to verify information that it has received about incidents.

Amendment 113 is a technical amendment that will correct a minor typographical error. I assure John Scott that errors do not occur only on his side.

I move amendment 110.

Amendment 110 agreed to.

Amendments 111 to 115 moved—[Roseanna Cunningham]—and agreed to.

Section 77, as amended, agreed to.

After section 77

11:00

The Convener: The next group is on reservoirs: flood plans. Amendment 116, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: Although the likelihood of a dam failure is very low, in most part due to the inspection and maintenance regime that is required by the Reservoirs Act 1975, the consequences of such a failure could be significant. Amendment 116 will introduce an enabling power in the 1975 act to allow the Scottish ministers to make regulations that require undertakers of some reservoirs to produce flood plans for their reservoirs. The intention is to create a risk-based regime with the scope and content of reservoir flood plans tailored to the risk that particular dams represent.

Requiring reservoir undertakers to produce flood plans should ensure that the undertakers have arrangements in place to understand and manage uncontrolled releases of water from their reservoirs. The plans will set out emergency action that the undertakers would take on site to delay or prevent dam failure or minimise damage. They could include information about how the undertakers would communicate with the emergency response services, or maps showing where flooding might occur if water escaped from reservoirs. Reservoir flood plans will provide a vital link between dam undertakers and the emergency response services, but they will not replace wider flood risk management plans or other forms of emergency response plan, which are covered by the provisions of the Civil Contingencies Act 2004 and are the responsibility of the category 1 responders, including the emergency services and SEPA.

The enabling power will allow ministers to make provision for approving, registering or publishing reservoir flood plans. SEPA will act as the enforcement authority for that work. The enabling power could also be used to give SEPA enforcement powers, as well as to create offences to ensure that plans are prepared and implemented. Of course, there would be a full and thorough consultation process before any such regulations were issued.
The Department for Environment, Food and Rural Affairs has already introduced a direction-making power allowing the secretary of state to require reservoir undertakers to produce on-site reservoir plans, and the Environment Agency in England and Wales has produced guidance on the preparation of reservoir plans. Amendment 116 will allow us to improve the reservoir safety regime in Scotland. I trust that the committee will support it.

I move amendment 116.

Amendment 116 agreed to.

Section 78 agreed to.

Section 79—SEPA’s power to obtain information about land

Amendment 57 moved—[Roseanna Cunningham]—and agreed to.

Section 79, as amended, agreed to.

Amendment 58 agreed to.

Section 80 agreed to.

Section 81—Offences by bodies corporate etc

Amendment 117 moved—[Roseanna Cunningham]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—Orders and regulations

The Convener: The next group is on power to give effect to Community obligations etc: parliamentary procedure. Amendment 118, in the name of the minister, is the only amendment in the group.

Roseanna Cunningham: I will be brief. The committee agreed with the Subordinate Legislation Committee that regulations that are made under section 44(1) should be approved by the Parliament before they are made by the Scottish ministers. I have considered the point and I am happy to accept the Subordinate Legislation Committee’s recommendation. Amendment 118 therefore provides that regulations under section 44(1) will be subject to the affirmative procedure. As amendment 118 meets the Subordinate Legislation Committee’s wishes, I look for members’ support.

I move amendment 118.

Amendment 118 agreed to.

Amendment 137 not moved.

Section 83, as amended, agreed to.

Section 84—Interpretation: general

Amendment 59 moved—[Roseanna Cunningham]—and agreed to.

The Convener: The next group is on definition of flood protection work. Amendment 138, in the name of Rhoda Grant, is grouped with amendment 131.

Rhoda Grant (Highlands and Islands) (Lab): Amendment 138 would amend the interpretation of flood protection work by adding the terms “restoration” and “enhancement”. I hope that the amendment will go some way towards shifting the mindset and ensuring that natural flood risk management options are given the same weight and consideration as other options.

Amendment 131 replaces amendment 88, which we have already debated. When amendment 88 was discussed, one of the main concerns that the committee and the minister expressed about it was that it would remove from the bill the wording:

“the sowing or planting of vegetation or forestry”.

I was sure at that point, and I still am, that amendment 88 was in keeping with the spirit of that provision and would not have prevented the sowing and planting of vegetation and forestry. However, after listening to the committee’s concerns, I have changed the wording of the amendment. Amendment 131 allows for

“the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area”

and makes clear that that includes the sowing and planting of vegetation and forestry. I hope that amendment 131 addresses the concerns of both the minister and the committee.

I move amendment 138.

Roseanna Cunningham: I thank Rhoda Grant for explaining the purpose of amendments 138 and 131.

The definition of flood protection work in the bill is intended to capture the physical works that local authorities will need to undertake to implement measures. The definition is used in part 4 in relation to local authority powers to manage flood risk. It is also used in the definition of structural measures in section 24.

The definition has been carefully drafted to ensure that it covers the full range of physical changes to land that a local authority may need to make in order to implement measures, including measures that use more natural approaches to managing flood risk. For example, channel or coastal realignment typically involves some form of alteration to the landscape. That could include changing the shape of rivers or coasts, possibly accompanied by the removal of old structures.
Likewise, restoration of flood plains typically requires the removal of embankments or other structures, the planting of vegetation and, possibly, other alterations to the landscape, such as the lowering of land. All those types of alteration are covered in the definition of flood protection work in sections 84(1)(a) and 84(1)(b).

The definition covers works that are targeted at storing water on some land to protect other land, and works that are targeted at slowing water. For example, an embankment could be removed to create flood storage capacity, and trees could be planted to create roughness, which would help to slow down flood waters. I am satisfied that the current definition of flood protection work covers all the works on land that might need to be carried out to implement natural flood risk management measures. I do not believe that either of Rhoda Grant’s amendments is needed to fill a gap in the definition.

I highlight the fact that the general power that section 49 will confer on local authorities is not limited to flood protection work. Flood protection work is just one example of the steps that local authorities can take; they can also implement any other measures, including more general land management measures. Last week, I committed myself to working with Elaine Murray to lodge an amendment at stage 3 that will make it clearer that the section 49 power covers all measures, including land management operations.

The effect of amendment 131 would be to limit the planting of trees and vegetation—which is given as an example of flood protection work in section 84(1)(b)—to cases in which planting takes place for the purpose of altering or restoring natural features or characteristics. That could exclude work to plant trees in places where there had never been trees—not because trees are not natural, but because planting them in such places might not involve altering, enhancing or restoring a natural feature or characteristic. It is not clear exactly what legal effect the limit would have in practice, because the definition of flood protection work is not used to restrict the measures that can be included in flood risk management plans or the steps that local authorities can take to manage flood risk, but it seems unnecessary to limit the definition in that way and to create a source of doubt about how it should be interpreted. For those reasons, I cannot support amendment 131 and I ask Rhoda Grant not to move it.

Amendment 138 would alter the definition of flood protection works to provide that flood protection work included any work of restoration or enhancement. The terms “restoration” and “enhancement” are also used in section 16, with reference to the restoration or alteration of natural features and characteristics. Although the current definition of flood protection work covers such work, inclusion of the terms would be appropriate, as it would provide a link between section 84 and section 16 and make clear that all works involving natural approaches to managing floods are captured by the definition. I accept amendment 138, but not amendment 131.

Rhoda Grant: I will press amendment 138.

I hear what the minister says about amendment 131. It was certainly not my intention to place any restrictions on the planting of forestry, but I do not think that the definition in the bill goes far enough—it does not include flood plains or wetlands, for example. Although I will not move amendment 131, I still feel that an amendment is necessary, so at stage 3 I will lodge one that does not cause the problems that the minister has mentioned.

Amendment 138 agreed to.
Amendment 131 not moved.
Section 84, as amended, agreed to.

Schedule 4

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Amendments 60 to 64 moved—[Roseanna Cunningham]—and agreed to.
Schedule 4, as amended, agreed to.
Section 85 agreed to.

Schedule 3

MINOR AND CONSEQUENTIAL MODIFICATIONS

Amendments 119 to 122 moved—[Roseanna Cunningham]—and agreed to.
Schedule 3, as amended, agreed to.
Section 86 agreed to.

Long Title

Amendment 65 moved—[Roseanna Cunningham]—and agreed to.
Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration. I thank all members of the committee and, for the amazing amount of work that they have had to carry out over the past three weeks, the clerks.
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Flood Risk Management (Scotland) Bill

[AS AMENDED AT STAGE 2]


PART 1

GENERAL DUTY, DIRECTIONS AND GUIDANCE

1 General duty

(1) The Scottish Ministers, SEPA and responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, must exercise their functions under Part 3 so as to secure compliance with the Directive.

(2) In exercising their functions in pursuance of subsection (1), the Scottish Ministers, SEPA and responsible authorities must—

(za) so far as such exercise affects a flood risk management district, act with a view to achieving the objectives set out in the flood risk management plan for that district as approved under section 27,

(a) have regard to the social, environmental and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the flood risk related function concerned—

(zi) act in the way best calculated to manage flood risk in a sustainable way,

(i) promote sustainable flood risk management,

(ii) act with a view to raising public awareness of flood risk, and

(iii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, co-operate with each other so as to co-ordinate the exercise of their respective functions.

(2A) For the purposes of co-operating with each other under subsection (2)(c), the Scottish Ministers, SEPA and responsible authorities may enter into agreements with each other.
(3) In this Act, “flood risk related functions” means—

(a) in relation to the Scottish Ministers—

(i) their functions under this Part (other than subsections (1) and (2) of this section), Part 2 (responsible authorities), Part 3 (flood risk assessment, maps and plans), Part 4 (flood risk management: local authority functions), and Part 5 (SEPA: other flood risk management functions), and

(ii) their functions under such other enactments as the Scottish Ministers may specify by order,

(b) in relation to SEPA—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 5 (SEPA: other flood risk management functions), and

(ii) its functions under such other enactments as the Scottish Ministers may specify by order,

(c) in relation to a responsible authority which is a local authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 4 (flood risk management: local authority functions), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers, and

(d) in relation to any other responsible authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers (whether or not in an order under section 5(c) designating it as a responsible authority).

2 Directions and guidance

(1) The Scottish Ministers may give directions (whether general or specific) and guidance to—

(a) SEPA, in relation to the exercise of its flood risk related functions, and

(b) any responsible authority, in relation to the exercise of its flood risk related functions.

(2) SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(3) Directions under subsection (1) may include provision for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

(4) Before giving a direction under subsection (1), the Scottish Ministers must consult—

(a) the person to whom the direction is to be given, and

(b) such of the following persons as they consider appropriate—

(i) SEPA, and

(ii) responsible authorities.
“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).

SEPA

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

Responsible authorities

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.

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

(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.

“The Directive”

PART 3
FLOOD RISK ASSESSMENT, MAPS AND PLANS

Purpose of Part

7 General purpose of Part 3
The purpose of this Part is to make provision for or in connection with establishing a framework for the assessment and mapping of flood risks and the planning in relation to the management of such risks, including making provision, and enabling provision to be made, for or in connection with implementing the Directive.

Flood risk management districts

8 Flood risk management districts
(1) A flood risk management district for the purposes of this Part is—
   (a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or
   (b) such other area as the Scottish Ministers may designate by order, being such area as they consider appropriate and to which they assign one or more coastal areas or river basins.
(2) An order under subsection (1)(b) must identify the flood risk management district by reference to a map prepared for the purposes of the order and laid before the Parliament.
(3) The Scottish Ministers must send SEPA a copy of any order under subsection (1)(b) and any map referred to in the order.
(4) SEPA must, whether a flood risk management district is—
   (a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or
   (b) an area designated by order under subsection (1)(b),
make copies of the order concerned and the map to which the order refers available for public inspection.

Flood risk assessment

9 SEPA to prepare flood risk assessments
(1) SEPA must prepare a flood risk assessment for each flood risk management district providing an assessment of any flood risk for the district.
(2) A flood risk assessment must be prepared by 22nd December 2011.
(3) A flood risk assessment is to be based on available and readily derivable information (including in particular information on any impact of climate change on the occurrence of floods).
(4) A flood risk assessment must include—
   (a) maps at the appropriate scale of the flood risk management district which show—
      (i) borders of any river basin, sub-basin and coastal area in the district,
      (ii) topography and land use, and
(iii) such other information as the Scottish Ministers may specify by regulations,

(b) where—

(i) SEPA considers there is reliable information that any flood has occurred in the flood risk management district which had significant adverse consequences for human health, the environment, cultural heritage or economic activity there, and

(ii) a similar future flood in the district with significant adverse consequences for such matters there is still probable,

a description of the flood which has occurred (including its extent and conveyance routes and an assessment of the adverse consequences mentioned in subparagraph (i) that the flood entailed),

(c) where—

(i) SEPA considers there is reliable information that a significant flood has occurred in the flood risk management district, and

(ii) significant adverse consequences for the district of any similar future flood there might be envisaged,

a description of the flood which has occurred, and

(d) an assessment of the potential adverse consequences of any future flood for human health, the environment, cultural heritage and economic activity in the flood risk management district taking into account as far as possible issues such as—

(i) the topography,

(ii) the position, and the general hydrological and geomorphological characteristics, of any body of surface water,

(iii) natural features and characteristics of any river basin or coastal area in the district,

(iv) the effectiveness of any existing artificial flood protection structure,

(v) the position of any populated area and area of economic activity, and

(vi) long-term developments, including any impact of climate change on the occurrence of floods.

(5) A flood risk assessment, and any map included in it by virtue of subsection (4)(a), may also include such other information as SEPA considers appropriate.

(6) In this section, “natural features and characteristics” has the same meaning as it has for the purposes of section 16(1) (see section 16(1A)).

10 Flood risk assessments: review

(1) SEPA must—

(a) by 22nd December 2018 or such earlier date as the Scottish Ministers may direct (“the operative date”), review and where appropriate update each flood risk assessment prepared under section 9, and
(b) by the end of the period of 6 years beginning with the operative date, and of each subsequent period of 6 years, review and where appropriate update the latest flood risk assessment updated after review under this section.

(2) Section 9(3) to (6) applies in relation to the review and updating of a flood risk assessment.

11 Flood risk assessments: regulations

The Scottish Ministers may by regulations make further provision as to the preparation of a flood risk assessment under section 9, or the review or updating of such an assessment under section 10, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

12 Flood risk assessments: availability for public inspection

SEPA must make available for public inspection copies of the flood risk assessment for the time being applicable to each flood risk management district.

Identification of potentially vulnerable areas and local plan districts

13 SEPA to identify potentially vulnerable areas and local plan districts

(1) SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk—

(a) exists, or

(b) is likely to occur.

(2) The document must be submitted to the Scottish Ministers by such date as they may direct, and after carrying out such consultation as may be required by regulations under section 15.

(3) The document must also identify areas (consisting of one or more river basins, sub-basins or coastal areas) around the areas in the flood risk management district identified under subsection (1) for the purpose of preparing local flood risk management plans (see section 29).

(4) SEPA’s identification—

(a) of any area under subsection (1) is to be based on the flood risk assessment prepared by it under section 9 for the district in which the area is situated,

(b) of any area under subsection (3) is to be based on—

(i) that assessment, and

(ii) such other information as SEPA considers appropriate, and

(c) of any area under subsection (1) or (3) is to identify the area by reference to a map at the appropriate scale prepared for the purposes of and included in the document.

(5) After considering the document, the Scottish Ministers may—

(a) approve it (in whole or in part and with or without modifications), or

(b) reject it.
(6) Before determining whether or not to approve the document, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.

(7) The Scottish Ministers must advise SEPA in writing of the reasons for their determination under subsection (5).

(8) Where the Scottish Ministers reject the document, they must return it to SEPA and direct SEPA to resubmit it by such date as the direction may specify with—
   (a) such modifications (if any) as the direction may specify, and
   (b) any further modification which SEPA considers appropriate.

(9) An area referred to in subsection (1) and identified in a document approved under this section or section 14 is referred to in this Part as a “potentially vulnerable area”.

(10) An area referred to in subsection (3) and identified in such a document is referred to in this Part and Part 4 as a “local plan district”.

14 Potentially vulnerable areas and local plan districts: review

(1) SEPA must, after carrying out such consultation as may be required by regulations under section 15—
   (a) by such date as the Scottish Ministers may direct, review and where appropriate update the document approved under section 13, and
   (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) review and where appropriate update the latest document approved under this section.

(2) SEPA must submit to the Scottish Ministers each updated document.

(3) Any review by SEPA under subsection (1) is to be based—
   (a) on the flood risk assessment for the time being applicable to the flood risk management district concerned, and
   (b) insofar as the review is of the identification of any local plan district, on such other information as SEPA considers appropriate.

(4) Section 13(4)(c) and (5) to (8) applies in relation to an updated document submitted to the Scottish Ministers under this section.

15 Potentially vulnerable areas and local plan districts: regulations

The Scottish Ministers may by regulations make provision as to—
   (a) the form and content of a document submitted to them under section 13 or 14,
   (b) consultation by SEPA in relation to its preparation of any such document,
   (c) SEPA making available to the public—
      (i) any such document,
      (ii) information relating to matters included in it,
      (iii) a summary of any consultation carried out by SEPA in relation to the document, and
(iv) a document as approved by the Scottish Ministers under section 13 or 14,

(d) SEPA publicising its making available to the public any of the things referred to in paragraph (c)(i) to (iv),

(c) the process to be followed in connection with preparation, submission, approval or modification of a document under section 13 or 14 or review or updating of a document approved under either of those sections, and

(f) such other matters in relation to any such document (including submission, approval, modification, review or updating) as the Scottish Ministers may consider appropriate.

Assessment of flood risk from sewerage systems

15A Scottish Water to assess flood risk from sewerage systems

(1) Scottish Water must, for each potentially vulnerable area and any other area identified by SEPA, prepare an assessment—

(a) identifying where in the area it considers that a flood is likely to originate from a sewerage system,

(b) estimating the volume of sewage which is likely to be released in the event of such a flood, and

(c) containing such other information as the Scottish Ministers may specify in regulations.

(2) An assessment under subsection (1) must be prepared by such date as the Scottish Ministers may direct.

(3) Before identifying an area for the purposes of subsection (1), SEPA must consult—

(a) Scottish Water, and

(b) any other responsible authority which has functions exercisable in or in relation to the area.

(4) An assessment prepared under subsection (1) must be in such form as SEPA may determine.

(5) In determining the form of an assessment under subsection (4), SEPA must seek to ensure that the assessment will integrate with information relating to flood risk held by—

(a) itself, and

(b) any responsible authority which has functions exercisable in or in relation to the area for which the assessment is prepared.

(6) Before determining the form of an assessment in accordance with subsections (4) and (5), SEPA must consult the persons mentioned in subsection (5)(b).

(7) Scottish Water must, if requested, provide a copy of an assessment to SEPA or a responsible authority.

(8) Scottish Water must, for each potentially vulnerable area and each area for the time being identified by SEPA—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update the assessment prepared under subsection (1) for that area,
(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) review and where appropriate update the latest assessment reviewed under this subsection for that area.

(9) Subsections (4) to (7) apply to the updating of assessments as they apply to their preparation.

(10) Before making regulations under subsection (1)(c), the Scottish Ministers must consult—

(a) SEPA,
(b) Scottish Water, and
(c) such other responsible authorities as they consider appropriate.

**Bodies of water etc.: mapping and assessment**

### 15B Local authorities to prepare maps of bodies of water etc.

(1) Every local authority must prepare a map which shows (or more than one map which, taken together, show) relevant bodies of water and sustainable urban drainage systems in its area.

(2) Each map must—

(a) be prepared by such date as the Scottish Ministers may direct,
(b) be prepared at a scale that the authority considers most appropriate, and
(c) contain such information and be in such form as the Scottish Ministers may specify in regulations.

(3) A local authority must, from time to time, review and where appropriate update the map (or maps) prepared for its area under subsection (1).

(4) A local authority must make available for public inspection the map (or maps) prepared under this section for the time being applicable to its area.

(5) In this section and section 56—

“relevant body of water”—

(a) means—

(i) a body of surface water other than a stretch of coastal water, or
(ii) a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but
(b) does not include sewers and drains which drain into sewers,

“sustainable urban drainage system” has the meaning given in section 59(1) of the Sewerage (Scotland) Act 1968 (c.47).

### 56 Local authorities to assess bodies of water

(1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—
(a) assess the relevant bodies of water (other than canals) in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or outwith its area, and

(ba) where—

(i) a body of water gives rise to such a risk, and

(ii) the authority considers that clearance and repair works would substantially reduce that risk,

prepare a schedule of those clearance and repair works.

(1A) In subsection (1)(ba), clearance and repair works are works that consist of any or all of the following—

(a) removing obstructions from a body of water,

(b) removing things that are at significant risk of becoming such obstructions,

(c) repairing artificial structures which form part of the bed or banks of a body of water.

(1B) A schedule prepared under subsection (1)(ba) must—

(a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,

(b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.

(1C) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(ba) for the time being applicable to its area.

(2) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any relevant body of water in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.

(3) Subsection (2) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

Artificial structures and natural features: mapping and assessment

15C SEPA to prepare maps of artificial structures and natural features

(1) SEPA must, for each flood risk management district, prepare a map—

(a) showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water,

(b) indicating, in relation to each structure or feature, whether it was constructed or altered under section 49 of this Act or section 2 of the 1961 Act, and

(c) containing such other information as the Scottish Ministers may specify in regulations.

(2) Each map must be prepared—

(a) by such date as the Scottish Ministers may direct,

(b) at the appropriate scale, and
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(c) in such form as the Scottish Ministers may specify in regulations.

(3) SEPA must, from time to time, review and where appropriate update the map prepared under this section for each flood risk management district.

(4) Before preparing or updating a map under this section, SEPA must consult every local authority whose area (or part of whose area) is in the flood risk management district to which the map relates.

(5) SEPA must make available for public inspection the map prepared or updated under this section for the time being applicable to each flood risk management district.

Assessment of possible contribution of alteration etc. of natural features and characteristics

SEPA to assess possible contribution of alteration etc. of natural features and characteristics

(1) SEPA must, by 22 December 2013 or such other date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in a flood risk management district could contribute to the management of flood risk for the district.

(1A) For the purposes of subsection (1), natural features and characteristics include such features and characteristics which can assist in the retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation), those which contribute to the transporting and depositing of sediment, and the shape of rivers and coastal areas.

(2) SEPA must—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update its assessment under subsection (1), and

(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) review and where appropriate update the latest assessment reviewed under this subsection.

(3) Each assessment under subsection (1), and each assessment updated after review under subsection (2), must—

(a) take into account the flood risk assessment, any flood hazard maps and flood risk maps and any flood risk management plan for the time being applicable to the flood risk management district, and

(b) refer to a map—

(i) at the appropriate scale prepared for the purposes of the assessment, and

(ii) showing where alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in the district could contribute to management of flood risk in the district.

(4) SEPA must make available for public inspection copies of—

(a) any assessment under this section for the time being applicable to each flood risk management district, and

(b) the map to which the assessment refers.
Flood hazard maps and flood risk maps

17 SEPA to prepare flood hazard maps and flood risk maps

(1) SEPA must prepare flood hazard maps and flood risk maps in accordance with this section and sections 18 and 19.

(2) Flood hazard maps and flood risk maps must be prepared—

(a) by 22nd December 2013,
(b) for the potentially vulnerable areas in each flood risk management district,
(c) at the appropriate scale, and
(d) so as to secure that the maps for the district (taken together) cover all such areas.

18 Flood hazard maps

(1) A flood hazard map (or more than one such map taken together) must (except to the extent subsections (2) to (6) provide otherwise), show—

(a) the geographical areas which could be flooded by each of the following types of flood—

(i) floods with a low probability (or which would be an extreme event),
(ii) floods with a medium probability, and
(iii) floods with a high probability, and

(b) the following elements for each of those types of flood—

(i) the flood extent,
(ii) water depths or water level, whichever is appropriate,
(iii) where appropriate, the flow velocity or the relevant water flow, and
(iv) such other elements as the Scottish Ministers may specify by regulations.

(2) But a flood hazard map need not show information referred to in subsection (1) as respects a flood with a high probability where SEPA considers such a flood would be unlikely to have significant adverse consequences for the area which could be flooded by it.

(3) And—

(a) where a geographical area shown in a flood hazard map is or includes a coastal area which SEPA considers is adequately protected from coastal floods, subsection (4) applies instead of subsection (1) as respects any coastal flood (of the coastal area) with a medium or high probability,

(b) where a geographical area shown in a flood hazard map is or includes an area at risk of flooding from groundwater, subsection (5) applies instead of subsection (1) as respects any flood (of the area at such risk) with a medium or high probability and which would be from groundwater, and

(c) subsection (6) applies instead of subsection (1) as respects any flood from a sewerage system which is not a flood solely from a sewerage system.

(4) Where subsection (3)(a) applies, the map—
(a) may, where SEPA considers it appropriate, and
(b) must, to the extent that the Scottish Ministers direct,
show for any such coastal area information referred to in subsection (1) as respects any such flood of that area.

Where subsection (3)(b) applies, the map—

(a) may where SEPA considers it appropriate, and
(b) must, to the extent that the Scottish Ministers direct,
show for the area at such risk information referred to in subsection (1) as respects any such flood of that area.

Where subsection (3)(c) applies, the map—

(a) may where SEPA considers it practicable, and
(b) must to the extent that the Scottish Ministers direct,
show information referred to in subsection (1) as respects any flood in the area from a sewerage system which is not a flood solely from a sewerage system.

To the extent (if any) that, in pursuance of subsections (2) to (6), a flood hazard map does not show information referred to in those subsections, the map must include a statement explaining that the information is not shown in it.

Before giving a direction under subsection (4)(b), (5)(b) or (6)(b), the Scottish Ministers must consult SEPA.

In this section—

(a) as respects a flood—

“low probability” (or “extreme event”) means such probability as may be specified as such by the Scottish Ministers by order,

“medium probability” means such probability involving a return period of 100 years or more (or an annual probability of occurrence of not more than 1%) as may be specified as such by the Scottish Ministers by order,

“high probability” means such probability as may be specified as such by the Scottish Ministers by order,

(b) “groundwater” has the same meaning as in section 3(4) of the 2003 Act.

The potential adverse consequences associated with each type of flood for which any information referred to in section 18(1) is shown in a flood hazard map must be shown in a flood risk map (or more than one flood risk map taken together) by reference to the matters mentioned in subsection (2).

The matters are—

(a) the indicative number of inhabitants who potentially could be affected,
(b) the type of economic activity in the area which could be flooded,
(c) installations referred to in Annex 1 to Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control, which might cause accidental pollution if any type of flood referred to in subsection (1) occurred,

(d) any of the following protected areas or bodies of water which potentially could be affected, if any type of flood referred to in subsection (1) occurred—

(i) areas for the abstraction of water intended for human consumption identified by order under section 6(1) of the 2003 Act,

(ii) areas referred to in section 7(4)(a) of that Act (areas designated for the protection of economically significant aquatic species),

(iii) bodies of water referred to in section 7(4)(b) of that Act (bodies of water designated as recreational waters),

(iv) areas referred to in section 7(4)(c) of that Act (nutrient-sensitive areas), and

(v) areas referred to in section 7(4)(d) of that Act (areas designated for the protection of habitats or species where the maintenance or improvement of the status of the water is an important factor in such protection),

(e) any area which is within a protected area or body of water referred to in paragraph (d)(i) to (v) and could be affected by pollution from any installation referred to in paragraph (c), and

(f) such other information as the Scottish Ministers may specify by regulations.

(3) Where SEPA considers it appropriate, a flood risk map may also show the potential adverse consequences associated with any type of flood referred to in subsection (1) by reference to any of the following—

(a) information indicating any areas where floods with a high content of transported sediments or debris floods (or a combination of such floods) can occur,

(b) such other sources of pollution as SEPA consider may be significant,

(c) such other available and readily derivable information as SEPA considers appropriate.

Flood hazard maps and flood risk maps: review

(1) SEPA must—

(a) by 22nd December 2019, review and where appropriate update each flood hazard map and each flood risk map prepared under section 17, and

(b) by the end of each subsequent period of 6 years, review and where appropriate update the latest flood hazard map and flood risk map updated after review under this section.

(2) SEPA must take into account in any review under this section the likely impact of climate change on the occurrence of floods.

(3) Sections 17(2)(b) to (d), 18 and 19 apply in relation to the review and updating of a flood hazard map and a flood risk map.
21 **Flood hazard maps and flood risk maps: availability for public inspection**

SEPA must make available for public inspection copies of each flood hazard map and each flood risk map for the time being applicable to each flood risk management district.

22 **Flood hazard maps and flood risk maps: regulations**

The Scottish Ministers may by regulations make further provision as to the preparation of flood hazard maps and flood risk maps under section 17, or the review or updating of such maps under section 20, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

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**Flood risk management plans**

23 **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.

(4A) In setting objectives and identifying measures under subsection (4), SEPA must consider the assessment of the potential contribution of the alteration (including enhancement) and restoration of natural features and characteristics of a river basin or coastal area to the management of flood risk for the district.

(4B) In identifying measures under subsection (4)(b), SEPA must identify measures which it considers are the most sustainable.

(4C) Where measures identified under subsection (4B) are different to those considered under subsection (4A), SEPA must give reasons for selecting such alternative measures.

(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.

(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.
Flood risk management plans: objectives and measures

(1) In setting objectives and identifying measures under section 23(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 16 in relation to the district,
(iv) the flood hazard maps and the flood risk maps prepared under section 17 for the district,
(v) the cost 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,
(viiiia) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c.36) relating to the district,
(ix) the environmental objectives within the meaning of section 9 of the 2003 Act,
(x) the conservation of nature in the district and elsewhere, and
(xi) 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.

(2A) For the purposes of subsection (1)(b)—

(a) a measure is structural if it involves flood protection work, and
(b) non-structural measures include flood warning, awareness raising and the preparation and review of development plans.

(2B) In subsections (1)(a)(viii) and (2A)(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.
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

(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) Scottish Natural Heritage,

(c) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and

(d) 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).

26 Flood risk management plans: submission for approval

(1) As soon as a flood risk management plan is submitted to the Scottish Ministers under section 23 or 28, 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 25,
(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 action should be taken by SEPA in relation to the plan under subsections (2) to (5) of section 25, they may return the plan to SEPA and direct it—
(a) to 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.

27 Flood risk management plans: approval and publication

(1) After considering a flood risk management plan submitted to them under section 23(1) or in pursuance of section 26(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.

28 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,

(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 23(5)) the matters specified in Part 2 of schedule 1.

(4) Sections 23(4) to (7) and 24 to 27 apply in relation to the preparation, submission and approval of an updated flood risk management plan.

Local flood risk management plans

29 Local authorities to prepare local flood risk management plans

(1) The lead authority for each local plan district must prepare a local flood risk management plan to supplement the relevant flood risk management plan.

(2) A local flood risk management plan is to consist of—

(a) a supplementary part, and

(b) an implementation part.

(3) The supplementary part must include—

(a) a summary of the objectives, measures and other information included in the relevant flood risk management plan under paragraphs 1 to 3 of schedule 1 so far as relevant to the local plan district,

(b) such information supplemental to that plan including such—
(i) maps, and
(ii) further information about the measures summarised under paragraph (a), as the lead authority considers relevant to flood risk management within the local plan district, and

5 (c) a summary of—

(i) the steps taken under subsections (1) to (6) of section 30 in relation to the local flood risk management plan,
(ii) any other consultation measures taken in connection with the preparation of the plan, and
(iii) changes made to the plan in light of the views and representations received on it.

(4) The implementation part must include a description of how the current measures are to be implemented including—

(a) a detailed timetable for—

(i) the completion of measures currently being implemented, and
(ii) the implementation of measures yet to be commenced,
(b) in relation to each measure, a description of—

(i) who is, or is to be, responsible for implementing the measure, and
(ii) the arrangements for funding the measure,
(ba) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to surface run-off water or urban drainage, and
(c) such other information as the lead authority considers relevant to the implementation of the measures.

(5) The implementation part may also include a description of how other measures summarised in the supplementary part under subsection (3)(a) are to be implemented.

(6) A local flood risk management plan must also include such other matters as the Scottish Ministers may specify by regulations.

(6A) Before making regulations under subsection (6), the Scottish Ministers must consult—

(a) SEPA,
(b) every responsible authority, and
(c) such other persons as they consider appropriate.

(7) A local flood risk management plan must not be inconsistent with anything in the relevant flood risk management plan.

(8) For the purposes of this Part, the lead authority—

(a) for a local plan district is—

(i) where a local authority’s area includes all of the local plan district, that authority,
(ii) in any other case, one of the local authorities whose area includes part of the local plan district as may be agreed between those authorities or, in default of agreement, as may be determined by the Scottish Ministers, and

(b) in relation to a local flood risk management plan, is the local authority responsible for preparing the plan by virtue of subsection (1) and paragraph (a) of this subsection.

(9) In this Act, the “current measures”, in relation to a local flood risk management plan, are those of the measures summarised in the plan under subsection (3)(a) which are identified in the relevant flood risk management plan as to be implemented before the plan is next reviewed under section 28.

(10) In this section, “relevant flood risk management plan”, in relation to a local plan district (or the local flood risk management plan for that district), means the flood risk management plan prepared under section 23 or updated under section 28 for the flood risk management district which includes the local plan district.

30 Local flood risk management plans: publicity and consultation

(1) Not less than one year before the beginning of the period to which the relevant flood risk management plan is to relate or by such date as the Scottish Ministers may direct, the lead authority must publish a draft of the supplementary part of the local flood risk management plan (“the draft supplementary part”).

(2) Publication of a draft under subsection (1) is to be in such manner as the lead authority considers appropriate.

(3) On publishing the draft supplementary part, the lead authority must—

(a) publicise—

(i) that fact, and

(ii) the opportunity to make representations about the draft supplementary part under subsection (4), and

(b) make copies of the draft supplementary part available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as the lead authority may determine.

(4) Any person who wishes to make representations to a lead authority about the draft supplementary part may do so before the expiry of the period determined under subsection (3)(b).

(5) On publishing the draft supplementary part, the lead authority must also—

(a) consult the persons specified in subsection (6) on—

(i) the draft supplementary part, and

(ii) a draft of the implementation part of the plan, and

(b) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(a) are—

(a) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district to which the plan relates (“the district”),

(b) SEPA,
(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 the lead authority considers appropriate.

(7) The lead authority must co-ordinate the steps it takes under subsections (1) to (6) with those taken by SEPA in relation to the relevant flood risk management plan under section 25(2) to (4).

(8) Before finalising the local flood risk management plan, the lead authority must take into account—

(a) any representations about the draft supplementary part made under subsection (4), and
(b) any views on the draft local flood risk management plan expressed by those consulted under subsection (5)(a),

which are received by the lead authority before the expiry of the period determined under subsection (3)(b).

(9) Not later than 2 months after receiving them, the lead authority must inform SEPA of any views expressed by those consulted under subsection (5)(a) which the lead authority considers relevant to the relevant flood risk management plan.

(10) In subsections (7) and (9), “relevant flood risk management plan” means the flood risk management plan prepared under section 23 or updated under section 28 for the flood risk management district which includes the local plan district.

31 Local flood risk management plans: completion and publication

(1) A local flood risk management plan for a local plan district is finalised when—

(a) the flood risk management plan which it supplements is approved under section 27, and
(b) either—

(i) the lead authority, every other responsible authority which has flood risk related functions exercisable in or in relation to the local plan district and SEPA agrees to its content, or
(ii) the Scottish Ministers determine its content under subsection (3).

(2) If—

(a) the lead authority considers that the local flood risk management plan will not be finalised by the local plan deadline, or
(b) the plan is not finalised by that deadline,

the lead authority must notify the Scottish Ministers of that fact.

(3) Where the Scottish Ministers receive notice under subsection (2), they must determine the content of the local flood risk management plan.

(4) Before determining the content of a plan under subsection (3), the Scottish Ministers must take into account any representations made by SEPA and any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.
(5) When a local flood risk management plan is finalised, the lead authority must—
   (a) publish the final plan in such manner as it considers appropriate,
   (b) make copies of it available for public inspection,
   (c) provide a copy of it to SEPA and the Scottish Ministers,
   (d) make copies of it available to the public, and
   (e) publicise the publication of the final plan.

(6) In making copies of the plan available to the public under subsection (5)(d), the lead
    authority may charge a reasonable price for each copy.

(7) In subsection (2), the “local plan deadline” is the date 6 months after the date the flood
    risk management plan mentioned in subsection (1)(a) is approved or such other date as
    the Scottish Ministers may direct.

32 Local flood risk management plans: interim report

(1) Not earlier than 2 years and not later than 3 years after a local flood risk management
    plan is finalised, the lead authority must—
    (a) review the plan, and
    (b) publish a report on the conclusions of the review including information on the
        progress that has been made towards implementing the measures identified in the
        implementation part of the plan.

(2) The lead authority must make copies of the report available for public inspection.

33 Local flood risk management plans: final report

(1) Not earlier than 5 years, and not later than 6 years, after a local flood risk management
    plan is finalised, or by such other date as the Scottish Ministers may direct, the lead
    authority must publish a report on the plan containing—
    (a) an assessment of the progress made towards implementing the current measures,
    (b) a summary of the current measures which were not implemented, with reasons for
        their non-implementation, and
    (c) a description of any other measures implemented since the plan was finalised
        which the lead authority considers have contributed to the achievement of the
        objectives summarised in the supplementary part of the plan.

(2) The lead authority must make copies of the report available for public inspection.

34 Local flood risk management plans: joint working

Where a local plan district covers more than one local authority’s area, the lead
authority and the other authorities must, so far as practicable, co-operate with each other
with a view to assisting in—

(1) the preparation of the local flood risk management plan for the district,
(2) the review of that plan under section 32,
(3) the preparation of the report published under that section, and
(4) the preparation of the report published under section 33.
Regulations relating to flood risk management plans and local flood risk management plans

(1) The Scottish Ministers may by regulations make further provision as to—
(a) the form of flood risk management plans and local flood risk management plans,
(b) the matters to be taken into account in preparing such plans,
(c) the procedures to be followed in connection with the preparation, submission, approval, review and modification of such plans,
(d) consultation by SEPA in relation to its preparation of flood risk management plans,
(e) consultation by lead authorities in relation to their preparation of local flood risk management plans, and
(f) the form, content, preparation and publication of reports under sections 32 and 33.

(2) Such regulations may, in particular, do any of the following—
(a) provide for the notice to be given of, or the publicity to be given to—
(i) matters to be included or proposed to be included in any such plan,
(ii) the approval of any such plan, and
(iii) any other procedural step,
(b) provide for the publicity to be given to the procedures referred to in subsection (1)(c),
(c) make provision for documents and information relating to matters included in the plan to be made available to the public,
(d) make provision as to the making and consideration of representations with respect to any such plan,
(e) require or authorise—
(i) in relation to a flood risk management plan, SEPA,
(ii) in relation to a local flood risk management plan, the lead authority,
to consult, or consider the views of, other persons before taking any particular procedural step.

Duty to have regard to plans

Duty to have regard to flood risk management plans and local flood risk management plans

The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a flood risk management district, have regard to—
(a) the flood risk management plan for that district as approved under section 27,
(b) so far as the exercise of the functions affects a local plan district, the local flood risk management plan for that district as finalised under section 31.
Flood Risk Management (Scotland) Bill
Part 3—Flood risk assessment, maps and plans

Provision of information and assistance

37 Power of SEPA to obtain information, documents and assistance

(1) The Scottish Ministers and any responsible authority must, on being requested by SEPA, provide SEPA with—

(a) such information in their or, as the case may be, its possession or under their or its control, and

(b) such assistance,

as SEPA may reasonably seek in connection with the exercise of any of SEPA’s functions under sections 9, 10, 15C, 16, 17, 20, 23, 24 and 28.

(2) Any responsible authority must, on being requested by SEPA—

(a) gather and provide SEPA with such information—

(i) as respects flood risk, and

(ii) which SEPA considers could contribute to improving understanding of flood risk, and

(b) prepare and provide SEPA with such assessments or maps which SEPA considers could contribute to such understanding,

as SEPA may reasonably seek in connection with the exercise of any of those functions.

(3) Information requested by SEPA in pursuance of subsection (2) may include in particular information about, or as the case may be assessments or maps of, urban drainage and flooding caused by surface run-off water or a sewerage system.

(4) Information and assistance which a responsible authority is required to provide to SEPA in pursuance of subsection (1) or (2) must be provided in such form and manner as SEPA may reasonably seek.

(5) SEPA may serve a notice on any person (but not the Scottish Ministers or a responsible authority) requiring the person to—

(a) provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or

(b) produce to SEPA, or to a person authorised by it, such documents,

as it may reasonably require in connection with the exercise of any of the functions referred to in subsection (1).

(6) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (5) cannot agree with SEPA on whether information or assistance is, or assessments, maps or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

38 Power of lead authorities to obtain information, documents and assistance

(1) A person mentioned in subsection (2) must, on being requested by a lead authority, provide the authority with—

(a) such information in its possession or under its control, and

(b) such assistance,
as the authority may reasonably seek in connection with its functions under sections 29 to 33.

(2) Those persons are—
   (a) SEPA, and
   (b) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.

(3) A lead authority may serve a notice on any person (but not SEPA, a responsible authority or the Scottish Ministers) requiring the person to—
   (a) provide the authority, or a person authorised by it, in the form and manner specified in the notice, with such information, or
   (b) produce to the authority, or to a person authorised by it, such documents, as it may reasonably require in connection with the exercise of any of the functions under sections 29 to 33.

(4) Where a responsible authority, SEPA or, as the case may be, a person on whom a notice is served under subsection (3) cannot agree with the lead authority on whether information or assistance is, or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

38A Power of local authorities to obtain information

(1) A person mentioned in subsection (2) must, on being requested by a local authority, provide the authority with such information in its possession or under its control as the authority may reasonably seek in connection with its functions under sections 15B and 56.

(2) Those persons are—
   (a) SEPA, and
   (b) any other responsible authority which has flood risk related functions exercisable in or in relation to the local authority’s area.

(3) Where SEPA or, as the case may be, a responsible authority cannot agree with the local authority on whether information is being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

39 Power to obtain information, documents and assistance: supplementary

(1) The information or documents required to be provided or produced in pursuance of a notice under section 37(5) or section 38(3) (an “information notice”) must be specified or described in the notice.

(2) An information notice may require information to be provided or documents to be produced—
   (a) at or by a time and at a place specified in the notice,
   (b) in circumstances specified in the notice, or
   (c) from time to time, in accordance with criteria specified in the notice.
(3) Nothing in this section or section 37 or 38 authorises SEPA or, as the case may be, a lead authority to require disclosure of anything which a person would be entitled to refuse to disclose in proceedings in the Court of Session on grounds of confidentiality in proceedings in that court.

(4) Where by virtue of an information notice documents are produced to any person, that person may take copies of or make extracts from them.

(5) References in this section or section 37 or 38 to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

40 Power to obtain information, documents and assistance: offence

(1) A person who—

(a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under section 37(5) or 38(3), or

(b) intentionally alters, suppresses or destroys a document which that person has been required by such notice to produce,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

Consistency and co-ordination with river basin management planning under the 2003 Act

41 Consistency and co-ordination with characterisations and plans under the 2003 Act

(1) SEPA—

(a) must secure appropriate consistency in the information in flood risk assessments, flood hazard maps, flood risk maps and flood risk management plans prepared under this Part with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act,

(b) must co-ordinate—

(i) preparation and review of flood hazard maps, flood risk maps and flood risk management plans under this Part with preparation and review of information mentioned in subsection (2), and

(ii) making available such maps and plans for public inspection with making available such information for such inspection, and

(c) may, where it considers it appropriate, integrate any such flood hazard map, flood risk map or flood risk management plan with the information mentioned in subsection (2).

(2) The information referred to in subsection (1)(b)(i) and (c) is—

(a) as respects flood risk maps and flood hazard maps, characterisations of river basin districts prepared under Chapter 2 of Part 1 of the 2003 Act, and
(b) as respects flood risk management plans, river basin management plans prepared under that Chapter.

(3) A lead authority responsible for preparing a local flood risk management plan must secure appropriate consistency in the information contained in the plan with information contained in characterisations of river basin districts and river basin management plans prepared under Chapter 2 of Part 1 of the 2003 Act.

Advisory groups

42 District flood risk advisory groups

(1) Each flood risk management district is to have one or more district flood risk advisory groups (“district advisory groups”).

