Rural Affairs and Environment Committee

1st Report, 2009 (Session 3)

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

Volume 2: Evidence
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Rural Affairs and Environment Committee

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

Volume 2: Evidence

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Rural Affairs and Environment Committee

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LETTER FROM MICHAEL RUSSELL MSP, MINISTER FOR ENVIRONMENT ON POTENTIAL STAGE 2 AMENDMENTS

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

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

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

MICHAEL RUSSELL MSP, MINISTER FOR ENVIRONMENT
November 2008

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

Reservoir safety

Inundation maps and on-site reservoir plans

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

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

Reservoir plans - what they are and why they are important

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

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

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

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

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

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

How inundation mapping and reservoir plans are connected

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

Under the proposed amendments, the regulations would require reservoir plans to be prepared by reservoir operators to identify action to be taken to minimise the impacts of an uncontrolled release of water. Inundation maps may also need to be prepared by operators of high risk reservoirs. These maps would help in the preparation of reservoir plans to minimise the impact of an uncontrolled release of water. Operators of some large reservoirs in Scotland have already prepared detailed inundation maps. The regulations would specify what the maps should demonstrate, but ideally they should include the impacts of action taken to manage various flood scenarios and show where water is likely to go following steps taken by the undertaking 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.
Flood Risk Management (Scotland) Bill: Stage 1

The Convener: This is our first evidence-taking session on the bill. The format is that Scottish Government officials will explain each part of the bill in order and the committee will ask questions on each part, after it has been explained, rather than leave them in a pile to be asked at the end.

The panel of officials is welcome. Nick Evans is a principal planner in sustainable development, climate change and renewable energy; Stuart Greig is a senior flooding policy officer; Lindsey Henderson is a principal officer from the legal directorate; Bob Irvine is the deputy director of the water, air, soils and flooding division; Louise Miller is head of branch 2 food and environment; Fiona Quinn is the flooding bill manager; and Judith Tracey is the flooding policy team leader.

I invite the relevant officials to make their opening remarks, which should include an explanation of part 1. You will have to be fairly brief, so that we can get straight to the meat. You will be aware that the committee has done an extensive inquiry on flooding and is already pretty up to speed on a lot of the issues.

Bob Irvine (Scottish Government Climate Change and Water Industry Directorate): Thank you, convener. I will make a few introductory remarks before Judith Tracey goes over parts 1 and 2. As you say, the committee investigated flooding with great thoroughness and produced a helpful report, which was published earlier this year. We hope that the provisions that we will describe reflect how ministers took the committee’s work fully into account.

The bill has eight parts—the degree of detail varies—and attempts to do five principal things, which we will describe as we go through our evidence. First, there is co-ordination and co-operation in flood risk management, which involves a new set of obligations and a clarification of responsibilities on existing bodies that relate to the assessment of flood risk and the preparation of flood risk management plans. In those provisions we have transposed the recent European directive on floods: the European Directive on the Assessment and Management of Flood Risks (2007/60/EC of 23 October 2007).

We then look at amending and clarifying local authority and Scottish Environment Protection Agency functions for flood risk management, to co-ordinate their actions and those of other relevant agencies. There is also a revised
statutory process for flood risk management schemes and the processing of them that replaces those in the Flood Prevention (Scotland) Act 1961, which have been widely thought to be unsatisfactory and not up to contemporary requirements. Finally, a more uniform approach to the enforcement of the Reservoirs Act 1975 is created. All those provisions have been extensively discussed with stakeholder groups, and that process continues. We are looking to deliver, as far as we can, the best set of provisions. Ministers are clear that they are positively disposed to suggestions that can improve the principles and provisions that we have set out in the bill.

I hope that that introductory context is helpful. I ask Judith Tracey, who led the detailed consideration from the policy point of view, to introduce and set out parts 1 and 2.

The Convener: Right. We wanted to go through the bill part by part and go straight to questions on each part. It would be more helpful for us to do that for part 1 before we move to part 2.

Bob Irvine: I am sure that Judith Tracey can break her comments at the end of part 1.

Judith Tracey (Scottish Government Environmental Quality Directorate): Part 1 sets out the general duty directions and guidance. It creates general duties that the Scottish ministers, SEPA and the responsible authorities must comply with when exercising their functions in relation to flood risk management. It includes a duty to exercise those functions with a view to reducing overall flood risk. It will, for the first time, place flood risk management on an equal footing with other general duties on local authorities, such as that to provide education and other services. Also for the first time, it will give Scottish Water a statutory responsibility for flood risk management. To ensure partnership working, there is a duty on the Scottish ministers, SEPA, local authorities, Scottish Water and the other responsible authorities to co-operate so as to co-ordinate their respective functions for flood risk management.

The Convener: Thanks. Some written evidence asks why the bill is not a bit more specific about some of the responsibilities, and some witnesses have suggested that questions about the bill must start with that. The “it depends” kind of answer will not necessarily move us much further forward if the lines of responsibility are not clear cut. Can the officials explain why we are left with that slight blurring in the bill?

Judith Tracey: I think that we have gone as far as we can in setting out who is responsible for each part. When we set out the proposed amendments for stage 2, we realised that we might need to strengthen in two areas which exactly is responsible for particular things—it concerns the assessment of the drainage infrastructure; we are looking to put a specific duty for that on Scottish Water—but responsibility for general flood risk management has always been with local authorities and it remains there.

The Convener: So you are clear that that responsibility lies with local authorities?

Judith Tracey: Yes.

Peter Peacock (Highlands and Islands) (Lab): Who is responsible for implementation? In a letter subsequent to the policy memorandum on the bill, the Minister for Environment indicated that he is “considering amendments to promote a stronger link between the general duty to act to reduce overall flood risk and the implementation of flood risk management plans.” Can you say what the Government has in mind?

Judith Tracey: Some concern has been raised that the bill places no duty on authorities to implement flood risk management plans. We do not want to impose a duty to implement such plans because there is no duty to implement other, similar, plans that local authorities develop. Placing a duty on local authorities purely to implement flood risk management plans would risk elevating those plans above other services that local authorities provide.

In light of the concerns that have been raised, we included the general duty at the beginning of the bill, to ensure that all local authorities, Scottish Water and the other responsible authorities have a duty to reduce overall flood risk. Combined with the power, which is provided later on, to carry out any work to reduce flood risk in their area—provided that such work is linked to a flood risk management plan—the general duty imposes a fairly strong duty on local authorities to carry out the work that is in a flood management plan. However, because those other concerns have been raised, we might try to see whether we can strengthen the duty slightly. We have not taken that any further yet, but we are open to suggestions—although we would not go as far as imposing a particular duty to implement flood risk management plans.

Peter Peacock: So there is no intention to impose a specific duty to implement the plans?

Judith Tracey: No.

Peter Peacock: People have made quite strong representations that the lack of a specific duty seems like an omission. One conclusion of our inquiry into flooding and flood management was the need for absolute clarity about who is responsible for what. Are the flood risk management plans that local authorities will not be
under a specific duty to implement nonetheless plans that they must agree to, along with the other partners?

**Judith Tracey:** The plans must be developed by SEPA in co-operation with all the other responsible authorities.

**Peter Peacock:** Do local authorities need to agree those plans? Will there be some process whereby, once the co-operation has taken place, all the partners involved say, “This is now an agreed plan”?

**Judith Tracey:** Yes, agreement is required.

**Peter Peacock:** But local authorities will be under no duty to implement their agreed plan.

**Judith Tracey:** There will be no duty to implement, but they will have a duty to reduce flood risk. Plus, anything that a local authority wants to do on flood risk management in its area must be related to the plan. Local authorities will have the overall responsibility. I find it difficult to accept that a local authority that has a flooding problem will not want to deal with that problem. The only way it could deal with the problem would be through the agreed flood risk management plan, unless there was an emergency.

**Peter Peacock:** You have pointed out that all local authorities will want to improve the situation in their area. Notwithstanding that, there may be aspects of the plan that they find difficult to address at particular moments in time because of the effect on the livelihood or health or wellbeing of their residents or citizens. What provision if any does the bill make for addressing situations in which the agreed plan is not being implemented? I am not necessarily thinking about a sanction but, given that there will be no duty to implement the flood risk management plan, what would happen if the agreed plan was not being implemented?

**Judith Tracey:** Ministers have powers under part 3 to step in if a plan is not being implemented.

**Peter Peacock:** Could ministers direct the authority?

**Judith Tracey:** Minisers have powers under part 3 to step in if a plan is not being implemented.

**The Convener:** I want to explore the social, economic and human impact of flooding, which ministers and SEPA are required to take into account in exercising their management duty. Recommendation 4 of the report of our inquiry into flooding and flood management stated:

> “The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs … of flooding can be included in future assessments of the value of proposed flood management measures.”

The research that was carried out by the University of Dundee in 2007 considered some aspects of that issue, but it did not propose any method by which such impacts could be included in an assessment. How will the Government go about making that assessment?

10:15

**Judith Tracey:** Part 2, “Principal expressions”, gives a definition of flood risk. The reference to human health is intended to cover all aspects of human health, including emotional aspects such as the distress and emotional impact of flooding.

**The Convener:** What mechanisms will you use to make that assessment?

**Judith Tracey:** That needs to be developed further. A lot of work is going on in that area, not just in Scotland but in lots of other places. The Environment Agency is doing research into how you can give a value to the type of emotional distress that is caused by flooding.

**The Convener:** Will you let us have a reference to that research? It would be useful.

**Judith Tracey:** Yes.

**The Convener:** At the moment, however, the matter is still slightly in the air.

**Judith Tracey:** It is slightly in the air; it is difficult to assess at the moment.

**John Scott (Ayr) (Con):** Local authorities, SEPA and Scottish Water have raised concerns in their submissions about the requirement to co-operate and co-ordinate. What action will be taken to ensure that the roles of different organisations will be aligned to enable the successful delivery of assessment maps and plans?

**Judith Tracey:** I am sorry; I did not catch the last bit about which mechanisms will be used to—

**John Scott:** What action will you take to ensure that the roles of different organisations will be co-ordinated and that they co-operate to enable the successful delivery of assessment maps and plans?

**Judith Tracey:** Part 3 goes into a lot more detail about that. Stuart Greig may want to take over and talk about it.

**Stuart Greig (Scottish Government Environmental Quality Directorate):** We can deal with it now, or I can deal with it in more detail when we get to part 3.

**The Convener:** I will take a note of John Scott’s question and he can follow it up later.

**John Scott:** When we talk about part 3, will you talk about the resolution of conflicts, and conflicts of interest, between bodies or even within organisations, or will you talk about that now?
There is a requirement in part 3 for everyone to come together to agree the implementation aspects of local flood risk management plans. There is a clear stage when any conflicts between the priorities of the different organisations need to be met and addressed. Part 3 also provides for the establishment of advisory groups that will support the production of the plans and identification of the measures. That forum is where potential conflicts that might exist between organisations can be addressed.

Do you have a specific type of conflict in mind?

John Scott: Just when people cannot agree—I envisage a situation involving two local authorities in which one regards itself as a winner and the other regards itself as a loser. How will you ensure that conflicts are resolved? Forums, assessments and discussions are all very well, but they might not in and of themselves resolve an entrenched position involving SEPA and a local authority or two local authorities in one catchment area.

Stuart Greig: Part 3 provides that when agreement cannot be reached between all the parties involved in developing and implementing the local flood risk management plan, ministers are required to step in to agree the plan on behalf of whoever is leading that work. If outstanding issues hinder the final development of the plan, particularly if they hinder production of the wider district flood risk plan with which SEPA would be involved, ministers might need to step in to resolve such conflicts. We have not set out the steps that ministers would take, but they can step in and take appropriate action to resolve conflicts.

John Scott: I noticed that you use the words “co-operate” and “co-ordinate” in the bill whereas others suggest that organisations should integrate. Is that because you are afraid that you will not get sufficient co-operation and co-ordination to allow integration, or are you just hastening slowly? I appreciate that it is a play on words, but one would expect such services to be integrated rather than just to co-operate, which is slightly less well-defined language.

Stuart Greig: We spent quite a bit of time looking at that. The policy steer was that co-operation and co-ordination are the steps to allow integration. Integration, where appropriate, is what we are looking for. Given aspects of the particular functions that the different organisations have, it is not always possible to integrate fully. There are particular circumstances, such as emergencies, in which the system should work by itself and it should not have to be fully integrated with a longer-term planning process. Integration is the model to use when that is appropriate, and co-operation and co-ordination help to deliver it.

Peter Peacock: I understand why the different elements relating to the various plans are in the bill; you have transposed the European directive. Do you have separate, sequential stages rather than a combination of elements and things being done in tandem or in parallel?

