

# **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 Directive<sup>1</sup> (“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

---

<sup>1</sup> Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

- 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 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<sup>2</sup> 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

---

<sup>2</sup> The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/ 1379)

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 Directive<sup>3</sup>.

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

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

---

<sup>3</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

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

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 22<sup>nd</sup> 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.

### **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 22<sup>nd</sup> December 2015 so subsection (3) requires the Scottish Ministers to set a submission date which they consider early enough to enable them to approve the plan by that deadline.

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

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

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)).

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,

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.

### **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, reapportion 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 authority<sup>4</sup> to be made the planning authority for the Park for the purposes of the planning acts<sup>5</sup> – 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 purposes<sup>6</sup>. 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.

---

<sup>4</sup> 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.

<sup>5</sup> The Town and Country Planning (Scotland) Act 1997; the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Planning (Hazardous Substances) (Scotland) Act 1997; the Planning (Consequential Provisions) (Scotland) Act 1997.

<sup>6</sup> 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 phonenumber, 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<sup>7</sup> 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

---

<sup>7</sup> The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/ 1379)

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 sheriffdom 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 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 \* 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

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<sup>8</sup> million** \* 4.5] where 4.5 is the total number of years in the first planning cycle after 2010-2011 financial year).

---

<sup>8</sup> 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** ( $(£35,000 * 4.5 \text{ years} + £52,000) * 2$  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

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

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**

<b>Organisation</b>	<b>Scottish Gov. £ Million</b>	<b>Local authorities £ Million</b>	<b>SEPA £ Million</b>	<b>Scottish Water £ Million</b>	<b>National Parks £ Million</b>	<b>Total £ Million</b>
Total cost of implementing the Directive for the first planning cycle (up to Dec 2015)	4.26 <sup>①</sup>	36.48 <sup>②</sup>	22.23 <sup>③</sup>	12.7 <sup>④</sup>	0.42 <sup>⑤</sup>	<b>76.09</b>
Annual running cost of implementing the Directive (after Dec 2015)	0.14 <sup>⑥</sup>	7.68 <sup>⑦</sup>	3.4 <sup>⑧</sup>	1.9 <sup>⑨</sup>	0.07 <sup>⑩</sup>	<b>13.19</b>
Annual running cost of local authority functions and the new statutory process	N/A	0.32 <sup>⑪</sup>	N/A	N/A	N/A	<b>0.32</b>
Initial set up costs for SEPA from amendments to the Reservoirs Act 1975	N/A	N/A	0.1 <sup>⑫</sup>	N/A	N/A	<b>0.1</b>
Annual running cost (or savings) from amendments to the Reservoirs Act 1975	N/A	(-0.15) <sup>⑬</sup>	0.25 <sup>⑭</sup>	N/A	N/A	<b>0.1</b>

①Paragraph 284, ②Paragraph 289, ③Paragraph 296, ④Paragraph 304, ⑤ Paragraph 306, ⑥Paragraph 284, ⑦Paragraph 289, ⑧Paragraph 297, ⑨Paragraph 304, ⑩Paragraph 306, ⑪Paragraph 313, ⑫Paragraph 325, ⑬Paragraph 323, ⑭Paragraph 325.

## 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.”

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

## **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.”



*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)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to: Information Policy, Office of the Queen's Printer for Scotland (OQPS), St Clements House, 2-16 Colegate, Norwich NR3 1BQ, or by e-mail to [licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk). OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley

ISBN 978-1-4061-4623-3



9 781406 146233