(2) The function of each district advisory group is to advise SEPA on any matter which—
(a) relates to—
   (i) the preparation of any of the documents mentioned in subsection (3),
   (ii) the review and updating of any such document,
   (iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 16, and
   (iv) the review and updating of any such assessment, and
(b) is within the remit of the group.

(3) The documents mentioned in subsection (2)(a)(i) are—
(a) the flood risk assessment for the district,
(b) the document (under section 13) identifying—
   (i) potentially vulnerable areas in the district, and
   (ii) local plan districts,
(c) each flood hazard map and flood risk map for the district,
(d) the flood risk management plan for the district.

(4) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (3) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a district advisory group for the district.

(5) The number of district advisory groups, and their remits, membership and procedure are to be such as SEPA may determine.

(6) SEPA may determine the remit of a district advisory group for any flood risk management district by reference to one or more of the following—
(a) a particular geographical area,
(b) any other particular aspect of flood risk management within the district.

(7) In determining the number of district advisory groups for any flood risk management district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of—
(a) the persons specified or referred to in section 25(5)(a) to (c), and
(b) such other persons as appear to SEPA to have an interest in flood risk management for the district.

(8) SEPA may pay to members of a district advisory group such expenses and allowances as it may determine.

### Sub-district flood risk advisory groups

1. For the purpose of setting up sub-district flood risk advisory groups, SEPA must divide each flood risk management district into such geographical areas (“sub-districts”) as it considers appropriate.

2. Each sub-district is to have a sub-district flood risk advisory group (“sub-district advisory group”).

3. The function of each sub-district advisory group is to advise—
   (a) SEPA, on any matter which relates to—
      (i) the preparation of the documents mentioned in subsection (4),
      (ii) the review and updating of those documents,
      (iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 16, and
      (iv) the review and updating of any such assessment, and
   (b) lead authorities for local plan districts, all or part of which form part of the sub-district, on any matter which relates to the preparation of—
      (i) a local flood risk management plan,
      (ii) a report under section 32 or 33,
   so far as those matters are within the remit of the group.

4. The documents referred to in subsection (3)(a)(i) are—
   (a) the flood risk assessment for the flood risk management district of which the sub-district forms part,
   (b) the document (under section 13) identifying—
      (i) potentially vulnerable areas in the district, and
      (ii) local plan districts in the district,
   (c) each flood hazard map and flood risk map for the district,
   (d) the flood risk management plan for the district.

5. SEPA must, in preparing, reviewing and updating the documents referred to in subsection (4) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a sub-district advisory group.

6. A lead authority must, in preparing a local flood risk management plan or a report under section 32 or 33, have regard to any advice given by a sub-district advisory group.

7. The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.

7A. In determining the remit and membership of a sub-district advisory group, SEPA must seek to ensure appropriate representation of the interests of—
(8) SEPA may pay to members of a sub-district advisory group such expenses and allowances as it may determine.

Supplementary

44 Power to give effect to Community obligations etc.

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

45 Annual report on implementation of Directive

The Scottish Ministers must either—

(a) as soon as practicable after the end of each calendar year lay before the Parliament a report summarising action taken during the year for securing compliance with the requirements of the Directive in accordance with this Part by—

(i) the Scottish Ministers,

(ii) SEPA, and

(iii) the responsible authorities, or

(b) incorporate into their report under section 26 of the 2003 Act for the calendar year concerned a report summarising such action.

46 Availability of documents for public inspection

(1) Where, under this Part, any order, assessment, map, plan, or report is to be made available for public inspection, it—

(a) must be made available—

(i) free of charge,

(ii) at all reasonable times, and

(b) may be made available by such means, or in such formats, as the person required to make it available considers appropriate for the purpose of encouraging the inspection of it by members of the public.

(2) The person required to make available the document referred to in subsection (1) must publicise the arrangements for making it available unless the document is—
(a) a map prepared under section 15B, or
(b) a schedule prepared under section 56(1)(ba).

47 **Publicity of matters**

(1) Where, under this Part, a person (“the publisher”) is required to publicise any matter, the publisher—

(a) must do so by means of a notice published in the appropriate newspapers, and
(b) may further publicise the matter by such electronic or other means as the publisher considers appropriate.

(2) In subsection (1), the appropriate newspapers are—

(a) in relation to a local flood risk management plan, such newspapers circulating in the local plan district, or any part of the district, as the publisher considers appropriate,

(b) in relation to any other matter—

(i) at least one newspaper circulating throughout Scotland, and

(ii) such local newspapers circulating in any part of the flood risk management district to which the matter relates as the publisher considers appropriate.

48 **Interpretation of Part 3**

(1) In this Part—

“appropriate scale” means such scale as SEPA considers most appropriate,

“body of surface water”, “loch”, “river basin” and “watercourse” have the same meanings as in section 28(1) of the 2003 Act,

“sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers, other watercourses and, as the case may be, lochs to a particular point in a watercourse or loch,

“wetland” means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water.

(2) The Scottish Ministers may by order specify boundaries of any coastal area for the purposes of this Part.

**PART 4**

**FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS**

**General power**

49 **General power to manage flood risk**

(1) A local authority may do anything which it considers—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan,

(b) is necessary to reduce the risk of a flood in its area which is likely to—
(i) occur imminently, and
(ii) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or
(c) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).

(2) Without prejudice to the generality of subsection (1), a local authority may in particular—
(a) carry out any operations to which a flood protection scheme relates (see section 52),
(b) carry out any other flood protection work,
(c) carry out any temporary works required for the purposes of a flood protection scheme or any other flood protection work,
(d) enter into agreements or arrangements with any other person for the carrying out by that person or by the authority of any work which could be done by the authority under this Part,
(e) acquire land in accordance with section 55,
(f) make contributions towards expenditure incurred by any other person doing something which could be done by the authority under this Part, and
(g) receive from any other person contributions towards expenditure incurred by the authority in exercising any of its functions under this Part.

(3) Work carried out under this section may be carried out within or outwith the local authority’s area.

50 Limits of general power

(1) The power under section 49 does not enable a local authority to do anything which it is, by virtue of a limiting provision, unable to do.

(2) In subsection (1), a “limiting provision” is one which—
(a) prohibits or prevents the local authority from doing anything or limits its powers in that respect, and
(b) is expressed in an enactment (whenever passed or made).

(3) The absence from an enactment of provision conferring any power does not of itself make that enactment a limiting provision.

51 Limits of general power: statutory undertakings

(1) A local authority may not exercise the power under section 49 in a way which—
(a) damages any works or property belonging to a statutory undertaker, or
(b) interferes with the carrying on of its statutory undertaking,
unless the undertaker consents.

(2) But consent is not required if it is withheld unreasonably.

(3) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably, and their decision is final.
Clearance and repair works

51A Duty to carry out clearance and repair works
A local authority must carry out the works described in a schedule prepared by it under section 56 if it considers carrying out the works—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
(b) will not affect the implementation of the measures mentioned in paragraph (a).

Flood protection schemes

52 Flood protection schemes

(1) A flood protection scheme is a scheme by a local authority for the management of flood risk within the authority’s area.

(2) A proposed flood protection scheme must—

(a) contain a description of the operations the local authority proposes to carry out,
(b) include such maps, plans and specifications as may be specified by regulations by the Scottish Ministers,
(c) state how the operations will contribute to the implementation of current measures described in any relevant local flood risk management plan, and
(d) inasmuch as they will not so contribute, state the reasons why the local authority considers carrying them out will not affect the implementation of those measures.

(3) Schedule 2 makes further provision about the making of flood protection schemes.

(4) The Scottish Ministers may by order amend schedule 2 so as to modify the procedure for making flood protection schemes.

(5) Before making an order under subsection (4), the Scottish Ministers must consult—

(a) every local authority,
(b) such bodies appearing to them to be representative of the interests of local authorities as they consider appropriate,
(c) SEPA,
(d) Scottish Natural Heritage,
(e) Scottish Water,
(f) the National Park authority for each National Park, and
(g) such other persons as they consider appropriate.

53 Orders under the Land Drainage (Scotland) Act 1958

(1) This section applies where an improvement order affects any land on which operations are proposed to be carried out under a flood protection scheme.

(2) The flood protection scheme may include proposals to—

(a) vary the improvement order by—

(i) removing land from the improvement area,
(ii) removing or rendering ineffective all or any part of the drainage or protective works specified in the improvement order, or

(iii) amending, reapportioining or removing any obligations of maintenance imposed on the authorised persons under the improvement order, or

(b) revoke the improvement order.

(3) But the scheme may not include proposals to vary the improvement order so as to impose any new obligations on the authorised persons in respect of operations described in the scheme.

(4) Where the proposed operations will materially alter drainage works or protective works, the scheme must include proposals to vary the improvement order so as to remove the obligation of maintenance in respect of the part of the drainage works or protective works so altered.

(5) On commencement of the flood protection scheme, the improvement order is varied or, as the case may be, revoked to the extent specified in the scheme.

(6) Where an improvement order has been varied or revoked by a flood protection scheme, the local authority must cause a notice of the variation or revocation to be registered in the Land Register of Scotland or recorded in the Register of Sasines (as applicable).

(7) The Scottish Ministers may by order specify the form and content of a notice under subsection (6).

(8) In this section—

“authorised persons” has the meaning given in section 2(2) of the Land Drainage (Scotland) Act 1958 (c.24),

“drainage works” has the meaning given in section 18(1) of that Act,

“improvement area” has the meaning given in section 1(3) of that Act,

“improvement order” has the meaning given in section 1(1) of that Act,

“protective works” has the meaning given in section 2(1)(d) of that Act.

53A Registers of flood protection schemes

(1) Every local authority must keep a register of flood protection schemes.

(2) A local authority must enter into its register—

(a) details of each relevant scheme including—

(i) a summary of the operations described in the scheme,

(ii) a description (by reference to a map) of the land affected by those operations, and

(iii) a note of the date on which notice of the scheme is first published under paragraph 1(1)(a) of schedule 2,

(b) a note of the following in relation to each such scheme—

(i) any decision made under paragraph 4(1), 5(1), 7(4), or 9(1) of schedule 2,

(ii) the fact that notice has been given to the Scottish Ministers under paragraph 5(5) of that schedule including whether any relevant objector is a local authority or a National Park authority,
(iii) the fact that notice has been given of proposed modifications under paragraph 7(5)(a) or 9(3)(a) of that schedule,
(c) where such a scheme is confirmed with modifications, the information specified in paragraph (a)(i) and (ii) in relation to the modified scheme, and
(d) a note of any suspension of the operation of such a scheme under paragraph 12(6) of schedule 2.

(3) For the purposes of subsection (2)(a), a relevant scheme is a scheme—

(a) proposed by the local authority, or
(b) in relation to which it is notified under paragraph 1(1)(f)(iii) of schedule 2.

(4) A local authority may remove information from its register relating to a scheme if the scheme is rejected under paragraph 4(1)(b), 7(4)(c) or 9(1)(c) of schedule 2.

(5) A local authority must amend its register to reflect any decision of a sheriff under paragraph 12(7) of schedule 2 to quash a scheme recorded in its register in whole or in part.

(6) Where a local authority enters information in its register about a scheme in relation to which it notified another local authority under paragraph 1(1)(f)(iii) of schedule 2, it must notify that authority of the information entered.

(7) A local authority must make available its register for public inspection and may charge a reasonable fee for doing so.

53B Registers of flood protection schemes: information about schemes under 1961 Act

A local authority must enter into its register details of every flood prevention scheme made by it under the 1961 Act including—

(a) a summary of the operations to which the scheme relates, and
(b) a description (by reference to a map) of the land affected by those operations.

53C Registers of flood protection schemes: regulations etc.

(1) The Scottish Ministers may by regulations make further provision about the keeping of registers under section 53A(1) including, in particular, provision as to—

(a) the content of a register,
(b) the time by which information must be entered into a register,
(c) the circumstances in which information may or must be removed from a register, and
(d) the time by which notice must be given under section 53A(6).

(2) Regulations under subsection (1) may also—

(a) make further provision about the availability of registers under section 53A(7) including, in particular, provision as to the form and manner in which registers are to be made available,
(b) make provision—

(i) requiring local authorities to make available their registers to a person specified in the regulations,
(ii) as to the form and manner in which the registers are made available to the person,

(iii) requiring local authorities to inform the person of any change to their registers as soon as reasonably practicable or within a period specified in the regulations, and

(iv) requiring the person to make available information from local authorities’ registers for public inspection.

(3) References in this section and sections 53A and 53B to a local authority’s register are references to the register of flood protection schemes kept by the authority.

Deemed planning permission

54 Deemed planning permission for scheme work

In section 57 of the Town and Country Planning (Scotland) Act 1997 (c.8) (deemed planning permission), after subsection (2A) insert—

“(2B) On—

(a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the Flood Risk Management (Scotland) Act 2009 (asp 00) in respect of any operation which would constitute development, or

(b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,

the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”.

Acquisition of land

55 Acquisition of land

(1) A local authority may—

(a) by agreement, acquire land which it requires for the exercise of its functions under this Part,

(b) with the authorisation of the Scottish Ministers, compulsorily acquire land (other than Crown land within the meaning of section 80(7)(a)) which it requires for the purpose of carrying out scheme operations.

(2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act.

General

57 Recovery of expenses

A local authority may recover any expense it incurs in carrying out any repairs or reinstatement to flood protection work done—

(a) under section 49,
(b) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act,

from the owner or, as the case may be, occupier of the land on which the work was carried out if such expense is as a result of the actions of that person.

58 Information about ownership etc. of land

(1) For the purposes of enabling it to exercise any of its functions under this Part, a local authority may require any person it believes to be the owner or occupier of any land to state in writing—

(a) the nature of the person’s interest in that land, and

(b) the name and address of any other person known to the person as having a interest in that land.

(2) Any person who—

(a) fails to comply with a requirement of a local authority under this section, or

(b) in answer to any such requirement, intentionally or recklessly makes any statement which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

59 Damage to certain flood protection work

(1) Any person who intentionally or recklessly damages any—

(a) barrier, embankment or other work for defence against flooding constructed or otherwise created by a local authority—

(i) in exercise of any of its functions under this Part, or

(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act, or

(b) apparatus ancillary to such work,

commits an offence.

(2) For the avoidance of doubt, a person carrying out flood protection work under this Part does not commit an offence under subsection (1).

(3) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding.

(4) A person who commits an offence under subsection (1) is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 3 on the standard scale, or to both,

(b) in the sheriff court—

(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both, and
(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i) above, or to both.

60 Repeal of Flood Prevention (Scotland) Act 1961

The 1961 Act is repealed.

61 Interpretation of Part 4

In this Part—

“relevant local flood risk management plan” means, in relation to a local authority, a local flood risk management plan for a local plan district that includes all or part of the local authority’s area,

“scheme documents” means, in relation to a proposed flood protection scheme, the documents containing the material specified in, or by regulations made under, section 52(2),

“statutory undertaker” means—

(a) the holder of a licence under section 6(1) of the Electricity Act 1989 (c.29),

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (c.44),

(c) the Civil Aviation Authority,

(d) a holder of a licence under Chapter 1 of the Transport Act 2000 (c.38),

(e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c.21), and

(f) any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“statutory undertaking”—

(za) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,

(a) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002 (asp 3),

(b) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997.

PART 5

SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Advice to planning authorities and others as to flood risk

62 Advice to planning authorities and others as to flood risk

(1) SEPA must, when requested by a planning authority, give the authority advice as to flood risk in the authority’s district.
Part 5—SEPA: other flood risk management functions

(2) SEPA must, when requested by a National Park authority which, though not a planning authority, is (by virtue of the order designating the National Park for which the authority is established) to be treated as the planning authority for the Park for any purpose, give the authority advice in relation to flood risk in the Park.

(3) Advice under subsection (1) or (2) is to be based on such information as respects such flood risk as SEPA possesses, taking into account—

(a) the flood risk assessment, any flood hazard map and flood risk map, the flood risk management plan and any local flood risk management plan for the time being applicable to the authority’s district, and

(b) information provided to it by any planning authority or National Park authority which is not a planning authority.

(4) In this section—

(a) “planning authority” and a planning authority’s “district” (except where paragraph (b) provides otherwise) have the meanings given in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

(b) where—

(i) all or part of a planning authority’s district is designated as a National Park, and

(ii) the designation order makes provision for the National Park authority to be the planning authority for the Park for the purposes of the planning Acts,

“planning authority” in relation to the National Park means the National Park authority and a planning authority’s “district” means the National Park for which the National Park authority is established, and

(c) “the planning Acts” has the meaning given in section 277(1) of that Act.

63 Other assessment and maps of flood risk

(1) SEPA may—

(a) (in addition to the flood risk assessment it is required to prepare under section 9 and review under section 10) carry out such other assessment of flood risk as it considers appropriate, and

(b) (in addition to the flood hazard maps and flood risk maps it is required to prepare under section 17 and review under section 20) prepare such other maps in relation to flood risk as it considers appropriate.

(2) In the exercise of its power under subsection (1), SEPA must take into account the flood risk assessment, any flood hazard map and flood risk map and the flood risk management plan for the time being applicable to the area being assessed.

(3) SEPA may, where it considers it appropriate, integrate any map prepared by it under subsection (1)(b) with any such flood hazard map or flood risk map.
Flood warning

64 Flood warning

(1) SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood.

(2) Any warning under subsection (1)—

(a) of a flood which SEPA considers is occurring must be made available as soon as practicable after SEPA considers that is the case,

(b) of a flood which SEPA considers is likely to occur in the near future must be made available as soon as SEPA considers appropriate,

(c) is to be based on information available to SEPA, and

(d) must be made publicly available by SEPA by such means as it considers appropriate.

65 Assessment of whether flood warning system should be provided or altered

(1) SEPA may, and must where the Scottish Ministers direct, assess whether in its opinion—

(a) provision and operation by it of a flood warning system, or alteration of any flood warning system provided and operated by it, would assist in providing earlier or more accurate flood warning as respects an area, and

(b) the earlier or more accurate flood warning so provided would be likely to reduce the potential adverse consequences of flooding of the area for human health, the environment, cultural heritage and economic activity there.

(2) Any assessment under subsection (1) is to be based on such information as SEPA possesses.

(3) In carrying out any such assessment SEPA must consult in accordance with section 67(1).

(4) In this section and section 66, “flood warning system” means a system by which, for the purpose of detecting, forecasting or providing warning of any flood which is occurring or likely to occur in the near future, information as respects any of the following matters is obtained and transmitted—

(a) rainfall,

(b) the level or flow of any surface water (within the meaning of section 3(3) of the 2003 Act),

(c) such other matters as appear to SEPA to be appropriate for that purpose.

66 Provision, alteration etc. of flood warning system

(1) SEPA may—

(a) provide and operate any flood warning system,

(b) alter any flood warning system provided and operated by it,

(c) for those purposes provide, install or alter apparatus and carry out any engineering or building operations, and
(d) maintain any such apparatus.

(2) Before—
(a) providing a flood warning system in pursuance of paragraph (a) of subsection (1),
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection, or
(c) for either of the purposes in paragraph (a) or (b) carrying out any engineering or building operations,

SEPA must consult in accordance with section 67(2).

(3) Where SEPA considers—
(a) the alteration of any flood warning system in pursuance of paragraph (b) of subsection (1), or
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection (“any related thing”),

would be material, it must consult in accordance with section 67(2) before carrying out the alteration of the system or for that purpose any related thing.

67 Consultation required by sections 65 and 66

(1) The consultation required by section 65 is consultation with—
(a) every local authority whose area includes any part of the area which is the subject of the assessment, and
(b) as regards the police duties mentioned in subsection (3), the chief constable of the police force maintained for the police area which is the subject of the assessment.

(2) The consultation required by section 66 is consultation with—
(a) every local authority in whose area the power is to be exercised, and
(b) as regards the police duties mentioned in subsection (3), the chief constable of the police force maintained for the police area in which the power is to be exercised.

(3) The police duties are such duties under section 17(1)(a)(ii) and (iii) of the Police (Scotland) Act 1967 (c.77) (general duties of guarding, patrolling and watching so as to preserve order and protect life and property) as arise in relation to any flood risk.

(4) In this section, “police area” has the same meaning as in that Act.

Power to obtain information about land

79 SEPA’s power to obtain information about land

Section 27 of the Environment Act 1995 (c.25) (SEPA’s power to obtain information about land for the purposes mentioned in that section) applies where SEPA considers that it requires information relating to any land for the purpose of the exercise of any of its functions under this Part, subject to the modification that the notice served by SEPA under subsection (1) of that section must specify the land, the function and this Act.
Powers of entry

(1) Any person authorised by SEPA is entitled to enter any land for the purposes of carrying out SEPA’s functions under—

(ya) section 9 (preparation of flood risk assessments),

(za) section 10 (review and updating of flood risk assessments),

(a) section 13 (identification of potentially vulnerable areas and local plan districts),

(b) section 14 (review of potentially vulnerable areas and local plan districts),

(ba) section 15C (preparation of maps of artificial structures and natural features),

(c) section 16 (assessment of possible contribution of alteration etc. of natural features and characteristics),

(d) section 17 (preparation of flood hazard maps and flood risk maps),

(e) section 20 (review of flood hazard maps and flood risk maps),

(f) section 23 (preparation of flood risk management plans),

(g) section 28 (review of flood risk management plans),

(h) section 63 (other assessment and maps of flood risk), and

(i) section 66 (provision, alteration etc. of flood warning systems).

(2) Any person authorised by a local authority is entitled to enter—

(ya) any land for the purposes of preparing, reviewing or updating a map under section 15B,

(za) any land for the purposes of assessing a body of water under section 56,

(a) any land on which scheme operations are to be carried out, for the purposes of carrying out the operations or of executing any temporary works in relation to them,

(b) any land for the purpose of carrying out flood protection work on the ground mentioned in section 49(1)(b),

(c) any land for the purposes of maintaining flood protection work carried out—

(i) under section 49, or

(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act,

(ca) any land for the purposes of carrying out works under section 51A, and

(d) any land for the purposes of determining whether, and if so in what manner, any function conferred by or under Part 4 is to be exercised.
Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 68 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned, and

(b) that—

(i) the conditions in subsection (3) are satisfied,

(ii) the land is unoccupied, or

(iii) the case is one of urgency.

(3) The conditions mentioned in subsection (2)(b)(i) are—

(a) the person applying for the warrant has given notice under section 70(3) of the person’s intention to exercise the right,

(b) the notice period has expired,

(c) either—

(i) permission to exercise the right in relation to the land has been refused, or

(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

(a) does not entitle a person to use force against an individual, and

(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

(5) Any person who, without reasonable excuse, prevents or obstructs any other person from doing anything which is authorised by a warrant granted under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Powers of entry: supplementary

(1) A right to enter any land conferred by section 68 includes a right to—

(a) enter for the same purpose any land adjacent to it, and

(b) survey and examine the land.

(2) Any person who enters any land in exercise of a right conferred by section 68 is entitled, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—

(a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person, and

(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
(3) Before any such person exercises any such right, the occupant of the land concerned must be given—
   (a) where—
      (i) the person exercising any such right intends to take heavy equipment onto
          the land concerned or entry is sought to a house, and
      (ii) the right being exercised is not being exercised in accordance with a
           warrant,
           at least 7 days’ notice,
   (b) in any other case, at least 24 hours’ notice.

(4) A right to enter any land conferred by section 68 may be exercised only at a reasonable
time.

(5) Subsections (3) and (4) do not apply to the exercise of—
   (a) a right under section 68(2)(b), or
   (b) if the situation is urgent, a right under section 68(1)(i).

(6) A person authorised to exercise any right conferred by section 68 must, if required to do
so, produce written evidence of that authorisation.

(7) In subsection (3)(a)(i)—
   “heavy equipment” does not include vehicles designed soley or mainly for the
   carriage of passengers,
   “house” has the meaning given in section 194(1) of the Housing (Scotland) Act
   2006 (asp 1).

(8) In this section and section 71, references to a right to enter land conferred by section 68
include references to that right exercised in accordance with a warrant granted under
section 69.

Compensation

71 Compensation

(1) SEPA must compensate any person who has sustained damage in consequence of—
   (a) any exercise of the power in section 66(1)(c) or (d), or
   (b) the exercise of a right of entry conferred by section 68(1) (including the ancillary
       rights mentioned in section 70(1) and (2)).

(2) A local authority must compensate any person who has sustained damage in
consequence of—
   (a) scheme operations carried out by or on behalf of the local authority,
   (b) the subsequent maintenance of any such operations by or on behalf of the local
       authority,
   (c) any other exercise of the power in section 49(1),
   (ca) the carrying out of works under section 51A,
   (cb) the variation or revocation of an improvement order under section 53, or
(d) the exercise of a right of entry conferred by section 68(2) (including the ancillary rights mentioned in section 70(1) and (2)).

72 Compensation: supplementary

(1) In section 71, a person sustains damage if—

(a) the value of the person’s interest in land has been depreciated, or

(b) the person has been disturbed in the person’s enjoyment of land.

(2) SEPA or, as the case may be, a local authority must pay compensation under section 71 to a person only if—

(a) the damage is not attributable to an act or omission of the person,

(b) the act or omission causing the damage would have been actionable at the person’s instance if it had been done or omitted otherwise than in exercise of statutory powers,

(c) the person gives notice to SEPA or, as the case may be, the local authority of the person’s claim stating the grounds of the claim and the amount claimed, and

(d) the notice is given no later than the earlier of—

(i) 2 years after the depreciation first becomes apparent or, as the case may be, the first occurrence of the disturbance, and

(ii) 10 years from the completion of the scheme operations, maintenance or, as the case may be, exercise of a right of entry.

(2A) Subsection (2)(b) does not apply where the damage has been sustained in consequence of circumstances falling within section 71(2)(cb).

(3) Any question of disputed compensation under section 71 is to be determined by the Lands Tribunal for Scotland.

PART 7
RESERVOIRS

SEPA to be enforcement authority under the Reservoirs Act 1975

73 SEPA to be enforcement authority under the Reservoirs Act 1975

(1) The Reservoirs Act 1975 (c.23) (referred to in this Part as “the 1975 Act”) is amended as follows.

(2) In section 1 (ambit and interpretation), after subsection (4A) insert—

“(4B) The “area” of the Scottish Environment Protection Agency (referred to in this Act as “SEPA”), in its capacity as a relevant authority for the purposes of this Act, is the whole of Scotland.”.

(3) In section 2(1) (relevant authorities), for the words from “councils” to “1994” substitute “SEPA”.

(4) In Schedule 1 (index of definitions), after the entry for “Area (in relation to the Environment Agency)” insert—

“Area (in relation to SEPA) Section 1(4B)”.

819
74 **Transitional arrangements**

(1) An existing relevant authority is a body which, immediately before the date of commencement of section 73 ("the commencement date"), is a relevant authority in Scotland for the purposes of the 1975 Act.

(2) Each existing relevant authority must, no later than 28 days after the commencement date, give to SEPA—

(a) the register maintained by the authority under section 2(2) of that Act, and

(b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).

(3) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(4) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the commencement date.

(5) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the commencement date.

(6) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date has effect as if done by SEPA.

75 **Service of documents**

(1) In section 15(4) of the 1975 Act (reserve powers of enforcement authorities)—

(a) after “section 22A” insert “or 22B”,

(b) the words “or section 192 of the Local Government (Scotland) Act 1973” are repealed.

(2) After section 22A of that Act insert—

"22B Service of notices by SEPA

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by SEPA as if it were authorised or required to be served or given by or under that Act.”.

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**Enforcement powers and incident reporting**

76 **Extension of enforcement authority’s reserve powers**

The amendments to the 1975 Act made by section 75 of the Water Act 2003 (c.37) (which enable enforcement authorities to serve and enforce notices requiring undertakers to take measures in the interests of safety) extend to Scotland.
77 Incident reporting
After section 12 of the 1975 Act, insert—

“12ZA Incident reporting: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations.

(2) The regulations may, in particular—

(za) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(a) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,

(b) provide for a supervising engineer or other person to determine whether an incident has occurred,

(c) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,

(d) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(e) make provision for the publishing of reports,

(ea) confer powers of entry on the enforcement authority in connection with its functions under the regulations,

(f) create offences,

(g) provide that any offence created is triable—

(i) only summarily, or

(ii) either summarily or on indictment,

(h) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(i) provide for any offence created which is triable either summarily or on indictment to be punishable—

(i) on summary conviction, by a fine not exceeding the statutory maximum,

(ii) on conviction on indictment, by a fine,

(j) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—
(a) SEPA,
(b) undertakers of reservoirs to which they consider the regulations will apply,
(c) the Institution of Civil Engineers, and
(d) any other person as they consider appropriate.

(3A) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(4) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

77A Flood plans

After section 12B of the 1975 Act, insert—

“12C Flood plans: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.

(2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) The regulations may, in particular—

(a) provide that the enforcement authority or another person—

   (i) may specify the criteria, and
   (ii) is to determine whether a reservoir meets the criteria,

(b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,

(c) specify the form in which a flood plan is to be prepared,

(d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,

(e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(f) require the flood plan to be produced or submitted to the enforcement authority by such time as—

   (i) the regulations specify, or
   (ii) the authority or Scottish Ministers may direct,

(g) make provision about the approval of flood plans,

(h) make provision for the review and updating of flood plans,

(i) provide for a register of flood plans to be established and maintained,

(j) make provision for the publication, or distribution of copies, of—
(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
(ii) flood plans, and
(iii) reports,

(k) make provision in connection with the testing of flood plans,
(l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,
(m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,
(n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
(o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,
(p) create offences,
(q) provide that any offence created is triable—
   (i) only summarily, or
   (ii) either summarily or on indictment,
(r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
(s) provide for any offence created which is triable either summarily or on indictment to be punishable—
   (i) on summary conviction, by a fine not exceeding the statutory maximum,
   (ii) on conviction on indictment, by a fine.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,
(b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
(c) the Institution of Civil Engineers, and
(d) such other persons as they consider appropriate.

(5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.
Crown application

Reservoirs Act 1975: Crown application

After section 27A of the 1975 Act, insert—

"27B Crown application in Scotland"

(1) This Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.

(5) The power conferred by section 17 is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5)—

(a) "Crown land" means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department, or

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) "appropriate authority", in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(7) In subsection (6), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(8) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.".
PART 8
GENERAL

80 Crown application

(1) This Act binds the Crown.

(2) The modifications made by schedule 3 bind the Crown to the extent that the enactments modified bind the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 68 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—

(a) “Crown land” means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department, or

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

81 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual, that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a Scottish partnership, a partner, and

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

82 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

(2) An order under this section may modify any enactment, instrument or document.

83 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act—

(a) must be exercised by statutory instrument,

(b) may be exercised so as to make different provision for different purposes (including different areas), and

(c) includes power to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 86(1)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
(3) A statutory instrument containing—

(za) regulations under section 44(1),
(a) an order under section 52(4),
(b) an order under section 82(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

84 Interpretation: general

(1) In this Act—

“the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c.41),
“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003 (asp 3),
“flood protection work” means any operation on land for the purpose of protecting any land from flooding including—

(a) any work of construction, alteration, restoration, enhancement, improvement, repair, maintenance, demolition or removal,
(b) the sowing or planting of vegetation or forestry,
(c) any work ancillary to an operation specified in paragraph (a) or (b),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39), and “area” in relation to such an authority is to be construed accordingly,

“scheme operation” means, in relation to a flood protection scheme, an operation described in that scheme in pursuance of section 52(2)(a).

(2) The words and other expressions listed in schedule 4 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

85 Minor and consequential modifications

Schedule 3 makes—

(a) minor modifications, and
(b) modifications consequential on the provisions of this Act.

86 Commencement and short title

(1) The provisions of this Act, except this section and sections 3 to 6, 48, 61, 83 and 84, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Flood Risk Management (Scotland) Act 2009.
SCHEDULE 1
(introduced by section 23(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 before or after the plan is next
       reviewed under section 28.

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 17 and the conclusions
   that can be drawn from those maps.

4 A summary of flood-related measures taken under—
       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) 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.

6 A summary of—
   (a) the steps taken under subsections (2) to (5) of section 25 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.

7 Information as to SEPA.
Flood Risk Management (Scotland) Bill
Schedule 2—Flood protection schemes: procedure etc.

8 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 41.

PART 2

COMPONENTS OF THE SUBSEQUENT UPDATE OF FLOOD RISK MANAGEMENT PLANS

9 A summary of any changes which have been made as compared to the previous version
of the plan.

10 An assessment of the progress made towards the achievement of the objectives included
in the plan under paragraph 1(a).

11 A summary of any measures included in the previous plan under paragraph 1(b) which
were not implemented, with reasons for the non-implementation.

12 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 52)

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—
(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 (in so far 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

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

(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

(1) Any person may object to a proposed flood protection scheme.

(2) An objection is valid if it—
Flood Risk Management (Scotland) Bill
Schedule 2—Flood protection schemes: procedure etc.

(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
   (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.

(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

(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).

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 53 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 53 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 85)  
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)

2A 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)

3 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 49 of the Flood Risk Management (Scotland) Act 2009 (asp 00)”.  

Electricity Act 1989 (c.29)

3A 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)

4 Paragraph 56 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.
Environment Act 1995 (c.25)
5 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)
5A 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)
6 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)
7 The Flood Prevention and Land Drainage (Scotland) Act 1997 is repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)
8 Paragraph 24 of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

Transport Act 2000 (c.38)
8A 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)
9 Paragraph 3 of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

Water Environment and Water Services (Scotland) Act 2003 (asp 3)
10 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”.

SCHEDULE 4
(introduced by section 84(2))

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Flood Risk Management (Scotland) Bill
[AS AMENDED AT STAGE 2]


Introduced by: Richard Lochhead
On: 29 September 2008
Bill type: Executive Bill
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND – EC FLOODS DIRECTIVE

4. The flood risk assessment and management provisions of the Bill (Part 3) make provision and enable provision to be made for or in connection with implementing the EC Floods Directive¹ (“the Directive”).

5. The purpose of the Directive (set out in article 1) is to establish a framework for the assessment and management of flood risks, aiming at the reduction of the adverse consequences for human health, the environment, cultural heritage and economic activity associated with floods.

6. The Directive applies to all forms of flooding by defining “flood” to include all temporary covering by water of land not normally covered by water. This includes flooding from rivers, lochs, groundwater and the sea as well as flooding from surface water runoff but Article 2 of the Directive allows Member States to choose whether to exclude floods from sewerage systems. The Directive requires Member States to:

This document relates to the Flood Risk Management (Scotland) Bill as amended at Stage 2 (SP Bill 15A)

- produce preliminary flood risk assessments (deadline – December 2011)
- produce flood hazard maps and flood risk maps (deadline – December 2013)
- produce flood risk management plans (deadline – December 2015)

7. The Directive gives Member States the freedom to set their own objectives for flood risk management, and allows member states to utilise existing tools, information and plans.

BACKGROUND – THE FLOOD PREVENTION (SCOTLAND) ACT 1961

8. The provisions which replace the Flood Prevention (Scotland) Act 1961 (Part 4) make provision for a revised statutory process for flood protection schemes (known as flood prevention schemes under that Act). The Act gave local authorities the power to carry out measures for the prevention or mitigation of flooding of non-agricultural land including:

- cleansing any watercourse or embankment;
- repairing any watercourse or embankment;
- maintenance of any watercourse or embankment;
- improvement, alteration or reinstatement of a watercourse, work or apparatus;
- construction of a new watercourse, work or apparatus.

9. These powers were permissive and discretionary only, i.e. the authority could exercise the powers but did not have to. Additionally, no work other than maintenance could be carried out under the Act without the promotion of a flood prevention scheme by the local authority. Flood prevention schemes were confirmed under the 1961 Act by the Secretary of State and then since devolution by the Scottish Ministers and financially supported by the Scottish Government if they complied with the approved cost/benefit ratio.

10. The Flood Prevention and Land Drainage (Scotland) Act 1997 amended the 1961 Act by placing statutory duties on local authorities including:

- requiring the local authority to assess all watercourses from time to time to ascertain whether or not they are likely to cause flooding of non-agricultural land;
- requiring the local authority to carry out works to reduce the likelihood of flooding of non-agricultural land caused by the condition of a watercourse;
- requiring local authorities to liaise with adjacent authorities in order to warn them of flood risk from watercourses;
- requiring local authorities to prepare biennial reports.

THE BILL – OVERVIEW

11. The Bill makes provision in relation to five main areas: (i) coordination and cooperation within the domain of flood risk management; (ii) assessment of flood risk and preparation of flood risk maps and flood risk management plans, including implementing the EC Floods Directive; (iii) amendments to local authority and SEPA functions for flood risk management;
(iv) a revised statutory process for flood protection schemes; and (v) amendments to the
enforcement regime for the safe operation of reservoirs.

12. The Bill is separated into eight Parts:

- **PART 1** creates general duties which Scottish Ministers, SEPA, and responsible
authorities must comply with when exercising their functions in relation to flood risk
management. These include a duty to exercise those functions with a view to
reducing flood risk and to collaborate when doing so and a duty to take account of
guidance and comply with directions in relation to flood risk management.

- **PART 2** defines some of the principal expressions used in the Bill, including “flood”
and “flood risk”.

- **PART 3** provides for the preparation and review of the flood risk assessments, flood
hazard and flood risk maps and flood risk management plans which are required by
the Directive. It also provides for local flood risk management plans to be prepared
and reviewed. It requires advisory groups to be created to advise on the preparation
of these documents and it imposes a duty on public authorities, including the Scottish
Ministers, to have regard to flood risk management plans and local flood risk
management plans where relevant.

- **PART 4** sets out provisions to replace the 1961 Act. These provisions will give local
authorities broad powers to allow them to take forward a full range of flood risk
management measures.

- **PART 5** replaces SEPA’s powers to provide flood warning systems and carry out
flood risk assessments under the Agriculture Act 1970 and the Environment Act
1995. The provisions provide SEPA with a new statutory framework for exercising
these flood risk management functions.

- **PART 6** sets out new powers of entry and compensation provisions to support local
authorities and SEPA in exercising their statutory responsibilities under the Bill.

- **PART 7** amends the Reservoirs Act 1975 to transfer responsibility for enforcement of
the Act from local authorities to SEPA. It inserts a new section into the Act to
enable provision to be made, by regulations, to introduce a new system for reporting
incidents which could affect safety at reservoirs. It also inserts a new section about
the application of that Act to the Crown.

- **PART 8** makes general provision for the making of orders and regulations under the
Bill. It also makes provision about the application of the Bill to the Crown and
commencement of the Bill.

**THE BILL – SECTION BY SECTION**

**PART 1 – GENERAL DUTY, DIRECTIONS AND GUIDANCE**

**Section 1 – General duty**

13. Section 1(1) places a general duty on the Scottish Ministers, SEPA, local authorities,
Scottish Water and other responsible authorities to exercise their flood risk related functions with
a view to reducing overall flood risk and, in particular, to do so to secure compliance with the
Directive. “Flood risk” is defined in section 3.
14. “Responsible authorities” are defined in section 5 and include local authorities, Scottish Water and any other public bodies and office holders designated by the Scottish Ministers. “Flood risk related functions” are defined in subsection (3) and include functions under the Bill and any other functions relevant to flood risk management which the Scottish Ministers may specify by order.

15. Because the definition of “flood risk related functions” includes functions under the Bill, the general duty to act with a view to reducing overall flood risk will apply to the Scottish Ministers when designating responsible authorities and specifying new flood risk related functions and to SEPA, the Scottish Ministers and responsible authorities when they are involved in the preparation of flood risk assessments, flood maps and flood risk management plans under Part 3 of the Bill. It will also apply to local authorities and to the Scottish Ministers when considering flood protection schemes and to SEPA and the Scottish Ministers when dealing with flood risk assessment and flood warning functions under Part 5 of the Bill.

16. Where the exercise of their flood risk related functions affects a flood risk management district, subsection (2)(za) requires the Scottish Ministers, SEPA and responsible authorities to act with a view to achieving the objectives set out in the flood risk management plan for that district. Flood risk management districts are established under section 8 and sections 23 to 28 make provision for flood risk management plans to be prepared, approved and reviewed for those districts.

17. Subsection (2)(a) requires the Scottish Ministers, SEPA and the responsible authorities to take into account social, environmental and economic considerations when exercising their flood risk related functions. This would appear to be consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective.

18. Subsection (2)(b) requires the Scottish Ministers, SEPA and the responsible authorities to act in the way best calculated to manage flood risk in a sustainable way, to promote sustainable flood risk management, to act in the way best calculated to contribute to sustainable development, and to take steps to raise public awareness of flood risk. These duties apply in so far as is consistent with the purposes of the function in question.

19. Subsection (2)(c) requires the Scottish Ministers, SEPA and the responsible authorities to cooperate so as to coordinate the exercise of their respective functions for flood risk management, so far as is practicable. This provides flexibility for these bodies to take action in isolation where it is sensible to do so, e.g. in emergency situations. Subsection (2A) clarifies that they may enter into agreements with each other for the purposes of co-operation.

Section 2 – Directions and guidance

20. Subsection (1) enables the Scottish Ministers to direct or issue guidance to SEPA and responsible authorities on how they must exercise their flood risk related functions. Subsection (2) then requires SEPA and responsible authorities to comply with such directions and take account of any such guidance. The Scottish Ministers must comply with their general duties under section 1 when giving directions or issuing guidance. Before giving a direction they must...
also consult the person to whom the direction is to be given, as well as SEPA or any responsible authorities as Scottish Ministers consider appropriate.

21. Subsection (3) would enable the Scottish Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.

PART 2 – PRINCIPAL EXPRESSIONS

Section 3 – “Flood” and “flood risk”

22. In section 3, the definition of “flood” and “flood solely from a sewerage system” determine what types of floods are covered by the Bill. The cumulative effect of these definitions is that all forms of flooding are covered by the Bill except where the source of the flood is solely from a sewerage system. A flood solely from a sewerage system is a flood containing sewage which is caused solely by a blockage or a failure in a sewerage system and which is not connected with external hydraulics. Floods that are caused by a sewer being overloaded by higher than usual rainfall are covered by the Bill. An example of a flood that is not covered by the Bill would be where flooding is caused by a sewer collapsing or becoming blocked, and where that collapse or blockage is not a result of external hydraulics, e.g. higher than usual rainfall or river levels.

23. “Flood” means the temporary covering by water from any source of land not normally covered by water. This reference to land will include buildings because “land” is defined for the purposes of references in Acts of the Scottish Parliament in the Interpretation Order2 and this definition includes buildings and other structures.

24. This section also defines the term “flood risk”. The definition mirrors the definition in Article 2 of the Directive and states that flood risk is the combination of the probability of flooding and the potential adverse consequences of flooding to human health, the environment, cultural heritage and economic activity.

Section 5 – Responsible authorities

25. Section 5 identifies local authorities and Scottish Water as “responsible authorities” and allows the Scottish Ministers to designate other public bodies and office holders as responsible authorities by order. Responsible authorities will have to comply with the general duty in Part 1 of the Bill. They will also have duties under Part 3 to assist SEPA in preparing the flood risk assessments, maps and plans required by the Directive and to assist local authorities in the preparation and completion of local flood risk management plans. Before designating new responsible authorities under this section, the Scottish Ministers must consult SEPA, existing responsible authorities, the proposed new responsible authorities and such other persons as are deemed appropriate. When designating responsible authorities the Scottish Ministers must also comply with their general duty under Part 1 of the Bill.

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PART 3 – FLOOD RISK ASSESSMENT, MAPS AND PLANS

Section 7 – General purpose of Part 3

26. 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

27. 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.

28. 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.

29. 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.

30. The provisions in this section will enable the Scottish Ministers to implement Article 3(2)(b) of the Directive.

Section 9 – SEPA to prepare flood risk assessments

31. 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 December 2011, which is the deadline set by the Directive.

32. 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).

33. 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.
34. 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.

35. 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.

36. Subsection (5) allows SEPA to include other information in a flood risk assessment where it considers appropriate.

Section 10 – Flood risk assessment: review

37. This section requires SEPA to review and, where appropriate, update the flood risk assessment by 22nd December 2018, or by an earlier date specified by the Scottish Ministers, and then every 6 years thereafter. The 22 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

38. 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

39. Section 12 requires SEPA to make copies of the current flood risk assessment available for public inspection. This section should be read with sections 46 and 47, 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

40. 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 17 and flood risk management plans produced under section 23 will set objectives to manage flood risks for the areas.
41. 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 29. 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 48(1). The Scottish Ministers may specify the boundaries of coastal areas under section 48(2).

42. 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.

43. 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.

44. 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.

45. This section will enable the Scottish Ministers to implement Article 5 of the Directive.

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

46. 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

47. 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 15A – Scottish Water to assess flood risk from sewerage systems

48. 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.
49. 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.

50. 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.

51. 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 15B - Local authorities to prepare maps of bodies of water etc

52. 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.

53. “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 48 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.

54. 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.

55. Subsection (4) provides that the maps must be made available for public inspection. This requirement should be read with section 46, which contains detailed provisions about making documents publicly available.

Section 56 – Local authorities to assess bodies of water

56. 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.

57. 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 51A, which imposes a duty on local authorities to carry out works described in schedules of clearance and repair works.
58. Subsection (1A) defines “clearance and repair works”. Subsection (1B) 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 (1C) requires schedules of clearance and repair works to be made available for public inspection. This requirement should be read with section 46.

59. Subsection (2), as read with subsection (3), 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 15C - SEPA to prepare maps of artificial structures and natural features

60. 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 48 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.

61. Maps have to show whether structures or features were constructed by local authorities under the 1961 Act or under Part 4 of the Bill. 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 48) and in a form specified in regulations made by the Scottish Ministers.

62. 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 46.

Section 16 – SEPA to assess possible contribution of alteration etc. of natural features and characteristics

63. 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 (1A) contains examples of “natural features and characteristics”.

64. When carrying out this assessment, subsection (3) requires SEPA to consider the flood risk assessment prepared under section 9, any relevant flood hazard or flood risk maps prepared under section 17 and any relevant flood risk management plan prepared under section 23. There is also a requirement that the assessments refer to maps which are at the appropriate scale and which show where the restoration of natural features and characteristics could contribute to the management of flood risk in the district.

65. The first assessment must be carried out by 22 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
sections 46 and 47 again apply in relation to the detail of doing that.

Section 17 – SEPA to prepare flood hazard maps and flood risk maps

66. 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 18 and 19, this section implements Article 6 of the Directive. Section 18 sets out what flood hazard maps must show and section 19 does the same for flood risk maps.

67. The first maps must be prepared by 22 December 2013, which is the date set by Article 6 of the Directive.

Section 18 – Flood hazard maps

68. 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.

69. 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 (8) 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.

70. 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.

71. 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.

72. 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.
73. 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.

74. Subsection (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 Bill.

75. 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.

76. Subsection (7A) 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 19 – Flood risk maps

77. 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.

78. Flood risk maps must show the potential adverse consequences of floods by reference to various matters listed in subsection (2). These matters are the same as 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.

79. 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 Bill.

Section 20 – Flood hazard maps and flood risk maps: review

80. This section requires SEPA to review and, where appropriate, update the flood hazard and risk maps by the 22 December 2019 and every 6 years thereafter. The 22 December deadline and the requirement to review every 6 years come from Article 14 of the Directive.

81. 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.
82. Subsection (3) requires updated maps to comply with the same content requirements as the original maps prepared under section 17.

Section 21 – Flood hazard maps and flood risk maps: availability for public inspection

83. Section 21 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 46 and 47 which contain detailed requirements for making documents available for inspection and publicising matters.

Section 22 – Flood hazard maps and flood risk maps: regulations

84. Section 22 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 83 contains detailed provisions about how regulations are to be made.

Section 23 – SEPA to prepare flood risk management plans

85. 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 24 and schedule 1, this section implements Article 7 of the Directive.

86. 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 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.

87. 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 24, which sets out matters which SEPA must take into account when setting objectives and identifying measures for the purpose of flood risk management plans. Subsection (4B) duplicates subsection (4)(b) and requires SEPA to identify the measures which it considers to be the most sustainable.

88. When setting objectives and identifying measures, subsection (4A) requires SEPA to consider the assessment of the potential contribution of altering or restoring natural features and characteristics. Section 24(1)(iii) is very similar because it requires SEPA to take account of the assessment carried out under section 16 when setting objectives and identifying measures.

89. Subsection (4C) requires SEPA to set out reasons for selecting measures which differ from those covered by the assessment of the potential contribution of altering or restoring natural features and characteristics which is referred to in subsection (4A).

90. 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.
91. Subsections (6) and (7) allow SEPA to include maps, diagrams and other illustrative information in plans.

Section 24 – Flood risk management plans: objectives and measures

92. 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.

93. 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 17. Also, some matters are dealt with elsewhere in the Bill, for example, in section 1 (general duty).

94. 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 (2A) defines structural measures as measures that involve flood protection work (as defined in section 84). It also gives a non-exhaustive list of non-structural measures, including flood warning, awareness raising and the preparation and review of development plans.

Section 25 – Flood risk management plans: publicity of drafts etc. and consultation

95. Sections 25 to 27 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 46 and 47.

96. Section 25 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 publicisation and consultation on draft river basin management plans. This similarity is relevant because section 41 requires SEPA to co-ordinate the preparation of flood risk plans with river basin management plans.

97. 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.

98. 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)).
99. 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 Scottish Natural Heritage, National Park Authorities and any other persons SEPA consider 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.

100. 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 26 – Flood risk management plans: submission for approval

101. 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 46 and 47.

102. 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 25. The statement must also include a summary of the representations received about the draft plan and of any consequential adjustments made to the plan.

103. If, having considered the statement from SEPA under subsection (2), the Scottish Ministers decide that more consultation and publicity work is needed under section 25, subsection (3) allows them to return the plan to SEPA. In doing so they may direct SEPA to take such further action under section 25 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.

104. 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 27 – Flood risk management plans: approval and publication

105. 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.

106. 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.

107. 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.

108. 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 46 and 47. Subsection (6) allows SEPA to charge a reasonable price for copies of the plan.

Section 28 – Flood risk management plans: review

109. 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 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.

110. 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.

111. 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 will give Ministers the same control of the review process as they have for the original plan.

Section 29 – Local authorities to prepare local flood risk management plans

112. 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 plans will cover the local plan districts identified by SEPA under section 13.

113. 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 23. “Lead authority” are local authorities identified in accordance with subsection (8).

114. Subsection (2) sets out that a local flood risk management plan must comprise two parts: a supplementary part and an implementation part.

115. 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 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.

116. 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)(ba) 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 surface water run-off or urban drainage. Subsection (4)(c) allows the lead authority to include any other information they consider relevant to the implementation of the measures.

117. 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.

118. Subsection (6) allows the Scottish Ministers to specify, in regulations, further matters to be included in local flood risk management plans. Subsection (6A) requires the Scottish Ministers to consult SEPA, responsible authorities and such other persons as they consider appropriate before making such regulations.

119. Subsection (7) 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.

120. Subsection (8) makes provision for identification of a lead authority for each local plan. Where a local plan falls entirely within a local authority’s area, subsection (8)(a)(i) provides for that local authority to be the lead authority for that local plan. Where a local plan falls within two or more local authority areas, subsection (8)(b)(ii) provides for one of the authorities whose area is within the local plan 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 area but where agreement cannot be reached, the Scottish Ministers may determine the lead authority.

Section 30 – Local flood risk management plans: publicity and consultation

121. 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 25(2). Subsection (2) gives the lead authority discretion to determine the manner in which the draft plan is to be published.

122. 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 46 and 47. Subsection (4) allows any person to make representations to the lead authority about the draft supplementary part.

123. 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 and any other persons the lead authority consider appropriate. Responsible authorities are defined in section 5 and include Scottish Water and local authorities.

124. 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 23. 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 25(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.

125. 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 31 – Local flood risk management plans: completion and publication

126. Section 31 makes provision for the completion and publication of local flood risk management plans.

127. 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.

128. 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 (6) provides for the “local plan deadline” to be 6 months after the relevant flood risk management plan is approved under section 27 or another date set by the Scottish Ministers.

129. 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.

130. 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 46 and 47.

Section 32 – Local flood risk management plans: interim report

131. 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 31 and the lead authority must produce and publish a report on the conclusions of the review.

Section 33 – Local flood risk management plans: final report

132. 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.

133. 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 29 to supplement the updated flood risk management plan produced for each 6 year period under section 28. This allows for any changes in local plan districts to be taken into account when planning for the next 6 years.
Section 34 – Local flood risk management plans: joint working

134. 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 29(8), which provides for the identification of lead authorities, and section 38, which allows lead authorities to seek information and assistance in preparing and reviewing local plans.

Section 35 – Regulations relating to flood risk management plans and local flood risk management plans

135. 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 83 sets procedural requirements for making such regulations.

Section 36 – Duty to have regard to flood risk management plans and local flood risk management plans

136. This section 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).

Section 37 – Power of SEPA to obtain information, documents and assistance

137. 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 Bill. It does not require disclosure of information or documents protected by the law on confidentiality (see section 39(3)).

138. 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 (15C), flood hazard and flood risk maps (sections 17 and 20) and flood risk management plans (sections 23, 24 and 28). This duty only applies where SEPA’s requests for information or assistance are reasonable.

139. 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 urban drainage and flooding by surface run-off water. Again, the duty only applies where SEPA’s requests for information about flood risk are reasonable.
140. 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 39(1), (2) and (4) sets further requirements about the content of information notices. Section 39(5) contains interpretation provisions in relation to “documents”.

141. 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 38 – Power of lead authorities to obtain information, documents and assistance

142. 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 29) and interim and final reports (sections 32 and 33). As with section 37, it does not require disclosure of information or documents protected by the law on confidentiality (see section 39(3)).

143. 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.

144. 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 39(1), (2) and (4) provide more detail about the form and content of and procedures in relation to such notices.

145. 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 38A – Power of local authorities to obtain information

146. 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 15B) and assessments and schedules of clearance and repair works in relation to those bodies of water (section 56).

147. 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 39 – Power to obtain information, documents and assistance: supplementary

148. Subsections (1), (2) and (4) set further requirements about the content of notices served under sections 37(5) and 38(3) and what may be done with documents produced in response to a notice.

149. 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 40 – Power to obtain information, documents and assistance: offence

150. 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 37(5) or 38(3). It will not be 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.

151. 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 41 – Consistency and co-ordination with characterisations and plans under the 2003 Act

152. This section sets out arrangements for coordinating flood risk assessment and management work under Part 3 of the Bill, 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 Bill 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.

153. 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.

154. 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.

155. 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 42 – District flood risk advisory groups

156. 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.

157. Subsections (2) to (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 16), flood risk and flood hazard maps (sections 17 and 20) and flood risk management plans (sections 23 and 28).

158. Subsection (4) requires SEPA to have regard to any advice given by advisory groups on these matters.

159. 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.

160. 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 25(5)(a) to (c) (responsible authorities, Scottish Natural Heritage and National Park authorities) and other persons with an interest in flood risk management.

Section 43 – Sub-district flood risk advisory groups

161. 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.

162. 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.

163. 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.

164. 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 17), or flood risk management plan (section 23). 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.
165. 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 (7A) requires SEPA to try and ensure appropriate representation of responsible authorities, Scottish Natural Heritage and National Park authorities and other persons with an interest in flood risk management for the sub-district.

Section 44 – Power to give effect to Community obligations etc.

166. Subsection (1) provides that the Scottish Ministers may by regulations provide that the provisions of Part 1 of the Bill 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 45 – Annual report on implementation of Directive

167. 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 for securing compliance with the requirements of the Directive.

168. The report may be a freestanding report under the Bill 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 46 – Availability of documents for public inspection

169. This section applies whenever SEPA or a lead authority must make documents available for public inspection under this Part of the Bill. The Bill 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 15B and 56), SEPA maps of artificial structures and natural features (section 15C), assessments and maps about the possible contribution of alteration or restoration of natural features and characteristics (section 16), flood hazard and flood risk maps (section 21), flood risk management plans, drafts of those plans and statements relating to their preparation (sections 25 to 27), local flood risk management plans, drafts of some parts and reports in relation to those plans (sections 30 to 33). 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 47, unless the document concerned is a local authority map of bodies of water under section 15B or a schedule of clearance and repair works under section 56.
Section 47 – Publicity of matters

170. This section applies whenever SEPA or a lead authority must publicise something under this Part of the Bill, such as those requirements in relation to the matters mentioned in paragraph 149. 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).

Section 48 – Interpretation of Part 3

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

PART 4 – FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

Section 49 – General power to manage flood risk

172. Subsection (1) enables a local authority to do anything which it considers will contribute to the implementation of current measures described in any relevant local flood risk management plan. It may also do anything it considers necessary to reduce an imminent risk of flooding which would be likely to have serious adverse consequences, or which it considers will otherwise manage flood risk in its area without affecting the implementation of the area’s local flood risk management plan (for instance, because it will be possible to carry it out in addition to the measures identified in the plan).

173. Subsection (2) provides various illustrations of what a local authority may do under subsection (1), without restricting the generality of the power contained in that subsection.

174. Subsection (3) provides that work which meets the criteria in subsection (1) may be carried out within or outwith the local authority’s area.

Section 50 – Limits of general power

175. Subsection (1) prevents a local authority from doing anything under section 49 which it would otherwise be unable to do because of a “limiting provision”. Subsection (2) defines a limiting provision, which must be contained in an Act or other form of legislation.

176. Subsection (3) provides that a limiting provision must contain a positive restriction on the powers of the local authority, rather than merely failing to confer a power on it to do a thing.

Section 51 – Limits of general power: statutory undertakings

177. Section 51 prohibits a local authority from exercising its general power to manage flood risk in a way which damages any works or property belonging to a statutory undertaker, or interferes with the carrying on of its statutory undertaking, unless the undertaker consents. However, consent is not required if it is withheld unreasonably and it is for the Scottish Ministers to determine whether consent has been withheld unreasonably in the event of a dispute, their
decision being final. “Statutory undertaker” and “statutory undertaking” are defined in section 61.

Section 51A- Duty to carry out clearance and repair works

178. Section (51A) imposes a new duty on local authorities to undertake the clearance and repair works described in the schedule prepared under section 56, as long as the works contribute to the implementation of measures described in the relevant local flood risk management plan (as defined in section 61) or do not affect the implementation of those measures.

Section 52 – Flood protection schemes

179. This section defines a flood protection scheme as being a scheme by a local authority for the management of flood risk within the authority’s area. Subsection (2) sets out what a proposed flood protection scheme must contain. The Scottish Ministers are empowered to lay down requirements to include maps, plans and other specifications in regulations. In addition, a scheme must state how the measures included in it will contribute to the implementation of any relevant local flood risk management plan and, if they will not contribute, demonstrate how this will not affect delivery of such a plan (for example, because there is no such plan or because it will be possible to carry out the scheme as well as the measures contained in the plan). Further provision about the making of a flood prevention scheme is made within schedule 2, which may also be amended by the Scottish Ministers by order. The Scottish Ministers may only make such an order after consultation with those persons and bodies listed in subsection (5).

Section 53 – Orders under the Land Drainage (Scotland) Act 1958

180. This section makes provision for flood protection schemes to vary improvement orders made under the Land Drainage (Scotland) Act 1958.

181. The 1958 Act allowed owners of agricultural land to apply to the Scottish Ministers for improvement orders authorising drainage works in order to improve drainage or prevent or mitigate flooding or erosion of agricultural land. The Flood Prevention (Scotland) Act 1961 gave local authorities power to protect non-agricultural land from flooding. That Act is repealed by section 60 of the Bill and the general power for local authorities to manage flood risk under section 49 now covers both agricultural and non-agricultural land. Paragraph 1 of schedule 3 amends the 1958 Act so that new improvement orders cannot be made for the purposes of preventing or mitigating flooding. That amendment does not prevent new orders being made under the 1958 Act for the purposes of improving drainage or preventing or mitigating erosion. Existing improvement orders under the 1958 Act will remain in place but this section allows them to be varied where they affect any land on which operations are proposed to be carried out under a flood protection scheme.

182. Subsection (2) sets out the changes which can be made to improvement orders. Flood protection schemes can revoke improvement orders completely, they can reduce the size of improvement areas or they can remove all or any part of the drainage or protective works covered by an improvement order. Schemes can also amend, reapporition or remove the obligations on authorised persons to maintain drainage or protective works covered by the improvement order. This should be read with subsections (3) and (4) which restrict the changes
which can be made to maintenance obligations. “Authorised persons” are defined in section 2(2) of the 1958 Act as the owners of agricultural land situated in the improvement area covered by the improvement order.

183. Subsections (3) and (4) restrict the changes which can be made to maintenance obligations under improvement orders. Subsection (3) prevents flood protection schemes from altering maintenance obligations under improvement orders so as to oblige the authorised persons to maintain things done by local authorities under schemes. Where proposed scheme operations will alter drainage or protective works under an improvement order, subsection (4) requires the scheme to remove the obligations on authorised persons to maintain the parts of the drainage or protective works which are altered.

184. The commencement of a flood protection scheme triggers the variation or revocation of the improvement order. Subsection (6) requires a notice of the variation or revocation of an improvement order to be registered in the Land Register of Scotland or the Register of Sasines, whichever is appropriate. Subsection (7) enables the Scottish Ministers to prescribe the form and content of such notices by regulation.

Section 53A - Registers of flood protection schemes

185. Section 53A places a duty on each local authority to create and update a register of flood protection schemes relevant to the local authority area. A relevant scheme is one proposed by a local authority or one for which it has received notification from another local authority under paragraph 1(1)(f)(iii) of schedule 2.

186. Subsection 2(a) sets out the details pertaining to each scheme that must initially be included in the register. Subsection 2(b)(i) specifies that the register must include a note of whether any preliminary decision to confirm, confirm with modifications or reject the scheme has been taken by the local authority, and whether any final decision to confirm, confirm with modifications or reject has been taken by the local authority or the Scottish Ministers. Subsection 2(b)(ii) requires the register to show whether the scheme has been referred to the Scottish Ministers because of an objection from a relevant objector, and whether that objector is a local authority or a National Park Authority. Subsection 2(b)(iii) requires the register to show whether the Scottish Ministers or local authority have notified relevant objectors and anyone else affected by the scheme of any proposed modifications.

187. Subsection (4) enables a local authority to remove details of proposed schemes that were rejected by the local authority or by the Scottish Ministers. Subsection (5) requires a local authority to amend the register to reflect any decision by a sheriff to quash any part of a scheme on appeal.

188. Subsection (6) requires a local authority to inform any other local authority that it has notified about a proposed scheme about any information entered in its register relating to the proposed scheme.

189. Subsection (7) requires the local authority to make the register available for public inspection, and allows it to make a reasonable charge for doing so.
Section 53B - Registers of flood protection schemes: information about schemes under 1961 Act

190. Section 53B requires each local authority to place details of flood prevention schemes made by it under the Flood Prevention (Scotland) Act 1961 on its register of flood protection schemes.

Section 53C - Registers of flood protection schemes: regulations etc

191. Section 53C enables the Scottish Ministers to make further regulations on the content of a register, the time by which information must be entered into a register, the circumstances under which information should be removed from a register and the date by which one local authority must notify another of information about a flood protection scheme that should be entered in its register.

192. Subsection (2) also provides for regulations to make further provision about the availability of registers, including the form and manner in which they should be made available and the sharing of registers with specified third parties, who may themselves be required by regulations to make information from a register available to the public.

Section 54 – Deemed planning permission for scheme work

193. Section 54 inserts a new section 57(2B) into the Town and Country Planning (Scotland) Act 1997. This provides that once a flood protection scheme is confirmed (whether by the local authority or the Scottish Ministers), the Scottish Ministers are to direct that any necessary planning permission is deemed to be granted, subject to any planning conditions which Ministers may specify.

Section 55 – Acquisition of land

194. This section enables local authorities to acquire land which they require to exercise functions under this Part by agreement. It also empowers local authorities, with the authorisation of the Scottish Ministers, to acquire land by compulsory purchase in connection with operations under a flood protection scheme. In subsection (1)(b), Crown land as defined in section 80(7) is excluded from the power of compulsory acquisition.

195. Subsection (2) applies the procedure contained in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to any compulsory purchase by a local authority in connection with a scheme.

Section 57 – Recovery of expenses

196. Section 57 enables a local authority to recover any expense incurred by it in repairing or reinstating flood protection work it has put in place from the owner or occupier of the land, where that person’s actions have caused the damage. This includes flood prevention scheme works carried out under the Flood Prevention (Scotland) Act 1961.
Section 58 – Information about ownership etc. of land

197. In order to enable it to exercise any of its functions under this Part, a local authority may require land owners or occupiers to state their interest in that land in writing. Land owners or occupiers may also be required to provide contact details for any other person known to have an interest in that land. Any person failing to comply with the requirements of a local authority under this section, or knowingly or recklessly providing false or misleading information, is guilty of an offence.

Section 59 – Damage to certain flood protection work

198. Subsection (1) creates a criminal offence which is committed by any person who intentionally or recklessly damages any flood defence work created by a local authority under this Part, or any ancillary apparatus. This includes owners and lawful occupiers of the land on which the work is located. Flood prevention scheme works carried out under the Flood Prevention (Scotland) Act 1961 are also covered by this subsection.

199. Subsection (3) provides that, where a person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding, this is a defence to a charge in any proceedings under subsection (1).

PART 5 – SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Section 62 – Advice to planning authorities and others as to flood risk

200. This section requires SEPA to provide advice to planning authorities and National Park authorities as to flood risk. Flood risk is defined in section 3 as the combination of the probability of a flood and of the potential adverse consequences. This duty replaces SEPA’s duty to advise planning authorities under section 25(2) of the Environment Act 1995, which is repealed by paragraph 5 of schedule 3.

201. Subsection (1), like section 25(2) of the 1995 Act, requires SEPA to provide advice on flood risk in a planning authority’s district when requested by the authority. Section 1 of the Town and Country Planning (Scotland) Act 1997 provides that local authorities are planning authorities and that a planning authority’s district is the local authority area. Where any part of the district/local authority area is a National Park, it is possible for a National Park authority\(^3\) to be made the planning authority for the Park for the purposes of the planning acts\(^4\) – in that case SEPA must, when requested by the National Park authority, give it advice as to flood risk in the National Park.

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\(\text{\(^{3}\)}\) National Parks and National Park authorities are established under the National Parks (Scotland) Act 2000 - an order under section 10(1)(a) of that Act may provide for a National Park authority to be the planning authority for the National Park.

202. Subsection (2) requires SEPA to provide advice to a National Park authority about their park where they are not made planning authorities but are to be treated as planning authorities for the National Park for certain purposes\(^5\). This is a new requirement.

203. Subsection (3), like section 25(2) of the 1995 Act, requires the advice SEPA provides to be based on information SEPA holds. The advice must take into account, but is not limited to, information produced under Part 3 of the Bill (flood risk assessments, flood hazard and flood risk maps, flood risk management plans and local flood risk management plans), and any information provided to SEPA by the planning authority or National Park authority.

**Section 63 – Other assessment and maps of flood risk**

204. This section allows SEPA to undertake other assessments of flood risk and to prepare other maps in addition to the flood risk assessments and maps it is obliged to prepare under Part 3 of the Bill.

205. When carrying out assessments or preparing maps under this section, subsection (2) requires SEPA to consider any relevant flood risk assessments, flood hazard and flood risk maps and flood risk management plans prepared under Part 3.

**Section 64 – Flood warning**

206. This section requires SEPA to make flood warnings available where it considers that a flood is occurring or is likely to occur in the near future.

207. Subsection (2) sets requirements as to the timing of flood warnings, the information on which they are to be based and the means by which they are to be made available. Warnings must be based on information available to SEPA (paragraph (c)). Where SEPA considers a flood is already occurring, a warning must be made available as soon as is practicable (paragraph (a)) and where a flood is considered likely to occur SEPA may choose when to issue the warning (paragraph (b)). This discretion under paragraph (b) will allow SEPA to decide when it is appropriate to issue a very early warning and when it is appropriate to wait until more reliable information is available. SEPA can decide how to make warnings publicly available (paragraph (d)). This discretion will allow SEPA to issue general warnings, for example online or through a phoneline, and it would also allow it to establish systems for issuing warnings to individuals or other organisations if that is considered appropriate.

**Section 65 – Assessment of whether flood warning systems should be provided or altered**

208. This section makes provision for SEPA to assess where provision of or improvements to any form of flood warning system could assist in providing earlier or more accurate flood warning information and where that earlier warning or improved accuracy could help reduce the adverse consequences of flooding. SEPA may choose to carry out such an assessment at any time and must do so when directed by the Scottish Ministers.

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\(^5\) A designation order under section 10(1)(b) of the 2000 Act can provide that a National Park authority is to be treated as the planning authority for the National Park for such purposes of Part II (development plans) of the Town and Country Planning (Scotland) Act 1997, as are specified in the order.
209. “Flood warning system” is defined in subsection (4). The definition is similar to the one used in section 92(2)(a) of the Agriculture Act 1970, which is repealed for Scotland by paragraph 2 of schedule 3. The definition covers flood warning systems which rely on information from gauges and other monitoring equipment in rivers, coastal waters and other bodies of water and flood warning systems which rely on meteorological data and modelling software.

210. Subsection (2) requires SEPA to use information it has in making this assessment and subsection (3) and section 67(1) require SEPA to consult the relevant local authorities and chief constables in making its assessments.

Section 66 – Provision, alteration etc. of flood warning system

211. This section allows SEPA to provide, operate, alter and maintain flood warning systems and to carry out any building or engineering work required to provide and install apparatus for that purpose. “Flood warning system” is defined in section 65(4).

212. This section replaces sections 92 and 94 of the Agriculture Act 1970, which are repealed by paragraph 2 of schedule 3. SEPA’s general powers under section 37 of the Environment Act 1995 will apply in relation to its functions under this section, including powers to acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate.

213. Subsection (2) and section 67(2) require SEPA to consult the relevant local authorities and chief constables before it exercises its powers to provide a new flood warning system or to make material alterations to an existing system.

Section 67 – Consultation required by section 65 and 66

214. This section sets out consultation requirements for the purposes of sections 65 (assessment in relation to flood warning systems) and section 66 (provision or alteration of flood warning systems).

Section 79 – SEPA’s power to obtain information about land

215. This section applies section 27 of the Environment Act 1995 to this part of the Bill. This will allow SEPA to obtain information about land where it requires the information for the purposes of carrying out its functions in relation to assessment of possible contribution of alteration or restoration of natural features to management of flood risk, flood risk assessment and flood warning. In order to obtain such information SEPA must serve a notice on the occupier of the land or any person with an interest in the land. That notice must specify the land concerned, and that it is served under the Bill. Failure to comply with a notice is an offence under section 27(3) of the 1995 Act.
PART 6 – POWERS OF ENTRY AND COMPENSATION

Section 68 – Powers of entry

216. This section creates powers for SEPA and local authorities to enter land for the purposes of carrying out some of their functions under the Bill. It also gives local authorities power to enter land for the purposes of maintaining flood prevention schemes confirmed under the 1961 Act. The power to enter land includes a power to enter buildings because “land” is defined in the Interpretation Order6 to include buildings and other structures.

217. Subsection (1) allows any person authorised by SEPA to enter any land for the purposes of carrying out some of SEPA’s flood risk management functions under Part 3 of the Bill (sections 9, 10, 13, 14, 15C, 16, 17, 20, 23 and 28). This will allow SEPA to survey land in order to check the accuracy of information which it is using to prepare flood risk management documents. The section also allows SEPA to enter land in order to assess flood risk (section 63) and to provide, alter and maintain flood warning systems (section 66).

218. Subsection (2) allows any person authorised by a local authority to enter any land for the purpose of preparing maps of bodies of water under section 15B or assessing those bodies of water under section 56. It also allows them to enter land on which scheme operations, temporary works, emergency flood protection work, maintenance operations or clearance and repair works are to be carried out under Part 4 of the Bill. Land may also be entered for the purposes of determining whether any function conferred by or under that Part is to be exercised.

Section 69 – Warrants authorising entry

219. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 68 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).

220. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant (either SEPA or the local authority) must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 70(3).

221. Subsection (5) makes it an offence to prevent or obstruct a person from exercising a power of entry under a warrant unless the person obstructing or preventing access has a reasonable excuse for doing so. The standard scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. Level 3 is currently £1,000.

Section 70 – Powers of entry: supplementary

222. This section supplements sections 68 and 69. Subsection (1) provides that a right to enter land under section 68 (with or without a warrant under section 69) includes a right to enter adjacent land and a right to survey or examine the land.

223. Subsection (2) entitles those entering land under section 68 (with or without a warrant) to take other persons, materials and equipment onto the land. This includes vehicles. The subsection also enables them to do anything else reasonably required to fulfil the purpose of entering the land.

224. Subsections (3) sets notice periods which must be complied with except in the urgent cases defined in subsection (5). A seven day notice period applies where the power under section 68 is to be exercised without a warrant in order to enter a house or to take heavy equipment onto land (subsection (3)(a)). “Heavy equipment” and “house” are defined in subsection (7).

225. A twenty four hour notice period applies where the power under section 68 is to be exercised without a warrant, without entering a house and without taking heavy equipment onto the land (subsection (3)(b)). A twenty four hour notice period also applies to all cases where the power under section 68 is to be exercised with a warrant (subsection (3)(b)).

226. Subsection (4) requires that, except in the urgent cases set out in subsection (5), people entering land under section 68 (with or without a warrant) may only do so at a reasonable time.

227. In all cases, subsection (6) requires those entering land to be able to produce written evidence that they have been authorised to enter.

Section 71 – Compensation

228. Subsection (1) obliges SEPA to compensate anyone sustaining damage as a result of SEPA using its powers to install, provide, alter or maintain flood warning systems or its powers to enter land. “Damage” is defined in section 72(1).

229. Subsection (2) obliges local authorities to compensate anyone who has sustained damage as a result of scheme operations, subsequent maintenance by or on behalf of the local authority, clearance and repair works, the variation or revocation of an improvement order or the exercise of a right of entry.

Section 72 – Compensation: supplementary

230. Subsection (1) defines damage as the depreciation of the value of a person’s interest in land or the disturbance of a person’s enjoyment of land.

231. Subsection (2) places certain limits on the right to compensation and requires notice of any claim to be given to SEPA or the local authority within a specified period. It should be read with subsection (2A).
232. Subsection (3) provides that any disputes over compensation under section 72 are to be determined by the Lands Tribunal for Scotland.

PART 7 – RESERVOIRS

233. Part 7 amends the Reservoirs Act 1975, which sets safety requirements to prevent escapes of water from reservoirs. The 1975 Act imposes duties on persons (referred to as “undertakers”) who own, operate or use large raised reservoirs. These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, they require the appointment of qualified civil engineers to inspect and supervise works on reservoirs and recommend safety measures. Where an engineer recommends measures under the 1975 Act, the undertaker generally has a duty to implement those measures. “Relevant authorities” (also referred to in the Act as “enforcement authorities”) then have duties to maintain registers of information about large raised reservoirs, powers and duties to secure that undertakers comply with their duties under the Act and duties to report to the Scottish Ministers. Enforcement action involves service of written notices on undertakers who have failed to appoint engineers or implement measures recommended by engineers. Failure to comply with a notice is a criminal offence and also triggers a power for the enforcement authority to carry out the work itself and recover the costs from the undertaker.

Section 73 – SEPA to be enforcement authority under the Reservoirs Act 1975

234. Sections 73 to 75 make provision for SEPA to take over from local authorities as the relevant authority and enforcement authority under the 1975 Act. Section 73 appoints SEPA as the relevant authority for the whole of Scotland.

Section 74 – Transitional arrangements

235. This section contains detailed provision about the transfer of responsibility from local authorities to SEPA. Subsection (2) requires local authorities to hand over relevant registers, records and other relevant information to SEPA within 28 days of the transfer of responsibility. Subsection (3) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority.

236. Subsections (4) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.

Section 75 – Service of documents

237. This section amends section 15 of the 1975 Act and inserts a new section 22B to provide for service of documents by SEPA in its new role as the relevant authority and enforcement authority for Scotland.

Section 76 – Extension of enforcement authority’s reserve powers

238. This section extends to Scotland amendments made to sections 8, 15 and 17 of the 1975 Act by section 75 of the Water Act 2003, which amended the 1975 Act for England and Wales. The effect of the amendments is to allow the enforcement authority to enter land under section

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17 to determine whether measures recommended by engineers who were appointed by the enforcement authority under section 8 have been carried out. The enforcement authority can serve enforcement notices on undertakers who fail to implement such measures and if an undertaker fails to comply with an enforcement notice, the enforcement authority can also carry out the work itself and recover the costs under section 15.

Section 77 – Incident reporting

239. This section inserts a new section 12ZA into the 1975 Act. This enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of reservoirs. The power is not limited to large raised reservoirs under the 1975 Act and instead regulations can set criteria for determining which reservoirs will fall within the incident reporting regime.

240. Subsections 12ZA(2) and (3A) set out what regulations may cover.

241. Section 12ZA(3) sets consultation requirements which the Scottish Ministers must comply with before making regulations and section 12ZA(4) provides for regulations to be subject to affirmative procedure in the Scottish Parliament.

Section 77A - Flood Plans

242. This section inserts a new section 12C into the 1975 Act. This enables the Scottish Ministers to make provision in regulations for the preparation of reservoir flood plans. These plans would set out the action which the reservoir undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. As with the new incident reporting power, this power is not limited to large raised reservoirs and instead the regulations can set criteria for determining which reservoirs will require flood plans.

243. Subsections 12C(3) and (5) set out what regulations may cover.

244. Section 12C(4) sets consultation requirements which the Scottish Ministers must comply with before making regulations and section 12C(6) provides for regulations to be subject to affirmative procedure in the Scottish Parliament.

Section 78 – Reservoirs Act 1975: Crown application

245. This section inserts a new section 27B into the 1975 Act. This makes provision for the 1975 Act to apply to the Crown in Scotland. The new section is similar to section 27A which was inserted into the 1975 Act by the Water Act 2003 and which makes provision for the Act to apply to the Crown in England and Wales.

246. Subsection (1) of section 27B provides that the 1975 Act binds the Crown.

247. Subsection (2) and (3) of section 27B provide that the Crown will not be criminally liable for any contravention of the 1975 Act but allows SEPA to apply to the Court of Session for a declaration that any act of the Crown is in contravention of the Act.
248. Subsection (4) of section 27B provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

249. Subsection (5) and (6) of section 27B limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (6) defines “Crown land” and “appropriate authority” and subsection (8) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

PART 8 – GENERAL

Section 80 – Crown application

250. This section makes provision for the Bill to apply to the Crown in Scotland.

251. Subsections (3) and (4) provide that the Crown in Scotland will not be criminally liable for any contravention of the Bill’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Bill’s provisions unlawful, upon application by the public body or office holder responsible for enforcing the provision in question.

252. Subsection (5) provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

253. Subsection (6) and (7) limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (7) defines “Crown land” and “appropriate authority” and subsection (9) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

Section 81 – Offences by bodies corporate etc.

254. This section provides that where an offence under the Bill has been committed by a corporate body, Scottish partnership or other unincorporated association and the offence was committed with the consent or connivance of a “relevant individual”, both the body and the individual can be prosecuted.

255. Subsection (2) defines “relevant individual” and includes directors and other officers of companies, partners and individuals who manage or control other unincorporated associations.

Section 82 – Ancillary provision

256. This section enables the Scottish Ministers by order to make incidental, supplementary, consequential, transitional, transitory or saving provision, if appropriate.

Section 83 – Orders and regulations

257. This section provides the procedure for the making of orders and regulations under the Bill.
258. Subsection (2) provides that all orders and regulations, except a commencement order, made under the Bill are subject to negative procedure unless they are listed in subsection (3). Orders and regulations which fall under subsection (3) are subject to affirmative procedure.

Section 84 – Interpretation: general

259. This section defines various terms used across the Bill. Schedule 4 contains an index of terms used across the Bill and defined in various provisions (see paragraph 303).

Section 85 – Minor and consequential modifications

260. This section introduces schedule 3, which contains amendments and repeals to other Acts.

Section 86 – Commencement and short title

261. This section makes the usual provision that all of the provisions of the Bill, except those containing definitions and providing where procedure is required for orders and regulations, are to come into force on a day set by the Scottish Ministers by order. The section also provides for the short title of the Bill.

THE BILL – SCHEDULES

SCHEDULE 1 – MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

262. This schedule sets out what flood risk management plans must contain. It is closely based on the Annex to the Directive and should be read with sections 23, 24 and 28 of the Bill.

Part 1 – Matters to be included in every plan

263. Part 1 of the schedule applies to the first plans produced under section 23 and to updated plans produced under section 28.

264. Paragraph 1 requires flood risk management plans to include a description of the objectives set and the measures identified by SEPA under section 23. They must also explain the priority to given to implementing each. Paragraph 5 also requires plans to include a description of how the priority given to implementing each measure was determined and how progress will be monitored.

265. Paragraph 2 requires plans to include the conclusions of the flood risk assessment, prepared under section 9. This should be presented in the form of a map of the flood risk management district showing the potentially vulnerable areas identified under section 13.

266. Paragraph 3 requires plans to include copies of the flood hazard maps and flood risk maps prepared under section 17.
267. Paragraph 4 requires plans to include a summary of flood-related measures taken under various EC directives.

268. Paragraph 6 requires plans to include a summary of the consultation which was carried out in order to comply with section 25. They must also include any other consultation measures taken in connection with preparation of the plan. This would include consultation carried out in relation to flood risk assessments and flood risk and flood hazard maps. It may also include information about the role of the advisory groups established under sections 42 and 43 in the preparation of assessments, maps and plans. A summary of changes made to the plan in light of views and representations received must also be included.

269. Paragraph 7 requires the plan to include information on SEPA. In practice, this would include information to reflect SEPA’s role as competent authority for the Directive.

270. Paragraph 8 requires the plan to include a description of how its preparation has been co-ordinated with the preparation of river basin management documents under Part 1 of the 2003 Act. This will include information about steps taken under section 41.

### Part 2 – Components of the subsequent update of flood risk management plans

271. Part 2 of the schedule applies only to updated plans produced under section 28.

272. Paragraph 9 requires updated plans to include a summary of changes which have been made compared to the previous version of the plan.

273. Paragraph 10 requires an assessment of the progress made towards the achievement of the objectives set by SEPA for the management of flood risk, while paragraph 11 requires it to include information about why any measures included in the previous plan were not implemented.

274. Paragraph 12 requires a description of any other measures implemented which SEPA considers have contributed to the achievement of the objectives set by SEPA for the management of flood risk.

### SCHEDULE 2 – FLOOD PROTECTION SCHEMES: PROCEDURE ETC.

#### Paragraph 1 – Notification

275. Paragraphs 1(1)(a) to (c) set out the requirements for newspaper advertisement of a proposed flood protection scheme by a local authority.

276. Sub-paragraphs (1)(d) to (f) require a local authority to send direct notification of a proposed scheme to those with an interest in affected land, the authorised persons in respect of any land covered by an improvement order under the Land Drainage (Scotland) Act 1958 and a number of specified consultees. Sub-paragraph (1)(f)(vii) enables the Scottish Ministers to specify additional consultees by order. Sub-paragraph (2) requires the local authority to display notice of the proposed scheme in a prominent position in the locality.
277. Sub-paragraph (3) sets out the required contents of each notice of the proposed scheme, whether published in a newspaper, sent directly to a person entitled to individual notification or displayed in the locality.

278. Sub-paragraph (4) requires notice to be given to those with an interest in land and the specified consultees, and to be displayed in the locality, no later than the date that notice is first published in local newspapers.

**Paragraph 2 – Public inspection of scheme proposal**

279. Paragraph 2 makes provision about the availability for public inspection of documents relating to the proposed scheme in both the area of the local authority taking forward the scheme and that of any other local authority where work would be carried out.

**Paragraph 3 – Objections**

280. Paragraph 3 entitles any person to object to a proposed flood protection scheme. Valid objections must be made in writing (including by electronic means so long as legible and useable) and include the name and address of the objector. These objections must be made to the local authority within 28 days from the date notice of the proposed scheme is published in local newspapers. Sub-paragraph (4) defines a “late objection” for the purposes of schedule 2.

**Paragraph 4 – Decision where no valid objections received**

281. Paragraph 4 places a requirement on the local authority, where no valid objections are received within the 28 day period, to either confirm or reject the proposed scheme. However, a late objection may be treated as being valid so long as the local authority is satisfied that it was reasonable for the objector to make the objection after the specified deadline.

**Paragraph 5 – Preliminary decision following objections**

282. Where a local authority receives a valid objection, it must make a preliminary decision under paragraph 5 to either confirm the proposed scheme, with or without modifications, or to reject the scheme. In arriving at its decision, sub-paragraph (2) sets out that the local authority must consider any valid objections (unless withdrawn) and may consider any late objections if the authority is satisfied that it was reasonable for the respondent to make the objection after the deadline. These matters are not exclusive and the local authority may consider any other factors it considers appropriate.

283. The local authority must, under sub-paragraph (3), give notice of its preliminary decision to either confirm the proposed scheme, with or without modifications, or to reject the scheme, to every person who made an objection which it considered. Any person who made such an objection is a relevant objector. Where a relevant objector falls within sub-paragraph (6), then sub-paragraph (5) requires the local authority to give the Scottish Ministers notice of its decision along with other material including the scheme documents and copies of all objections received. The relevant objectors falling within sub-paragraph (6) are: those with an affected interest in land; authorised persons under an improvement order made under the Land Drainage (Scotland)
Act 1958 where land affected by the order would have work carried out on it under the scheme; and the specified consultees.

**Paragraph 6 – Ministerial call-in**

284. Where the Scottish Ministers receive notification of a proposed scheme under paragraph 5(5), paragraph 6 requires them to call in the proposed scheme where any relevant objector is a local authority or National Park Authority. Otherwise, the Scottish Ministers must advise the local authority within 28 days of receipt, whether or not they will call in the proposed scheme for decision by them. In reaching this decision whether to call in, the Scottish Ministers must have regard to the factors listed in paragraph 6(3).

285. Sub-paragraphs (4) and (5) allow the Scottish Ministers to extend the time in which they must decide whether or not to call in a scheme by up to 28 days, but they must make any decision to extend within the original 28 day period and must notify the local authority of the extension as soon as practicable.

**Paragraph 7 – Ministerial consideration of proposed scheme**

286. Paragraph 7 applies where the proposed scheme has been called in by the Scottish Ministers and requires them to hold a public local inquiry, unless all objections made by relevant objectors are withdrawn. Paragraph 7(3) applies provisions of the Local Government (Scotland) Act 1973 concerning local inquiries to inquiries held under paragraph 7. The Scottish Ministers must consider the material received by them under paragraph 5(5) as well as the report of the person who held the public local inquiry before either confirming the proposed scheme either with or without modifications, or rejecting the scheme.

287. The Scottish Ministers may not confirm a scheme with modifications unless they have notified relevant objectors and anyone else they consider to be affected of the proposed modifications at least 28 days before confirming the scheme, given them an opportunity to make objections about the proposed modifications, and considered any objections made as a result. Sub-paragraph (6) requires the Scottish Ministers to notify the local authority of their decision as soon as reasonably possible.

**Paragraph 8 – Local authority hearing to consider proposed scheme**

288. Paragraph 8 applies where the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5 and the proposed scheme has not been called in by the Scottish Ministers (either because it did not have to be notified to them under paragraph 5(5) or because they decided not to call it in following such notification).

289. Before making a final decision (see notes on paragraph 9), the local authority must hold a hearing to consider the proposed scheme if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the scheme, or may hold a hearing in any other case.

290. Sub-paragraph (3) requires the local authority to invite each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, to the hearing. Any invitation under sub-paragraph 3 must be given not less than 28 days before
Paragraph 9 – Final decision following preliminary decision

291. Paragraph 9 requires the local authority to make a final decision in relation to the proposed scheme by either confirming it with or without modifications, or rejecting it, unless the scheme has been called in by the Scottish Ministers.

292. Sub-paragraph (2) lists matters which the local authority is to take into account.

293. Sub-paragraph (3) prohibits a local authority from confirming a scheme with modifications unless it has notified the relevant objectors and anyone else considered to be affected of the proposed modifications at least 28 days before confirming the scheme, given them an opportunity to make objections about the proposed modifications, and considered any objections made.

Paragraph 10 – Notice of final decision

294. Paragraph 10 requires that, where a final decision of a local authority or the Scottish Ministers is made on a proposed scheme, the local authority must give notice of the decision to every person given direct notification of the scheme at the outset, every relevant objector (see paragraph 5(3) and 5(4)) and anyone else who received notification of a proposed modification to the scheme. Should it be decided to confirm the proposed scheme (with or without modifications) then notice must be given in local newspapers in the relevant local authority areas, as well as in the Edinburgh Gazette.

Paragraph 11 – Commencement of scheme

295. Paragraph 11 sets out that a scheme becomes operative 6 weeks after notice of its confirmation is published under paragraph 10(2)(d).

Paragraph 12 – Appeals

296. Any person affected by a final decision of the local authority or a decision of the Scottish Ministers to confirm a scheme may appeal that decision. Paragraph 12 states that an appeal must be made within 6 weeks of the notice of confirmation of the scheme being published in a newspaper circulating in the area of the local authority taking forward the scheme.

297. An appeal under this paragraph is to be made by summary application to the sheriff of a sheriffdom in which all or some of the proposed operations are to be carried out.

298. Sub-paragraph (5) provides that the grounds on which a decision can be appealed are that the local authority or the Scottish Ministers failed to comply with the requirements relating to improvement orders under the Land Drainage (Scotland) Act 1958 (see section 53(3) and (4)), erred in law or failed to follow a procedural requirement.
299. Sub-paragraph (6) enables the sheriff to suspend the operation of the scheme in whole or in part pending consideration of the appeal. Sub-paragraph (7) enables the sheriff to uphold the appeal only where the interests of the appellant have been substantially prejudiced and to quash the scheme in whole or in part.

**Paragraph 13 – Assessment of environmental effects**

300. Paragraph 13 enables the Scottish Ministers to make regulations requiring environmental assessment of proposed schemes.

**Paragraph 14 – Further provision**

301. Paragraph 14 enables the Scottish Ministers to make regulations containing further procedural provisions relating to schemes.

**SCHEDULE 3 – MINOR AND CONSEQUENTIAL MODIFICATIONS**

302. Schedule 3 sets out minor and consequential modifications to other legislation.

**SCHEDULE 4 – INDEX**

303. This schedule is an index of terms used across the Bill and defined in various provisions – it also contains a list of the provisions where the meanings of the terms listed there can be found.
INTRODUCTION

1. This supplementary Financial Memorandum has been prepared by the Scottish Government to accompany the Flood Risk Management (Scotland) Bill following Stage 2 consideration of that Bill which concluded on 18 March. It has been produced in accordance with Rule 9.7.8B of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Explanatory Notes and other accompanying documents published to accompany the Bill (As Introduced) (SP Bill 15–EN).

2. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new provisions included in the Bill following Stage 2 amendments. The majority of the amendments are technical and do not affect the assumptions in the original Financial Memorandum. This document therefore addresses new elements of policy on reservoir flood plans and registers of flood protection schemes which were incorporated into the Bill at Stage 2.

RESERVOIR SAFETY

3. The new section 77A of the Bill introduces an enabling power into the Reservoirs Act 1975 (1975 Act) to allow Scottish Ministers to make provision in regulations for the preparation of reservoir flood plans.

4. The enabling power will allow regulations to be developed to,

- Establish criteria for determining which reservoirs require plans;
- Introduce a requirement to produce plans for reservoirs which meet the criteria;
- Specify the form and content of plans;
- Impose new duties on undertakers to implement plans in an emergency;
- Create offences; and
5. Before making regulations about reservoirs plans, Scottish Ministers will have to consult SEPA, the Institution of Civil Engineers and undertakers whose reservoirs would be expected to require a flood plan. It is expected that there will be three tiers of on-site plans:

- Low risk plans: where the undertaker completes a standard template setting out basic steps;

- Moderate risk plans: where the undertaker completes a bespoke plan setting out on-site actions that should be taken to reduce any impacts. It is expected that this plan could require technical assistance from a consultant;

- High risk plans: where the undertaker completes a bespoke plan setting out on-site actions that should be taken to reduce any impacts, including options for different scenarios based on inundation maps. It is expected that this plan would require technical assistance from a consultant, particularly in the preparation of inundation maps.

6. The Scottish Government would expect undertakers to be able to produce a low risk plan themselves by completing a standard template. As such, it would carry a relatively low cost estimated to be in the region of £100 per plan.

7. For the moderate risk plan, it may be necessary for the undertaker to seek assistance from a professional consultant in drawing up the plan. It is assumed that around 2 days assistance would be required - 1 day on site, 1 day on preparing information – the Scottish Government estimates this will cost around £1,000 per plan.

8. For the high risk plans, it is more difficult to estimate the cost to undertakers until draft regulations are put together covering the form and contents of plans. A number of bodies have provided estimates of the cost of detailed on site reservoir plans which include inundation maps. Defra estimated that the cost would be £2,500 per reservoir, Scottish and Southern Energy estimated that the cost would be between £12,000 to £14,000 per reservoir in their response to the public consultation. Scottish Water estimated that it would cost up to £25,000 per reservoir. The variation in these cost estimates are due to different understandings of what the form and contents of the different plans will comprise.

9. For the high risk category, based on the figures provided by the bodies in paragraph 8, the Scottish Government estimates that the cost of producing an on-site plan will be within the range £2,500 and £25,000. These costs will cover consultancy fees, modelling costs and the preparation of inundation maps covering different dam break scenarios.

10. Some of the very high risk reservoirs may be identified as posing a significant flood risk under Part 3 of the Bill. SEPA will be required to produce flood risk and flood hazard maps for these reservoirs as part of their duties under the Bill. Therefore, the costs incurred by the undertakers of these reservoirs would be reduced, because they would have access to the
This document relates to the Flood Risk Management (Scotland) Bill as amended at Stage 2 (SP Bill 15A)

maps prepared by SEPA. However, until the flood risk assessments are carried out, the number of reservoirs which would be involved cannot be identified.

11. The regulations made under the Bill could require on-site plans to be prepared for reservoirs that are not currently captured by the 1975 Act. These reservoirs would be identified after a thorough assessment of the potential flood risk that they could pose. It is therefore not possible at this stage to accurately determine how many reservoirs that are not currently captured by the 1975 Act could require an on-site plan. However, for the purposes of preparing this financial memorandum, it is assumed that 10% of the 1975 Act reservoirs could be additionally captured. At present, the 1975 Act covers 678 reservoirs, therefore, it is estimated that 746 reservoirs would require some form of on-site plan.

12. Once in place the plans will have to be reviewed at intervals set out in the regulations. The cost of reviewing the plans is estimated at 5% of the initial cost.

**Costs on the Scottish Administration**

13. The provisions will not add to the running costs of the Scottish Government. The Scottish Government anticipates making regulations under this new provision in conjunction with regulations under section 77 (incident reporting) of the Bill. Therefore, no additional costs are anticipated.

**Costs on local authorities**

14. This enabling power will not have any immediate financial impacts, but the regulations made under the power will have financial implications for local authorities. The Scottish Government anticipates that the provisions will impose additional costs on local authorities where they are the undertakers of reservoirs. 16 out of the 32 local authorities are the undertakers of one or more reservoirs, with a total of 36 reservoirs currently being operated by local authorities. Based on the assumption set out in paragraph 11, it is assumed that local authorities may need to prepare on-site plans for up to 40 reservoirs.

15. Until the criteria are set in regulations, it is difficult to estimate which reservoirs would require the different types of plans. However based on the size and location of the reservoirs operated by local authorities, it is estimated that many of these reservoirs would fall into the low to medium risk categories. Initial costs on local authorities are therefore estimated to be between £0.04 million and £0.26 million (assuming 10 high risk, 10 medium risk and 20 low risk) and up to £13,000 to review.

**Costs on SEPA**

16. Regulations made under this power are expected to give SEPA enforcement functions in relation to reservoir flood plans. These are expected to be carried out in conjunction with the other enforcement responsibilities which SEPA will have under the Reservoirs Act 1975. The costs of the additional tasks will be minor or negligible because the tasks will be very closely aligned with those that will already be undertaken. The regulations for flood plans will not be brought forward until SEPA takes over its enforcement role for the Reservoirs Act 1975 under the Bill. The specific timing of when this is to happen is still under consideration, but it is unlikely to be before 2011.
Costs on other bodies, individuals and businesses

17. The enabling power will not have any immediate financial impacts but the Scottish Government anticipates that the regulations made under the power will impose additional costs on bodies, individuals and businesses who are undertakers of reservoirs which will be required to prepare reservoirs flood plans under the regulations. Reservoir undertakers include private individuals, small and medium sized businesses (such as fishing clubs and sporting estates) and private/public larger companies (such as utilities, including Scottish Water). The costs incurred by these operators would be scaled against the risk associated with individual reservoirs as described in paragraph 5.

18. Until the criteria are set in regulations, it is difficult to estimate which reservoirs would require the different types of plans. Around 235 reservoirs are owned or operated by large utility companies. As these are generally large reservoirs that are often located fairly close to populated areas, many of these reservoirs are expected to require the high-risk plans. The Scottish Government understands that many of the operators of these reservoirs have already prepared inundation maps and other information on on-site mitigation steps. The total new cost on these undertakers is therefore likely to be significantly lower than the highest estimate provided by Scottish Water, and the total cost is estimated to be in the region of £0.5 to £1 million. This is the estimated cost of updating plans and maps and producing plans for any reservoirs that lack the necessary information, and captures the assumption set out in paragraph 9 that an additional 24 (10%) reservoirs may require on-site plans. It is estimated that it will also cost approximately £0.025 to £0.05 million to review the plans.

19. The remaining 407 (678 - 36 (with local authority undertakers) – 235 (utility owned reservoirs)) reservoirs under the 1975 Act are likely to require a low or moderate risk plan. Based on the assumption set out in paragraph 9 it is estimated that an additional 41 reservoirs may require a low to moderate risk plan. Until the criteria are set in regulations, it is difficult to estimate which reservoirs would require the different types of plans. For the purposes of this memorandum, it is assumed half of the 448 reservoirs will require moderate risk plans and half would require low risk plans. Therefore, the estimated cost of producing plans for 224 reservoirs at moderate risk is approximately £224,000 and the estimated cost for the remaining 224 low risk reservoirs is approximately £22,400. However, it is possible that due to the type, size and location of some of these reservoirs, a small number of these reservoirs should, in the interests of public safety be required to prepare high risk plans. It is estimated that the total cost of reviewing the plans for these low to medium will be approximately £12,400.

REGISTERS OF FLOOD PROTECTION SCHEMES

Costs on local authorities

20. The Bill contains new provisions (section 53A) requiring local authorities to keep a register of flood protection schemes and make these registers available to the public. The new provision allows for local authorities to charge a reasonable fee for access to this information. Therefore it is estimated that there will be little or no cost to local authorities as a result of these provisions.
Costs on other bodies, individuals and businesses
21. The current cost of a property enquiry certificate in Scotland varies between £50 and £150 depending on the local authority area and the type of property. The additional cost of a search of this new register to individuals and businesses is estimated to be between a 10% and 20% increase. This increase is relatively minor in relation to existing charges and fees incurred during a purchase of a property.

OTHER NEW PROVISIONS
22. The remainder of the new provisions are largely technical in nature or clarify existing duties and responsibilities under the Bill and as such, the financial implications will be minor and within the ranges set in the original financial memorandum. The new provisions simply set out more explicitly the tasks the relevant bodies are expected to undertake to fulfil their obligations under the Bill.

Costs on the Scottish Administration
23. It is not anticipated that the other new provisions should impose any additional costs on the Scottish Government.

Costs on local authorities
24. It is not anticipated that the provisions should impose any additional costs on local authorities.

Costs on other bodies, individuals and businesses
25. It is not anticipated that the provisions should impose any additional costs on bodies, individuals and businesses.

TOTAL ESTIMATED COSTS OF NEW PROVISIONS
26. The total estimated costs of the new provisions in the Bill is estimated to be between £0.87 and £1.37 million.

SUMMARY OF COSTS

<table>
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<tr>
<th>Proposals\Costs</th>
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<th>Non-recurring- £100, £1000 or £10,750 dependant on risk £ million</th>
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<td>Cost on local authorities</td>
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<td>Cost on other bodies, individuals and businesses</td>
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<tr>
<td>Totals</td>
<td>£0.053 to £0.073</td>
<td>£0.79 to £1.51 million</td>
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</tbody>
</table>
FLOOD RISK MANAGEMENT (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration, of the Flood Risk Management (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

3. In deciding whether to adopt negative or affirmative resolution procedure, careful consideration has been given to the degree of parliamentary scrutiny that is felt to be required for the regulations, balancing the need for the appropriate level of scrutiny with the need to avoid using up parliamentary time unnecessarily.

4. During the Stage 2 proceedings, new powers were introduced and a number of the delegated powers were modified. These changes give Parliament a greater role in scrutinising some of the subordinate legislation made under the Bill and respond positively to the comments made in both the Subordinate Legislation Committee and the Rural Affairs and Environment Committee. The procedure applicable to one power has been altered from negative resolution procedure to affirmative resolution procedure. Outlined below are descriptions of the relevant powers which have been added or modified and explanations of and as to why the additions, amendments or alterations have been made and are considered appropriate.
PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

PART 2 - PRINCIPAL EXPRESSIONS

Section 5– Power to designate ‘responsible authorities’

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

5. Section 5(1)(c) allows the Scottish Ministers to designate public bodies and office holders as “responsible authorities” by order. Responsible authorities will have to comply with the general duty in Part 1 of the Bill. They will also have duties under Part 3 to assist SEPA in preparing the flood risk assessments, maps and plans required by the Directive and to assist local authorities in the preparation and completion of local flood risk management plans. When designating responsible authorities under this section, the Scottish Ministers must comply with their general duty under section 1 of the Bill.

6. Subsection (2) was inserted during Stage 2. It places a new duty on Scottish Ministers to consult SEPA, responsible authorities, Scottish Water, public bodies and office-holders who may be designated under by the order being made and such other persons considered appropriate before making an order under Section 5. This amendment responded to a recommendation of the Subordinate Legislation Committee.

Reason for taking power and choice of procedure

7. These remain the same as in the original Delegated Powers Memorandum.

PART 3 – FLOOD RISK ASSESSMENT, MAPS AND PLANS

Section 15A(1)(c) – Power to specify the content of Scottish Water assessments of flood risk from sewerage systems

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

8. Section 15A was inserted during Stage 2. It requires Scottish Water to prepare assessments of where floods are likely to originate from sewerage systems. Subsection (1)(c) provides for the Scottish Ministers to specify in regulations additional information which must be included in these assessments.
Reason for taking power

9. The assessment produced by Scottish Water for each potentially vulnerable area will contribute to the assessment of flood risk for that area. The core requirements as to the content of the assessment are specified in Section 15A(1) and SEPA is given a power under subsection (4) to determine the form of the assessment. The intention is to use regulations to supplement the requirements set out in the Bill by specifying more detailed aspects of the content of the assessment. This approach will allow the Scottish Ministers to put in place a detailed set of provisions that have been developed after thorough consultation.

Choice of procedure

10. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny of a provision of this nature, given that the key requirements relating to the content of the assessments to be prepared by Scottish Water are already specified in the Bill.

Section 15B(2)(c) – Power to specify the content and the form of local authority maps of bodies of water and SUDS

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

 Provision

11. Section 15B was inserted during Stage 2. It requires local authorities to prepare maps of relevant bodies of water and sustainable urban drainage systems in their areas. Subsection (2)(c) provides for the Scottish Ministers to specify in regulations additional information which must be included in these maps. Regulations may also specify the form of maps.

Reason for taking power

12. Maps prepared by local authorities under this section will supplement the maps prepared by SEPA. The core requirements as to the content of the maps prepared by local authorities are specified in section 15B(1). The intention is to use regulations to specify more detailed aspects of the content of the maps of bodies of water such as whether SUDS shown on maps are publicly or privately owned. This approach will allow the Scottish Ministers to put in place a detailed set of provisions that have been developed after thorough consultation.

Choice of procedure

13. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. As with the previous power, the negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny of a provision of this nature, given that the key requirements relating to the content of the maps to be prepared by local authorities are already specified in the Bill.
This document relates to the Flood Risk Management (Scotland) Bill as amended at Stage 2 (SP Bill 15A)

Section 56(1B)(b) – Power to specify the content and the form of local authority schedules of clearance and repair works

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

14. Section 56 was amended and moved to Part 3 of the Bill at Stage 2. It now requires local authorities to prepare schedules of clearance and repair works for their areas. Subsection (1B)(b) provides for the Scottish Ministers to specify in regulations additional information which must be included in these schedules. Regulations may also specify the form of schedules.

Reason for taking power

15. It is considered appropriate to delegate this power to subordinate legislation. The intention is to use regulations to supplement the requirements set out in the Bill by specifying more detailed aspects of the content of the schedules. In addition, information required in these schedules may need to change from time to time, for example to react to changes in other areas of the law dealing with circumstances affecting the form and contents of the schedules (such as health and safety legislation). This approach will allow the Scottish Ministers to put in place a detailed set of provisions that have been developed after thorough consultation.

Choice of procedure

16. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. Negative procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny of a provision of this nature, particularly because the key requirements relating to schedules of clearance and repair works are already specified in the Bill.

Section 15C(1)(c) – Power to specify the content of SEPA maps of artificial structures and natural features

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

17. Section 15C was inserted during Stage 2. It requires SEPA to prepare maps of artificial structures and natural features which, if removed, would significantly increase the risk of flooding from a body of surface water. Subsection (1)(c) provides for the Scottish Ministers to specify in regulations additional information which must be included in these maps.

Reason for taking power

18. The maps prepared by SEPA of artificial structures and features will contribute to the assessment of flood risk for that area. The core requirements as to the content of these maps are specified in section 15C(1)(a) and (b). The intention is to use regulations to supplement the
requirements set out in the Bill by specifying more detailed aspects of the content of the maps. This approach will allow the Scottish Ministers to put in place a detailed set of provisions that have been developed after thorough consultation.

Choice of procedure

19. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. As with the powers in sections 15A(1)(c), 15B(2)(c) and 56(1B)(b), the negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny of a provision of this nature, given that the key provisions relating to the content of the maps to be prepared by SEPA are already specified in the Bill.

Section 15C(2)(c) – Power to specify the form of SEPA maps of artificial structures and natural features

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

20. Section 15C requires SEPA to prepare maps of artificial structures and natural features which, if removed, would significantly increase the risk of flooding from a body of surface water. Subsection (2)(c) provides for the Scottish Ministers to specify the form of these maps in regulations.

Reason for taking power

21. The key requirements about the preparation of these maps are set out in Section 15C. The intention is to use regulations to specify the form of the maps. This approach will allow the Scottish Government to put in place a detailed set of provisions that have been developed after thorough consultation. This will enable the Scottish Ministers to ensure the maps are in a form which can be integrated with other maps produced under this Bill.

Choice of procedure

22. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. These regulations would probably be largely technical in nature and may require adjustment from time to time. Negative procedure is thought to be appropriate as the key requirements in relation to these maps are already specified in the Bill.
Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

23. Section 29(6) allows the Scottish Ministers to specify, in regulations, further matters to be included in local flood risk management plans by local authorities. Local authorities are required 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 plans will cover the local plan districts identified by SEPA under section 13. Subsection (6A) inserted at Stage 2 requires Scottish Ministers to consult SEPA, responsible authorities and such other persons considered appropriate before making regulations under subsection (6). This amendment responded to a recommendation of the Subordinate Legislation Committee.

Reason for taking power and choice of procedure

24. These remain the same as in the original Delegated Powers Memorandum.

Section 44(1) – Power to give effect to Community obligations etc.

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

25. Section 44(1) confers a power on the Scottish Ministers to, by regulations, modify Part 3 of the Bill for the purpose of giving effect to any Community obligation or exercising any related right. Section 83(3) was amended at Stage 2 to make the power subject to affirmative rather than negative procedure.

Reason for taking power

26. This remains the same as in the original Delegated Powers Memorandum.

Choice of procedure

27. The Subordinate Legislation Committee recommended in its Stage 1 report to the Rural Affairs and Environment Committee that this power should be subject to affirmative rather than negative procedure. The Scottish Ministers accepted the recommendation that regulations made under the power should be subject to the level of parliamentary scrutiny that affirmative procedure provides.
PART 4 - FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

Section 52(4) – Power to amend flood protection scheme making process

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

28. Section 52(4) allows the Scottish Ministers to, by order; amend the process within schedule 2 for making a flood protection scheme. New subsection (5), inserted at Stage 2 requires the Scottish Ministers to consult local authorities, such representatives of local authorities as they consider appropriate, SEPA, Scottish Natural Heritage, Scottish Water, National Park Authorities and such other persons as are considered appropriate before amending schedule 2 so as to modify the procedure for making flood protection schemes. This amendment responded to a recommendation of the Subordinate Legislation Committee.

Reason for taking power and choice of procedure

29. These remain the same as in the original Delegated Powers Memorandum.

Section 53C (1) – Power to make provision about the keeping of registers

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

30. Section 53A requires local authorities to keep registers of flood protection schemes, which are to be made available to the public. Section 53C provides for the Scottish Ministers to specify the contents of these registers, the time by which information must be entered into a register, the circumstances in which information can or must be removed from a register and the time by which notice must be given by one local authority to another under section 53A(6). Regulations may also make further provision about the availability of registers, including the form and manner, in which registers are made available, require local authorities to make their registers available to persons specified and require them to inform such persons of any changes to registers. Regulations may also require the person specified to make available information from local authorities’ registers for public inspection.

Reason for taking power

31. Development work will need to take place with local authorities and others to establish detailed provisions for the registers, especially in a situation where a scheme requires to be registered by more than one local authority. Work also requires to be done on the feasibility of any mechanism to enable all local authority registers to be searched centrally, or to enable a register to be searched alongside other searches relating to the same property. Once registers are established, the Scottish Ministers may wish to amend their form, contents, timing and accessibility from time to time to reflect e.g. developments in information technology or changes
This document relates to the Flood Risk Management (Scotland) Bill as amended at Stage 2 (SP Bill 15A)

to the content of scheme documents. Regulations are considered more appropriate to make such changes and can be brought forward in shorter timescales than primary legislation.

Choice of procedure

32. These regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. These regulations would probably be largely technical in nature and may require adjustment from time to time. Negative procedure is thought to be appropriate as the key requirements in relation to these registers are already specified in the Bill.

PART 7 - RESERVOIRS

Section 77 – Power to make provision for reporting incidents relating to reservoir safety

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

33. Section 77 inserts a new section 12ZA into the Reservoirs Act 1975 which enables the Scottish Ministers to make provision in regulations for the reporting of incidents which may affect the safety of reservoirs. The power was extended at Stage 2 to allow incident reporting requirements to be imposed in relation to all reservoirs which meet criteria set in or under regulations made by the Scottish Ministers, instead of only in relation to “large raised reservoirs”. The consultation requirements in subsection (3) have been amended accordingly, so as to require Scottish Ministers to consult undertakers of all reservoirs to which they consider the regulations will apply. Subsection (3A) has been inserted to allow the power to be exercised to make different provision for different purposes.

34. The power has also been amended to allow regulations to confer powers of entry on the enforcement authority in connection with its incident reporting functions under the regulations.

Reason for taking power

35. The reasons for taking a power to introduce a compulsory incident reporting regime are the same as in the original Delegated Powers Memorandum. The reason for amending the power is to allow a new incident reporting system to be tailored according to the level of risk presented by different reservoirs, whether or not they are currently “large raised reservoirs” under the 1975 Act. The amended power would allow the Scottish Ministers to set risk based criteria for determining whether reservoirs required incident reports and to impose different levels of incident reporting requirements for classes of reservoir which presented different levels of risk.

Choice of procedure

36. The reasons for choosing affirmative procedure are the same as in the original Delegated Powers Memorandum.
Section 77A – Power to make provision for preparing reservoir flood plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

37. Section 77A inserts a new section 12C into the Reservoirs Act 1975. This enables the Scottish Ministers to make provision in regulations for the preparation of flood plans in relation to reservoirs. A reservoir flood plan would set out action to be taken by the reservoir undertaker in order to control or mitigate the effects of flooding which could result if water escaped from the reservoir. In summary, the regulations may: establish criteria for determining which reservoirs need flood plans; require undertakers to produce plans for reservoirs which meet the criteria; specify the form and content of plans; provide for the approval, registration or publication of plans; impose duties on undertakers to implement plans in an emergency; create offences; and confer enforcement powers on SEPA.

38. Before making regulations the Scottish Ministers would have to consult SEPA, the Institution of Civil Engineers and undertakers whose reservoirs would be expected to require a flood plan.

Reason for taking power

39. Flood plans will set out the actions to be taken by undertakers of reservoirs in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. This power would allow Scottish Ministers to set out detailed requirements in relation to the preparation of flood plans as summarised in paragraph 33 above and new section 12C(3) which will be inserted in the 1975 Act by section 77A of the Bill.

40. The power is being taken in order to require flood plans to be prepared for reservoirs in Scotland which meet criteria specified in regulations, but to do so after SEPA has been installed as single enforcement authority and has researched the matter and Scottish Ministers have carried out a full consultation on the subject.

Choice of procedure

41. This power could be used to impose new and potentially onerous obligations on reservoir undertakers, create criminal offences and confer enforcement powers on SEPA. It is therefore considered appropriate that regulations made under the power should be subject to the level of parliamentary scrutiny that affirmative procedure provides.
Subordinate Legislation Committee

26th Report, 2009 (Session 3)

Flood Risk Management (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 11 May 2009
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

(a) any-

   (i) subordinate legislation laid before the Parliament;

   (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Jackson Carlaw
Malcolm Chisholm
Bob Doris
Helen Eadie
Tom McCabe
Ian McKee (Deputy Convener)
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Shelagh McKinlay

Assistant Clerk
Jake Thomas
The Committee reports to the Parliament as follows—

1. At its meeting on 5 May the Subordinate Legislation Committee considered the delegated powers provisions in the Flood Risk Management (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill.

Delegated Powers Provisions

3. The Committee considered all of the powers as set out in the supplementary DPM and is content with sections: 2(1), 5, 9(2), 15A(1)(c), 15A(2) to (9), 15B(2), 15C(1)(c), 15C(2)(c), 18(4), (5) and (6), 29(6), 44(1), 52(4), 53C(1), 56(1B)(b), 77 and 77A.

Section 82(1) – Ancillary provision

4. In its Stage 1 Report, the Committee recommended that the Scottish Government should give further consideration to agreeing that any modification of primary legislation however effected should be subject to affirmative procedure.

5. Section 82(1) confers a power on the Scottish Ministers to make incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, the Bill or any provision of the Bill. Section 82(2) provides that an Order under subsection (1) may modify any enactment, instrument or document.

6. Section 83 provides that this power is exercisable by negative resolution procedure, unless it contains provisions which add to, replace or omit any part of the text of an Act in which case it is subject to affirmative procedure.

Supplementary Delegated Powers Memorandum
7. During its Stage 1 consideration of the Bill, the Committee recognised that this is a wide power to make orders to “modify any enactment, instrument or document” and, as such, it could be used to amend or repeal primary legislation (including the Bill once enacted). However, the Committee recognised that the power could only do so in order to make incidental, supplemental, consequential, transitional, transitory or savings provisions. In addition, Ministers would also require to be satisfied that the provisions were necessary or expedient to deliver the purpose of, or in consequence of, or to give full effect to the Bill.

8. The Committee recognised that it is possible to modify the effect of an Act using such powers, without making textual amendments to it which would add, replace or omit any part of its text. Whilst this form of modification may be appropriate in limited circumstances such as a transitory provision that would apply only for a short period when moving over to a new statutory regime, there may be concerns as to transparency, and the proper role of Parliament as guardian of primary legislation, were the power to be used in this way for more significant amendments.

9. The Committee therefore asked at Stage 1 whether the Scottish Government was prepared to agree that any modification of primary legislation should be subject to affirmative procedure and, if not, whether it would give an undertaking that any significant or permanent modifications made to enactments using this power will be effected through textual amendment and so subject to affirmative procedure.

10. The Minister confirmed in the Stage 1 response to the Committee that non-textual modification is normally confined to modifying particular pieces of text for certain limited circumstances, application or adaptation and that negative procedure is usually appropriate in relation to such modification, and agreed to give further consideration to this issue.

11. The ancillary provision was not amended at Stage 2, so the committee assumes that on consideration the Scottish Government have determined that no amendment on this issue is required.

12. The Committee was satisfied that the Minister had given some additional comfort in his explanation in the Stage 1 response, that non-textual modification using such ancillary powers is usually confined to modifying particular pieces of text for certain limited circumstances, application or adaptation, when the Government considers that negative procedure is usually more appropriate than affirmative procedure.

13. The Committee will always consider powers in the context of the particular Bill. The Committee finds that in the instance of this particular Bill, the ancillary provisions in section 82 are acceptable.

14. The Committee reiterates its views on this matter, as expressed in paragraph 79 of its Stage 1 Report. In its view the modification of enactments (without textual amendment) using such ancillary powers may be appropriate by negative procedure in limited circumstances, such as a transitory provision applying only for a short period. However, the
Committee considers that any significant or permanent modification of enactments using such powers should be effected through textual amendment, and subject to affirmative procedure.
When we last discussed the above Bill, I indicated my intention to undertake a comprehensive review of the emergency services’ ability to deal with all forms of water rescue, including flooding. I am pleased to inform you that I will announce tomorrow that Paddy Tomkins, QPM, former HM Chief Inspector of Constabulary for Scotland, will lead this review. An embargoed copy of the Press Release is attached for your information. As you will see, Mr Tomkins will work with all key stakeholders and report to me in around four months time with recommendations on whether Scotland’s water rescue response may be improved. The review will examine:

- The resources and capabilities of all agencies currently involved in water rescue emergencies, including flooding.
- Whether there is a need for changes in current operational arrangements between responders.
- Whether there is a need for a change in the law covering the responders who cover water rescue.
- The level of public awareness and education of the risks associated with open water.

I hope that all the issues of concern to the Committee can be debated during the review. In particular, the question as to whether there would be value in placing a new duty on Fire and Rescue Services to undertake a coordinating role on flood rescue. I am pleased that David Wynne, Chair of the Chief Fire Officers Association Scotland, has formally welcomed this approach and looks forward to working with Paddy Tomkins. The Fire Brigades Union also support a review into water rescue capabilities, rather than more legislation.

I hope that you will share my view that a review presents us with the most comprehensive position on which to consider changes to current arrangements, including legislation. I look forward to meeting with the Committee again in due course, when I will report back on the outcome of the review.

I have copied this letter to the Justice Committee for information.

Fergus Ewing MSP, Minister for Community Safety
11 May 2009
Flood Risk Management (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 86
Long Title
Schedules 1 to 4

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Elaine Murray

19 In section 1, page 1, line 26, leave out <co-operate> and insert <adopt an integrated approach by co-operating>.

Section 2

Roseanna Cunningham

26 In section 2, page 2, line 39, at end insert—

<(5) The Scottish Ministers must give guidance under subsection (1) to SEPA and all responsible authorities on their duties under—
(a) subsection (2)(a) of section 1, and
(b) subsection (2)(b)(zi) of that section.
(6) The guidance given in pursuance of subsection (5) must be given not later than 18 months after the provision to which the guidance relates is commenced.
(7) The Scottish Ministers must review and where appropriate update the guidance given in pursuance of subsection (5) not later than 6 years after it was first given or, as the case may be, last reviewed under this subsection.
(8) Before giving guidance in pursuance of subsection (5) or updating the guidance under subsection (7), the Scottish Ministers must consult—
(a) SEPA,
(b) every responsible authority, and
(c) such other persons as they consider appropriate.>

After section 2

Robin Harper

8 After section 2, insert—
Guidance on sustainable flood risk management

(1) The Scottish Ministers must, no later than one year after the day appointed under section 86(1), give guidance to SEPA and responsible authorities as to the management of flood risk in a sustainable way.

(2) SEPA and responsible authorities must have regard to such guidance in relation to the exercise of their flood risk related functions.

(3) The Scottish Ministers may from time to time, but in any case no later than 6 years after guidance was last given under subsection (1), review that guidance and give updated guidance under that subsection.

(4) Before giving guidance under this section, the Scottish Ministers must consult—
   (a) SEPA,
   (b) responsible authorities, and
   (c) such other persons as they consider appropriate.

Section 9

Roseanna Cunningham

27 In section 9, page 5, line 34, leave out subsection (6)

Section 16

Roseanna Cunningham

28 In section 16, page 11, line 16, leave out <subsection (1)> and insert <this Act>

Roseanna Cunningham

29 In section 16, page 11, leave out line 35

Roseanna Cunningham

30 In section 16, page 11, line 38, at end insert—
   <( ) The map referred to in subsection (3)(b) must be prepared at a scale which SEPA considers will assist in—
   (a) the identification of measures under section 23(4)(b), and
   (b) the inclusion of information in local flood risk management plans under section 29(3)(b)(ia) and (4)(ba)(i).>

Peter Peacock

5 In section 16, page 11, line 38, at end insert—
   <(3A) In subsection (3)(b)(i), the reference to a map at the appropriate scale for the purposes of the assessment is a reference to a map at a sufficient scale to enable—
   (a) SEPA, in setting objectives and identifying measures in a flood risk management plan under section 23(4), or>
(b) a lead authority, in preparing the supplementary part of a local flood risk management plan under section 29(3),
to have regard in the plan to the possible contribution of the alteration (including enhancement) or restoration of any natural features and characteristics identified in an assessment under section 16(1) to managing flood risk in the district for which the plan is to be prepared.>

Section 19

Roseanna Cunningham
31 In section 19, page 14, line 16, at end insert—

<(vi) areas classified pursuant to Article 4 of Council Directive 79/409/EEC on the conservation of wild birds,
(vii) special areas of conservation designated under regulation 8(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716), and
(viii) sites of special scientific interest which have been notified in terms of section 3 of the Nature Conservation (Scotland) Act 2004 (asp 6).>

Roseanna Cunningham
32 In section 19, page 14, line 18, leave out <(v)> and insert <(viii)>

Section 23

Roseanna Cunningham
33 In section 23, page 15, line 24, leave out subsections (4A) to (4C)

Section 24

Roseanna Cunningham
34 In section 24, page 16, line 10, leave out <cost> and insert <costs>

Roseanna Cunningham
35 In section 24, page 16, line 34, leave out from <flood> to end of line 35 and insert—

<(  ) 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.>

Peter Peacock
65 In section 24, page 16, line 35, at end insert—
(2AA) 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.

(2AB) The measures considered in pursuance of subsection (2AA) 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 16 in relation to the district.

**After section 24**

**Roseanna Cunningham**

36 After section 24, insert—

**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 23 and 24.

(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 22 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.

**Section 25**

**Roseanna Cunningham**

37 In section 25, page 17, line 24, at end insert—

*( ) every category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district.*
Section 26

Roseanna Cunningham

38 In section 26, page 18, line 16, leave out <action should be> and insert <consultation should be undertaken or other action>

Roseanna Cunningham

39 In section 26, page 18, line 18, after <to> insert <undertake such further consultation and>

Section 29

Roseanna Cunningham

40 In section 29, page 20, line 1, after <maps,> insert—

<(ia) information about how implementing the measures summarised under paragraph (a) may alter (including enhance) or restore natural features and characteristics,>

Roseanna Cunningham

41 In section 29, page 20, line 2, leave out <the measures summarised under paragraph (a)> and insert <those measures>

Peter Peacock

9 In section 29, page 20, line 11, at end insert—

<(  ) Where a summary under subsection (3)(a) includes reference to the contribution that natural features and characteristics could make to flood risk management within the local plan district, the supplementary part must also include—

(a) a map which shows, or

(b) more than one map which, taken together, show,

those natural features and characteristics at such level of detail as the lead authority considers appropriate for the purposes of the implementation part.>

Roseanna Cunningham

42 In section 29, page 20, line 22, after <to> insert—

<(i) the alteration (including enhancement) or restoration of natural features and characteristics, and

(ii)>}

Peter Peacock

10 In section 29, page 20, line 23, after <drainage,> insert—

<(  ) where the lead authority considers that implementation of a measure requires a co-ordinated approach across two or more local plan districts, a description of how the lead authority proposes to secure such an approach,>
Section 30

Roseanna Cunningham

43 In section 30, page 21, line 41, at end insert—

<(  ) any category 1 responder (other than a responder which is a responsible authority)
which has functions exercisable in or in relation to the district,>

Section 36

Peter Peacock

4 In section 36, page 24, line 37, at end insert—

<(  ) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any
responsible authority for the purpose of flood risk management for any period, have
regard to flood risk management plans (as approved under section 27) and local flood
risk management plans (as finalised under section 31).>

After section 36

Karen Gillon

13 After section 36, insert—

<Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

In regulation 24 (further information) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432)—

(a) the words from “may” to the end become paragraph (a), and

(b) at the end there is inserted—

“(b) must, where the application relates to a development that is likely to result in a material increase in the number of buildings at risk of being damaged by flooding, require from the applicant an assessment of flood risk in respect of the development.”.>

Karen Gillon

14 After section 36, insert—

<Town and Country Planning (Scotland) Act 1997

After section 37(2) of the Town and Country Planning (Scotland) Act 1997 (c.8) insert—

“(2A) Where a flood risk assessment has been provided by virtue of regulation 24(b) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432), that assessment is, for the purposes of subsection (2), a material consideration.”.>
Section 37

Roseanna Cunningham

44 In section 37, page 25, line 19, leave out <of,> and insert <relating to—

( ) the contribution that altering (including enhancing) or restoring natural features and characteristics could make to managing flood risk, and

( )>

Section 43

Roseanna Cunningham

45 In section 43, page 30, line 2, at end insert—

<( ) any category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the sub-district,>

Section 45

Roseanna Cunningham

46 In section 45, page 30, line 21, leave out from <action> to <Part> in line 22 and insert <the action referred to in subsection (2) taken during the year>

Roseanna Cunningham

47 In section 45, page 30, line 27, at end insert—

<(2) The action is—

(a) action taken in accordance with this Part (including, in particular, action taken for securing compliance with the requirements of the Directive), and

(b) action taken to implement measures identified in a flood risk management plan approved under section 27.>

Section 48

Peter Peacock

7 In section 48, page 31, line 19, after <means> insert <(subject, in the case of the map mentioned in subsection (3)(b) of section 16, to subsection (3A) of that section)>

Section 49

Elaine Murray

11 In section 49, page 32, line 10, at end insert—
carry out any operation that would assist in the retention of flood water, whether on a permanent or temporary basis (such as the restoration of floodplains, woodland or wetland), or in slowing the flow of such water (such as through the management of woodlands or other vegetation).>

John Scott

20 In section 49, page 32, line 13, after <person> insert—
   <(i)>

John Scott

21 In section 49, page 32, line 15, at end insert <or,
   (ii) relating to the management by that person of land in a way which can assist in the retention of flood water or slowing the flow of such water.>

Roseanna Cunningham

48 In section 49, page 32, leave out line 16

Elaine Murray

12 In section 49, page 32, line 17, after <incurred> insert <or income foregone>

John Scott

22 In section 49, page 32, line 18, after <Part,> insert—
   <( ) make payments to any other person in compensation for income lost as a result of entering into agreements or arrangements of the type mentioned in paragraph (d)(ii),>

Section 57

Elaine Murray

23 In section 57, page 36, line 36, after <out> insert—
   <( )>

Elaine Murray

24 In section 57, page 37, line 2, at end insert <or
   ( ) any work required under section 51A,>

After section 61

Robin Harper

15 After section 61, insert—
Powers of Scottish Ministers to set objectives for Scottish Water

In section 56A(3) of the Water Industry (Scotland) Act 2002 (asp 3)—
(a) the words “section 51(1)” become paragraph (a), and
(b) at the end, insert “, and
(b) section 1(2)(b)(zi) of the Flood Risk Management (Scotland) Act 2009 (asp 00).”.

Peter Peacock

After section 61, insert—

Scottish Water: exercise of functions regarding charges

In section 29C(2)(c) of the Water Industry (Scotland) Act 2002 (asp 3)—
(a) the word “and” which immediately follows sub-paragraph (i) is repealed, and
(b) after sub-paragraph (ii) insert “and
(iii) Scottish Water’s duty under section 1(2)(b)(zi) of the Flood Risk Management (Scotland) Act 2009 (asp 00),”.

Section 67

Roseanna Cunningham

In section 67, page 41, leave out lines 20 and 21 and insert—

( ) every category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area which is the subject of the assessment.

Roseanna Cunningham

In section 67, page 41, leave out lines 24 and 25 and insert—

( ) any category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area in which the power is to be exercised.

Roseanna Cunningham

In section 67, page 41, line 26, leave out subsections (3) and (4)

After section 67

John Scott

Supported by: Peter Peacock, Liam McArthur

After section 67, insert—
PART

FIRE AND RESCUE AUTHORITIES: FLOOD RISK MANAGEMENT FUNCTIONS

Duty to prepare a strategy

(1) Each relevant authority must prepare a strategy for its area that—
   (a) identifies (so far as is relevant in relation to reducing overall flood risk)—
      (i) the property held by, and
      (ii) the human resources available to,
      category 1 and 2 responders,
   (b) sets out how it proposes to—
      (i) deploy that property and those human resources, and
      (ii) co-operate with category 1 and 2 responders and any other person the
           authority considers appropriate,
           in a way that would, in its opinion, best contribute to reducing overall flood risk.

(2) The strategy must also contain proposals for the promotion of flood prevention measures
    in the authority’s area (including in particular measures which members of the public
    can take in order to protect property and individuals from the effects of flooding).

(3) In preparing a strategy, the relevant authority must have regard to—
   (a) any current flood risk management plan for any flood risk management district in
       the area,
   (b) any current local flood risk management plan for any local plan district in the
       area,
   (c) such other matters as the Scottish Ministers may specify in regulations.

(4) Before finalising a strategy, a relevant authority must submit a draft of it for approval to
    the Scottish Ministers; and the Scottish Ministers may specify a date by which a relevant
    authority must submit a draft to them.

(5) A relevant authority—
   (a) may from time to time, and
   (b) must, when directed to do so by Scottish Ministers,
    prepare a revised strategy; and subsections (1) to (4) apply to the revised strategy as they
    do to the strategy.

(6) In this section—
   “relevant authority” has the same meaning as in section 6 of the Fire (Scotland)
   Act 2005 (asp 5); and
   the references to category 1 and 2 responders are to be construed by reference to
   Schedule 1 to the Civil Contingencies Act 2004 (c. 36).>

Section 68

Roseanna Cunningham

52 In section 68, page 42, line 23, at end insert—
<zb>any land for the purposes of preparing a local flood risk management plan under section 29,

(zc) any land for the purposes of preparing a report under section 32 or 33,>

Roseanna Cunningham

53 In section 68, page 42, line 35, at end insert—

<\( )\) In subsection (2), paragraphs (zb) and (zc) apply only where the local authority is a lead authority within the meaning of section 29.>

Section 72

Roseanna Cunningham

54 In section 72, page 45, line 18, leave out <or, as the case may be>

Roseanna Cunningham

55 In section 72, page 45, line 19, at end insert <or, as the case may be, exercise of another function mentioned in section 71>

Peter Peacock

66 In section 72, page 45, line 21, at end insert—

<\(2AA\)SEPA or, as the case may be, a local authority must pay any compensation due under section 71 within a reasonable period of notice being given in accordance with subsection (2).

\(2AB\)The Scottish Ministers must, no later than one year after section 71 comes into force, give guidance to SEPA and local authorities as to what constitutes a “reasonable period” for the purposes of subsection (2AA).>

Section 80

Roseanna Cunningham

56 In section 80, page 51, line 14, after <68> insert <(whether those specified in that section or the ancillary powers mentioned in section 70(1) and (2))>

Section 84

Roseanna Cunningham

57 In section 84, page 53, line 12, at end insert—

<“category 1 responder” means a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004 (c.36).>

Rhoda Grant

17 In section 84, page 53, line 16, at end insert—

11
any work that involves the alteration (including enhancement) or restoration
of natural features and characteristics of any river basin or coastal area.

Rhoda Grant

18 In section 84, page 53, line 18, leave out <paragraph (a) or> and insert <paragraphs (a) to>

Roseanna Cunningham

58 In section 84, page 53, line 23, at end insert—

< (1A) In this Act, any reference to a Directive of the European Parliament and of the Council
or, as the case may be, a Council Directive includes a reference to the Directive as
amended from time to time.>

Schedule 1

Roseanna Cunningham

59 In schedule 1, page 54, line 11, leave out from <before> to end of line 12 and insert—

< (i) before the plan is next reviewed under section 28,
(ii) in the 6 years following that review, or
(iii) after the end of the period mentioned in sub-paragraph (ii).>

Roseanna Cunningham

60 In schedule 1, page 54, line 27, at end insert—

<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 16,
(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.>

Roseanna Cunningham

61 In schedule 1, page 54, line 31, at end insert—

<In relation to measures to be implemented before the plan is next reviewed under section
28, an estimate of the cost of implementing the measures.>
Schedule 4

Roseanna Cunningham

62  In schedule 4, page 63, line 30, column 2, after <6> insert <(see also section 84(1A))>

Roseanna Cunningham

63  In schedule 4, page 64, line 3, at end insert—
    <category 1 responder Section 84(1)>

Roseanna Cunningham

64  In schedule 4, page 64, line 18, at end insert—
    <natural features and characteristics Section 16(1A)>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted.

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Co-operation and co-ordination: duties of Scottish Ministers, SEPA and responsible authorities**
19, 10

**Group 2: General duty: guidance on certain functions including sustainable flood risk management**
26, 8

Debate to end no later than 20 minutes after proceedings begin

**Group 3: Natural features and characteristics**
27, 28, 29, 30, 5, 33, 65, 36, 40, 41, 9, 42, 44, 7, 17, 18, 60, 64

**Group 4: Flood risk maps: protected areas**
31, 32

**Group 5: Minor drafting points**
34, 56, 58, 62

**Group 6: Non-structural measures**
35
Group 7: Category 1 responders: involvement in flood risk management planning process etc.
37, 43, 45, 49, 50, 51, 57, 63

Group 8: Flood risk management plans: submission for approval
38, 39

Debate to end no later than 1 hour 5 minutes after proceedings begin

Group 9: Funding allocations to SEPA and responsible authorities
4

Group 10: Development plans and individual planning decisions
13, 14

Group 11: Annual report on implementation etc.
46, 47

Group 12: Local authorities: general power to manage flood risk
11, 20, 21, 48, 12, 22

Group 13: Local authorities: recovery of expenses
23, 24

Debate to end no later than 1 hour 45 minutes after proceedings begin

Group 14: Scottish water; flood risk management functions
15, 16

Group 15: Fire and rescue authorities: Flood risk management functions
25

Group 16: Powers of entry: preparation of local flood risk management plans etc.
52, 53

Group 17: Compensation
54, 55, 66

Group 18: Flood risk management plans: matters to be included in every plan
59, 61

Debate to end no later than 2 hours 25 minutes after proceedings begin
Flood Risk Management (Scotland) Bill: Bruce Crawford, on behalf of the Parliamentary Bureau, moved S3M-4111—That the Parliament agrees that, during Stage 3 of the Flood Risk Management (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated, each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

- Groups 1 and 2: 20 minutes
- Groups 3 to 8: 1 hour 5 minutes
- Groups 9 to 13: 1 hour 45 minutes
- Groups 14 to 18: 2 hours 25 minutes.

The motion was agreed to.

Flood Risk Management (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to without division: 19, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 65, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 20, 21, 48, 22, 23, 24, 49, 50, 51, 52, 53, 54, 55, 56, 57, 17, 18, 58, 59, 60, 61, 62, 63 and 64.

The following amendments were agreed to (by division)—
- 4 (For 58, Against 56, Abstentions 0)
- 13 (For 56, Against 55, Abstentions 0).

The following amendments were disagreed to (by division)—
- 14 (For 56, Against 56, Abstentions 0; amendment disagreed to on casting vote)
- 15 (For 55, Against 57, Abstentions 0)
- 16 (For 57, Against 57, Abstentions 0; amendment disagreed to on casting vote).

The following amendments were moved and, with the agreement of the Parliament, withdrawn: 11 and 25.

The following amendments were not moved: 8, 5, 9, 10, 7, 12 and 66.
Flood Risk Management (Scotland) Bill: The Cabinet Secretary for Rural Affairs and the Environment moved S3M-4058—That the Parliament agrees that the Flood Risk Management (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Flood Risk Management (Scotland) Bill: Stage 3

14:35

The Presiding Officer (Alex Fergusson): The next item of business is stage 3 proceedings on the Flood Risk Management (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2—that is, SP bill 15A; the marshalled list—that is, SP bill 15A-ML; and the groupings, which I have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division this afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate and 30 seconds for all other divisions.

Section 1—General duty

The Presiding Officer: We go straight to group 1. Amendment 19, in the name of Elaine Murray, is grouped with amendment 10.

Elaine Murray (Dumfries) (Lab): It is a pleasure to kick off proceedings at stage 3 of the Flood Risk Management (Scotland) Bill, about which there has been a lot of discussion and agreement.

Amendment 19 is a rewrite of an amendment that was lodged at stage 2. It focuses on the need for all agencies, including the Scottish Environment Protection Agency, the Scottish ministers, councils and any designated responsible authorities, to take an integrated approach to flood risk management in exercising their individual functions. As the bill stands, those authorities will be required to co-operate so far as is practicable in order to co-ordinate the exercise of their functions. Co-ordinated actions require the agencies to work in harmony whereas integration requires them to work together as a whole. Integrated working is required to ensure that all aspects of flood risk prevention are covered.

All forms of flood risk—whether from surface, ground, river or coastal water—need to be addressed in an integrated way. To do that, policy must also be integrated, and the work of the many agencies that may be involved in flood prevention must fit together as much as possible.

Peter Peacock’s amendment 10 recognises that some issues—surface water run-off and the management of natural features, for example—will cross local authority boundaries and local plan districts and that flood risk planning needs to be integrated in such cases. It proposes that the lead authority plan should include a description of how an integrated approach will be achieved. I encourage members to support both amendments in the group.

I move amendment 19.

The Presiding Officer: I remind members that, if they wish to participate in a discussion on a group of amendments, they should press their request-to-speak buttons when the group is announced.

Peter Peacock (Highlands and Islands) (Lab): The implementation of certain flood protection measures may require two or more local authorities to take a co-ordinated approach in order for the measure to be effective. A measure could be proposed high up in a catchment area that seeks to slow down the flow of water, and a measure could be proposed further down in a separate local authority area that will store water in a flood plain, for example. Such measures will work effectively only if the relevant local authorities co-ordinate their implementation across the whole catchment. Amendment 10 seeks to ensure that local authorities are required to secure a co-ordinated approach.

Amendment 42, in the name of the minister, also deals with co-ordination to implement certain measures. I look to the minister to give me a brief assurance that her amendment deals with the issue of co-ordination. If it does, I will not move amendment 10.

The Minister for Environment (Roseanna Cunningham): Amendment 19 places a duty on the Scottish ministers, SEPA and responsible authorities to co-operate when they exercise their functions in order to adopt an integrated approach. That is entirely consistent with the spirit of the bill, so I support the amendment.

Amendment 10 relates to the co-ordination of efforts to implement measures that cross multiple local plan districts. Local plan districts will be discrete flood risk management units based on catchments. As such, flood risk management efforts should never need to be co-ordinated across different districts. We therefore believe that amendment 10 is unnecessary.

Furthermore, section 34 already includes provision on joint working arrangements between local authorities when local flood risk management plans are being prepared and, as Peter Peacock said, amendment 42, which will be discussed later, will require the lead local authority to set out information on how the efforts of all the bodies that are involved will be co-ordinated to implement measures. For those reasons, I urge Peter Peacock not to move amendment 10.

Elaine Murray: I am pleased that the minister intends to accept amendment 19.

Amendment 19 agreed to.
Section 2—Directions and guidance

The Presiding Officer: We come to group 2. Amendment 26, in the name of the minister, is grouped with amendment 8.

Roseanna Cunningham: The concept of sustainable flood management was introduced by the Water Environment and Water Services (Scotland) Act 2003. Broadly speaking, sustainable flood risk management is about taking a catchment-focused approach to organising actions to manage flood risk for current and future generations. Sustainable flood risk management is at the heart of the bill, so guidance on it is essential.

Amendment 26 will require the Scottish ministers to issue guidance to SEPA and the responsible authorities on acting in the way that is best calculated to manage flood risk in a sustainable way. The guidance will have to be issued no later than 18 months after the relevant bill provisions are commenced, and it will have to be reviewed at least every six years and, when necessary, updated. Before the Scottish ministers issue guidance, they will have to consult SEPA and the responsible authorities.

Further, amendment 26 will require the Scottish ministers to issue guidance on sustainable flood risk management to SEPA and other responsible authorities, and that guidance would have to be taken into account when those authorities exercised their flood risk-related functions. Prior to issuing the guidance, the Scottish ministers would have to consult SEPA, all responsible authorities and other appropriate persons, whom I envisage to include district flood risk advisory groups. Guidance is essential to ensure that we have a common understanding of what it means to manage flood risk in a sustainable way, and it will be the first important step in a new approach to flood management.

In accordance with previous legislation that the Parliament has passed and with European directives, my amendment proposes that the guidance be produced within one year of the bill coming into force, whereas the Government's amendment 26 would require the guidance to be produced within 18 months of that. I will not quibble over six months, although the sooner the guidance is issued the better. The minister has assured me that amendment 26 will achieve the same aim as amendment 8, which is to ensure that ministers, in association with all appropriate partners, develop guidance for SEPA and local authorities on what it means to manage flood risk in a sustainable way. I will therefore be happy not to move amendment 8.

Roseanna Cunningham: Amendment 26 does what Robin Harper said and more. I am glad to hear that he is content with the amendment that we lodged.

Amendment 26 agreed to.

Amendment 8 not moved.

Section 9—SEPA to prepare flood risk assessments

14:45

The Presiding Officer: In group 3, amendment 27, in the name of the minister, is grouped with amendments 28 to 30, 5, 33, 65, 36, 40, 41, 9, 42, 44, 7, 17, 18, 60 and 64.

Roseanna Cunningham: Of necessity, my comments on this group will be longer. I will speak to amendments 27 to 30, 5, 33, 36, 40, 41, 9, 42, 44, 7, 17, 18, 60 and 64.

I lodged amendment 8 to ensure that the second part of recommendation 9 in the Rural Affairs and Environment Committee's stage 1 report is met. The recommendation was that the Government should produce a similar amendment at stage 2, but it failed to do so. I am therefore pleased that the Government has done so at stage 3.

Amendment 8 would require the Scottish ministers to issue guidance on sustainable flood risk management to SEPA and other responsible authorities, and that guidance would have to be taken into account when those authorities exercised their flood risk-related functions. Prior to issuing the guidance, the Scottish ministers would have to consult SEPA, all responsible authorities and other appropriate persons, whom I envisage to include district flood risk advisory groups. Guidance is essential to ensure that we have a common understanding of what it means to manage flood risk in a sustainable way, and it will be the first important step in a new approach to flood management.

In accordance with previous legislation that the Parliament has passed and with European directives, my amendment proposes that the guidance be produced within one year of the bill coming into force, whereas the Government's amendment 26 would require the guidance to be produced within 18 months of that. I will not quibble over six months, although the sooner the guidance is issued the better. The minister has assured me that amendment 26 will achieve the same aim as amendment 8, which is to ensure that ministers, in association with all appropriate partners, develop guidance for SEPA and local authorities on what it means to manage flood risk in a sustainable way. I will therefore be happy not to move amendment 8.

Roseanna Cunningham: Amendment 26 does what Robin Harper said and more. I am glad to hear that he is content with the amendment that we lodged.

Amendment 26 agreed to.

Amendment 8 not moved.
The first set of amendments that I will discuss relates to the assessment made under section 16. The assessment is intended to create for the first time a national picture of opportunities for natural flood risk management measures throughout Scotland. It will be a challenging exercise, but I do not expect SEPA to undertake the work in isolation: local authorities, the Forestry Commission and other bodies will be expected to contribute.

Amendment 30 stipulates that the map accompanying the assessment made under section 16 must be prepared at a scale that SEPA considers will assist in considering measures under section 24 and the inclusion of information in local flood risk management plans prepared under section 29. Amendment 30 addresses directly concerns raised by the committee at stage 2; I recognise the constructive contributions that committee members made during the preparation of amendment 30 and other amendments.

Peter Peacock has lodged a set of amendments that also deal with the issue of scale and section 16 assessments. Although I fully appreciate the good intentions behind his amendments, it is my view that amendments 5, 7 and 9 duplicate the amendments that I have lodged and that they therefore risk creating unnecessary duplication and confusion. For those reasons, I ask Peter Peacock not to move those amendments.

The second set of amendments relates to information that should be included in the supplemental and implementation parts of a local flood risk management plan.

Amendment 40 clarifies that local plans should include supplemental information on how implementing measures may alter or restore natural features and characteristics. Amendment 42 requires the lead local authority to specify how the responsible authorities will co-ordinate their functions to implement measures that alter, enhance or restore natural features and characteristics. Such co-ordination is particularly important as those types of measures must work in concert with measures in other parts of a catchment. Amendment 42 is the amendment to which I referred earlier. The amendments in this grouping all help to ensure that natural flood management options are considered in the preparation and implementation of local flood risk management plans, and I trust that they will be supported. Amendment 44 clarifies that SEPA may request responsible authorities to prepare information, assessments or maps about how the alteration, enhancement or restoration of natural features and characteristics could contribute to flood risk management.

Amendments 33 and 60 deal with a duplication that arose as a consequence of two similar amendments being agreed to at stage 2—one lodged by me and one by Peter Peacock. Peter Peacock and I have worked closely over the past few weeks to draft an alternative amendment that avoids such duplication. Amendment 60 will require SEPA to set out reasons for identifying measures in a flood risk management plan. When an assessment made under section 16 indicates that restoration or enhancement of natural features or characteristics could contribute to managing flood risk but a measure to take forward such an opportunity has not been identified, amendment 60 will require SEPA to set out the reasons why. Amendment 33 is a technical amendment to remove the remaining duplicate provisions.

My amendment 36 and amendment 65, which has been lodged by Peter Peacock, relate to the setting of objectives and measures to tackle flooding problems. The setting of objectives and measures is a complex process that requires a variety of factors to be balanced carefully. Amendment 36 requires the Scottish ministers to issue guidance to SEPA and the responsible authorities on setting objectives and measures under sections 23 and 24. The guidance must pay particular attention to the consideration of measures to alter or restore natural features and characteristics. The first guidance must be issued by 22 December 2012 and will allow the Scottish ministers to set out a framework to support the selection of the most sustainable flood-risk management measures.

Central to the selection of the most sustainable measures will be taking a catchment-focused approach. I expect SEPA and local authorities in taking such an approach to look first at how the timing, magnitude and duration of a flood can be altered to reduce flood risk—that is, what steps can be taken to manage the sources and pathways of flood waters before they cause a flood risk. By first focusing on the sources and pathways of flood waters, the aim is to reduce, but not necessarily replace, the need for traditional engineering solutions. Clearly, natural flood management options have an important role to play in that respect and, in most cases, I expect those options to be considered first. I intend fully to set out those and other important considerations in the guidance issued under amendment 36.

I believe that amendment 65, which has been lodged by Peter Peacock, will complement this approach by requiring SEPA to consider the contribution that restoring natural features and characteristics can make to reducing, slowing or otherwise managing flood waters. I therefore support amendment 65.
Finally, I support amendments 17 and 18, which have been lodged by Rhoda Grant, who spent a considerable amount of time on the committee while the bill was going through, although she is no longer a member of it. The amendments will add reference to the restoration and alteration of natural features and characteristics to the definition of “flood protection work.”

Amendments 27 to 29, 41 and 64 are all consequential amendments.

I move amendment 27.

Peter Peacock: I will speak to amendment 65 in particular but also to the other amendments in the group. I acknowledge that, through the joint action of the committee and the Government, we have made huge progress since the first discussions took place. One matter that has received great attention throughout the passage of the bill—and indeed before the bill was introduced—is natural flood management. That cause has been advanced strongly by Scottish Environment LINK, and I pay tribute to its hard work and its advice during the passage of the bill. Andrea Johnstonová deserves a mention on the record, given the work that she has done.

There is little doubt that the committee has been attracted by the proposition of using more natural approaches to flood risk management. Such approaches might be more sustainable in the long term than hard engineering, and they have the additional advantage of utilising or restoring natural characteristics and habitats, which has other benefits for our society as a whole. When such approaches can be used to take the peak off floods before we need engineered solutions downstream, they should certainly be considered.

Natural flood management approaches might not work in every circumstance and they are not a panacea, but they certainly have a contribution to make and have great potential, too.

It has also become clear that we require a change in culture, particularly within local authorities, which are heavily influenced by engineers. Good people though engineers are, that situation can lead to a bias towards hard engineering solutions when natural flood alleviation measures might help. As the minister said, the Scottish Government has addressed that in part by introducing amendment 60 to schedule 1. I am grateful for that amendment, because it moves things forward. It strengthens the provisions for reporting and explaining why natural flood management measures are not included in a flood risk management plan.

Amendment 60 does not go far enough to address some of the concerns of the Rural Affairs and Environment Committee. Amendment 65 seeks to address that point. It requires that SEPA must consider measures that seek to reduce, slow or otherwise manage flood water by altering, including enhancing, or restoring natural features and characteristics. Put more simply, it requires SEPA to consider the contribution that natural flood management, as it has become known, can make to the management of flood risk.

Amendment 65 is linked to the consideration of structural measures under section 24(1)(b), which includes measures that involve flood protection works. The minister has referred to Rhoda Grant’s amendment 17, which seeks to deal with part of that, too.

I have been grateful to discuss such matters off-stage with the Government—the minister referred to that. An earlier draft of amendment 65 tried to express the idea of giving natural flood management priority, but I accept that that has legal difficulties. Following discussions, the amendment that was lodged was designed to achieve consensus. I thank the minister for saying that the Government will support the amendment.

I also thank the minister for setting out that she expects natural flood management issues to be discussed and considered first when decisions are made about what flood management plans need to be engineered—if that is the right word—and that she expects that process to be specified in guidance. I am grateful for all that. When taken with other stage 3 amendments that the minister mentioned, that fully meets the committee’s recommendation in its report.

Given what the minister said, I accept that her amendment 30 deals with the points that I sought to make through amendments 5 and 7, so I will not move them.

The situation is similar for amendment 9, as the minister’s amendment 42 deals with more detailed mapping. I am content with the minister’s assurance and that her amendment deals with the issue adequately. Accordingly, I do not plan to move amendment 9.

Rhoda Grant (Highlands and Islands) (Lab): Section 84 defines flood protection work as “any operation on land for the purpose of protecting any land from flooding”.

The definition includes a wide range of operations, but it lacks an emphasis on natural flood management.

The committee was concerned that those who are involved in flood prevention work will have a mindset that favours more structural measures, because of their training and experience. Changing the definition to include a paragraph that reads

“any work that involves the alteration (including enhancement) or restoration of natural features and
would ensure a shift of emphasis towards more natural solutions in the consideration of structural measures. Amendment 17 is therefore important to the bill. I welcome the minister’s support, and I hope that the rest of the Parliament will support the amendment.

Amendment 18, which is in my name, is consequential, so I urge members to support it, too.

John Scott (Ayr) (Con): I support most of the amendments in the group. I welcome the minister’s response to stage 2 amendments that were intended to strengthen the provision of natural flood management. I also welcome Peter Peacock’s amendment 65, which supports the principle of considering natural flood management techniques at the beginning, rather than at the end of a flood.

Like Peter Peacock, I agree with Scottish Environment LINK that natural solutions are more likely to be sustainable in the long term, will be cheaper to maintain and might benefit local communities. Natural flood management techniques should also help to increase biodiversity, deliver better habitat protection and improve water quality. In every sense, they will represent value for the money that is spent on developing them.

During the passage of the bill, I have learned of hydraulic roughness, which means slowing the progress of water and taking the peaks and tops off floods. I see huge potential in developing that concept on upstream flood plains as soon as possible.

Allowing hitherto natural flood plains to flood again and turning those temporary bodies of water into leaky dams by placing barriers of trees across flood plains and along riverbanks is a simple concept to visualise and understand. That is likely to be the most effective tool in the box of natural flood management techniques.

We will support all the amendments in the group that are moved.

Amendment 27 agreed to.

Section 16—SEPA to assess possible contribution of alteration etc of natural features and characteristics

Amendments 28 to 30 moved—[Roseanna Cunningham]—and agreed to.

Amendment 5 not moved.

Section 19—Flood risk maps

15:00

The Presiding Officer: We come to group 4. Amendment 31, in the name of the minister, is grouped with amendment 32. I see that the Cabinet Secretary for Rural Affairs and the Environment is to speak to the amendments.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): I will speak to amendments 31 and 32, in the name of Roseanna Cunningham.

During stage 2, Liam McArthur lodged an amendment with the intention of ensuring that flood risk maps included details of potential damage to protected sites that do not depend on water, including a number of terrestrial sites and woodlands. We agreed that flooding could place non-water-dependent sites at risk and said that we would consider amending the bill to address the point. Amendments 31 and 32 will ensure that such areas are considered when flood risk maps are being prepared. I trust that the amendments in the group address Liam McArthur’s concerns, and I hope that the chamber will support them.

I move amendment 31.

Liam McArthur (Orkney) (LD): As the cabinet secretary indicated, I moved an amendment at stage 2 to address the fact that the bill did not cover non-water-dependent protected sites, which appeared to be an oversight. I am happy with the Government’s amendments in the group.

Amendment 31 agreed to.

Amendment 32 moved—[Richard Lochhead]—and agreed to.

Section 23—SEPA to prepare flood risk management plans

Amendment 33 moved—[Roseanna Cunningham]—and agreed to.

Section 24—Flood risk management plans: objectives and measures

The Presiding Officer: We move to group 5. Amendment 34, in the name of the minister, is grouped with amendments 56, 58 and 62.

Richard Lochhead: The amendments in the group are all largely drafting amendments.

At stage 2, Bill Wilson lodged an amendment to introduce a requirement on SEPA, when setting objectives and measures in flood risk management plans, to take account of the social, environmental and economic costs of implementing those measures. Amendment 34 is
a minor consequential amendment: it changes the word "cost" to "costs", to reflect the new wording.

Section 80 already provides that the consent of the appropriate authority is needed before any of the powers of entry that are conferred by section 68 can be exercised on Crown land. Amendment 56 clarifies that the requirement applies to the powers that are listed in sections 68 or 70.

Amendment 58 provides that the references in the bill to European directives include references to the amended versions of the relevant directives. Amendment 62 is consequential on amendment 58. I hope that the chamber will support the amendments in the group.

I move amendment 34.

Amendment 34 agreed to.

The Presiding Officer: We come to group 6. Amendment 35, in the name of the minister, is the only amendment in the group.

Richard Lochhead: Amendment 35 clarifies that non-structural measures may include "the carrying out of research, monitoring and other methods of gathering information relevant to managing flood risk".

Clearly, we need good information if we are to get the right measures in the right places, whether they are natural flood management measures or flood warning systems. Amendment 35 will ensure that those data-gathering exercises are targeted appropriately.

I move amendment 35.

Amendment 35 agreed to.

Amendment 65 moved—[Peter Peacock]—and agreed to.

After section 24

Section 25—Flood risk management plans: publicity of drafts etc and consultation

The Presiding Officer: We now come to group 7. Amendment 37, in the name of the minister, is grouped with amendments 43, 45, 49 to 51, 57 and 63.

Roseanna Cunningham: We lodged the amendments in the group in response to a recommendation by the Rural Affairs and Environment Committee in its stage 1 report that the Scottish Government "explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk".

In some ways, the issue relates to the debate that we will have on group 15.

Amendments 37, 43 and 45 ensure that category 1 responders must be consulted on flood risk management plans and that they must be appropriately represented on all district and sub-district advisory groups.

Amendments 49 to 51 ensure that SEPA will consult all relevant category 1 respondents in an area on the provision and alteration of flood warning systems.

Amendments 57 and 63 define a category 1 responder as "a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004".

Those bodies include the emergency services—fire, police and ambulance—among others.

As I indicated, later we will discuss an amendment that proposes to give the fire and rescue service a specific role in flood risk management planning. I do not want to pre-empt that discussion, but I believe that the amendments that I have lodged strengthen the role of all category 1 responders in the flood risk management planning process. I trust that the amendments will be supported.

I move amendment 37.

Amendment 37 agreed to.

Section 26—Flood risk management plans: submission for approval

The Presiding Officer: We come to group 7. Amendment 38, in the name of the minister, is grouped with amendment 39.

Roseanna Cunningham: During stage 2, John Scott lodged an amendment that sought to give the Scottish ministers a role in deciding which bodies SEPA should consult about draft flood risk management plans. The Scottish ministers already had power to do that under section 26 of the bill, but I undertook to lodge an amendment at stage 3 that would make the drafting clearer. Amendments 38 and 39 clarify the Scottish ministers' existing powers to direct SEPA to undertake further consultation, if they consider that that is required.

I move amendment 38.

John Scott: I speak in support of amendments 38 and 39. I am grateful to the minister for lodging the amendments in response to my amendment 87 at stage 2. Although I accept that neither of the amendments changes the powers of ministers, they clarify their existing powers to direct SEPA at an early stage, if required, under section 26. The amendments are to be welcomed.

Amendment 38 agreed to.

Amendment 39 moved—[Roseanna Cunningham]—and agreed to.
Section 29—Local authorities to prepare local flood risk management plans

Amendments 40 and 41 moved—[Roseanna Cunningham]—and agreed to.
Amendment 9 not moved.
Amendment 42 moved—[Roseanna Cunningham]—and agreed to.
Amendment 10 not moved.

Section 30—Local flood risk management plans: publicity and consultation

Amendment 43 moved—[Roseanna Cunningham]—and agreed to.

Section 36—Duty to have regard to flood risk management plans and local flood risk management plans

The Presiding Officer: We come to group 9. Amendment 4, in the name of Peter Peacock, is the only amendment in the group.

Peter Peacock: I suspect that we are getting into slightly more controversial territory and that the consensus may not last, but I live in hope.

Amendment 4 is designed to give effect to the unanimous recommendation that the Rural Affairs and Environment Committee made in relation to flooding funding in its stage 1 report. Labour members have consistently pushed the issue of funding, as we believe that the bill as it stands leaves future funding less well ordered and clear than it could.

The committee received a number of recommendations and representations on the adequacy of the means for planning and funding national priorities for flood protection. The amendment seeks to place ministers under a duty to “have regard to flood risk management plans” when determining funding allocations to SEPA and local authorities. In my view, it is a modest but important amendment that requires ministers, in effect, to consider and form views on short, medium and long-term priorities, without tying their hands in relation to specific funding allocations and decisions at any given moment. As I mentioned, the amendment seeks to give effect to a committee recommendation.

The duty that the amendment creates is for ministers to “have regard to flood risk management plans” when allocating funding to SEPA or any responsible authority. It does not say how ministers must allocate the cash or how much funding they must provide; ultimately, those are matters for ministers. However, the wider public need to be assured that, when considering funding, ministers have had regard to the various plans that exist. After all, by providing for investment in future measures, the bill is designed to reduce the trauma that all too many people experience when their home and community are flooded.

Ministers will no doubt argue that they will, of course, have regard to plans and that the new duty is not needed. In my view, the duty is clearly needed to give some assurance over the period during which successive ministers will be required to have regard to the important issues concerned. Ministers will have to consider a range of other matters when it comes to funding, and the amendment does not prevent them from doing so.

Richard Lochhead: I am intrigued by amendment 4. I appreciate that Peter Peacock has a point to make, but is it the policy of his party to lodge such amendments for every bill that comes before the Parliament from now on? Clearly, ministers give all such issues equal priority. I ask him to clarify the point for the record.

Peter Peacock: That is a matter for future bills. Flood funding is an important issue, and many people in Scotland have been traumatised by flooding. At the very least, ministers must have regard to flood risk management plans before they decide on funding allocations. That is all that amendment 4 does—it does nothing more and nothing less. Ministers should consider the plans before they make their decisions. Some might make out that the duty is onerous or even unnecessary, and that it conflicts with ministers’ wider duties and responsibilities, but I do not accept that argument. It is no more onerous than the amendment says—ministers must “have regard to” the plans. That leaves ministers considerable scope, while ensuring that they cannot ignore flood funding among the many other issues that they have to consider.

I move amendment 4.

Liam McArthur: As Peter Peacock has indicated, amendment 4 represents a unanimous recommendation by the Rural Affairs and Environment Committee. We received wide-ranging evidence from a cross-section of witnesses, many of whom expressed concern, not least the redoubtable Jim Moodie of Fife Council, who voiced a number of concerns about what would happen if a “have regard to” provision was not placed in the bill. The bill delivers a wide range of benefits, but it is important to ensure that we will the ends as well as the means. Peter Peacock’s amendment is, as he suggests, perhaps more modest than some of the proposals that committee members had been considering earlier in the process. I certainly commend the amendment.
Elaine Murray: As Peter Peacock has described, his amendment 4 places a duty on ministers just to “have regard to” flood risk plans. That indeed reflects the recommendations in the Rural Affairs and Environment Committee’s report on flooding and flood management, and in its stage 1 report on the bill. In fact, the amendment does not go as far as those recommendations might suggest. It does not tie ministers into reintroducing ring-fenced funding for flood prevention, which many of us would like to see. The amendment says that, especially in spending review years, ministers should take into account the burden that is placed on the finances of SEPA and responsible authorities if they are to be able to implement the flood risk management plans that they have drawn up. It is important that funding follows policy, and that is all that we are asking for at this point. As Peter Peacock said, amendment 4 is relatively modest, and I hope that the Government feels able to accept it.

Roseanna Cunningham: I fear that Elaine Murray’s hopes are going to be dashed.

I regret that Peter Peacock decided to lodge amendment 4. It would of course require ministers to “have regard to flood risk management plans … and local flood risk management plans” when making funding decisions. Under the bill, “The Scottish Ministers, SEPA and responsible authorities” have a duty to act “with a view to reducing overall flood risk”, and they must “act with a view to achieving the objectives set out in the flood risk management plan”.

It is for ministers, in co-operation with the responsible authorities, to allocate funding across a wide range of Government responsibilities in order to meet agreed national and local priorities. To place an additional statutory duty on ministers to “have regard to” such plans risks elevating flood risk management above all the other important functions of SEPA and other responsible authorities that ministers must consider when determining spending priorities. If such requirements are going to begin to appear in other legislation, everything will become a priority—in which case, as we know, nothing will be a priority.

For those reasons, I believe that amendment 4 is unnecessary, and I ask Peter Peacock to withdraw it.

Peter Peacock: I take it that we will just have to disagree. I do not accept the minister’s arguments, as she knows. She said that the requirement “risks elevating flood risk management”, but it does not actually elevate it. Ministers remain free to make the decisions that all ministers and Governments have to make in sorting out their relative spending priorities. The provisions contained in amendment 4 would require ministers to have regard to what are very important plans before they arrive at their decisions. As other members have said, it is a modest proposal, but it is significant.

The Presiding Officer: The question is, that amendment 4 be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division. I suspend proceedings for five minutes.
The Presiding Officer: The result of the division is: For 58, Against 56, Abstentions 0.

Amendment agreed to.

After section 36

The Presiding Officer: We now come to group 10. Amendment 13, in the name of Karen Gillon, is grouped with amendment 14.

Karen Gillon (Clydesdale) (Lab): Like the amendments that the Parliament has just agreed to, amendments 13 and 14 seek to give effect to unanimous recommendations made by the Rural Affairs and Environment Committee in its flooding report; indeed, at the time, the minister was the convener of the committee.

The committee has had long and, at times, heated discussions on the importance of there being clear and impartial advice and evidence before any planning permission is granted for a development about which there is concern that the risk of flooding may be increased either at the site of the development itself or downstream.

It was made clear during evidence taking that pressure is always brought to bear on planning authorities by many different parties when there is evidence that a development that is seen to bring perceived economic benefit may increase the risk of flooding either at the site or further down the river’s catchment area.

The committee recommended that the Scottish Government ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas that are at risk of flooding. [Interruption.]

The Presiding Officer: Order. I am sorry, Ms Gillon, but there are far too many conversations taking place in the chamber. I ask members to concentrate on business.

Karen Gillon: Thank you, Presiding Officer.

When asked whether there was any merit in having a statutory requirement for a flood risk assessment and for finding and developing a solution to manage any flood risk before an individual development is given consent, SEPA responded positively. Even Homes for Scotland expressed concern about ambiguity in interpretation and evident loopholes and recommended that the policy be reviewed.

The committee was very clear that a statutory requirement was needed to ensure that the planning system was clear and transparent:
sufficient evidence must be available to prove—or sufficient time must be taken to ensure—that mitigation will be done and works will be carried out before planning permission is granted. The evidence to the committee was that it was very difficult to get that work undertaken once planning permission had been granted.

I hope that Parliament will see that these measures are positive, that they will aid the process and that they will ensure that we do not take short-term decisions that will, in the end, have long-term impacts and lead to unnecessary flooding. I ask the chamber to support the two amendments in my name.

I move amendment 13.

Roseanna Cunningham: Amendments 13 and 14 appear to replicate existing duties that are already in planning legislation. Amendment 13 would require a flood risk assessment to be prepared where a development could increase the risk of properties being flooded. Amendment 14 would require planning authorities to have regard to that flood risk assessment when determining the application for planning permission.

Where flood risk is an issue, planning authorities already have a statutory duty to consult SEPA on planning applications. In commenting on an application, SEPA may advise that an assessment of flood risk should be prepared, and the planning authority has the power to require applicants to submit such an assessment.

In determining whether a flood risk assessment is necessary, SEPA will consult its flood risk experts, and both SEPA and the planning authority will consult SEPA’s indicative flood maps. The authority must also consider SEPA’s comments in response to an assessment before determining the application. That requirement arises from regulation 25 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, which prevents a planning authority from determining a planning application to. Are we agreed?

Karen Gillon: I thank the minister for her explanation. However, she was clearly not convinced by that explanation when she was a member of the Rural Affairs and Environment Committee, which produced the recommendations. Without wanting to delve into too many difficult issues and without mentioning the “A” word in too much detail, the experience of the Parliament this session is that current planning procedures are not sufficiently robust. I therefore urge the Parliament, in the best interests of the society in which we live, to ensure that amendments 13 and 14 go through and that undue influence is not placed on SEPA or anyone else in the future.

Roseanna Cunningham: I am curious about whether the member is going to make an allegation of undue influence in a specific case. If she is, I can say that there has been absolutely no proof whatsoever that any undue influence has been exerted in any planning case.

Karen Gillon: I am not suggesting that; I am suggesting that we want to ensure that undue influence cannot be brought to bear. Indeed, in evidence to the Rural Affairs and Environment Committee, SEPA said that it would find the proposed mechanism helpful. If SEPA is asking for it and if the Rural Affairs and Environment Committee, of which the minister was the convener, unanimously recommended it, I can see no good reason for the Parliament not to support amendments 13 and 14. I will press my amendments.

The Presiding Officer: Before I put the question on amendment 13, I remind members who might have come into the chamber late that, if they wish to take part in discussions on groupings, they should press their request-to-speak buttons when the grouping is announced. I think that one or two members were disappointed that they did not get to speak on this grouping.

The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigeie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
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**AGAINST**

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Amendment 14 moved—[Karen Gillon].

The Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

- Alexander, Ms Wendy (Paisley North) (Lab)
- Balfour, Jackie (Dumfarton) (Lab)
- Baker, Claire (Mid Scotland and Fife) (Lab)
- Baker, Richard (North East Scotland) (Lab)
- Boyack, Sarah (Edinburgh Central) (Lab)
- Brankin, Rhona (Midlothian) (Lab)
- Brown, Robert (Glasgow) (LD)
- Butler, Bill (Glasgow Anniesland) (Lab)
- Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
- Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
- Curran, Margaret (Glasgow Baillieston) (Lab)
- Eadie, Helen (Dunfermline East) (Lab)
- Ferguson, Patricia (Glasgow Maryhill) (Lab)
- Finnie, Ross (West of Scotland) (LD)
- Foulkes, George (Lothians) (Lab)
- GilIen, Karen (Clydesdale) (Lab)
- Glen, Marilyn (North East Scotland) (Lab)
- Gordon, Charlie (Glasgow Cathcart) (Lab)
- Grant, Rhoda (Highlands and Islands) (Lab)
- Gray, Iain (East Lothian) (Lab)
- Harper, Robin (Lothians) (Green)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Paisley South) (Lab)
- Hume, Jim (South of Scotland) (LD)
- Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
- Kelly, James (Glasgow Rutherglen) (Lab)
- Kerr, Andy (East Kilbride) (Lab)
- Lamont, Johann (Glasgow Pollok) (Lab)

Against

- Adam, Brian (Aberdeen North) (SNP)
- Aitken, Bill (Glasgow) (Con)
- Allan, Alasdair (Western Isles) (SNP)
- Brocklebank, Ted (Mid Scotland and Fife) (Con)
- Brown, Gavin (Lothians) (Con)
- Brownlee, Derek (South of Scotland) (Con)
- Campbell, Owen (North of Scotland) (SNP)
- Coffey, Willie (Kilmarnock and Loudoun) (SNP)
- Constance, Angela (Livingston) (SNP)
- Crawford, Bruce (Stirling) (SNP)
- Cunningham, Roseanna (Perth) (SNP)
- Don, Nigel (North East Scotland) (SNP)
- Doris, Bob (Glasgow) (SNP)
- Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
- Fabiani, Linda (Central Scotland) (SNP)
- FitzPatrick, Joe (Dundee West) (SNP)
- Fraser, Murdo (Mid Scotland and Fife) (Con)
- Gibson, Kenneth (Cunninghame North) (SNP)
- Gibson, Rob (Highlands and Islands) (SNP)
- Grahame, Christine (South of Scotland) (SNP)
- Harvie, Christopher (Mid Scotland and Fife) (SNP)
- Hepburn, Jamie (Central Scotland) (SNP)
- Hyslop, Fiona (Lothians) (SNP)
- Ingram, Adam (South of Scotland) (SNP)
- Johnstone, Alex (North East Scotland) (Con)
- Kidd, Bill (Glasgow) (SNP)
- Lamont, John (Roxburgh and Berwickshire) (Con)
- Lochhead, Richard (Moray) (SNP)
- MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
- Marwick, Tricia (Central Fife) (SNP)
- Mather, Jim (Argyll and Bute) (SNP)
- Matheson, Michael (Falkirk West) (SNP)
- Maxwell, Stewart (West of Scotland) (SNP)
- McGrigor, Jamie (Highlands and Islands) (Con)
- McKee, Ian (Lothians) (SNP)
- McMillan, Stuart (West of Scotland) (SNP)
- Milne, Nanette (North East Scotland) (Con)
- Mitchell, Margaret (Central Scotland) (Con)
- Morgan, Alasdair (South of Scotland) (SNP)
- Neil, Alex (Central Scotland) (SNP)
- Paterson, Gil (West of Scotland) (SNP)
- Robison, Shona (Dundee East) (SNP)
- Salmond, Alex (Gordon) (SNP)
- Scanlon, Mary (Highlands and Islands) (Con)
- Scott, John (Ayr) (Con)
- Smith, Elizabeth (Mid Scotland and Fife) (Con)
- Somerville, Shirley-Anne (Lothians) (SNP)
- Stevenson, Stewart (Banff and Buchan) (SNP)
- Swinney, John (North Tayside) (SNP)
- Thompson, Dave (Highlands and Islands) (SNP)
- Watt, Maureen (North East Scotland) (SNP)
- Welsh, Andrew (Angus) (SNP)
- White, Sandra (Glasgow) (SNP)
- Wilson, Bill (West of Scotland) (SNP)
- Wilson, John (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 56, Against 55, Abstentions 0.

Amendment 13 agreed to.
Amendment 46 agreed to.

I move amendment 46.

Amendment 46 agreed to.

Amendment 47 moved—[Roseanna Cunningham]—and agreed to.

Amendment 44 moved—[Roseanna Cunningham]—and agreed to.

Amendment 45 moved—[Roseanna Cunningham]—and agreed to.

Amendment 14 disagreed to.

The Presiding Officer: The result of the division is: For 56, Against 56, Abstentions 0.

I have to use my casting vote. In line with convention, I vote against the amendment.

15:30

Section 37—Power of SEPA to obtain information, documents and assistance

Amendment 44 moved—[Roseanna Cunningham]—and agreed to.

Section 43—Sub-district flood risk advisory groups

Amendment 45 moved—[Roseanna Cunningham]—and agreed to.

Section 45—Annual report on implementation of Directive

The Presiding Officer: We move to group 11. Amendment 46, in the name of the minister, is grouped with amendment 47.

Roseanna Cunningham: Annual reports to Parliament provide valuable information on the implementation of legislation. The bill includes a requirement on the Scottish ministers to report to Parliament on action taken during the year by ministers, SEPA and the responsible authorities for securing compliance with the requirements of the European Community floods directive. Amendments 46 and 47 will extend the scope of such reports to cover all action taken to develop flood risk management plans and subsequently to implement measures that are set out in those plans. That will give Parliament a full picture of the action that is being undertaken by those who are responsible for managing flood risk.

I move amendment 46.

Amendment 46 agreed to.

Amendment 47 moved—[Roseanna Cunningham]—and agreed to.
Section 48—Interpretation of Part 3

Amendment 7 not moved.

Section 49—General power to manage flood risk

The Deputy Presiding Officer (Alasdair Morgan): We come to group 12. Amendment 11, in the name of Elaine Murray, is grouped with amendments 20, 21, 48, 12 and 22.

Elaine Murray: Again, the amendments in my name in this group rework an issue that I raised at stage 2, when I also highlighted the issue of the management of land for flood risk prevention. At stage 2, I moved that local authorities might be permitted to apply to Scottish ministers for a land management order for the purposes of flood prevention in a manner similar to that which applies for the management of sites of special scientific interest under the Nature Conservation (Scotland) Act 2004, and to compensate landowners for the loss of income from such land—a proposal that attracted John Scott’s support in principle. However, the minister felt that my proposal would have created two parallel procedures. She suggested that the bill already contains provisions that will enable local authorities to carry out flood prevention operations. Nevertheless, all of us agreed that the bill could usefully be further amended at stage 3, so I did not press the amendments in my name at stage 2.

Subsequently, I have worked with committee clerks and John Scott has worked with Government officials, so group 12 offers two sets of alternative amendments—amendments 11 and 12, in my name, and amendments 20, 21 and 22, in the name of John Scott—that have the same aim. However, I note that the Scottish Rural Property and Business Association seems to be more concerned about the effects of amendments 11 and 12, so I will be interested to hear the minister’s views on the issue.

Both sets of amendments would ensure that local authorities have the power to carry out land management with the aim of slowing down or storing water. Both sets of amendments would also provide for landowners to be compensated for the loss of income derived from their land when it is used for flood prevention. I think that amendments 11 and 12 are neat, but brevity might not necessarily be the best option in this case. Therefore, I am happy to listen to the minister’s assessment of both sets of amendments. There may be technical reasons why amendments 20, 21 and 22 are preferable.

I will move amendment 11 at this point, but I might seek Parliament’s permission to withdraw it and decide not to move amendment 12 if it transpires that amendments 20, 21 and 22 would achieve the same aim and are more competently expressed.

I move amendment 11.

John Scott: Before I speak to amendments 20, 21 and 22, I must declare an interest as a farmer, although not one who is ever likely to benefit from those amendments.

In essence, the amendments in my name seek to compensate land managers for income lost or forgone as a result of their land being flooded. The downside of the use of natural flood management techniques, on which we all wish to place emphasis, is that land that is currently being used for agriculture, growing timber or other purposes might have to be flooded frequently or infrequently to protect communities downstream—or, on occasion, upstream—of the land in question. Therefore, it will be important, once flood risk plans have been developed, to assess the likely frequency of pieces of land being sacrificed to flooding and, possibly, coastal inundation, and thereafter to work out compensation for income lost on an occasional or regular basis.

In that regard, it would be best if individual long-term agreements could be reached between local authorities and land managers and an annual income stream created that is based on a risk assessment of potential damage to crop, stock, timber or other business interests. In addition, the use of annualised payments similar to cross-compliance payments or land management order payments would remind land managers of the duties and obligations that they must meet under their agreements and would encourage them to maintain their land exactly as the flood risk plans required.

I say that because I am concerned that a danger to natural flood prevention techniques might emerge if land is not maintained exactly as the flood risk plans demand. Given the likely complexity of some of the hydrology involved in producing those plans, they must not fail because agreements that have been reached on land use are not properly implemented.

I have listened carefully to Elaine Murray’s arguments and believe that, in principle, amendments 11 and 12 seek to achieve the same ends as the amendments in my name. However, as my amendments are broader in scope than hers, I believe that they will work better in practice, so I hope that she will consider withdrawing amendment 11 and supporting mine.

Roseanna Cunningham: I will speak to amendment 48 before I deal with amendments 11, 12, 20, 21 and 22. Amendment 48 is a technical amendment that seeks to remove the unnecessary overlap that was created by the cross-reference in
section 49 to acquiring land under section 55—I dare say that that is crystal clear to everyone.

The other amendments in the group all aim to address a point that the committee made at stage 2. The committee was concerned that section 49 did not make it clear that local authorities could enter into agreements about how land is managed or make monetary contributions towards such work. Amendment 21 makes it clear that local authorities can enter into arrangements with landowners and occupiers to manage land in a way that will assist with the retention or slowing down of flood water, which could include a range of natural flood management measures. Amendment 22 will allow local authorities to pay landowners and occupiers for income that they lose as a result of entering into such agreements. I fully support the concept of entering into agreements about how land should be managed in that respect, so I support the amendments in the name of John Scott.

Amendment 12, in the name of Elaine Murray, is clearly similar to amendment 22, in the name of John Scott, but we believe that it is narrower in scope and could make it more difficult for local authorities to pay landowners who agree to change land management practices. Amendment 11, which would add a reference to operations by local authorities that would assist with the retention of flood water or slow down the flow of such water, is not necessary, as the definition of flood protection work already includes operations to retain or slow flood water. For those reasons, I ask Elaine Murray to withdraw amendment 11 and not to move amendment 12, and I reiterate my support for the amendments in the name of John Scott.

**Elaine Murray:** These amendments were the subject of an amendment at stage 2. The motivation behind them arose from evidence given to the Rural Affairs and Environment Committee by Jim Moodie of Fife Council, who has been mentioned already today. Mr Moodie told us that although the bill contained a mechanism to allow a local authority to recover costs when it had to undertake work on privately owned land to repair or reinstate flood prevention measures, there was no similar mechanism when authorities were required to clear debris from private land to prevent flooding from occurring.

Although landowners should not be responsible for the whole cost of installing flood prevention measures on their land that are devised and agreed by the responsible authorities, where landowners have been negligent in keeping watercourses or field drains free of debris, and in so doing have placed neighbouring properties in danger of flooding, the local authority should be able to reclaim the expense to the public purse of remedial work.

At stage 2, the minister agreed that the situation was anomalous, but felt at that stage that any amendment should be tied in with the new requirements for local authorities to produce and implement schedules of clearance and repair work. I am grateful to her officials for subsequently suggesting a suitable form of words, now presented as amendments 23 and 24, in order to achieve that aim. I trust that the amendments will attract the support of all members.

I move amendment 23.

**Roseanna Cunningham:** As indicated, amendments 23 and 24 deal with an issue that was raised at stage 2. They expand section 57 to enable local authorities to recover from the landowner or occupier expenses that are incurred in carrying out clearance and repair works under section 51(1)(a), where the need for such work was caused by the positive actions of the owner or occupier. That would include, for example, situations in which a flood risk arises as a consequence of a landowner dumping debris in a river. Under those circumstances, it is entirely appropriate for a local authority to seek compensation for any works that it undertakes to rectify the situation.

I am therefore happy to support amendments 23 and 24.

Amendment 23 agreed to.

Amendment 24 moved—[Elaine Murray]—and agreed to.

**Section 57—Recovery of expenses**

The Deputy Presiding Officer: We move to group 13. Amendment 23, in the name of Elaine Murray, is grouped with amendment 24.
After section 61

The Deputy Presiding Officer: We move to group 14. Amendment 15, in the name of Robin Harper, is grouped with amendment 16.

Robin Harper: Amendment 15 seeks to add an additional requirement to section 56A(3) of the Water Industry (Scotland) Act 2002.

During oral evidence at stage 1, it became clear that Scottish Water prioritised the more immediate or short-term financial cost of options when assessing what form of work to undertake. The Rural Affairs and Environment Committee made it clear that that was incompatible with Scottish Water’s duty to promote sustainable flood management, which will be more cost effective in the long term.

The committee recommended that changes to existing arrangements for financial regulation of Scottish Water were required in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the bill. The Government’s response has not addressed those concerns satisfactorily. Therefore, I have lodged amendment 15, which I hope will, along with Peter Peacock’s amendment 16, ensure that Scottish Water delivers sustainable flood management.

While amendment 16 addresses the Water Industry Commission for Scotland, amendment 15 adds an additional requirement on ministers to consider Scottish Water’s duty to act in the best way calculated to manage flood risk sustainably when issuing directions to Scottish Water under section 56A of the 2002 act.

Scottish ministers issue a statement on ministerial objectives to Scottish Water. The statement includes objectives on such things as the standards of services to be provided to customers by Scottish Water; support for new development; the protection of drinking water; and other forms of environmental protection.

With the new bill, the statement will now also include sustainable flood management. That will sit alongside a requirement on ministers to consider Scottish Water’s duty to act in a way calculated to contribute to sustainable development when issuing directions.

I believe that amendment 15 will go some way towards ensuring that Scottish Water starts to consider a range of investment options that allows it to take a more sustainable approach to its investment programmes.

I move amendment 15.

Peter Peacock: When Scottish Water officials admitted in their evidence at stage 1 that Scottish Water prioritised options with more immediate and short-term financial benefits when assessing what form of work to undertake, I think that we all realised that there could be a problem. The admission came despite the fact that Scottish Water has a duty under the 2002 act to act in the best way calculated to contribute to sustainable development.

In its stage 1 report, the Rural Affairs and Environment Committee recommended that the Scottish Government should change its existing arrangements for the financial regulation of Scottish Water, in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the present bill.

The Water Industry Commission is the economic regulator of Scottish Water and has only a limited role in promoting sustainability. In that limited role, it has to have regard to any Scottish Water duties and to the guidance that is issued to it by ministers. However, it remains unclear how the commission goes about meeting that obligation. Amendment 16 seeks to ensure that it is required to consider Scottish Water’s duty to act in the best way calculated to contribute to sustainable flood management when exercising its functions regarding charges. That duty would sit alongside the existing requirements for the commission to consider guidance that is issued to Scottish Water by Scottish ministers.

Amendment 16 deals only with issues of sustainable flood management. The issue of the sustainability of Scottish Water is wider than just flood management and cannot be fixed through this bill. I hope that the minister will be able to offer reassurance that the general issue of the sustainability of Scottish Water’s investment programme will be dealt with appropriately at an early opportunity. That could be achieved in the short term by issuing guidance to the WIC on issues of sustainability and on how the WIC should exercise its functions regarding charges.

I support amendment 15, and I hope that members will also support amendment 16 when we come to a vote—if, indeed, we do.

Sarah Boyack (Edinburgh Central) (Lab): This is an important issue. I have constituents who regularly suffer sewage flooding problems but cannot get resolution through Scottish Water, even though councillors and I have lobbied it.

Scottish Water would like to address the issue. It has bid for funding to give it the capacity to do remedial work to solve the problem, which is caused by greater flooding incidents. However, Scottish Water is not able to secure funding, because that would contravene the advice given by the WIC. That means that my constituents will not even be considered for the next round of
improvement works until 2014. They have property that is regularly flooded with sewage, but the problem will not be addressed. That is not just an economic problem for my constituents, it is also a health and safety issue. It is directly related to the way in which advice from the WIC is structured. That is why we need to ensure that sustainable development is added to the calculations when investment advice is being set for the next period.

At lunch time today, the cross-party group in the Scottish Parliament on renewable energy and energy efficiency held a meeting at which we considered energy efficiency and water use. There is at present no way of ensuring that the economics of climate change are factored into investment programmes. Amendments 15 and 16 will go part of the way towards ensuring that the issue is at least on the agenda. We must not simply take the short-term solution that seems economically appropriate now. That would mean that our medium-term decisions would be the wrong decisions for climate change and sustainable development.

Roseanna Cunningham: Members are concerned to ensure that Scottish Water is funded to carry out its new responsibilities under the bill. I recognise and share that concern. However, given the structure and operation of the regulatory framework in which Scottish Water operates, I do not believe that amendments 15 and 16 are necessary. I assure members that the existing framework will ensure that the new functions are funded.

Scottish Water carries out a number of important functions, including—most obviously—the treatment and supply of drinking water and the treatment of waste water and sewage. Those functions are funded through the regulatory framework, but neither is identified specifically within the relevant legislation and there is no difference in importance between those functions and the new functions under the bill.

Members might find it helpful if I say a few words about the funding of Scottish Water and the basic role of the Water Industry Commission in determining and setting charges. To determine the maximum charges for a period defined by ministers, the commission considers the cost of all the core functions that Scottish Water must perform in that period together with the requirements of any guidance or any applicable directions that ministers may have given to Scottish Water. That includes a direction from ministers setting the investment objectives that guide Scottish Water’s investment programme.

The definition of “core functions” in the Water Industry (Scotland) Act 2002 is very broad. It includes the basic functions of providing water and sewerage services but will also, on the passing of the bill, include all of Scottish Water’s flood risk-related functions under the bill. That means that the present text of the 2002 act will already require the cost of performing flood risk-related duties to be taken into account when charges are set, just as the duties in relation to water supply and waste water are taken into account.

By focusing on just one of Scottish Water’s important functions, the amendments risk undermining the carefully balanced regulatory framework. Scottish Water is already under a statutory obligation to act in the best way calculated to contribute to sustainable development, which is clearly the issue behind the amendments.

In fact, the Government has issued Scottish Water with guidance on that duty, to which the commission must have regard in setting charges. We recognise that understanding of the issue continues to develop and, as I said at earlier stages of the bill, I would be happy to review and update the guidance in full consultation with all relevant organisations, bodies and groups. As the commission is an independent body, there is no provision for ministers to issue it with directions or guidance. However, I consider it essential that we work towards a shared understanding of sustainable development and its evolving role in the water industry. I can, therefore, commit to entering into open discussions with the commission and Scottish Water to pursue that shared understanding.

I do not believe that the amendments will do anything to address the wider concern that members have outlined today. On that basis, I ask Robin Harper to withdraw amendment 15 and Peter Peacock not to move amendment 16.

The Deputy Presiding Officer: I call Robin Harper to wind up and to press or withdraw amendment 15.

Robin Harper: The assurances from the minister were fairly detailed but not detailed enough. I think that I would be safer moving the amendment.

The Deputy Presiding Officer: The amendment has already been moved, so you are pressing it.

The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
The Deputy Presiding Officer: The result of the division is: For 55, Against 57, Abstentions 0.

Amendment disagreed to.

Amendment 16 moved—[Peter Peacock].

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

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Glen, Marilyn (North East Scotland) (Lab)
Gordon, Charlie (Glasgow Cathcart) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Hume, Jim (South of Scotland) (LD)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kelly, James (Glasgow Rutherglen) (Lab)
Kerr, Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McArthur, Liam (Orkney) (LD)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Tom (Hamilton South) (Lab)
McConnell, Jack (Motherwell and Wishaw) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Hamilton North) (Bellshill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mary (Linlithgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
O’Donnell, Hugh (Central Scotland) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nic (Aberdeen South) (LD)
Stewart, David (Highlands and Islands) (Lab)
 Tolson, Jim (Dunfermline West) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Whitton, David (Strathkelvin and Bearsden) (Lab)

AGAINST
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con).
Allan, Alasdair (Western Isles) (SNP)
Brocklebank, Ted (Mid Scotland and Fife) (Con)
Brown, Gavin (Lothians) (Con)
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FitzPatrick, Joe (Dundee West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
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Grahame, Christine (South of Scotland) (SNP)
Harvie, Christopher (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Central Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow) (SNP)
Lamont, John ( Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
MacAskill, Kenny (Edinburgh East and Musselburgh) (SNP)
Marwick, Tricia (Central Fife) (SNP)
Mather, Jim (Argyll and Bute) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West of Scotland) (SNP)
McGirr, Jamie (Highlands and Islands) (Con)
McKee, Ian (Lothians) (SNP)
McKelvie, Christina (Central Scotland) (SNP)
McMillan, Stuart (West of Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Gil (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Alex (Gordon) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (SNP)
Smith, Elizabeth (Mid Scotland and Fife) (Con)
Somerville, Shirley-Anne (Lothians) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, John (North Tayside) (SNP)
Thompson, Dave (Highlands and Islands) (SNP)
Watt, Maureen (North East Scotland) (SNP)
Welsh, Andrew (Angus) (SNP)
White, Sandra (Glasgow) (SNP)
Wilson, Bill (West of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 57, Against 57, Abstentions 0.

The vote is tied. I cast my vote against the amendment.

Amendment 16 disagreed to.

Section 67—Consultation required by sections 65 and 66

Amendments 49 to 51 moved—[Roseanna Cunningham]—and agreed to.

After section 67

The Deputy Presiding Officer: We come to group 15. Amendment 25, in the name of John Scott, is the only amendment in the group.

John Scott: I thank Peter Peacock, Liam McArthur and other members of the Rural Affairs and Environment Committee for their support for my proposal at stages 2 and 3.

The minister is aware that amendment 25 was developed in response to concerns that the fire and rescue authorities expressed during the committee’s flooding inquiry, and in meetings and correspondence from them since. In our view, the fire and rescue service and others correctly identified a gap in the arrangements for coordinating inland flood rescues after a flood warning has been issued. The committee also thought that greater information should be made available to the public about how to cope with flooding and how to respond to flood risk warnings. We thought that the fire and rescue service would be well equipped to disseminate
information to the public at large in flood risk areas, in the same way that the fire service makes available information about fire prevention.

**The Deputy Presiding Officer**: Order. There are too many conversations going on.

**John Scott**: In England and Wales, the Pitt report has delivered an enhanced and more co-ordinated response to flood prevention and flood rescue. The committee thought that the bill created an opportunity to enhance the response in Scotland. For that reason, I welcome the Government’s announcement on Tuesday of the review that will be conducted into those matters. We all know well that they stray into civil review that will be conducted into those matters. Government Scotland. For that reason, I welcome the created an opportunity to enhance the response in rescue. The committee thought that the bill has delivered an enhanced and more co-

ordinated response to flood prevention and flood rescue. The issue had a good airing in the committee. Like other members, I am grateful that I have had the opportunity to discuss it with ministers. The review that the minister announced yesterday, which has become even more relevant in the light of recent events, is welcome. If the minister reads the same thing into the Official Report, as I assume she will, I will be happy to support any move for the amendment not to be pressed.

**Liam McArthur**: As John Scott said, the issue aroused considerable discussion in the committee, although, given the time that was available, there were limited opportunities to take oral evidence on it. I am clear that, whatever arrangements are currently in place, there are occasionally failures to co-ordinate and implement measures effectively. It has been suggested that the roles and responsibilities of emergency services and others are fairly clear when water is lapping around people’s ankles or is even higher, but there seems to be a lack of clarity about roles and responsibilities leading up to that point.

I acknowledge the complexity of the issue, which drifts into the area of civil contingencies. I also acknowledge the efforts of ministers and their officials to find a resolution. Like John Scott and Peter Peacock, I welcome Fergus Ewing’s announcement earlier this week on the instigation of a review. However, I urge ministers to ensure that the review is timely and is not allowed to drift towards the end of the year. I would welcome clarification of the timescale.

16:00

I encourage the Government to take any early actions for which it need not await the outcome of the review, particularly in relation to co-ordination. Members are aware of the tragic events on Loch Awe earlier this year—my colleague Alan Reid has highlighted concerns about that. John Grieve has drawn attention to a failure to co-ordinate and a lack of knowledge of where resources were and who had them. I urge ministers to provide a sense of urgency and to give a commitment to conduct the review in early course and to take any early actions that are possible. Like John Scott and Peter Peacock, if I am given reassurances on those issues, I will agree to amendment 25 being withdrawn.

**Roseanna Cunningham**: I am grateful to John Scott for giving us the opportunity to discuss the issues that are raised in amendment 25. Concern has been raised at all stages of the bill about instances in which response arrangements have not gone well. However, I believe that a statutory framework for multi-agency response is already in place under the Civil Contingencies Act 2004. That highly practised multi-agency approach is the key principle that underpins our wider resilience strategy. The bill deals with flooding, but the range of rescue incidents involving water is far wider. That is why it would be wrong to pick out one single cause, such as flooding, and one single service for a statutory duty, without considering the issue more broadly.

As members might know, the Minister for Community Safety announced yesterday that a comprehensive review of the emergency services’ ability to deal with all forms of water rescue, including flood rescue, has been ordered. The review will be led by Paddy Tomkins, who as a former chief inspector of constabulary will bring with him a strong understanding of the legal and operational role of emergency services in responding to such emergencies. Among other matters, the review will examine the need for a change in the law on the responders who cover water rescue; the resources and capability of all agencies that are currently involved in water rescue emergencies, such as flooding; the need for changes in the current operational arrangements between responders; and the level of public awareness of the risks that are associated with open water, including flood water.

At present, a wide range of agencies, including police, fire and rescue services, the Scottish Ambulance Service, the coastguard and the Royal National Lifeboat Institution could be called on to undertake a water rescue, with many interventions
involving a multi-agency response. The review will actively seek views from all those agencies for full consideration by ministers. Any proposals to reform the legal framework or change operational practice would be taken only after full public consultation. The review has the support of the Chief Fire Officers Association Scotland, which, as the committee knows, originally asked for an amendment on the issue. The review also has the support of the Fire Brigades Union, the Convention of Scottish Local Authorities and many other organisations, voluntary and statutory, that can be called on to support a flooding or water rescue event. I hope that the review will reassure the Parliament that the Scottish Government is doing everything that it can to ensure the correct response from all the emergency services in the event of a flood.

I give a commitment to inform the Rural Affairs and Environment Committee of the outcome of the review and of any legislative or operational proposals in due course. The Minister for Community Safety has advised that he hopes that that will be done before the end of the year. For all those reasons, I urge John Scott to withdraw amendment 25.

Amendment 25, by agreement, withdrawn.

Section 68—Powers of entry

The Deputy Presiding Officer: We come to group 16. Amendment 52, in the name of the minister, is grouped with amendment 53.

Roseanna Cunningham: Amendments 52 and 53 will fix a minor omission from section 68. Amendment 52 will give local authorities that are lead authorities powers of entry for the purposes of preparing local flood risk management plans under section 29 and for the purposes of preparing reports under sections 32 and 33. Amendment 53 clarifies that those powers of entry will be available only to local authorities that are lead authorities under section 29(8).

I move amendment 52.

Amendment 52 agreed to.

Amendment 53 moved—[Roseanna Cunningham]—and agreed to.

Section 72—Compensation: supplementary

The Deputy Presiding Officer: We come to group 17. Amendment 54, in the name of the minister, is grouped with amendments 55 and 66.

Roseanna Cunningham: Amendments 54 and 55 ensure that the 10-year deadline for giving notice of a claim for compensation covers all the activities listed in section 71 in respect of which compensation can be awarded.

Amendment 66, which was lodged by Peter Peacock, seeks to ensure that any compensation due is made within a “reasonable period”. I understand that the speed of payment is not usually an issue. Claimants are generally concerned more about the time that it takes the local authority to determine the amount of compensation that is due in the first place. In that respect, amendment 66 would achieve very little. The negotiation of whether compensation is due and the amount that should be payable depend on the circumstances of each case. Often it involves factors outwith the local authority’s control, such as the quality of the information that is provided by the claimant in support of his claim and his timely response to any requests for further information. The authority might also have to commission specialist technical reports to inform the valuer about specific aspects that need to be taken into account.

The intention behind amendment 66 might have been to speed up the negotiation process and ensure that it is completed within a reasonable period. However, agreement over compensation is rightly a two-way process, which makes it difficult to generalise about what a reasonable period might be. It might well be that the local authority has made a timely offer, but that the claimant disagrees with it. Indeed, there have been cases in which claims have been made for compensation and the valuer has subsequently shown that the claimant has not suffered any loss in value. However, getting to the bottom of such complicated situations can be a protracted process. Under those circumstances, it is difficult to understand what would constitute a reasonable time. That is why any question of disputed compensation is referred to the Lands Tribunal for Scotland, which is an independent body that can look at the case dispassionately and come to a reasoned decision.

What constitutes a reasonable period will always depend on the factors and circumstances in each case, including how both parties have approached the negotiations, and such questions should probably be left to the tribunal to determine in each case. As the Lands Tribunal for Scotland is an independent body, the Scottish Government should not deal with the matter in guidance. However, amendment 66 has been lodged as a clear response to an expressed concern. In the circumstances, I wonder whether Peter Peacock would be satisfied at this stage with my commitment to discuss his more general issue with the Scottish Council for Development and Industry, COSLA and interested bodies to see whether any specific issues need to be teased out. On that basis, I ask Peter Peacock not to move amendment 66.

I move amendment 54.
Peter Peacock: As the minister said, the matter was brought to my and others’ attention by the SCDI, which is a highly respected business organisation. Amendment 66 reflects concern in the business community that it can sometimes take many years before a compensation dispute between a council and a business can be settled—in fact, a decade has been quoted to me as being not unknown, whereas a timescale of 18 months would be far more reasonable.

The purpose of amendment 66 was to concentrate the minds of local authorities, as well as to require the minister to issue guidance on the issue with a view to ensuring that a settlement can be made in a reasonable timeframe. The minister has set out a variety of reasons why the amendment might not be technically competent or might address the wrong issue in the context of what I am trying to achieve. I am grateful to the minister for what she said and, on the basis of her commitment to meet the SCDI to discuss the matter and hear its concerns, to look at what might be done to engage with the problem and to speak to COSLA, I am happy not to move amendment 66.

Amendment 54 agreed to.

Amendment 55 moved—[Roseanna Cunningham]—and agreed to.

Amendment 66 not moved.

Section 80—Crown application

Amendment 56 moved—[Roseanna Cunningham]—and agreed to.

Section 84—Interpretation: general

Amendment 57 moved—[Roseanna Cunningham]—and agreed to.

Amendments 17 and 18 moved—[Rhoda Grant]—and agreed to.

Amendment 58 moved—[Roseanna Cunningham]—and agreed to.

Schedule 1

MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

The Deputy Presiding Officer: We come to group 18. Amendment 59, in the name of the minister, is grouped with amendment 61.

Roseanna Cunningham: Amendment 59 is a response to an amendment that was lodged by Peter Peacock at stage 2, which aimed to address the concern that the bill as drafted did not place enough emphasis on the need for long-term planning. Amendment 59 requires flood risk management plans prepared by SEPA to describe whether each measure is to be implemented in the six-year period before the plan is next reviewed, in the following six years or after some other period. I assure members again that the bill is very much about long-term planning and that, in all likelihood, flood risk management plans will have to look at how to tackle flood risk over the next 50-plus years.

From discussions with the committee at stage 2, it was clear that there was a desire for more explicit information on the costs of measures to be included in flood risk management plans. Amendment 61 will require flood risk management plans to include information on the costs of measures that are to be implemented before the plan is next reviewed.

I move amendment 59.

The Deputy Presiding Officer: No other member has indicated a desire to speak. [ Interruption. ] Mr Peacock has now done so. He has got in by a nose.

Peter Peacock: Thank you, Presiding Officer. I have known what it is like to be ignored throughout most of my life. [ Interruption. ] I hear expressions of ironic sympathy from members in other parties. I thank the minister for acknowledging the points that were made at an earlier stage. The amendments that she has lodged address those points, for which I am grateful.

Amendment 59 agreed to.

Amendments 60 and 61 moved—[Roseanna Cunningham]—and agreed to.

Schedule 4

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Amendments 62 to 64 moved—[Roseanna Cunningham]—and agreed to.

The Deputy Presiding Officer: That concludes consideration of amendments.
The Deputy Presiding Officer (Alasdair Morgan): The next item of business is a debate on motion S3M-4058, in the name of Richard Lochhead, on the Flood Risk Management (Scotland) Bill.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): I am absolutely delighted to open the debate on the Flood Risk Management (Scotland) Bill, which I believe is a timely and crucial piece of legislation for Scotland. We even had our moments of excitement this afternoon with two casting votes and a number of narrow votes, too.

I hope that the people of Scotland and members of the Parliament, particularly those who represent communities that are under threat from flooding or which have experienced damage as a result of flooding events in past years, will recognise that the bill will improve substantially Scotland’s ability to manage flooding and its impacts. It will equip Scotland with a modern and sustainable approach to managing all forms of flooding. In doing so, it will promote a safer, stronger and more secure environment for Scotland’s citizens and businesses.

For the purposes of rule 9.11 of the standing orders, I advise the Parliament that, having been informed of the purport of the Flood Risk Management (Scotland) Bill, Her Majesty has consented to place her prerogative and interests in so far as they are affected by the bill at the disposal of the Parliament for the purposes of the bill.

Before outlining key elements of the bill, I will take a moment to thank all those who contributed much to its development. Our consultation exercises allowed us to listen to and learn from the experiences of people who have been affected by flooding, alongside people with experience of tackling flooding problems throughout Scotland. That input was greatly appreciated and helped the process considerably.

I thank the members of the Finance Committee, the Subordinate Legislation Committee and particularly the Rural Affairs and Environment Committee, whose diligent scrutiny of the bill helped shape the bill’s final form, as it should. I also thank the committee clerks, who worked hard to support the committees’ work. I put on record my sincere thanks to our officials in the bill team and to the Government and parliamentary legal teams. They worked extremely hard on what has been at times a demanding bill, with a challenging timetable. I am confident that all those who worked on the bill will agree that collaboration across party lines and with stakeholders was central to the bill’s successful development.

I also say a word of thanks to the former Minister for Environment, Michael Russell, who began to pilot the bill through the Rural Affairs and Environment Committee at stage 1 and to his successor, Roseanna Cunningham, who steered the bill through stage 3 today and who made a seamless transition from chairing the committee at stage 1 to steering the bill through stage 3 on the Government’s behalf.

The bill’s aim is simply to equip Scotland with 21st century legislation for 21st century flood risk management. Research into climate change tells us that flooding could become more frequent and more severe. We must act now to minimise the impact of future flooding on Scotland’s people, services, environment and economy.

Historical records show an upward trend in average rainfall for each year. For instance, Scotland became 20 per cent wetter between 1961 and 2004. That change included an increase of almost 70 per cent in winter rainfall in northern Scotland. The summer of 2008 was one of the wettest on record—August was 50 per cent wetter than normal and the ensuing floods disrupted people’s lives and damaged their livelihoods.

The unavoidable conclusion from climate change predictions is that flooding is likely to become an increasingly regular threat to our communities, our lives and the economy. The unavoidable message is that we must act now to minimise the impact of future flooding on Scotland’s people. Blaming climate change entirely for recent flooding would be convenient, but there are other factors to consider, which include how we have managed our land and our waterways to suit our society’s needs, which has compounded the effects of flooding in some areas.

We recognise that flooding cannot be eliminated. However, experience tells us that well co-ordinated action can significantly reduce the likelihood of flooding and its harmful impacts. Scotland’s current flooding legislation—the Flood Prevention (Scotland) Act 1961—has been criticised for restricting the range of flood management measures that can be adopted; for lacking a clear framework to co-ordinate measures across catchments; and for delaying the implementation of measures to manage flooding. As I am sure everyone agrees, much of that act is outdated and no longer reflects how Government services and local services are delivered in Scotland.
The bill will address those problems directly and will give Scotland the modern and sustainable approach to managing flooding that it deserves, while also transposing the European Union floods directive. It will remove unnecessary burdens and obstacles to developing flood protection measures and it will clarify roles in and responsibilities for flood risk management by, for example, placing local authorities, the Scottish Environment Protection Agency, Scottish Water and the Scottish ministers under new and clear duties. It will also provide Scotland with an improved reservoir safety regime. It is important that the bill will establish a framework for collaboration between the bodies that are tasked with managing flooding and protecting Scotland’s people, environment and economy.

The bill will create a flexible approach to managing flooding, which can be adapted to different circumstances—including many local issues—throughout the nation. Furthermore, the intent behind creating a flexible approach is to produce legislation that will work for current and future generations.

The bill will deliver flood management at a catchment scale, which will allow local authorities and others to take the best possible approach to managing flooding in their areas. Options will range from traditional defences to improved flood warning and natural flood management measures wherever appropriate.

Robin Harper (Lothians) (Green): To back up the bill, which I am glad that we will be able to pass later this afternoon, does the minister agree that local authorities need to be given the strongest advice not to allow building on existing flood plains?

The Deputy Presiding Officer: It would be helpful if you could begin to wind up your remarks, cabinet secretary.

Richard Lochhead: Okay.

The member raises a fair point. The issue featured throughout the debate in committee, as it did in the chamber and in discussions with stakeholders. I am sure that it will be reflected.

The new national flood risk assessments and flood maps will improve our understanding of the likelihood and consequences of flooding from rivers, the sea, extreme rainfall events and groundwater. Those new assessments will be complemented by flood risk management plans that will ensure that the most sustainable and cost-effective measures are put in place to manage flooding. The implementation of the bill over the next few years will make vital improvements to how we manage flooding and make a real and long-term difference to the lives of people in Scotland.

I believe, as does the Scottish Government—indeed, I am sure that we all believe—that the bill will position Scotland at the forefront of modern flood risk management. More important, it will make a significant and lasting difference to those who are at risk of flooding. I believe that the bill deserves the support of every member of the Parliament.

I am delighted to move,

That the Parliament agrees that the Flood Risk Management (Scotland) Bill be passed.

The Deputy Presiding Officer: We are going to try to finish the debate this afternoon. It would be helpful if opening speakers did not take up their entire allotment of time.

16:21

Elaine Murray (Dumfries) (Lab): Point taken, Presiding Officer.

The Flood Risk Management (Scotland) Bill transposes into Scots law the provisions of a European Union directive. Many members will have witnessed the distress that floods have caused our constituents. The legislation will not prevent flooding from ever happening again, but it should ensure that the relevant authorities, working together in the full knowledge of their respective responsibilities, will develop better systems of flood prevention.

Consideration of the bill was enlightened by the Rural Affairs and Environment Committee’s earlier inquiry into flooding, and amendments at stages 2 and 3 have effected significant improvement to the original bill. The progress of the bill illustrates how effective Parliament’s committee system can be in working with the Government to achieve the aims of stakeholders.

I record the thanks of Labour members to RSPB Scotland and Scottish Environment LINK for their considerable and considered input at all stages of the bill. As Peter Peacock said, we thank in particular Andrea Johnstonová. I thank the minister and her officials for their constructive engagement with the committee. I also thank the committee clerks for their invaluable assistance in translating our aspirations into amendments. Through that assistance, the focus on sustainability has been strengthened. The bill now reflects a clear emphasis on the importance of natural features and characteristics in flood prevention measures, and provides the steer that is necessary to effect cultural change.

The need for the agencies that are involved in flood prevention not only to co-operate but to coordinate their activities using an integrated approach will now be laid in statute. Local authorities will be empowered to manage flood risk
through land management, and owners will be entitled to claim compensation for work on their land that acts to prevent flooding but adversely affects their income from other uses. Local authorities will also be able to recover expenses for work that they are obliged to do on private land in the pursuance of flood prevention, whether in repairing flood defences or in clearing debris from water courses to prevent flooding of neighbouring land or properties.

However, the best flood prevention schemes will not be implemented if there is insufficient funding to make them happen, which is why amendment 4, in the name of my colleague Peter Peacock, was so important. Similar amendments were debated at committee, but lost on the convener’s casting vote. I am delighted that Parliament agreed to amendment 4, albeit narrowly. The benefits of the bill will be realised only if ministers allocate adequate funding to responsible authorities to enable them to undertake the prevention schemes that they have identified as being necessary. The amendment that was agreed today is not unduly restrictive; it simply requires ministers to “have regard to” flood risk management planning when allocating funding to the Scottish Environment Protection Agency and other responsible authorities.

The Rural Affairs and Environment Committee felt that the current legislative requirement on Scottish Water to deliver its functions “at lowest reasonable overall cost” may not enable it to give adequate weight to issues of sustainability. It was for that reason that my colleagues Peter Peacock and Robin Harper lodged amendments to amend the relevant sections of the Water Industry (Scotland) Act 2002 on the duties of the Water Industry Commission for Scotland and Scottish Water. The aim of the amendments was to enable Scottish Water to deliver sustainable solutions to flood management. The amendments required ministers to consider the issuing of directions to Scottish Water and the WIC on their duties on sustainable flood risk management. I am sorry that we did not manage to persuade Parliament to agree to the amendments, but I hope that their spirit will be taken forward. I think that, in her responses, the minister indicated that she will progress some elements of the amendments, even without their having been agreed to.

In her amendments, Karen Gillon focused on the committee’s consideration of the need for flood risk assessment to be undertaken prior to planning permission being granted in areas that have been assessed as being prone to flooding. One amendment was agreed to but the other was not. At this stage, I am not quite certain what the effect of that will be; however, we must note that the amendments reflect concerns that were brought to Parliament in the form of petition PE1207, from Gordon Sinclair, which was considered at stage 1. Similar issues were raised by our colleague Helen Eadie in her speech during the stage 1 debate.

To summarise, this is a good bill that has been further strengthened by the committee process and by parliamentary consideration at stage 3. It represents a major improvement to flood risk management in Scotland and a cultural change in the approach to flood prevention—from the previous assumption that prevention required hard engineering solutions to an approach that requires that consideration be given to use of natural features and characteristics. A duty has been placed on ministers, SEPA and the responsible authorities to act to achieve the objectives that are set out in flood risk management plans. The bill, when enacted, should help to prevent the considerable distress that is caused to individuals and communities by flooding incidents. It will be a welcome addition to the statute book.

16:26

**John Scott (Ayr) (Con):** I congratulate the Government on the passing of the bill today. It has been an exciting bill to work on. Although it has been slow in its gestation, I believe that today we have delivered a bill of which all those who have been involved in its creation can be justifiably proud.

During consideration of the bill, the composition of the Rural Affairs and Environment Committee has changed regularly: only Peter Peacock and Bill Wilson remain on the committee from the start of its initial inquiry into flooding. However, the concept and spirit behind the committee’s work—to deliver a bill that is fit for purpose, to tidy up existing legislation, to develop natural flood prevention techniques and to contribute to the social, economic and environmental development of Scotland—have been constant throughout.

Today we must thank our clerks, who have delivered two reports on flooding in Scotland and who have, on occasion, worked long into the night to sort out amendments for stages 2 and 3 of the bill. We must also thank all those who gave evidence to the committee during both inquiries, especially those who invited members of the committee to see for themselves the problems and solutions that we are addressing today. We must thank Scottish Environment LINK and RSPB Scotland for their constant input into the bill, as well as the members of the Government bill team, all of whom worked tirelessly to create a bill that we all hope will improve flood risk management in Scotland.
The bill is vital in addressing the problem of climate change. Increased rainfall since the 1960s is a fact of life in Scotland and, as the minister indicated, it is likely to increase further. Sea level rises and coastal inundation are not yet immediate problems, but they are likely to become greater problems in the future. If I have a concern about the bill, it is that we may not have addressed sufficiently the problems that are likely to be associated with sea level rises and storm and tidal surges. Storminess and semi-tropical storms, producing huge deluges of rain, are likely to increase. Those events pose the biggest threat to at-risk communities in Scotland.

In response to the threats that have been identified, we have developed the approach that is set out in the bill. At its simplest, the bill changes the emphasis of flood management from hard to soft engineering practices, as well as tidying up other areas of legislation. Although funding has not been discussed at length today, it will be a key to delivering the protection of communities that we all seek. Given the cuts in the Scottish budget that are likely as a result of the recession, I hope that lack of funding will not prove to be an insurmountable problem in the future.

I welcome, especially in the light of recent tragedies, the Government’s commitment to a review of inland waterway search and rescue provision and I look forward to the emergence, within a reasonable timescale, of better and clearer contingency planning as a result.

Finally, I thank colleagues on the committee, who have been great fun to work with. I hope that the bill will achieve what it sets out to do.

16:29

Liam McArthur (Orkney) (LD): The passing of the bill is a further significant landmark for the Scottish Parliament, as we enter our second decade. Scottish Liberal Democrats warmly welcome not only the detail of the legislation but the manner in which it has been dealt with since its introduction. I suggest gently that although there are numerous examples of the minority Government’s talk of working with other parties to achieve agreement being found wanting, the bill is a good illustration of what can be achieved through early, meaningful and transparent engagement—not just with Parliament and its committees but with the wider group of interested parties.

There have continued to be areas of disagreement throughout the process, including this afternoon, but it is worth observing that those have, on the whole, been limited. Resolutions to such disagreements have invariably been found relatively painlessly to satisfy all sides. For that reason, I record my thanks, as a member of the Rural Affairs and Environment Committee, to the ministerial team—in both its current and previous forms—and to their officials for the work that they have put in, particularly since the bill was introduced in September last year. At stage 1 I commended them for their willingness to listen and respond, and I am pleased that that approach has, by and large, remained since then.

I also record my sincere thanks to the committee clerks and to the Scottish Parliament information centre and other support staff, who have helped me up the learning curve since I joined the committee in September last year. Unlike some other members, I did not have the advantage of having participated in the previous flooding inquiry, but the clerks helped me to mask that fact, at least in the early stages. To all those who provided written and oral evidence, both to the committee and on a one-to-one basis, I offer my thanks. Like Elaine Murray and Peter Peacock, I draw particular attention to the efforts of Andrea Johnstonová.

It would be an unhealthy state of affairs if we agreed on all aspects of any piece of proposed legislation, however much the overarching principles might commend themselves. Even now, there will be those—perhaps even ministers—who can and will point to bits of the bill with which they are unhappy. However, that is the nature of the beast. As politicians it is, in the current climate, nice to think that the issues of controversy are related to policy, and not to the flood risk of one’s moat, swimming pool or—heaven forfend—tennis court.

I am under no illusions that, however it might have seemed at times over the past six or seven months, we have been involved in the more straightforward task. Implementing the bill’s measures and ensuring that they are effective and will achieve the objectives that have been set will be altogether more onerous. In that regard, we as parliamentarians must ensure that subsequent guidance is clear, well informed and timely; that funding is in place to meet agreed needs; and that we have the appropriate skills mix that is required as part of the culture change that we all agree needs to take place in our approach to managing flood risk in this country. That, as Elaine Murray has suggested, is all that we realistically can do.

It is imperative that natural flood management processes and features play a greater role in addressing a problem that, as the cabinet secretary said, we are likely to face more and more in the years and decades ahead. That is not to say that more traditional and innovative hard engineering solutions will not continue to be necessary, but a better balance needs to be struck. That can best be achieved by taking a
longer-term perspective, but without losing sight of the need for early action; by making explicit our expectations of a range of bodies; and by ensuring, among other things, that appropriate compensation can and will be paid. In that way, we can help to effect the necessary culture change. We can do so without the need for a presumption in favour of natural processes, a concept about which there was clearly confusion, particularly among various local authorities. I think that the bill now achieves the right balance in that respect.

As for my own interest, the issue of coastal flooding has a particular resonance. Again, I record my desire for SEPA to take proper account of data on climate change impacts and local tidal patterns, including tidal surges, in seeking conclusions on flood risk. I echo John Scott’s sentiments and concerns on that.

At stage 1 I concluded that this is a good bill that could be made better. Over the past three months, the necessary improvements have largely been made. The bill does justice to the legacy of the Water Environment and Water Services (Scotland) Act 2003, which was successfully introduced by my colleague, Ross Finnie. I congratulate the Government, and Liberal Democrats look forward to voting in favour of the bill at decision time.

The Deputy Presiding Officer: We now move to the open part of the debate. I am afraid that I will have to limit speakers to three minutes each.

16:33

Maureen Watt (North East Scotland) (SNP): I start by mentioning that I was not on the Rural Affairs and Environment Committee for stage 1. At stage 2, I was in the unusual position of considering Government amendments that had been lodged by my predecessor as convener, who had convened stage 1 proceedings.

I add my thanks to all the clerks for their hard work, and to all those who gave evidence on the bill. The process began for the Rural Affairs and Environment Committee away back in September 2007, when the committee agreed to conduct an inquiry into flooding and flood management. It was undertaken in the knowledge that the Government intended to introduce a bill. Such pre-legislative scrutiny proved very valuable, as it allowed the committee to feed its thinking on the best approach to flood risk management into the Government’s work at a very early stage. As a result, the bill as introduced to Parliament reflected a number of the committee inquiry’s recommendations. In addition, the issues and associated inquiry recommendations that the Government did not endorse served as a useful starting point for scrutiny of the bill.

In its stage 1 report, the committee highlighted concerns, for example about resources and the shortage of specialist staff to implement the bill’s provisions. Given the skills that we require in this country, youngsters might consider becoming water engineers. The committee also noted that there is uncertainty about the funding that will be provided to local authorities and Scottish Water to implement the legislation, and expressed concern about the conflict between SEPA’s role in implementation and its priorities as an environmental regulator.

I am pleased that the Government has responded positively to a large number of the committee’s recommendations. I am also pleased that points to which the Government did not see fit to agree were doggedly pursued to the end of stage 3. I am glad that the committee has ensured that flood risk will be managed sustainably and that existing natural features, such as wetlands, will be used to manage flood risk, wherever that is possible.

The committee’s recommendation that clear strategic priorities be derived from the risk assessment process and be made publicly available has also been adopted. We have also received assurances that local authority development and flood risk management planning processes should prevent developments in areas that are subject to significant flooding. The need for more detail on how local authorities can recover expenses or fine landowners who do not maintain watercourses has been addressed, as has the need for more detail on how landowners can be compensated for loss of earnings if their land is required for flood prevention work.

We have a good bill. The committee reserves the right to conduct post-legislative scrutiny.

16:36

Peter Peacock (Highlands and Islands) (Lab): I have spoken in Parliament about a visit that I made to an old lady in the village of Caol, near Fort William, who told me about the terrible flooding that she had experienced. She told me that all her family photographs, which had been in the bottom drawer of a desk in her room, had been destroyed and she would never be able to look at them again. It was a poignant moment. I know that the Cabinet Secretary for Rural Affairs and the Environment and the Minister for Environment have heard similar stories in their constituencies. If the bill does nothing other than reduce the chance of such losses in the future, it will have served a useful purpose.

The bill will speed up a series of procedures in making provision for communities who are affected by flooding. However, it remains a
complex bill—some of the terminology and concepts will be extremely complex for lay people. SEPA, which will have substantial new powers as a result of the bill, and local authorities will have a major job to do to interpret and explain the bill to communities who are affected by flooding, and to enable people to realise what is possible. SEPA staff have been in the public gallery this afternoon—I hope that they will take seriously the agency’s new powers and their responsibility to explain the bill’s provisions.

We have made substantial progress on natural flood management. The concept was very raw for committee members early in our inquiry on flooding, but it has been better defined and our understanding has become much more sophisticated. Natural flood management will have a big part to play in the future, which is why members have given the issue so much attention. I am pleased that we have made progress in that regard.

Finance will continue to be a big issue—notwithstanding the bill’s provisions—for the reasons that the minister set out. Flooding will increase as climate change continues, which means that we will have to make more provision in more places throughout Scotland, if we are to protect communities. There is no question but that more cash will be required over time. The Government has a long way to go in relation not just to the quantum of cash that is to be made available but to how the cash is administered. I urge the minister to continue to consider the administration of funding, to ensure that small communities, such as South Uist, that require large flooding schemes can get the cash that they need.

The bill is better as a result of the scrutiny that it has received. There has been good co-operation between the Government and committee members in reaching consensus, which I welcome. I congratulate Scottish Environment LINK staff on all their work to support, encourage, cajole and persuade committee members to take seriously and push to a conclusion certain issues. I will very much welcome the passing of the bill.

16:39

Bill Wilson (West of Scotland) (SNP): One cannot unboil an egg but I welcome the fact that this bill takes us from hard to soft—at least in terms of flood prevention. From now on there will be an emphasis on sustainable flood management practices making use of the natural features of the environment rather than hard engineering solutions. This will benefit biodiversity and the amenity and scenic value of our landscape. I am convinced it will prove more cost effective in the long term.

However, a change in mindset will be required if we are to adopt across Scotland an environmentally benign and co-ordinated approach to flood risk. If we are to meet our biodiversity and climate change targets, the cost benefit analysis must and will be extended beyond simple financial estimates. The guidance that will be provided by ministers on how to create the new cost benefit analysis is critical, so I urge the minister to ensure that the final decision on guidance will be open to discussion among a range of sources.

The minister will not be surprised if I return to a concern that I raised in the course of the flooding inquiry that preceded the introduction of the bill, and during the committee’s consideration of the bill. I am almost tempted to tell the minister to take a guess.

A supplementary submission from Scottish Environment LINK that was recorded in the stage 1 report on the bill also noted the potential for changes in sea level as a result of climate change. It stated:

“Potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20 cm higher in the Clyde estuary and 28 cm higher in Moray and Aberdeenshire than previously estimated.”

During the course of the flooding management inquiry, Professor John Mitchell, the director of climate science at the Met Office, agreed with me that preventing new building below a certain height above sea level would be sensible. It is vital that our actions to mitigate the effects of global warming should include a prohibition on development below a given height above sea level—surely that should be at least 1m. If we fail to prevent major developments within the expected range of sea-level rises, we are only building problems for the future.

Let me emphasise that I am referring to significant developments. If a farmer decides to build a byre or an individual a holiday cottage, it is hardly a matter of great concern. However, when it comes to power stations, hospitals or housing estates, surely it is common sense to take possible sea level rises into account when granting planning permission. Therefore, I urge the minister to examine changes to planning law in the near, rather than the distant, future.

I also urge the minister to ensure that SEPA is instructed to make public the estimates of sea level rises it uses when preparing its coastal maps of flood risk. For coastal flood maps to contribute to good decision making, knowledge of the estimates that are used to build the flood maps is vital. As we are trying to be quick, I will stop there.
The Presiding Officer (Alex Fergusson): I am grateful for the extra time. We come to closing speeches.

16:42

Jim Hume (South of Scotland) (LD): There can be no doubt that the bill is a leap forward for Scotland in dealing with the seriousness that flooding and the danger of water brings to the Scottish people, and it furthers the work of the Liberal Democrat former minister, Ross Finnie, who introduced the Water Environment and Water Services (Scotland) Act 2003.

At the weekend, a couple from Kilwinning in my region tragically died after trying to rescue their dogs. I am sure all our thoughts go out to their family and friends. That acts as a reminder of the importance of joined-up rescue services for inland waters.

In many towns in my area, such as Hawick, Selkirk and Dumfries—which are in Elaine Murray’s constituency—residents and shopkeepers live in fear of flash floods and the devastation they can bring, as they have done in the past. Those people are victims of the fact that towns with industry had to be built next to the flowing rivers of the Nith and Tweed tributaries.

There is a broad welcome for the bill and a recognition of the hard work that has been put into it by the clerks and all the committee. In particular, the work of Elaine Murray and John Scott has encouraged the Government to address the processes, thereby avoiding much controversy in flood plan implementation: if land users have to give up their livelihoods and land for the greater good of the community, it is only right that they be compensated.

My colleague Liam McArthur lodged an amendment that took into account environmentally important areas, which was in recognition of the rich biodiversity that is found in our riparian areas and the need to take that into account in deliberations. Both withdrawn amendments have influenced the bill positively.

Amendment 31, in the name of Roseanna Cunningham, seemed to cover Liam McArthur’s point, as special areas of conservation cover large parts of Scotland, including the River Tweed and its tributaries.

The Cabinet Secretary for Rural Affairs and the Environment, with the aid of his past and present ministers, has been fastidious in progressing the bill. However, there are still concerns about it, particularly from local authorities, which have difficulties in gaining expertise in hydrology—

Maureen Watt mentioned that. We can perhaps learn that expertise from countries such as Austria, which has had to attempt to tame the likes of the great Danube with hard and soft engineering, which have been mentioned often in the debate. There is undoubtedly a skills gap in hydrology, which we must fill.

Funding, of course, is the age-old enemy, and there is a perceived lack of funding that would back up the bill’s provisions. Flood measures funding is not ring-fenced, and it may take second place to front-line services such as education and social services. Given that we have a recession and budgets are limited across the board, I fear that flood measures may be put off until a later date, particularly when plans do not have to be finalised for some time. Of course, the longer we wait to implement projects, the more expensive they tend to become and the more the risk to life and property increases.

Concerns have been raised throughout the bill’s stages about SEPA’s role as facilitator and regulator. I am not totally convinced that there is no conflict there.

The Liberal Democrats welcome the bill and look forward to the speedy implementation of its provisions in flood risk areas, with adequate funding of proper expertise and engineering—soft and hard. I do not refer to the soft and hard eggs to which Mr Wilson’s scrambled message referred. Finally, I acknowledge the hard work that was done for all stages of the bill by all who have previously been mentioned.

16:46

Nanette Milne (North East Scotland) (Con): Like all members, I am pleased that the Flood Risk Management (Scotland) Bill has now completed its progress through Parliament and that the flood risk management plans and co-ordinated structures will soon be in place, which should help to protect people in Scotland from the devastating effects that flooding can have on their homes and communities and their emotional and physical wellbeing.

The bill is timely, as it comes in the wake of significant flooding episodes in recent years and one of the wettest summers on record. Climate change is likely to result in more wet summers, and a rise in sea level is possible. It is recognised that flooding is a threat to nearly 100,000 properties in Scotland. Water surges threaten our coastal defences and may cause surface flooding with which our urban drainage systems will struggle to cope.

There is an urgent need for long-term planning, with an emphasis on sustainable flood management, so the bill is welcome indeed. There
is a plethora of flood-related legislation, but much of it is now outdated and out of line with changes to the delivery of Government and local services in Scotland. The bill gives us the opportunity to put right that situation.

By establishing a framework for assessing flood risk, mapping flood hazard and risk, developing flood risk management plans and transposing the EU floods directive into Scots law, the bill ought to lead to a reduction in the incidence and adverse consequences of flooding. The bill’s main provisions have been ably discussed by many members this afternoon, so I will not repeat them—I will just highlight a few areas.

The initial provision in part 3 of the bill on the preparation and review of the assessments and plans that are required by the EU floods directive caused us some concern, because it contained no requirement to implement natural flood management techniques, nor was there a presumption in favour of natural flood management, hence our support for the stage 3 amendments that dealt with that.

The use of agricultural land for natural flood management must be considered carefully alongside the need to protect food security—that is of prime concern to my party. Although we welcome the provisions in part 4, which give local authorities broad powers to develop a full range of flood risk management measures, we feel strongly that land managers must be adequately compensated for any income loss sustained because their land is used as flood plain or as a means of holding back the flow of water.

We very much welcome the emphasis on natural flood management, but we recognise that it will not completely get rid of the need for hard engineering solutions to flooding problems. However, the bill should help to induce a culture shift in the minds of local authorities, with natural solutions being used wherever possible.

We are pleased that the Government has announced a review of all inland waterway rescue services, because they clearly require consideration and improvement. We look forward to the outcome of the review in due course.

There is clear consensus on the need for the bill and on its provisions. The Rural Affairs and Environment Committee, the Scottish Government and the various agencies with an interest in the bill are to be congratulated on their hard work and cooperation in taking forward such a complex and important bill and in amending it at stages 2 and 3 such that it has been strengthened and improved as it has gone through the parliamentary process. We are broadly happy with the end result, and we look forward to supporting the bill at decision time.

16:50

Karen Gillon (Clydesdale) (Lab): I very much welcome the opportunity to participate in this stage 3 debate. Those of us who have been on the Rural Affairs and Environment Committee since the start of session 3 have been on a relatively long journey in our consideration of flooding, but our pre-legislative scrutiny—in the form of the committee’s inquiry into flooding and flood management—has helped us in our understanding of the issues.

John Scott: Will Karen Gillon accept my apologies for not including her in my list of those who have been a member of the committee from the beginning?

Karen Gillon: I will accept John Scott’s apology in the constructive manner in which it was offered, although I must confess that I had a small absence for stages 1 and 2 of the bill. However, I came back from maternity leave for stage 3.

The bill has been shaped positively by that parliamentary process, which I think has, on the whole, been constructive and consensual. Yes, we do not agree on everything, but we now have a good bill that will begin the process of effecting culture change. However, the real test of the bill is not how worthy it is as a document or how much we have learned, but the extent to which it will prevent communities throughout Scotland from experiencing the type of flooding devastation that Peter Peacock mentioned. The bill is not the end of the process, either. Perhaps a future Rural Affairs and Environment Committee will need to reconsider, through post-legislative scrutiny, how matters can be improved.

Bill Wilson’s scientific background leads him to explore issues in a very particular way and to ask difficult questions of his own ministers. The questions that he has raised today have some considerable merit, as has the persistence that he has shown in highlighting the need for more effective use of surface materials that allow better run-off in residential areas. I hope that the Minister for Environment will respond to those points in due course, if not in her closing speech today.

On what is a constantly changing picture, the bill will provide us with the ability to respond effectively as and when change happens and as information becomes available. The bill will also embed the principle of catchment planning to ensure that actions cannot be taken in one area that will impact on another without it having some involvement in the process. All in all, we have a good bill before us today. Those of us on the Scottish Labour Party benches will have much pleasure in supporting the Flood Risk Management (Scotland) Bill at decision time.
The Minister for Environment (Roseanna Cunningham): I am in the unusual position of having made a transition, midway through the bill’s parliamentary process, from being the convenor of the lead committee dealing with the bill to being the minister sitting on the other side of the room dealing with the committee’s concerns. I understand that I share that dubious distinction with Sarah Boyack. We are perhaps the only two members of the Parliament who have had that experience, although I may have been luckier in that I have managed to get the bill through stage 3, whereas I think that the timing was rather more difficult for Sarah Boyack last time round.

I thank all those who have been members of the Rural Affairs and Environment Committee and the various clerks who have dealt with the committee throughout the period in which it has discussed flooding. As members will have heard, the committee undertook an inquiry into flooding and flood management before we—I am still saying “we”, but I mean the committee—considered the bill.

No one doubts that we need new and improved flooding legislation. My constituency certainly has a traumatic history of serious flooding incidents, including the overwhelming floods of 1993, which are difficult to eradicate from the collective consciousness, therefore I am all too aware of the distress and suffering that flooding can cause individuals and communities. That awareness is shared by the Cabinet Secretary for Rural Affairs and the Environment, whose constituency has also had to deal with such experiences. Indeed, the vexed issue of moving water rescue—which emerged late as a big issue—is also a matter with which I am familiar, as a result of events in the River Tay. However, having got to this stage, we all know that legislation alone is not enough. The Scottish Government has already put in place a framework to implement the bill. That work will build on partnerships and experiences that have been developed.

As some members have said, it is vital that we have a sufficient number of specialist staff. The skills shortage became clear to everyone who was involved in the committee’s inquiry and consideration of the bill. Last week, I met the Cabinet Secretary for Education and Lifelong Learning to discuss how we can ensure that Scotland has adequate skills and staffing to carry out the new duties that the bill will introduce.

Furthermore, SEPA is planning to create 10 new posts in its flood risk science training programme in this and the following two years. The successful candidates will work for SEPA on a part-time basis while studying for MSc degrees at the University of Dundee or the University of Stirling—SEPA’s partners in the initiative. That will help us to deal with the significant issue that arose during the passage of the bill.

I will try to deal with some of the points that have been made during the debate. As we would have expected him to, Robin Harper pleaded with us not to build on flood plains, but the fact is that we have already built on a great many flood plains. The process began so many hundreds of years ago that it is impossible for us to take back the land in question. The planning guidance that is provided to local authorities includes a presumption against building on functional flood plains that have not already been built on. We will continue to highlight that message when it is appropriate to do so.

The Presiding Officer: Order. I am sorry, minister. It is the height of discourtesy for members who have not taken part in the debate to come wandering into the chamber and just start talking among themselves. Kindly refrain from doing so.

Roseanna Cunningham: Karen Gillon asked what the impact will be of the fact that one of her amendments on planning was agreed to and the other was not. I can tell her that it will now be a requirement that a flood risk assessment be prepared, but no one will have to take any notice of it. We will have to go away and have a look at that, as we will have to do in relation to the decisions on all the amendments that the Parliament has considered today.

Karen Gillon: Will the minister take an intervention?

Roseanna Cunningham: I had better just press on, if the member does not mind.

John Scott talked about coastal flooding. I can assure him and Bill Wilson that tidal surges and other coastal flooding are fully covered by the bill.

It is clear that we cannot prevent flooding, but the bill will ensure that our flood practitioners have the necessary framework to deal quickly and effectively with those areas that are at greatest risk. That is, after all, the principal aim of the bill. We ought to remember that local authorities will have an enormous amount of work to do as a result of it being passed.

We will continue to take into account all relevant views as we develop secondary legislation. I put on record my thanks for the enormous amount of work that officials have done, to which other members have referred. As well as providing assistance with drafting, they held many meetings and discussions with MSPs, non-governmental organisations such as Scottish Environment LINK and RSPB Scotland, and other stakeholders. We will continue to discuss issues with all stakeholders.
Finally, I thank all members for their comments. It has been a commendable process, so I thank everyone who has contributed to the development of the bill, which I believe will make a significant and lasting difference to people who are at risk of becoming victims of flooding. I urge every member to support it and I commend it to Parliament.

**The Presiding Officer:** I thank all members for their co-operation in allowing us to conclude consideration of the bill this afternoon.
Flood Risk Management (Scotland) Bill
[AS PASSED]

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Flood Risk Management (Scotland) Bill
[AS PASSED]


PART I
GENERAL DUTY, DIRECTIONS AND GUIDANCE

1 General duty

(1) The Scottish Ministers, SEPA and responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, must exercise their functions under Part 3 so as to secure compliance with the Directive.

(2) In exercising their functions in pursuance of subsection (1), the Scottish Ministers, SEPA and responsible authorities must—

(za) so far as such exercise affects a flood risk management district, act with a view to achieving the objectives set out in the flood risk management plan for that district as approved under section 27,

(a) have regard to the social, environmental and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the flood risk related function concerned—

(zi) act in the way best calculated to manage flood risk in a sustainable way,

(i) promote sustainable flood risk management,

(ii) act with a view to raising public awareness of flood risk, and

(iii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, adopt an integrated approach by co-operating with each other so as to co-ordinate the exercise of their respective functions.

(2A) For the purposes of co-operating with each other under subsection (2)(c), the Scottish Ministers, SEPA and responsible authorities may enter into agreements with each other.
(3) In this Act, “flood risk related functions” means—

(a) in relation to the Scottish Ministers—

(i) their functions under this Part (other than subsections (1) and (2) of this section), Part 2 (responsible authorities), Part 3 (flood risk assessment, maps and plans), Part 4 (flood risk management: local authority functions), and

(ii) their functions under such other enactments as the Scottish Ministers may specify by order,

(b) in relation to SEPA—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 5 (SEPA: other flood risk management functions), and

(ii) its functions under such other enactments as the Scottish Ministers may specify by order,

(c) in relation to a responsible authority which is a local authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans) and Part 4 (flood risk management: local authority functions), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers, and

(d) in relation to any other responsible authority—

(i) its functions under Part 3 (flood risk assessment, maps and plans), and

(ii) such of its functions relevant to flood risk management as are specified in relation to it in an order made by the Scottish Ministers (whether or not in an order under section 5(c) designating it as a responsible authority).

2 Directions and guidance

(1) The Scottish Ministers may give directions (whether general or specific) and guidance to—

(a) SEPA, in relation to the exercise of its flood risk related functions, and

(b) any responsible authority, in relation to the exercise of its flood risk related functions.

(2) SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

(3) Directions under subsection (1) may include provision for any matter to which the directions relate to be determined, in such manner (if any) as the directions may specify, by a person other than the Scottish Ministers.

(4) Before giving a direction under subsection (1), the Scottish Ministers must consult—

(a) the person to whom the direction is to be given, and

(b) such of the following persons as they consider appropriate—

(i) SEPA, and

(ii) responsible authorities.
(5) The Scottish Ministers must give guidance under subsection (1) to SEPA and all responsible authorities on their duties under—
   (a) subsection (2)(a) of section 1, and
   (b) subsection (2)(b)(zi) of that section.

(6) The guidance given in pursuance of subsection (5) must be given not later than 18 months after the provision to which the guidance relates is commenced.

(7) The Scottish Ministers must review and where appropriate update the guidance given in pursuance of subsection (5) not later than 6 years after it was first given or, as the case may be, last reviewed under this subsection.

(8) Before giving guidance in pursuance of subsection (5) or updating the guidance under subsection (7), the Scottish Ministers must consult—
   (a) SEPA,
   (b) every responsible authority, and
   (c) such other persons as they consider appropriate.

3

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—
(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”

PART 3
FLOOD RISK ASSESSMENT, MAPS AND PLANS

Purpose of Part

7 General purpose of Part 3
The purpose of this Part is to make provision for or in connection with establishing a framework for the assessment and mapping of flood risks and the planning in relation to the management of such risks, including making provision, and enabling provision to be made, for or in connection with implementing the Directive.

Flood risk management districts

8 Flood risk management districts
(1) A flood risk management district for the purposes of this Part is—

(a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or

(b) such other area as the Scottish Ministers may designate by order, being such area as they consider appropriate and to which they assign one or more coastal areas or river basins.

(2) An order under subsection (1)(b) must identify the flood risk management district by reference to a map prepared for the purposes of the order and laid before the Parliament.

(3) The Scottish Ministers must send SEPA a copy of any order under subsection (1)(b) and any map referred to in the order.

(4) SEPA must, whether a flood risk management district is—

(a) an area designated as a river basin district by order under section 4(1) of the 2003 Act, or

(b) an area designated by order under subsection (1)(b),

make copies of the order concerned and the map to which the order refers available for public inspection.
Flood risk assessment

9  **SEPA to prepare flood risk assessments**

(1) SEPA must prepare a flood risk assessment for each flood risk management district providing an assessment of any flood risk for the district.

(2) A flood risk assessment must be prepared by 22nd December 2011.

(3) A flood risk assessment is to be based on available and readily derivable information (including in particular information on any impact of climate change on the occurrence of floods).

(4) A flood risk assessment must include—

(a) maps at the appropriate scale of the flood risk management district which show—

(i) borders of any river basin, sub-basin and coastal area in the district,

(ii) topography and land use, and

(iii) such other information as the Scottish Ministers may specify by regulations,

(b) where—

(i) SEPA considers there is reliable information that any flood has occurred in the flood risk management district which had significant adverse consequences for human health, the environment, cultural heritage or economic activity there, and

(ii) a similar future flood in the district with significant adverse consequences for such matters there is still probable,

a description of the flood which has occurred (including its extent and conveyance routes and an assessment of the adverse consequences mentioned in sub-paragraph (i) that the flood entailed),

(c) where—

(i) SEPA considers there is reliable information that a significant flood has occurred in the flood risk management district, and

(ii) significant adverse consequences for the district of any similar future flood there might be envisaged,

a description of the flood which has occurred, and

(d) an assessment of the potential adverse consequences of any future flood for human health, the environment, cultural heritage and economic activity in the flood risk management district taking into account as far as possible issues such as—

(i) the topography,

(ii) the position, and the general hydrological and geomorphological characteristics, of any body of surface water,

(iii) natural features and characteristics of any river basin or coastal area in the district,

(iv) the effectiveness of any existing artificial flood protection structure,

(v) the position of any populated area and area of economic activity, and
(vi) long-term developments, including any impact of climate change on the occurrence of floods.

(5) A flood risk assessment, and any map included in it by virtue of subsection (4)(a), may also include such other information as SEPA considers appropriate.

10 Flood risk assessments: review

(1) SEPA must—

(a) by 22nd December 2018 or such earlier date as the Scottish Ministers may direct (“the operative date”), review and where appropriate update each flood risk assessment prepared under section 9, and

(b) by the end of the period of 6 years beginning with the operative date, and of each subsequent period of 6 years, review and where appropriate update the latest flood risk assessment updated after review under this section.

(2) Section 9(3) to (6) applies in relation to the review and updating of a flood risk assessment.

11 Flood risk assessments: regulations

The Scottish Ministers may by regulations make further provision as to the preparation of a flood risk assessment under section 9, or the review or updating of such an assessment under section 10, including provision as to criteria to be applied and the methods and procedures to be followed in those matters.

12 Flood risk assessments: availability for public inspection

SEPA must make available for public inspection copies of the flood risk assessment for the time being applicable to each flood risk management district.

Identification of potentially vulnerable areas and local plan districts

13 SEPA to identify potentially vulnerable areas and local plan districts

(1) SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk—

(a) exists, or

(b) is likely to occur.

(2) The document must be submitted to the Scottish Ministers by such date as they may direct, and after carrying out such consultation as may be required by regulations under section 15.

(3) The document must also identify areas (consisting of one or more river basins, sub-basins or coastal areas) around the areas in the flood risk management district identified under subsection (1) for the purpose of preparing local flood risk management plans (see section 29).

(4) SEPA’s identification—

(a) of any area under subsection (1) is to be based on the flood risk assessment prepared by it under section 9 for the district in which the area is situated,
of any area under subsection (3) is to be based on—

(i) that assessment, and

(ii) such other information as SEPA considers appropriate, and

(c) of any area under subsection (1) or (3) is to identify the area by reference to a map at the appropriate scale prepared for the purposes of and included in the document.

(5) After considering the document, the Scottish Ministers may—

(a) approve it (in whole or in part and with or without modifications), or

(b) reject it.

(6) Before determining whether or not to approve the document, the Scottish Ministers may request such further information and carry out such further investigations and consultation as they consider appropriate.

(7) The Scottish Ministers must advise SEPA in writing of the reasons for their determination under subsection (5).

(8) Where the Scottish Ministers reject the document, they must return it to SEPA and direct SEPA to resubmit it by such date as the direction may specify with—

(a) such modifications (if any) as the direction may specify, and

(b) any further modification which SEPA considers appropriate.

(9) An area referred to in subsection (1) and identified in a document approved under this section or section 14 is referred to in this Part as a “potentially vulnerable area”.

(10) An area referred to in subsection (3) and identified in such a document is referred to in this Part and Part 4 as a “local plan district”.

14 Potentially vulnerable areas and local plan districts: review

(1) SEPA must, after carrying out such consultation as may be required by regulations under section 15—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update the document approved under section 13, and

(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) review and where appropriate update the latest document approved under this section.

(2) SEPA must submit to the Scottish Ministers each updated document.

(3) Any review by SEPA under subsection (1) is to be based—

(a) on the flood risk assessment for the time being applicable to the flood risk management district concerned, and

(b) insofar as the review is of the identification of any local plan district, on such other information as SEPA considers appropriate.

(4) Section 13(4)(c) and (5) to (8) applies in relation to an updated document submitted to the Scottish Ministers under this section.
Potentially vulnerable areas and local plan districts: regulations

The Scottish Ministers may by regulations make provision as to—

(a) the form and content of a document submitted to them under section 13 or 14,
(b) consultation by SEPA in relation to its preparation of any such document,
(c) SEPA making available to the public—
   (i) any such document,
   (ii) information relating to matters included in it,
   (iii) a summary of any consultation carried out by SEPA in relation to the document, and
   (iv) a document as approved by the Scottish Ministers under section 13 or 14,
(d) SEPA publicising its making available to the public any of the things referred to in paragraph (c)(i) to (iv),
(e) the process to be followed in connection with preparation, submission, approval or modification of a document under section 13 or 14 or review or updating of a document approved under either of those sections, and
(f) such other matters in relation to any such document (including submission, approval, modification, review or updating) as the Scottish Ministers may consider appropriate.

Assessment of flood risk from sewerage systems

Scottish Water to assess flood risk from sewerage systems

(1) Scottish Water must, for each potentially vulnerable area and any other area identified by SEPA, prepare an assessment—
   (a) identifying where in the area it considers that a flood is likely to originate from a sewerage system,
   (b) estimating the volume of sewage which is likely to be released in the event of such a flood, and
   (c) containing such other information as the Scottish Ministers may specify in regulations.

(2) An assessment under subsection (1) must be prepared by such date as the Scottish Ministers may direct.

(3) Before identifying an area for the purposes of subsection (1), SEPA must consult—
   (a) Scottish Water, and
   (b) any other responsible authority which has functions exercisable in or in relation to the area.

(4) An assessment prepared under subsection (1) must be in such form as SEPA may determine.

(5) In determining the form of an assessment under subsection (4), SEPA must seek to ensure that the assessment will integrate with information relating to flood risk held by—
   (a) itself, and
(b) any responsible authority which has functions exercisable in or in relation to the area for which the assessment is prepared.

(6) Before determining the form of an assessment in accordance with subsections (4) and (5), SEPA must consult the persons mentioned in subsection (5)(b).

(7) Scottish Water must, if requested, provide a copy of an assessment to SEPA or a responsible authority.

(8) Scottish Water must, for each potentially vulnerable area and each area for the time being identified by SEPA—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update the assessment prepared under subsection (1) for that area,

(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) review and where appropriate update the latest assessment reviewed under this subsection for that area.

(9) Subsections (4) to (7) apply to the updating of assessments as they apply to their preparation.

(10) Before making regulations under subsection (1)(c), the Scottish Ministers must consult—

(a) SEPA,

(b) Scottish Water, and

(c) such other responsible authorities as they consider appropriate.

**Bodies of water etc.: mapping and assessment**

**15B Local authorities to prepare maps of bodies of water etc.**

(1) Every local authority must prepare a map which shows (or more than one map which, taken together, show) relevant bodies of water and sustainable urban drainage systems in its area.

(2) Each map must—

(a) be prepared by such date as the Scottish Ministers may direct,

(b) be prepared at a scale that the authority considers most appropriate, and

(c) contain such information and be in such form as the Scottish Ministers may specify in regulations.

(3) A local authority must, from time to time, review and where appropriate update the map (or maps) prepared for its area under subsection (1).

(4) A local authority must make available for public inspection the map (or maps) prepared under this section for the time being applicable to its area.

(5) In this section and section 56—

“relevant body of water”—

(a) means—

(i) a body of surface water other than a stretch of coastal water, or
(ii) a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but

(b) does not include sewers and drains which drain into sewers,

“sustainable urban drainage system” has the meaning given in section 59(1) of the Sewerage (Scotland) Act 1968 (c.47).

56 Local authorities to assess bodies of water

(1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—

(a) assess the relevant bodies of water (other than canals) in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or outwith its area, and

(ba) where—

(i) a body of water gives rise to such a risk, and

(ii) the authority considers that clearance and repair works would substantially reduce that risk,

prepare a schedule of those clearance and repair works.

(1A) In subsection (1)(ba), clearance and repair works are works that consist of any or all of the following—

(a) removing obstructions from a body of water,

(b) removing things that are at significant risk of becoming such obstructions,

(c) repairing artificial structures which form part of the bed or banks of a body of water.

(1B) A schedule prepared under subsection (1)(ba) must—

(a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,

(b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.

(1C) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(ba) for the time being applicable to its area.

(2) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any relevant body of water in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.

(3) Subsection (2) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

Artificial structures and natural features: mapping and assessment

15C SEPA to prepare maps of artificial structures and natural features

(1) SEPA must, for each flood risk management district, prepare a map—
Part 3—Flood risk assessment, maps and plans

(a) showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water,

(b) indicating, in relation to each structure or feature, whether it was constructed or altered under section 49 of this Act or section 2 of the 1961 Act, and

(c) containing such other information as the Scottish Ministers may specify in regulations.

(2) Each map must be prepared—

(a) by such date as the Scottish Ministers may direct,

(b) at the appropriate scale, and

(c) in such form as the Scottish Ministers may specify in regulations.

(3) SEPA must, from time to time, review and where appropriate update the map prepared under this section for each flood risk management district.

(4) Before preparing or updating a map under this section, SEPA must consult every local authority whose area (or part of whose area) is in the flood risk management district to which the map relates.

(5) SEPA must make available for public inspection the map prepared or updated under this section for the time being applicable to each flood risk management district.

Assessment of possible contribution of alteration etc. of natural features and characteristics

SEPA to assess possible contribution of alteration etc. of natural features and characteristics

(1) SEPA must, by 22 December 2013 or such other date as the Scottish Ministers may direct, assess whether alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in a flood risk management district could contribute to the management of flood risk for the district.

(1A) For the purposes of this Act, natural features and characteristics include such features and characteristics which can assist in the retention of flood water, whether on a permanent or temporary basis, (such as flood plains, woodlands and wetlands) or in slowing the flow of such water (such as woodlands and other vegetation), those which contribute to the transporting and depositing of sediment, and the shape of rivers and coastal areas.

(2) SEPA must—

(a) by such date as the Scottish Ministers may direct, review and where appropriate update its assessment under subsection (1), and

(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) review and where appropriate update the latest assessment reviewed under this subsection.

(3) Each assessment under subsection (1), and each assessment updated after review under subsection (2), must—

(a) take into account the flood risk assessment, any flood hazard maps and flood risk maps and any flood risk management plan for the time being applicable to the flood risk management district, and
(b) refer to a map showing where alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area in the district could contribute to management of flood risk in the district.

(3A) The map referred to in subsection (3)(b) must be prepared at a scale which SEPA considers will assist in—
(a) the identification of measures under section 23(4)(b), and
(b) the inclusion of information in local flood risk management plans under section 29(3)(b)(ia) and (4)(ba)(i).

(4) SEPA must make available for public inspection copies of—
(a) any assessment under this section for the time being applicable to each flood risk management district, and
(b) the map to which the assessment refers.

Flood hazard maps and flood risk maps

17 SEPA to prepare flood hazard maps and flood risk maps

(1) SEPA must prepare flood hazard maps and flood risk maps in accordance with this section and sections 18 and 19.

(2) Flood hazard maps and flood risk maps must be prepared—
(a) by 22nd December 2013,
(b) for the potentially vulnerable areas in each flood risk management district,
(c) at the appropriate scale, and
(d) so as to secure that the maps for the district (taken together) cover all such areas.

18 Flood hazard maps

(1) A flood hazard map (or more than one such map taken together) must (except to the extent subsections (2) to (6) provide otherwise), show—
(a) the geographical areas which could be flooded by each of the following types of flood—
(i) floods with a low probability (or which would be an extreme event),
(ii) floods with a medium probability, and
(iii) floods with a high probability, and
(b) the following elements for each of those types of flood—
(i) the flood extent,
(ii) water depths or water level, whichever is appropriate,
(iii) where appropriate, the flow velocity or the relevant water flow, and
(iv) such other elements as the Scottish Ministers may specify by regulations.

(2) But a flood hazard map need not show information referred to in subsection (1) as respects a flood with a high probability where SEPA considers such a flood would be unlikely to have significant adverse consequences for the area which could be flooded by it.
(3) And—

(a) where a geographical area shown in a flood hazard map is or includes a coastal area which SEPA considers is adequately protected from coastal floods, subsection (4) applies instead of subsection (1) as respects any coastal flood (of the coastal area) with a medium or high probability,

(b) where a geographical area shown in a flood hazard map is or includes an area at risk of flooding from groundwater, subsection (5) applies instead of subsection (1) as respects any flood (of the area at such risk) with a medium or high probability and which would be from groundwater, and

(c) subsection (6) applies instead of subsection (1) as respects any flood from a sewerage system which is not a flood solely from a sewerage system.

(4) Where subsection (3)(a) applies, the map—

(a) may, where SEPA considers it appropriate, and

(b) must, to the extent that the Scottish Ministers direct,

show for any such coastal area information referred to in subsection (1) as respects any such flood of that area.

(5) Where subsection (3)(b) applies, the map—

(a) may where SEPA considers it appropriate, and

(b) must, to the extent that the Scottish Ministers direct,

show for the area at such risk information referred to in subsection (1) as respects any such flood of that area.

(6) Where subsection (3)(c) applies, the map—

(a) may where SEPA considers it practicable, and

(b) must to the extent that the Scottish Ministers direct,

show information referred to in subsection (1) as respects any flood in the area from a sewerage system which is not a flood solely from a sewerage system.

(7) To the extent (if any) that, in pursuance of subsections (2) to (6), a flood hazard map does not show information referred to in those subsections, the map must include a statement explaining that the information is not shown in it.

(7A) Before giving a direction under subsection (4)(b), (5)(b) or (6)(b), the Scottish Ministers must consult SEPA.

(8) In this section—

(a) as respects a flood—

   “low probability” (or “extreme event”) means such probability as may be specified as such by the Scottish Ministers by order,

   “medium probability” means such probability involving a return period of 100 years or more (or an annual probability of occurrence of not more than 1%) as may be specified as such by the Scottish Ministers by order,

   “high probability” means such probability as may be specified as such by the Scottish Ministers by order,

(b) “groundwater” has the same meaning as in section 3(4) of the 2003 Act.
Flood risk maps

(1) The potential adverse consequences associated with each type of flood for which any information referred to in section 18(1) is shown in a flood hazard map must be shown in a flood risk map (or more than one flood risk map taken together) by reference to the matters mentioned in subsection (2).

(2) The matters are—

(a) the indicative number of inhabitants who potentially could be affected,
(b) the type of economic activity in the area which could be flooded,
(c) installations referred to in Annex 1 to Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control, which might cause accidental pollution if any type of flood referred to in subsection (1) occurred,
(d) any of the following protected areas or bodies of water which potentially could be affected, if any type of flood referred to in subsection (1) occurred—

(i) areas for the abstraction of water intended for human consumption identified by order under section 6(1) of the 2003 Act,
(ii) areas referred to in section 7(4)(a) of that Act (areas designated for the protection of economically significant aquatic species),
(iii) bodies of water referred to in section 7(4)(b) of that Act (bodies of water designated as recreational waters),
(iv) areas referred to in section 7(4)(c) of that Act (nutrient-sensitive areas),
(v) areas referred to in section 7(4)(d) of that Act (areas designated for the protection of habitats or species where the maintenance or improvement of the status of the water is an important factor in such protection),
(vi) areas classified pursuant to Article 4 of Council Directive 79/409/EEC on the conservation of wild birds,
(vii) special areas of conservation designated under regulation 8(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (SI 1994/2716), and
(viii) sites of special scientific interest which have been notified in terms of section 3 of the Nature Conservation (Scotland) Act 2004 (asp 6),

(c) any area which is within a protected area or body of water referred to in paragraph (d)(i) to (viii) and could be affected by pollution from any installation referred to in paragraph (c), and

(f) such other information as the Scottish Ministers may specify by regulations.

(3) Where SEPA considers it appropriate, a flood risk map may also show the potential adverse consequences associated with any type of flood referred to in subsection (1) by reference to any of the following—

(a) information indicating any areas where floods with a high content of transported sediments or debris floods (or a combination of such floods) can occur,
(b) such other sources of pollution as SEPA consider may be significant,
(c) such other available and readily derivable information as SEPA considers appropriate.
20 Flood hazard maps and flood risk maps: review
   (1) SEPA must—
      (a) by 22nd December 2019, review and where appropriate update each flood hazard
          map and each flood risk map prepared under section 17, and
      (b) by the end of each subsequent period of 6 years, review and where appropriate
          update the latest flood hazard map and flood risk map updated after review under
          this section.
   (2) SEPA must take into account in any review under this section the likely impact of
       climate change on the occurrence of floods.
   (3) Sections 17(2)(b) to (d), 18 and 19 apply in relation to the review and updating of a
       flood hazard map and a flood risk map.

21 Flood hazard maps and flood risk maps: availability for public inspection
SEPA must make available for public inspection copies of each flood hazard map and
each flood risk map for the time being applicable to each flood risk management district.

22 Flood hazard maps and flood risk maps: regulations
The Scottish Ministers may by regulations make further provision as to the preparation
of flood hazard maps and flood risk maps under section 17, or the review or updating of
such maps under section 20, including provision as to criteria to be applied and the
methods and procedures to be followed in those matters.

23 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.

(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.

24 Flood risk management plans: objectives and measures

(1) In setting objectives and identifying measures under section 23(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 16 in relation to the district,

(iv) the flood hazard maps and the flood risk maps prepared under section 17 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,

(viiia) any plan or assessment published under section 2(1)(f) of the Civil Contingencies Act 2004 (c.36) relating to the district,

(ix) the environmental objectives within the meaning of section 9 of the 2003 Act,

(x) the conservation of nature in the district and elsewhere, and

(xi) 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.

(2A) 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.

(2AA) 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.

(2AB) The measures considered in pursuance of subsection (2AA) 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 16 in relation to the district.

(2B) In subsections (1)(a)(viii) and (2A)(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.

24A  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 23 and 24.

(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 22 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.

25  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

(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”),

(aa) every category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district,

(b) Scottish Natural Heritage,

(c) where any part of the district has been designated as a National Park, the National Park authority for the National Park, and

(d) 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).
26 Flood risk management plans: submission for approval

(1) As soon as a flood risk management plan is submitted to the Scottish Ministers under section 23 or 28, 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 25,
   (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 25, 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.

27 Flood risk management plans: approval and publication

(1) After considering a flood risk management plan submitted to them under section 23(1) or in pursuance of section 26(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.

28 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,
(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 23(5)) the matters specified in Part 2 of schedule 1.
(4) Sections 23(4) to (7) and 24 to 27 apply in relation to the preparation, submission and approval of an updated flood risk management plan.

Local flood risk management plans

29 Local authorities to prepare local flood risk management plans
(1) The lead authority for each local plan district must prepare a local flood risk management plan to supplement the relevant flood risk management plan.
(2) A local flood risk management plan is to consist of—
(a) a supplementary part, and
(b) an implementation part.
(3) The supplementary part must include—
(a) a summary of the objectives, measures and other information included in the relevant flood risk management plan under paragraphs 1 to 3 of schedule 1 so far as relevant to the local plan district,
(b) such information supplemental to that plan including such—
   (i) maps,
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(ia) information about how implementing the measures summarised under paragraph (a) may alter (including enhance) or restore natural features and characteristics, and

(ii) further information about those measures,

as the lead authority considers relevant to flood risk management within the local plan district, and

(c) a summary of—

(i) the steps taken under subsections (1) to (6) of section 30 in relation to the local flood risk management plan,

(ii) any other consultation measures taken in connection with the preparation of the plan, and

(iii) changes made to the plan in light of the views and representations received on it.

(4) The implementation part must include a description of how the current measures are to be implemented including—

(a) a detailed timetable for—

(i) the completion of measures currently being implemented, and

(ii) the implementation of measures yet to be commenced,

(b) in relation to each measure, a description of—

(i) who is, or is to be, responsible for implementing the measure, and

(ii) the arrangements for funding the measure,

(ba) a description of how the functions of the persons identified under paragraph (b)(i) will be coordinated to implement the measures and, in particular, a description of how those functions will be coordinated insofar as the measures relate to—

(i) the alteration (including enhancement) or restoration of natural features and characteristics, and

(ii) surface run-off water or urban drainage, and

(c) such other information as the lead authority considers relevant to the implementation of the measures.

(5) The implementation part may also include a description of how other measures summarised in the supplementary part under subsection (3)(a) are to be implemented.

(6) A local flood risk management plan must also include such other matters as the Scottish Ministers may specify by regulations.

(6A) Before making regulations under subsection (6), the Scottish Ministers must consult—

(a) SEPA,

(b) every responsible authority, and

(c) such other persons as they consider appropriate.

(7) A local flood risk management plan must not be inconsistent with anything in the relevant flood risk management plan.

(8) For the purposes of this Part, the lead authority—
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(a) for a local plan district is—

(i) where a local authority’s area includes all of the local plan district, that authority,

(ii) in any other case, one of the local authorities whose area includes part of the local plan district as may be agreed between those authorities or, in default of agreement, as may be determined by the Scottish Ministers, and

(b) in relation to a local flood risk management plan, is the local authority responsible for preparing the plan by virtue of subsection (1) and paragraph (a) of this subsection.

(9) In this Act, the “current measures”, in relation to a local flood risk management plan, are those of the measures summarised in the plan under subsection (3)(a) which are identified in the relevant flood risk management plan as to be implemented before the plan is next reviewed under section 28.

(10) In this section, “relevant flood risk management plan”, in relation to a local plan district (or the local flood risk management plan for that district), means the flood risk management plan prepared under section 23 or updated under section 28 for the flood risk management district which includes the local plan district.

Local flood risk management plans: publicity and consultation

(1) Not less than one year before the beginning of the period to which the relevant flood risk management plan is to relate or by such date as the Scottish Ministers may direct, the lead authority must publish a draft of the supplementary part of the local flood risk management plan (“the draft supplementary part”).

(2) Publication of a draft under subsection (1) is to be in such manner as the lead authority considers appropriate.

(3) On publishing the draft supplementary part, the lead authority must—

(a) publicise—

(i) that fact, and

(ii) the opportunity to make representations about the draft supplementary part under subsection (4), and

(b) make copies of the draft supplementary part available for public inspection for such period, which must be at least 3 months beginning with the date of its publication, as the lead authority may determine.

(4) Any person who wishes to make representations to a lead authority about the draft supplementary part may do so before the expiry of the period determined under subsection (3)(b).

(5) On publishing the draft supplementary part, the lead authority must also—

(a) consult the persons specified in subsection (6) on—

(i) the draft supplementary part, and

(ii) a draft of the implementation part of the plan, and

(b) take such steps as it considers appropriate for the purpose of encouraging those persons to participate appropriately in the preparation of the plan.

(6) The persons referred to in subsection (5)(a) are—
(a) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district to which the plan relates (“the district”),

(aa) any category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the district,

(b) SEPA,

(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 the lead authority considers appropriate.

(7) The lead authority must co-ordinate the steps it takes under subsections (1) to (6) with those taken by SEPA in relation to the relevant flood risk management plan under section 25(2) to (4).

(8) Before finalising the local flood risk management plan, the lead authority must take into account—

(a) any representations about the draft supplementary part made under subsection (4), and

(b) any views on the draft local flood risk management plan expressed by those consulted under subsection (5)(a),

which are received by the lead authority before the expiry of the period determined under subsection (3)(b).

(9) Not later than 2 months after receiving them, the lead authority must inform SEPA of any views expressed by those consulted under subsection (5)(a) which the lead authority considers relevant to the relevant flood risk management plan.

(10) In subsections (7) and (9), “relevant flood risk management plan” means the flood risk management plan prepared under section 23 or updated under section 28 for the flood risk management district which includes the local plan district.

31 Local flood risk management plans: completion and publication

(1) A local flood risk management plan for a local plan district is finalised when—

(a) the flood risk management plan which it supplements is approved under section 27, and

(b) either—

(i) the lead authority, every other responsible authority which has flood risk related functions exercisable in or in relation to the local plan district and SEPA agrees to its content, or

(ii) the Scottish Ministers determine its content under subsection (3).

(2) If—

(a) the lead authority considers that the local flood risk management plan will not be finalised by the local plan deadline, or

(b) the plan is not finalised by that deadline,

the lead authority must notify the Scottish Ministers of that fact.
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(3) Where the Scottish Ministers receive notice under subsection (2), they must determine the content of the local flood risk management plan.

(4) Before determining the content of a plan under subsection (3), the Scottish Ministers must take into account any representations made by SEPA and any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.

(5) When a local flood risk management plan is finalised, the lead authority must—
   (a) publish the final plan in such manner as it considers appropriate,
   (b) make copies of it available for public inspection,
   (c) provide a copy of it to SEPA and the Scottish Ministers,
   (d) make copies of it available to the public, and
   (e) publicise the publication of the final plan.

(6) In making copies of the plan available to the public under subsection (5)(d), the lead authority may charge a reasonable price for each copy.

(7) In subsection (2), the “local plan deadline” is the date 6 months after the date the flood risk management plan mentioned in subsection (1)(a) is approved or such other date as the Scottish Ministers may direct.

32 Local flood risk management plans: interim report

(1) Not earlier than 2 years and not later than 3 years after a local flood risk management plan is finalised, the lead authority must—
   (a) review the plan, and
   (b) publish a report on the conclusions of the review including information on the progress that has been made towards implementing the measures identified in the implementation part of the plan.

(2) The lead authority must make copies of the report available for public inspection.

33 Local flood risk management plans: final report

(1) Not earlier than 5 years, and not later than 6 years, after a local flood risk management plan is finalised, or by such other date as the Scottish Ministers may direct, the lead authority must publish a report on the plan containing—
   (a) an assessment of the progress made towards implementing the current measures,
   (b) a summary of the current measures which were not implemented, with reasons for their non-implementation, and
   (c) a description of any other measures implemented since the plan was finalised which the lead authority considers have contributed to the achievement of the objectives summarised in the supplementary part of the plan.

(2) The lead authority must make copies of the report available for public inspection.
Local flood risk management plans: joint working

Where a local plan district covers more than one local authority’s area, the lead authority and the other authorities must, so far as practicable, co-operate with each other with a view to assisting in—

(a) the preparation of the local flood risk management plan for the district,
(b) the review of that plan under section 32,
(c) the preparation of the report published under that section, and
(d) the preparation of the report published under section 33.

Regulations about plans

Regulations relating to flood risk management plans and local flood risk management plans

(1) The Scottish Ministers may by regulations make further provision as to—

(a) the form of flood risk management plans and local flood risk management plans,
(b) the matters to be taken into account in preparing such plans,
(c) the procedures to be followed in connection with the preparation, submission, approval, review and modification of such plans,
(d) consultation by SEPA in relation to its preparation of flood risk management plans,
(e) consultation by lead authorities in relation to their preparation of local flood risk management plans, and
(f) the form, content, preparation and publication of reports under sections 32 and 33.

(2) Such regulations may, in particular, do any of the following—

(a) provide for the notice to be given of, or the publicity to be given to—

(i) matters to be included or proposed to be included in any such plan,
(ii) the approval of any such plan, and
(iii) any other procedural step,
(b) provide for the publicity to be given to the procedures referred to in subsection (1)(c),
(c) make provision for documents and information relating to matters included in the plan to be made available to the public,
(d) make provision as to the making and consideration of representations with respect to any such plan,
(e) require or authorise—

(i) in relation to a flood risk management plan, SEPA,
(ii) in relation to a local flood risk management plan, the lead authority,
Duty to have regard to plans

36 Duty to have regard to flood risk management plans and local flood risk management plans

(1) The Scottish Ministers and every public body and office-holder must, in exercising any functions so far as affecting a flood risk management district, have regard to—

(a) the flood risk management plan for that district as approved under section 27,

(b) so far as the exercise of the functions affects a local plan district, the local flood risk management plan for that district as finalised under section 31.

(2) The Scottish Ministers must, in determining any funding to be allocated to SEPA or any responsible authority for the purpose of flood risk management for any period, have regard to flood risk management plans (as approved under section 27) and local flood risk management plans (as finalised under section 31).

36A Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

In regulation 24 (further information) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432)—

(a) the words from “may” to the end become paragraph (a), and

(b) at the end there is inserted—

“(b) must, where the application relates to a development that is likely to result in a material increase in the number of buildings at risk of being damaged by flooding, require from the applicant an assessment of flood risk in respect of the development.”.

Provision of information and assistance

37 Power of SEPA to obtain information, documents and assistance

(1) The Scottish Ministers and any responsible authority must, on being requested by SEPA, provide SEPA with—

(a) such information in their or, as the case may be, its possession or under their or its control, and

(b) such assistance,

as SEPA may reasonably seek in connection with the exercise of any of SEPA’s functions under sections 9, 10, 15C, 16, 17, 20, 23, 24 and 28.

(2) Any responsible authority must, on being requested by SEPA—

(a) gather and provide SEPA with such information—

(i) as respects flood risk, and

(ii) which SEPA considers could contribute to improving understanding of flood risk, and

(b) prepare and provide SEPA with such assessments or maps which SEPA considers could contribute to such understanding,

as SEPA may reasonably seek in connection with the exercise of any of those functions.
(3) Information requested by SEPA in pursuance of subsection (2) may include in particular information about, or as the case may be assessments or maps relating to—
    (a) the contribution that altering (including enhancing) or restoring natural features and characteristics could make to managing flood risk, and
    (b) urban drainage and flooding caused by surface run-off water or a sewerage system.

(4) Information and assistance which a responsible authority is required to provide to SEPA in pursuance of subsection (1) or (2) must be provided in such form and manner as SEPA may reasonably seek.

(5) SEPA may serve a notice on any person (but not the Scottish Ministers or a responsible authority) requiring the person to—
    (a) provide SEPA, or a person authorised by it, in the form and manner specified in the notice, with such information, or
    (b) produce to SEPA, or to a person authorised by it, such documents, as it may reasonably require in connection with the exercise of any of the functions referred to in subsection (1).

(6) Where a responsible authority or, as the case may be, a person on whom a notice is served under subsection (5) cannot agree with SEPA on whether information or assistance is, or assessments, maps or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

38 Power of lead authorities to obtain information, documents and assistance

(1) A person mentioned in subsection (2) must, on being requested by a lead authority, provide the authority with—
    (a) such information in its possession or under its control, and
    (b) such assistance, as the authority may reasonably seek in connection with its functions under sections 29 to 33.

(2) Those persons are—
    (a) SEPA, and
    (b) any responsible authority which has flood risk related functions exercisable in or in relation to the local plan district.

(3) A lead authority may serve a notice on any person (but not SEPA, a responsible authority or the Scottish Ministers) requiring the person to—
    (a) provide the authority, or a person authorised by it, in the form and manner specified in the notice, with such information, or
    (b) produce to the authority, or to a person authorised by it, such documents, as it may reasonably require in connection with the exercise of any of the functions under sections 29 to 33.
(4) Where a responsible authority, SEPA or, as the case may be, a person on whom a notice is served under subsection (3) cannot agree with the lead authority on whether information or assistance is, or documents are, being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

38A Power of local authorities to obtain information

(1) A person mentioned in subsection (2) must, on being requested by a local authority, provide the authority with such information in its possession or under its control as the authority may reasonably seek in connection with its functions under sections 15B and 56.

(2) Those persons are—
(a) SEPA, and
(b) any other responsible authority which has flood risk related functions exercisable in or in relation to the local authority’s area.

(3) Where SEPA or, as the case may be, a responsible authority cannot agree with the local authority on whether information is being sought reasonably under this section, either of them may refer the matter to the Scottish Ministers, whose decision is final.

39 Power to obtain information, documents and assistance: supplementary

(1) The information or documents required to be provided or produced in pursuance of a notice under section 37(5) or section 38(3) (an “information notice”) must be specified or described in the notice.

(2) An information notice may require information to be provided or documents to be produced—
(a) at or by a time and at a place specified in the notice,
(b) in circumstances specified in the notice, or
(c) from time to time, in accordance with criteria specified in the notice.

(3) Nothing in this section or section 37 or 38 authorises SEPA or, as the case may be, a lead authority to require disclosure of anything which a person would be entitled to refuse to disclose in proceedings in the Court of Session on grounds of confidentiality in proceedings in that court.

(4) Where by virtue of an information notice documents are produced to any person, that person may take copies of or make extracts from them.

(5) References in this section or section 37 or 38 to documents are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.

40 Power to obtain information, documents and assistance: offence

(1) A person who—
(a) refuses or fails, without reasonable excuse, to do anything required of that person by a notice under section 37(5) or 38(3), or
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(b) intentionally alters, suppresses or destroys a document which that person has been
required by such notice to produce,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

Consistency and co-ordination with river basin management planning under the 2003 Act

41 Consistency and co-ordination with characterisations and plans under the 2003 Act

(1) SEPA—

(a) must secure appropriate consistency in the information in flood risk assessments,
flood hazard maps, flood risk maps and flood risk management plans prepared
under this Part with information contained in characterisations of river basin
districts and river basin management plans prepared under Chapter 2 of Part 1 of
the 2003 Act,

(b) must co-ordinate—

(i) preparation and review of flood hazard maps, flood risk maps and flood
risk management plans under this Part with preparation and review of
information mentioned in subsection (2), and

(ii) making available such maps and plans for public inspection with making
available such information for such inspection, and

(c) may, where it considers it appropriate, integrate any such flood hazard map, flood
risk map or flood risk management plan with the information mentioned in
subsection (2).

(2) The information referred to in subsection (1)(b)(i) and (c) is—

(a) as respects flood risk maps and flood hazard maps, characterisations of river basin
districts prepared under Chapter 2 of Part 1 of the 2003 Act, and

(b) as respects flood risk management plans, river basin management plans prepared
under that Chapter.

(3) A lead authority responsible for preparing a local flood risk management plan must
secure appropriate consistency in the information contained in the plan with information
contained in characterisations of river basin districts and river basin management plans

Advisory groups

42 District flood risk advisory groups

(1) Each flood risk management district is to have one or more district flood risk advisory
groups (“district advisory groups”).

(2) The function of each district advisory group is to advise SEPA on any matter which—

(a) relates to—

(i) the preparation of any of the documents mentioned in subsection (3),
(ii) the review and updating of any such document,

(iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 16, and

(iv) the review and updating of any such assessment, and

(b) is within the remit of the group.

(3) The documents mentioned in subsection (2)(a)(i) are—

(a) the flood risk assessment for the district,

(b) the document (under section 13) identifying—

(i) potentially vulnerable areas in the district, and

(ii) local plan districts,

(c) each flood hazard map and flood risk map for the district,

(d) the flood risk management plan for the district.

(4) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (3) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a district advisory group for the district.

(5) The number of district advisory groups, and their remits, membership and procedure are to be such as SEPA may determine.

(6) SEPA may determine the remit of a district advisory group for any flood risk management district by reference to one or more of the following—

(a) a particular geographical area,

(b) any other particular aspect of flood risk management within the district.

(7) In determining the number of district advisory groups for any flood risk management district and their remits and membership, SEPA must seek to ensure appropriate representation of the interests of—

(a) the persons specified or referred to in section 25(5)(a) to (c), and

(b) such other persons as appear to SEPA to have an interest in flood risk management for the district.

(8) SEPA may pay to members of a district advisory group such expenses and allowances as it may determine.

Sub-district flood risk advisory groups

(1) For the purpose of setting up sub-district flood risk advisory groups, SEPA must divide each flood risk management district into such geographical areas (“sub-districts”) as it considers appropriate.

(2) Each sub-district is to have a sub-district flood risk advisory group (“sub-district advisory group”).

(3) The function of each sub-district advisory group is to advise—

(a) SEPA, on any matter which relates to—

(i) the preparation of the documents mentioned in subsection (4),

(ii) the review and updating of those documents,
(iii) any assessment (of possible contribution of alteration etc. of natural features and characteristics) under section 16, and

(iv) the review and updating of any such assessment, and

(b) lead authorities for local plan districts, all or part of which form part of the sub-district, on any matter which relates to the preparation of—

(i) a local flood risk management plan,

(ii) a report under section 32 or 33,

so far as those matters are within the remit of the group.

(4) The documents referred to in subsection (3)(a)(i) are—

(a) the flood risk assessment for the flood risk management district of which the sub-district forms part,

(b) the document (under section 13) identifying—

(i) potentially vulnerable areas in the district, and

(ii) local plan districts in the district,

(c) each flood hazard map and flood risk map for the district,

(d) the flood risk management plan for the district.

(5) SEPA must, in preparing, reviewing and updating the documents referred to in subsection (4) and in carrying out or reviewing any assessment under section 16, have regard to any advice given by a sub-district advisory group.

(6) A lead authority must, in preparing a local flood risk management plan or a report under section 32 or 33, have regard to any advice given by a sub-district advisory group.

(7) The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.

(7A) In determining the remit and membership of a sub-district advisory group, SEPA must seek to ensure appropriate representation of the interests of—

(a) every responsible authority which has functions exercisable in or in relation to the sub-district,

(aa) any category 1 responder (other than a responder which is a responsible authority) which has functions exercisable in or in relation to the sub-district,

(b) Scottish Natural Heritage,

(c) where any part of the sub-district has been designated as a National Park, the National Park authority for the National Park, and

(d) such other persons as appear to SEPA to have an interest in flood risk management for the sub-district.

(8) SEPA may pay to members of a sub-district advisory group such expenses and allowances as it may determine.
Supplementary

44  **Power to give effect to Community obligations etc.**

(1) The Scottish Ministers may by regulations provide that the provisions of this Part are to have effect with such modifications as the regulations may specify for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

(2) In this section “related right”, in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.

45  **Annual report on implementation of Directive**

(1) The Scottish Ministers must either—

   (a) as soon as practicable after the end of each calendar year lay before the Parliament a report summarising the action referred to in subsection (2) taken during the year by—

      (i) the Scottish Ministers,

      (ii) SEPA, and

      (iii) the responsible authorities, or

   (b) incorporate into their report under section 26 of the 2003 Act for the calendar year concerned a report summarising such action.

(2) The action is—

   (a) action taken in accordance with this Part (including, in particular, action taken for securing compliance with the requirements of the Directive), and

   (b) action taken to implement measures identified in a flood risk management plan approved under section 27.

46  **Availability of documents for public inspection**

(1) Where, under this Part, any order, assessment, map, plan, or report is to be made available for public inspection, it—

   (a) must be made available—

      (i) free of charge,

      (ii) at all reasonable times, and

   (b) may be made available by such means, or in such formats, as the person required to make it available considers appropriate for the purpose of encouraging the inspection of it by members of the public.

(2) The person required to make available the document referred to in subsection (1) must publicise the arrangements for making it available unless the document is—

   (a) a map prepared under section 15B, or

   (b) a schedule prepared under section 56(1)(ba).
Publicity of matters

(1) Where, under this Part, a person (“the publisher”) is required to publicise any matter, the publisher—

(a) must do so by means of a notice published in the appropriate newspapers, and

(b) may further publicise the matter by such electronic or other means as the publisher considers appropriate.

(2) In subsection (1), the appropriate newspapers are—

(a) in relation to a local flood risk management plan, such newspapers circulating in the local plan district, or any part of the district, as the publisher considers appropriate,

(b) in relation to any other matter—

(i) at least one newspaper circulating throughout Scotland, and

(ii) such local newspapers circulating in any part of the flood risk management district to which the matter relates as the publisher considers appropriate.

Interpretation of Part 3

(1) In this Part—

“appropriate scale” means such scale as SEPA considers most appropriate,

“body of surface water”, “loch”, “river basin” and “watercourse” have the same meanings as in section 28(1) of the 2003 Act,

“sub-basin” means an area of land from which all surface run-off water flows through a series of streams, rivers, other watercourses and, as the case may be, lochs to a particular point in a watercourse or loch,

“wetland” means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water.

(2) The Scottish Ministers may by order specify boundaries of any coastal area for the purposes of this Part.

PART 4

FLOOD RISK MANAGEMENT: LOCAL AUTHORITY FUNCTIONS

General power to manage flood risk

(1) A local authority may do anything which it considers—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan,

(b) is necessary to reduce the risk of a flood in its area which is likely to—

(i) occur imminently, and

(ii) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or
(c) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).

(2) Without prejudice to the generality of subsection (1), a local authority may in particular—

(a) carry out any operations to which a flood protection scheme relates (see section 52),

(b) carry out any other flood protection work,

(c) carry out any temporary works required for the purposes of a flood protection scheme or any other flood protection work,

(d) enter into agreements or arrangements with any other person—

(i) for the carrying out by that person or by the authority of any work which could be done by the authority under this Part, or

(ii) relating to the management by that person of land in a way which can assist in the retention of flood water or slowing the flow of such water,

(f) make contributions towards expenditure incurred by any other person doing something which could be done by the authority under this Part,

(fa) make payments to any other person in compensation for income lost as a result of entering into agreements or arrangements of the type mentioned in paragraph (d)(ii), and

(g) receive from any other person contributions towards expenditure incurred by the authority in exercising any of its functions under this Part.

(3) Work carried out under this section may be carried out within or outwith the local authority’s area.

50 Limits of general power

(1) The power under section 49 does not enable a local authority to do anything which it is, by virtue of a limiting provision, unable to do.

(2) In subsection (1), a “limiting provision” is one which—

(a) prohibits or prevents the local authority from doing anything or limits its powers in that respect, and

(b) is expressed in an enactment (whenever passed or made).

(3) The absence from an enactment of provision conferring any power does not of itself make that enactment a limiting provision.

51 Limits of general power: statutory undertakings

(1) A local authority may not exercise the power under section 49 in a way which—

(a) damages any works or property belonging to a statutory undertaker, or

(b) interferes with the carrying on of its statutory undertaking, unless the undertaker consents.

(2) But consent is not required if it is withheld unreasonably.
(3) It is for the Scottish Ministers to determine any question which arises as to whether consent has been withheld unreasonably, and their decision is final.

Clearance and repair works

51A Duty to carry out clearance and repair works

A local authority must carry out the works described in a schedule prepared by it under section 56 if it considers carrying out the works—

(a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or

(b) will not affect the implementation of the measures mentioned in paragraph (a).

Flood protection schemes

52 Flood protection schemes

(1) A flood protection scheme is a scheme by a local authority for the management of flood risk within the authority’s area.

(2) A proposed flood protection scheme must—

(a) contain a description of the operations the local authority proposes to carry out,

(b) include such maps, plans and specifications as may be specified by regulations by the Scottish Ministers,

(c) state how the operations will contribute to the implementation of current measures described in any relevant local flood risk management plan, and

(d) inasmuch as they will not so contribute, state the reasons why the local authority considers carrying them out will not affect the implementation of those measures.

(3) Schedule 2 makes further provision about the making of flood protection schemes.

(4) The Scottish Ministers may by order amend schedule 2 so as to modify the procedure for making flood protection schemes.

(5) Before making an order under subsection (4), the Scottish Ministers must consult—

(a) every local authority,

(b) such bodies appearing to them to be representative of the interests of local authorities as they consider appropriate,

(c) SEPA,

(d) Scottish Natural Heritage,

(e) Scottish Water,

(f) the National Park authority for each National Park, and

(g) such other persons as they consider appropriate.

53 Orders under the Land Drainage (Scotland) Act 1958

(1) This section applies where an improvement order affects any land on which operations are proposed to be carried out under a flood protection scheme.

(2) The flood protection scheme may include proposals to—
(a) vary the improvement order by—
   (i) removing land from the improvement area,
   (ii) removing or rendering ineffective all or any part of the drainage or protective works specified in the improvement order, or
   (iii) amending, reapportioning or removing any obligations of maintenance imposed on the authorised persons under the improvement order, or
(b) revoke the improvement order.

(3) But the scheme may not include proposals to vary the improvement order so as to impose any new obligations on the authorised persons in respect of operations described in the scheme.

(4) Where the proposed operations will materially alter drainage works or protective works, the scheme must include proposals to vary the improvement order so as to remove the obligation of maintenance in respect of the part of the drainage works or protective works so altered.

(5) On commencement of the flood protection scheme, the improvement order is varied or, as the case may be, revoked to the extent specified in the scheme.

(6) Where an improvement order has been varied or revoked by a flood protection scheme, the local authority must cause a notice of the variation or revocation to be registered in the Land Register of Scotland or recorded in the Register of Sasines (as applicable).

(7) The Scottish Ministers may by order specify the form and content of a notice under subsection (6).

(8) In this section—
   “authorised persons” has the meaning given in section 2(2) of the Land Drainage (Scotland) Act 1958 (c.24),
   “drainage works” has the meaning given in section 18(1) of that Act,
   “improvement area” has the meaning given in section 1(3) of that Act,
   “improvement order” has the meaning given in section 1(1) of that Act,
   “protective works” has the meaning given in section 2(1)(d) of that Act.

53A Registers of flood protection schemes

(1) Every local authority must keep a register of flood protection schemes.

(2) A local authority must enter into its register—
   (a) details of each relevant scheme including—
      (i) a summary of the operations described in the scheme,
      (ii) a description (by reference to a map) of the land affected by those operations, and
      (iii) a note of the date on which notice of the scheme is first published under paragraph 1(1)(a) of schedule 2,
   (b) a note of the following in relation to each such scheme—
      (i) any decision made under paragraph 4(1), 5(1), 7(4), or 9(1) of schedule 2,
(ii) the fact that notice has been given to the Scottish Ministers under paragraph 5(5) of that schedule including whether any relevant objector is a local authority or a National Park authority,

(iii) the fact that notice has been given of proposed modifications under paragraph 7(5)(a) or 9(3)(a) of that schedule,

(c) where such a scheme is confirmed with modifications, the information specified in paragraph (a)(i) and (ii) in relation to the modified scheme, and

(d) a note of any suspension of the operation of such a scheme under paragraph 12(6) of schedule 2.

(3) For the purposes of subsection (2)(a), a relevant scheme is a scheme—

(a) proposed by the local authority, or

(b) in relation to which it is notified under paragraph 1(1)(f)(iii) of schedule 2.

(4) A local authority may remove information from its register relating to a scheme if the scheme is rejected under paragraph 4(1)(b), 7(4)(c) or 9(1)(c) of schedule 2.

(5) A local authority must amend its register to reflect any decision of a sheriff under paragraph 12(7) of schedule 2 to quash a scheme recorded in its register in whole or in part.

(6) Where a local authority enters information in its register about a scheme in relation to which it notified another local authority under paragraph 1(1)(f)(iii) of schedule 2, it must notify that authority of the information entered.

(7) A local authority must make available its register for public inspection and may charge a reasonable fee for doing so.

53B Registers of flood protection schemes: information about schemes under 1961 Act

A local authority must enter into its register details of every flood prevention scheme made by it under the 1961 Act including—

(a) a summary of the operations to which the scheme relates, and

(b) a description (by reference to a map) of the land affected by those operations.

53C Registers of flood protection schemes: regulations etc.

(1) The Scottish Ministers may by regulations make further provision about the keeping of registers under section 53A(1) including, in particular, provision as to—

(a) the content of a register,

(b) the time by which information must be entered into a register,

(c) the circumstances in which information may or must be removed from a register, and

(d) the time by which notice must be given under section 53A(6).

(2) Regulations under subsection (1) may also—

(a) make further provision about the availability of registers under section 53A(7) including, in particular, provision as to the form and manner in which registers are to be made available,

(b) make provision—
(i) requiring local authorities to make available their registers to a person specified in the regulations,
(ii) as to the form and manner in which the registers are made available to the person,
(iii) requiring local authorities to inform the person of any change to their registers as soon as reasonably practicable or within a period specified in the regulations, and
(iv) requiring the person to make available information from local authorities’ registers for public inspection.

(3) References in this section and sections 53A and 53B to a local authority’s register are references to the register of flood protection schemes kept by the authority.

Deemed planning permission

54 Deemed planning permission for scheme work

In section 57 of the Town and Country Planning (Scotland) Act 1997 (c.8) (deemed planning permission), after subsection (2A) insert—

“(2B) On—

(a) confirming a flood protection scheme under paragraph 7(4) of schedule 2 to the Flood Risk Management (Scotland) Act 2009 (asp 00) in respect of any operation which would constitute development, or

(b) a local authority confirming such a scheme under paragraph 4(1) or 9(1) of that schedule,

the Scottish Ministers must direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.”.

Acquisition of land

55 Acquisition of land

(1) A local authority may—

(a) by agreement, acquire land which it requires for the exercise of its functions under this Part,

(b) with the authorisation of the Scottish Ministers, compulsorily acquire land (other than Crown land within the meaning of section 80(7)(a)) which it requires for the purpose of carrying out scheme operations.

(2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to an acquisition under subsection (1)(b) as if that provision were contained in an Act of Parliament in force immediately before the commencement of that Act.

General

57 Recovery of expenses

A local authority may recover any expense it incurs in carrying out—

(a) any repairs or re-instatement to flood protection work done—
(i) under section 49, or

(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act, or

(b) any work required under section 51A,

from the owner or, as the case may be, occupier of the land on which the work was carried out if such expense is as a result of the actions of that person.

58 Information about ownership etc. of land

(1) For the purposes of enabling it to exercise any of its functions under this Part, a local authority may require any person it believes to be the owner or occupier of any land to state in writing—

(a) the nature of the person’s interest in that land, and

(b) the name and address of any other person known to the person as having a interest in that land.

(2) Any person who—

(a) fails to comply with a requirement of a local authority under this section, or

(b) in answer to any such requirement, intentionally or recklessly makes any statement which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

59 Damage to certain flood protection work

(1) Any person who intentionally or recklessly damages any—

(a) barrier, embankment or other work for defence against flooding constructed or otherwise created by a local authority—

(i) in exercise of any of its functions under this Part, or

(ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act, or

(b) apparatus ancillary to such work,

commits an offence.

(2) For the avoidance of doubt, a person carrying out flood protection work under this Part does not commit an offence under subsection (1).

(3) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding.

(4) A person who commits an offence under subsection (1) is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 3 on the standard scale, or to both,

(b) in the sheriff court—
(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both, and

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i) above, or to both.

60 Repeal of Flood Prevention (Scotland) Act 1961
The 1961 Act is repealed.

61 Interpretation of Part 4
In this Part—

“relevant local flood risk management plan” means, in relation to a local authority, a local flood risk management plan for a local plan district that includes all or part of the local authority’s area,

“scheme documents” means, in relation to a proposed flood protection scheme, the documents containing the material specified in, or by regulations made under, section 52(2),

“statutory undertaker” means—

(a) the holder of a licence under section 6(1) of the Electricity Act 1989 (c.29),

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (c.44),

(c) the Civil Aviation Authority,

(d) a holder of a licence under Chapter 1 of the Transport Act 2000 (c.38),

(e) the operator of an electronic communications code network within the meaning of paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c.21), and

(f) any other person who is a statutory undertaker within the meaning of section 214(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

“statutory undertaking”—

(za) means, in relation to a person mentioned in paragraphs (a) to (e) in the definition of “statutory undertaker”, the person’s undertaking,

(a) means, in relation to Scottish Water, its core functions within the meaning of section 70(2) of the Water Industry (Scotland) Act 2002 (asp 3),

(b) otherwise has the meaning given in the Town and Country Planning (Scotland) Act 1997.
PART 5
SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

Advice to planning authorities and others as to flood risk

62 Advice to planning authorities and others as to flood risk

(1) SEPA must, when requested by a planning authority, give the authority advice as to flood risk in the authority’s district.

(2) SEPA must, when requested by a National Park authority which, though not a planning authority, is (by virtue of the order designating the National Park for which the authority is established) to be treated as the planning authority for the Park for any purpose, give the authority advice in relation to flood risk in the Park.

(3) Advice under subsection (1) or (2) is to be based on such information as respects such flood risk as SEPA possesses, taking into account—

(a) the flood risk assessment, any flood hazard map and flood risk map, the flood risk management plan and any local flood risk management plan for the time being applicable to the authority’s district, and

(b) information provided to it by any planning authority or National Park authority which is not a planning authority.

(4) In this section—

(a) “planning authority” and a planning authority’s “district” (except where paragraph (b) provides otherwise) have the meanings given in section 1(1) of the Town and Country Planning (Scotland) Act 1997 (c.8),

(b) where—

(i) all or part of a planning authority’s district is designated as a National Park, and

(ii) the designation order makes provision for the National Park authority to be the planning authority for the Park for the purposes of the planning Acts, “planning authority” in relation to the National Park means the National Park authority and a planning authority’s “district” means the National Park for which the National Park authority is established, and

(c) “the planning Acts” has the meaning given in section 277(1) of that Act.

Other assessment and maps of flood risk

63 Other assessment and maps of flood risk

(1) SEPA may—

(a) (in addition to the flood risk assessment it is required to prepare under section 9 and review under section 10) carry out such other assessment of flood risk as it considers appropriate, and

(b) (in addition to the flood hazard maps and flood risk maps it is required to prepare under section 17 and review under section 20) prepare such other maps in relation to flood risk as it considers appropriate.
In the exercise of its power under subsection (1), SEPA must take into account the flood risk assessment, any flood hazard map and flood risk map and the flood risk management plan for the time being applicable to the area being assessed.

SEPA may, where it considers it appropriate, integrate any map prepared by it under subsection (1)(b) with any such flood hazard map or flood risk map.

Flood warning

(1) SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood.

(2) Any warning under subsection (1)—

(a) of a flood which SEPA considers is occurring must be made available as soon as practicable after SEPA considers that is the case,

(b) of a flood which SEPA considers is likely to occur in the near future must be made available as soon as SEPA considers appropriate,

(c) is to be based on information available to SEPA, and

(d) must be made publicly available by SEPA by such means as it considers appropriate.

Assessment of whether flood warning system should be provided or altered

(1) SEPA may, and must where the Scottish Ministers direct, assess whether in its opinion—

(a) provision and operation by it of a flood warning system, or alteration of any flood warning system provided and operated by it, would assist in providing earlier or more accurate flood warning as respects an area, and

(b) the earlier or more accurate flood warning so provided would be likely to reduce the potential adverse consequences of flooding of the area for human health, the environment, cultural heritage and economic activity there.

(2) Any assessment under subsection (1) is to be based on such information as SEPA possesses.

(3) In carrying out any such assessment SEPA must consult in accordance with section 67(1).

(4) In this section and section 66, “flood warning system” means a system by which, for the purpose of detecting, forecasting or providing warning of any flood which is occurring or likely to occur in the near future, information as respects any of the following matters is obtained and transmitted—

(a) rainfall,

(b) the level or flow of any surface water (within the meaning of section 3(3) of the 2003 Act),

(c) such other matters as appear to SEPA to be appropriate for that purpose.
66  Provision, alteration etc. of flood warning system

(1) SEPA may—
(a) provide and operate any flood warning system,
(b) alter any flood warning system provided and operated by it,
(c) for those purposes provide, install or alter apparatus and carry out any engineering or building operations, and
(d) maintain any such apparatus.

(2) Before—
(a) providing a flood warning system in pursuance of paragraph (a) of subsection (1),
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection, or
(c) for either of the purposes in paragraph (a) or (b) carrying out any engineering or building operations,
SEPA must consult in accordance with section 67(2).

(3) Where SEPA considers—
(a) the alteration of any flood warning system in pursuance of paragraph (b) of subsection (1), or
(b) for that purpose doing any of the things referred to in paragraph (c) of that subsection (“any related thing”),
would be material, it must consult in accordance with section 67(2) before carrying out the alteration of the system or for that purpose any related thing.

67  Consultation required by sections 65 and 66

(1) The consultation required by section 65 is consultation with—
(a) every local authority whose area includes any part of the area which is the subject of the assessment, and
(b) every category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area which is the subject of the assessment.

(2) The consultation required by section 66 is consultation with—
(a) every local authority in whose area the power is to be exercised, and
(b) any category 1 responder (other than a local authority) which has functions exercisable in or in relation to the area in which the power is to be exercised.

Power to obtain information about land

79  SEPA’s power to obtain information about land

Section 27 of the Environment Act 1995 (c.25) (SEPA’s power to obtain information about land for the purposes mentioned in that section) applies where SEPA considers that it requires information relating to any land for the purpose of the exercise of any of its functions under this Part, subject to the modification that the notice served by SEPA under subsection (1) of that section must specify the land, the function and this Act.
PART 6
POWERS OF ENTRY AND COMPENSATION

Powers of entry

68  (1) Any person authorised by SEPA is entitled to enter any land for the purposes of carrying out SEPA’s functions under—

(ya) section 9 (preparation of flood risk assessments),
(za) section 10 (review and updating of flood risk assessments),
(a) section 13 (identification of potentially vulnerable areas and local plan districts),
(b) section 14 (review of potentially vulnerable areas and local plan districts),
(ba) section 15C (preparation of maps of artificial structures and natural features),
(c) section 16 (assessment of possible contribution of alteration etc. of natural features and characteristics),
(d) section 17 (preparation of flood hazard maps and flood risk maps),
(e) section 20 (review of flood hazard maps and flood risk maps),
(f) section 23 (preparation of flood risk management plans),
(g) section 28 (review of flood risk management plans),
(h) section 63 (other assessment and maps of flood risk), and
(i) section 66 (provision, alteration etc. of flood warning systems).

(2) Any person authorised by a local authority is entitled to enter—

(ya) any land for the purposes of preparing, reviewing or updating a map under section 15B,
(za) any land for the purposes of assessing a body of water under section 56,
(zb) any land for the purposes of preparing a local flood risk management plan under section 29,
(zc) any land for the purposes of preparing a report under section 32 or 33,
(a) any land on which scheme operations are to be carried out, for the purposes of carrying out the operations or of executing any temporary works in relation to them,
(b) any land for the purpose of carrying out flood protection work on the ground mentioned in section 49(1)(b),
(c) any land for the purposes of maintaining flood protection work carried out—
   (i) under section 49, or
   (ii) in accordance with a flood prevention scheme confirmed under section 4 of the 1961 Act,
(c) any land for the purposes of carrying out works under section 51A, and
(d) any land for the purposes of determining whether, and if so in what manner, any function conferred by or under Part 4 is to be exercised.

(3) In subsection (2), paragraphs (zb) and (zc) apply only where the local authority is a lead authority within the meaning of section 29.

5 69  Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 68 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned, and

(b) that—

(i) the conditions in subsection (3) are satisfied,
(ii) the land is unoccupied, or
(iii) the case is one of urgency.

(3) The conditions mentioned in subsection (2)(b)(i) are—

(a) the person applying for the warrant has given notice under section 70(3) of the person’s intention to exercise the right,

(b) the notice period has expired,

(c) either—

(i) permission to exercise the right in relation to the land has been refused, or
(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

(a) does not entitle a person to use force against an individual, and

(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

(5) Any person who, without reasonable excuse, prevents or obstructs any other person from doing anything which is authorised by a warrant granted under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

70  Powers of entry: supplementary

(1) A right to enter any land conferred by section 68 includes a right to—

(a) enter for the same purpose any land adjacent to it, and

(b) survey and examine the land.

(2) Any person who enters any land in exercise of a right conferred by section 68 is entitled, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
(a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person, and
(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(3) Before any such person exercises any such right, the occupant of the land concerned must be given—
(a) where—
(i) the person exercising any such right intends to take heavy equipment onto the land concerned or entry is sought to a house, and
(ii) the right being exercised is not being exercised in accordance with a warrant,
at least 7 days’ notice,
(b) in any other case, at least 24 hours’ notice.

(4) A right to enter any land conferred by section 68 may be exercised only at a reasonable time.

(5) Subsections (3) and (4) do not apply to the exercise of—
(a) a right under section 68(2)(b), or
(b) if the situation is urgent, a right under section 68(1)(i).

(6) A person authorised to exercise any right conferred by section 68 must, if required to do so, produce written evidence of that authorisation.

(7) In subsection (3)(a)(i)—
“heavy equipment” does not include vehicles designed solely or mainly for the carriage of passengers,
“house” has the meaning given in section 194(1) of the Housing (Scotland) Act 2006 (asp 1).

(8) In this section and section 71, references to a right to enter land conferred by section 68 include references to that right exercised in accordance with a warrant granted under section 69.

Compensation

71 Compensation

(1) SEPA must compensate any person who has sustained damage in consequence of—
(a) any exercise of the power in section 66(1)(c) or (d), or
(b) the exercise of a right of entry conferred by section 68(1) (including the ancillary rights mentioned in section 70(1) and (2)).

(2) A local authority must compensate any person who has sustained damage in consequence of—
(a) scheme operations carried out by or on behalf of the local authority,
(b) the subsequent maintenance of any such operations by or on behalf of the local authority,
(c) any other exercise of the power in section 49(1),
(ca) the carrying out of works under section 51A,
(cb) the variation or revocation of an improvement order under section 53, or
(d) the exercise of a right of entry conferred by section 68(2) (including the ancillary
   rights mentioned in section 70(1) and (2)).

72 Compensation: supplementary

(1) In section 71, a person sustains damage if—
   (a) the value of the person’s interest in land has been depreciated, or
   (b) the person has been disturbed in the person’s enjoyment of land.

(2) SEPA or, as the case may be, a local authority must pay compensation under section 71
    to a person only if—
    (a) the damage is not attributable to an act or omission of the person,
    (b) the act or omission causing the damage would have been actionable at the
        person’s instance if it had been done or omitted otherwise than in exercise of
        statutory powers,
    (c) the person gives notice to SEPA or, as the case may be, the local authority of the
        person’s claim stating the grounds of the claim and the amount claimed, and
    (d) the notice is given no later than the earlier of—
        (i) 2 years after the depreciation first becomes apparent or, as the case may be,
            the first occurrence of the disturbance, and
        (ii) 10 years from the completion of the scheme operations, maintenance,
             exercise of a right of entry or, as the case may be, exercise of another
             function mentioned in section 71.

(2A) Subsection (2)(b) does not apply where the damage has been sustained in consequence
      of circumstances falling within section 71(2)(cb).

(3) Any question of disputed compensation under section 71 is to be determined by the
    Lands Tribunal for Scotland.

PART 7

RESERVOIRS

73 SEPA to be enforcement authority under the Reservoirs Act 1975

(1) The Reservoirs Act 1975 (c.23) (referred to in this Part as “the 1975 Act”) is amended
    as follows.

(2) In section 1 (ambit and interpretation), after subsection (4A) insert—

   “(4B) The “area” of the Scottish Environment Protection Agency (referred to in this
   Act as “SEPA”), in its capacity as a relevant authority for the purposes of this
   Act, is the whole of Scotland.”.
(3) In section 2(1) (relevant authorities), for the words from “councils” to “1994” substitute “SEPA”.

(4) In Schedule 1 (index of definitions), after the entry for “Area (in relation to the Environment Agency)” insert—

“Area (in relation to SEPA) Section 1(4B)”.

74 Transitional arrangements

(1) An existing relevant authority is a body which, immediately before the date of commencement of section 73 (“the commencement date”), is a relevant authority in Scotland for the purposes of the 1975 Act.

(2) Each existing relevant authority must, no later than 28 days after the commencement date, give to SEPA—

(a) the register maintained by the authority under section 2(2) of that Act, and

(b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).

(3) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(4) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the commencement date.

(5) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the commencement date.

(6) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date has effect as if done by SEPA.

75 Service of documents

(1) In section 15(4) of the 1975 Act (reserve powers of enforcement authorities)—

(a) after “section 22A” insert “or 22B”,

(b) the words “or section 192 of the Local Government (Scotland) Act 1973” are repealed.

(2) After section 22A of that Act insert—

“22B Service of notices by SEPA

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by SEPA as if it were authorised or required to be served or given by or under that Act.”.


76 Extension of enforcement authority’s reserve powers

The amendments to the 1975 Act made by section 75 of the Water Act 2003 (c.37) (which enable enforcement authorities to serve and enforce notices requiring undertakers to take measures in the interests of safety) extend to Scotland.

77 Incident reporting

After section 12 of the 1975 Act, insert—

“12ZA Incident reporting: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations.

(2) The regulations may, in particular—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(a) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,

(b) provide for a supervising engineer or other person to determine whether an incident has occurred,

(c) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,

(d) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(e) make provision for the publishing of reports,

(ea) confer powers of entry on the enforcement authority in connection with its functions under the regulations,

(f) create offences,

(g) provide that any offence created is triable—

(i) only summarily, or

(ii) either summarily or on indictment,

(h) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(i) provide for any offence created which is triable either summarily or on indictment to be punishable—

(i) on summary conviction, by a fine not exceeding the statutory maximum,

(ii) on conviction on indictment, by a fine,
(j) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) undertakers of reservoirs to which they consider the regulations will apply,

(c) the Institution of Civil Engineers, and

(d) any other person as they consider appropriate.

(3A) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.

(4) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

77A Flood plans

After section 12B of the 1975 Act, insert—

“12C Flood plans: Scotland

(1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which meets criteria specified in, or otherwise determined in accordance with, the regulations.

(2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) The regulations may, in particular—

(a) provide that the enforcement authority or another person—

(i) may specify the criteria, and

(ii) is to determine whether a reservoir meets the criteria,

(b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,

(c) specify the form in which a flood plan is to be prepared,

(d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,

(e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,

(f) require the flood plan to be produced or submitted to the enforcement authority by such time as—

(i) the regulations specify, or

(ii) the authority or Scottish Ministers may direct,
(g) make provision about the approval of flood plans,
(h) make provision for the review and updating of flood plans,
(i) provide for a register of flood plans to be established and maintained,
(j) make provision for the publication, or distribution of copies, of—
   (i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,  
   (ii) flood plans, and  
   (iii) reports,
(k) make provision in connection with the testing of flood plans,
(l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,
(m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,
(n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
(o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,
(p) create offences,
(q) provide that any offence created is triable—
   (i) only summarily, or
   (ii) either summarily or on indictment,
(r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
(s) provide for any offence created which is triable either summarily or on indictment to be punishable—
   (i) on summary conviction, by a fine not exceeding the statutory maximum,
   (ii) on conviction on indictment, by a fine.
(4) Before making regulations under subsection (1), the Scottish Ministers must consult—
   (a) SEPA,
   (b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
   (c) the Institution of Civil Engineers, and
   (d) such other persons as they consider appropriate.
(5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
(6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Crown application

Reservoirs Act 1975: Crown application

After section 27A of the 1975 Act, insert—

“27B Crown application in Scotland

(1) This Act binds the Crown.

(2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.

(5) The power conferred by section 17 is exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In subsection (5)—

(a) “Crown land” means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department, or

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
(7) In subsection (6), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(8) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.

PART 8
GENERAL

80 Crown application

(1) This Act binds the Crown.

(2) The modifications made by schedule 3 bind the Crown to the extent that the enactments modified bind the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 68 (whether those specified in that section or the ancillary powers mentioned in section 70(1) and (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—

(a) “Crown land” means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department, or

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

81 Offences by bodies corporate etc.

(1) Where—

(a) an offence under this Act has been committed by—

(i) a body corporate,

(ii) a Scottish partnership, or

(iii) an unincorporated association other than a Scottish partnership, and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, a member,

(b) in relation to a Scottish partnership, a partner, and

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

82 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

(2) An order under this section may modify any enactment, instrument or document.

83 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act—

(a) must be exercised by statutory instrument,
(b) may be exercised so as to make different provision for different purposes (including different areas), and
(c) includes power to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

5 (2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 86(1)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.

(3) A statutory instrument containing—
(za) regulations under section 44(1),
(a) an order under section 52(4),
(b) an order under section 82(1) containing provisions which add to, replace or omit any part of the text of an Act,
is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

84 Interpretation: general

(1) In this Act—
“the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c.41),
“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003 (asp 3),
“category 1 responder” means a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004 (c.36),
“flood protection work” means any operation on land for the purpose of protecting any land from flooding including—
(a) any work of construction, alteration, restoration, enhancement, improvement, repair, maintenance, demolition or removal,
(aa) any work that involves the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area,
(b) the sowing or planting of vegetation or forestry,
(c) any work ancillary to an operation specified in paragraphs (a) to (b),
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39), and “area” in relation to such an authority is to be construed accordingly,
“scheme operation” means, in relation to a flood protection scheme, an operation described in that scheme in pursuance of section 52(2)(a).

(1A) In this Act, any reference to a Directive of the European Parliament and of the Council or, as the case may be, a Council Directive includes a reference to the Directive as amended from time to time.

(2) The words and other expressions listed in schedule 4 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.
Minor and consequential modifications

Schedule 3 makes—

(a) minor modifications, and

(b) modifications consequential on the provisions of this Act.

Commencement and short title

(1) The provisions of this Act, except this section and sections 3 to 6, 48, 61, 83 and 84, come into force on such day as the Scottish Ministers may by order appoint.

(2) This Act may be cited as the Flood Risk Management (Scotland) Act 2009.
SCHEDULE 1
(introduced by section 23(5)(a))

MATTERS TO BE INCLUDED IN FLOOD RISK MANAGEMENT PLANS

PART 1

MATTERS TO BE INCLUDED IN EVERY PLAN

5

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 28,
   (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 17 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.

4A 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 16,
   (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.

5 A description of—
(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.

5A In relation to measures to be implemented before the plan is next reviewed under section 28, an estimate of the cost of implementing the measures.

6 A summary of—
(a) the steps taken under subsections (2) to (5) of section 25 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.

7 Information as to SEPA.

8 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 41.

PART 2
COMPONENTS OF THE SUBSEQUENT UPDATE OF FLOOD RISK MANAGEMENT PLANS

9 A summary of any changes which have been made as compared to the previous version of the plan.

10 An assessment of the progress made towards the achievement of the objectives included in the plan under paragraph 1(a).

11 A summary of any measures included in the previous plan under paragraph 1(b) which were not implemented, with reasons for the non-implementation.

12 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 52)
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—
   (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,

(c) 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.

(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
   (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

(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.

(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,
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(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

(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

(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).

5 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 53 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 53 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 85)

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)

2A 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.
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Roads (Scotland) Act 1984 (c.54)
3 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 49 of the Flood Risk Management (Scotland) Act 2009 (asp 00)”.

Electricity Act 1989 (c.29)
3A 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)
4 Paragraph 56 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

Environment Act 1995 (c.25)
5 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)
5A 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)
6 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)
7 The Flood Prevention and Land Drainage (Scotland) Act 1997 is repealed.

Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)
8 Paragraph 24 of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

Transport Act 2000 (c.38)
8A 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)
9 Paragraph 3 of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.
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”.

### SCHEDULE 4
*(introduced by section 84(2))*

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Flood Risk Management (Scotland) Bill

[AS PASSED]


Introduced by: Richard Lochhead
On: 29 September 2008
Bill type: Executive Bill