Bob Irvine: A sequential timetable is set out in the directive.

Peter Peacock: So that is an absolute requirement under the directive?

Bob Irvine: Yes.

The Convener: Let us move on to part 2.

Judith Tracey: Part 2 covers the definitions that are used in the bill. It provides a definition of “flood” that covers all forms of flooding with the sole exception of flooding that is caused solely by a failure of the sewerage network—Scottish Water already has statutory responsibility for maintaining the sewerage network. The bill does not, however, exclude flooding caused by heavy rainfall that leads to the sewerage network discharging; the exception lies purely with a failure in the mechanism of the sewers.

Part 2 also defines “flood risk”, to promote common understanding of the term, and covers its important role in managing floods. The reference to “human health” covers all aspects of human health, from personal damage or loss of life to the distress and emotional impact of flooding.

Part 2 sets out the responsible authorities, which are:

“local authorities … Scottish Water, and … such other public bodies … as the Scottish Ministers may designate” at a later stage.

Peter Peacock: The term “sustainable flood management” is not used in the long title or elsewhere. There is no definition of sustainable management in the bill. Why did you choose not to include it in the long title or elsewhere in the bill?

Judith Tracey: We feel that the whole bill will deliver sustainable flood management. We have drawn up the entire bill with sustainable flood management in mind—and sustainable flood management is mentioned in the bill. The definition of “flood” includes all types of flooding; it does not cover just the limited sorts of flooding that have been dealt with under previous legislation. We are confident that the whole bill will deliver sustainable flood risk management. We felt that it was not necessary to include it in part 2 because it is covered enough in other parts of the bill.
Peter Peacock: If the whole bill is about sustainable flood management, would it not be entirely appropriate for that term to be in the long title? I appreciate that there are difficult legal concepts and definitional problems. No doubt parliamentary counsel is wrestling with that—and no doubt you are wrestling with parliamentary counsel on the matter. Is it a drafting issue, or is it a policy question?

Judith Tracey: It is a drafting issue, to some extent. We are creating a framework for sustainable flood management, which is an idea that is still evolving. What sustainable flood management meant a year or two ago is different from what it means now. The definition will probably differ again in 10 years’ time, when we have a better understanding of the meaning of sustainability. If we tie ourselves down too closely to a particular form of words in the bill, we run the risk of being in the same position with the legislation that we are considering now as we find ourselves in with regard to the 1961 act. The way legislation is set out might stop certain things being done. We want to make the bill as open as possible, ensuring that local authorities and other bodies can use whatever tools they have at their disposal to manage flood risk in their areas without being tied to a particular definition.

Peter Peacock: I understand your argument, and you take me neatly to my next point. Is there a duty on ministers to issue guidance about sustainable flood management over time?

Judith Tracey: We will issue guidance. The good thing about guidance is that, when things move on, we can change it. It is far more difficult to go back and change legislation.

Peter Peacock: Indeed, but will ministers be under a duty to issue guidance, or will they have the power to do so?

Judith Tracey: Ministers will have the power to issue guidance, not a duty to do so.

The Convener: Elaine Murray wanted to talk about surface water management. Has the minister’s letter changed your view slightly, given that it addresses that issue?

Elaine Murray (Dumfries) (Lab): The issue has been addressed to an extent, but I would like more detail. Surface water flooding is particularly frustrating for constituents who suffer from it because many authorities are involved—Scottish Water and the roads authority, or Transport Scotland if a trunk road is involved. Also, in my experience, flooding frequently occurs from private land and it can be difficult to get action on it. Will you expand a little on how the bill will address surface water, which causes particular distress to individuals?

Judith Tracey: The first measure that will address surface water management is the requirement on the various organisations to work together. We seek to make it clear that, because local authorities will have initial responsibility for flood risk management, in general, the management of surface water will be their responsibility. They will have to work with the other organisations to do that. We hope that there will be a move towards better management of surface water so that it does not end up in the sewerage system, which is where it causes problems.

The consultation paper on householder permitted development, which will come out shortly, will ask whether it would be suitable to place limits on paving over front gardens for hardstandings, or to ensure that they remain porous, to stop surface water run-off. We are considering that and we hope to move towards more solutions of that type. The bill will enable the various organisations to work together in that way to provide co-operative solutions.

Elaine Murray: So the buck-passing that goes on at present should not happen?

Judith Tracey: Local authorities should no longer turn round and say, “If it’s in the sewer it is Scottish Water’s responsibility and if it’s on the trunk road it is Transport Scotland’s.” That should not happen any more.

Elaine Murray: You mentioned guidance on new developments. Several issues arise in current developments, in urban areas and in rural areas. For example, there can be problems with field drains not being cleared, which can lead to flooding on people’s properties. How will the bill deal with issues that involve surface water that originates from privately owned property?

Judith Tracey: The bill will require a lot of stakeholder engagement, including engagement with communities. The idea is to involve communities closely in the development of local flood risk management plans. It will be in communities’ best interests to ensure that anything that can be done in their area to help prevent flooding of their houses is included in the local flood risk management plan. A lot of work will be done to raise awareness of flood risk and of what people can do to help themselves, rather than rely on others to sort out the flooding. We are all responsible for looking after our property. It is important to make the public aware of that and of the fairly simple measures that they can take to protect themselves without going as far as having flood risk management schemes.

Elaine Murray: We will probably return to this issue. One problem is that of water that comes off one person’s property and ends up as flooding in somebody else’s. Often, the individual whose
property is the source of the flooding is not all that bothered because it does not affect them. What provisions are there on that? We may return to this issue when we consider duties and responsibilities.

John Scott: I presume that nothing will change. The reality is that those below will receive flood water from those above—no legislation will change that. I think that that is what Elaine Murray is talking about.

10:30

The Convener: Is Elaine Murray suggesting that when the house above or the neighbouring property is at fault—

Elaine Murray: Yes—when it is at fault.

The Convener: Is that not a matter between the two property owners?

Bob Irvine: That must be right. The bill will do nothing to affect that situation.

As the minister's letter suggested, dealing with surface water is complex and difficult. We do not start from a perfect understanding of all the relevant issues in the places that are most affected. The processes and co-ordination in the bill are an important step to improving that position. We are considering strengthening the provisions, particularly to improve the reliability of the data, which are the starting point for understanding surface water and working out what to do about it. That will require significant effort by local authorities and Scottish Water.

We acknowledge that dealing with the issue is important and we are keen to get that right. We are reviewing the provisions and we have suggestions for improving them further. We will examine carefully how the committee approaches the issue and the evidence that is presented, to ensure that the bill provides the best basis for working to address the problem. It must be borne in mind that we expect the guidance to deal with quite a lot of the practical details of modelling and interactions between the various parties. We will track the developing methodology through that guidance. We expect a high level of co-operation between the responsible authorities to address the matter and take it forward from our present understanding.

Alasdair Morgan (South of Scotland) (SNP): The bill defines flood risk as

"the combination of the probability of a flood and of the potential adverse consequences".

A minor point is that most lay members of the public would probably think that the probability of a flood was its risk and would not go into the risk management-speak. I do not know whether that will give you problems in any consultation with communities.

A more substantive point is that adverse consequences are not defined. That definition might vary according to people’s perceptions. Did you consider fleshing that out?

Lindsey Henderson (Scottish Government Legal Directorate): The definition of flood risk is closely based on the definition in the floods directive, which refers to adverse consequences.

Alasdair Morgan: If the term is reasonably understandable, why is it not defined in the bill?

Stuart Greig: Part 3 provides for flood risk maps, which will go into the detail of assessing the impacts. We provide that the maps should include information such as the number of people who could be affected and the economic activity that could be affected, but we have kept some flexibility to specify in regulations more matters to include in the assessment. We can add issues once we have engaged with stakeholders to understand what they want to be included, which we will have the flexibility to add. By its nature, the definition of flood risk is broad, but we can add to that over time to take on board different views.

Peter Peacock: In its report, the committee supported the notion that SEPA should have a significant, enhanced responsibility. However, we drew to the minister’s attention, first, the need for mechanisms to ensure that SEPA is independent; secondly, SEPA’s need for clear guidance on how to resolve internal disputes that arise because of its different responsibilities in relation to, for example, the controlled activities regulations and watercourses; and, thirdly, the need for an independent mechanism to review and audit SEPA’s decisions and recommendations. How have those concerns been addressed?

Bob Irvine: Ministers’ starting point is that SEPA, as a non-departmental public body, is independent and free to carry out its functions appropriately. Ministers’ powers of direction under
various parts of the bill could be used to resolve the tensions that you mention between various parts of SEPA’s responsibilities but, in general, ministers are confident that SEPA’s management and board will properly reflect on the balance of responsibilities and reach an appropriate outcome. If that is not so, as I said, ministers can intervene.

Again, much will be developed through the guidance to SEPA and the various other parties that are involved. In the guidance, we will articulate ways in which to resolve difficulties in the areas that you have in mind and set out how to deal with them. Ultimately, if things become difficult as the plan is worked through and they are unresolved, the plan will be submitted to ministers. If there are difficulties with objections and local interests make representations for or against particular parts of the plan, ministers have a route to resolve that, because the provisions allow them to modify the plan.

Peter Peacock: I understand that. However, there are contemporary examples in which SEPA is objecting to local flood management plans because of its specific environmental responsibility for a watercourse—for scouring out a river, or whatever. Under the bill, SEPA will also have a duty to ensure that flooding in the area is managed effectively. Which duty will supersede or trump the other? Will SEPA’s primary duty be the protection of communities, families and houses or the protection of the environment, or is it impossible to say?

Bob Irvine: I regret that it is not possible to say. I risk incurring the wrath of the convener, but the answer is that it all depends on the particular circumstances.

It would be difficult for ministers—or indeed anyone else—to set out an absolute set of principles to be followed in every case in which there was tension between those responsibilities. It is a fact of life that those factors have to be resolved. There is a process for allowing them to be identified and a process for consultation and discussion and, ultimately, ministers can resolve the situation if an appropriate way through it cannot be found. It would be going too far for ministers to say that SEPA must favour one responsibility or the other.

Ministers are confident in their relationship with SEPA and confident that it has the processes to identify the most appropriate balance of policies at any particular time. If things go wrong, ministers will have the opportunity to change that.

Elaine Murray: The bill designates certain authorities as responsible authorities and gives ministers powers to designate others in regulations. Scottish Natural Heritage seems to be under the impression that it is not designated in the bill and will not be designated in regulations. It fears that, although it may be a consultee, it will not be involved early enough in the process and could end up lodging late-stage objections, which may extend the time that it takes to introduce flood risk management plans. Why are some responsible authorities named in the bill, why will others be designated in regulations, and why is SNH not included in either category?

Judith Tracey: No decisions have been made about what the other responsible authorities will be. SNH, along with others that are under consideration, may still be designated. Local authorities and Scottish Water are included in the bill because they are the main organisations that have on-the-ground responsibilities for flood risk management. Scottish Water has drainage responsibilities, and local authorities have overall responsibility for managing flood risk in their areas. The timeframes for implementation of the European directive, especially the first part of it—on flood risk assessment—are very tight.

I do not know whether you are familiar with the Water Environment and Water Services (Scotland) Act 2003, which provides for a similar set-up and responsibilities. In that case, there was the option of identifying responsible authorities, but that was done not in the bill but later, after a long, time-consuming process. The matter went out to consultation and a great deal of consideration was given to exactly what responsibilities and functions such authorities should have under the 2003 act. We will have to go through a similar consultation process when determining whether organisations such as SNH and the Forestry Commission should be designated as responsible authorities. Because local authorities and Scottish Water have on-the-ground responsibilities for flood risk management, it was obvious that they needed to be named up front, so that they could start work straight away. All other organisations will be subject to a consultation process, so that everyone has the opportunity to have an input.

Elaine Murray: SNH may be feeling a little nervous about the fact that it appears that to have been omitted because, at one time, it was mooted that it would be merged with SEPA. You mentioned the WEWS act. How long did it take for other responsible authorities to be designated in that case?

Judith Tracey: I cannot remember exactly—I think that it took about two years.

Stuart Greig: It took about two years. That was the first time that we had dealt with such a process, so it may be possible to complete it significantly more quickly in this instance.

You raised the issue of the engagement of SNH in the flood risk management process and the
lodging of objections. The role of the advisory groups is to ensure that all partner organisations are around the table right from the start. Even if an organisation is not a responsible authority, it will be at the table to put across its views at an early stage in the preparation of plans, so that we do not find that there are stumbling blocks at the end of the process.

**Judith Tracey:** Under the bill, responsible authorities will have a lot of duties, including a duty to reduce overall flood risk. That is an obvious duty to place on the organisations that we have already named, because there are measures that they can take to do that. It would be odd to place a duty to reduce overall flood risk on SNH, given its functions. We must examine the issue carefully.

**The Convener:** I invite Stuart Greig to introduce part 3. We will then move to questions.

**Stuart Greig:** The provisions in part 3 are lengthy, complex and technical, so it will be useful if I break them down into smaller, more manageable pieces. I will take advice from you, convener, on how quickly you would like me to go through this part of the bill.

Overall, part 3 will create the framework within which SEPA, Scottish Water, local authorities, responsible authorities and the public will work together to create flood risk assessments and maps, and to prepare plans that will set out all the measures that we need to put in place to tackle the risks that have been identified. It may be useful if I begin by summarising briefly the role of SEPA as the competent authority. I will then say something about the geographical boundaries of flood management plans and go through the provisions relating to flood risk assessments, flood hazard maps and flood risk management plans. I will finish by talking about advisory groups and consultation.

**The Convener:** As long as you do not take half an hour to do that.

**Stuart Greig:** No. I will keep it as brief as I can. The first point is that, through the combination of the duties that are placed on it, SEPA is identified as the lead authority for the work. Critically, though, SEPA will not work in isolation. It will work alongside others, local authorities in particular, in preparing the assessments. It will act as the overall national body providing strategic direction and co-ordination, but it will facilitate all the other bodies to come together and work under clear guidelines so that we get a nationally consistent approach. It will act as a facilitator, rather than holding a whip and controlling the situation.

The district plans, which SEPA will prepare, will be along the same geographical boundaries that we have for river basin management plans. There will therefore be two plans for Scotland: a Scotland one and a cross-border plan for the Solway/Tweed area. There will be another plan for Northumbria, but only a very small part of the district covered by that plan is in Scotland. That provision will help to ensure that there is clear co-ordination between the work for the water framework directive and the work for the flood directive. It will also help to identify the opportunities where we can use the public purse to improve the environment and deliver flooding benefits as well.

SEPA will have responsibility for identifying where local flood risk management plans need to be prepared. In doing that, SEPA will have to work across catchments, which are the fundamental unit of management for flood risk management. SEPA will also be responsible for identifying what are the most appropriate catchments or sub-basins, as they are called in the bill, in order to be in line with the directive. We see it as being a catchment-based approach.

SEPA will also be responsible for preparing the flood risk assessment, which is the first-cut examination of where the most significant flood risks are in the country. We have made a set of provisions that need to be incorporated in the assessment, which is basically an assessment of where flooding has occurred in the past and what its impacts have been. The assessment will give a national picture and will culminate in an assessment of where the most vulnerable areas are. The assessment of the most vulnerable areas will need to be submitted to ministers for approval. That will be a matter for regulations because it will be an important step in the consultation process that needs to take place. There will also be regulations on some of the processes and content of the assessment of vulnerable areas. We can set that out in more detail in regulation, rather than put something fixed in the bill. We have set out the framework in the bill and can add the detail later.

SEPA will be responsible, too, for the flood risk and hazard maps, but it will need to take a lot of information and advice from local authorities and Scottish Water in the preparation of the assessments. The flood hazard map is the map of where the water goes. Particular flooding scenarios are set out that must be considered. As was discussed earlier, the flood risk assessment is the assessment of the impact of the water once it has entered the different parts of communities and so on. We have set out particular things that must be taken account of in preparing the assessments, but we have kept the opportunity to add detail to that in guidance and regulations so that we have the flexibility to take account of stakeholder views and to adapt the approach as flood management needs change over time.
We discussed surface water management issues; I think that we included some extra provisions in our submission on the stage 2 amendments that we are considering, which might help to clarify that Scottish Water is best placed to deal with sewer flooding and that it will perhaps need to have a more direct responsibility to prepare that information and provide it to SEPA. We expect local authorities, with their responsibilities for surface water, to be best placed to provide guidance to SEPA on surface water flooding problems so that SEPA can incorporate that in the wider picture of flood risks and problems for Scotland.

The most important part of the bill is on the preparation of flood management plans. The plans will have two tiers. One is the district plan and the national plan, which I described as being an overview for Scotland; the other is the local flood risk management plans. The critical provision is that the two tiers of plans need to be prepared in co-ordination because they are not two separate plans. They need to be prepared in parallel, and we have set out steps in the provisions to ensure that things such as consultation happen in tandem or closely together. We have also ensured that the plans cannot be inconsistent and that we have a set of integrated plans coming together.

To support the preparation of those plans, we have advisory groups and a set of consultation provisions, which are similar to what we had under WEWS. There will be a fairly wide-ranging set of advisory groups that can input to the process without limitations on who should be on them.

The Convener: By WEWS, do you mean the Water Environment and Water Services (Scotland) Act 2003?

Stuart Greig: Yes. We used that as a model. We have critical consultation steps for the assessment of vulnerable areas and for what happens once the plans have been prepared so that we have a full consultation process.

Alasdair Morgan: It will require a great deal of technical expertise to bring about all the plans, assessments and maps. The financial memorandum goes into some detail about the costs of recruiting all the required people. I know that it is not something that should be in the bill itself but, on the assumption that there are not lots of unemployed hydrologists floating around at the moment, exactly what consideration is being given to ensuring that the required number of people are available if the bill becomes an act?

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

Alasdair Morgan: Would it be fair to say that no real assessment has been made yet? Some guesstimates of how many people will be needed have been made for the financial memorandum, but there is no measurement of how many of them may already be in the field doing something else that presumably will still have to done by somebody else.

The Convener: Could I characterise the position as keeping your fingers crossed?

Bob Irvine: Yes and no, I suspect. We acknowledge that there is an issue with skills. Local authorities, SEPA and Scottish Water are registering and considering that. The financial memorandum contains the first assessment of the resource implications of the bill. If there is a shortage of particular skills, we will have to think carefully about what we can do to rectify that, such as engaging with the Scottish Further and Higher Education Funding Council and the higher education sector to provide graduate studentships in the relevant disciplines. However, at the moment, we must go with the skill base that we have and ensure that it is properly directed and focused on the key tasks. As part of the process that Stuart Greig described, we must register the key tasks, register where all the various agencies that will be engaged in them can most appropriately apply their effort and build up the knowledge and expertise as and when we have the opportunity.

Alasdair Morgan: Given the timescales that are involved, you will have to do some of that interaction with the funding council pretty soon. Perhaps lots of people who were considering careers in merchant banking could be usefully diverted.

Bob Irvine: I suspect that they might divert themselves; they might not need much encouragement.

We have opened a dialogue with the funding council, and SEPA is talking to a number of higher education institutions about the possibility of supporting studentships and graduates. An active discussion is taking place.

Liam McArthur (Orkney) (LD): Alasdair Morgan is talking about an overall absence of hydrologists and other skilled people. SEPA and local authorities have registered concerns about that. When it was considering the financial memorandum, the Finance Committee expressed concern about an inflation in the head count at SEPA but no apparent expansion of the required
skills in local authorities. Do you accept that if we are to move towards more sustainable flood management, the necessary hydrology and other skills will be needed most acutely in the local authorities, which, to date, have tended towards using engineering solutions to the problems that we have experienced?

Bob Irvine: Possibly, but I encourage you to direct that question to the local authorities.

Liam McArthur: They are telling us that they do not have the funding.

Bob Irvine: Yes, but it is important that they look at their resource requirements and the type of people they need across the range of their responsibilities.

The Convener: Rhoda Grant has a question on an area on which the minister has already given quite a lot of specifics.

Rhoda Grant (Highlands and Islands) (Lab): Yes, so it is just a very short question.

You said that there will be an amendment to restate the duties that local authorities already have for flood risk management. Is the bill really about fulfilling the planning process that is laid down by the European directive rather than about providing practical solutions to flooding? The practical solutions remain as they were and the bill is just about setting up the bureaucracy to deal with the European directive.

Bob Irvine: To an extent, yes, the bill is mostly about process. However, it is important to register that the bill releases some constraints that apply at present, particularly to local authorities in relation to what constitutes a flood prevention scheme. That is the point that Judith Tracey was trying to make about sustainable flood management. In devising a plan to address the flood risks that have been identified through the processes that Stuart Greig has described, local authorities can now do anything. The 1961 act was pretty specific about hard-wall and diversion structures and so on, so the bill presents an opportunity to think about and develop new approaches.

Stuart Greig: We know that there is a large planning process involved, and that there is an interaction between national and local plans. A lot of effort will therefore go into working out the appropriate combination of measures. That is necessary to give us the right combinations in the right places. Unfortunately, it takes a lot of up-front planning to come up with the right combinations to manage flood risk, so we have been careful to ensure that we have transposed the directive in a way that is appropriate to our organisational setup in Scotland, and particularly to the needs of local authorities. That is why we have brought in the local flood risk management plans, which are really delivery plans that allow local needs to be accounted for. That ensures that there is the right combination of local measures at the same time as a broad overview or perspective is set out by SEPA.

Rhoda Grant: My next question is about planning and the bill, so it follows on quite neatly. What is the role of individuals? The bill gives quite strong planning powers so that if something ends up in the final plan, it is deemed to have received planning permission. Under normal circumstances, planning permission involves discussion with neighbours and other consultation, but there seems to be very little about public consultation in the bill. It is all about how different authorities act together but not about how the public, community councils and other folk on the ground interact with the process.

Stuart Greig: The consultation provisions that are set out in the bill are not intended to be limited to the bodies that are directly involved in managing flood risks. Consultation is meant to be done widely with the public and as wide a group of stakeholders as possible. Trying to get views through consultation is important. Likewise, the advisory groups are not limited to the public bodies that are directly involved in flood management; the door is open to the National Flood Forum or community representatives, for example, to be involved in the process. The consultation process is fairly flexible. Different consultation formats can be used to get messages out to as many people as possible. I hope that having fairly flexible provisions will allow that to be done.

11:00

Rhoda Grant: That seems to me to be an area of concern. Will there be guidance on it to local authorities and SEPA? A big human rights issue is involved if people who will be directly affected by things in a plan have not been consulted on or made aware of those things. It seems that there will be great flexibility, but surely there must be a minimum standard.

Stuart Greig: A useful exercise was carried out for the Water Environment and Water Services (Scotland) Act 2003. SEPA set out a consultation very early on in the process. It said how its consultation exercise would take place and what its strategy was for engaging with all the people whom it needed to engage with. A similar approach early in the process, with the involvement of local authorities, could be helpful to show exactly how the necessary level of engagement will be obtained.

Rhoda Grant: Would we be able to see guidance on how that would happen?
Stuart Greig: Yes. We can consider whether we can do something about that in the bill or whether guidance would be sufficient.

The Convener: The committee recommended that consideration of the resilience of the national infrastructure be part of any flood risk assessment. Will you clarify whether infrastructure resilience assessments are intended to be part and parcel of the proposed flood risk assessments? I do not think that that is specifically outlined in the bill.

Stuart Greig: Absolutely—that is my short and sweet answer. The issue is where the greatest flood risks are, and there are great flood risks in that context.

The Convener: That is fine.

Alasdair Morgan: Section 16 requires SEPA to consider the contribution that the alteration of natural features could make to preventing floods. I suspect that the committee would tend to favour such an approach as opposed to hard measures. Did you consider building into the bill a presumption in favour of natural flood management measures, unless there were strong arguments for not using them?

The Convener: The committee recommended that.

Stuart Greig: We certainly considered the matter. We have wanted to adhere to the principle of getting the right measure in the right place, whether we are talking about a natural flood management measure, a flood warning scheme, or a flood protection scheme. However, we are reluctant to have a presumption in favour of any particular type of flood management measure; rather, it is a matter of finding the right measure for the right circumstances.

A thorough assessment of the costs and benefits of measures that are identified in the flood management plans is needed. The benefits of measures in tackling flooding are not the only benefits that must be considered; other benefits that could result—wider environmental benefits, for example—should also be considered. We think that the approach that we have taken means that an appropriate balance will be struck in deciding the most appropriate measure.

Alasdair Morgan: You say that environmental benefits could be considered. That leaves things a bit optional.

Stuart Greig: Benefits beyond that of reducing flood risks would have to be considered. Things would depend on the type of measure that is involved. Any associated environmental benefits would need to be considered. In some instances, urban regeneration benefits would need to be brought into the mix. It is a matter of considering the wide range of benefits and selecting the most appropriate measure.

Peter Peacock: I would like something to be clarified. I think that you have said in communications with the committee that you would consider the issue of natural features and natural processes. We have had representations on the matter. Will you confirm that you will consider introducing the words “processes” and “features” into the bill?

Stuart Greig: We can certainly consider that. That would be no problem.

Peter Peacock: I would like to pursue a bit further what Alasdair Morgan said. It was no accident that, having considered the presumption that he mentioned, the committee made the recommendation that it made. It did so deliberately and purposefully to try to shift from having hard engineering solutions to everything to considering more natural processes. If part of the bill’s purpose is to achieve sustainability, I presume that it would be entirely appropriate to put such a presumption in the bill for the reasons that Alasdair Morgan touched on. So that I am clear, are we talking about a policy consideration? Are you saying that you do not want to include such a presumption as a matter of policy or that it is quite difficult to capture what has been suggested in drafting terms?

Stuart Greig: I do not think that it is difficult in drafting terms. On policy, we want to focus on the principle of sustainability and sustainable flood management. That will entail using the right combination of measures in the right places.

Issues still arise to do with the evidence base for natural flood management approaches. To have a presumption in favour of something that is very new and fairly novel in the field of flood risk management might, we feel, shift the balance too soon. We want to build up the evidence base first. The evidence base is increasing, and steps have been put in place through some research and development work. As a result, we may find that natural approaches are the most appropriate, in which case we would hope that the focus would move towards them in flood management plans. However, such approaches should be adopted only when the evidence supports them.

Peter Peacock: Does your concern arise because your interpretation of a presumption is that it is something that must happen? That was not the committee’s interpretation; our interpretation was that a presumption is something that must be considered. If it were not to happen, a justification would have to be given. We did not feel that it would have to happen in all
circumstances. Is there a difference between the committee’s view on a presumption and your view?

**Bob Irvine:** There possibly is a difference, Mr Peacock. As Stuart Greig said, we would find it difficult to accept that having a presumption in favour of a particular approach would be the right thing to do. However, when measures to address identified flood risks are being considered, it would be expected that all appropriate techniques—including natural flood management techniques—would be considered. If, following analysis, the natural techniques had the most to commend them, they would be pursued because they would be right—to use Stuart Greig’s word.

In setting out guidance on schemes, we could certainly stress that natural flood management techniques should be considered or reviewed, and that they should be assessed relative to other techniques. However, we have reservations about capturing that idea in the bill itself.

**The Convener:** That is a useful clarification, because my next question was going to be about where, in the bill, that expectation is expressed. It would be useful if you could find a way of expressing it, even if it was in the guidance that would go along with the bill.

**Bill Wilson (West of Scotland) (SNP):** The strategic environmental assessment apparently suggested that the bill could actively promote the restoration of ecosystems, but the report also noted that the bill did not appear to do that. The Government’s aim is to enhance and improve biodiversity, so it seems as if an opportunity has been missed. Was the opportunity considered? If so, why was it not taken?

**Bob Irvine:** My answer will be rather similar to those that we gave to the previous question. It may be that, in particular circumstances, the restoration or enhancement of an ecosystem would be a gain from the measures that were proposed. However, that would not apply to all schemes. As Stuart Greig has said, considerations of urban regeneration might be a stronger driver in particular circumstances. We therefore find it difficult to envisage how, in the bill, that expectation is expressed. It is a clear opportunity for SEPA to look at all its work on environmental improvement and tie it in with flood management measures, where appropriate.

**John Scott:** Will there be a clearly defined methodology for doing that? You talk about a cost benefit analysis, but it seems to me that it will all be rather subjective. How will an urban regeneration scheme, for example, be evaluated against the Forestry Commission’s proposal for a hydraulic roughness scheme that enhances ecosystems and biodiversity?

**Bob Irvine:** That is the great challenge with all such cost benefit tools, and why they are constantly being redeveloped and re-examined. At the start of our discussion, I talked about how the health benefits are taken account of properly in methodologies. We have to find the appropriate way to do that. You are right to say that the process is complicated and difficult, but all we can do at this stage is register that those are important factors that must be taken account of and then find the best way of doing that as we go forward.

In the bill, we have the opportunity to create a relatively open-ended framework for the development of plans and schemes. We can develop and refine the guidance as people’s understanding develops over time.

**John Scott:** I took the view that the Forestry Commission’s thinking was far advanced on the matter, and we felt that it was worth while reflecting that in our report.

**Bob Irvine:** Absolutely; it makes an important contribution.

**Stuart Greig:** We set up advisory groups in developing the bill with representation from the Forestry Commission, SNH and all the other people who will be involved. The intention is to keep those groups in place in the long term and to
use them to develop the tools, methods and guidelines. Those measures will not be dictated because all the people who are involved are coming together to work out the best way of doing things. We can then distil that into appropriate guidance and regulation as necessary.

John Scott: Excellent. Thank you.

Elaine Murray: You referred to the length of time that it would take for some aspects of the WEWS act to come into force. The planning cycle will take time to come into force; I think that there has been talk of the first cycle beginning in 2015. What are the interim arrangements for the time between the passage of the bill and the act being enforced? How do you foresee things working in that period?

Judith Tracey: The legislation makes provision for transitional measures to be drawn up. We have not yet drawn them up, but there will not be a cut-off between the provisions under the 1961 act and those under the bill. We know that local authorities will continue to work on flood risk management and to develop flood plans. One of the first things that will go into any local flood risk management plan will be the work that local authorities have under way or close to the start. We need to ensure a smooth transition, but we will work out formal transitional arrangements, for which the bill makes provision.

11:15

Elaine Murray: Local authorities have raised concern over whether and how they will be funded for that work.

Bob Irvine: We recognise that concern, on which the committee has heard the minister’s views a number of times. An important point is that the bill does not mean that there will be silence on the issue until 2015. The EC directive imposes successive requirements at 2011 and 2013 that will form important parts in building up the big picture from which the detailed plans will emerge at 2015. Identifying the extent of flood risk in a number of vulnerable communities and so on will provide important information to ministers and local authorities at successive spending reviews for identifying future resource requirements for addressing flood risk and flood hazard. The plans that are created will provide a pretty long-term view, as the committee recommended in its report in the summer. To all intents and purposes, they will provide a road map for planning to address those risks over the longer term.

The Convener: I think that Elaine Murray’s other question has been covered substantially in the responses to John Scott. Does Rhoda Grant feel that her question was sufficiently dealt with in those responses?

Rhoda Grant: I would like some clarification on how the flood risk assessments will interact with planning policy. If a development is proposed in a flood risk area, will a full flood risk assessment be a prerequisite for planning permission? How will that work in practice?

Nick Evans (Scottish Government Directorate for the Built Environment): I do not think that the provisions in the bill will change the current arrangements. If a planning authority thinks that a flood risk affects a planning application, the authority consults the Scottish Environment Protection Agency. SEPA has the opportunity to require the developer to undertake a flood risk assessment, which SEPA will then consider and comment on. The planning authority takes those comments into account before determining the application. That provision is expected to continue.

Rhoda Grant: So that will continue as at present.

Elaine Murray: My constituency is probably nearer than anyone else’s to the Borders, which is obviously an area that has been subject to flooding. What arrangements will be put in place to ensure effective cross-border working, given that it seems to have taken time to develop cross-border strategies under the 2003 act? According to the Macaulay Institute, there are still on-going challenges in reconciling the different regulatory frameworks and advisory networks. Who will be responsible for cross-border flooding incidents? How will risk assessments, maps and plans and so forth be developed across the border?

Judith Tracey: We have started talking to the Department for Environment, Food and Rural Affairs about that. We will look to develop specific regulations to deal with the cross-border areas. It is likely that we will follow broadly the plans for the 2003 act, in that SEPA and the Environment Agency will perform joint functions in the area and report jointly to Scottish ministers and to DEFRA ministers. We are aware that difficulties can arise because local authorities in Scotland have different responsibilities for flood risk management from those of local authorities in England and Wales, so the authorities in the border areas will need a much closer connection with the Environment Agency. However, we have started talking to DEFRA about that and we are working out how best to deal with those problems.

The Convener: Let us move to part 4. Who is dealing with part 4?

Judith Tracey: I am.

The Convener: Judith Tracey is working hard this morning.

Bob Irvine: As always.
Judith Tracey: Part 4 repeals the Flood Prevention (Scotland) Act 1961 and replaces it with new provisions. It sets out the new powers for local authorities and gives them general powers to manage flood risk, in line with our sustainable flood risk management policy. It does not limit what flood risk management local authorities can undertake, as the 1961 act did. It does not state that they have to build walls or embankments or knock things down; it leaves it open to local authorities to decide what tools to use. We have left it that way specifically because we want the legislation to last for a fairly long time and because we want local authorities to be able to implement new tools and techniques as they are developed.

Part 4 enables local authorities to take the full range of flood risk management measures—there is no restriction on the type of measures that they can take, only that they must contribute to the delivery of a local flood risk management plan. We believe that, along with the general power at the beginning of the bill, that will place a strong duty on local authorities to implement their flood risk management plans. The only exception to that is when there is an emergency—when a flood is imminent—and a local authority wants to take immediate action. It was difficult for local authorities to do that under the 1961 act. It happened, but there was no provision for them to do that under that act, and it was something that local authorities were quite keen to see included in the bill. The intention is to reduce, whenever possible, the time that is taken to implement flood risk management measures.

The bill does not require local authorities to go through a statutory process—the statutory process is set out in schedule 2—if they are comfortable that they have got local co-operation, that they have spoken to local people and that they can go ahead with whatever plans they have without having to complete a statutory process to get the coercive powers. They can go ahead and do that. There is no need for a local authority to go through a statutory process for flood risk management; they have to do it only when they want the additional powers and benefits that the statutory process will bring. If they decide to go through the statutory process, that results in deemed planning permission so that they have to go through only one process. If they do not go through the statutory process, they still have to get planning permission in the normal way.

Peter Peacock: I want to pick up on the question of the funding of local authorities and Scottish Water. The committee made specific recommendations about funding for the future. You could argue that that is a matter of policy, which can change from time to time, rather than a matter of law and that, therefore, there should not be anything about it in the bill. Did you consider setting out in the bill any of the factors that ministers should have to take into account in deciding on funding for the various partners that will deliver flooding policy? Was that a consideration?

Bob Irvine: No. I do not see how we could do that. Ministers will look at the funding of local authorities in the widest understanding of local authority responsibilities and take all those into account. It would be strange for them to identify one particular local authority responsibility as being above and beyond any other.

Peter Peacock: Is it envisaged that SEPA, given its insights into the matter and its overall responsibility in this, will advise ministers formally on the funding needs into the future?

Bob Irvine: Certainly—so will local authorities and other agencies. As I said a few moments ago, part of the plan will provide a set of long-term priorities, schemes and activities that must be planned for and resourced in the appropriate way. There will be a much better collective picture of what requires to be done to address the priorities that have been identified by a more extensive analysis of all the relevant factors than exists at present. That will provide a much more secure basis for the collective identification and allocation of resources throughout Scotland than we have at the moment.

Peter Peacock: You do not envisage any formal duty on SEPA to advise ministers on an annual or triennial basis, or whatever, about the funding that will be needed to tackle flooding. You do not envisage any formal requirement for that.

Bob Irvine: No, because that will come out of the way in which the plans are presented. The plans have to be revised on a six-yearly basis.

Peter Peacock: Scottish Water has new responsibilities, which you have talked about. It will have to consider potential funding implications as part of its forward budgeting process. What will be the role of the Water Industry Commission for Scotland in that? Will the commission have to have regard to what is required under the bill, given that Scottish Water will have duties and responsibilities under the bill? The commission could be influential in relation to charging and costs.

Bob Irvine: The commission’s role will be to look at the objectives that ministers set for Scottish Water, which, following this bill, will contain references to flooding, as well as a range of other objectives for improving the water system and customer service. The commission will determine the level of revenue that Scottish Water can collect from its customers that is necessary to meet those objectives through the business plan that it submits. It will not be for the commission to say
that this or that flooding measure is more important than another, just as it is not for the commission to say that this or that water treatment works is more important than another. It has to look to ensure that Scottish Water has the resources needed; the determination of those resources will involve significant efficiency objectives and targets for Scottish Water.

Peter Peacock: I was not implying that the commission should take a view about individual schemes. There is currently no constraint on the commission to consider such matters. Will its remit have to change in any respect to allow it to do so?

Bob Irvine: No, because the commission’s remit is driven by what Scottish Water has to do and the plans that it presents to the commission, which, in turn, are driven by the objectives that ministers have set Scottish Water.

John Scott: The committee recommended that there should be a sort of strategic rolling roadmap that would look 25 years ahead. The Association of British Insurers also look at that view, yet you have no such timescale in the bill. We took the view that there should be a rolling look ahead, so that we can anticipate what is coming. We could perhaps look ahead for longer than 25 years, given all the predictions that we have all received about climate change. