



The Scottish Parliament

Rural Affairs and Environment Committee

1st Report, 2009 (Session 3)

Stage 1 Report on the Flood Risk Management (Scotland) Bill

Volume 1

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Rural Affairs and Environment Committee

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CONTENTS

Remit and membership

Report	1
Summary of Conclusions and Recommendations	1
Introduction	8
Purpose of the Bill	8
Pre-legislative scrutiny	10
Written and oral evidence	12
Scottish Government amendments	12
Issues arising from Stage 1 evidence taking	13
Part 1: General duty, directions and guidance	13
General duty to exercise functions with a view to reducing flood risk	13
Part 2: Principal expressions	14
Responsible authorities	14
Social and economic impact of exercising functions	16
Roles and responsibilities of lead and responsible authorities	18
Sustainable flood risk management	21
Part 3: The flood risk management planning process	24
Long term planning	25
Natural flood management	26
Local flood risk management plans and local development plans	28
Surface water management	30
Interim arrangements	33
Obtaining information, documents and assistance	34
Water Environment and Water Services (Scotland) Act 2003	34
Stakeholder engagement	35
Cross-border flood risk management	36

Part 4: Local authority functions	37
Deemed planning permission	37
Approval of flood protection schemes	38
Recovery of local authority expenses	39
Duty to cleanse, repair and maintain watercourses	40
Part 5: SEPA: other flood risk management functions	41
Flood warning	41
Emergency services response to flood warning	42
Part 6: Powers of entry and compensation	43
Part 7: Reservoirs	43
Transfer of responsibilities	44
Reservoir inundation maps	44
Part 8: General	45
Coastal flooding	45
SEPA coastal flood risk maps	46
Resource implications	47
Hydrologists and other specialist staff	47
Financial implications	48
Subordinate legislation	53
Policy Memorandum	53
Equal opportunities	54
Conclusions on the general principles of the Bill	54
Appendix 1 Letter from Minister for Environment	55
Appendix 2 Flooding and Flood Management Inquiry recommendations	61
ANNEXE A: REPORT FROM SUBORDINATE LEGISLATION COMMITTEE	64
ANNEXE B: REPORT FROM FINANCE COMMITTEE	85
ANNEXE C: EXTRACTS FROM THE MINUTES	176

VOLUME 2: Evidence is published separately and contains the following material:

ANNEXE D – ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

ANNEXE E – OTHER WRITTEN EVIDENCE



The Scottish Parliament

Rural Affairs and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries and rural development and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and the Environment.

Membership:

Roseanna Cunningham (Convener)
Karen Gillon
Liam McArthur
Alasdair Morgan
Elaine Murray
Peter Peacock
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Bill Wilson

Committee Clerking Team:

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The Scottish Parliament

Rural Affairs and Environment Committee

1st Report, 2009 (Session 3)

Stage 1 Report on the Flood Risk Management (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Pre-legislative scrutiny

Recommendation 1: The Committee recommends to the Parliament the advantages of pre-legislative scrutiny where time permits, both as a method of influencing Scottish Government policy and as an aid to effective Stage 1 scrutiny. [Paragraph 23]

Scottish Government amendments

Recommendation 2: The Committee asks the Scottish Government to note that it is always helpful for the lead Committee to receive advance notice of proposed Government amendments to legislation before oral evidence commences during Stage 1 scrutiny and asks the Scottish Ministers to consider making this standard practice whenever possible. [Paragraph 31]

Part 1: General duty, practice and guidance

Recommendation 3: The Committee agrees that the Bill should be amended to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans [Paragraph 39].

Part 2: Principal expressions

Responsible authorities

Recommendation 4: The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers' powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these

organisations directions or guidance, must be undertaken in accordance with the general duty to reduce overall flood risk. [Paragraph 44]

Recommendation 5: In order to allow this Committee (or its successor) to influence the selection of responsible authorities named in subordinate legislation, the Committee recommends that it be consulted on Scottish Government proposals to lay any order designating responsible authorities under section 1 before the instrument is laid. [Paragraph 50]

Social and economic impacts of exercising functions

Recommendation 6: The Committee recommends that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs, recognising that any such guidance should be consistent with the advice set out in the HM Treasury Green Book. Such guidance should be available sufficiently far in advance of the deadline for SEPA's production of initial flood risk assessments (December 2011) to allow SEPA to take it fully into account. The guidance will then also inform the work of SEPA and responsible authorities in the production of flood risk management plans. [Paragraph 59]

Roles and responsibilities of lead and responsible authorities

Recommendation 7: The Committee re-iterates its inquiry report recommendation that, at the earliest possible opportunity, there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA. [Paragraph 69]

Recommendation 8: The Committee strongly recommends that the Scottish Government takes steps to align the timing of funding streams for the lead and responsible authorities as early as possible in the Bill's implementation. [Paragraph 76]

Sustainable flood risk management

Recommendation 9: The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.

The Committee considers that another means of ensuring the promotion of sustainable flood risk management is to strengthen the link between the general duty in section 1 to reduce flood risk in a manner that promotes sustainable flood risk management and the implementation of the flood risk management planning process in Part 3. As highlighted above, Stage 2 is likely to afford further opportunity for consideration of this important issue. [Paragraphs 81 and 82]

Recommendation 10: The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when

assessing what form of work to undertake. This is likely to be incompatible with Scottish Water's duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing. [Paragraph 92]

Recommendation 11: The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools they consider place sufficient emphasis on these benefits and should therefore be adopted by local authorities. [Paragraph 97]

Part 3: The flood risk management planning process

Long term planning

Recommendation 12: The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water's planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.

The Committee recommends that this strategic assessment should also provide an outline of longer-term priorities for 12 and 24 year periods based on SEPA's projections of future flood risk, and that it should be laid before the Parliament at least once during each parliamentary session. Given the long-term nature of such an undertaking, to ensure that it is adhered to by successive administrations this should be a legislative requirement. [Paragraphs 107 and 108]

Natural flood management

Recommendation 13: The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process. [Paragraph 115]

Recommendation 14: In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to "natural processes" as well as "natural features". [Paragraph 116]

Recommendation 15: The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision. [Paragraph 117]

Local flood risk management plans and local development plans

Recommendation 16: The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use another piece of planned legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation “that a full flood risk assessment [should be] a prerequisite for the granting of planning permission for individual development areas at risk of flooding”. [Paragraph 128]

Surface water management

Recommendation 17: The Committee recommends that the Bill should be amended to require the production of surface water management plans. [Paragraph 136]

Recommendation 18: The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2. [Paragraph 140]

Recommendation 19: The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government’s Stage 1 response before Stage 2 commences. [Paragraph 143]

Interim arrangements

Recommendation 20: The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements will be issued to local authorities in its written Stage 1 response. [Paragraph 148]

Water Environment and Water Services (Scotland) Act 2003

Recommendation 22: The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act. [Paragraph 158]

Stakeholder engagement

Recommendation 23: Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act. [Paragraph 162]

Cross-border flood risk management

Recommendation 24: The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government. [Paragraph 168]

Part 4: Local authority functions

Deemed planning permission

Recommendation 25: The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance. [Paragraph 177]

Recovery of local authority expenses

Recommendation 26: The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for recovery of expenses, the grounds on which authorities may fine landowners, and what those fine levels should be. [Paragraph 185]

Duty to cleanse, repair and maintain watercourses

Recommendation 27: The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and is in line with flood risk management plans. [Paragraph 190]

Part 5: SEPA: Other flood risk management functions

Flood warning

Recommendation 28: The Committee is encouraged by SEPA's work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken. [Paragraph 195]

Emergency services response to flood warning

Recommendation 29: The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate

emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill's scope allows. [Paragraph 203]

Part 7: Reservoirs

Transfer of responsibilities

Recommendation 30: The Committee requests a summary of the impact of the provisions of the UK Flood and Water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill's introduction. [Paragraph 212]

Reservoir inundation maps

Recommendation 31: Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA's request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues. [Paragraph 217]

Coastal flooding

Recommendation 32: The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government's response prior to Stage 2. [Paragraph 225]

Resource implications

Hydrologists and other specialist staff

Recommendation 33: Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister's reassurance that the steps being taken to recruit and retrain will "ensure future supply".

The Committee is deeply concerned that a marked shortage in skilled staff may impact both on the effectiveness of Scotland's new flood risk management process, and the time taken for implementation. [Paragraphs 231 and 232]

Financial implications

Recommendation 34: The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government to ensure that future memorandums to Bills are the best possible final estimate at the point of introduction. [Paragraph 237]

Recommendation 35: The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible

authorities in the run-up to implementation and reports these costs to this Committee and its successor. [Paragraph 240]

Recommendation 36: The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee's inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above. [Paragraph 249]

Recommendation 37: The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above or in annual reports laid before Parliament. [Paragraph 255]

Recommendation 38: The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme. [Paragraph 261]

Conclusions on the general principles of the Bill

The Committee is all too aware of the current flood risk faced in parts of Scotland and the anticipated increase in the probability of flooding. Seeking to establish a co-ordinated approach to the adoption of sustainable flood risk management is clearly very desirable. The Committee supports the general approach taken in the Bill to achieve this aim.

However, the Committee considers that it is essential to give further consideration to the recommendations above which seek to strengthen the provisions of the Bill. The Committee also considers that its concerns on the adequacy of funding and staffing arrangements merit further consideration prior to the Bill being approved by the Parliament as a whole at Stage 3.

Recommendation 39: On this basis, the Committee recommends that the general principles of the Bill be agreed. [Paragraphs 268 to 270]

INTRODUCTION

1. The Flood Risk Management (Scotland) Bill¹ (“the Bill”) was introduced to the Scottish Parliament on 29 September 2008 by Richard Lochhead MSP. The Bill was accompanied by Explanatory Notes², a Financial Memorandum, and a Policy Memorandum³ as required by the Parliament’s Standing Orders⁴. On 8 October 2008, under Rule 9.6 of Standing Orders, the Parliamentary Bureau referred the Bill to the Rural Affairs and Environment Committee (“the Committee”) to consider and report on the general principles of the Bill.

2. As the Bill contains provision for making subordinate legislation, a report from the Subordinate Legislation Committee is attached at Annexe A. The Finance Committee’s report on the Financial Memorandum is attached at Annexe B.

PURPOSE OF THE BILL

3. The Policy Memorandum states that—

“The provisions in the Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding.”⁵

4. The Bill in part seeks to transpose the EC Floods Directive⁶ which came into force on 26 November 2007. The Policy Memorandum explains that the Directive aims to—

“...reduce the adverse consequences of floods on human health, the environment, cultural heritage and economic activity. To achieve this, the Directive establishes a framework for the assessment and management of flood risks...The Directive must be transposed by 26 November 2009.”⁷

Part 1 – General duty, directions and guidance

5. Part 1 consists of two sections. Section 1 imposes a general duty upon the Scottish Ministers, the Scottish Environment Protection Agency (SEPA) and responsible authorities to exercise their flood related functions under Part 3 of the

¹ Flood Risk Management (Scotland) Bill. Available at: <http://www.scottish.parliament.uk/s3/bills/15-FloodRisk/b15s3-intro.pdf> [Accessed 12 January 2009]

² Flood Risk Management (Scotland) Bill. Explanatory Notes. Available at: <http://www.scottish.parliament.uk/s3/bills/15-FloodRisk/b15s3-intro-en.pdf> [Accessed 12 January 2009]

³ Flood Risk Management (Scotland) Bill. Policy Memorandum. Available at: <http://www.scottish.parliament.uk/s3/bills/15-FloodRisk/b15s3-intro-pm.pdf> [Accessed 12 January 2009]

⁴ Scottish Parliament Standing Orders. Available at: http://www.scottish.parliament.uk/business/so/so_final.pdf [Accessed 12 January 2009]

⁵ Policy Memorandum, paragraph 2.

⁶ Directive 2007/60/EC on the assessment and management of flood risks. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0060:EN:NOT> [Accessed 12 January 2009]

⁷ Policy Memorandum, paragraph 7.

Bill (the flood risk management planning framework) with a view to reducing overall flood risk. This is the general principle underpinning the Bill. Section 2 includes provision for the Scottish Ministers to give directions and guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions.

Part 2 – Principal expressions

6. Part 2 defines “flood” and “flood risk” for the purposes of the Bill. It also names local authorities and Scottish Water as responsible authorities, and enables the Scottish Ministers to designate other public bodies and office-holders as responsible authorities through subordinate legislation.

Part 3 – Flood risk assessment, maps and plans

7. Part 3 seeks to transpose the EC Floods Directive, setting out a process for flood risk management planning at “district” level by SEPA. It requires the production of preliminary flood risk assessments (Directive deadline for this is December 2011), an assessment of flood risk including the production of flood hazard maps and flood risk maps (by December 2013), and the production of flood risk management plans (by December 2015). It also requires flood risk management plans to be supplemented by local flood risk management plans, to be produced by local authorities at “sub-district” level.

8. The Policy Memorandum⁸ states that the district plans will be geographically coincident with the river basin districts designated under the Water Environment and Water Services (Scotland) Act 2003⁹. The 2003 Act transposed the EC Water Framework Directive setting out a river basin management planning process for the protection and improvement of the water environment. Section 41 sets out measures SEPA must take to seek to ensure consistency and co-ordination between flood risk management planning and river basin management planning.

9. Part 3 also sets out the arrangements for consultation and participation including the publication of assessments, maps, plans, an annual report on implementation by SEPA and the establishment of district flood risk advisory groups and sub-district advisory groups.

Part 4 – Flood risk management: local authority functions

10. Part 4 sets out provisions for the replacement of the Flood Prevention (Scotland) Act 1961¹⁰ and the Flood Prevention and Land Drainage (Scotland) Act 1997¹¹.

⁸ Policy Memorandum, paragraphs 53-55.

⁹ Water Environment and Water Services (Scotland) Act 2003. Available at: http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030003_en_1 [Accessed 12 January 2009]

¹⁰ Flood Prevention (Scotland) Act 1961. Available at: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1961/cukpga_19610041_en_1 [Accessed 12 January 2009]

¹¹ Environment Act 1995. Available at: http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950025_en_1 [Accessed 12 January 2009]

11. The 1961 Act currently enables local authorities to undertake measures to defend non-agricultural land from fluvial flooding (stemming from rivers overtopping their banks) or coastal flooding. It also enables them to promote flood protection schemes, subject to approval from the Scottish Ministers. The 1961 Act was amended by the 1997 Act which places a duty on local authorities to assess the state of watercourses and act if they consider that these watercourses generate a flood risk.

12. The provisions in Part 4 repeal these Acts and set out a revised statutory process for approval of flood risk management measures including flood protection schemes which the Policy Memorandum suggests will—

“underpin the exercise of these powers with a streamlined and local authority based statutory process that provides for efficient use of local resources and timely introduction of flood management measures.”

Part 5 – SEPA: other flood risk management functions

13. The provisions in Part 5 replace those in the Agriculture Act 1970 and the Environment Act 1995, setting out updated responsibilities for SEPA for flood risk assessment, including the provision of advice to local authorities, and extending SEPA’s current role in flood warning.

Part 6 – Powers of entry and compensation

14. Part 6 provides local authorities and SEPA with powers of entry onto private land and into private property, to be used in carrying out their duties to assess and manage flood risk. It also provides for the payment of compensation for any damage caused as a consequence of the construction or maintenance of a flood protection scheme or other flood protection work.

Part 7- Reservoirs

15. Part 7 amends the Reservoirs Act 1975¹², which sets out safety requirements to prevent escapes of water from reservoirs. The amendments would have the effect of transferring enforcement responsibilities from local authorities to SEPA.

Part 8 – General

16. Part 8 includes provisions for the making of orders and regulations, the application of the Bill to the Crown, and provisions on the Bill’s commencement.

PRE-LEGISLATIVE SCRUTINY

17. At the start of the parliamentary session, the Committee consulted stakeholders on which issues they viewed as being of highest priority for the

¹² Reservoirs Act 2005. Available at: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1975/cukpga_19750023_en_1 [Accessed 12 January 2009]

Committee's attention. Flooding was identified by a number of stakeholders as a high priority.

18. As a result, the Committee began an inquiry on Flooding and Flood Management ("the inquiry"), launching a call for written evidence on 19 September 2007. The Committee received 65 written responses, then took oral evidence at six meetings (including one in Elgin). The Committee also undertook fact-finding visits to areas at high risk of flooding including Perth and the River Devon catchment, East Kilbride, and Glasgow.

19. The Committee launched its inquiry in the knowledge that the Scottish Government was in the process of drafting legislation in this area, and with a view to informing the contents of the upcoming Bill. The full inquiry report and associated written and oral evidence are available via the Scottish Parliament's website¹³. Amongst other things, the inquiry report considers the social, economic and environmental cost of flooding and the potential impact of climate change on flood risk levels across Scotland. This provides useful context for the consideration of the general principles of the Bill and the Committee suggests that it would be helpful to read this report in conjunction with it. A summary of the report's recommendations is reproduced at Appendix 1.

20. The Committee considers that this pre-legislative scrutiny has proved valuable in aiding its Stage 1 scrutiny of the Bill. It has allowed the Committee to influence Scottish Government legislation "upstream", which means that a significant number of inquiry recommendations are reflected in the Bill. (Where the Committee wishes to re-iterate a recommendation that it does not consider has been taken into account in the Bill this is made clear within the body of this report.)

21. It has also provided those members serving on the Committee for the duration of the inquiry with a useful knowledge base to inform consideration of the Bill's provisions.

22. Additionally, giving stakeholders the opportunity to provide written evidence to the inquiry on the broad subject matter means that submissions received on the Bill were in the main very concise, highlighting areas where the Bill was perceived as lacking. All of these factors allowed the Committee to conduct focused and informed scrutiny within a somewhat restrictive Stage 1 timetable.

23. The Committee recommends to the Parliament the advantages of pre-legislative scrutiny where time permits, both as a method of influencing Scottish Government policy and as an aid to effective Stage 1 scrutiny.

¹³ Scottish Parliament Rural Affairs and Environment Committee. 2nd Report, 2008 (Session 3). *Report on flooding and flood management* (SPP 96) Available at: <http://www.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/index.htm> [Accessed 12 January 2009]

WRITTEN AND ORAL EVIDENCE

24. The Committee opened its call for evidence on the Bill on 1 October 2008 and received 33 written responses. The written submissions of those individuals and organisations that did not also provide oral evidence are reproduced at Annexe E.

25. The Committee held four evidence sessions on the Bill. The first evidence session with Scottish Government officials on 19 November 2008 provided a general overview of the provisions of the Bill.

26. A panel consisting of Scottish Environment Link (SE Link), Scottish Natural Heritage (SNH) and the Forestry Commission Scotland gave evidence on 26 November 2008, focussing primarily on sustainable flood risk management. At the same meeting, a panel of representatives from the Scottish Rural Property and Business Association (SRPBA), the National Farmers' Union Scotland (NFUS) and the Scottish Council Development and Industry (SCDI) gave evidence mainly on the Bill's implications for land management and commercial interests.

27. On 10 December 2008 the Committee heard from the Scottish Water, local authorities (specifically Scottish Borders Council and Fife Council) and Loch Lomond and Trossachs National Park Authority, followed by the Association of British Insurers. On 17 December 2008 the Committee took evidence from SEPA and then from the Minister for Environment ("the Minister") and accompanying officials. The relevant extracts of the minutes of these committee meetings are reproduced at Annexe C. The relevant extracts of the *Official Report* of these meetings, written submissions and any supplementary written submissions from witnesses are reproduced at Annexe D.

28. The Committee would like to thank all those who provided written and oral evidence on the Bill, and those who provided evidence during pre-legislative scrutiny, including on informal visits to areas affected by flooding.

SCOTTISH GOVERNMENT AMENDMENTS

29. The Committee is conscious that legislation is often introduced to Parliament whilst the specifics of some of the provisions are still being developed by the Scottish Government. With this in mind, the Convener wrote to the Minister at the start of Stage 1 requesting information on any amendments the Scottish Government was already aware it wished to make at Stage 2.

30. The response from the Minister outlined a number of sets of amendments that the Government proposes to lodge (reproduced at Appendix 2). The Committee appreciates the level of information provided by the Minister as it has enabled the Committee to anticipate to an extent how the Bill may evolve at Stage 2 and to scrutinise proposed changes at Stage 1. This may lessen the need for the Committee to take further evidence at Stage 2. These sets of amendments are considered further in the body of the report.

31. The Committee asks the Scottish Government to note that it is always helpful for the lead Committee to receive advance notice of proposed

Government amendments to legislation before oral evidence commences during Stage 1 scrutiny and asks the Scottish Ministers to consider making this standard practice whenever possible.

ISSUES ARISING FROM STAGE 1 EVIDENCE TAKING

32. As noted above, the Committee's pre-legislative scrutiny has been instrumental in informing the contents of the Bill and therefore it is unsurprising that the Committee endorses the general approach taken to flood risk management within it. In particular the Committee endorses the general approach of there being a more co-ordinated and integrated approach to flood risk management, with SEPA drawing up flood risk management plans and responsible authorities (principally local authorities) using information held by SEPA to develop flood protection schemes for their area. However, the Committee has some outstanding concerns outlined below in relation to a number of provisions in the Bill and its funding arrangements. The Committee invites the Scottish Government to adopt the associated recommendations in order to further strengthen the Bill.

PART 1: GENERAL DUTY, DIRECTIONS AND GUIDANCE

33. As mentioned above, Part 1 imposes a general duty upon the Scottish Ministers, SEPA and responsible authorities to exercise their flood related functions under Part 3 of the Bill (the flood risk management planning framework) with a view to reducing overall flood risk. Amongst other things, section 1 requires these organisations, in exercising their functions to reduce flood risk, to have regard to the social and economic impact of doing so and to promote sustainable flood risk management.

General duty to exercise functions with a view to reducing flood risk

34. Concerns have been raised with the Committee in relation to the strength of the link between this general duty and flood risk management planning itself. It has been argued that this could impact on the extent to which the requirements within section 1 are carried out through the flood risk management planning process. In its submission, RSPB Scotland argues that a weakness in the Bill is that there is no specific duty on responsible authorities to implement measures (such as flood protection schemes) on the ground; they are expressly required only to establish the framework within which such measures would sit.

35. In oral evidence, Chris Spray from SEPA broadly agreed—

“We want a better linkage between the beginning of the bill, which deals with the correct and understandable general duty of responsible authorities and others to reduce flood risks, and the mechanisms for producing and implementing plans. That linkage needs to be tightened up...¹⁴”

¹⁴ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1303.

36. Evidence from local authorities suggested an awareness amongst these authorities that there would be no specific requirement to implement flood risk management plans under the Bill. Jim Moodie from Fife Council told the Committee that Scottish Government officials had indicated in a recent meeting that the duty to implement flood protection schemes was “permissive”¹⁵. The Committee takes this to mean that local authorities would not be open to legal challenge if they did not implement any schemes in a flood risk management plan. Paul Frankland from Scottish Borders Council suggested during the same session that, whilst councils may not be legally bound to implement local flood risk management plans, the provisions currently in the Bill combined with the importance of the issue to constituents would ensure implementation¹⁶.

37. The Committee appreciates that there will be an expectation from constituents in local authorities that authorities will act to reduce flood risk. But this may not lead to flood risk being reduced in the manner outlined in flood risk management plans. Nor would it necessarily prevent some local authorities continuing to rely on outdated practices to reduce flood risk, rather than promoting sustainable flood risk management techniques wherever possible, which would be more in the spirit of the legislation.

38. When questioned on the link between the general duty to reduce flood risk and the implementation of measures in flood risk management plans Scottish Government officials indicated that the Minister is considering amendments to the Bill to promote a stronger link between the two¹⁷.

39. The Committee agrees that the Bill should be amended to strengthen the link between a duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans.

PART 2: PRINCIPAL EXPRESSIONS

40. Part 2 of the Bill defines “flood” and “flood risk” for the purposes of the Bill. It also names local authorities and Scottish Water as responsible authorities, and enables the Scottish Ministers to designate other public bodies and office-holders as responsible authorities.

Responsible authorities

Powers conferred on Scottish Ministers

41. Subsection (3) of section 1 confers power on the Scottish Ministers (amongst other things) to name additional responsible authorities and to specify any further functions such authorities should hold, through subordinate legislation. The Subordinate Legislation Committee has raised with the lead committee concerns

¹⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1271.

¹⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1265.

¹⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 19 November 2008*, Cols 1173-4.

that this power is not subject to the general duty imposed under section 1. When the Subordinate Legislation Committee raised this point with the Scottish Government, the Government responded that making section 1(3) subject to the general duty would have “limited practical impact”. According to the Subordinate Legislation Committee—

“The restriction on the use of this delegated power by the Scottish Ministers offers comfort to the Parliament that the power will be exercised appropriately and that only bodies with the potential to contribute to a reduction in the overall flood risk will be designated as responsible authorities.¹⁸”

42. The Subordinate Legislation Committee raises a similar issue in relation to directions and guidance. Section 2(1) provides that the Scottish Ministers may give directions and guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions but again this is not subject to the general duty under section 1.

43. This Committee understands that the Minister has indicated he will consider amending the Bill to address the Subordinate Legislation Committee’s point.

44. The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers’ powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these organisations directions or guidance, must be undertaken in accordance with the general duty to reduce overall flood risk.

Additional responsible authorities

45. SNH has argued that omitting it from the list of responsible authorities, and only naming it as a consultee on flood risk management plans and flood protection schemes, means it may not be involved in planning at a sufficiently early stage. SNH is concerned that this could result in it having to resort to late stage objections because it has been unable to influence the development of plans. The Forestry Commission Scotland also stated in its evidence that it would welcome being designated as a responsible authority for similar reasons¹⁹.

46. Scottish Government officials have suggested that those named as responsible authorities in the Bill have a clear and central role in reducing flood risk and that such a level of responsibility would be an odd duty to place on SNH²⁰. In supplementary evidence, officials also pointed out that the Water Environment and Water Services (Scotland) Act 2003 did not name any bodies as responsible authorities (although SNH was subsequently so designated in subordinate legislation). Additional responsible authorities in the flood risk management planning process could similarly be designated through secondary legislation.

¹⁸ Annexe B, Subordinate Legislation Committee report on Flood Risk Management (Scotland) Bill, paragraphs 7-14.

¹⁹ SNH. Written submission to Rural Affairs and Environment Committee on Flood Risk Management (Scotland) Bill.

²⁰ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Col 1185.

47. The Committee supports the flexibility allowed for in the flood risk management planning process, as this will enable SEPA and local authorities to plan their approach to managing flood risks on a case by case basis. It may also help reduce bureaucracy or “consultation fatigue”. The Committee also considers that there is a difference between ensuring that important stakeholder bodies are consulted adequately and early in the process and designating every such body as a responsible authority. The former is to be supported, but the latter may endanger the flexibility of the flood risk management planning process. Members of the Committee urge the Scottish Government to report back in future on progress towards the designation of further responsible authorities.

48. The Committee accepts the Scottish Government’s argument that it would be unnecessary to set out on the face of the Bill every organisation that should be involved at an early stage of the flood risk management planning process as a responsible authority. The focus should instead be on ensuring that bodies such as SNH and Forestry Commission Scotland are fully involved in helping SEPA and responsible authorities prepare plans and schemes.

49. The laying of any subordinate legislation under section 1 will afford the lead committee the opportunity to consider whether bodies are being appropriately designated as responsible authorities or whether functions are being appropriately assigned. When such orders are laid, the detail of the flood risk management planning process will presumably also be more developed and organisations may be in a better position to provide practical examples of how they may or may not benefit from being made a responsible authority. However since orders cannot currently be amended by committees it would help the lead committee if it had the opportunity to consider Scottish Government proposals in this area before an instrument is laid.

50. In order to allow this Committee (or its successor) to influence the selection of responsible authorities named in subordinate legislation, the Committee recommends that it be consulted on Scottish Government proposals to lay any order designating responsible authorities under section 1 before the instrument is laid.

Social and economic impact of exercising functions

51. Section 1(2)(a) requires that, in exercising their flood risk related functions, Scottish Ministers, SEPA and responsible authorities must have regard to the social and economic impact of doing so.

52. The Committee inquiry report suggested that the Scottish Government explores methods to ensure that the social and human costs of flooding, as well as the economic costs, be included in future assessments of the value of proposed flood management measures.

53. Research carried out by the University of Dundee in 2007, *Exploring the social impacts of flood risk and flooding in Scotland*²¹, highlighted the significance of social and human costs but did not propose methods by which such costs should be included in assessments. It also highlighted that some methods that enable social and human costs to be evaluated can be very costly to carry out.

54. In the annexe to its submission, SEPA noted that it—

“...is unaware of any specific new tools which have been developed in this regard and recognise that accounting for such factors properly is difficult...there is a lack of specific guidance on how social and human costs might be included or prioritised.”

55. In response to a question about the mechanisms that would be used to assess human and social costs of flooding, Scottish Government officials agreed that the matter “is slightly in the air; it is difficult to assess at the moment.”²²

56. The Committee is aware that there is existing Scottish Government guidance detailing a range of tools deemed appropriate for undertaking cost-benefit analysis, including the appraisal and evaluation of social costs. The Scottish Public Finance Manual²³ (SPFM) sets out guidance on cost-benefit analysis, with reference to the Green Book²⁴ (which is the UK Treasury guidance on appraisal and evaluation). The SPFM website states that “the guidance in the Green Book has been adopted by the Scottish Ministers and applies directly to the constituent parts of the Scottish Administration. However, as the Green Book embodies good practice in appraisal and evaluation, its use is also recommended for all other organisations subject to the requirements of the SPFM”. These organisations include SEPA, local authorities and Scottish Water. The Green Book has an annexe on methods of valuing non-market costs and benefits, such as environmental and social costs and benefits. The Committee appreciates that any consideration given by the Scottish Government to appropriate assessment methods for social and human costs should have regard to best practice guidance in the Green Book.

57. The first flood risk management plans do not require to be produced until 2015. However the scale of this task will require the lead-in work by SEPA, local authorities and Scottish Water to commence immediately following the passage of the Bill. On this basis, the Committee’s view is that the Scottish Government’s consideration of which methodology should be adopted to assess human and social costs is at a surprisingly early stage, especially since the terms “human and social costs” are extremely wide ranging and difficult to quantify accurately.

²¹ University of Dundee. (2007) *Exploring the social impacts of flood risk and flooding in Scotland*. Edinburgh: Scottish Government. Available at:

<http://www.scotland.gov.uk/Publications/2007/04/02121350/0> [Accessed 12 January 2009]

²² Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 19 November 2008*, Col 1176.

²³ Scottish Government. (2007) *Scottish Public Finance Manual*. Edinburgh: Scottish Government. Available at: <http://www.scotland.gov.uk/Topics/Government/Finance/spfm> [Accessed 12 January 2009]

²⁴ HM Treasury. *The Green Book: Appraisal and Evaluation in Central Government*. London: TSO. Available at: http://www.hm-treasury.gov.uk/data_greenbook_index.htm [Accessed 12 January 2009]

58. The Committee is concerned that SEPA and responsible authorities may be required to take into account human and social costs without clear guidance on what this entails from the Scottish Government. The absence of such guidance may mean that this important requirement ends up being low on their list of priorities. The absence of guidance may also lead to the provision being implemented in an inconsistent manner across responsible authorities and between responsible authorities and SEPA, impeding their ability to co-ordinate their work in reducing flood risk.

59. The Committee recommends that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs, recognising that any such guidance should be consistent with the advice set out in the HM Treasury Green Book. Such guidance should be available sufficiently far in advance of the deadline for SEPA's production of initial flood risk assessments (December 2011) to allow SEPA to take it fully into account. The guidance will then also inform the work of SEPA and responsible authorities in the production of flood risk management plans.

Roles and responsibilities of lead and responsible authorities

60. Under current law, SEPA, local authorities, and Scottish Water all have roles in relation to flood risk management. In its inquiry report, the Committee said that "there must be clarity about where responsibilities lie and where the boundaries of those responsibilities begin and end".

61. The Committee report also noted that there may be circumstances where a new duty related to flood risk management may come into conflict with the existing statutory duties of the organisations concerned (e.g. to promote habitat conservation). The report stated that "some mechanism for resolving such conflicts will be needed".

62. Part 3 of the Bill does extensively set out requirements placed on SEPA and local authorities in undertaking the flood risk management process. There is also a general requirement in section 1(2)(c) for the Scottish Ministers, SEPA and responsible authorities to co-operate and co-ordinate the exercise of their specific functions. In addition, the Scottish Ministers are given powers of direction, included in direct response to concerns raised in the inquiry report about the need for a last resort to resolve conflicts between or within organisations.

63. The Committee appreciates the efforts made by the Scottish Government to ensure clear lines of responsibility within the Bill. However, during evidence taking on the Bill concerns have been expressed about the continuing potential for conflict or lack of co-ordination.

SEPA's role as lead authority

64. SEPA is given the lead national role for flood risk management in the Bill. In particular, it is expected to be the main information-holder on flood risk at national level. This reflects the majority opinion of evidence highlighted in the Committee inquiry report, although there was some evidence to suggest that a new body should be established to lead on flood management at a national level.

65. During the inquiry, Professor David Crichton from Benfield UCL Hazard Research Centre argued that SEPA has “an unenviable conflict of interest²⁵”. He compared its responsibilities under the Water Environment and Water Services (Scotland) Act 2003 to protect the water environment to its potential responsibilities for flood management under the Bill that might require it to insist on modifications to watercourses.

66. When recommending SEPA be given the lead national role, the Committee therefore highlighted a number of steps which needed to be taken, including the need for clear guidance to enable SEPA to resolve conflict between its new role and existing responsibilities.

67. Scottish Government officials were asked in evidence whether there had been progress made to ensure that conflicts between responsibilities could be resolved. In response officials suggested that there was no “rule of thumb” as to which of SEPA’s functions took precedence should they come into conflict, that this would be resolved on a case by case basis, and that the Bill gave the Scottish Ministers the right to intervene and direct as a last resort²⁶.

68. The Committee appreciates from the evidence session with SEPA that there is considerable work underway aimed at ensuring that SEPA is in a state of readiness for its proposed new role. The Committee also accepts that SEPA is probably already in a position where it is required to balance the requirements of potentially conflicting pieces of legislation. However, the Committee remains concerned that the Scottish Government has thus far apparently taken no steps to determine how SEPA should resolve conflicts of interests. The Committee anticipates that, in the absence of a resolution process, SEPA’s actions may be stifled due to conflicting internal priorities, with the Scottish Ministers potentially required to regularly use powers of intervention intended as a last resort.

69. The Committee re-iterates its inquiry report recommendation that, at the earliest possible opportunity, there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA.

Local authorities

70. Evidence to the Committee’s inquiry highlighted that local authorities acting as planning authorities might face a potential conflict between the desire to grant planning permission for developments of benefit to the local community and economy, and wanting to prevent new developments on areas at risk of flooding. This issue is considered in the section on Part 3 of the Bill (paragraphs 118 to 128).

²⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 23 January 2008, Col 411.

²⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Cols 1182-3.

Alignment of funding streams – Scottish Water

71. In its submission, SEPA expressed concern that funding streams for the lead and responsible authorities are not aligned and that without alignment co-ordinating work between these organisations would prove very challenging—

“...tasks such as aligning funding streams may prove to be difficult and ultimately may require guidance and support from the Scottish Government...the timings of the existing funding mechanisms for Local Authorities, Scottish Water and SEPA do not coincide. This may lead to problems in terms of being able to plan for and ultimately fund joint work at the appropriate times to meet future deadlines.”

72. Glasgow City Council’s submission highlights the extent to which Scottish Water’s current planning process does not sit comfortably alongside the flood risk management planning process—

“The development of the Business Case for Quality & Standards IV requires to commence towards the end of 2013. By the conclusion of this Scottish Water will require to have identified, and costed to within 5%, all the capital works it intends to undertake in the period 2014 to 2022. At the time of the development of this Business Case SEPA will have just concluded their Flood Risk and Hazard Mapping and will be less than halfway through the timescale for the development of District Flood Risk Management Plans. The conclusion of Local Flood Risk Management Plans by May 2016 will still be over two years from conclusion.”

73. Geoff Aitkenhead from Scottish Water also confirmed in evidence that this is one of the biggest challenges that Scottish Water faces²⁷.

74. The Minister acknowledged the specific issue in relation to Scottish Water’s funding and planning cycle, stating that—

“...once [Scottish Water’s] flooding priorities and timescale of spending are aligned, the matter becomes entirely clear. In the end, the buck stops, as it has to stop, with the minister. If things are not happening, the minister will have to ensure that they do happen.”²⁸

75. The Committee is aware that the successful implementation of the flood risk management plans under the Bill is in large part reliant on co-ordination between the lead authority and responsible authorities in planning and funding projects set out in the plans. Therefore, it is imperative that the timing of the funding mechanisms for these organisations coincide. The Committee is pleased to note that the Minister acknowledges, most markedly in the case of Scottish Water, that there is a requirement to alter timescales for spending to aid the Bill’s implementation.

²⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1253.

²⁸ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 December 2008*, Col 1327.

76. The Committee strongly recommends that the Scottish Government takes steps to align the timing of funding streams for the lead and responsible authorities as early as possible in the Bill's implementation.

Sustainable flood risk management

References to sustainable flood risk management in the Bill

77. Section 1(2) outlines what matters the Scottish Ministers, SEPA and responsible authorities must have regard to in carrying out their flood risk management related functions. This includes the promotion of sustainable flood risk management. The Policy Memorandum states that the Bill will produce a framework—

“...to deliver sustainable approaches to managing all forms and consequences of flooding. By protecting and working with the environment, sustainable flood risk management is intended to provide the maximum possible social and economic resilience against flooding for current and future generations.²⁹”

78. In its written evidence SE Link said that the provisions of the Bill “do not ensure the sustainable delivery of flood risk management” and suggested that defining sustainable flood risk management in Part 2 or mentioning the term in the long title would highlight the central importance of this concept on the face of the Bill³⁰.

79. In evidence before the Committee Scottish Government officials and the Minister suggested that the process laid out by the provisions of the Bill would be sufficient to deliver sustainable flood risk management, and that defining it on the face of the Bill would not therefore be necessary³¹. Officials also suggested that the understanding of the term “sustainable” may evolve over time and that defining it in statute now could restrict the approach taken to implementing the Bill in the future, possibly excluding the use of more modern methods yet to be developed³².

80. The Committee supports SE Link's intention of ensuring that sustainable flood risk management is adopted wherever possible by local authorities but is clear that defining the term in the Bill is problematic for the reasons already indicated in paragraph 79. The Committee is however agreed that it is very important to ensure that the Bill sets out a process that will guarantee that sustainable flood management techniques are always considered and are applied as often as is practicable.

81. The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.

²⁹ Policy Memorandum, paragraph 2.

³⁰ Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 November 2008.

³¹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1317.

³² Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Col 1179.

82. The Committee considers that another means of ensuring the promotion of sustainable flood risk management is to strengthen the link between the general duty in section 1 to reduce flood risk in a manner that promotes sustainable flood risk management and the implementation of the flood risk management planning process in Part 3. As highlighted above, Stage 2 is likely to afford further opportunity for consideration of this important issue.

Scottish Water

83. SE Link has also raised concerns that regulation by the Water Industry Commission for Scotland (WICS) could impact on Scottish Water's ability both to promote sustainable flood risk management and to have regard to social impacts in exercising its functions under the Bill.

84. Scottish Water's activity is based on objectives set by the Scottish Ministers over a four year period. Scottish Water also has a duty, under the Water Industry (Scotland) Act 2002³³, to "act in a way best calculated to contribute to sustainable development".

85. Scottish Water considers how much funding it will need to achieve the objectives set by Scottish Ministers with this duty in mind and then sets out the basis for these funding requirements in business plans (including detailing projects it intends to undertake). The WICS scrutinises Scottish Water's proposals to determine whether they represent value for money for customers. The WICS then converts Scottish Water's funding requirements, based on lowest reasonable overall cost, into annual limits on the prices that Scottish Water can charge customers over the four year review period.

86. SE Link's submission states that—

"The role of the WIC appears to clash with the duties of SW to contribute to sustainable development. Sustainable solutions may not always be the cheapest solutions for a specific problem in the short term, but may require a larger initial investment, with longer-term gains. Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term. Sustainable, innovative solutions should be promoted and Scottish Water encouraged by Scottish Ministers and the WIC to contribute actively to sustainable development in Scotland."³⁴

87. Geoff Aitkenhead from Scottish Water acknowledged that the current approach adopted is to a large degree driven by financial considerations—

³³ Water Industry (Scotland) Act 2002. Available at: http://www.opsi.gov.uk/legislation/scotland/acts2002/asp_20020003_en_1 [Accessed 12 January 2009]

³⁴ Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 November 2008.

“...we focus on the financial costs of constructing the solution, which would be the immediate capital cost, and the operating costs throughout the life of the asset.³⁵”

88. Mr Aitkenhead also confirmed that, as a result of this approach, Scottish Water is likely to be biased against more sustainable developments because they may be more expensive³⁶.

89. The Committee suggested to the Minister that Scottish Water’s cost-benefit analysis processes may not place sufficient emphasis on social and environmental benefits. The Minister replied—

“It is probably best to include that in the ministerial instruction to Scottish Water, and I can perhaps assure you that I need to discuss that point with my ministerial colleagues who deal with Scottish Water. We can take a belt-and-braces approach to that.³⁷”

90. He added that “...there is a case for discussing the instructions to the Scottish Water Industry Commission with the responsible ministers.³⁸”

91. The Committee is of the view that, at the very least, an element of cultural shift is required on Scottish Water’s part to ensure it fulfils its duties under section 1 of the Bill. A more fundamental issue is whether the WICS’ regulatory regime has led to an over-emphasis on purely financial considerations, and whether this requires further investigation by the Scottish Government. This point of course goes wider than scrutiny of the Bill.

92. The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when assessing what form of work to undertake. This is likely to be incompatible with Scottish Water’s duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing.

Local authorities

93. SE Link also raised a concern that cost-benefit analysis processes currently used by local authorities might not be conducive to the selection of sustainable flood

³⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1259.

³⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1259.

³⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 November 2008*, Col 1319.

³⁸ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 December 2008*, Col 1331.

risk management techniques³⁹ where the use of hard engineering is also an option⁴⁰. SE Link then provided supplementary information on a range of other assessment techniques which they considered could effectively incorporate environmental and social impacts⁴¹.

94. The existing skills base of local authorities may lead to a preference for hard engineering solutions. Whether SEPA and responsible authorities will have sufficient specialist staff to implement the Bill is considered further in paragraphs 226 to 232 below.

95. As indicated in paragraph 56, the Treasury's Green Book details a range of tools deemed appropriate for undertaking cost-benefit analysis and includes an annex on best practice methods of valuing non-market costs and benefits, such as environmental and social costs and benefits.

96. The Committee acknowledges that flood management works will usually tend to incorporate some form of hard engineering. However, as detailed above in relation to Scottish Water, if assessment techniques that go beyond short term cost-benefit analysis are not adopted, this may lead to some responsible authorities continuing to rely on hard engineering solutions when alternative approaches may be more sustainable and, in the longer term, no more costly. This would not be in keeping with the spirit of the legislation.

97. The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools they consider place sufficient emphasis on these benefits and should therefore be adopted by local authorities.

PART 3: THE FLOOD RISK MANAGEMENT PLANNING PROCESS

98. Part 3 of the Bill seeks to transpose the EC Floods Directive, setting out a process for flood risk management planning at "district" level by SEPA. It requires the production of preliminary flood risk assessments (Directive deadline for this is December 2011), an assessment of flood risk including the production of flood hazard maps and flood risk maps (December 2013) and then for the production of flood risk management plans (December 2015). It also requires flood risk management plans to be supplemented by local flood risk management plans, to be produced by local authorities at "sub-district" level.

³⁹ Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 November 2008.

⁴⁰ Hard engineering is the use of man-made structures such as concrete breakwalls as opposed to solutions based around natural geographic features and processes.

⁴¹ Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 December 2008.

Long term planning

99. The Committee inquiry report recommended that the Scottish Government sets out a “road map” for investment to look across at least 25 years and that there should be a mechanism to update it each parliamentary session.

100. In evidence on the Bill a number of organisations suggested that there should be some form of rolling long-term strategy to be published by the Scottish Government to inform the production of flood risk management plans. The Association of British Insurers suggested the Scottish Government should—

“...put in place a long-term strategy to reduce flood risk; set out the Scottish Government’s objectives and measures at a national level, ensuring effective and prioritised allocation of resource across each 6 year planning cycle, backed by local plans with realistic and deliverable objectives and measures; agree long-term outline spending plans that are aligned with funding arrangements for all responsible authorities.⁴²”

101. In addition, Scottish Water suggested a “nationally prioritised list of flooding schemes” would prove very valuable in informing its decisions on which projects to focus on within its business plans⁴³.

102. Under the Bill SEPA is required to produce district level flood risk management plans and it is proposed that there will be two such districts, one covering the majority of Scotland and another part of the Scottish border.

103. Scottish Government officials were asked why the Bill did not require the production of any long-term strategy. They replied that the rolling 6 year planning process for district and local flood risk management plans proposed in Part 3 will require long-term planning and that SEPA’s planning at a district level will provide a national overview⁴⁴.

104. The Minister was asked for a view on the benefits of a long-term strategy. He responded “nothing in the bill prevents the creation of a long-term strategy. In fact, much in the bill encourages such a strategy.⁴⁵”

105. Chris Spray from SEPA explained how the organisation would approach district flood risk management planning—

“We should look 20 or 25 years ahead. The Scottish Government has given us a steer to consider the strategic needs for flooding in that time period so that we can start building in what we know about climate change, and so that we can set priorities...”

⁴² Association of British Insurers. Submission to Rural Affairs and Environment Committee.

⁴³ Scottish Water. Submission to Rural Affairs and Environment Committee.

⁴⁴ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Col 1199.

⁴⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1316.

It is important to get a vision or road map for 25 years because it will allow people to understand the key issues and it will enable us to bring together climate information from SEPA and the Met Office and to consider how the Government's key economic priorities fit in. We will put all of that together.⁴⁶

106. Since SEPA clearly acknowledges the importance of long-term planning and the need to identify national priorities in producing district level plans, it seems to the Committee that it would not appear particularly labour intensive for SEPA to produce and publish a long-term national strategic assessment as well.

107. The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water's planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.

108. The Committee recommends that this strategic assessment should also provide an outline of longer-term priorities for 12 and 24 year periods based on SEPA's projections of future flood risk, and that it should be laid before the Parliament at least once during each parliamentary session. Given the long-term nature of such an undertaking, to ensure that it is adhered to by successive administrations this should be a legislative requirement.

Natural flood management

109. Section 16 provides that SEPA must assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example, flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district. This section is intended to promote the use of "natural flood management" wherever possible. According to SEPA—

"Natural flood management promotes a subset of flood alleviation techniques that aim to work with natural processes to reduce flood risk. Examples of such natural techniques include replanting upland forests, reconnecting rivers to their flood plains and restoring wetlands to act as natural sponges for flood waters.⁴⁷"

110. SNH highlights that such approaches can produce—

"...additional public benefits by helping to counter diffuse pollution and by improving biodiversity, geodiversity, landscape and recreation, for example

⁴⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1313.

⁴⁷ SEPA. Submission to Rural Affairs and Environment Committee Flooding and Flood Management inquiry. Available at: <http://www.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/SEPAcomplete.pdf> [Accessed 13 January 2009]

from the creation of woodlands and wetlands and restoring natural landforms and river processes.⁴⁸

111. The Committee inquiry report recommended that—

“...the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale.”

112. SE Link expressed concern in evidence on the Bill as to whether, in practice, section 16 will have the effect of ensuring natural flood management is the preferred approach wherever appropriate. SE link was specifically concerned that an assessment at a national level may not be detailed enough for use by local authorities and suggested that it might be better carried out at a more local level. Mike Donaghy stated in evidence that—

“...we must find a way of getting SEPA, the local authorities and the other responsible authorities to work together to get the right resolution for the approach to implementation [of natural flood management].⁴⁹”

113. SE Link also suggested that the emphasis on natural flood management techniques could be further strengthened by amending section 16 so that it included reference to “natural processes” as well as to “natural features”. Mr Donaghy argued that—

“The process, in conjunction with the feature, gives us the effect. The definition of natural flood management is the restoration of natural features and processes to lower flood risk. Therefore, it is true to say that when we put in a natural feature, a process will be linked to it.

To anyone who is trying to interpret the definition or to engage in work on the ground, it will be much clearer if the word “processes” is included in the Bill.⁵⁰”

114. John Thomson of SNH agreed—

“I acknowledge that some reluctance might be felt about using the word ‘processes’ in the bill, because it might not be readily defined. I am not sure whether it has been customarily used in legislation, but Mike Donaghy is right

⁴⁸ SNH. Submission to Rural Affairs and Environment Committee Flooding and Flood Management inquiry. Available at: <http://www.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/ScottishNaturalHeritage.htm> [Accessed 13 January 2009]

⁴⁹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 26 November 2008, Col 1216.

⁵⁰ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 26 November 2008, Col 1215-6.

to say that processes are fundamental, that we should recognise that and that the Bill should be explicit about that.⁵¹”

115. The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process.

116. In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to “natural processes” as well as “natural features”.

117. The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision.

Local flood risk management plans and local development plans

118. The Committee’s inquiry report recommended that—

“...the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensure that a full flood risk assessment is a prerequisite for the granting of planning permission for individual development areas at risk of flooding.”

119. Section 24 of the Bill states that SEPA, in preparing flood risk management plans, must take account of any development plan relating to the district. The Policy Memorandum explains that the production of flood risk maps and flood hazard maps within the flood risk management planning process should—

“...provide local authorities with information to support their development planning and development management decisions, and in particular, in the pursuance of actions to avoid flood risks.⁵²”

120. Current planning guidance within *Scottish Planning Policy: Planning and Flooding* (SPP7)⁵³ also advises against developments which would have a significant probability of being affected by flooding.

⁵¹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 26 November 2008, Cols 1216.

⁵² Policy Memorandum, paragraph 70.

121. The Committee agreed to consider public petition PE1207 from Mr Gordon Sinclair on the interaction between planning and flood risk assessment as part of its Stage 1 scrutiny. The petition suggests that SPP7 may not be being followed appropriately by all local authorities⁵⁴. Members questioned local authority witnesses on this proposition and also asked which they considered would take precedence should the Bill be enacted: local development plans or local flood risk management plans.

122. Jim Moodie from Fife Council suggested that SPP7 was being implemented correctly at present in Fife but that if the Committee wished to see consistent implementation across local authorities, then legislation would be required to ensure local authorities took flood risk into account in considering planning applications⁵⁵.

123. The local authority witnesses tended to agree that there was uncertainty at present as to whether a local development plan or a local flood risk management plan would take precedence were there apparent conflict. Paul Frankland from Scottish Borders Council explained that—

“We feel that they should be on an equal footing, and that there should be a bit of give and take...When the development of a site on a flood plain is believed to be of paramount importance to the economic development of a small town. We believe that discussions would be held around that.”⁵⁶

124. Neither of the local authority witnesses had any particular suggestions as to how disagreements between councillors as to which plan should take precedence should be resolved⁵⁷.

125. Scottish Government officials have said that the intention would be to revise SPP7 in light of the Bill. The Scottish Government has also suggested that it may introduce planning provisions within future legislation to strengthen the link between the two forms of plans⁵⁸. Presumably this would include provisions to require local development plans to have regard to flood risk management plans. No timescale has been suggested for this legislation and officials have stated that such provisions would not “naturally fall” within this Bill.

126. The Committee appreciates that competing land use demands are such that there will need to be some flexibility in the interaction of flood risk management planning and development planning, and that local authorities are sometimes in a difficult position in having to balance these demands.

⁵³ Scottish Government. (2004) *Scottish Planning Policy: Planning and Flooding*. Edinburgh: Scottish Government. Available at: <http://www.scotland.gov.uk/Publications/2004/02/18880/32952> [Accessed 13 January 2009]

⁵⁴ Petition PE1207 to the Scottish Parliament by Mr Gordon Sinclair. Available at: <http://www.scottish.parliament.uk/business/petitions/docs/PE1207.htm> [Accessed 13 January 2009]

⁵⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Cols 1279-80.

⁵⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1264.

⁵⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1264.

⁵⁸ Policy Memorandum, paragraph 82.

127. The Committee welcomes the Scottish Government's plans to produce revised planning guidance reflecting the need for planning authorities to take flood risk management plans into account when considering planning applications. However, the Committee is concerned that flood risk management plans may not be considered by local authorities to be on an equal footing with development plans in the absence of revisions to planning legislation.

128. The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use another piece of planned legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation "that a full flood risk assessment [should be] a prerequisite for the granting of planning permission for individual development areas at risk of flooding".

Surface water management

129. Pluvial flooding occurs when precipitation is so heavy that it exceeds the rate at which it can drain away. It can be a particularly acute problem in urban areas where the land surface tends to be less porous than in rural areas. Sewer flooding can be considered as a subset of pluvial flooding as it can occur when domestic sewage is mixed with surface water in older combined sewer systems. The Committee's inquiry report recommended that—

“...the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding.”

130. Correspondence from the Minister on possible Stage 2 amendments states that—

“A key policy objective for the Bill is the creation of an integrated and coordinated approach to dealing with all sources of flooding. This is particularly the case in urban areas where there is currently a complex interaction between different components of the drainage system and fragmented responsibilities. The existing arrangements can lead to piecemeal investment and a lack of coordinated actions. Future impacts of climate change, which include increased frequency of high intensity rainfall, could further increase the risks of pluvial and sewerage flooding caused by surface water runoff.⁵⁹”

131. The definition of “flood” in Part 2 includes sewerage flooding. The Bill divides responsibilities for managing surface water between local authorities and Scottish Water. The Policy Memorandum states that local authorities and Scottish Water are “well placed to develop assessments and maps of sewerage flooding” for incorporation into flood risk management plans⁶⁰.

⁵⁹ Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment Committee (November 2008).

⁶⁰ Policy Memorandum, paragraph 67.

132. Correspondence from the Minister detailed several amendments that the Scottish Government is considering to strengthen the provisions set out in the Bill in relation to surface water management⁶¹. These are intended to ensure that the appropriate level of information is produced on flooding and drainage assets, to clarify responsibilities for the assessment of sewerage flooding, and to strengthen the basis for collaborative working between local authorities and Scottish Water.

133. Witnesses from both Scottish Water and local authorities welcomed the intention behind these proposed amendments and suggested a number of additional measures that could further enhance the Bill.

Surface water management plans

134. Scottish Water's written submission stressed the importance of surface water management plans (which would feed into the production of flood risk management plans), in ensuring the sharing of information and collaborative working. Jim Conlin, Scottish Water, further explained—

“Such plans bring together all the partners and can be used to deal with a number of issues in addition to flooding, such as development, planning and habitats in green urban areas. All those issues can be co-ordinated and we can get extra advantages out of what we do to deal with sustainable flood management...

We feel that surface water management plans are the key to making the collaboration between all the authorities work. The plans can set out clearly who is responsible for what and can deal with how systems will be managed and operated. They can clearly align and highlight other benefits.⁶²”

135. As the Committee's report highlighted, and as the Minister acknowledged in correspondence, the management of pluvial flooding, including sewerage flooding, is complex. The Committee therefore welcomes the provisions which seek to clarify the roles and responsibilities of Scottish Water and local authorities, together with the Scottish Government's proposed amendments, which should help improve the level of information available to responsible authorities.

136. The Committee recommends that the Bill should be amended to require the production of surface water management plans.

Sustainable urban drainage systems (SUDS)

137. Witnesses have discussed the importance of sustainable urban drainage systems (SUDS) in reducing flood risk. Scottish Water's submission explains that SUDS—

“...use natural systems like ponds and filter strips that treat the surface water before it discharges to burns and rivers. SUDS can be used to ensure that

⁶¹ Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment Committee (November 2008).

⁶² Scottish Water. Submission to Rural Affairs and Environment Committee (November 2008).

there is no increase in downstream flood risk but their primary purpose is providing surface water treatment.⁶³

138. SEPA have expressed concern that the Bill makes no mention of SUDS and therefore of “their potential role in urban flood mitigation, particularly with respect to pluvial and sewer flooding”. The Society of Chief Officers of Transportation in Scotland (SCOTS) also suggested that clarification about the adoption and maintenance of SUDS is required in the Bill.

139. The Committee inquiry report detailed concerns raised by local authorities on where responsibility lies for the maintenance of SUDS where Scottish Water does not adopt them. In evidence on the Bill, Jim Moodie, Fife Council, echoed those concerns—

“In my opinion, the bill does not clarify who is responsible for SUDS. Scottish Water has introduced a second edition of the ‘Sewers for Scotland’ documentation and design manual. It restricts SUDS to only a couple of things, such as detention basins and attenuation ponds, and excludes all the other facilities, such as swales and filtration trenches...there is still a question mark over who will adopt all the SUDS features in places other than where a council has already put in place a system in which a factor looks after, for example, an attenuation pond or a detention basin...It is not an omission; it is a sidestep by Scottish Water to avoid taking on responsibility for SUDS.⁶⁴”

140. The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2.

Assessment of infrastructure drainage

141. In evidence to the Committee on 19 November 2008, Scottish Government officials stated that “we are looking to put a specific duty for that [the assessment of infrastructure drainage] on Scottish Water⁶⁵”. This duty is not contained in the Bill as introduced. However, the Minister’s letter on possible Stage 2 amendments suggested this duty may be placed on local authorities—

“We are considering amendments that would impose an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas, including information on the condition and ownership of certain drainage structures. The information would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968, as amended by the Water Industry Scotland Act 2002, which includes a

⁶³ Scottish Water. Submission to Rural Affairs and Environment Committee (November 2008).

⁶⁴ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1276.

⁶⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 19 November 2008*, Col 1174.

map of sewers drains and sewerage treatment works for which they have responsibilities.⁶⁶

142. It would therefore appear that it is as yet undecided whether Scottish Water or local authorities, or a combination of the two, will hold responsibility for assessing infrastructure drainage.

143. The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government's Stage 1 response before Stage 2 commences.

Interim arrangements

144. Written submissions from a number of local authorities expressed concern with the lack of interim arrangements, including funding arrangements, for flood risk management in advance of the Bill's full implementation in 2015. (General funding arrangements for local authorities are considered in the section on the financial implications of the Bill).

145. In evidence to the Committee on 19 November 2008, Scottish Government officials said that they had not yet drawn up interim arrangements. Council representatives expressed different views on whether this concerned them. Jim Moodie of Fife Council said that—

“They are a concern because there is nothing in the bill to say that councils have to do anything until the management plans are in place.⁶⁷”

146. Paul Frankland, Scottish Borders Council, said that—

“They are not a concern for us. We will carry on with the assessments that we do at present, although we will tweak them slightly in line with the bill.⁶⁸”

147. This contrasting evidence demonstrates the potential for starkly different interpretations of how to proceed with flood risk management in advance of the finalising of the flood risk management plans in 2015. The Committee is concerned that the Scottish Government may not appreciate this variation of interpretation amongst local authorities, leading to an insufficient sense of urgency on the part of the Scottish Government to produce guidance on how to proceed.

148. The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements will be issued to local authorities in its Stage 1 response.

⁶⁶ Michael Russell MSP, Minister for Environment. Submission to Rural Affairs and Environment Committee (November 2008).

⁶⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1273.

⁶⁸ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1273.

Obtaining information, documents and assistance

149. Sections 37 and 38 provide SEPA and local authorities with the power to obtain information, documents and assistance reasonably required in the exercise of functions relating to flood risk management planning. Perth and Kinross Council's submission questioned—

“Will the powers to obtain information, documents and assistance help local authorities and SEPA obtain information from Scottish Water which they often say is protected under data protection legislation?”

150. Members asked witnesses from Scottish Water for examples of instances where data protection requirements prevented them providing information. Jim Conlin from Scottish Water suggested that data protection is an issue in relation to customer addresses but that the organisation seeks to provide the relevant information without divulging specific details, for example by providing postcodes to local authorities without the corresponding names and addresses⁶⁹. Geoff Aitkenhead from Scottish Water also suggested that for security reasons the locations of drinking water supplies could not be divulged⁷⁰. Beyond those examples Scottish Water witnesses were unaware of instances where local authority requests for information had been refused.

151. Perth and Kinross Council was invited to provide specific evidence backing up its concerns. The Council did not provide this evidence. Scottish Water did correspond with Committee clerks following discussion of this issue on stating that—

“As it is not clear exactly what information the enquiry refers to we will contact Perth and Kinross Council and Fife Council to clarify their particular concerns.”⁷¹

152. The Committee notes the evidence received in relation to the sharing of information between Scottish Water and local authorities. However, in the absence of specific examples of a lack of willingness to share information the Committee does not wish to make any recommendation on this issue.

Water Environment and Water Services (Scotland) Act 2003

153. Section 41 consists of broad provisions intended to ensure consistency and co-ordination with river basin management planning under the Water Environment and Water Services (Scotland) Act 2003.

154. Much of the flood risk management planning mechanism in Part 3 is intended to mirror the approach taken for river basin management planning, so as to encourage integration of the processes as far as is practicable. For example, section 41(1)(a) requires SEPA, in identifying districts established for flood risk

⁶⁹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1262.

⁷⁰ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1262.

⁷¹ Scottish Water. Submission to Rural Affairs and Environment Committee (16 December 2008).

management planning, to have regard to the districts established under the 2003 Act (and the Policy Memorandum suggests there is a strong possibility that district boundaries will be the same under both⁷²). Timescales under the Bill and the Act are also intended to run in parallel, with both processes operating on a six year planning cycle, and the first flood risk management plans due at the same time as the second river basin management plans.

155. According to the Macaulay Institute—

“...there will be considerable difficulties in ensuring consistency and co-ordination, due to (amongst other things) a lack of a joined-up approach even within river basin management planning, the complex and congested policy arena for water management and the difficulty of communicating complex technical data to a wide range of people.⁷³”

156. There have clearly been teething problems with implementation of the 2003 Act⁷⁴ but many of these problems would not necessarily be repeated under this Bill as a result of lessons learned during this implementation.

157. The Committee appreciates that the river basin management planning process is still in its infancy and that some practical problems remain. The implementation of the Bill will undoubtedly further complicate matters to a degree. However, as the intentions behind the Act and the Bill are inextricably linked, and in the interests of efficiency and joined up working, the Committee would wish that every effort be made to integrate these processes from the outset.

158. The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act.

Stakeholder engagement

159. Part 3 includes arrangements for consultation and participation such as the publication of assessments, maps and plans. It also provides for the establishment of district flood risk advisory groups and sub-district advisory groups to advise SEPA and local authorities on the preparation, review and update of documentation required under the Bill.

160. Scottish Government officials suggested in evidence that advisory groups under the Bill would involve many of the same organisations involved under the

⁷² Policy Memorandum, paragraph 53.

⁷³ Macaulay Institute. Submission to Rural Affairs and Environment Committee.

⁷⁴ Macaulay Institute. Submission to Rural Affairs and Environment Committee.

⁷⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1298.

2003 Act so it was hoped that existing groups could take on advisory roles under the Bill⁷⁶.

161. SEPA's submission also reflects this intention—

“River Basin Planning operates using 10 area advisory groups across Scotland, each helping to produce sub-basin plans for their catchments and coastal areas. Members of the River Basin Management Plan advisory groups include Local Authorities, Scottish Water, Scottish Natural Heritage, the Forestry Commission, representatives of land-owners, NGOs and fishery boards. Many of these members will have a role in flood risk management and we shall seek opportunities to integrate these groups with the flood risk management groups wherever relevant.”⁷⁷

162. Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act.

Cross-border flood risk management

163. As mentioned above, the district boundaries defined in subordinate legislation under section 41 are very likely to mirror those used for river basin management planning, including the existing cross-border district.

164. The Macaulay Institute's submission states that there is a lack of clarity on how cross-border flooding incidents will be handled and that this needs to be addressed, especially as parts of the Borders are highly susceptible to flooding. The submission also argues that steps should be taken to prevent similar cross-border implementation problems as were encountered with river basin management planning under the 2003 Act in Scotland and the Water Environment (Water Framework Directive) Regulations (England and Wales) 2003 in England (which both transposed the EC Water Framework Directive).

165. The Institute's submission outlines specific difficulties encountered in establishing the river basin management planning process—

“Under RBMP, additional guidance and a policy statement from DEFRA and the Scottish Government had to be developed during 2007, but there are still ongoing challenges in reconciling the different ways in which data is collected and recorded by the agencies; the different regulatory frameworks and different advisory networks.”

166. The Committee has heard evidence to suggest that a sizeable amount of work has been undertaken to better co-ordinate cross border implementation in recognition of these issues. For example, Paul Frankland from Scottish Borders Council suggested that, at a local authority level, the existing collaborative work

⁷⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Col 1184.

⁷⁷ SEPA. Submission to Rural Affairs and Environment Committee (November 2008).

undertaken by the Tweed Forum for river basin management planning had proved very valuable⁷⁸. The Committee considers that such existing mechanisms for co-ordination could be built upon to ensure consistent implementation of flood risk management planning.

167. It therefore appears that a number of lessons were learnt as a result of problems encountered during the cross-border implementation of the EC Water Framework Directive and a number of processes in place for river basin management planning could be built upon in implementing this legislation. The Committee would hope that the Scottish Government, SEPA, local authorities, Scottish Water, and their English counterparts would work effectively together to ensure that the EC Floods Directive is effectively transposed on a cross-border basis.

168. The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government.

PART 4: LOCAL AUTHORITY FUNCTIONS

169. The provisions in Part 4 set out a revised statutory process for approval of flood risk management measures, including flood protection schemes, which the Policy Memorandum suggests will—

“...underpin the exercise of these powers with a streamlined and local authority based statutory process that provides for efficient use of local resources and timely introduction of flood management measures.”⁷⁹

Deemed planning permission

170. At present, the Flood Prevention (Scotland) Act 1961 requires that local authorities (as promoters of flood prevention schemes) undertake an initial approval process for proposed schemes. Final decisions are taken by Scottish Ministers where there are outstanding objections. In addition they are required to apply for planning permission from planning authorities (which is the local authority in another guise). Finally, local authorities are required to gain approval from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2005.

171. Section 54 of the Bill amends the Town and Country Planning (Scotland) Act 1997. The Explanatory Notes for the Bill explain that this—

“...provides that once a flood protection scheme is confirmed (whether by the local authority or the Scottish Ministers), the Scottish Ministers are to direct

⁷⁸ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1177.

⁷⁹ Policy Memorandum, paragraph 11, bullet point 4.

that any necessary planning permission is deemed to be granted, subject to any planning conditions which Ministers may specify.⁸⁰

172. This proposed change is in recognition of the need for the existing system for approving flood protection schemes to be simplified, an issue which the Committee highlighted in its inquiry report. Evidence to the inquiry had suggested that the existing procedure, involving three separate approval processes, each with a different lead decision-making body, took an unreasonable length of time. The net effect of this was clearly articulated in Argyll and Bute Council's written evidence to the inquiry—

“When the owners of properties affected by flooding hear that a Council is promoting a scheme, their expectation is usually that construction to protect their properties would start in, say, a year at the most. In reality, the process from feasibility and engineering report to confirmation of funding and a start on site can take 5 years or more.⁸¹”

173. Given this situation, the inquiry report recommended—

“...that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions.”

174. The Committee welcomes the Bill's provision for deemed planning consent following the Committee's request that this process be streamlined.

Approval of flood protection schemes

175. The Bill repeals the Flood Prevention (Scotland) Act 1961, which sets out the approval process for flood prevention schemes. The Bill puts in place new provisions for the approval of schemes (referred to as flood protection schemes) Schedule 2 includes provisions for notification of a proposed scheme. For example, paragraph 1 states—

“The local authority must give notice of a proposed flood protection scheme...to every person known to the local authority...whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations.”

176. As the planning application procedure will no longer be followed for confirmed flood protection schemes, it is important that the initial consultation in the process for approval of proposed schemes is suitably robust to ensure that the public and stakeholders have every opportunity to comment or raise objections.

⁸⁰ Explanatory Notes, paragraph 164.

⁸¹ Argyll and Bute Council. Submission to Rural Affairs and Environment Committee inquiry into Flooding and Flood Management. Available at: <http://www.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/ArgyllandButeCouncil.htm> [Accessed 13 January 2009]

177. The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance.

Recovery of local authority expenses

178. Section 57 of the Bill states that—

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

179. Fife Council stated in its submission that—

“Section 57 appears to restrict recovery of costs to repairs or reinstatement of flood prevention works. This is too restrictive. Section 57 should be linked to Section 49; General power to manage flood risk and Section 56; Assessment of watercourses.”

180. The SCOTS submission suggests that there is a need for guidance on this section including an explanation of the mechanism for recovering costs. This could perhaps include agreed levels of charges for different pieces of work so local authorities across Scotland adopt parallel charging regimes.

181. It has been suggested to the Committee that a barrier to being able to recover expenses may be the need to prove negligence on the part of the landowner⁸² and that the responsibility of landowners in relation to reducing flood risk should perhaps appear on the face of the Bill.

182. However, the SRPBA has suggested that imposing such a responsibility on landowners could prove problematic as it may require landowners or property owners to have responsibility for flood prevention which could include actively maintaining flood protection works. The SRPBA suggested that these individuals “cannot be expected to have full information and technical expertise to take on principal responsibility for proactively assessing and responding to flood risks⁸³”.

183. The Committee agrees with the SRPBA that landowners should not be expected to have primary responsibility for the implementation of flood prevention measures determined by responsible authorities. However, the Committee believes that landowners do have a responsibility to maintain features such as field drains and watercourses where they play an important role in flood prevention. In situations where such features have not been adequately maintained by private landowners and a local authority has been obliged to reinstate or repair these features, the Committee agrees that the local authority should be able to reclaim its expenses for so doing.

⁸² South Lanarkshire Council. Submission to Rural Affairs and Environment Committee.

⁸³ SRPBA. Submission to Rural Affairs and Environment Committee (December 2008).

184. The Committee supports the intention behind section 57 but the evidence received demonstrates that its wording leaves it open to varied interpretation. The Committee also notes concerns about whether section 57 would be effective in the absence of clarity as to how landowners' negligence would be evidenced.

185. The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for recovery of expenses, the grounds on which authorities may fine landowners, and what those fine levels should be.

Duty to cleanse, repair and maintain watercourses

186. The Flood Prevention and Land Drainage (Scotland) Act 1997 would be repealed under section 60 of the Bill. One of the provisions of this Act is a requirement for local authorities to cleanse, repair and maintain watercourses. In his written evidence to the Committee, Dr John Riddell argues that this has proved one of the most effective methods of reducing flood risk.

187. Scottish Government officials argued that this duty was being removed—

“...because local authorities will have an overall duty to reduce flood risk. Previously, local authorities' only duty in relation to flood risk management was the duty to assess and maintain watercourses. We thought that the overall duty encompassed that requirement. If we included in the bill a duty to maintain watercourses, that might become the overriding duty in some circumstances.⁸⁴”

188. Officials also suggested there were some circumstances where watercourses were deliberately blocked to re-direct water for flood management purposes and that this duty might require local authorities to clear a watercourse that had been blocked for flood risk management purposes⁸⁵.

189. The Committee does not accept the logic of the Scottish Government's argument that retaining this specific provision could lead to situations where authorities clear watercourses despite stipulations to the contrary in local flood risk management plans (although it is accepted that some amendment of the relevant provisions may be needed to take account of the Bill). In addition, if it is envisaged that an overriding duty to reduce flood risk will encompass a specific duty to maintain watercourses, the Committee sees no reason why the provision in the 1997 Act cannot co-exist with the broader provision on the face of the Bill.

190. The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and is in line with flood risk management plans.

⁸⁴ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 19 November 2008*, Col 1200.

⁸⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 19 November 2008*, Col 1201.

PART 5: SEPA: OTHER FLOOD RISK MANAGEMENT FUNCTIONS

191. The provisions in Part 5 replace those in the Agriculture Act 1970 and the Environment Act 1995, and set out updated responsibilities for SEPA for flood risk assessment, including the provision of advice to local authorities, and expansion of its role in providing flood warnings.

Flood warning

192. In evidence, Chris Spray from SEPA told the Committee how the organisation is involving key stakeholders in ongoing work to refine the flood warning—

“It is worth reassuring the committee that we are working on a new flood warning dissemination system for Scotland. It is a £7 million project. The advisory board for that includes ACPOS, the Society of Local Authority Chief Executives and Senior Managers, COSLA, and fire and rescue services. We are also going to bring the national health service on to the board. The new system will enable folk to get individual messages. It is key that everybody understands the messages and how they are produced. It is not a SEPA system; it is for all of those groups.⁸⁶”

193. In its written submission the Association of British Insurers expressed an interest in collaborative working with SEPA to see how flood risk can be better communicated to the public and insurers as “over time this will impact on insurance premiums for those worst affected, reducing premiums for others.”

194. The Met Office also expressed a keen interest in collaborative working with SEPA, a re-iteration of sentiments expressed in its submission to the Committee’s inquiry—

“The Pitt Review of the flooding in England and Wales in 2007 recognised the benefits that closer working between the Met Office and the Environment Agency would bring to flood risk management in England and Wales. The Met Office and the EA have taken this key recommendation forward in its consideration to form a joint flood forecasting centre. The Met office would welcome the opportunity to work with SEPA in a similar arrangement to ensure Scotland also takes best advantage of advances in developing science and technology, and their integration.”

195. The Committee is encouraged by SEPA’s work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken.

⁸⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1310.

Emergency services response to flood warning

196. The Committee is aware that this Bill deals specifically with flood risk management, which can include informing those at risk, but does not extend to rescue activities in the event of flooding. Section 64(1) states that “SEPA must, where it considers that a flood is occurring or likely to occur in the near future, make available warnings in relation to the flood”.

197. David Faichney from SEPA detailed which organisations SEPA currently informs as part of its flood warning system—

“SEPA's primary customers for flood warnings are local authorities, the police, fire and rescue services in some instances, the telephone floodline service and the web service, through SEPA's website. We make flood warnings available to the public through the floodline service and through professional partners such as the police and local authorities. Some local authorities cascade those flood warnings down to individual customers in their areas, such as businesses and householders. The local authorities and the police are category 1 responders. In large flood events, SEPA, as a category 1 responder itself, has to share information about the event that it is leading on—in this case floods—with all other category 1 responders through the strategic co-ordinating group structure.⁸⁷”

198. The Civil Contingencies Act 2004⁸⁸ outlines the specific roles of the emergency services in responding to flood risk. The police play a co-ordinating role in the management of responses to flood events but are not responsible for rescue. The latter responsibility lies predominantly with the fire and rescue service.

199. The Committee was not convinced during its inquiry that the police and fire and rescue services always act proactively once they have been issued with a flood warning. Evidence from these emergency services suggested that they perhaps viewed their role as commencing once a flood had become an emergency. For example, David Wynne of the Chief Fire Officers Association of Scotland told the Committee—

“In reality, the first indication that a response is needed is usually a 999 call.⁸⁹”

200. The lack of a single authority holding responsibility for responding to flood events was also raised in evidence as a possible obstacle to immediate action being taken when emergency services are informed of a flood risk.

201. The inquiry report included recommendations to encourage decisive and proactive action from emergency services in response to a flood warning. Specific recommendations were “that the fire and rescue service be tasked with co-ordinating all flood-related rescue activities” and “that the Scottish Government

⁸⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1310.

⁸⁸ The Civil Contingencies Act 2004. Available at: http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040036_en_1 [Accessed 13 January 2009]

⁸⁹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 5 March 2008, Col 574.

should explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency”.

202. The Committee notes that the proactive element of the role of the emergency services in preparation for flooding could probably be seen as being part of “flood risk management”, whereas other inquiry recommendations in this area relate to flood rescue, which the Bill does not address.

203. The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill’s scope allows.

PART 6: POWERS OF ENTRY AND COMPENSATION

204. Part 6 provides local authorities and SEPA with powers of entry onto private land and into private property in carrying out their duties to assess and manage flood risk. It also provides for the payment of compensation for any damage caused as a consequence of the construction or maintenance of a flood protection scheme or other flood protection work.

205. The Policy Memorandum makes clear that powers of entry would only be used in urgent cases following attempts to provide advance notice of the need to grant access to the land or property owner or occupier⁹⁰. The Committee welcomes the assurance that these powers will only be used as a last resort.

206. The Committee notes that a number of witnesses and written submissions explored the potential for funding streams within the Scotland Rural Development Programme to be used to supplement compensation and to incentivise land owners to avoid the compulsory purchase of land wherever possible. This is considered further in the section on the financial implications of the Bill below (paragraphs 256 to 261).

PART 7: RESERVOIRS

207. Part 7 amends the Reservoirs Act 1975, which sets out safety requirements to prevent escapes of water from reservoirs. The amendments would have the effect of transferring enforcement responsibilities from local authorities to SEPA. This would include provisions to allow SEPA to prepare reservoir maps and plans for very high risk reservoirs.

208. The possibility of a delay in the implementation of a number of these provisions has been raised with the Committee as outlined below.

⁹⁰ Policy Memorandum, paragraphs 163-4.

Transfer of responsibilities

209. Jim Moodie, Fife Council, told the Committee that Scottish Government officials had suggested that the handover of responsibilities could take two to three years as the Scottish Government wishes to consider the nature of provisions to tighten reservoir security in the UK Flood and Water Bill before implementing its own Bill's provisions⁹¹.

210. The Minister informed the Committee that the proposed flood and water Bill is unlikely to be considered at Westminster until the next UK parliamentary session⁹².

211. The Committee acknowledges the merits of ensuring that the Bill is implemented in such a way that it complements comparable legislation in England and Wales. This is in the interests of co-ordinated cross border implementation. The Committee intends to continue to monitor the Scottish Government's progress towards the transfer of responsibilities to SEPA.

212. The Committee requests a summary of the impact of the provisions of the UK flood and water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill's introduction.

Reservoir inundation maps

213. In its submission SEPA requests clarification from the Scottish Government on national security issues related to reservoir inundation plans, stating that—

“...we would wish to see clarification within the Bill or through future policy and guidance giving clear direction to SEPA and other relevant authorities on security issues with respect to reservoir inundation plans, and taking account of guidance drafted by DEFRA.⁹³”

214. SEPA representatives were asked to elaborate on this issue when they appeared before the Committee. David Faichney explained that—

“From our security manager and emergency planning manager, we understand that sensitivities surround inundation plans showing what would happen if a reservoir were to fail. There are particular concerns about terrorist activity and the ability of organisations to understand quickly which reservoirs could have the biggest impacts down stream. I believe that such concerns are being thrashed out among the Department for Environment, Food and Rural Affairs, the Environment Agency and the security services in England and Wales.⁹⁴”

⁹¹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1280.

⁹² Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 December 2008*, Col 1334.

⁹³ SEPA. Submission to Rural Affairs and Environment Committee (November 2008).

⁹⁴ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 December 2008*, Col 1309.

215. The Minister and accompanying officials were then asked to outline progress being made towards resolving this issue. Scottish Government officials explained that—

“National security has been extensively discussed since the issue came up when the Water Act 2003 conferred on ministers a power to acquire inundation maps. The power has not yet been enacted, for the simple reason that there has been much discussion about who should see the maps, how they should be stored and who should have access to them. Much discussion has focused on security, and inundation maps have not yet been produced in England and Wales...Agreement has been reached with the security services that category 1 responders should have access to the inundation maps. I think that it was agreed that that will happen in a controlled environment.⁹⁵”

216. The Committee is concerned to learn that provisions within the Water Environment and Water Services (Scotland) Act 2003 have not yet been implemented. On a wider issue, the Committee is concerned that this lack of an agreement with security services could have impacted on the ability of strategic co-ordinating groups to plan in the event of an emergency. The Committee is encouraged that agreement has now been reached and hopes that as a result there will be no unnecessary delay in the implementation of the Bill's provisions.

217. Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA's request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues.

PART 8: GENERAL

218. Part 8 includes provisions for the making of orders and regulations, the application of the Bill to the Crown and also on the Bill's commencement. A number of the provisions within Part 8 stem from provisions elsewhere in the Bill and therefore have been dealt with above. No specific issues were raised with the Committee in relation to the application of the Bill to the Crown. As regards the Bill's commencement, concerns over interim arrangements were raised in the discussion on local authority responsibilities (paragraphs 144 to 148).

COASTAL FLOODING

219. Although the Bill does not specifically mention coastal flooding, the definition of “flood” as “the temporary covering by water from any source of land not normally covered by water...” includes coastal flooding. For example, flood protection schemes proposed in the Bill could be developed for any type of flooding within a local authority area, including coastal flooding.

⁹⁵ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1334-5.

220. The Bill's provisions are intended to sit alongside those in the Coast Protection Act 1949⁹⁶ which seeks to manage coastal erosion. Section 4 of this Act empowers local authorities "to carry out such coast protection work, whether within or outside their area, as may appear to them to be necessary or expedient for the protection of any land in their area."

SEPA coastal flood risk maps

221. SE Link's supplementary submission notes the potential for changes in sea levels in the future, including increases as a result of climate change—

"...a study of coastal flooding by Dundee University⁹⁷...suggests that the uplift of land due to the melting of Scottish ice sheets has been over-estimated and potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20cm higher in the Clyde estuary and 28cm higher in Moray and Aberdeenshire than previously estimated. It is also likely that the net sea level changes in the Firth of Forth had shifted from a net fall to a net rise since the 1970s."

222. At present SEPA's inundation maps are based on estimated flood probability under current climate conditions. The Committee sought assurances from SEPA that, in its new role under the Bill, predictions of flood probability as a result of climate change over the long term would be taken into account in the production of flood risk maps and assessments. SEPA's supplementary submission confirmed that this was definitely its intention.

223. The value of flood risk management plans which include coastal areas depends upon the accuracy of the flood risk maps and assessments upon which they are based, including detailed information on localised tidal patterns. In addition, as recommended above (paragraphs 118 to 128), local development plans and decisions on planning applications should also reflect flood risk as assessed and mapped by SEPA. It is therefore extremely important that SEPA ensures that its flood risk maps and assessments produced under the Bill reflect the most accurate predictions available on the impact of climate change on sea levels over the long term.

224. Section 22 of the Bill enables Scottish Ministers to prescribe through subordinate legislation "criteria to be applied and the methods and procedures to be followed" in the production of flood risk maps and flood hazard maps.

225. The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government's response prior to Stage 2.

⁹⁶ Coast Protection Act 1949. Available at: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1949/cukpga_19490074_en_1 (Accessed 13 January 2009)

⁹⁷ Coastal Flooding in Scotland: A scoping study, 2008, SNIFFER report.

RESOURCE IMPLICATIONS

Hydrologists and other specialist staff

226. The Bill's Financial Memorandum details the additional tasks that SEPA, Scottish Water and local authorities will be required to undertake as a result of the Bill and the potential staffing implications. The Financial Memorandum includes an estimate of 55 new staff for SEPA to aid the establishment of the flood risk management planning process, including hydrologists and flood modellers⁹⁸. The Financial Memorandum also indicates that Scottish Water will require an additional team focused on duties arising from the Bill and input from specialist modelling consultants⁹⁹.

227. In its submission on the Bill, SEPA states that—

“Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. SEPA highlighted this in its previous evidence to the RAE Committee and it is widely recognised by the Committee, Ministers and others that this will be a severe challenge to SEPA, Local Authorities and all others involved in the delivery of the Bill.” In addition, in evidence to the Finance Committee SEPA quantified the shortage elsewhere in the UK mentioning that the Environment Agency already has 200 vacant flood management posts.¹⁰⁰”

228. The Committee is also aware that the requirement to transpose the EC Floods Directive by 2015 will mean specialist staff will be in high demand across Europe and that this will further exacerbate the problem.

229. On the same issue Scottish Government officials stated in evidence that—

“There is definitely a deficit of qualified hydrologists. However, a wide range of skills is required; we need not only hydrologists but trained engineers and people who understand how the rivers and coastal environments function. We hope that we will be able to draw on and build on the experience that is already available, such as in-house experience in SEPA and the experience of qualified engineers in local authorities.¹⁰¹”

230. The Minister remarked that—

“Positive engagement is taking place with universities, trainers and others to ensure future supply. We are looking at retraining people with other engineering skills. I am in contact with my opposite numbers in the education portfolio to encourage them and to highlight the opportunities...It should be possible for small amounts of resource to be found from flooding research and

⁹⁸ Explanatory Notes, Financial Memorandum, paragraph 294.

⁹⁹ Explanatory Notes, Financial Memorandum, paragraphs 302-3.

¹⁰⁰ SEPA. Submission to Rural Affairs and Environment Committee (November 2008).

¹⁰¹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 19 November 2008, Cols 1188-9.

other areas if new courses need to be provided. However, I think that the issue is getting the individuals rather than the cash.¹⁰²

231. Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister's reassurance that the steps being taken to recruit and retrain will "ensure future supply".

232. The Committee is deeply concerned that a marked shortage in skilled staff may impact both on the effectiveness of Scotland's new flood risk management process, and the time taken for implementation.

Financial implications

Adequacy of the Financial Memorandum

233. The Finance Committee's report, reproduced at Annexe B, considers whether the potential range of costs for the Bill's implementation outlined in the Financial Memorandum are reasonable and whether all potential costs are accounted for.

234. In addition to considering the Financial Memorandum, the Finance Committee also considered supplementary information provided by the Scottish Government on 7 November 2008 (also reproduced at Annexe B). Scottish Government officials stated in evidence to the Finance Committee that—

"The purpose of the supplementary evidence was to register the further work that had gone on in the interim to refine the policy and develop the detailed provisions in the bill."¹⁰³

235. The supplementary information outlines revised upper and lower estimates for costs on SEPA, Scottish Water and local authorities. For example, it projects an upper estimate of costs to local authorities up to 2015 of £44.9 million, whereas the Financial Memorandum suggests an upper limit of £36.48 million. Assuming that there are a number of other underestimates in the Financial Memorandum, the total anticipated start up and ongoing costs suggested within it could be significantly lower than the actual costs of implementing the Bill.

236. Provision of the most accurate information available to inform scrutiny is appreciated. However the Committee considers that this legislation should only have been introduced when the specifics of the policy work underpinning the Bill were at a suitably advanced stage to allow an accurate estimation of the Bill's potential cost in the Financial Memorandum. The figures set out in the Financial Memorandum are clearly based on outdated policy information and include significant underestimates.

237. The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial

¹⁰² Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Cols 1336-7.

¹⁰³ Scottish Parliament Finance Committee. *Official Report*, 25 November 2008, Col 855.

implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government to ensure that future memorandums to Bills are the best possible final estimate at the point of introduction.

Actual costs

238. The Financial Memorandum explains that a number of uncertainties (primarily the need to await the outcome of the initial flood risk assessments) mean that cost estimates cannot be entirely robust at this stage. The Finance Committee report notes that its witnesses generally seemed to accept that the assumptions within the Financial Memorandum about uncertainties were reasonable.

239. In the interests of transparency, Scottish Government officials confirmed in evidence to the Finance Committee that information on the costs incurred by various public bodies in delivering their new responsibilities could be included in the formal mechanisms for reporting to the Parliament provided in the Bill¹⁰⁴. The Minister's response to the Finance Committee (in Annexe D) confirmed that he will give consideration as to whether the Scottish Government will provide information on actual costs within the annual report to Parliament on implementation (provided for in section 45).

240. The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible authorities in the run-up to implementation and reports these costs to this Committee and its successor.

Method of funding allocation

241. The Financial Memorandum attempts to assess the cost of the establishment of the flood risk management planning process but does not estimate the potential cost of the implementation of this process. For example, Highland Council's submission raises the issue of the cost of increased duties in relation to watercourses stating—

“Under current legislation the Council have a duty to access watercourses. These watercourses generally relate to urban, built up areas. Under the proposed Bill the Council will have a duty to assess all watercourses – rural and urban. The ‘extra’ cost for the wider watercourse assessment does not appear to be included in the Financial Memorandum.”

242. Scottish Water also mentioned, in evidence to the Finance Committee, that the significant cost of work required in areas not yet covered by drainage plans did not feature in the Financial Memorandum¹⁰⁵.

243. The Committee appreciates that it would be nigh on impossible to estimate in the Financial Memorandum overall running costs of the Bill's implementation, such as the cost of establishing and maintaining flood protection schemes across Scotland. However, given the importance of these schemes and their substantial

¹⁰⁴ Scottish Parliament Finance Committee. *Official Report*, 25 November 2008, Col 855.

¹⁰⁵ Scottish Water. Submission to the Finance Committee.

cost, it is imperative that the Parliament is reassured before agreeing to the general principles of the Bill and its financial resolution, that the relevant organisations will receive sufficient funds to manage flood risk on an ongoing basis. The most effective approach to this would appear to be the establishment of clear funding streams.

244. The Committee inquiry report recommended that three distinct streams of funding would be required to effectively implement flood management legislation, namely—

- a relatively modest amount of budget retained at a national level to ensure that the Scottish Government is able to fund overarching projects directly;
- a centrally controlled budget held specifically for flooding used to fund, in accordance with national needs and priorities, major flood management projects that may be too expensive for individual local authorities to fund; and
- some funding should be distributed to individual local authorities (whether or not on a ring-fenced basis) to enable them to prepare and deliver smaller scale local schemes as they see fit.

245. There is no central mechanism proposed by the Scottish Government for the allocation of funding to local authorities for funding future flood protection schemes or for carrying out any other duties. The Minister's written response to the Finance Committee suggested that future funding allocations for flood management to SEPA, Scottish Water and local authorities would be made through existing arrangements for block funding allocations to these organisations. In addition, it confirmed that SEPA and local authorities would need to source funding for the initial stages of the Bill's implementation to 2011 from existing spending review allocations.

246. The majority of local authorities submitting evidence on the Bill said that the lack of a specific funding mechanism for flood management was a major concern, and a number have suggested this will seriously impact on the Bill's implementation. This is entirely understandable considering the cost of these schemes (for example a single flood protection scheme in Elgin has an estimated cost of around £98 million). Justin Jacobs from the Association of British Insurers also highlighted that the knock on effect of a lack of certainty over funding for flood protection schemes is a higher assessment of risk and therefore a higher potential level of premiums being passed on to the customer¹⁰⁶.

247. Jim Moodie from Fife Council was pragmatic in evidence on this issue, stating that the lack of a clear funding mechanism—

“...will mean that many schemes will not be delivered at all, because the funding will be allocated to what councils consider to be other priorities. We face that issue at the moment...Our budgets are defined by accountants and asset management people who are not directly affected by flood prevention

¹⁰⁶ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Cols 1283-4.

issues or functions. They might have higher priorities, such as education or social work.¹⁰⁷

248. The Minister reiterated in evidence the Scottish Government's commitment to agree future funding allocations for local authority work during discussions with COSLA on the Concordat between the Scottish Government and local government¹⁰⁸.

249. The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee's inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above (paragraphs 99 to 108).

Transparency of funding allocation process

250. The Finance Committee report reflected concerns from a number of local authorities on the absence of any criteria to inform what level of funding allocation each authority should receive to fulfil all of their various duties under the Bill. Such criteria could include the level of flood risk faced and/or the proportion of each authority area deemed to be rural or urban.

251. As noted above, the Minister's response to any request for details of the basis for decisions on funding allocations to local authorities is likely to be that funding decisions will be made following discussions with COSLA on the Concordat.

252. However, the Committee is aware that it is Scottish Government practice to transfer expenditure from one portfolio into the local government portfolio for a specific purpose, such as funding flood prevention work, and considers that, as a minimum, the Scottish Government should be able to provide information on how this funding is allocated. For example, during evidence on the 2009-10 Scottish Government Draft Budget the Committee was informed by the Cabinet Secretary for Rural Affairs and Environment that £40m had been allocated in the local government settlement for each year of the spending review period and that this covered all schemes that were currently going ahead or were planned to start during the current spending review period¹⁰⁹.

253. In evidence on the Bill, the Minister responded to the Committee's concerns on the lack of a transparency in the allocation of funding for flood risk management stating that—

¹⁰⁷ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1270.

¹⁰⁸ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 17 December 2008*, Col 1329.

¹⁰⁹ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 8 October 2008*, Col 1076.

“The money that is being spent is clearly going into recognised schemes that we all know are required...I would be happy if a system were developed that shows what is being spent and what the plans expect to be required, in the context of a series of variable estimates.¹¹⁰”

254. The Minister’s remarks would appear to tie in with the Committee’s proposal above for the publication of a national strategic assessment of priorities alongside estimates of the potential cost of work required to address these priorities (paragraphs 99 to 108). In addition to information on possible costs, and in the interests of transparency, the Committee considers that information on what funding allocations are actually made to local authorities towards the delivery of these national priorities should also be provided by the Scottish Government.

255. The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above (paragraphs 99 to 108) or in its annual reports laid before Parliament.

Allocation of funding to land managers

256. As mentioned above, section 55 enables local authorities to acquire land by agreement. It also enables local authorities to acquire land by compulsory purchase should that land be required as part of a flood protection scheme. Such compulsory purchase requires authorisation from the Scottish Ministers. The number of farms and other land based businesses affected by proposals within flood risk management plans will only begin to become apparent as these plans are developed.

257. The Committee considers that where a piece of land is required to be part of a flood protection scheme, the powers of compulsory purchase should only be used as a last resort. Wherever possible, land should be retained by its owner and compensation provided to ensure any business requiring that land or attached land remains viable.

258. SE Link’s written submission also highlighted the potential for incentives, and other forms of funding support for land managers, to encourage the adoption of land management techniques in keeping with sustainable flood risk management¹¹¹.

259. The Committee received evidence in support of this idea that suggested funding streams available through the Scotland Rural Development Programme, including agri-environment and forestry schemes, could be used for this purpose. For example, Gordon Watson from Loch Lomond and Trossachs National Park Authority suggested that—

¹¹⁰ Scottish Parliament Rural Affairs and Environment Committee. *Official Report*, 17 December 2008, Col 1330.

¹¹¹ Scottish Environment Link. Submission to Rural Affairs and Environment Committee, 11 November 2008.

“...other funding streams could be brought to bear on natural flood management. For example, the Scottish rural development programme and rural development contracts could be used to provide support to land managers who undertake works on their land. There could be a process of offering incentives in addition to funding significant schemes that councils will be involved in. The national parks could play a role in supporting the heightened emphasis on natural flood management.¹¹²”

260. Hugh Clayden, Forestry Commission Scotland, added in relation to forestry—

“In the UK—and Scotland is no different—over the years we have fought to get away from the forest law aspect of compulsion and used persuasion and incentives. There is no reason why that should not continue. If there is a need for particular flood regulation duties, we already have the instrument of the Scottish rural development programme to fund them.¹¹³”

261. The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme.

Subordinate legislation

262. As the Bill contains provision for subordinate legislation, the Subordinate Legislation Committee considered and reported on the Bill, and its report is reproduced at Annexe A.

263. As detailed above, the Committee supports the Subordinate Legislation Committee’s recommendation in relation to the powers conferred on Scottish Ministers under section 2(1) (paragraphs 41 to 44) and thanks the Committee for bringing this issue to this Committee’s attention.

264. The Committee also acknowledges the other recommendations made by the Subordinate Legislation Committee. The Committee notes the agreement from the Minister to bring forward amendments at Stage 2 as a direct result of these recommendations.

Policy Memorandum

265. Under Rule 9.6.3 of Standing Orders, the Committee is required to consider and report on the Policy Memorandum. The Policy Memorandum sets out the Bill’s policy objectives, what alternative approaches were considered, the consultation undertaken and an assessment of the effects of the Bill on equal opportunities,

¹¹² Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 10 December 2008*, Col 1270.

¹¹³ Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 26 November 2008*, Col 1226.

human rights, island communities, local government, sustainable development and other relevant matters.

266. Notwithstanding the concerns outlined above in relation to whether some of the specific provisions in the Bill bring into effect the aims expressed within the Policy Memorandum, the Committee is content that the Policy Memorandum is clear and reflects the intentions of this legislation.

Equal opportunities

267. In the Policy Memorandum, the Scottish Government sets out the impact of the Bill on equal opportunities¹¹⁴. The Committee is content that such matters have been accounted for and that no major issues arise.

CONCLUSIONS ON THE GENERAL PRINCIPLES OF THE BILL

268. The Committee is all too aware of the current flood risk faced in parts of Scotland and the anticipated increase in the probability of flooding. Seeking to establish a co-ordinated approach to the adoption of sustainable flood risk management is clearly very desirable. The Committee supports the general approach taken in the Bill to achieve this aim.

269. However, the Committee considers that it is essential to give further consideration to the recommendations above which seek to strengthen the provisions of the Bill. The Committee also considers that its concerns on the adequacy of funding and staffing arrangements merit further consideration prior to the Bill being approved by the Parliament as a whole at Stage 3.

270. On this basis, the Committee recommends that the general principles of the Bill be agreed.

¹¹⁴ Policy Memorandum, paragraphs 174-5.

Appendix 1

FLOOD RISK MANAGEMENT (SCOTLAND) BILL – STAGE 2 AMENDMENTS

Thank you for your letter of 21 October in which you requested details of amendments that the Scottish Government plans to introduce at stage 2 for the above Bill. Please see the attached document which provides these details and which, I hope, will assist members with their scrutiny.

As you will be aware, we have also received a report from the Subordinate Legislation Committee in relation to the delegated powers memorandum that accompanied the Bill. We will be considering the recommendations on minor amendments to the Bill in due course.

Finally, I have noted the provisional evidence session date of the morning of 17 December.

MICHAEL RUSSELL MSP
MINISTER FOR ENVIRONMENT

SUMMARY OF PROPOSED STAGE 2 AMENDMENTS TO FLOOD RISK MANAGEMENT (SCOTLAND) BILL

Reservoir safety

Inundation maps and on-site reservoir plans

The Flooding Bill does not currently include any specific reference to reservoir inundation maps or reservoirs plans. However, the Bill does already include the necessary provisions that would allow SEPA to undertake inundation mapping for very high risk reservoirs as part of their work under the EC Floods Directive (which includes preliminary flood risk assessments, assessments of significant flood risk and flood mapping).

The intention is to introduce an enabling power that would allow Scottish Ministers to make regulations requiring undertakers of 'high risk' reservoirs to produce 'reservoir plans', the regulations would also specify the matters to be included in the flood plan, and any criminal or civil penalties in relation to the plans. SEPA would act as the enforcement authority for this work.

Reservoir plans - what they are and why they are important

A reservoir on-site flood plan is intended to ensure that reservoir undertakers have arrangements in place to (i) understand the implications of an uncontrolled release of water and (ii) on-site arrangements to contain or limit the potential effects of an incident, which could including works to delay failure or minimise damage. The Water Act 2003 in England and Wales includes provision for operators to produce reservoir plans. The Environment Agency have produced guidance on the preparation of reservoir plans.

A reservoir plan provides a vital link between the dam undertaker and the emergency response services. This plan should not be confused with an off-site plan or other form of emergency response plan, which would fall under the auspices of the Civil Contingencies Act (2004) and would be the responsibility of the Category 1 responders.

It is envisaged that a reservoir on-site flood plan would include:-

- details of the courses of action an undertaker would take to try to contain and limit the effects of less serious (or non-emergency) incidents, based on a range of scenarios that could result in any escapes of water (i.e. overtopping, escapes involving more than the intended amount of water being released from the reservoir via normal channels, including complete failure / collapse of dams);
- a communications strategy to engage the relevant external organisations at the appropriate times.

The scope and details of these plans would vary depending on the level of flood risk associated with a particular reservoir. This would ensure that the effort required by operators would be proportionate to the risk associated with a particular reservoir.

For some higher risk reservoirs, the expectation would also be for operators to prepare inundation maps to support the development of reservoir plans.

How inundation mapping and reservoir plans are connected

Under the existing Bill provisions, we would expect SEPA to produce, high level flood maps (risk and hazard) for those reservoirs that SEPA identify as posing a significant flood risk, i.e. areas identified as potentially vulnerable to flooding. These would show where water would be likely to escape to and its potential impact. However, these maps would not be sufficiently detailed to show how different mitigation measures could alter the release of water and its impact.

Under the proposed amendments, the regulations would require reservoir plans to be prepared by reservoir operators to identify action to be taken to minimise the impacts of an uncontrolled release of water. Inundation maps may also need to be prepared by operators of high risk reservoirs. These maps would help in the preparation of reservoir plans to minimise the impact of an uncontrolled release of water. Operators of some large reservoirs in Scotland have already prepared detailed inundation maps. The regulations would specify what the maps should demonstrate, but ideally they should include the impacts of action taken to manage various flood scenarios and show where water is likely to go following steps taken by the undertaker to minimise flood risk, e.g. drawing down water, or using controlled flooding to minimise impacts.

Surface water management

A key policy objective for the Bill is the creation of an integrated and coordinated approach to dealing with all sources of flooding. This is particularly the case in urban areas where there is currently a complex interaction between different components of the drainage system and fragmented responsibilities. The existing arrangements can lead to piecemeal investment and a lack of coordinated actions. Future impacts of climate change, which include increased frequency of high intensity rainfall, could further increase the risks of pluvial and sewerage flooding caused by surface water runoff.

Responsibilities for managing surface water in urban areas are principally split between local authorities and Scottish Water. Scottish Ministers (through Transport Scotland) also have responsibilities for drainage of surface water from major trunk roads, while SEPA has responsibility for environmental protection. These arrangements for managing surface water can create several inefficiencies in the system which can act as barriers to a more sustainable approach.

Based on past experiences and case studies, the keys to developing an integrated approach to managing surface water are:

1. availability of reliable data on which to base decisions;
2. a basis for collaborative working and production plans to manage risk;
3. a clear leader in the process, complemented by clear responsibilities for those involved.

We believe that the third point is addressed by the Bill. Under the Bill provisions, SEPA will be responsible for district flood risk management plans while local authorities will be responsible for local flood risk management plans. Local flood risk management plans will provide a basis for local authorities, SEPA, Scottish Water and others to coordinate their efforts to manage surface water flooding. Local authorities and Scottish Water will be ultimately responsible for the majority of measures to tackle surface water flooding. As the lead authority for local flood risk management plans, local authorities would be expected to lead on surface water flooding issues. To support collaborative working, the Bill sets out clear consultation exercises, provision for advisory groups and a general duty to cooperate and coordinate the exercise of flood risk management functions.

We are considering some minor amendments to the Bill to (i) ensure the provision of high quality information on flooding and drainage assets, (ii) clarify who will be responsible for assessing sewerage flooding and (iii) strengthen the basis for collaborative working.

(i) Provision of information on flooding and drainage assets

Reliable information on the location, condition and ownership of existing flood risk management measures, including information on drainage assets and watercourses, would:

- assist in the identification of measures to manage flood risk;

- assist in the preparation of maintenance schedules and coordination of maintenance efforts; and
- Identify any ownership/maintenance responsibilities that need to be addressed.

Different organisations already hold some of this information but it is held in different forms and has never been collated. We are considering amendments that would impose an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas, including information on the condition and ownership of certain drainage structures. The information would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968, as amended by the Water Industry Scotland Act 2002, which includes a map of sewers drains and sewerage treatment works for which they have responsibilities.

The information would need to be made available, in map form, to SEPA and other responsible authorities. We feel it would also be sensible for this new duty to work alongside the current duty on local authorities to assess watercourses to ascertain the risk of flooding, which is in Section 56 of the Bill. This would enable the development of a more rounded picture of the overall flood risk in a local authority area.

(ii) Assessing sewerage flooding

Under the current Bill provisions, SEPA are responsible for producing maps to comply with the Directive. To support production of these maps, the expectation is that SEPA will need to rely on information provided by other organisations, and in particular information on sewerage flooding from Scottish Water. SEPA have powers under the Bill to request information from other organisations to support their flood risk assessment, mapping and planning work.

Assessing sewerage flooding will be an important but challenging task. Scottish Water are recognised as being best placed to undertake this work and already prepare basic assessments of sewerage flooding as part of their work to remove properties from the 'at risk' register.

We are considering requiring Scottish Water, to, where practicable, prepare assessments of where their sewerage network might discharge sewage contaminated floodwater during a pluvial event, and to share this information with SEPA and other responsible authorities. This information will need to be incorporated in maps prepared by SEPA to comply with the Directive and so will need to be in a form that will ensure that the outputs from this assessment could be integrated with other assessments and maps prepared by SEPA. We would expect that further guidance or Ministerial Direction would be required to ensure that local authorities, SEPA and Scottish Water take a broadly similar technical approach to assessing flood risk.

(iii) Coordination of efforts to assess/manage surface water (pluvial flooding)

The Bill requires Ministers, SEPA, and responsible authorities to co-operate with each other so as to coordinate the exercise of their respective functions (section 1(2)(c)). Cooperation will be essential when assessing and managing pluvial flooding, including the contribution of sewerage flooding.

The duty to co-operate would apply to assessing and managing pluvial and sewerage flooding. However, to ensure that this work is fully coordinated, we are considering strengthening the cooperation and coordination provisions to ensure that an integrated approach to assessing and managing pluvial flooding and sewerage flooding is delivered.

Preparation of other types of flood maps

Although SEPA will be responsible for meeting the mapping requirements of the Directive, local authorities will often need to undertake additional, more detailed and targeted mapping exercises to allow them to identify the right combination of local measures to address flood risk.

We are considering amendments that may help to clarify the roles and linkage we envisage, for example the preparation by local authorities of supplementary maps to support the identification of measures, that where these maps are intended to help to tackle pluvial flooding, their preparation should be coordinated with work undertaken by Scottish Water and that SEPA should also consider any supplementary maps prepared by local authorities when reviewing the maps it has prepared to comply with the Directive.

Flood probabilities and mapping

Section 18(8) of the Bill allows the Scottish Ministers to specify what constitutes low probability, medium probability and high probability. “Medium probability” must involve a return period of 100 years or more. This is based on the Directive, which defines medium probability floods by reference to return periods.

Return periods can sometimes give the false impression that only one “50 year flood” will occur within each 50 year period. They can also be confusing when referring to low and high probabilities. For example, although 500 is a much higher number than 50, a flood with a 50 year return period is one with a fairly high probability whereas a flood with a 500 year return period is one with a much lower probability.

It is becoming more common to refer to an annual probability of recurrence, expressed as a percentage, rather than to return periods. This is thought to be easier to explain to the public and less likely to cause confusion than references to return periods.

We intend to amend the definition of “medium probability” in subsection 18(8) to provide that the Scottish Ministers can specify as “medium probability”, floods with an annual probability of recurrence of not more than 1%.

Other amendments under consideration

Section 1 (General duty to reduce overall flood risk). The Bill establishes a framework in which key public bodies and stakeholders can work together to prepare plans to reduce overall flood risk. The intention is for flood management measures identified in plans to be followed through to implementation. To ensure that plans form the basis for on-the-ground action, the Bill places a general duty on Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to act with a view to reducing overall flood risk.

The Bill also requires local authorities to prepare an implementation strategy. The implementation strategy will serve two purposes: first, it will ensure that the objectives and measures set out in the district and local plans are realistic and supported by a clear pathway to implementation; and second, it will provide a clear requirement for all bodies involved in delivering flood risk management to come together to negotiate and coordinate their efforts to deliver the measures set out in flood risk management plans.

The Bill does not require that measures are implemented. If there was a duty on local authorities to deliver the measures in a flood risk management plan, this could be seen as superseding all those other areas where local authorities have to provide a service, but where no similar duty to implement exists.

We are, however, considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans. More specifically, we are considering a general provision that would complement the existing provision within the Bill that ensures that the exercise of local authority powers to undertake measures to manage flood risk is limited to actions that will contribute to the delivery of objectives set out in the relevant flood risk management plan. This limitation would not apply in the case of emergency works or to measures that would not hinder delivery of objectives set out in the relevant flood risk management plan.

Section 13 (local plan districts). The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding. The Bill currently requires SEPA to identify local plan districts for the purpose of preparing local flood risk management plans. In identifying these areas, SEPA must have regard to the flood risk assessment (section 9) which includes maps of river basins and sub-basins.

Although the clear intention is that catchments (sub-basins) would form the basis of the local plan districts identified by SEPA, we are considering an amendment that would clarify the basis on which SEPA are to identify local plan districts.

Section 62 (Advice to planning authorities). At present, section 62 does not limit the scenarios under which SEPA should be expected to provide advice to planning authorities on flood risk. To ensure that SEPA's role is clear, we are considering refining the duty to it make clear that advice only has to be provided in relation to development planning. This would limit SEPA's role to providing advice on individual development proposals and development plans.

Appendix 2

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

FLOODING AND FLOOD MANAGEMENT INQUIRY

SUMMARY OF RECOMMENDATIONS

Recommendation 1: The Committee strongly recommends that the Scottish Government fully consider the recommendations contained within this report before introducing its bill on flooding and flood management. [Paragraph 14 of the Inquiry Report]

Recommendation 2: The Committee recommends that the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding. [Paragraph 57]

Recommendation 3: The Committee recommends that the Scottish Government conduct an assessment of the resilience of national infrastructure to potential storm surge events, especially given that storm surges and related coastal flooding are likely to increase in the future. [Paragraph 61]

Recommendation 4: The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs, as well as the economic costs, of flooding can be included in future assessments of the value of proposed flood management measures. [Paragraph 74]

Recommendation 5: The Committee recommends that the Scottish Government establish how it can best contribute to building capacity in hydrological expertise. [Paragraph 80]

Recommendation 6: The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management. [Paragraph 100]

Recommendation 7: The Committee recommends that SEPA should be given the role of competent authority and take the lead at a national level in flood risk management, with suitable further safeguards to its independence. [Paragraph 113]

Recommendation 8: The Committee recommends that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans. [Paragraph 119]

Recommendation 9: The Committee recommends that the Scottish Government place significantly greater emphasis on pluvial flood management in setting future objectives for Scottish Water. [Paragraph 136]

Recommendation 10: The Committee recommends that the Scottish Government set out a national, strategic “road-map” for investment in flood management that

looks forward over a period of at least 25 years, with provision for updating every parliamentary session. [Paragraph 139]

Recommendation 11: The Committee recommends that the Scottish Government publishes clear criteria for prioritising the funding for future flood management. [Paragraph 150]

Recommendation 12: The Committee recommends that needs-based funding should be provided to local authorities in order that they can contribute to catchment flood management plans and believes the funding method adopted should embrace the three distinct levels of funding set out at paragraph 145. [Paragraph 151]

Recommendation 13: The Committee recommends that the Scottish Government consider where there is scope for different approval processes to be established for different scales of flood management measure; that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions. [Paragraph 162]

Recommendation 14: The Committee recommends that the Scottish Government establishes further pilot studies to assess the contribution that natural flood management measures can make at a catchment scale. [Paragraph 175]

Recommendation 15: The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale. [Paragraph 177]

Recommendation 16: The Committee recommends that local authorities ensure that, when planning permission is granted for new developments incorporating sustainable urban drainage systems, and where Scottish Water is not adopting the system, an appropriate maintenance regime is a requirement of the planning permission. [Paragraph 184]

Recommendation 17: The Committee recommends that, given the importance of land-use management, the Scottish Government should ensure it has the power to require changes to land use for flood management purposes. Such a power would have to be accompanied by a provision for landowners to be compensated. [Paragraph 199]

Recommendation 18: The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas at risk of flooding. [Paragraph 209]

Recommendation 19: The Committee recommends that the Scottish Government ensure that the suggestion of enhanced reinstatement following flooding is communicated to representatives of the insurance industry and should seek to persuade the insurance industry that it is the best way to minimise the cost implications of further flooding incidents. [Paragraph 220]

Recommendation 20: The Committee recommends that the Scottish Government develops a flood warning strategy and, in doing so, addresses SEPA's other eight recommendations regarding flood warning. [Paragraph 233]

Recommendation 21: The Committee recommends that the Scottish Government take steps, including by making representations to the UK Government, to ensure that high-resolution radar coverage is established throughout Scotland to ensure that flood warning is as effective as possible. [Paragraph 238]

Recommendation 22: The Committee recommends that the Scottish Government ensures that SEPA has the necessary funding to enable it to collaborate with the Meteorological Office to provide an effective flood warning system for all types of flooding. [Paragraph 240]

Recommendation 23: The Committee recommends that the Scottish Government investigates the possibility of individual property vendors providing information on previous flooding incidents associated with a particular property to potential purchasers and requiring developers to provide flood risk assessments for new developments to potential purchasers. [Paragraph 243]

Recommendation 24: The Committee recommends that the Scottish Government takes steps, together with SEPA, local authorities, the emergency services and the insurance industry, to consider how it can educate members of the public at risk of flooding of how they can best protect themselves and their property. [Paragraph 248]

Recommendation 25: The Committee recommends that the fire and rescue service be tasked with coordinating all flood-related rescue activities. [Paragraph 251]

Recommendation 26: The Committee recommends that the Scottish Government explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency. [Paragraph 254]

ANNEXE A: REPORT FROM SUBORDINATE LEGISLATION COMMITTEE
FLOOD RISK MANAGEMENT (SCOTLAND) BILL

The Committee reports to the lead committee as follows—

Introduction

1. At its meetings on 4 November¹ and 2 December 2008² the Subordinate Legislation Committee considered the delegated powers provisions in the Flood Risk Management (Scotland) Bill at Stage 1. The Committee submits this report to the Rural Affairs and Environment Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (DPM).³
3. The Committee's correspondence with the Scottish Government is reproduced in the [Appendix](#).

Delegated Powers Provisions

4. This Bill relates to flooding but it is limited to matters occurring before an actual flood and does not (except incidentally) deal with the response to flooding. There are many provisions in the Bill which delegate powers to make subordinate legislation.
5. The Committee considered each of the delegated powers provisions in the Bill.
6. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following sections: 8(1)(b); 9(4)(a)(iii); 11; 15; 18(1)(b)(iv); 18(8)(a); 19(2)(f); 22; 23(5)(b); 26; 27; 28; 30; 31; 33; 35(1); 48(2); 52(2)(b); 53(7); 54; 65; 86(1); Schedule 2, paragraph 1(1)(f)(vii) and Schedule 2, paragraph 14(1).

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Power to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

7. Section 1 of the Bill imposes a general duty upon the Scottish Ministers, the Scottish Environment Protection Agency (SEPA) and responsible authorities (which are defined in section 5 as local authorities, Scottish Water and any other public body or office-holder so designated by the Scottish Ministers by order), The general duty requires them to exercise their flood related functions with a view to

¹ [Official Report 4 November](#)

² [Official Report 2 December 2008](#)

³ [Delegated Powers Memorandum](#)

reducing overall flood risk and, in particular, to exercise their functions under Part 3 of the Bill so as to secure compliance with the Flooding Directive.⁴ This general duty appears to be the basic mechanism for ensuring that these public bodies operate so as to reduce flood risk and deliver the requirements of the Flooding Directive. It seems to be a matter of general principle underpinning the Bill.

8. This general duty only attaches to flood risk related functions of the relevant bodies. Subsection (3) defines “flood related functions” for these bodies. It identifies the specific functions under the Bill which are flood risk related functions and confers power on the Scottish Ministers to specify any further powers (under the Bill or any other enactment) as flood risk related functions.

9. The Committee asked the Government to explain why this power to specify flood risk related functions is not itself subject to the general duty in section 1 of the Bill. To set this question in context, the functions of the Scottish Ministers under Parts 2 to 5 of the Bill, including the power to designate public bodies as responsible authorities are flood risk related functions. However, the power to specify additional flood risk related functions (either of the Scottish Ministers or responsible authorities) is set out in Part 1 of the Bill and so is not currently a flood risk related function or subject to the overarching duty in section 1. It appeared to the Committee that specification of responsible authorities and their flood risk related functions and the issuing of mandatory directions and guidance in relation to their exercise of those functions are interconnected. It was not clear whether it was a drafting oversight to make designation of responsible authorities subject to the duty but not their functions or powers of direction or to issue guidance.

10. The Scottish Government responded that this function is not subject to the general duty in section 1 to act with a view to reducing overall flood risk as it would have “limited practical impact” upon the function. The Government also stated that applying the general duty to this function would create scope for confusion as to whether the duty had been complied with in the exercise of the function which is not outweighed by the benefits of applying the general duty to the function. The Government also comments that it may be circular to apply the general duty in section 1 to this function.

11. The Scottish Government did not explain why it considers that applying the general duty to act with a view to reducing overall flood risk would be of “limited practical effect”, particularly in the circumstances where the power to designate other bodies as responsible authorities is already subject to the general duty. It was the Committee’s view that there must be a practical effect in specifying that the delegated power in section 5 to specify other public bodies and office-holders as responsible authorities is subject to the section 1 general duty to reduce overall flood risk. The restriction on the use of this delegated power by the Scottish Ministers (through the application of the general duty) offers comfort to the Parliament (and potentially affected bodies) that the power will be exercised appropriately and that only bodies with the potential to contribute to a reduction in the overall flood risk will be designated as responsible authorities. On this basis, it

⁴ Directive 2007/60/EC of the European Parliament and of the Council on the assessment and management of flood risks

is not clear why there would be limited practical effect in providing that the delegated power to specify additional functions of responsible authorities is subject to the general duty to act with a view to reducing overall flood risk. If it is appropriate that the designation of responsible bodies should be subject to the general duty, it is not clear to the Committee why the specification of responsible authorities' functions as flood risk related functions should not also be subject to the general duty.

12. Furthermore, the Committee did not consider that the Government's point that the application of the general duty to this delegated power relating to the specification of flood risk related functions introduces confusion as to whether the duty had been complied with has merit. Were the function to be subject to the general duty then Ministers would discharge that duty through a reasoned explanation for their actions based on the impact (or potential impact) on overall flood risk and delivery of the requirements of the Flooding Directive.

13. The Committee accepted that there would be a certain circularity in applying the general duty to the Scottish Ministers' exercise of the power to specify their own flood risk related functions where the effect of specifying additional functions as flood related functions means that the general duty applies to the exercise of those functions. However, the Committee did not consider that this potential circularity applies to the application of the section 1 general duty to the exercise of the Scottish Ministers' power to specify additional functions of SEPA or responsible authorities as flood risk related functions.

14. The Committee reports this power to the lead committee on the basis that it may wish to consider whether the Scottish Ministers' powers under section 1(3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) (to specify additional functions of SEPA and the responsible authorities as flood risk related functions) should be specified as "flood risk related functions" of the Scottish Ministers in section 1(3)(a)(i). The result would be that, in exercising these powers, the Scottish Ministers must act in accordance with the general duty in section 1 to reduce overall flood risk and secure compliance with the Flooding Directive.

Section 2(1) – Directions and guidance

15. Section 2(1) provides that the Scottish Ministers may give directions (whether general or specific) and any guidance to SEPA or any responsible authority in relation to the exercise of its flood related functions. Subsection (2) provides that SEPA and the responsible authorities must comply with any such directions and have regard to any such guidance.

16. The Committee asked the Government to explain why this function (of giving directions and guidance) is not subject to the general duty in section 1. For the reasons set out in relation to section 1(3) above, the Committee considered that it would be appropriate for the power to issue directions or guidance, which is binding on the responsible authorities and SEPA in relation to their flood risk related functions, to be subject itself to the requirements of the general duty. This

would provide a limit on the use of this power which is consistent with the general principles of the Bill.

17. The Minister responded that he is happy to consider amending the Bill to provide that the general duty in section 1 applies to the issue of such directions and guidance by the Scottish Ministers.

18. The Committee also asked the Government to consider amending the Bill to provide that this direction-making power is exercisable only after consulting with SEPA and/or any responsible authority about the proposed directions. The Minister again agreed to consider amending this power to provide for consultation with SEPA and/or responsible authorities about the proposed directions.

19. The Committee therefore recommends that the Scottish Government give further consideration to amending the Bill to—

(a) apply the general duty to reduce overall flood risk (in section 1) to the exercise of this power; and

(b) provide that the direction-making is exercisable only after consulting with SEPA and/or any responsible authority about proposed directions in light of their impact upon the exercise of these bodies' functions; and reports to the lead committee accordingly.

Section 5(c) – Power to designate “responsible authorities”

20. Section 5(c) allows the Scottish Ministers to designate public bodies and office-holders as a “responsible authority” by order. Section 1 of the Bill imposes a duty upon responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, to exercise their functions under Part 3 of the Bill so as to secure compliance with the Flooding Directive. Responsible authorities are also consultees of SEPA and of local authorities in relation to the preparation of flood risk management plans and local flood risk management plans respectively. In addition, the Bill imposes duties upon responsible authorities to (a) provide information, documents and assistance to SEPA in connection with SEPA’s preparation and review of flood risk assessments, flood hazard and flood risk maps and flood risk management plans and (b) provide information, documents and assistance to local authorities in connection with their preparation of local flood risk management plans.

21. Local authorities and Scottish Water are already specified as responsible authorities on the face of the Bill (section 5). The DPM explains that, whilst it might be appropriate in the future to designate additional bodies or office-holders as responsible authorities under the Bill, this could only be done with “extensive consultation” with those organisations that might be affected by such designation.

22. The Committee considered the delegation of this power to be acceptable in principle, acknowledging that it would be difficult to specify each of the responsible authorities on the face of the Bill and that these may change over time. The Committee also considered that negative resolution procedure provides the

appropriate level of Parliamentary scrutiny in the circumstances where the remit of responsible authorities is largely defined in the Bill and the Scottish Ministers are obliged to exercise this delegated power in accordance with their section 1 general duty.

23. However, in light of the Government's apparent intention to conduct "extensive consultation" with any body proposed as a responsible authority, the Committee asked the Government to consider amending the Bill so that that this power is subject to an obligation to consult with affected organisations before its exercise. The Minister responded that he is willing to consider amending the Bill to provide that this power is subject to an obligation to consult appropriately before its exercise.

24. The Committee recommends that the Scottish Government give further consideration to amending the Bill to provide that this power is subject to an obligation to consult appropriately before its exercise, particularly in light of its apparent intention to conduct "extensive consultation" with any body which it proposes to specify as a responsible authority. The Committee reports this to the lead committee accordingly.

Section 9(2) – SEPA to prepare flood risk assessments

25. Section 9(2) provides that a flood risk assessment must be prepared by SEPA by 22 December 2011 (which is the deadline imposed by Article 4(4) of the Flooding Directive) or an earlier date as directed by the Scottish Ministers.

26. This direction appears to the Committee to be of an administrative nature and there appears to be no need for the direction-making power to be incorporated in any form of delegated legislation.

27. However, this power enables the Scottish Ministers to direct that SEPA must prepare a flood risk assessment earlier than 22 December 2011, which is the deadline imposed by the Flooding Directive. In light of the better regulation agenda, which is critical of implementation which goes beyond the minimum necessary to comply with the requirements of Community legislation and the lack of explanation by the Government as to the potential use of this direction-making power, the Committee asked the Government to explain the circumstances in which it envisages using this delegated power to direct SEPA to prepare a flood risk management plan before the deadline given in the Flooding Directive (i.e. 22 December 2011). The Committee also asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise.

28. The Scottish Government explained that this direction-making power would only have been exercised if it was practicable for SEPA to prepare flood risk assessments early and the power was included in case early availability of flood risk assessment would facilitate the identification of potentially vulnerable areas under section 13 of the Bill or the preparation of other information under the Water Environment and Water Services (Scotland) Act 2003. However, in his response, the Minister indicated that, upon further consideration of this section, he is considering whether to remove the flexibility for Ministers to direct SEPA to

prepare flood risk assessments prior to 22 December 2011 on the basis that it is unlikely to be practicable for this work to be delivered before 2011.

29. In light of the Minister's response, the Committee agreed to reconsider this aspect of the Bill after Stage 2 to assess whether this direction-making power has been removed from the Bill. It therefore reports this to the lead committee accordingly.

Section 10(1)(a) – Flood risk assessments: review

30. Section 10(1)(a) provides that SEPA must review and, where appropriate, update each flood risk assessment prepared under section 9 of the Bill by 22 December 2018 (which is the deadline imposed by Article 14(1) of the Flooding Directive) or an earlier date as directed by the Scottish Ministers.

31. As with section 9(2), this direction-making power appears to be of an administrative nature and there appears to be no need for this power to be incorporated in any form of delegated legislation.

32. The Committee asked the Government to explain the circumstances in which it envisages using this delegated power to direct SEPA to review (and update) each flood risk assessment before the deadline given in the Flooding Directive (22 December 2018). In addition, in light of the potential impact of the imposition of an earlier deadline upon SEPA and its organisational planning, the Committee asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise.

33. The Scottish Government explained that this direction-making power is required as the flood risk management planning process requires preparation of various pieces of information by dates specified by the Community and the preparation of information under this Bill will need to be co-ordinated with information prepared under the Water Environment and Water Services (Scotland) Act 2003. It also explained that the information provided under flood risk assessment reviews may inform spending decisions by other organisations.

34. The Government also explained that a requirement to formally consult with SEPA before exercising this direction-making power may introduce delays into a tight timetable of deadlines. The Minister confirmed that he is confident that informal discussion will take place with SEPA about the direction of dates in any event.

35. In light of the Government's explanation that this direction-making power will provide Ministers with the flexibility to direct SEPA to prepare a flood risk assessment review before 22 December 2018 where it is apparent that this information would assist in the co-ordination of flood risk management with other planning and investment cycles, the Committee considers this direction-making power acceptable in principle.

36. The Committee also draws the Scottish Government's response that a formal consultation requirement would impinge upon an already tight

timetable of deadlines to the attention of the lead committee. The lead committee may wish to consider whether this power to direct that a review is to be conducted earlier than required under the Flooding Directive should be subject to a consultation requirement.

Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts

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

Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features

37. Section 13(1) provides that SEPA must prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area in the district for which it considers that significant flood risk exists or is likely to occur. Subsection (2) provides that this document must be submitted to the Scottish Ministers by such date as directed by the Scottish Ministers and after SEPA has carried out any consultation required under regulations made under section 15 relating to the preparation of the document.

38. Section 14(1) provides that, after carrying out such consultation as may be required by regulations under section 15, SEPA must—

(a) review and (where appropriate) update the document approved under section 13 (which identifies potentially vulnerable areas and local plan districts) by such date as the Scottish Ministers may direct; and

(b) review and (where appropriate) update the latest review document approved under section 14 by the end of the period of 6 years and by the end of each subsequent period of 6 years (or, in each case, by such lesser period as directed by the Scottish Ministers).

39. Section 16(1) provides that SEPA must, by such date as the Scottish Ministers direct, assess whether alteration (including enhancement) or restoration of natural features in a flood risk management district (for example flood plains, wetlands or woodlands) could contribute to the management of flood risk for the district. Subsection (2) provides that SEPA must (a) by such date as the Scottish Ministers direct, review and (where appropriate) update its assessment under subsection (1); and (b) by the end of the period of 6 years beginning with that date, and of each subsequent period of 6 years (or, in each case, such lesser period as the Scottish Ministers may direct) review and (where appropriate) update the latest assessment reviewed under this subsection.

40. The Committee considered that these direction-making powers appear to be of an administrative nature and there appears to be no need for the direction-making powers to be incorporated in any form of delegated legislation.

41. As the exercise of these direction-making powers will oblige SEPA to carry out various acts by a certain date and may have resource implications for the

organisation, the Committee asked the Government to consider making these powers subject to a requirement to consult with SEPA before its exercise. The Minister responded that he does not consider it appropriate for these direction-making powers to be subject to a requirement to consult with SEPA before their exercise as this may introduce delays into a tight timetable of deadlines. He also indicated that he is confident that informal discussion between the Government and SEPA on the direction of dates will take place in any event.

42. The Committee draws to the attention of the lead committee the Scottish Government's response that it considers that a formal consultation requirement would impinge upon an already tight timetable of deadlines. The lead committee may wish to give further consideration to whether these direction-making powers should be subject to a consultation requirement with SEPA.

Section 18(4), (5) and (6) – Flood hazard maps

43. Section 17 provides that SEPA must prepare flood hazard maps by 22 December 2013, for the potentially vulnerable areas in each flood risk management district, at the appropriate scale, and so as to secure that the maps for the district cover all such vulnerable areas.

44. Section 18(1) provides that the following information must be shown in flood hazard maps:

(a) the geographical areas which could be flooded by floods of low probability (or which would be an extreme event); floods with a medium probability; and floods with a high probability; and

(b) the following elements for those types of flood: the flood extent; water depths or water level (whichever is appropriate); where appropriate, the flow velocity or the relevant water flow; and such other elements as the Scottish Ministers may specify by regulations.

45. The Bill also sets out derogations (which are permitted by the Flooding Directive, Articles 6(6), 6(7) and 2 respectively) from these requirements providing that information may be omitted from flood hazard maps in relation to the following circumstances: where SEPA considers that the coastal area concerned is adequately protected from such floods (section 18(3)(a) and (4)); high and medium probability flooding from groundwater (section 18(3)(b) and (5)); and floods from sewerage systems (section 18(3)(c) and (6)). However, in each case, this information may be included if SEPA considers it appropriate/practicable to do so and must be included if the Scottish Ministers direct SEPA to do so.

46. The Committee considered that these direction-making powers are administrative in nature as they compel SEPA to include information in flood hazard maps about certain types of flooding in certain areas where it is not otherwise required to do so by the Bill (as the Bill exercises derogations which are available under the Flooding Directive). It was therefore considered that there is no requirement for these powers to take the form of delegated legislation.

47. However, it was noted that the exercise of these direction-making powers impose additional obligations upon SEPA and could have resource implications for the organisation. The Committee therefore asked the Scottish Government to consider making these powers subject to a requirement to consult with SEPA before its exercise. In his response, the Minister indicated that he is happy to consider making these powers subject to a requirement to consult with SEPA before their exercise as the Government acknowledges that the exercise of these powers involve directing SEPA to undertake assessments in a particular manner and that prior consultation with SEPA may help ensure that it is practicable for SEPA to prepare this information.

48. The Committee recommends that the Scottish Government give further consideration to amending the Bill to introduce a requirement to consult with SEPA, as the exercise of these powers will impose additional obligations upon SEPA which may have resource implications for the organisation. It reports this to the lead committee accordingly.

Section 23(2) – SEPA to prepare flood risk management plans

49. Section 23(2) provides that a flood risk management plan must be submitted by SEPA to the Scottish Ministers by such date as the Scottish Ministers direct. This direction-making power is limited by subsection (3) which provides: “The date by which SEPA is directed to submit the plan must be a date that the Scottish Ministers consider allows them sufficient time to approve the plan by 22nd December 2015.” (We note that 22 December 2015 is the deadline for completion and publication of flood risk management plans imposed upon Member States by Article 7(5) of the Flooding Directive).

50. The Committee considered that this direction-making power, which allows the Scottish Ministers to impose a deadline upon SEPA for the submission of a flood risk management plan, is of an administrative and there is therefore no requirement for the power to be incorporated in any form of delegated legislation.

51. As the exercise of this direction-making power will oblige SEPA to prepare a flood risk management plan before the deadline set out on the face of the Bill and may have resource implications for the organisation, the Committee asked the Government to consider making this power subject to a requirement to consult with SEPA before its exercise. The Minister responded that he does not consider it to be appropriate for this direction-making power to be subject to a requirement to consult with SEPA before its exercise as this may introduce delays into a tight timetable of deadlines. The Minister also indicated that he is confident that informal discussion between the Government and SEPA on the direction of dates will take place in any event.

52. The Committee draws to the attention of the lead committee the Scottish Government’s response that it considers that a formal consultation requirement would impinge upon an already tight timetable of deadlines. The lead committee may wish to give further consideration to whether this power

to direction-making power should be subject to a consultation requirement with SEPA.

Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

53. Section 29(1) imposes a duty upon the relevant local authority to prepare a local flood risk management plan for each local plan district. (A local plan district is the geographical area(s) around potentially vulnerable areas identified by SEPA for the purpose of preparing local flood risk management plans.)

54. Section 29(6) confers a delegated power on the Scottish Ministers to, by regulations, specify additional matters which must be included in local flood risk management plans.

55. It was not clear from the DPM how the Scottish Ministers intend to use this delegated power to make regulations specifying additional matters to be included in local flood risk management plans. The DPM merely provides: “The intention is to use regulations to specify aspects of the content of local plans. This approach will allow the Scottish Government to put in place a detailed set of provisions that have been developed after thorough consultation.” The Committee sought a more detailed explanation from the Government of the nature of the additional matters which the Scottish Ministers intend to specify by regulations as being required in a local flood risk management plan and detail which person(s) or bodies are to be consulted by the Scottish Ministers in this regard.

56. In its response, the Government states that this power will be used to specify further details on the structure and content of local flood risk management plans with a view to ensuring that they are prepared in a consistent manner across Scotland and that they are co-ordinated with the flood risk management plans prepared by SEPA. The Government provided the following examples of the matters to be specified in these regulations:

- details of steps to be taken to ensure coordination with flood risk management plans prepared by SEPA;
- details on how information should be prepared or presented, particularly where information is supplemental to the information in the flood risk plans prepared by SEPA; and
- dates by which key steps in the plan should be completed.

57. The Government also confirmed that it intends to conduct a full and thorough consultation exercise with local authorities, SEPA, Scottish Water and other responsible authorities and stakeholders before exercising this power to make regulations.

58. The Committee reports that it considers that this power should be subject to a requirement to consult with local authorities and other appropriate bodies including SEPA and Scottish Water.

59. **The Committee also reports that it considers that the power conferred by section 29(6) allows Ministers, by regulations, to specify other matters which must be included in a local flood risk management plan. The Committee queried whether it is within the vires of this proposed delegated power to make provisions as to the structure of such plans and the procedural steps that must be taken in the course of their preparation. The Committee draws this matter to the attention of the lead committee, which may wish to consider it further.**

Section 44(1) – Power to give effect to Community obligations etc.

60. Section 44(1) confers a power on the Scottish Ministers to, by regulations, modify Part 3 of the Bill for the purpose of giving effect to any Community obligation or exercising any related derogation or other right to make more onerous provisions, which are available in respect of that obligation (referred to as “related rights”). Part 3 of the Bill is mainly concerned with implementing the Flooding Directive but it does go further than the Directive itself.

61. The Committee recognised that this is a very wide power as the only limitation upon the use of the power is that modification Part 3 of the Bill must be required in order comply with a Community obligation or related right. Furthermore, it was proposed that the exercise of this “Henry VIII” power (which permits modification of the provisions of Part 3 of the Bill by way of regulations) should attract only negative procedure. The Committee asked the Government to consider amending the Bill to provide that this power to modify Part 3 is subject to affirmative rather than negative procedure in light of the presumption in favour of affirmative procedure where a provision in a Bill enables primary legislation to be amended or repealed by subordinate legislation.

62. The Minister confirmed in his response that he is happy to amend the Bill to provide that this power should be subject to affirmative procedure.

63. The Committee welcomes the Government’s agreement to amend the Bill to provide that this power will be subject to affirmative rather than negative procedure. The Committee will reconsider this power at Stage 2 to ensure that this amendment has been made to the Bill.

Section 52(4) – Power to amend flood protection scheme making process

64. Schedule 2 to the Bill sets out further provision about the making of flood protection schemes.

65. Section 52(4) confers power on the Scottish Ministers to, by order, modify the procedure for making flood protection schemes which is set out in schedule 2 to the Bill.

66. The Committee considered this delegated power to be acceptable in principle and that it is appropriate for it to be subject to affirmative procedure where it provides for modification of the procedure specified in primary legislation.

67. However, as this power to modify the procedure for making flood protection schemes will impact upon the local authority seeking to make the flood protection scheme and may impact upon consultees if the notice and consultation arrangements are amended, the Committee asked the Government to consider amending the Bill to require consultation with affected parties (especially local authorities) before the exercise of this power. The Minister responded that he would be happy to amend the Bill to require consultation with persons to be specifically affected by the proposed exercise of the power, for example local authorities and agents of local authorities.

68. The Committee welcomes the Scottish Government's commitment to amend the Bill to provide that the exercise of this power is subject to a requirement to consult with those parties to be specifically affected by the exercise of the power, such as local authorities and agents of local authorities.

69. The Committee also recommends that the Scottish Government, in considering the amendment to this power, give careful consideration to whether other notifiable bodies (such as SEPA, responsible authorities, National Park authorities, statutory undertakers and Scottish Natural Heritage), whose interests may be affected by any proposed change to flood protection scheme making process, should also be consulted before the exercise of this power. The Committee reports to the lead committee accordingly.

**Section 77 (inserting a new section 12ZA into the Reservoirs Act 1975) –
Power to make provision for reporting incidents relating to reservoir safety**

70. Part 7 of the Bill relates to reservoir safety. Section 77 inserts a new section 12ZA (incident reporting) into the Reservoirs Act 1975 ("1975 Act"). New section 12ZA(1) of the 1975 Act confers power on the Scottish Ministers to, by regulations, make provision for the reporting to the enforcement authority (SEPA) of incidents occurring at large raised reservoirs.

71. New section 12ZA(2)(d) of the 1975 Act provides that regulations (making provision for the reporting to SEPA of incidents occurring at large raised reservoirs) made by the Scottish Ministers under subsection (1) may require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by SEPA or the Scottish Ministers. The Committee sought further information from the Government as to the likely content of any such guidance in the circumstances where no information as to the kind of guidance to be issued by SEPA or the Scottish Ministers had been provided.

72. In his response, the Minister indicated that he envisages that the guidance on post-incident reporting will broadly mirror that which the Environment Agency produced in 2007 for England and Wales and will include the following details:

- guidance on who an undertaker (or other person) should speak to if they have concerns about the state of their reservoir and how to report the onset of an incident;

- guidance on who should provide information post-incident and to whom;
- full contact details for the enforcement authority;
- examples of completed post-incident reporting forms to assist those reporting post-incident;
- information on next steps (for example, setting out that the enforcement authority may wish to contact the undertaker to discuss the incident further for knowledge gathering purposes);
- general questions and answers on aspects of reservoir safety legislation (for example, how someone can find a panel engineer).

73. The Committee was content, based upon the Government’s response that the proposed guidance on incident reporting will concern practical matters relating to the response to an incident having occurred at a large raised reservoir and that it is appropriate that a power be conferred upon SEPA and the Scottish Ministers to issue such guidance to undertakers, supervising engineers and other specified persons.

74. Separately, the Committee was content that the delegated power conferred by section 12ZA(1) of the 1975 Act (to make regulations making provision for the reporting to SEPA of incidents occurring at large raised reservoirs) is acceptable in principle. The Committee also considered it appropriate that this power is subject to affirmative procedure in the circumstances where it is a broad power to set up a wholly new system of compulsory incident reporting at large raised reservoirs which includes the power to create offences and to amend the 1975 Act.

Section 82(1) – Ancillary provision

75. Section 82(1) confers a power on the Scottish Ministers to make incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, the Bill or any provision of the Bill. Section 82(2) provides that an order under subsection (1) may modify any enactment, instrument or document.

76. Section 83 provides that this power is exercisable by negative resolution unless it contains provisions which add to, replace or omit any part of the text of an Act in which case it is subject to affirmative procedure (per section 67(4)(b)).

77. The Committee recognised that this is a wide power to make orders to “modify any enactment, instrument or document” and, as such, it could be used to amend or repeal primary legislation (including the Bill once enacted). However, the Committee recognised that the power could only do so in order to make incidental, supplemental, consequential, transitional, transitory or savings provisions. In addition, Ministers would also require to be satisfied that the provisions were necessary or expedient to deliver the purpose of, in consequence of or to give full effect to the Bill.

78. However, the Parliamentary procedure applicable to orders made under this power depends upon whether textual or non-textual modification of an Act is

provided for in such an order. The Bill provides that only orders which contain provisions which add to, replace or omit any part of the text of an Act are subject to affirmative procedure: non-textual modification of an Act (or any form of modification of an instrument or document) is subject to negative procedure.

79. The Committee recognised that it is possible to modify the effect of an Act using such powers without making textual amendments to it which would add, replace or omit any part of its text. The Committee considered that, whilst this form of modification may be appropriate in limited circumstances such as a transitory provision that was to apply only for a short period when moving over to the new statutory regime, there may be concerns as to transparency and the proper role of Parliament as guardian of primary legislation were the power to be used in this way for a more significant amendment. The Committee therefore asked the Government—

(a) whether it is prepared to agree that any modification of primary legislation however effected should be subject to affirmative procedure; and

(b) if not, whether it will give an undertaking that any significant or permanent modifications made to enactments using this power will be effected through textual amendment and so subject to affirmative procedure?

80. The Minister stated in his response that non-textual modification is normally confined to modifying particular pieces of text for certain limited circumstances, application or adaptation and that negative procedure is usually appropriate in relation to such modification. However, the Minister has agreed to give further consideration to this issue and advise the Committee of the outcome of that consideration.

81. The Committee recommends that the Scottish Government give further consideration to agreeing that any modification of primary legislation however effected be subject to affirmative procedure, and reports this to the lead committee accordingly.

82. The Committee will reconsider this power after Stage 2 following notification of the outcome of the Government's further consideration.

Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

83. Paragraph 13 of schedule 2 confers power on the Scottish Ministers to, by regulations, make provision about the consideration to be given to the likely environmental effects of the operations proposed in the flood protection scheme before the scheme is approved under paragraph 4 (decision by the local authority where no valid objections have been received), 7 (Ministerial consideration) or 9 (final decision by the local authority where valid objection received by the Scottish Ministers have not called-in the proposed scheme for consideration). This power is to be subject to negative procedure.

84. The DPM simply states that this power will ensure that “a detailed specialist regime for environmental assessment” can be created which can then be adapted in response to things such as scientific developments or changes in other environmental assessment regimes. In the circumstances, before reaching a view in relation to the appropriateness of this delegated power, the Committee sought further explanation of what kind of provision is likely to be made under this power and, in particular, what form of “detailed specialist regime for environmental assessment” is envisaged.

85. In its response, the Scottish Government stated that it is envisaged that these regulations will require an Environmental Impact Assessment (EIA) to be completed and included as part of the package of documents that will be submitted for flood protection scheme approval. It also indicated that the regulations made under this power will be developed in line with Commission Directive 2003/35/EC on Public Participation (PPD) and EIA requirements.

86. The Scottish Government explained that the regulations to be made under this power, making provision about the consideration to be given to the likely environmental effects of the operations proposed in a flood protection scheme before the scheme is confirmed, will be based upon Community obligations relating to EIA and the PPD.

87. The Committee considered that the delegated power is acceptable in principle as the decision whether or not to confirm a flood protection scheme is an administrative decision. In addition, the Committee considered that negative procedure is the appropriate level of parliamentary procedure in the circumstances where the content of such regulations is likely to be technical in nature and based upon receipt of specialist scientific and technical advice.

APPENDIX

Response from Scottish Government

Flood Risk Management (Scotland) Bill at stage 1

I am writing further to the Committee Clerk’s letter of 4 November to Paul Johnston in which you requested an explanation of specific delegated powers for the above Bill. I hope this response will assist members with their scrutiny.

Section 1(3)(a)(ii), (3)(b)(ii), (3)(c)(ii) and (3)(d)(ii) – Power to specify “flood risk related functions” for the Scottish Ministers, SEPA, local authorities and other responsible authorities

The Committee asks the Scottish Government why this function (of specifying flood risk related functions) is not subject to the general duty in section 1.

This function is not subject to the general duty in section 1 because it was considered that a general duty to act with a view to reducing overall flood risk would have a limited practical impact on the function of specifying flood risk related

functions. There was a risk that applying the general duty would create scope for confusion about whether the duty had been complied with and that risk was not outweighed by clear benefits of applying the general duty.

It might also appear circular to apply a general duty to act with a view to reducing overall flood risk to the function of specifying flood risk related functions, when the purpose of specifying functions would be to apply the general duty to those functions.

I am happy to consider further whether to amend the Bill such that the general duty in section 1 applies to these powers.

Section 2(1) – Directions and guidance

The Committee asks the Scottish Government why the function (of giving directions and guidance) is not subject to the general duty in section 1 and whether the Scottish Government is willing to consider amending the Bill to provide that the direction-making power is exercisable only after consulting with SEPA and/or responsible authorities.

This function is not subject to the general duty in section 1 because there is a risk that applying the general duty would create scope for confusion about whether the duty had been complied with in issuing guidance and directions and that risk was not considered to be outweighed by clear benefits of applying the general duty.

I am happy to consider amending the Bill such that the general duty in section 1 applies to directions and guidance issued by Ministers.

I am happy to consider amending this power to consult, where practicable, SEPA and/or responsible authorities about proposed directions.

Section 5(c) – Power to designate “responsible authorities”

The Committee asks the Scottish Government to consider amending the Bill so that this power is subject to an obligation to consider with affected organisations.

I am happy to consider amending the Bill so that this power is subject to an obligation to consult appropriately before its exercise.

Section 9(2) – SEPA to prepare flood risk assessments

The Committee asks the Scottish Government to explain the circumstances in which it envisages using the delegated power to direct SEPA to prepare a flood risk assessment before the deadline in the Flooding Directive (22 December 2011)

This power was included in case early availability of flood risk assessments would facilitate the identification of potentially vulnerable areas under section 13 of the Bill or the preparation of other information under the Water Environment and Water Services (Scotland) Act 2003. The power would only have been exercised if it was practicable for SEPA to prepare flood risk assessments early.

I have considered this section further and am considering removing the flexibility for Ministers to direct for the flood risk assessment to be prepared prior to December 2011. This is on the basis that it is unlikely to be practicable for this work to be delivered in advance of 2011.

Section 10(1)(a) – Flood risk assessments: review

The Committee asks the Scottish Government: to explain the circumstances in which it envisages using the delegated power to direct SEPA to review and update each flood risk assessment before the deadline in the Flooding Directive (22 December 2018); and to consider making the power subject to a requirement to consult SEPA.

The flood risk management planning process requires preparation of various pieces of information by EC specified dates. The preparation of information needs to be coordinated with information prepared under the Water Environment and Water Services (Scotland) Act 2003. Finally, the information could inform spending decisions by other organisations. This power gives Ministers flexibility to set earlier dates where, for instance, it is apparent that early availability of this information would help in the coordination of flood risk management with other planning and investment cycles.

I have considered the Committee's recommendation to make this power subject to a requirement to consult with SEPA before its exercise. However, I do not consider it appropriate to do so. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 13(2) – SEPA to identify potentially vulnerable areas and local plan districts

The Committee asks the Scottish Government to consider making this power (to direct the date by which a document under this section is to be submitted) subject to a requirement to consult SEPA before its exercise.

I have considered the Committee's recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider it appropriate to do so. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 14(1) – Potentially vulnerable areas and local plan districts: review

The Committee asks the Government to consider making this power (to direct the date by which a document under section 13 must be reviewed and updated) subject to a requirement to consult with SEPA before its exercise.

I have considered the Committee's recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 16(1) and (2) – SEPA to assess possible contribution of alteration etc. of natural features

The Committee asks the Government to consider making these powers (to direct the dates by which an assessment of the contribution of alterations of natural features must be carried out and reviewed) subject to a requirement to consult with SEPA before their exercise.

I have considered the Committee's recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 18(4), (5) and (6) – Flood hazard maps

The Committee asks the Government to consider making these powers (to direct SEPA to include in flood hazard maps information on coastal floods, flooding from groundwater and floods from sewerage systems) subject to a requirement to consult with SEPA before their exercise.

I am happy to consider amending these powers to make them subject to a requirement to consult with SEPA before their exercise. This is because Ministers would be directing SEPA to undertake assessments in a particular manner, and prior consultation with SEPA may help ensure that it is practicable for SEPA to prepare this information.

Section 23(2) – SEPA to prepare flood risk management plans

The Committee asks the Government to consider making this power (to direct the date by which SEPA must submit a flood risk management plan) subject to a requirement to consult with SEPA before its exercise.

I have considered the Committee's recommendation to make the power subject to a requirement to consult with SEPA before its exercise. However, I do not consider this appropriate. The Scottish Government and SEPA are in constant liaison with one another and informal discussion with SEPA on the direction of dates is something that I am confident will occur without the need to formalise this in the Bill. Furthermore, I am concerned that to require formal consultation would risk introducing further delays into an already tight timetable of deadlines.

Section 29(6) – Power to make further provision in relation to local authorities preparing local flood risk management plans

The Committee asks the Government to provide a fuller explanation of the additional matters which the Scottish Ministers intend to specify by regulations as being required in a local flood risk management plan and detail which person(s) or bodies are to be consulted by the Scottish Ministers in this regard.

Additional matters that may be required in a local flood risk management plan would relate to further details on the structure and content of such plans. The intent is to ensure that these plans are prepared in a consistent manner across Scotland and that the plans are prepared and coordinated with the flood risk management plans prepared by SEPA:

- details of steps to be taken to ensure coordination with flood risk management plans prepared by SEPA
- details on how information should be prepared or presented, particularly where information is supplemental to the information in the flood risk plans prepared by SEPA
- dates by which key steps in the plan should be completed.

We would expect there to be a full and thorough consultation exercise with local authorities, SEPA, Scottish Water other responsible authorities and stakeholders.

Section 44(1) – Power to give effect to Community obligations etc.

The Committee: observes that the power is available in place of the power in section 2(2) of the European Communities Act 1972 and were section 2(2) to be used to modify primary legislation, the expectation is that affirmative procedure would apply; and asks the Government to consider amending the Bill so that the power to modify Part 3 is subject to affirmative rather than negative procedure.

I note the Committee's expectation that should section 2(2) of the European Communities Act 1972 be used to modify primary legislation, affirmative procedure would apply and I confirm that I agree to observe this.

I am also happy to accept the Committee's recommendation that the power to apply.

Part 3 with modifications should be subject to affirmative procedure.

Section 52(4) – Power to amend flood protection scheme making process

The Committee asks the Scottish Government to consider amending the Bill to require consultation with affected parties before the exercise of this power (to amend the procedure for making flood protection schemes).

I am happy to accept the Committee's recommendation to require appropriate consultation before the exercise of this power, although I consider it appropriate to consult with a limited group of those specifically affected, for example local authorities and agents of local authorities.

Section 12ZA of the Reservoirs Act 1975 (inserted by section 77) – Incident reporting

The Committee asks the Scottish Government to provide some indication of the likely content of guidance to be issued to undertakers, supervising engineers and any other specified person under this power.

I envisage that guidance on post-incident reporting, that would be issued to undertakers and panel engineers, will broadly mirror that which the Environment Agency produced in 2007 for England and Wales.

This will include:-

- guidance on who an undertaker (or other person) should speak to if they have concerns about the state of their reservoir and how to report the onset of an incident;
- guidance on who should provide information post-incident and to whom;
- full contact details for the enforcement authority;
- examples of completed post-incident reporting forms to assist those reporting post-incident;
- information on next steps (for example, setting out that the enforcement authority may wish to contact the undertaker to discuss the incident further for knowledge gathering purposes);
- general questions and answers on aspects of reservoir safety legislation (for example, how someone can find a panel engineer).

Section 82(1) – Ancillary provision

The Committee asks whether the Scottish Government would be prepared to agree that any modification of primary legislation should be subject to affirmative procedure or, alternatively, to give an undertaking that any significant or

permanent modifications made to enactments using this power would be effected through textual amendment and so subject to affirmative procedure.

The Bill provides for textual modification of primary legislation to attract affirmative procedure. Normally, non-textual modification is confined to modifying particular pieces of text for certain limited circumstances, application or adaptation - thus negative procedure would usually be appropriate in relation to such modifications. However, I will give further consideration to the issue and advise the Committee of the outcome of that consideration.

Schedule 2, paragraph 13 – Power to make provision about consideration to be given to likely environmental effects of proposed flood protection schemes

The Committee asks the Scottish Government what kind of provision is likely to be made under this power and, in particular, what form of “detailed specialist regime for environmental assessment” is envisaged.

It is envisaged that these regulations will require an Environmental Impact Assessment (EIA) to be completed and included as part of the package of documents that will be submitted for flood protection scheme approval. This is the same process as section 40 of the Town and Country Planning (Scotland) Act 1997 and the Land Drainage (Scotland) Act 1958, amongst others follow.

The Environmental Impact Assessment (Scotland) Regulations 1999 were amended with effect from 1 February 2007 by the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 (the 2006 Regulations) to transpose Article 3 of European Commission Directive 2003/35/EC on Public Participation (the PPD). The PPD is concerned with the rights of the public to participate in the assessment of the environmental effects of certain projects likely to have significant effects on the environment.

The power outlined in Schedule 2, paragraph 13, will allow regulations to be developed in line with the PPD and EIA requirements and will form the detailed specialist regime for environmental assessment.

ANNEXE B: REPORT FROM FINANCE COMMITTEE

REPORT ON THE FINANCIAL MEMORANDUM OF THE FLOOD RISK MANAGEMENT (SCOTLAND) BILL

The Committee reports to the Rural Affairs and Environment Committee as follows—

Introduction

1. The Flood Risk Management (Scotland) Bill (“the Bill”) was introduced in the Parliament on 29 September 2008. The Rural Affairs and Environment Committee has been designated as the lead committee on the Bill at Stage 1. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum. In doing so, it is required to consider any views submitted to it by the Finance Committee.

2. At its meeting on 7 October 2008, the Committee agreed to adopt level three scrutiny in relation to the Bill.¹ The Committee took evidence from SEPA, Scottish Water, Angus Council and North Ayrshire Council at its meeting on 18 November. Written submissions were also received from all of these bodies. The Committee then took evidence from Scottish Government officials at its meeting on 25 November. Prior to the oral evidence sessions, a supplementary written submission was received from the Minister for the Environment, Michael Russell MSP. Further supplementary material on flood management schemes was also received from the Scottish Government and from Angus Council. Angus Council also submitted a further supplementary letter dated 28 November 2008.

3. The Committee also received written evidence from:

- Clackmannanshire Council
- Comhairle nan Eilean Siar
- East Lothian Council
- Highland Council
- Moray Council
- Orkney Islands Council
- Renfrewshire Council
- Scottish Borders Council
- South Ayrshire Council
- West Lothian Council
- Forestry Commission Scotland
- NFU Scotland
- Scottish Environment LINK

4. All written evidence received is published as Annexe B to this report. The Official Report of the evidence sessions on 18 and 25 November can be found on the Parliament’s website.²

The Bill

5. The Bill seeks to modernise the flood risk management system in Scotland by ensuring that all persons and organisations involved in flood risk management can co-ordinate efforts

¹ For information on the Committee’s three-level system of scrutiny for Financial Memoranda, please see <http://www.scottish.parliament.uk/s3/committees/finance/financialMemo.htm>

² Available at: <http://www.scottish.parliament.uk/s3/committees/finance/or-08/fi08-2701.htm> and <http://www.scottish.parliament.uk/s3/committees/finance/or-08/fi08-2801.htm> respectively.

to deliver sustainable approaches to managing all forms and consequences of flooding. The Bill makes provision in five policy areas:

- co-ordination and co-operation in flood risk management;
- assessment of flood risk and preparation of flood risk management plans, including transposing European Directive 2007/60/EC on Assessment and Management of Flood Risks;
- clarifying the responsibilities of Scottish Ministers, SEPA, local authorities and other responsible authorities in managing flood risk;
- a revised statutory process for flood risk management measures; and
- amending the Reservoirs Act 1975, transferring some enforcement responsibilities from local authorities to SEPA.

Costs

General background

6. To a significant extent, the costs arising from the Bill are expected to be incurred in phases. An initial period of flood risk assessment has to be completed by the first Directive deadline of December 2011. To a degree, the total subsequent costs are dependent on the results of this initial assessment work.

7. A significant element of subsequent costs are associated with a phase up to 2015, by which time flood risk management plans are required to be prepared. This 2011-2015 period is described in the Financial Memorandum as the “first planning cycle”.

8. There are a number of establishment costs – both revenue and capital – associated with both the initial assessment period and the first planning cycle.

9. After the first planning cycle, there is a requirement for flood risk assessments, flood hazard and risk maps and flood risk management plans to be reviewed every six years. Annual running costs for the first few of these subsequent planning cycles are expected to remain at a level similar to those for the first planning cycle, with possible savings in time as the processes become more embedded.

10. The costs are not expected to fall equally across the first few financial years, and the profile of costs could be managed flexibly depending on the approach to implementation taken. The Financial Memorandum describes the costs it outlines as “preliminary estimates” as detailed implementation plans cannot be developed until the Bill is enacted. Similarly, the total cost of the Bill depends on the result of the initial assessment work in the period to December 2011, and the Financial Memorandum states that a number of variables - such as the nature of flood risks identified in initial assessments – could cause significant fluctuation in costs. Work to assess different cost scenarios was still ongoing at the time of the Bill’s introduction, and is the subject of supplementary material submitted by the Scottish Government.

11. The main costs identified in the Financial Memorandum are a total of £76.09 million for implementation up to December 2015, and a subsequent annual running cost of £13.19 million after 2015. The supplementary material from the Scottish Government dated 7 November 2008 refines the estimates into two scenarios, one resulting in lower range costs totalling £62.24 million and the other resulting in higher range costs totalling £81.89 up to December 2015, and lower and upper annual costs beyond 2015 of £11.08 million and £14 million respectively.

12. The Financial Memorandum emphasises that the Bill does not place a specific duty on local authorities to implement flood risk management plans. It states that, until the end of the first planning cycle in 2015, it is not clear whether the current capital cost of flood management measures is likely to rise as a result of the provisions of the Bill. The costs stated in the Financial Memorandum are, therefore, those associated with the flood risk management planning process rather than the provision of flood risk measures themselves.

Costs on the Scottish Government

13. The Financial Memorandum states a variety of costs on the Scottish Government arising from the Bill. The estimated costs of implementation of the Directive over the 6.5 year planning cycle up until 2015 total £4.26 million, comprising:

- Staff resources and other non-recurring revenue costs required to take forward secondary legislation etc - amounting to £270,000 prior to 2015
- £3 million in total over a number of years prior to 2015 for access to new datasets required for mapping etc.
- £140,000 per annum in staff costs to carry out additional duties, with further temporary staff likely to be required in certain phases.

14. Again, the supplementary information dated 7 November outlines revised upper and lower estimates of £3.76 million and £4.76 million.

15. After 2015, the ongoing annual running costs on the Scottish Government are expected to continue at £140,000 per annum.

16. Both costs and savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes, with an expectation of modest savings as a result of a reduction in the number of public inquiries.

17. There are no additional costs on the Scottish Government anticipated as a result of amendment of the Reservoirs Act 1975.

Costs on local authorities

18. The Financial Memorandum states a variety of costs on local authorities. The estimated costs of implementation of the Directive over the planning cycle up until 2015 total £36.48 million, comprising:

- £1.92 million for the preliminary flood risk assessment over 2010 and 2011 (an average of £60,000 per local authority)
- £7.68 million per annum over 4.5 years from 2010-11 to 2015 for ongoing annual running costs (an average of £240,000 per authority, although likely to vary significantly depending on the extent of flood risk in each area).

19. After 2015, the ongoing annual running costs on local authorities are expected to continue at £7.68 million per annum, although costs may fall in time as the planning process becomes better established.

20. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £36.48 million – the same as the Financial Memorandum - and the upper estimate is £44.9 million. The lower estimate for the

annual costs beyond 2015 is £7.68 million – the same as the Financial Memorandum - and the upper estimate is £9.5 million.

21. Both costs and savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes. Local authorities have estimated an average additional cost of £10,000 per authority.

22. There is a small saving anticipated (less than £5000 per authority) as a result of amendment of the Reservoirs Act 1975.

Costs on SEPA

23. The Financial Memorandum states that SEPA will be identified as the competent authority for implementation of the Directive, imposing specific duties on it in respect of flood risk assessment and mapping. A variety of costs for the period up to 2015 are stated, including:

- £8.05 million for the development of new modelling tools, data sets, etc.
- £14.18 million for staff costs during different developmental phases.

24. After 2015, ongoing costs of staff and dataset maintenance are estimated at £3.4 million per annum.

25. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £16 million and the upper estimate is £22.23 million – the same as the Financial Memorandum. The lower estimate for the annual costs beyond 2015 is £2.7 million and the upper estimate is £3.4 million – the same as the Financial Memorandum. SEPA indicates that it considers the upper estimate to be the likely scenario.

26. Marginal savings are anticipated as a result of changes to the statutory process in relation to flood prevention schemes.

27. Additional staff costs are anticipated as a result of amendment of the Reservoirs Act 1975 to transfer the existing enforcement role to SEPA. This is estimated at £100,000 up to 2010-11 and £250,000 per annum thereafter.

Costs on Scottish Water

28. The Financial Memorandum states that, under implementation of the Directive, Scottish Water and other responsible authorities will have a duty to act with a view to reducing flood risk. This will involve it in considering flood risk from sewerage and linking with other flooding work by SEPA and local authorities. Costs are estimated to total £12.7 million up to 2015, including:

- £4 million on specialist modelling consultants
- £1.5 million per annum on staff resources to contribute to wider flood risk work and £400,000 per annum to maintain modelling.

29. After 2015, ongoing costs of staff and modelling maintenance are estimated to continue at £1.9 million per annum.

30. Again, the supplementary information dated 7 November outlines revised upper and lower estimates. The lower estimate for the costs to 2015 is £6 million and the upper estimate is £10 million – both lower than the Financial Memorandum. The lower estimate for the annual costs beyond 2015 is £0.7 million and the upper estimate is £1.1 million – again, both lower than stated in the Financial Memorandum.

Costs on other bodies

31. The Financial Memorandum states that the costs on other responsible authorities of Directive implementation in the period to 2015 are likely to be £420,000, comprising:

- £52,000 non-recurring costs for participation in developing flood risk plans.
- £35,000 per annum staff costs per national park authority.

32. The Financial Memorandum also states that there are likely to be very minor costs and savings on some landowners where a flood protection scheme requires the revocation or amendment of a land drainage order. Costs may also be incurred if local authorities seek to recover the cost of any damage by landowners to local authority flood prevention works.

SUMMARY OF EVIDENCE

General issues

Adequacy of cost estimates

33. The Financial Memorandum explains that a number of uncertainties (primarily the need to await the outcome of the initial flood risk assessments) mean that cost estimates cannot be entirely robust at this stage. Witnesses generally seemed to accept that these assumptions about uncertainties were reasonable.

34. Some of the uncertainty associated with the costs also appears to arise from the split between different layers of responsibility, where SEPA will conduct national planning work to a certain degree and local authorities will subsequently apply local expertise to their area plans. Angus Council suggested that this could cause some delay in clarifying costs and expressed concern that, “The local authority may in consequence be heavily constrained by and obliged to the financial consequences of decisions made by the unelected authority.”³

35. Whether the division of responsibilities and apportionment of expected costs under the Bill between SEPA, Scottish Water and local authorities is an appropriate and effective division is a policy matter for the lead committee to consider. However, witnesses expressed some concern over how the Scottish Government will co-ordinate those organisations’ different funding streams to ensure effective delivery. The Financial Memorandum does not indicate whether any different delivery models (i.e. a different balance between national [SEPA] and local authority planning) were tested and costed, and SEPA confirmed that it was not aware of any such work being done.⁴

36. Some local authorities and Scottish Water also said that several issues arising from the Bill have not been covered in the Financial Memorandum. For example, North Ayrshire Council mentioned coastal flooding and the surface water sewer network, and Scottish Water mentioned significant work in areas not yet covered by drainage plans. Moray Council stated that the estimates of costs falling on local authorities are abbreviated overall totals, and so it

³ Angus Council. Supplementary written submission to the Finance Committee dated 28 November 2008.

⁴ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 847.

is not clear whether all cost headings are included. It mentioned the cost of local advisory groups and stakeholder participation and consultation in the process.⁵

37. Several witnesses emphasised the complex and very dynamic nature of flood risks, with climate change altering assumptions and the Bill requiring a move from reactive to proactive approaches and now covering all types of land. This raised concern about whether the cost implications of the Bill had yet been fully appreciated. Angus Council stated, “Our wider remit covers not only non-agricultural land, as before, but all land, and it covers fluvial flooding, pluvial flooding, coastal inundation and climate change.”⁶ SEPA also stated that, “The elements in [flood risk management plans] that must be reported on are much more extensive than we have a handle on at present.”⁷

38. North Ayrshire Council’s written submission stated that it is difficult to be certain about the cost estimates for local authorities and said that the annual cost estimate of £240,000 up to 2015 “can easily be accounted for”.⁸ Several councils (for example, Angus Council and East Lothian Council) also stated that a high level of resources is required to produce flood risk assessments and management plans, and disputed the average estimates in the Financial Memorandum. Angus Council expressed concern that “the memorandum deals with average figures in only one (the lower) of two specifically identified scenarios”.⁹

39. While a number of witnesses noted the high cost of implementing the Bill even before any actual flood management measures are funded, SEPA confirmed that it did not consider that the approach to implementation provided by the Bill gave rise to costs beyond the scope of what is required in the European Directive.¹⁰

40. Scottish Government officials confirmed that information on the costs incurred by various public bodies in delivering their new responsibilities could be included in the formal mechanisms for reporting to the Parliament provided in the Bill.¹¹

Funding mechanisms

41. Although accepting that the uncertainties were reasonable, witnesses suggested that the funding methods and allocation needed greater clarity. Scottish Water emphasised that, “The question is how those are built into future funding.”¹²

42. The different funding mechanisms for different public bodies, and the costs falling in different periods, raised a number of issues. For example, SEPA stated that it will work with the Scottish Government to review its current spending review allocation to identify resources. It pointed out that the deadline for completion of the flood risk planning preliminary studies is December 2011 – around the end of the current spending review period. It later said that it was “content that we can do that within our current allocation, although we will have to consider our priorities and look to find as many efficiencies as possible.”¹³

⁵ Written submissions to the Finance Committee.

⁶ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 835.

⁷ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 836.

⁸ Written submission to the Finance Committee.

⁹ Angus Council. Supplementary written submission to the Finance Committee dated 28 November 2008.

¹⁰ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 847.

¹¹ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 855.

¹² Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 832.

¹³ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Cols 832 and 849.

43. Scottish Water stated that costs falling on it will have to be covered in its business plan for 2010-14, to be submitted to regulators and then funded through customer charges. However, it is normally funded for the agreed costs of specific projects and it is not able to give that certainty for work arising from this Bill. It stated that, “We intend to submit our estimates on the basis that we will draw down funding based on the results of the flood risk assessments.”¹⁴

44. Angus Council said that the current spending review allocations to local authorities do not cover the initial implementation costs. It stated that, “The grant-aided expenditure settlement does not address the bill’s costs, which I understand are identified as being additional and are not currently met through the settlement.”¹⁵ North Ayrshire Council also said that, “We can see no detail on how funding will be allocated from 2011 up to 2015”.¹⁶ However, Scottish Government officials stated that they did take “some account of the issue in the spending review”, and that, as future risk mapping information became available, it would need to form the basis for further discussion with COSLA.¹⁷

45. Several local authorities noted that the Financial Memorandum provides an overall figure for local authorities as a whole, and does not clarify how individual allocations to local authorities will be calculated – although it does state that costs will vary significantly depending on the extent of flood risk in each area. It is not yet clear whether the Scottish Government will make a set allocation for an authority to budget within, or a mechanism to claim back actual costs. Angus Council suggested that, given the uncertainty, a system of revenue grants outwith the main local authority settlement would be an appropriate way to proceed, notwithstanding the general trend to minimise ring-fenced sums.¹⁸

Skills

46. North Ayrshire Council’s written submission stated that there is a “scarcity of experienced flood practitioners” and a number of witnesses discussed the potential difficulty and cost implications of attracting sufficient skilled staff in the context of competition across the UK and Europe for those skills. SEPA said that the Environment Agency already has 200 vacant flood management posts across the UK.¹⁹ Scottish Government officials stated that various discussions with educational institutions would help ensure that future employment needs are properly catered for. They emphasised that, when developing the policy, “we paid close attention to existing skill sets in organisations and tried to ensure that the responsibilities that we placed on them were based on the skills that they had...The need to work with existing skills in the organisations concerned was one reason why we went along the lines that we did in developing the policy.”²⁰

Revised estimates based on two scenarios

Adequacy of information

47. The supplementary information from the Scottish Government outlines two scenarios, with some cost estimates differing from those in the Financial Memorandum. Witnesses were generally content that these scenarios were a useful illustration of the uncertainties. SEPA appeared to regard the upper cost scenario as the likely one, although the Scottish

¹⁴ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 832.

¹⁵ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 835.

¹⁶ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 832.

¹⁷ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 857.

¹⁸ Angus Council. Written submission to the Finance Committee.

¹⁹ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 842.

²⁰ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 854.

Government's supplementary material seemed to suggest that it expects the lower one to be realistic and Scottish Water also estimated its costs at the lower end.

48. Scottish Government officials expressed confidence that the upper scenario represents the likely upper limit of costs. They said that the cost estimates had been developed through a series of workshops and discussions to tease out the implications of the new responsibilities. They suggested that SEPA faces a significant set of new responsibilities, whereas Scottish Water's role will build on a set of existing competences and understandings. Scottish Government officials stated that "there are significant challenges for all the organisations" and estimated that, overall, "Our best guess is that the cost will probably be in the middle range, possibly tending towards the upper range".²¹

Process

49. The supplementary material from the Minister states that "the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised". Standing Orders require a Financial Memorandum to be the best estimate of the cost implications of a Bill as introduced, and do not provide for the option of this being supplemented at a later stage to allow for the work not being done earlier.

50. Scottish Government officials stated that,

"The purpose of the supplementary evidence was to register the further work that had gone on in the interim to refine the policy and develop the detailed provisions in the bill, which allowed us to identify and quantify some of the uncertainties. Those are the best estimates that we have."²²

51. The officials emphasised that policy on certain aspects "was developing right up until the bill's introduction", and stated that, "The cost estimates that are in the supplementary information have not changed since the financial memorandum was published; we have just provided additional information."²³ However, the upper scenario provided in the supplementary material does in fact project significantly higher potential initial and recurring costs on local authorities than those outlined in the Financial Memorandum. If the upper scenario proves accurate, the costs to local authorities up to 2015 increase to £44.9 million, from the £36.48 million stated in the Financial Memorandum. The supplementary evidence also suggests that, under both lower and upper scenarios, the costs on Scottish Water will be significantly lower than originally estimated in the Financial Memorandum.

52. Several local authorities also suggested in written submissions that the time allowed for consultation during the development of the Bill did not allow for a detailed formulation of costs, and that the Scottish Government's consultation on flood management in April 2008 did not allow for comments on financial assumptions.

Other issues specific to local authorities

53. Moray Council said that paragraph 289 of the Financial Memorandum assumes that costs will be higher for urban than rural authorities and that funds will be skewed accordingly. Both it and other local authorities seemed to dispute this and questioned the usefulness of

²¹ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Cols 852-3.

²² Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 855.

²³ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 856.

providing simply an average figure per authority with no information on likely margins of variation or likely upper or lower limits for an authority. Angus Council also stated that cheaper flood alleviation measures are being ruled out on environmental grounds, and that this cost pressure on rural authorities is not reflected in the Financial Memorandum.

54. Scottish Government officials clarified that ‘urban’ in this context is not meant to be confined to large cities. They said, “An urban area is not necessarily a large metropolitan area—it is any town area with flooding problems in addition to coastal and pluvial flooding, which are recognised. Any urban area that has problems with surface water run-off and pluvial flooding caused by drainage comes within the definition.”²⁴

55. For the transfer of enforcement responsibilities for reservoirs from local authorities to SEPA, West Lothian Council said that the average figure of £5000 per authority quoted in the Financial Memorandum is more than it spends and would not want this amount to be removed from its budget automatically.²⁵

Funding of flood management measures

56. Many of the local authorities submitting evidence made comments about meeting the cost of flood risk management measures. The Bill does not directly provide for a duty to implement flood management measures, but is rather about the assessment and planning system. SEPA emphasised that the substantial resources associated with the Bill are targeted at the plans because, “We need to understand what the current and future flood risk is likely to be in order to prioritise things.”²⁶ However, the Financial Memorandum and the Scottish Government’s supplementary information both acknowledge that the assessment and flood management planning processes are bound to lead to increased expectations that identified flood risks will be addressed. Local authority witnesses raised a number of concerns, partly about how capital allocations can be made in the current local authority funding context of moving away from specific grants, and partly about how increased pressure for grants in the future will be accommodated and prioritised.

Funding mechanism

57. North Ayrshire Council stated that, “As yet, we have been unable to get any information on how local authorities are expected to fund capital schemes in the future”.²⁷ Angus Council also stated that it is unclear how schemes that are confirmed by a flood prevention order are to be funded within the current spending review period, even before considering the situation after implementation of the Bill.²⁸ Previously 80% grants were available for specific flood alleviation schemes which had received flood prevention order consent. The Financial Memorandum does not provide any information on how block grant for the capital cost of flood management measures will be distributed equitably to local authorities.

58. Scottish Government officials stated that the removal of ring-fencing from certain funds does not “seem to have inhibited flood-related activity on the ground so far. A significant amount of activity—probably more than in any recent year—is going on this year and next year.”²⁹

²⁴ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 857.

²⁵ West Lothian Council. Written submission to the Finance Committee.

²⁶ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 840.

²⁷ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 832.

²⁸ Scottish Parliament Finance Committee. Official Report, 18 November 2008, Col 835.

²⁹ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 856.

59. Officials stated that, although they now have no formal meetings in respect of grant funding for projects, they still gather information on the flood risk management measures that local authorities are pursuing. They said that, beyond the next spending review period, “the process that the bill puts in place will enable us to form a view on the resource requirements and on what schemes or proposals should have priority. That will be the subject of continuing discussions with COSLA.”³⁰ The Bill is intended to produce a process that will provide continually developing information about how the relative priority of flood risk areas is changing.

Extent of capital funding required

60. The extent to which the Scottish Government expects the current capital expenditure on flood management measures to have to rise as a result of the Bill is not clear. However, officials stated that, “if the process identifies a significantly greater quantum of flood risk than has been identified so far, a fair question about resources must be put to ministers and the Parliament”.³¹

CONCLUSIONS

Provision of supplementary information

61. There are a number of aspects of the Financial Memorandum which have been clarified in the course of evidence. The Committee considers that it would have been helpful for the Financial Memorandum to have reflected the range of costs later provided by supplementary written material. Supplementary information from the Scottish Government was useful. However, it is unfortunate that the consultation and policy development work was not done in time to allow this information to be included in the Financial Memorandum. As the Committee has had cause to remind the Scottish Government in respect of other recent Bills, it remains the case that the Financial Memorandum at the time of introduction should provide the best estimate of the costs associated with the provisions in a Bill.

Issues requiring clarification

62. While the Committee acknowledges the uncertainty over eventual costs which is created by the need to await the outcome of the initial flood risk assessments, evidence has indicated a number of significant concerns. The Committee, therefore, recommends that the lead committee may wish to seek clarification from the Cabinet Secretary on the following issues:

- Whether the cost estimates for local authorities, which are presented as abbreviated overall totals, include costs for all the expected responsibilities and are as comprehensive and robust as possible (paragraphs 36 and 37 above).
- Whether the Scottish Government intends formal reporting to the Parliament on implementation of the Bill to include information on the actual costs on all public bodies (paragraph 40).
- How the Scottish Government will be able to build the implications of the significant uncertainty about the extent of future responsibilities into the different financial planning frameworks for the different public bodies involved (paragraphs 42-44).

³⁰ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 857.

³¹ Scottish Parliament Finance Committee. Official Report, 25 November 2008, Col 856.

- Whether the current spending review period allocations to local authorities include sums to cover the responsibilities in this Bill and, if so, how these sums have been allocated among local authorities (paragraph 44). If not, the lead committee may wish to seek clarification on the mechanisms the Scottish Government will use to allocate additional funds where new responsibilities have been imposed on public bodies within a spending review period.
- How the Scottish Government will ensure that future local authority funding allocations will reflect actual costs rather than averages and, specifically, how the different burdens on rural and urban authorities and those with different flood risk issues will be equitably reflected in funding (paragraphs 45 and 53).
- How the Scottish Government will distribute block grant for the capital cost of flood management measures equitably to local authorities in future (paragraph 57).

SUBMISSIONS RECEIVED

This annexe contains submissions from the following organisations—

- Michael Russell MSP, Minister for Environment
- Scottish Environment Protection Agency
- Scottish Water
- Angus Council
- North Ayrshire Council
- Clackmannanshire Council
- Comhairle nan Eilean Siar
- East Lothian Council
- Highland Council
- Moray Council
- Orkney Islands Council
- Renfrewshire Council
- Scottish Borders Council
- South Ayrshire Council
- West Lothian Council
- Forestry Commission Scotland
- NFU Scotland
- Scottish Environment LINK
- The Scottish Government (supplementary)
- Angus Council (supplementary)

SUBMISSION FROM THE MINISTER FOR ENVIRONMENT

I am writing in advance of the Finance Committee's scrutiny of the Financial Memorandum which accompanied the Flood Risk Management (Scotland) Bill.

I am pleased to enclose a supplementary evidence paper that has been prepared by the Scottish Government to assist Committee members with their consideration of the financial aspects of Bill. Members should read this paper in conjunction with the Financial Memorandum that was submitted to the Scottish Parliament alongside the Bill.

In summary, the paper provides supplemental information on the costs of implementing the EC Floods Directive. The paper focuses on:-

- providing additional details and background to the resource estimates set out in the financial memorandum, including an examination of potential implementation scenarios and associated costs; and
- Providing additional information on the potential cost of implementing future flood risk management measures.

As Committee members will be aware from the Financial Memorandum, the information presented in it was developed in close consultation with those involved in implementing the Bill. However, the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised. The Scottish Government has continued to liaise with key stakeholders to examine the Bill provisions, new responsibilities and associated financial implications. This work has allowed the Scottish Government and stakeholders to develop a clearer picture of new responsibilities and their resource implications.

The Scottish Government wish to ensure that the committee members are provided with the most up-to-date information on the potential costs of the Bill and hope that members find this helpful.

MICHAEL RUSSELL MSP
MINISTER FOR ENVIRONMENT

Supplementary evidence on costs of implementing the Directive

Purpose

This supplementary evidence paper has been prepared by the Scottish Government to assist members of the finance committee in their consideration of the financial aspects of the Flood Risk Management (Scotland) Bill. The paper should be read in conjunction with the Financial Memorandum that was submitted to the Scottish Parliament alongside the Bill.

The paper provides supplementary information on the costs of implementing the (Floods) Directive. The paper focuses on providing the following:

- additional details and background to the resource estimates set out in the financial memorandum, including an examination of potential implementation scenarios and associated costs; and
- additional information on the potential cost of implementing future flood risk management measures.

The paper does not provide supplementary information on the costs associated with local authority functions and the statutory process, or enforcement of the Reservoirs Act 1975.

Costs for the period up to and including the 2010-2011 financial year will not be affected by the implementation scenarios outlined in this paper. Costs for this period are summarised in the financial memorandum.

Rationale for submitting additional evidence

The Scottish Government wishes to ensure that the committee members are provided with the most up-to-date information on the potential costs of the Bill.

The information presented in the financial memorandum was developed in close consultation with those involved in implementing the Bill. However, the Bill timetable necessitated consideration of resource estimates before the Bill provisions were finalised.

The Scottish Government has continued to liaise with key stakeholders to examine the Bill provisions, new responsibilities and associated financial implications. This work has allowed the Scottish Government and stakeholders to develop a clearer picture of new responsibilities and their resource implications.

Furthermore, as stated in the financial memorandum, the final cost of this Bill will depend on the results of initial flood risk assessments which must be completed by 2011 and the identification of potentially vulnerable areas. The Scottish Government has therefore taken the opportunity to consider potential implementation scenarios and associated uncertainties in more detail.

Background

The Scottish Government has worked closely with key stakeholders to ensure that each organisation clearly understands the roles and responsibilities delegated to them under the Bill. This process has involved:

- workshops with SEPA to discuss the Bill provisions and SEPA's role;
- meetings with Scottish Water and CoSLA to discuss the implications of the Bill;
- Scottish Government led Bill Advisory Group meetings and workshops. The Bill advisory group includes senior representatives from local authorities, CoSLA, Scottish Water, SEPA and other stakeholders likely to be impacted by the Bill.

CoSLA, SEPA, and Scottish Water were asked to submit assessments of the resource implications of the Bill on their organisations. Further written information has also been submitted in templates specifically prepared by the Scottish Government to examine resource implications, uncertainties and implementation scenarios.

The Scottish Government also commissioned an independent review of the information presented in the financial memorandum (Flooding Bill Financial Implications Assessment September 2008). This report concluded that the costs set out were directly attributable to the Bill and that the assumptions and costs set out were justifiable. The report also concluded that the level of uncertainty was justified, as many costs were ultimately dependent upon the results of the assessment of vulnerable areas required under the Bill.

Assumptions

A number of assumptions have been employed to allow the Scottish Government to estimate the potential resource implications of the Bill. The financial memorandum describes specific assumptions employed in relation to particular organisations or responsibilities. The key overarching assumptions that have been employed are:

- all per person staff costs are estimated to be between £50-60,000. These costs are based on typical staff costs for the organisations involved and include an estimate of all ongoing overheads. Where available, more precise staffing costs have been used and these have been based on a range of appropriate staff grades;
- inflation has been included in all estimates of costs across the first planning cycle, and has been set at 2.5%.

Implementation scenarios and uncertainties

- As stated in the financial memorandum, there are a number of uncertainties associated with the resource estimates for the Bill. These uncertainties include:
- estimating the costs of new mapping and modelling work, particularly where new tools will need to be developed, e.g. to map pluvial flooding;
- variations in the quality of information available on pluvial and sewerage flooding across the country;
- reporting standards for the Directive have yet to be established by the Commission; these could result in additional work for SEPA to comply with the Directive;

- the results of the initial flood risk assessments will determine the proportion of the country that will be identified as being vulnerable to flooding and therefore the scope and number of flood risk management plans.

The variables that could cause the greatest fluctuation in costs will be the number and scope of the flood risk management plans. Any adjustment in these variables would result in a proportionate adjustment in the expected costs, although efficiencies of scale would be expected. The results of the assessment of potentially vulnerable areas (Section 13 of the Bill) will determine where efforts to map and manage flood risk are targeted.

To ensure the cost estimates for the Bill reflect these uncertainties, the Scottish Government has considered two implementation scenarios. These scenarios are based on potential outputs from the assessment of vulnerable areas, which will provide a national overview of flood risk and will determine where efforts to map, plan and manage flood risk are targeted. The greater the number and complexity of flood risks identified, the greater the resources required to address these risks. Based on potential outputs from the assessment of vulnerable areas, the following implementation scenarios have been considered.

- *Scenario 1* - Assumes that the overall proportion of areas known to be at flood risk will be similar to current understanding of flood risk- around 3.6% of properties estimated to have a 0.5% or greater chance of flooding each year. (SEPA Indicative Flood Map 2007 Summary results³²). Under this scenario, improved information on pluvial and sewerage flooding, and the impacts of climate change, will identify new areas as having a 0.5% or greater chance of flooding. However, a better understanding of the different types of flood risk may also result in some areas being shown as having a lower flood risk than the current maps indicate. On balance this would result in a similar proportion of properties in Scotland being at risk of flooding from all sources.
- *Scenario 2* - Assumes that improved information on flood risk, particularly on pluvial and sewerage flooding and the impacts of climate change, will identify enough new potentially vulnerable areas to increase the overall number of properties considered to have a 0.5% or greater chance of flooding. Furthermore, the improved information will require the development of new types of flood maps (e.g. pluvial flood maps) and flood risk management plans that tackle complex flooding problems.

The relevant resource estimates set out in the financial memorandum have been reviewed in light of these implementation scenarios. Where appropriate, an upper and lower resource threshold for the work required to fulfil the requirements of the Directive have been set out.

As assessment, mapping and planning work is undertaken over the first planning cycle and beyond, the uncertainties surrounding implementation costs of the Bill will be resolved. The Scottish Government and the bodies responsible for implementing the Directive will therefore have opportunities to take informed and positive decisions throughout the planning cycle on where investment should be targeted. Resource constraints mean that it will not be possible to address all flood risks in one six year planning cycle, but the identification of vulnerable areas will be crucial to prioritising efforts to map and manage flood risks. The responsible authorities will be able to target resources to those areas where they would be most effective, but also include longer term goals across future planning cycles for all areas at risk of flooding. This will ensure that investment can be aligned both to vulnerable areas and

³² Scottish Executive Geographic Information Service; Impact of Flooding in Scotland - In-house GIS analysis using the SEPA Indicative Flood Map 2007. <http://www.scotland.gov.uk/Publications/2007/09/20092209/0>

particular flood management needs, for example investment in mapping or investment in resources to support selection of measures.

As the scenarios are based on the outputs from the assessment of vulnerable areas, the implementation scenarios apply to the work carried out after the deadline for this work, which is shortly after the production of the first flood risk assessment that must be prepared by December 2011.

Costs on the Scottish Administration

As set out in the financial memorandum, the most efficient approach to obtaining new flood risk data (e.g. high resolution topography data), would be for the Scottish Government to negotiate and purchase important data licences and datasets, and make this information available to the organisations involved in implementing the Bill. The costs for these datasets will vary depending on the type of data purchased and the level of coverage required.

The financial memorandum estimates the total cost for new datasets to lie in the region of £3 million. This was based on an average figure for key datasets. The Scottish Government, in liaison with SEPA, has investigated datasets costs more fully. Based on this information and with reference to the implementation scenarios described in paragraph 14, a range of potential costs for obtaining new datasets and licences are presented below. The mean costs are still estimated to lie in the region of £3 million.

For some datasets, full national coverage will be required. The cost of these datasets, which include Ordnance survey data and aerial photographs, is around **£1 million**. However, for other datasets, including high resolution topography data, the data can be targeted at specific parts of the country that would benefit from this information, for instance urban centres to support mapping of pluvial flooding.

Applying the scenarios described in paragraph 14, a range of implementation costs for new datasets can be estimated. Under scenario 1, targeted datasets, for instance high resolution topography data to support mapping of pluvial flooding, will need to cover around 15% of the country. Based on typical data licence cost for key datasets, including high resolution topography data the cost for new datasets will be around **£1.5 million**.

Scenario 2 assumes that the outputs of the assessment of vulnerable areas will increase the proportion of the country currently considered to be at risk of flooding. For the purposes of assessing implementation costs, it is assumed that the proportion of the country considered to be at risk from flooding would increase and that targeted datasets would need to cover around 20% of the country. Based on typical data licence cost for key datasets, including high resolution topography data, the cost for new datasets is estimated to be around **£2.5 million**. This estimate includes licensing costs for more expensive forms of data that have been shown to be valuable for mapping pluvial flooding.

In summary, new datasets and data licenses to support implementation of the Directive are estimated to be in the range of **£2.5 million** and **£3.5 million**.

The implementation scenarios set out in paragraph 14 are not expected to influence other costs on the Scottish Government set out in the financial memorandum, which include staff costs. These costs are estimated to be in the region of **£1.26 million** over the first flood risk management planning cycle.

Costs on local authorities

The costs on local authorities presented in the financial memorandum were based on estimates from six local authorities. These local authorities covered different geographic parts of Scotland and different types and severities of flooding problems, ranging from urban centres to rural parts of Scotland. The estimated total costs for all local authorities were based on the average costs across these six local authorities, which was subsequently applied to the 32 local authorities.

The resource implications for local authorities will be strongly dependent on the results of the assessment of vulnerable areas. This assessment will identify where the greatest flood risks exist across the country and where local flood risk management plans will be required to identify measures to tackle these risks. Applying the implementation scenarios set out in paragraph 14, an upper and lower estimate of potential costs across all local authorities has been produced.

The figures presented in the financial memorandum are aligned with scenario 1 described in paragraph 14. This is because the estimates provided by local authorities covered authorities with extensive experience of tackling flooding problems alongside local authorities with more limited experience in flooding matters. Overall these estimates therefore provide a good picture of the likely effort required to assess and plan flood risk measures based on current understanding of flood risks.

To enable the Government to examine scenario 2, which assumes that the collation of information on flooding problems could result in a greater proportion of Scotland being identified as being at risk of flooding, the overall estimate of the resource implications across all local authorities has been weighted towards the costs estimated by those local authorities with more experience in tackling a wide range of flooding problems, and in particular pluvial flooding. This weighting exercise results in an overall cost across all local authorities of **£44.9 million**.

In summary, it is estimated that the cost of the first flood risk management planning cycle (up to December 2015), across all 32 local authorities will be between **£36.48 million** and **£44.9 million**.

We estimate that the annual running cost for all local authorities once all staff resources are on line after 2015 would therefore be between **£7.68 million** and **£9.5 million**.

Costs on SEPA

Although SEPA is required to produce national assessments, maps and plans, the detail of these assessments, maps and plans will be determined by the results of the assessment of vulnerable areas. The resource implications for SEPA will therefore also be strongly dependent on the results of the assessment of vulnerable areas.

The cost estimates for SEPA were developed in consideration of how understanding of flood risk could change once the assessment of vulnerable areas is completed. The costs set out in the financial memorandum for SEPA and its floods directive work reflect the costs associated with scenario 2 described in paragraph 14³³. This is because SEPA have

³³ Total cost £22.23 million. Staff costs (55 staff) £14.18 million. Capital costs £8.05 million.

assumed that information collated through the preliminary flood risk assessment work will result in new flooding problems being identified and therefore an overall increase in the proportion of Scotland at risk of flooding. Furthermore, SEPA have assumed that improved understanding of the complex sources of flooding (pluvial fluvial coastal and groundwater) will require development of integrated management plans to address all sources of flooding. Under this scenario, SEPA would be expected to provide support to local authorities in assessing flood risks and identifying or coordinating objectives and measures.

If the results of the assessment of vulnerable areas indicated that there was no increase in the proportion of Scotland at risk of flooding and that the complexity of flooding problems that needed to be addressed are similar to those that are already well understood (scenario 1), then a lower resource estimate may apply. It is estimated that SEPA's costs for the first flood risk management planning cycle (up to December 2015) would be in the region of **£16 million**. This would break down as **£9.5 million** in staffing costs (40 staff) and **£6.5 million** in investment into new tools and datasets. These lower costs reflect a reduced level of effort in flood mapping and planning work, for instance, in mapping pluvial flooding. Under this scenario, it is also possible that flood risk management could rely more heavily on local flood risk management plans, which would be driven by current local understanding of flooding problems.

In summary, it is estimated that the cost of the first flood risk management planning cycle (up to December 2015), for SEPA will be between **£16 million** and **£22.23 million**.

We estimate that the annual cost for SEPA once all staff resources are on line after 2015 will be between **£2.7** and **£3.4 million**.

Costs on Scottish Water

The estimated costs on Scottish Water presented in the financial memorandum were based on information provided by Scottish Water. The resource implications for Scottish Water will be strongly dependent on the results of the assessment of vulnerable areas. This assessment will identify where the greatest flood risks exist across the country and where modelling work and local flood risk management plans will be required to identify measures to tackle those risks.

Scottish Water will be required to undertake new work to improve understanding of flooding from sewers. This information will need to be linked to other flooding studies undertaken by SEPA and the local authorities to provide an overall picture of surface water (pluvial) flooding. This will require the development and application of specialist modelling. The estimated cost of this modelling work over the first flood risk management cycle (up to 2015) as specified in the financial memorandum is £4 million for 200,000 households, with an ongoing running cost of £0.4 million. This estimate includes consideration of variations in modelling effort for rural and urban areas. The cost of modelling work will vary depending on the complexity of the situations being modelled. These figures therefore represent an indicative cost for modelling based on costs of similar modelling work already undertaken by Scottish Water.

Applying the scenarios described in paragraph 14, it is estimated that investment in modelling flooding from sewers would lie in the region of **£3 million** to **£5 million** over the first flood risk management cycle (up to 2015). This is based on an assumption that the assessment of vulnerable areas could identify between 150,000 to 250,000 households at risk of sewer

flooding. Ongoing running costs for maintaining models are estimated to remain in the region of 10% of the one-off modelling cost.

In addition to undertaking specific flood risk assessment work, Scottish Water will also be required to contribute to the wider flood risk assessment and management process under the Bill. Initially Scottish Water had estimated that the annual running costs of this additional work would be approximately **£1.5 million** per annum, based on the known cost of implementing the Water Framework Directive. Now that Scottish Water have a clearer understanding of the duties and responsibilities they will have under the Bill, they have re-evaluated their estimates. Based on the scenarios described in paragraph 14, it is estimated that the annual cost of contributing to the preparation of flood risk management plans, excluding the modelling work, will be between **£0.375 million** and **£0.625 million**. This is based on an assumption that this work will require approximately 5-8 highly skilled staff to deal with flooding issues including detailed knowledge of flood modelling.

In summary, taking into account the reduction in the expected annual running costs, it is estimated that the total cost of the first flood risk management planning cycle (up to December 2015), for Scottish Water will be between **£6 million**³⁴ and **£10 million**.

We estimate that the annual cost for Scottish Water once all staff resources are on line after 2015 will be between **£0.7 million** and **£1.1 million**.

Implementation costs for measures to manage flood risk

At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence of the provisions set out in the Bill. However, where investment does occur, improved information on flood risk and a new flood risk management planning process will ensure that expenditure is targeted in those areas at greatest flood risk and on the most cost effective measures to manage those risks. By ensuring consideration is given to other planning processes, including development planning and river basin management plans, new opportunities for using public funding to deliver multiple benefits will also be created.

Total investment by local authorities in flood protection schemes has increased significantly in recent years, from over £10 million in 2002-03 to over £40 million in 2007-08. Given that flood protection schemes currently under construction are valued at nearly £150 million with tenders for others being sought, this trend is likely to continue. Further, local authorities have responsibilities for cleansing watercourses, which can make a significant contribution to managing flood risk in certain circumstances. For the years 2002-2008, revenue support to local authorities was based on the Grant Aided Expenditure Assessment which included allowances for flood prevention revenue expenditure, which ranged from £3.4 million in 2002-3 to £4.9 million in 2007-08.

The local government settlement for 2008-11 provided local authorities with block grants towards capital and revenue expenditure. However, it is for each authority to allocate the total financial resources available to it for flood risk management. This must be done on the basis of local needs and priorities having first fulfilled its statutory obligations and its Single Outcome Agreement with the Scottish Government.

³⁴ £3 million (investment in models) + [£0.3 million (model maintenance costs) + £0.375 million (staff costs)* 4.5], where 4.5 is the total number of years in the first planning cycle after 2010-2011 financial year.

The Scottish Government has also invested in other forms of flood risk management, including investing in awareness raising campaigns, new flood maps, a database of flood management assets and new flood warning schemes. Over the period 2002-2008, it is estimated that in the region of £5 million has been invested in these areas, with a further £7 million currently being invested in improving the dissemination of flood warning information to the public.

Scottish Water is responsible for providing water and wastewater services to its customers. Included in its duties is the requirement to collect and treat wastewater from households and businesses as well as surface water from roofs etc and to discharge the combined effluent safely to the environment. In the current regulatory period, Scottish Water will invest in the region of £2 billion in Scotland's water and wastewater services. These will deliver the Ministerial Objectives for Scottish Water for the period 2006-10 that were set in February 2005. The objectives set by Scottish Ministers include a requirement for Scottish Water to reduce the number of properties at risk of internal flooding, and investment is already contributing to reducing the risk of flooding in Scottish towns and cities. Scottish Water holds a register of all properties that are connected to sewers of inadequate capacity (1,603 in March 2006) and is investing to remove at least 456 properties from the risk of internal flooding by 2010. Also between 2006-2010, around £160 million will be invested in improving sewerage network infrastructure. A significant proportion of the investment will be in the Glasgow Sewerage network and is linked where possible with the requirements of the Metropolitan Glasgow Strategic Drainage Partnership.

Scottish Water's investment requirements for the next regulatory period (2010-14) are currently under consideration.

Summary of refinements to the costs set out in the financial memorandum

Table 2 summarises the refined costs for implementing the Directive based on the two implementation scenarios described in paragraph 14. A summary of the costs set out in the financial memorandum is also provided. The costs cover the period up to December 2015, but exclude costs prior to the 2011-2012 financial year. Based on the same implementation scenarios, Table 3 summarises the ongoing running costs for implementing the Directive once all new staff come on line after 2015.

The costs for the period up to 2010-2011 would be incurred prior to the preparation of the assessment of potentially vulnerable areas and are therefore not subject to the implementation scenarios outlined in this paper. These costs are summarised in the financial memorandum.

Table 2 Summary of refined total cost estimates for implementing the Directive*

Organisation	Costs financial memorandum (£million)	in Revised lower range cost (£million)	Revised upper range cost (£million)
Scottish Government	4.26	3.76	4.76
Local authorities	36.48	36.48	44.9
SEPA	22.23	16	22.23
Scottish water	12.7	6	10
Total	75.67	62.24	81.89

* Costs are for the period 2011-2015, and exclude costs prior to the 2011-2012 financial year.

Table 3 Summary of annual running costs (post 2015) for implementing the Directive*

Organisation	Costs financial memorandum (£million)	in Revised lower range cost (£million)	Revised upper range cost (£million)
Local authorities	7.68	7.68	9.5
SEPA	3.4	2.7	3.4
Scottish water	1.9	0.7	1.1
Total	12.98	11.08	14

*

Annual running costs for the Scottish Government have been omitted as they are not expected to vary significantly with the implementation scenarios set out in paragraph 14. The cost set out in the financial memorandum was £0.14 million per annum.

SUBMISSION FROM THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

Opening Remarks

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to respond to the Finance Committee on the Financial Memorandum of the Flood Risk Management (Scotland) Bill [the Bill].

The Bill will create the framework that will ensure that organisations involved in flood risk management work together to deliver sustainable approaches to managing the various forms and consequences of flooding.

The Bill will bring new duties to SEPA in terms of flood risk assessment, flood mapping, flood risk management planning and reservoir safety. The Bill will also require changes to our flood warning services and the way in which we undertake our statutory duties in relation to flood risk advice for planning and development.

SEPA recognises the responsibilities associated with its new roles and looks forward to the challenges they will bring. Clearly, success will depend on the powers and duties conferred, the relationships defined within the legislation, how organisations work together and the resources that are made available.

Background

SEPA has a team of approximately 90 staff dedicated to providing hydrological services in hydrometry, water resources, groundwater and flood risk management. As the hydrometric authority for Scotland, we run the surface and groundwater monitoring networks, with over 450 river and tidal monitoring stations and 550 rain gauges. As the flood warning authority we operate 45 flood warning schemes and run the Floodline service for Scotland. We are a statutory consultee in the planning process for flood risk issues, and manage the Indicative River and Coastal Flood Map (Scotland).

SEPA has a long history of engagement with the Scottish Government on flooding issues and is a core member of the Government's flooding advisory groups. Since the development of the Floodline service in Scotland in 2001, SEPA has also worked closely with the Government flooding team in developing flood warning in Scotland and raising awareness of flood risk. SEPA are a category one responder under the Civil Contingencies Act (2004) and the lead on flooding issues.

Since the EC Floods Directive was proposed by the European Commission in January 2006, SEPA has been tracking the development of this legislation and considering the likely implications for our flood risk management operations. Since the Directive has entered into force, we have been working closely with the Flooding Bill Team in the Scottish Government as they have explored the options for transposing this Directive in Scotland.

SEPA and the Scottish Government are both members of the Defra EC Floods Directive Steering Group and Technical Working Group and as such have been working together at the UK level as well.

Finance Committee questions

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Flooding Bill Team throughout the Bill drafting process in providing comment on the wording of the provisions relevant to SEPA.

SEPA formally responded to the Scottish Government consultation "*The Future of Flood Risk Management in Scotland*" in April 2008. We also assisted the Government in the stakeholder engagement process of this consultation through the stakeholder workshops and as panel members at the public Ministerial meetings around the country.

SEPA gave written evidence (21 January 2008) and oral evidence (5 March 2008) to the Parliamentary Rural Affairs and Environment (RAE) Committee as part of its "*Flooding and Flood Management Inquiry*"; available at:

<http://www.scottish.parliament.uk/s3/committees/rae/inquiries/flooding/WrittenEvidence.htm>

SEPA is a core member of the Flooding Bill Advisory Group (FBAG) and in recent years has held lead roles in the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC). These groups have had considerable influence in outlining the national flood risk management priorities for Scotland; the priorities that are now captured within the Flood Risk Management (Scotland) Bill.

SEPA worked closely with Scottish Government on the development of options and the range of financial assumptions made.

SEPA believes it has managed to do the best it can to establish its estimate of the resources required at each of the various stages of the Bill's development, given the available knowledge at each stage of the process.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, the assumptions used in the Financial Memorandum reflected our understanding of the Bill at that time.

Since then we have continued to work with the Scottish Government to better understand the possible scenarios for delivery of key elements of the Bill. In doing so, and in the light of the clearer guidance and assumptions made, we have been able to further refine our estimates of the resources required.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has significant financial implications for SEPA; in the Financial Memorandum these were presented as £22.23 million to December 2015 and an annual cost of £3.4 million for implementing the EC Directive requirements. The costs associated with the amendments to the Reservoirs Act were a further £0.1 million set-up costs and £0.25 million annual running costs.

The precise financial implications will depend on a number of factors. To a great extent, overall costs will be determined by the result of the preliminary flood risk assessment process. Until this crucial first stage has been completed, it is impossible to be precise about the level of the resource requirements for the subsequent stages:- flood mapping and flood risk management planning.

The financial implications for SEPA outlined in the Financial Memorandum are in line with our estimates, based on our understanding of the Bill at that time. Since then we have continued to work with the Scottish Government to better understand the possible scenarios for delivery of elements of the Bill. In doing so we have been able to further refine our estimates of the resources required in light of the clearer guidance and assumptions made.

The Scottish Government's latest supplementary evidence on costs of implementing the directive now outlines two scenarios based on the two possible outcomes from the preliminary flood risk assessment process:

- Scenario 1 is based on an outcome of the preliminary flood risk assessment that shows no increase in the proportion of the population at risk of flooding than is currently understood. (Around 3.6% of properties estimated to have a 0.5% chance or greater of flooding in any one year. Based on Indicative River and Coastal Flood Map (Scotland) 2007 summary results.)

Under this scenario SEPA would expect to carry out only limited mapping covering approximately 1-2% of Scotland's river and coastal floodplains including the four main urban centres. Limited action will also be required in terms of flood risk management planning.

It should be noted that this scenario does not include any resource to carry out the new duties associated with the enforcement of reservoir safety.

The £16 million cost estimate (up to December 2015) in this scenario would enable SEPA to carry out these new duties on the basis of our current understanding of flood risk across Scotland. However, SEPA feels that this will not adequately address the challenges Scotland faces in the future from flooding of all types; river, pluvial and coastal.

We do not believe that this scenario will allow us to develop the level of understanding of pluvial flooding that will be required to address urban flood risk. This is particularly important given climate change predictions on the likely increase in short duration, high intensity rainfall events.

- Scenario 2 assumes that the outcome of the preliminary flood risk assessment will show an increase in the proportion of the population at risk. In particular this is likely to show an increase in flood risk in urban areas. These are the areas more vulnerable to extreme rainfall events and are likely to be exposed more frequently to flooding due to climate change.

This scenario will require the development of more complex maps and flood management plans. Initial work done by some local authorities indicates that there will be a significant increase in the proportion of the population at risk from pluvial and sewerage flooding. Following the devastating flooding in England and Wales in 2007, the Pitt Review recognises both issues and makes strong recommendations to address these.

Under this scenario SEPA would expect to carry out detailed mapping for approximately 2-4% of Scotland's river and coastal floodplains, including the four main urban centres and other urban centres with significant populations at flood risk. A higher level of involvement in the flood risk management planning process would also be required to address present and future flood risk in Scotland. In particular the potential impact of climate change on flooding in urban areas is significant.

The £22.23 million cost estimate (up to December 2015) shown in the Government's latest supplementary evidence on costs of implementing the directive would enable SEPA to carry out its new duties, including those relating to reservoirs, on the basis of this more comprehensive understanding of flood risk in Scotland.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, however, given what we know at this point it will be challenging. There is a considerable number of tasks that SEPA must complete that fall within the current CSR period. SEPA will work with the Scottish Government to review its current CSR allocation with a view to identifying internally where resources can be directed to fund this work. December 2011 is the deadline for the completion of the preliminary flood risk assessments; however, it is essential to complete much of the work in advance of this date to allow other responsible authorities to start planning for their new duties under the Bill, e.g. the earlier the identification of areas vulnerable to flooding, the earlier local authorities and Scottish Water can start their business planning processes.

None of these costs could be classified as re-chargeable, and it is assumed that future costs will be met through future CSR funding. Clearly SEPA will look for efficiencies by integrating current and future flooding work with its other work, where possible and we will reprioritise work to ensure we meet the requirements of the Bill as far as is practicable. We look to Government to take account of the various new duties and all other SEPA responsibilities in allocating resources in future CSR rounds.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, the cost estimates associated with Scenarios 1 and 2 as described in the answer to Q4 and supplied by the Scottish Government in the latest supplementary evidence on costs of implementing the directive reflect the margins of uncertainty. It is clear that the extent of, and

results from, the preliminary flood risk assessments will have a significant bearing on subsequent costs.

SEPA believes that its initial estimate of required resources was accurately reflected in the Financial Memorandum submitted with the Bill (£22.23 million up to December 2015). This cost is shown as Scenario 2 under the latest supplementary evidence on costs of implementing the directive and we still believe this to be a fair estimate of the resource needed to deliver the requirements of the Bill.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

While the Bill costs in the Financial Memorandum are those directly attributable to the Bill, we have concerns as to the wider implications, especially for the hydrometric network and for the recruitment of trained hydrologists and flood risk management professionals:

- Hydrometric network - Improving our ability to manage flood risk, particularly in the longer term, will require improvements to Scotland's hydrometric network. Long term decisions, often costly in nature, demand to be based on sound scientific and technical data. The hydrometric network underpins a lot of what the Bill aims to achieve and its development needs to reflect the increasing challenge and geographical scope of hydrological variability, particularly in relation to climate change and urbanisation.
- Building a skills base - Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. We highlighted this in our evidence to the RAE Committee and it is widely recognised by the Committee, Ministers, and others that this will be a severe challenge to SEPA and all others involved in the delivery of the Bill.

We assume that any future requirements for flood warning schemes and associated infrastructure identified in flood risk management plans will be funded through the usual channels, i.e. outside funding associated with the implementation of the Bill.

Whilst these are associated costs, SEPA will strive to make efficiencies by integrating new flood risk management duties with existing duties wherever possible. In particular we will seek opportunities to combine elements of work associated with the Bill with those of the Water Framework Directive.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Our current understanding is that subordinate legislation would focus on setting out processes and guidance on the content of assessments and plans, rather than on setting out significant new tasks or responsibilities. As such SEPA would not expect there to be significant cost implications. If new duties did arise then there may be costs associated with these, but it is not possible for SEPA to quantify these costs at this stage.

SEPA
November 2008

SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to respond to the Financial Memorandum for the Flood Risk Management (Scotland) Bill. We are particularly interested in this paper due to our involvement in four areas relating to Flood Risk Management.

Scottish Water will be designated as a responsible authority under the Bill and will have a duty to act with a view to reducing overall flood risk.

Scottish Water will require to undertake new work improving the understanding of flooding from sewers and linking this work with other flooding studies undertaken by SEPA and the local authorities. This will require the use of specialist modelling consultants in the first instance.

In addition to undertaking specific flood risk assessment work, Scottish Water will also be required to contribute to the wider flood risk assessment and management process under the Bill.

In relation to reservoir safety Scottish Water will have to work closely with SEPA as the competent authority.

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

- Scottish Water responded to the consultation “The Future of Flood Risk Management in Scotland” in April 2008.
- The Bill introduces additional responsibilities for Scottish Water and therefore additional costs. In our response to the consultation we highlighted that it was unclear how these additional responsibilities would be funded and how the various funding routes of different Organisations will be coordinated.
- Scottish Water is funded by customer charges. The priorities for what we spend customers’ money on are set by Government and Regulators through the Quality and Standards process for each four year regulatory period. We have assumed that Scottish Water will be funded through customer charges to deliver the requirements of the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Scottish Water identified additional duties and changes as a result of the Bill and our initial estimates were included in the Financial Memorandum. We have continued to work with the Government to better understand the implications for Scottish Water.

Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

- Scottish Water believes that the Bill has significant financial implications. The cost estimates that we provided to Scottish Government cover the period 2010 to 2014. We recognise that the costs set out in the financial memo cover the whole flood risk management planning cycle up to Dec 2015. The approach that the Government has taken to extrapolating costs based on information provide by Scottish Water is logical.
- We have worked closely with the Government since submitting our original cost estimates. This work has resulted in the development of implementation scenarios with a range of the £6 to £10 million. We believe that this is a sensible approach to estimating the range of costs to Scottish Water for the flood risk management planning cycle as long as the assumptions set out below in response to Question 6 are fully understood.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

- Our estimates of the financial costs to Scottish Water of the Bill will be included in our 2nd Draft Business Plan for the period 2010-2014 which will be presented to the Water Industry Commission in March 2009. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period 2010-2014.
- We remain concerned that it is not clear how the various funding routes of all the organisations involved will be linked to allow efficient delivery of schemes to reduce flooding risk. We recognise that the Government decided not to proceed on the basis of creating a single national authority with a secure funding route. The proposed arrangement of Competent and Responsible authorities can work but its success will be reliant on the proper allocation of funding. The challenge for the Government will be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body.
- As implementation proceeds the Government will have to keep the arrangements under careful review to ensure that Scottish Water securing funding through customer charges, for our capital contributions to any Flood Risk reduction scheme, remains the most appropriate route of financing. Alternatives may include relevant capital contributions to any Flood Risk reduction scheme being allocated entirely to the relevant Local Authority responsible for the scheme.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- It should be noted that the estimate of £4 million for 200,000 households is based on historical work done for the Dalmarnock drainage catchment in Glasgow and the Elgin, Rothes and Forres drainage catchments. This should not be considered as a definitive value for different catchments. Costs will vary due to the complexity of the catchment.

- Scottish Water currently has drainage area models for 75% of the population connected to the sewerage system in Scotland. These models are not of a uniform standard and may require to be significantly improved before they are suitable for using in flood risk management plans. Significant work in areas not currently covered by drainage models has not been allowed for.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

- This Bill aims to reduce flood risk through sustainable flood management. As discussed in our response to the Rural Affairs & Environment Committee a fundamental aspect of this wider policy initiative should be surface water management plans so that long term solutions are implemented to reduce the flood risk. This will require Local Authorities and Scottish Water to enter into agreements to allow the integrated drainage of surface water. Scottish Water believes that such integrated drainage arrangements will be the key to reducing flood risk. The impact on the operating costs of both Scottish Water and Local Authorities is not fully understood at present and is not reflected in the Financial Memorandum.
- The Financial Memorandum does not include the wider requirements of the Pitt report to address flood risk management through completing critical assets flood risk assessment and investing in currently identified remedial works at critical water supply installations, estimated cost range £7.7 to £11.6m in the 2010-2014 period. These figures require to be reviewed for flood risk assessment and optioneering through the best practice Halcrow guidance produced in April 2008. These figures include an estimate for delivering water asset flooding improvements and flood risk assessment for wastewater assets. These costs will also be included in our 2nd Draft Business Plan for the period 2010-2014.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

- We believe there will be operating and capital costs in all future regulatory periods in relation to flood risk management. Scottish Water believes that it is only when more detail regarding the preliminary Flood Risk Assessment has been developed, that a more accurate costing of the impact on Scottish Water can be produced.
- No assessment can be made of the capital cost of improving Scottish Water's network as part of any Flood Risk Reduction Scheme identified in Flood Risk Management Plans. It is assumed that these costs will be identified in the 2010-2014 period for delivery in the 2014-2018 period. We envisage that this process of doing study and modeling work in one regulatory period to identify the capital investment requirements for the following regulatory period will continue through all future regulatory periods.

Scottish Water
11 November 2008

SUBMISSION FROM ANGUS COUNCIL

Draft Detailed Response to Questionnaire (Pending Approval by the Infrastructure Services Committee, Angus Council, on 25/11/08)

Consultation	
Q1.	Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
A1.	Yes – The comments made on the financial assumptions made can be summarised as follows:
(i)	While SEPA, as the only competent authority with a national remit, would be given the strategic role of both assessing and quantifying national flood risk and developing strategic Flood Risk Management Plans (FRMP's) the Local Flood Risk Management Plans (LFRMP's) are to be produced by the local authorities (LA's). This would mean that, as the LFRMP's would have to be compliant with the FRMP's, the LA's would potentially be significantly constrained in finding the best and most cost effective approach to solving local flooding problems. For instance the FRMP, essentially dictated by SEPA, could compel an LA to only consider a specific range of measures to solve a flooding problem which may be expensive to operate and maintain. Yet it will be the LA that would have to fund these measures, particularly as the grant allocation from the Scottish Government appears to no longer be directed at specific flood prevention schemes [see also item A1. (iv) below].
(ii)	The new legislation should put the onus on Scottish Water (SW) to deal with excess surface water from an incompetent system (that is, incompetent to deal with flows resulting from extreme rainfall events greater than that of the critical design 1 in 30 year storm return period, which is all that is required by the recently implemented Sewers for Scotland 2). Currently the Water Commission and SW appear to regard this excess water as someone else's problem (i.e. LA's). Funding should be available either directly to SW or through funding of LA's to deal with the excess [see also item A1. (v) below].
(iii)	It must be recognised that the level of assessment that will be required for Local Flood Risk Management (LFRM) is much greater than it is at present. The LFRMP's are major strategy documents and will require

	extensive research and consultation by the lead authority. As an example the Shoreline Management Plan for the Angus coastline took five years and cost in excess of £200,000.
(iv)	Given that Ministers would only approve or otherwise SEPA's FRMP's and would have no part in approving the LFRMP (other than requiring it to "not be inconsistent with anything in the relevant flood risk management plan") and as already alluded to in item A1. (i) above, it is not clear how and when block funds from the Scottish Government would be made available to an LA acting as deliverer of the LFRMP's. Angus Council would prefer that commitment to funding is made on the basis of the LFRMP's. This would undoubtedly require prior approval of plans by Ministers as a precursor to funding allocations.
(v)	Similar to A1 (ii) above, in agreeing that integrated urban drainage plans should be included as part of an LFRMP, it was stated that a properly funded means of dealing with outflows from SW's systems was required. At present the means of dealing with these outflows is not properly funded because it falls out-with any legislation. Angus Council <u>did not support</u> the proposal to make SW responsible for implementing measures associated with drainage infrastructure as SW have never demonstrated an appetite to take on this role and it would be very questionable if it would ever be given any degree of priority in their spending profiles. This would inevitably lead to major difficulties in the integration of budgets and be a massive constraint on the delivery of measures and schemes. Angus Council would prefer to be funded directly to deal with all types of outflows from either incompetent or competent systems in the same way it has to deal with other overflows, as part of an integrated approach to urban catchments [see item A1. (ii) above].
(vi)	<p>The contention that LA's are no longer constrained by reliance on central funding and may therefore undertake "non 1961 Act" activities needs to be fully elaborated in the proposals, as it is vital for clarity to know which other legislation is being referred to. With respect to this finance is still a constraint for two reasons:</p> <p>a) If LA's do not have express statutory power to act, they may be cautious about taking action in the face of potential vires issues, particularly in urgent situations.</p> <p>b) If funding is insufficient or uncertain this will hamper the development of projects contained in LFRMP's.</p> <p>LA's have argued this uncertainty about the disjointed nature of legislation and regulations has caused problems in the past. The 1997 Flood Prevention and Land Drainage (Scotland) Act has received</p>

	particular criticism for being imprecise in its drafting, leading to severe difficulties in its implementation. The Act was intended to allow LA's to take action but they are still constrained in being proactive since they had to bear the cost of any such actions where there is no specific, direct funding. This was even though it might be considered that LA's have powers in terms of the Local Government in Scotland Act 2003, Section 20 – Power to advance well-being.
(vii)	For pro-active catchment management, which is central to achieving Sustainable Flood Management, SFM, LA's should be empowered to deliver agreed LFRMP's, where necessary on private land. In order to do this proper compensation arrangements for private landowners would be vital. Such compensation should be properly considered as part of the funding in block allocations to LA's. It should be noted that such compensation may include long term commitments to achieve changes in environmental management plans and management regimes.
Q2.	Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
A2.	This depends on which comments (using the same numbering as A1. above) as follows:
(i)	As the three tier approach has essentially been maintained, it is believed that the original concern has not been adequately addressed: the measures which the locally accountable LA's can take and would have to fund themselves to solve specific local flooding problems will still be dictated by the unelected organisation, SEPA, via its FRMP's. Therefore it seems likely that the whole life cost of measures to be taken to solve flooding will be significantly higher than present, though it is noted from Cl. 328 of the Memorandum that "at this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly".
(ii)	While Cl. 329 of the Memorandum states that "the identification of Scottish Water as a responsible authority under the Bill would place them under new statutory duties for flood risk management" it is open to interpretation what this would actually compel SW to do. In fact the reiteration, or even underlining, in Sewers for Scotland 2 of the previous status quo, whereby SW have no responsibility for increased flood risk out-with a development site due to increased run-off from that site due to that development beyond the critical 1 in 30 year return period storm event, would tend to emphasise an interpretation which continued to

	<p>assume that this problem was not SW's to deal with.</p> <p>This is particularly concerning given the removal of an LA's right, which the repealed flooding legislation gave, to request grant assistance from the Scottish Government. However, it is noted that, although not explicitly stated, the fact that the Coast Protection Act 1949 remains in force unaltered, LA's would still have this right for coastal protection schemes (though it is understood that this will also now normally be dealt with through the unspecified block funding allocation mechanism).</p> <p>It should also be noted that a representative of SW stated at a meeting in September 2008 that SW only had a budget to deal with flooding (due to inadequacies in SW's system) within a private property that had a flood risk up to and including the 1 in 10 year return period. Thus it appears that SW currently has no budget to deal with incompetent systems which cause "internal" flooding (i.e. within private homes) beyond the 1 in 10 year return period, let alone any "external" flooding (i.e. on the public roads, etc.) at all.</p>
(iii)	<p>It is unlikely that providing an additional £240,000 p.a. to each LA would be sufficient to cover the additional costs to the Council of producing LFRMP's. This is particularly as this figure is an average which, as stated in Cl. 277, is likely to be skewed towards "Scotland's urban centres" rather "than in Scotland's rural areas", which is likely to discriminate against Scotland's small, primarily rural councils such as Angus Council. It should be understood that Angus Council, due to its location, climate and topography is highly prone to problematic flooding (it currently has 4 significant flood prevention schemes at various stages of development or maintenance which is more than some of the major urban councils) and the allocation of funding should reflect this.</p> <p>Also a lot of the additional costs in the last 5 years for the development of flood alleviation schemes are due to the increasing need for environmental safeguards, monitoring and improvement. As rural councils tend to have some of the best river environments, which support significantly higher levels of biodiversity than heavily engineered and relatively polluted urban watercourses, there appears to be a stronger focus and higher environmental standards demanded by statutory environmental bodies and fishery boards on rural rivers than on urban watercourses. For instance, if there are no protected fresh water pearl mussels potentially present, as is likely to be the case in an urban watercourse of a major city, the statutory environmental bodies are unlikely to ask for an expensive fresh water pearl mussel survey to be carried out, nor will the flood prevention scheme being developed have to take into account their presence, which can be costly and often lead to cheaper flood alleviation options being ruled out on environmental grounds. These additional environmental concerns have led to significant increased costs for rural councils developing flood alleviation schemes, which given the Flood Management Bill's emphasis on SFM is only likely to increase. This factor does not appear to be acknowledged in the Financial Memorandum.</p>

	<p>Related to this it is understood that SEPA's FRMP's, which an LA's LFRMP will be constrained by, are more likely to place a greater emphasis on catchment management measures in rural areas than in urban areas, as there will simply be more scope for significant catchment wide measures to be applied in the rural areas. Given that the effectiveness of the catchment management measures will be largely dependent on the understanding, goodwill and implementation of local landowners and farmers who may not see the benefits outweighing the costs, it seems highly likely that there will be a greater need for significant and ongoing negotiations and incentives for a disparate group of stakeholders to sign up to such a plan. This, in the long-term, is likely to have a higher whole life cost than the initially more capital intensive, hard engineered solutions that urban LA's are more likely to be allowed to implement, particularly in view of the changing requirements of the catchment stakeholders due to inevitable changes in landownership. This increased cost appraisal excludes the high cost of the likely monitoring and, if possible, enforcement role which it is, perhaps erroneously, assumed SEPA will undertake to ensure that the catchment wide measures are implemented or adhered to by private landowners, etc.</p> <p>Finally, based on the level of flood risk shown by the flood plain definitions given by Scottish Planning Policy SPP 7 in development control, it appears that the additional £240,000 p.a. envisaged grossly underestimates how much more flood alleviation work these LFRMP's will generate. Currently, due to resource constraints, LA flood alleviation work tends to be reactive rather than proactive. This means that the focus of LA's tends to be on areas where a flood has already recently occurred, with a view to preventing a similar flood happening again. The development of the FRMP's will mean that LA's will have to address a much more extensive area at risk of flooding (where LA's had previously no knowledge of a recorded historic flood risk) than is currently the case.</p>
(iv)	<p>As stated in item A2. (ii) the Bill effectively removes a LA's right to request grant assistance from the Scottish Government for flood protection schemes. Nor does the Bill explain how the block grant for flood prevention will be equitably distributed to LA's on the basis of their need. As explained in item A2. (iii) above, the statement in Cl. 277 of the Memorandum that "it has been assumed that efforts to understand and manage flood risks are greater in Scotland's urban centres than in Scotland's rural areas, and the costs on LA's reflect this spread of effort" is also clearly unsatisfactory.</p> <p>With respect to this, a letter was sent to the Cabinet Secretary for Finance and Sustainable Growth, Mr. John Swinney, MSP, on 30/05/08, from David S. Sawers, Chief Executive, seeking confirmation that the funding regime had now changed from "grants" awarded to individual projects when a Flood Prevention Order (FPO) has been made to funds being directed to LA's through "block allocations" and that this will</p>

continue beyond the current three years settlement period. Two issues were raised with respect to this:

(a) Firstly, the current grant allocations provide for schemes having the benefit of an FPO. Clarification was sought as to how schemes are likely to receive financial support where the FPO for a scheme is programmed to be confirmed during the current three year settlement period. In the case of one particular scheme, the Brechin Flood Prevention Scheme (BFPS) the FPO was programmed for promotion commencing in 2008. It was queried whether the block allocation would be made ahead of an FPO being made for an individual scheme, for example on the basis of the LA's capital plan containing a programme of both coastal and flood alleviation schemes or whether the funding would be part of the Scottish Futures Trust (SFT). Also, in either case, clarification was sought on what approval process would be applied and how the funding would be allocated and whether funding through block allocations would allow the opportunity for funds to be available before the FPO is made. With particular reference to the BFPS, this scheme has occurred in the period when new SFM practices are being introduced and the regulatory framework has been undergoing extensive change. This council has extraordinary preparatory costs occasioned by the need to comply with these recent legislative developments during the preparation of the scheme. At a recent conference on Infrastructure Investment in Scotland, John Mason spoke on the matter of flood prevention and its relationship with SFT, indicating that the funding for the BFPS was included in the Scottish Government's £35bn, 10 year programme. If the BFPS is to be funded from or through SFT, it was queried when the Scottish Government would be providing guidance on its application. The importance of receiving this clarification was emphasised if the BFPS was to get approval in 2008 as noted above, which now seems unlikely.

(b) Secondly, clarification was sought as to what extent the financial support may provide for such elements as necessary environmental mitigation or enhancements and design costs (i.e. it was queried what would comprise "eligible costs"). When developing a scheme LA's have to bear the preparatory cost of design and investigations required to bring forward any scheme significantly in advance of an FPO. Eligible costs had previously been subject to grant after the FPO was made. Previously and at present the risk of obtaining approvals is with the LA. By contrast for other capital schemes the preparatory costs are included in the capital plan and are considered within the overall funding package for the scheme.

Although it is understood that an acknowledgement from the Minister's office was received, no substantive response has yet been received, prompting the Chief Executive of Angus Council to write again to the Minister on 24/09/08 requesting a likely timescale for a substantive response from the Minister's office.

(v)	<p>Although it is satisfactorily noted that the proposal to make SW responsible for implementing measures associated with drainage infrastructure has been withdrawn, the funding issues raised for dealing with outflows from SW's systems have not been addressed [see item A2 (ii) above].</p> <p>With respect to this, the letter sent to the Cabinet Secretary for Finance and Sustainable Growth, Mr. John Swinney, MSP, on 30/05/08 [see item A2. (iv) above] also sought clarification on whether the revised funding mechanism would remove a number of apparent legislative restraints of the 1961 Flooding Act and the 1949 Coastal Protection Act, as stated in the consultation on the emerging Flooding Bill, particularly with respect to the BFPS. It was asked whether it would be competent for Angus Council to include all the work required to deal with the outflows from drainage systems, including the sewers, in an integrated manner as part of the flood scheme and consequently how it would be funded.</p> <p>The letter stated that: the effectiveness of the BFPS will rely on its interrelationship with the sewer system. At present there appears to be no requirement on SW to “flood proof” their sewers which they contend operate to their design standards. Equally it may not be within the legislative powers of the Council to achieve this flood proofing either through the promotion of the BFPS or through other legislation. The consultation paper on the Flooding Bill 2009 appeared to hold out hope of a resolution to this difficulty. Confirmation was requested that this difficulty would be overcome through the forthcoming legislation [though this does not appear to have happened as per item A2. (ii) above] or otherwise.</p> <p>With respect to a lack of a substantive response to the queries raised in this letter see item A2. (iv) above.</p>
(vi)	<p>While Sections 49 – 51 of the Bill appear to be more precise in stating what LA'S can or cannot do with respect to their general power to manage flood risk than the flooding legislation to be repealed, LA's will still be constrained in being proactive as they will still have to bear the cost of any such actions where there is no specific direct funding.</p> <p>Although the new power conferred by Section 57 of the Bill for LA's to recover any expense it incurs in carrying out repairs, etc. to flood protection work from the owner or occupier of the land if that person caused the damage is welcome, it may be difficult in practice to prove that the damage repaired was “as a result of the actions of that person”.</p>
(vii)	<p>It is not clear that the cost to primarily rural LA's, such as Angus Council, of carrying out proactive catchment management measures as part of SFM has been sufficiently allowed for in the additional £240,000</p>

	p.a. average per LA budget allocation as per item A2. (iii) above.
Q3.	Did you have sufficient time to contribute to the consultation exercise?
A3.	The timescale for a consultation response to this Questionnaire on the Financial Memorandum has been very tight and it has been difficult to accommodate the Committee's requirement for this response along with other high priority flooding issues.
	Costs
Q4	If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
A4.	In addition to the outstanding financial issues Angus Council still has from the original draft Bill consultation detailed above in item A2, the following financial implications have not been accurately reflected in the Financial Memorandum:
(i)	The estimate given in Cl. 313 by LA's (which LA's, it is not clear) that "when the new system is in place ... the changes to the statutory process will cost approximately an additional average of £10,000 per annum for an individual local authority ... to carry out new duties including processing of objections, additional administration costs and setting up a new system to approve applications for flood protection schemes" appears to be far too low an additional cost incurred, certainly between the enactment of this Bill and when the FRMP's are in place (December 2015). This is because currently the level and detail of documentation required for an FPO is significantly less than that required for full planning permission, although the FPO consultation required is much more extensive. This means that an LA can do the minimum amount of work required for the FPO for a scheme to be granted and then, due to the extensive consultation requirement for an FPO, be fairly certain (once the FPO is approved by Ministers) that the scheme will be granted Planning Permission before carrying out the extensive additional work required for Planning Permission. By combining the FPO and planning processes, LA's will have to undertake a much greater minimum amount of work on a scheme before the proposed scheme is tested against public opinion, etc. via the extensive new consultation process. Given that flood protection schemes are

	<p>generally relatively complex and are normally, by their nature, carried out on private land, it is likely that the rejection of such an LA scheme by the Scottish Government will result in significantly more abortive work by the LA than the rejection of an FPO would currently. This does not appear to have been taken into account in this LA cost estimate. It should be noted that it is <u>hoped</u> that when the FRMP's have been approved the likelihood of significant levels of abortive work would be reduced as, providing the proposed scheme is consistent with the approved FRMP, the scheme should be more likely to be accepted by consultees.</p>
(ii)	<p>With respect to Cl. 323, while it is accepted that there will be a small saving to LA's as a result of the transfer of responsibility for the enforcement of the Reservoirs Act to SEPA. In the case of Angus Council, this saving is likely to be offset by the new requirement for incident reporting on the 3 reservoirs it owns.</p>
Q5.	<p>Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?</p>
A5.	<p>Given the outstanding concerns raised in items A2 and A4 above it seems highly unlikely that Angus Council will be able to meet the financial costs associated with this Bill (i.e. as detailed in the summary of estimated costs in the Memorandum) particularly in view of the concern raised in item A6. below.</p> <p>Given that a high degree of uncertainty is expressed throughout the Memorandum regarding the likely additional costs of implementing the requirements of the Bill, it would seem fair and logical that a LA should be able to claim back any additional expenditure it has incurred on implementing this Bill from the Scottish Government until such time as the real additional costs to LA's are known. Although it is recognised that claiming a grant to cover the additional cost incurred is perhaps against the current CoSLA and Scottish Government line of aiming to minimise ring fencing to allow LA's greater flexibility, given the uncertainty surrounding the costs and how these will be spread amongst LA's, the option of having a grant out-with the main settlement, at least initially until such time as the outcome from implementing the new Directive has become clear, is considered to be most appropriate. It is therefore suggested that the mechanism for claiming back the additional cost incurred could be similar to that which previously was in place for LA's to claim the 80% grant from the Scottish Government for carrying out a flood prevention scheme. The Scottish Government would be in a good position to compare the additional expenditure incurred between similar LA's and carry out audits as it saw fit to ensure that no LA's were making spurious additional expenditure claims, the</p>

	<p>cost of which could be charged to an LA if this was found to be the case. There would also be the benefit of this process being generally well understood by flood prevention practitioners in both LA's and the Scottish Government.</p> <p>If LA's are unable to adequately fund the additional requirements, there is a danger that LA's will be unable to take the proactive approach envisaged by the Bill, but will only be able to carry out the minimum requirements of the Bill. This will mean that the development of the LFRMP's is likely to be much delayed and until more certainty is given over the likely funding mechanism for the detailed flood protection measures (particularly those to be incorporated within flood protection schemes to be promoted) the detailed timetable of completion and implementation of measures is likely to be long-term. Please note that LA's have various competing demands for resources, and the priority of flooding as an issue tends to recede as the time since the last major flood occurred lengthens. The decision to allocate the central government funds, which previously were available as an 80% grant for specific flood alleviation schemes, as block grants, on an as yet unspecified basis, to individual LA's is only likely to encourage this unfavourable response from LA's as higher priority demands eat into this funding.</p>
Q6.	Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
A6.	While for virtually every cost the Memorandum states uncertainty in the cost and timescales of implementing the requirements of the Bill, it states mean costs for each Council with no mechanism by which the real costs can be claimed back should the cost estimate and timescale prove significantly erroneous. Furthermore the Bill also makes an allowance for Ministers to add significantly to the workload of LA's at virtually every stage of the Bill's implementation, both directly and indirectly.
	Wider Issues
Q7.	If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
A7.	It is understood that this Bill, in promoting SFM, forms part of a wider environmental policy initiative, as introduced by the Water Environment

	<p>& Water Service (Scotland) Act 2003 (WEWS) from which the River Basin Management Plans (RBMP) and Controlled Activities Regulations (CAR) legal requirement for Sustainable Drainage Systems (SuDS) and Scottish Planning Policy SPP 7: Planning and Flooding have emanated. The prime associated costs have mainly come from the introduction of the CAR, SuDS & SPP 7. As all three of these policy initiatives have already been introduced, it is presumed that the cost estimates in the Memorandum have not taken account of them. However, it is not clear that the substantial additional financial burden which these place on LA's (in particular the adoption of virtually all forms of SuDS which do not meet SW's Sewers for Scotland Version 2 strict vesting criteria, i.e. the vast majority of SuDS) have been allowed for in the current budget allocation for individual LA's. With respect to this see item A2. (iii) & (iv) (a) above.</p> <p>In addition, and similar to the problem highlighted in the Bill's proposed amalgamation of the FPO and Planning Approval stages of the statutory approval process [see item A4. (i) above] the Bill gives no indication of how the CAR licence application and approval requirement will fit into the process. There is a danger that SEPA could require the detailed information it needs to assess and approve a licence application, which can take up to 4 months, at the new flood protection scheme approval stage, rather than after the detailed design stage when it would be most appropriate to provide the detailed information required for a CAR application. While this may appear to shorten the whole statutory approval process, it would only do so at LA's risk, as this may make the issue of abortive work, similar to that described in item A4 (i) above, even more significant. For an LA, in order to gain scheme approval, may need to carry out this work before it has any indication that the scheme will be approved. Currently, it is understood that SEPA in the Angus area would require conditional approval of a scheme at both the FPO and planning stages to ensure that its CAR approval requirements would be met and the relevant licence be issued to Angus Council prior to construction work beginning on site. This allows any detailed information requirements to be dealt with by an LA at the appropriate stage in a scheme's development.</p>
Q8.	<p>Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?</p>
A8.	<p>Yes, there may be future costs associated with the Bill as per items A6. above. No, it is not possible to quantify these costs at this stage.</p>

David S. Sawers
 Chief Executive
 5 November 2008

SUBMISSION FROM NORTH AYRSHIRE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes to both

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

No, see comments for question 4 below:

Did you have sufficient time to contribute to the consultation exercise?

No, the timescale did not allow for North Ayrshire Council's submission to be approved by its Executive Committee.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Council expressed concerns over the funding of large-scale flood protection schemes following the ring fencing of flood prevention and coast protection grants as part of the single outcome agreement. This effectively allocates funding to those local authorities with approved schemes and which will be built in the 3 years up to 2011. The Financial Memorandum, paragraph 327, states that the first set of flood risk management plans will be produced in 2015 and will identify measures to be taken forward in the subsequent 6 years. There is no detail provided on how funding will be allocated in the period from 2011 up to 2015. From 2015, the Financial Memorandum is very vague stating only that "expenditure will be targeted in those areas at greatest flood risk and on most cost effective measures to manage those risks".

North Ayrshire Council is currently progressing a scheme for the upper Garnock catchment at Kilbirnie, Glengarnock and Dalry. The estimated cost is around £12 – 15m and the Council has concerns over the lack of information in the Bill with respect to a mechanism which would allow local authorities to bid for flood protection schemes.

With regard to revenue funding, the annual costs given in paragraph 286 for undertaking work to contribute to the preliminary flood risk assessment seem fairly accurate. Until local flood risk management plans are complete, it is impossible to comment on whether the costs given in paragraph 289 are an accurate reflection of the work that will be required. Within North Ayrshire Council, based on current knowledge gained by officers since the 1997 Amendment, it is considered that the identified cost of £0.24m per annum can easily be accounted for during the first 6-year cycle.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

North Ayrshire Council would not be able to meet these costs out of its current budget allocation for flood prevention. Accordingly, it is the Council's contention that the anticipated costs of implementing this legislation be fully funded by the Scottish Government.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

North Ayrshire Council does not consider that the Financial Memorandum accurately reflects the margins of uncertainty. Currently most local authorities have a fair understanding of the condition of their watercourses and the financial implications of the work that are required. The question of dealing with flooding from all sources has, at present, not generally been identified. The costs of dealing with coastal flooding, overland flow and, in particular, upgrading an antiquated and often unrecorded surface water sewer network (including culverted minor watercourse in urban areas) is considered to be high. Few local authorities in Scotland, with possibly the exception of Renfrew and Glasgow, have assessed this aspect of flood risk in any detail.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No, for reasons stated above, if the costs in the Financial Memorandum are not considered to accurately reflect the Bill then it follows that they not will not reflect any associated costs of a wider policy initiative.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

On past experience of this type of legislation, in particular the 1997 amendment to the Flood Prevention and Land Drainage (Scotland) Act 1961, North Ayrshire Council has no doubt that there will be future costs associated with the Bill. This view is based not only on past experience but also on the scarcity of experienced flood practitioners, current uncertainty on flood risk and public expectation where flood risk is a real concern.

R Small
Head of Infrastructure & Design Services
November 2008

SUBMISSION FROM CLACKMANNANSHIRE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Clackmannanshire Council did respond to the call for comment on the draft Bill, but no direct comment was made on the financial assumptions taken at that time. The C.C. response was sent within the timescale required.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The "summary of questions" document to be completed on the draft bill did not ask for comment on the financial issues related to the bill.

Did you have sufficient time to contribute to the consultation exercise?

It is considered that despite the relatively tight timescales and importance of the topic there was sufficient time to offer useful comment.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Although the Bill successfully sets out a robust framework for the future of flood management in Scotland, the scale and cost of the resultant duties and responsibilities on Local Authorities (LA) has not yet been determined. LA costs can only be known accurately enough to allow meaningful financial planning once more detailed knowledge is gained of the Bill by the relevant LA staff. As an example, the exact extent of Local Plan Districts and the identify of all Lead Authorities are unknown at this time. It is therefore difficult for CC to have confidence in the accuracy of the costs quoted in the Explanatory Notes given the significance and extent of these variables. Also, with the variety of council area sizes, catchments and likely Local Plan Districts, giving average cost figures does not seem to offer any useful information.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As the scale of the duties and responsibilities that will fall to CC are not known at this time, CC cannot confirm that the financial costs associated with the Bill can be met from normal LA resource allocations from SG.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

CC considers that the draft Financial Memorandum does reflect a level of uncertainty in terms of resource estimates and of course a process to derive estimates is needed. However, the topic involved is of such a complexity and Council and catchments sizes vary so greatly that concern is expressed as to usefulness of the figures quoted.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Given the flood bill will transpose the EC Floods Directive, it does, to some extent, form part of a wider EC policy initiative. The Financial Memorandum does reflect costs associated with required steps towards adherence with the EC Flood Directive, but C.C. cannot as yet determine whether all such costs are currently included.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There will, no doubt, in future years be subordinate legislation and other requirements placed on LAs and it is inevitable that resultant future costs will require to be borne. However, given the very early stage in the legislative process combined with complexity of the topic involved, it is very difficult to determine any meaningful future costs.

SUBMISSION FROM COMHAIRLE NAN EILEAN SIAR

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Comhairle responded to the consultation on the Bill and on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, however as the costs detailed in the Financial Memorandum refer to estimated average amounts for each local authority, the actual costs on individual local authorities will vary significantly depending on the extent and type of flood risk that are being assessed and managed.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill will have significant financial implications for Comhairle nan Eilean Siar. For the reasons expressed in answer to Q2., it is difficult to ascertain whether the information submitted by the Comhairle has been taken account of in the Financial Memorandum.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Comhairle cannot meet the financial costs associated with the Bill. Comhairle nan Eilean Siar budgets are fully committed and services generally are under considerable pressure not least from the requirement to make year on year efficiency savings.

As the Bill places significant additional duties on Comhairle nan Eilean Siar, costs should be met by additional funding to the Comhairle from the Scottish Government. As the Bill has resulted from an EC Directive, consideration could be given to the EU as an appropriate source of finance to implement the requirements of the Bill.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Without access to the financial information submitted by each local authority, a definitive answer cannot be provided regarding the accuracy of cost estimates. However, given that the

cost estimates are a reflection of submissions from all parties, the Financial Memorandum provides reasonable estimates of costs in relation to uncertainty and timescales.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Yes.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Future costs will become apparent as the extent and type of flood risk that are being assessed and managed are developed by the processes stated in the Bill.

	Pre Bill Introduction £/annum	Post Bill Introduction £/annum
Statutory Process Costs per annum – including appeals/objections*	Nil Ad-hoc meeting as required with local communities costs met from existing revenue.	See previous spreadsheet Total costs for flood risk management responsibilities £107k per annum
Nr of full time/ part time Staff Employed in Statutory Process	Small variable revenue staff costs as required for local meetings etc.	6 no part time staff Total annual commitment 147 days (Approx 0.5 full time post)
External Consultancy Fees (per annum) – Statutory process	nil	Budget set at £40k per annum
Planning Process that deal with flood prevention schemes Costs per annum*	nil	nil
External Consultancy Fees (per annum) – Planning process related to Flood prevention schemes	nil	nil
Nr of full time/ part time Staff Employed in Planning	nil	nil

Process – that deal with flood prevention schemes		
External Consultancy Fees (per annum) - reservoirs	nil	nil
Cost of Enforcing Reservoir Act per annum	Variable sum generally less than £1k per annum	Variable sum generally less than £1k per annum
Nr of full time/ part time Staff Employed in Reservoir Act Enforcement	1 part time Small part of overall piers, harbours and coastal duties	1 part time Small part of overall piers, harbours and coastal duties
Fees for reservoir Inspection Engineers (per annum)	Small cost as necessary	Small cost as necessary
Cost Incurred in Water Framework Directive per annum (River Basin Management Planning)	Small staff attendance costs, meetings etc organised by SEPA	Small staff attendance costs, meetings etc organised by SEPA
Nr of full time/ part time Staff Employed in WFD Process (River Basin Management Planning)	Staff only for attendance at meetings, cost met from revenue.	Staff only for attendance at meetings, cost met from revenue.
External Consultancy Fees (per annum) WFD process	No external consultants employed by CNES	No external consultants employed by CNES

*** As annual figures will vary considerably it may be useful to provide the costs associated with the passage of an individual scheme through these processes.**

SUBMISSION FROM EAST LoTHIAN COUNCIL

Introduction

East Lothian Council welcomes the opportunity to comment on the Financial Memorandum for the Flood Risk Management Bill.

All questions have been answered as outlined on the Questionnaire.

Flood Risk in East Lothian

The “Impact of Flooding in Scotland Maps” prepared by the Scottish Executive Geographic Information Service covering both fluvial and coastal flooding and using the SEPA Indicative Flood Maps do not take into account any flood or coastal defences.

Properties which have already been protected are included in the number of properties at risk from flooding as shown on the SEPA Maps.

If Government Funding was distributed to Local Authorities on an average basis, East Lothian Council would be unfairly treated, as the number of properties in East Lothian at risk of Flooding is greater than the average number in each Local Authority area.

Consultation

Q1 Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

A1 Yes.

Q2 Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

A2 No.

Q3 Did you have sufficient time to contribute to the consultation exercise?

A3 Yes.

Costs

Q4 If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A4 No. The estimated staff costs associated with the preparation of the Flood Risk Management plans appear to be low compared with the expertise which will be required to prepare meaningful plans.

Para 276. “The costs identified are preliminary estimates.”

Para 285. “The Bill will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties.”

Para 289. “The average implementation cost for each local authority.”

Para 291. “SEPA, in close liaison with local authorities, will also be responsible for establishing the network of advisory groups that will support flood risk assessments and management plans.”

Para 294. “All work will be undertaken in close co-ordination with the responsible authorities and, in particular, local authorities.”

Para 298. “Scottish Water to assist SEPA on flood risk assessments and flood management planning, and to do so in collaboration with SEPA and other responsible authorities.”

Pars 299. “An area that will require Scottish Water to undertake new work in improving the understanding of flood risk from sewerage flooding, and linking this work with other flooding studies undertaken by SEPS and local authorities.”

Para 328. “At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence on the provisions set out in the Bill.”

Para 329. “Flood management measures would be taken forward through existing investment programmes.”

Q5 Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met.

A5 No. Additional Central Government Funding is required.

Q6 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A6 No. The estimated staff costs associated with the preparation of the Flood Risk Management plans appear to be low compared with the expertise which will be required to prepare meaningful plans.

Para 276. “The costs identified are preliminary estimates.”

Para 285. “The Bill will have both cost and resource implications for local authorities. It is difficult to estimate the likely total cost of these new duties.”

Para 289. “The average implementation cost for each local authority.”

Para 291. “SEPA, in close liaison with local authorities, will also be responsible for establishing the network of advisory groups that will support flood risk assessments and management plans.”

Para 294. “All work will be undertaken in close co-ordination with the responsible authorities and, in particular, local authorities.”

Para 298. “Scottish Water to assist SEPA on flood risk assessments and flood management planning, and to do so in collaboration with SEPA and other responsible authorities.”

Pars 299. “An area that will require Scottish Water to undertake new work in improving the understanding of flood risk from sewerage flooding, and linking this work with other flooding studies undertaken by SEPS and local authorities.”

Para 328. “At this stage it is not possible to predict whether current expenditure on flood risk management measures will change significantly as a consequence on the provisions set out in the Bill.”

Para 329. “Flood management measures would be taken forward through existing investment programmes.”

Wider Issues

Q7 If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A7 Unable to answer at this time. It is unlikely that the associated costs have been accurately reflected.

Q8 Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed? If so, is it possible to quantify these costs?

A8 Unable to answer at this time, but it is likely that there will be future associated costs.

SUBMISSION FROM THE HIGHLAND COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Highland Council did take a full part in the consultation, but did not comment on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Highland Council did not make any comments on any financial assumptions.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has substantial financial implications for the Highland Council. It is not possible to give a firm opinion on the financial details. The total financial costs for Local Authorities have been inserted after consultation with COSLA but are given for the whole of Scotland and are simply averaged for each of the 32 Authorities. There is no detail of the basis or breakdown of the costs. There is no guidance for the likely Highland Council liabilities.

There are some apparent omissions from the Financial Memorandum:-

Under current legislation the Council have a duty to access watercourses. These watercourses generally relate to urban, built up areas. Under the proposed Bill the Council will have a duty to assess all watercourses – rural and urban. The ‘extra’ cost for the wider watercourse assessment does not seem to appear in the Financial Memorandum.

The measures in the proposed Bill can be varied by future regulation, ministerial direction and guidance. It is unlikely that these unknown future changes are included in the costs.

If the proposed Bill is successful - as intended - in simplifying and accelerating the procedures for flood protection then it is likely there will be increasing pressures to deliver such schemes. This will increase the financial pressures on the Council’s budget.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The financial costs cannot be met by the Highland Council from within existing budgets. Many parts of the Bill will give the Council many extra duties and short fixed timescales. The Council will be seeking clarification from the Government over the substantial financial implications.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The financial memorandum is broken down into sections and is only averaged for each Authority. There are no margins of uncertainty given. It is not possible to say whether the margins, estimates or timescales are realistic.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

It is not possible to say whether these costs are accurately reflected or not.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The measures in the proposed Bill can be varied by future regulation, ministerial direction and guidance. It is unlikely that these unknown future changes are included in the costs. It is not possible for the Council to quantify these costs.

SUBMISSION FROM MORAY COUNCIL

Q1 The Moray Council took part in the consultation exercise and commented on the financial assumptions made to CoSLA.

Q2 It is unclear whether our comments have been accurately reflected. The response identified the establishment and administration of local advisory groups as likely to have significant additional costs attached but these have not been separately identified in the Financial Memorandum. Likewise the costs of stakeholder participation and consultation are not separately identified.

Q3 The time allowed for local authorities to respond to CoSLA with the information requested by the Scottish Government was too tight and did not allow for a detailed formulation of costs.

Q4 As the costs given at para 289 (the bulk of the costs for local authorities) are averages for all authorities with no indication of upper or lower limits or of what the costs include, it is unclear whether the likely financial implications for the Moray Council have been accurately reflected in the Financial Memorandum. However, the comment at para 277, assuming that costs will be higher for urban authorities than rural authorities, gives rise to concern that the costs for the Moray Council may have been underestimated in the preparation of the Financial Memorandum.

Q5 The Bill will clearly have significant additional revenue and potentially additional capital costs for the local authority. There is no scope to meet these additional costs within current financial resources. Additional statutory duties should be funded through additional revenue support and capital grant as appropriate.

Q6 The Financial Memorandum states that there is considerable uncertainty, particularly at the level of individual authorities, but does not attempt to indicate the margins of uncertainty within which the Scottish Government expects authorities to operate or the likely range of additional resource requirements.

Q7 A significant risk to the delivery of flood alleviation schemes in Moray is funding support from the Scottish Government. Prior to April 2008 the Council was guaranteed 80% funding for eligible expenditure. With the move to capital grants that at present do not match the 80% level, there is major uncertainty for Moray Council in terms of affordability. Further details are provided in the Additional Comments section below.

Q8 Unclear therefore cannot quantify.

Additional Comment

Flood Risk management is well developed in Moray because of the recent history of flooding and concomitant commitment to develop Flood Alleviation Schemes. Flood Risk maps already exist for the most vulnerable areas. However, the Bill will inevitably entail additional work. The costing developed by the Moray Council for likely additional costs assumes that the work already carried out will not require to be duplicated in the initial stages. However, additional costs will be entailed to meet the requirement to update plans on the timescale set within the Bill, and these were not requested as part of the consultation exercise.

The bulk of the £44.33 million cost estimated as falling on local authorities as a result of the Bill are described in paragraph 289, but in such an abbreviated fashion that it is difficult to see what has been included in the calculation and how this might be expected to apply to individual authorities. It is consequently difficult to assess whether or not the Financial Memorandum sets out the best estimate of the administrative, compliance and other costs to which the provisions of the Bill would give rise.

Paragraph 329 states that flood management measures arising from the new flood risk management procedures would be taken forward through existing investment programmes. This does not recognise that existing investment programmes are underfunded compared to the 80% specific grant funding regime previously in place. In the case of the Moray Council this results in a shortfall of £23 million between 2008/09 and 2010/11. This shortfall is calculated before allowing for construction inflation over the period, the cost of public local inquiries (if necessary) and the full cost of compensation for landowners affected by the schemes. At the least, public expectations of flood alleviation works will be raised by the process as described in the Bill and there is no recognition in the memorandum that additional capital works cannot be absorbed within current investment processes without significant impact on other capital investment or that additional capital works entail additional revenue expenditure on maintenance. The Council anticipates further capital expenditure of £71 million between 2011/12 to 2013/14 to complete the Flood Alleviation Schemes in Moray.

SUBMISSION FROM ORKNEY ISLANDS COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Answer – Orkney Islands Council did not take part in the consultation exercise for the Bill consequently no comments were made by the Council on the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Answer – Not applicable but please refer to the answer for 1.

Did you have sufficient time to contribute to the consultation exercise?

Answer – Sufficient time was allowed for a contribution to be made to the consultation exercise but Orkney Islands Council did not contribute in this instance.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Answer – The assessment of costs has been arrived at by consultation with CoSLA. On that basis it is accepted that the additional cost to be borne by local authorities is accurate. The figures are averaged across all Council's however and it is not possible therefore to assess the particular costs for Scotland's smallest local authority, Orkney Islands Council.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Answer – Given that the Financial Memorandum anticipates average costs per local authority of £300,000 (£60k – flood risk assessments & £240k – flood risk planning cycle) to instigate and continue with the requirements of flood risk management it is unlikely that Orkney Islands Council would be able to absorb costs of this magnitude without affecting other service provision. It would be expected that additional funding from the Scottish Government would be made available to the Orkney Islands Council in this regard.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Answer – Yes.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Answer – Yes.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Answer – No.

Brian Thomson
Director of Technical Services
Orkney Islands Council

SUBMISSION FROM RENFREWSHIRE COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, took part in consultation exercise through Cosla and commented on the financial assumptions. However, this was before the significant reduction in development took place, which has now shifted the perceived need for very local flood risk management planning much further ahead of cost recovery from improved capital receipts and development constraint removal. There are therefore much greater up front costs, within a fixed EU timeframe.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes. However, the mechanisms for aligning the budgets and especially the timeframes of Scottish Water are problematic.

Did you have sufficient time to contribute to the consultation exercise?

Yes. However, the implications and development of the Bill is ongoing.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes. However, with the information available at the time it would be reasonable to expect a significant margin of error to potentially exist. Further estimates made are on the higher side, but no allowance is made for any duplication with similar potential costs as a result of the Climate Change Bill, and overlapping measures that may be applicable.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Do not believe that the organisation could meet the financial costs associated from within current resources. An increase in GAE would be required and this should be based on the number of properties at risk of flooding.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Financial Memorandum provides reasonable estimates given the level of uncertainty. However, key decisions in respect of the WIC brief, could substantially affect both implementation timescales and expenditure profiles.

It should be noted however that the estimates provided are substantially based upon the existing expertise, intellectual capital, and data developed with 1M Euros of urban water project assisted by Westminster and the EU. Other LA's may not be so fortunate to be in this position.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The potential implications of the Climate Change Bill, include for a structural reassessment of our street layouts both old and new, to reflect a much needed reduction in carbon generation by traffic. Coupled with Statute on the quality of water runoff from within our urban areas and the need to control the volume of runoff and flow through these urban areas, we now have legislation fit for the 21st Century.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Production of flood risk maps by 2013 and management plans by 2015 will result in a greater call on local authority staff time in co-operating with SEPA and Scottish Water on working parties. To maximize the integrated working required it will probably be necessary for the most forward thinking LA's to produce a very local Flood risk management plan by 2011 for discussion with SEPA and SW to align budgets as closely as possible, whether or not the WIC have had their brief brought up to date.

In respect of costs there is a balance between revenue and preliminary design and capital cost, that is quite complex, and so is very difficult to quantify the human resource costs solely with the LA.

SUBMISSION FROM SCOTTISH BORDERS COUNCIL

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, I responded on the 30 April 2008 to the “The Future of Flood Risk Management in Scotland – A Consultation Document. There was no opportunity to comment on financial assumptions in this document.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

I did not identify any opportunities in the original consultation and made no comment at the time.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill does have financial implications for Scottish Borders Council. These implications arise out of:-

(a) the costs associated with initial flood risk assessments, production of local flood risk management plans and inspection and maintenance of an increased number of watercourses;

(b) the cost of implementing Flood Protection Schemes in view of the Bill’s general duty to reduce overall flood risk compared with the permissive and discretionary powers under the Flood Prevention (Scotland) Act 1961;

(c) the cost associated with the increased scope of the Bill compared with the Flood Prevention (Scotland) Act 1961 in that it covers all land not just non-agricultural land and all sources of flooding not just fluvial flooding.

Scottish Borders Council is a rural area with a large number of rivers and with most communities located in valleys adjacent to rivers. It has 8% of the properties in its area at risk of flooding, one of the highest percentages in Scotland. It is therefore very likely that the average figures derived in consultation with CoSLA will not cover the cost of preparing flood risk assessments and preparing and implementing local flood risk management plans for the area.

Scottish Borders Council is taking forward seven Flood Protection Schemes. These schemes are still at a very early stage. The initial estimate for these schemes is £72 million

(2006 prices). It is likely that the work phase of the schemes will start to come on stream in 2011 but the proposed funding mechanism is very unlikely to provide sufficient funding from the Scottish Government to allow the Council to implement these schemes.

At present Scottish Borders Council is in a position to limit the demand for fluvial flood protection to isolated properties on the basis that the 1961 Act only relates to non-agricultural land and it is the owner's responsibility to protect their own property. The Bill will remove this restriction and the Council will consequently come under increased pressure to provide flood protection to such properties from all sources of flooding. This may increase the number of schemes the Council will have to consider. The proposed funding mechanism is very unlikely to provide sufficient funding for even existing Flood Protection Schemes and so will not accommodate additional schemes.

In summary Scottish Borders Council has concern about the responsibility for increased duties and functions under the Bill without a commitment to fund these additional duties and functions.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

No.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum only partially identifies how additional duties and functions will be funded. Several Councils have disproportionately large Flood Protection Schemes that cannot now be funded by the model suggested and it is not clear how these can be taken forward, if at all.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Bill relates specifically to flood risk management and is not part of a wider policy initiative. There are therefore no associated costs with a wider policy initiative.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Yes, but without further details it is impossible to quantify these costs.

SUBMISSION FROM SOUTH AYRSHIRE COUNCIL

With regard to the Questionnaire on the above Bill, we've studied the Financial Memorandum produced to accompany the Flood Risk Management (Scotland) Bill, which is currently before the Scottish Parliament. Significant costs may be incurred by local authorities if the legislation is enacted, both in implementing the EC Floods Directive and by the statutory process. However, until the legislation is put in place it is difficult to predict what costs would fall on South Ayrshire Council. Taking a rough estimate from Table 1 of the Financial Memorandum, dividing the £36.48 million total cost to local authorities and dividing by 32 gives some £1.14 million, plus an annual running cost of some £250,000, but this would be very dependent on the flood risks assessed and managed.

Given the large uncertainties in these financial estimates at the current time we would wish to reserve the Council's position and record a "nil return" to the general questions raised.

SUBMISSION FROM WEST LOTHIAN COUNCIL

- Q1. Did you take part in the consultation exercise for the Bill, if applicable, and if so, did you comment on the financial assumptions made?
- A1. Yes, West Lothian Council submitted a comprehensive response to the consultation document and made a number of observations on the financial implications of the bill.
- Q2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
- A2. To a point, the suggestion that it might cost local authorities on average, £5,000 per annum to fulfil their role as Enforcement Authority under the reservoirs is probably too high a sum. West Lothian Council spends considerably less than this and would be reluctant to see a sum as large as this reflected in the settlement.
- Q3. Did you have sufficient time to contribute to the consultation exercise?
- A3. The council had time to contribute to the consultation on the proposed flood risk management bill but taking into account the consultation workshops, it meant that meeting the deadline required some short-circuiting of the usual democratic processes at a local level. The time available to respond to the questionnaire on the financial Memorandum was too limited.
- Q4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
- A4. The savings that it is suggested that local authorities will make from passing the role of Enforcement Authority under the reservoirs Act to SEPA is considered too high and should not, therefore, be reflected in the overall settlement.
- Q5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
- A5. West Lothian Council would be unable to meet the proposed costs from its existing resources. Given the already well documented substantial cost pressures that councils are facing it would be necessary for the resulting costs associated with successfully implementing the ensuing Act to be funded by the Scottish Government. . Also, given that the costs quoted in the Financial Memorandum are outline estimates, there is an expectation that the Scottish Government will also find ways of increasing funding if the national experience later identifies this need. There continues to be concerns that West Lothian will lose funding to more densely populated areas despite there being a significant risk of flooding in its disparate less-populated communities and having to commit exactly the same resources to meet the proposed legal duties.
- Q6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- A6. No, local authorities will be expected to resource the new duties as soon as possible after the ensuing Act receives Royal assent in order to secure and train the best personnel. This needs to be reflected in the financial profile of any settlement made to local government. Simply put this means funding in 2009/10.
- Q7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
- A7. Perhaps. There are concerns, however that disparity between the funding regimes of local authorities and Scottish Water, in particular, are likely to frustrate effective progress.
- Q8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
- A8. The identification of risk and the associated publicity will inevitably increase the expectation of local people that something will be done to reduce risk. The financial memorandum suggests that improvements to flood risk management will ultimately lead to the reduction in economic costs to businesses, domestic properties and infrastructure and the improvement of the social well being of people in at risk areas. The resources available to bring forward Flood Protection Schemes is finite and will need to be increased significantly if public expectation is to be satiated.

SUBMISSION FROM FORESTRY COMMISSION SCOTLAND

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. FCS, as the Government's Forestry Directorate, submitted a response to the consultation on '*The Future of Flood Risk Management in Scotland*'. In it we welcomed FCS's potential designation as a responsible authority, regarding this as a clarification and extension of our duties under the WEWS Act. We also drew attention to the relationship between the delivery of sustainable flood management and the level and availability of financial resources.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes. The Financial Memorandum acknowledges (e.g. paragraphs 278,279, 305) that there are likely to be costs to organisations identified as responsible authorities. Making specific reference to FCS (paragraph 306) it also acknowledges that such costs are currently unquantifiable as, until preliminary flood risk assessments are undertaken, the number of flood risk management plans on which we would be required to advise or act, is unknown. We agree with this.

Did you have sufficient time to contribute to the consultation exercise?

Yes. FCS was fully involved before and during the consultation exercise.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

If Forestry Commission Scotland were to be designated as a responsible authority our costs would vary depending on the role we were expected to fulfil. Based on previous discussions, and in expectation of further dialogue with our Scottish Government colleagues, we anticipate three key roles. Firstly, an advisory role within the flood management process. Secondly, implementing natural flood management (NFM) techniques on the national forest estate (managed by Forest Enterprise Scotland on behalf of Ministers). Thirdly, for other forest land, FCS would be expected to promote and support NFM techniques, where appropriate, through the Scottish Rural Development Programme and Rural Development Contracts.

These roles could represent significant costs for FCS through staff training, provision of advice and modelling work, and implementing flood alleviation measures on the ground. However, and as stated in the Financial Memorandum, it is not possible to quantify these potential costs at present as, until the preliminary flood risk assessments are undertaken, the number of flood risk management plans that will be required, and hence subsequent delivery actions, are unknown.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As it is not yet possible to assess the full range of potential costs it is hard to answer this question definitively. However, given the lead-in period to the implementation of delivery measures, our expectation is that the Comprehensive Spending Review (CSR) process will enable us to bid for new resources and/or re-prioritise existing resources as necessary. Other

mechanisms may also enable new measures (such as appropriate woodland creation) to be implemented within existing resources on the national forest estate, particularly where these have a climate change dimension (e.g. please refer to the current consultation on forestry provisions in the Climate Change Bill at: www.forestry.gov.uk/fcsclimateconsultation).

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes. At this early stage of development it is reasonable to state that the costs to FCS, and associated timescales, cannot be quantified.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

It is implicit that successful delivery of sustainable flood management will require significant expenditure. We believe the CSR process will be the appropriate mechanism for resource allocation.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Bill is enabling in nature and the Policy Memorandum states that it provides for regulations, in a number of different areas, to be made in due course. This relates, in particular, to the content and form of flood risk management plans and the assessments of flood risk. There will be a cost associated with this and Scottish Government colleagues are well placed to comment on this issue.

There are also other areas of the Bill which require further policy development. For example a Natural Flood Management (NFM) Group has been convened recently to offer advice to the Scottish Government and help develop a NFM policy strategy. The group is developing a research strategy for NFM and it is proposed that a number of demonstration projects be set up to provide empirical evidence on the value of such techniques. Funding will need to be secured to ensure these demonstration projects can be taken forward.

One area we would like to highlight is the potential disconnect between current agricultural economics, other land use pressures and natural flood management techniques such as the creation of floodplain woodland (as a mechanism to hold back floodwaters and desynchronise downstream flood peaks). Experience in England indicated that even doubling the rate of forestry support measures was insufficient to encourage floodplain woodland creation at various trial sites. If mirrored in Scotland, which is likely given the comparative scarcity of good quality agricultural land, this might have implications for the cost of providing 'environmental services' of this nature. However, although such costs may appear high in terms of forestry's standard costs, the true comparison will be with alternative, hard engineering solutions. From that perspective, such forestry-related environmental services can be expected to be extremely cost effective, particularly as other benefits will also accrue (such as carbon sequestration, reductions in agricultural emissions through reduced use of fertiliser, reductions in diffuse pollution, and biodiversity gains).

Forestry Commission Scotland
November 2008

SUBMISSION FROM NFU SCOTLAND

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

NFUS did respond to the consultation on the Flood Risk Management (Scotland) Bill, but did not make any specific reference to the financial assumptions made.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Given the response above, this question is non-applicable.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

NFUS is concerned by paragraph 317 on page 48 of the Financial Memorandum. The paragraph speaks of minor costs or savings to individual land owners or occupiers in respect of the Bill making amendments to the Land Drainage Act 1958. NFUS must seek greater clarity over new powers being given to local authorities to recover their expenses, including the costs of restoration if land owners or occupiers damage any flood protection work carried out by the local authority.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

It is impossible to estimate what the potential or actual costs might be for either individual farm businesses, farming sectors, or the agricultural industry from the operation of the proposed legislation on flood risk management.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

NFUS has no comment to make.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Impossible to assess without further explanation of where and how the Flood Risk Management (Scotland) Bill fits into a wider policy initiative.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

NFUS is concerned that there might well be future costs associated with the Bill, for either individual farm businesses, farming sectors, or the agricultural industry from the operation of the proposed legislation on flood risk management. However, these are as yet unknown and therefore cannot be quantified.

SUBMISSION FROM THE FRESHWATER TASKFORCE OF SCOTTISH ENVIRONMENT LINK

Scottish Environment LINK is the liaison body for Scotland's environmental organisations, the members of which are supported by around 500,000 people. LINK member organisations have been actively involved in work on water issues and have worked in partnership with the Scottish Government in the lead up to the Flood Risk Management (Scotland) Bill 2008, they;

- Were actively involved in the transposition of the Water Framework Directive into Scots law, and instrumental to introducing a duty on Scottish Ministers and Responsible Authorities to 'promote sustainable flood management'.
- Have been active members of the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC) and instrumental in producing the definition of sustainable flood management
- Are active members of the Flooding Bill Advisory Group, and the Natural Flood Management sub-group
- Have been instrumental in improving the understanding and the benefits of natural flood management
- Have provided written and oral evidence to the Environment and Rural Affairs Committee on its Flooding Inquiry
- Held a number of events for MSPs and other stakeholders on the issue of flooding.

All the previous submissions, briefings, reports and consultation responses can be on the LINK website, www.scotlink.org

Introduction

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Finance Committee on the Flood Risk Management (Scotland) Bill 2008. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

A critical part of introducing the new Bill is estimating and evaluating the costs and the benefits of the new approach to be introduced under the Bill. The new approach aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aim to deliver environmental and other benefits.

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because, traditionally, only the cost-benefit of hard engineering option was considered, and not the cost-benefit analysis of a range of different options. In addition, the cost-benefit analysis was also only carried out for easy-to-quantify monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analyses.

The real benefit in introducing the new framework for flood risk management is in the assessment of a variety of options, delivery of multiple benefits and the provision of long-term solutions. In this submission we would like to highlight the multiple benefits that would result from the new framework for flood management, in particularly looking at the benefits of natural approaches to flood management and long-term planning. Where Scottish data are not available, figures from England or other countries are used as indicated.

Benefits of long term planning

Strategic planning for flood defence allows for the most cost effective solutions for each catchment to be found. It also helps identify areas where flood mitigation is difficult and where development should be avoided. Planning is particularly important given that flooding is likely to increase in frequency due to climate change. By linking flood risk management with land use planning, it will be possible to avoid new development in areas at high risk of flooding, and so reducing the need for expensive flood protection measures. Avoiding building on floodplains and high flood risk areas remains the cheapest, long-term option for flood management.

Climate change

The UK Climate Impacts Programme³⁵ (CIP) predicts how climate might change over time, and concludes that winters will become wetter, and summers drier, but the intensity and frequency of summer storms may increase. For example, a medium-emission climate change scenario predicts that a 1 in 100 chance flood in any year is expected to become a 1 in 70 chance flood in any year by the 2020s, and to a 1 in 40-60 chance flood in any year by the 2080s³⁶. Therefore floods, which are currently considered 'extreme', will become more frequent in future. The sustainable approach to flood risk management provides effective means of planning for these changes and a framework for sustainable adaptation.

The costs of setting up the new framework for flood management

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that **the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes**. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Although we cannot calculate the potential cost saving from sound planning for the future, there are many examples of the costs of the lack of integrated flood management planning, especially in areas where development was allowed to take place on floodplains and now they must be defended at very high cost.

Costs and benefits of traditional hard defences

Costs of hard defences

Traditional flood defence measures are very expensive. The present value of Scotland's current flood defences is £1.3 million/kilometre.³⁷

³⁵ UK CIP 2002 - Climate Change Scenarios for the United Kingdom, Tyndall Centre for Climate Change Research, 2002

³⁶ Foresight report, 2002

³⁷ JBA Consulting, 2007, *Scottish flood defence asset database*, Scottish Government, Edinburgh. This figure is based on £82 million in costs for 61km of defence. Costs and benefits are best assessed over a long time frame, so that the relevant maintenance and replacement costs can be taken into account. The best way to do this is to use present value, which is the total value of the future benefit stream in present day terms - this allows costs and benefits to be compared

Maintenance and replacement costs are also high for hard defences. Around 38% of the annual capital cost is required to maintain the defences, which is a very large additional expense.³⁸ This is reflected by the Environment Agency (EA), in England, spending more of its flood risk management budget on maintenance in 2006-07 (38% of the budget) than on flood defence construction and replacement (36% of the budget).³⁹ Additionally, hard defences generally need to be replaced after fifty - sixty years.⁴⁰

With the anticipated changes in climate and the frequency and severity of flooding events, these costs are likely to increase in future.

Benefits of traditional hard defences

The benefits of traditional hard defences are likely to be limited to the single purpose, which is flood defence. The evaluation is usually based on the analysis of the number of homes/businesses protected from flooding.

Multiple benefits of natural flood management

There are multiple benefits that result from the habitat creation that accompanies many forms of sustainable flood management, and in particular through natural flood management. These can be categorised as ecosystem services – aspects of ecosystems that can be consumed and/or utilised to produce human well-being. The four main categories of ecosystem services, and examples of the types of services that would arise from an increase in habitats and biodiversity are:

- Provisioning (fresh water, food)
- Regulating (water purification)
- Supporting (nutrient cycling)
- Cultural (tourism/recreation, aesthetic, sense of place)

These benefits are summarised in Table 2 at the end of this document. The value of these services is usually very site specific, and dependent on variables such as the availability of other sites providing similar services and the population that enjoys the services. Because they are difficult to value they are often neglected in traditional cost-benefit analyses. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis. We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options.

Costs and benefits of natural flood management

It is difficult to generalise about the cost of sustainable and in particular natural flood management measures as the measures vary widely. It is also worth noting that this is a new area of economic research, with a number of European research projects due to report shortly. Some of these research projects are particularly relevant, and include the economic

more easily. The present values used in this submission use the Treasury's Green Book's declining discount rate over 100 years.

³⁸ Halcrow Maritime, HR Wallingford and John Chatterton Associates, 2001, *National Appraisal of Assets at Risk from Flooding and Coastal Defence*. Defra, London.

³⁹ National Audit Office, 2007, *Building and maintaining river and coastal defences in England*, London

⁴⁰ Halcrow Maritime et. al. 2001., *National Appraisal of Assets at Risk from Flooding and Coastal Defence*.

assessment of the benefits of flood warning, and the evaluation of multiple benefits/ecosystem services in cost-benefit analysis.

Despite this, it is clear that sustainable flood management measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure. Some examples of the lower cost of sustainable defences are given here.

Managed realignment

Managed realignment is widely practiced as a coastal flood management measure in England by the Environment Agency (EA) and elsewhere in Europe, and is still a new concept in Scotland. The costs provided in this submission are therefore largely based on research carried out in England.

Managed realignment schemes are often less costly over time than hard defences as they require less maintenance.⁴¹ The height needed for embankments is generally lower due to the retreat inland, and erosive pressure is lessened due to the buffering action of the intertidal habitat created in front of the embankment. No defences might be required at all if the retreat is to a contour. In 1998 the EA estimated that the difference in costs, for building new seawalls, with 30 metres of saltmarsh in front of the seawall cost £800 per metre as opposed to £5,000 per metre without saltmarsh.⁴²

Freiston Shore is an example of the potential benefits to be gained from managed realignment. The realignment of the flood defence walls saved almost half a million pounds in costs – the cost was £2 million compared to the £2.47 million estimated for maintenance/replacement of the walls.⁴³ This greater cost effectiveness was achieved without even taking into account the significant environmental benefits gained from creating 65 hectares of intertidal habitat. Another additional benefit was the improved recreation value of the site. By 2008 almost 60,000 people were visiting Freiston Shore each year compared with approximately 11,000 people before the realignment. The nature reserve on the site supports an estimated 6 full time equivalent jobs in the local community and also provides a valuable place for local people to exercise and relax.

The use of wetlands

Often sustainable flood management includes restoration of wetland to store or slow water flow. The Scottish Rural Development Plan indicates the likely costs of wetland creation and management. Table 1 displays the rates landholders are paid for creating and/or managing wetlands.

Table 1	Annual payment	Present value ⁴⁴
Management of open grazed or wet grassland	£111.00/ha	£2,043/ha

⁴¹ Environmental Futures, 2006, *Economics of managed realignment in the UK*, Coastal Futures.

⁴² Empson, B. *et al.*, 1997, "Sustainable flood defence and habitat conservation in estuaries – a strategic framework", *Proceedings of 32nd MAFF Conference of River and Coastal Engineers*.

⁴³ Environmental Futures, 2006, *Economics of managed realignment in the UK*.

⁴⁴ Present value is the total value of the future benefit stream in present day terms

for wildlife		
Management of Wetland	£90.00/ha	£1,656/ha
Creation, restoration and management of wetland	£227.00/ha	£4,178/ha
Management/restoration of lowland raised bogs	General Mgt. £40.00/ha Grazing Mgt. £83.00/ha	£736/ha £1,528/ha
Creation and management of water margins and enhanced riparian buffer areas)	£294.00/ha	£5,491/ha
Management of flood plain	£39.00/ha	£718/ha

These wetlands are being created or managed for wildlife benefits, and as such are likely to cost more than wetlands that are created simply for flood management. This means they wetlands created and managed for biodiversity are likely to be more expensive than a less managed wetland. However, these costs are still lower than the cost of hard flood defences.

Estimating the value of natural flood management

Whilst this area of economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding. As a general guideline, Defra flood appraisal guidance recommends the use of £175 or £300/ha per year for the environmental benefits of managing water levels. This gives a present value of £3,221 to £5,521 per hectare. Other figures, derived from “meta-analyses” of the economics valuation literature, suggest that benefits from grazing marsh is likely to be even higher, around £290-360/ha per year, or a present value of £4,785 - £7,177/ha.⁴⁵

To minimise the risk of double counting, generally ecosystem services are estimated together in one benefit valuation. One exception might be carbon storage, which is a service with a global impact. The UK government’s shadow price of carbon is currently £26.52/t, and increases each year. The value of carbon sequestration over time is potentially high. A recent analysis of the proposed Wallasea Island realignment assumed that one tonne of carbon was sequestered per hectare of intertidal habitat created.⁴⁶

In light of the multiple benefits it will probably be appropriate to seek funding from more than the traditional flood defence sources. Scottish Ministers have a role to play in ensuring that adequate funding is made available to deliver SFM on the ground, and to reward farmers and foresters for managing their land for the benefit of flood

⁴⁵ Eftec, 2007, *Policy appraisal and the environment: an introduction to the valuation of ecosystem services. Wareham managed realignment case study.* Defra, London.

⁴⁶ Eftec, 2008, *Wallasea Island economic benefits study,* East of England Development Authority.

management and climate change adaptation. This may require integrated funding streams.

Conclusions

The benefits of sustainable flood management, and in particular the natural component of flood management are many fold. We believe that sustainable flood management provides cost-effective means of protecting communities from flooding, whilst also providing additional benefits for the environment and the society. It therefore makes an economic sense to invest now on implementing a framework for the management of flood risk that will provide long-term solutions and ultimately reduce the future costs of flood protection. This is particularly important in the light of changes in weather and the predicted increases in flooding associated with climate change.

APPENDIX 1

Table 2: Natural Floodplain Functions and Societal values, (Department of Water Recourses California, May 2005)

Natural Floodplain Functions	Human Services and Values
Maintain Natural Channel Processes	
Maintain natural dynamic channel processes and equilibrium	All of below
Manage Flows	
Conduit for water, nutrients and organisms	Protection of life and property <ul style="list-style-type: none"> • Avoided structure and content losses • Avoided crop losses • Avoided income losses • Avoided damage to public infrastructure and services • Avoided emergency response and recovery costs • Avoided flood insurance
Spread and retain surface and subsurface water	
Moderate speed, force, depth and timing of flows	

Maintain base flows	<ul style="list-style-type: none"> • administration costs • Avoided hospitalization and related health care costs • Avoided physical, financial and emotional disruption of lives • Avoided loss of life
Reduce frequency and duration of low surface flows	
Maintain sediment balance	Avoided flood/sediment control infrastructure costs
Maintain connectivity between channel and floodplain	<p>Value of flow-related goods and services</p> <ul style="list-style-type: none"> • Recreational boating • Commercial navigation <p>Avoided habitat enhancement/replacement costs</p>
Maintain Water Supply	
Increase surface water storage	<p>Value of goods and services produced with additional water supplies</p> <ul style="list-style-type: none"> • Agricultural • Municipal and industrial • Environmental <p>Avoided water supply infrastructure costs</p> <p>Avoided habitat enhancement/replacement costs</p>
Promote groundwater recharge and storage	
Natural Floodplain Functions	Human Services and Values
Filter nutrients and impurities from runoff	Value of goods and services produced with improved water quality

Process organic wastes	<ul style="list-style-type: none"> • Agricultural • Municipal and industrial • Environmental
Moderate water temperature fluctuations	<p>Avoided water treatment infrastructure costs</p> <p>Avoided damage to plumbing, fixtures and appliances</p> <p>Avoided habitat enhancement/replacement costs</p>
Maintain Soil Quality	
Detention of particulates, compounds and elements	<p>Value of goods and services produced with improved soil quality</p> <p>Avoided soil treatment costs</p> <p>Avoided habitat enhancement/replacement costs</p>
Maintain Air Quality	
Carbon sequestration (removal of atmospheric carbon by vegetation)	Value of goods and services produced with improved air quality

<p>Vegetation humidifies atmosphere and moderates air temperatures</p>	<p>Improved property values</p> <p>Value of improved health and comfort</p> <p>Avoided damage caused by poor air quality</p> <p>Avoided habitat enhancement/replacement costs</p>
<p>Maintain Plant and Animal Habitats</p>	
<p>Maintain characteristic and diverse plant and animal communities</p>	<p>Value of goods and services associated with habitats</p> <ul style="list-style-type: none"> • Natural products • Aquaculture • Recreation • Hunting and fishing (sport and commercial) • Open space/aesthetics • Environmental studies • Cultural resources
<p>Provide habitat interspersion and connectivity</p>	
<p>Provide breeding and feeding grounds</p>	
<p>Protect habitat for species of special concern</p>	
<p>Maintain ecological succession</p>	
<p>Improved property values</p> <p>Enhanced economic development</p> <p>Preservation values (existence, option and bequest)</p> <p>Avoided habitat enhancement/replacement costs</p>	

SUPPLMENTARY SUBMISSION FROM THE SCOTTISH GOVERNMENT

During the Committee session on Tuesday 25 November 2008, the Finance Committee took evidence from Scottish Government officials on the Financial Memorandum for the Flood Risk Management (Scotland) Bill. During the evidence session officials agreed to provide details of the flood protection work which is known to be currently taking place in Scotland.

Please see the spreadsheet below which contains details of the Flood Prevention Schemes that were taken into account in the local government settlement and their current state of development.

Schemes which were specifically taken into account in the block grant for flood prevention/coast protection in local government settlement

Local Authority	Scheme	Dates	Total capital cost £m	comment
Flood Prevention Schemes				
Argyll & Bute	Kilbride Rd, Dunoon	2008-09	1.2	Construction to start shortly duration 30 weeks
Edinburgh	Braid Burn	2006-10	28.5	under construction at Tender
	Water of Leith	2009-12	46.5	
Falkirk	Bo'ness	2008-10	4.5	under construction
Fife	Dunfermline	2007-11	13.3	under construction
Glasgow	White Cart - Reservoirs	2008-11	26	under construction
	White Cart -Urban corridor	2008-11	27	contract awarded
Highland	South West Inverness	2009-12	11	confirmed in September 08
Moray	Forres (Burn of Mossett)	2007-10	16.9	under construction
	Rothies	2008-11	21	under construction
	Elgin	2010-15	65	objections - PLI likely
Nth Ayrshire	Saltcoats	2007-08	2.3	Completed
Renfrewshire	North Renfrew	2008-12	7.8	under construction

Sth Lanarkshire	Golf Larkhall	Gardens,	2007-08	1.9	Completed
West Dunbartonshire	Knowle Dumbarton	Burn,	2011-13	4	Public local inquiry
West Lothian	Broxburn		2010-12	5.6	Council investigating options for earlier site start.

The undernoted schemes have been submitted for confirmation since SR07:

- Moray Council: Forres (Findhorn and Pilmuir) FP Scheme 2008 published, on 1 April estimated cost £28 million
- Highland Council: River Ness (Tidal Section) and (Upper section) FP schemes 2008, published on 18 June, estimated cost £13 million

We are also aware that:

- Angus Council intend to develop the £7m Brechin FP scheme for publication next summer
- Aberdeenshire Council are developing a £0.5m scheme for Fettercairn
- Scottish Borders Council are looking to appoint consultants to develop schemes at:
- Selkirk: circa £15m
- Galashiels: £0.5m

These are with a view to obtaining consents by 2011

- Argyll & Bute intend to publish a £2m scheme at Dunoon next year and are considering a feasibility study of a scheme at Campbeltown.
- Dundee City Council are scoping schemes addressing coastal flooding
- Glasgow City Council are planning to take forward measures as part of the MGSDP
- Dumfries and Galloway are taking forward proposals to develop schemes at Stranraer, Dumfries and Moffat.

SUPPLEMENTARY MATERIAL FROM ANGUS COUNCIL DATED 20 NOVEMBER 2008

Coastal and Flood Schemes in Angus as envisaged November 2008

Impact of Flood Risk Management (Scotland) Bill - Revenue Cost implications.

Table 1

Scheme	Commentary	Review in light of Flood Bill 2009
<p>Arbroath Sea Wall at Victoria Park and West Links</p>	<p>Identified in Shoreline Management Plan (2004) and policy is to “hold the line” Initial Capital Project Appraisal proposal has been approved. Proposals are to develop scheme to address erosion and wave overtopping to replace defences at Arbroath which are now approaching the end of their life</p> <p>The scheme protects large low lying area of town both to west and east of harbour, to west it also protects the main NE railway line and leisure park, to the east it protects the soft cliff face and thereby the elevated properties overlooking Victoria Park. The value of these assets is very large.</p> <p>Cost estimates for the scheme is £5-10m.</p> <p>Preparatory costs have been identified in the Roads Capital budget for 08-11</p>	<p>If treated as a coastal defence which also protects against inundation/ overtopping then no real changes to status</p> <p>Note existing grant arrangements might apply (80%)</p> <p>If treated as flooding, then all cost borne by AC but some savings should result from deemed planning approval arrangement in new bill. This might be countered by increased costs of preparation of scheme under SFM regime.</p> <p>Regarding non capital cost with AC acting as client then no real increases in recurring revenue burden</p>
<p>Montrose golf course frontage</p>	<p>Identified in Shoreline Management Plan (2004) and policy is “managed retreat” with research into low-tech solutions. Reported to Committee (953/07) in October 2007.</p> <p>An unfavourable cost benefit ratio precludes traditional heavy engineering, therefore undertaking major research into non-traditional solutions, which might be applied. There may also be a need to augment the end point of the defences at Trail Drive</p> <p>New funding regime from Scottish Government may open up discussion on alternative proposal regarding realignment of course.</p> <p>Research cost are included in Roads revenue budget 08-11</p>	<p>AS ABOVE</p>
<p>Tayock</p>	<p>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</p>	<p>AS ABOVE</p>

landfill site	<p>Being progressed under coastal emergency powers in consultation with SWT, SNH, and SEPA. It is intended to start on site spring 2008. This scheme is not a formal Coast Protection scheme but is an interim measure to contain the landfill materials and is being funded from contaminated land funds. To keep costs within the available budget it has been designed to a lower specification and height than a fully engineered scheme.</p> <p>These cost are contained in the ECP Capital budget 08-09</p> <p>A fully engineered scheme is estimated at between £5-8m but it would protect NE railway line so could generate benefits and potential for shared funding with Network Rail. Such a scheme would require intensive environmental assessment for impact on SSSI etc.</p>	
Dowie Works frontage at Elliot Beach	<p>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</p> <p>Scheme to contain landfill could have been progressed under emergency powers or contaminated land Act. However draft scheme was too expensive and has now been deferred in favour of increased maintenance to clean up any spillage caused by erosion.</p> <p>A long-term solution needs to be considered. A fully engineered scheme is estimated at between £2 -3m but as it would protect NE railway line and pumped sewer (SW) it could generate required costs benefits and there is potential for shared funding with Network Rail and Scottish Water. This would require intensive environmental assessment. Currently no estimates or budget allowance</p>	AS ABOVE

<p>Esk Road to Railway Bridge on south side of Montrose Basin</p>	<p>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</p> <p>Erosion has occurred on the private road in front of a small number of private properties and to amenity ground held by Montrose Common Good, part of which is leased to the sailing club. Angus Council undertook medium term low cost works in Winter 2007.</p> <p>Long-term erosion could threaten the NE railway line. If this is taken into account it gives a favourable benefit to cost ratio, and potential for shared funding with Network Rail.</p>	<p>AS ABOVE</p>
<p>Monifieth Groyne Field</p>	<p>Identified in Shoreline Management Plan (2004) and policy is to “hold the line”</p> <p>The groynes have been damaged by recent storms associated with higher tide levels in February and March 2008. Two options are under consideration; replacement of damaged groynes on like for like basis accepting the same protection as existing but noting this would be a lower degree of protection than would be required by today’s standards; or replacement of groynes to increased heights to afford contemporary standard of protection. This option may require a different form of construction. Scheme would protect NE railway line so could generate benefits and potential for shared funding with Network Rail. Scheme would also protect pump sewer main so could generate benefits and potential for shared funding with Scottish Water.</p> <p>Like for like replacement has been estimated at £150k with no current budget allowance.</p> <p>Long term project and costs not yet identified.</p>	<p>AS ABOVE</p>

Table 2

Scheme	Commentary	Review in light of Flood Bill 2009
Brechin Flood Prevention Scheme at River Street and East Mill	At the recent budget setting meeting in February the estimate was revised for inflation and the indicated costs is now £ 9.1 m. An allowance is made within the Roads Capital budget 08-12. The application for FPO is due in autumn 2008 depending on results of investment appraisal and analysis of pumping requirements to deal with flows in the drainage system, which the floodwater would impound.	Scheme has been prepared in line with emerging guidance on SFM therefore should not be impacted other than in terms of the funding mechanism. Cost implications nil although the Council's capital programme assumes central government funding support under the existing regime.
Brothock Water, Arbroath	The present scheme will protect against a 1 in 20-25 year event. This level of protection cannot be economically improved in line because of substantial physical constraints such as large culverts in the urban area. Potential exists for upstream attenuation in agricultural section of flood plain. A study has been conducted and a proposal for a preferred scheme with an estimated cost of £2.15m was agreed at the budget meeting in February 2008. Scheme will protect large urban area and has large benefits of £11-15m. It could release major development potential on brown field sites. Preparatory costs included in Roads Capital budget 08-11	May require re-considering the option of attenuation of combined storm overflows in order to comply with the requirement to examine all options under SFM. Reconsidering the need for scheme under SEPA flood risk appraisal will need substantial input from LA Modelling the urban catchment will require substantially more time and additional funding probably shared funding between AC and SW Whichever party controls this aspect will also have additional revenue costs Cost implications probably in the order of 2-3 times current allowances –additional £300-500k

Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe B

Table 2 contd		
Gairie Burn, Kirriemuir	<p>Present scheme is in moderate condition and offers just below the design level of protection of a 1 in 50-year event. Maintenance works are underway (£50k)</p> <p>This is below the current standard of a 1 in 100 year event and again consideration could be given to upstream attenuation. Scheme should have moderate benefits greater than the cost of the scheme, but costs and budget remain to be identified</p>	<p>Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?)</p> <p>Cost implications probably in the order of 2-3 times current allowances –additional £300-500k</p>
Barry Burn Upgrade and sediment management	<p>A sediment management scheme is to be considered for this small catchment, which already has a full FPS in the lower section. Currently no budget provision</p>	<p>Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?)</p> <p>Cost implications probably in the order of 2-3 times current allowances –additional £300-500k</p>

Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe B

Table 2 contd		
Tayock Burn at Montrose	Scheme to relieve tidal flooding costs with estimated circa £50k. Not yet identified in capital plan	Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?) Cost implications circa £200 - 300k
Logie Mill	Unfavourable cost benefit for four houses, capital works project unlikely to proceed.	N/a
Fowlis	A management scheme is to be considered for this small catchment where small-scale flood events occasionally occur. Currently no budget provision	Presenting the case for inclusion in the SEPA Plans will accelerate the work on appraisal and will probably increase the costs 2-3 times e.g. full catchment modelling and consideration of attenuation and/or re-direction of urban flows (retrofit Suds?) Cost implications circa £200 - 300k

Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe B

Table 3		
Scheme	Commentary	Review in light of Flood Bill 2009
Montrose Town Coastal Flooding/Inundation	Identified on SEPA flood maps could cause extensive damage and hazard to life No current information on extents duration depths etc.	Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Probably shared funding between AC and SW Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs If this is required for SEPA Area plans the studies will have to be accelerated Ditto if required for first iteration of Local Plans Cost implications circa £500 - 750k
Arbroath Town Coastal Flooding	Identified on SEPA flood maps could cause extensive damage and hazard to life Some indirect knowledge because of the Brothock Water Flood PS and the Coastal PS. However specific studies required for lower section of urban area	Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Impact also on Brothock Water FPS Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs

Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe B

		<p>If this is required for SEPA Area plans the studies will have to be accelerated Ditto if required for first iteration of Local Plans</p> <p>Cost implications circa £500 - 750k</p>
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Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe B

Table 3 contd.		
Carnoustie Town Coastal Flooding	<p>Identified on SEPA flood maps could cause extensive damage and hazard to life No current information on extents duration depths etc.</p> <p>Could combine with flooding of Barry burn</p>	<p>Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Probably shared funding between AC and SW Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs</p> <p>If this is required for SEPA Area plans the studies will have to be accelerated Ditto if required for first iteration of Local Plans</p> <p>Cost implications circa £300 - 500k</p>
Monifieth Town Coastal Flooding/Inundation	<p>Some indirect knowledge because of the Brothock Water Flood PS and the Coastal PS.</p>	<p>Requires significant modelling of coastal inundation and its impact on combined urban drainage system as well as overland component. Modelling the urban catchment will require substantially more time and additional funding Whichever party controls this aspect will also have additional revenue costs If this is required for SEPA Area plans the studies will have to be accelerated Ditto if required for first iteration of Local Plans Cost implications circa £300 - 500k</p>

Coastal and Flood Schemes in Angus as proposed November 2008

Impact of Flood Bill 2009

Summary

Table 4

Category	Extra costs	Comments
Coastal Protection	Nil	Assumes current arrangements under Coastal Protection Bill remain
Fluvial Flooding	£1.3 – 2.1m	If outputs of studies required are time critical then cost will increase
Coastal Flooding	£1.6 – 2.5m	If outputs of studies required are time critical then cost will increase

Extra costs circa £2.9 - 4.6m in addition to the costs identified in the consultation document.

These expenditures could be required in a short time period if the information is required for first generation Area Plans

The information will definitely be required to inform the development of Local Plans and formulate evidence based, robust action plans

CORRESPONDENCE FROM ANGUS COUNCIL DATED 28 NOVEMBER 2008

Pursuant to Angus Council's previous response to your consultation on the above financial memorandum the subject was discussed further by the Council's Infrastructure Services Committee at its meeting held on 25 November 2008. Following that discussion the committee has instructed me to write to you further to emphasise in the strongest terms the seriousness with which it considers the memorandum and to stress in particular the following points:

The committee regrets the decision to retain the three tier system of administration of the incumbent duties and the consequential financial implications which it places on the local authorities to deliver the necessary measures, which measures will themselves be largely determined by the work done (led by SEPA) at national and regional level. The local authority may in consequence be heavily constrained by and obliged to the financial consequences of decisions made by the unelected authority.

Together with that the committee has very major concerns about the means of funding such (capital) measures as may be identified through the flood risk assessment work required by the bill, particularly in comparison to the regime as currently exists in the present legislative framework.

Given the (acknowledged) uncertainties in the financial implications of the emerging legislation for the relevant bodies the committee has concerns about the adequacy of any likely revenue monies as may be allocated to the local authorities to reflect the needs in that authority area, particularly as the memorandum deals with average figures in only one (the lower) of two specifically identified scenarios. (Angus Council has made a proposal in this regard in its earlier written response). Clearly the allocation of funding should reflect the identified needs of the individual authorities. Specifically in the case of Angus Council there are four coastal towns and three other burgh towns with three major river catchments all of which have their own particular needs in this regard.

Given the allocation of duties to deal with the overland flows in excess of the (Scottish Water) sewer network, for other than sewer only flooding events, the committee has serious concerns about the adequacy of the financial resources available to local authorities to deal with these, together with the efficiency of the mechanism for the relevant authorities to interact and co-operate in the pursuit of this. Further the committee has concerns about the allocation of the responsibility for the response to sewerage flooding and the public health issues associated with such where the local authorities themselves are not resourced to deal with these in the way that Scottish Water currently is.

Overall the committee is concerned in light of the move towards a more proactive approach to flood risk management, together with the inclusion of flooding from all sources (rather than fluvial) that the financial implications of the duties imposed on the local authorities are likely to have been significantly underestimated in the preparation of the work supporting the

memorandum. Further and specifically the committee are concerned about the potential implications of the removal of the limitation to non-agricultural land in the scope of the Bill and the possibility of land owners arguing a duty on the authorities to afford protection against flooding of land outwith urban areas.

While I realise that your date for receipt of responses has passed, the committee would hope that the Finance Committee might be prepared to consider the comments which it has articulated through this letter particularly in view of the seriousness with which it views this topic and given the timetable of its own meetings which precluded an earlier response.

ANNEXE C: EXTRACTS FROM THE MINUTES

15th Meeting, 2008 (Session 3), Tuesday 9 September 2008

Flood management legislation: The Committee considered its approach to forthcoming legislation on flood management and agreed specific terms for the call for evidence; that the clerks should issue a call for written evidence following introduction of the bill; to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in respect of consideration of this bill; and to consider drafts of the Committee's report on the bill in private.

18th Meeting, 2008 (Session 3), Wednesday 8 October 2008

Flood Risk Management (Scotland) Bill (in private): The Committee agreed to invite Scottish Environment Link, Scottish Natural Heritage and the Forestry Commission Scotland to give evidence at future meetings.

19th Meeting, 2008 (Session 3), Wednesday 29 October 2008

Flood Risk Management (Scotland) Bill (in private): The Committee considered possible witnesses and agreed to invite National Farmers' Union Scotland, the Scottish Council for Development and Industry, Scottish Rural Property and Business Association and Homes for Scotland to give evidence at its meeting on 26 November.

21st Meeting, 2008 (Session 3), Wednesday 19 November 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Nick Evans, Principal Planner on Sustainable Development, Climate Change and Renewable Energy, Stuart Greig, Senior Flooding Policy Officer, Lindsey Henderson, Principal Legal Officer, Legal Directorate, Bob Irvine, Deputy Director of Water, Air, Soils and Flooding Division, Louise Miller, Head of Branch 2 Food and Environment, Legal Directorate, Fiona Quinn, Flood Risk Management (Scotland) Bill Manager, and Judith Tracey, Flooding Policy Team Leader, Scottish Government.

The Scottish Government officials agreed to provide further supplementary information.

Petition PE1207: The Committee considered a petition by Gordon Sinclair calling for a review of Scottish planning policy to prevent developments being built on areas designated as being at a high risk of flooding. The Committee agreed to take the issues raised by the petition into consideration during its scrutiny of the Flood Risk Management (Scotland) Bill at Stage 1 and to close the petition on that basis.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting. The Committee agreed to invite Scottish Water, local authorities, a national park authority and the Association of British Insurers to give evidence at its meeting on 10 December. The Committee also agreed to invite SEPA and the Minister for Environment to give evidence at its meeting on 17 December.

22nd Meeting, 2008 (Session 3), Wednesday 26 November 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Hugh Clayden, Sustainable Forest Management Policy Adviser, Forestry Commission Scotland;

Mike Donaghy, Scottish Environment LINK;

John Thomson, Director of Strategy and Communications, Scottish Natural Heritage;

Nigel Miller, Vice President, National Farmers' Union Scotland;

Dr Karen Smyth, Rural Development Manager, Scottish Rural Property and Business Association;

Gareth Williams, Policy Manager North, Scottish Council for Development and Industry.

The Committee agreed to write to the first three witnesses with questions that could not be covered during the evidence session. The other witnesses agreed to provide supplementary information on issues arising during the evidence session.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

23rd Meeting, 2008 (Session 3), Wednesday 10 December 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Geoff Aitkenhead, Asset Management Director, and Jim Conlin, Regulation Manager, Scottish Water;

Paul Frankland, Civil Engineering Design Manager, Scottish Borders Council;

Jim Moodie, Lead Officer, Harbours Flood and Coast, Transportation Services, Fife Council;

Gordon Watson, Director of Planning, Loch Lomond and The Trossachs National Park Authority;

Justin Jacobs, Assistant Director of Property, Liability and Motor, and Arthur Philp, Policy Adviser on Floods, Association of British Insurers.

and agreed to request clarification from Perth and Kinross Council and from the City of Edinburgh Council on issues raised in their written submissions.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

24th Meeting, 2008 (Session 3), Wednesday 17 December 2008

Flood Risk Management (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

David Faichney, Flood Warning Unit Manager, and Chris Spray, Director of Environmental Science, SEPA;

Michael Russell MSP, Minister for Environment, Judith Tracey, Flooding Policy Team Leader, and Dr Stuart Greig, Senior Flooding Policy Officer, Scottish Government.

The Committee agreed to write to the first two witnesses with questions that could not be covered during the evidence session.

Flood Risk Management (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier and considered the possible contents of a draft Stage 1 report.

1st Meeting, 2009 (Session 3), Wednesday 7 January 2009

Flood Risk Management (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

2nd Meeting, 2009 (Session 3); Wednesday 14 January 2009

Flood Risk Management (Scotland) Bill (in private): The Committee agreed the Stage 1 report subject to specified changes being made.

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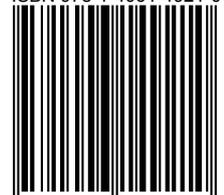
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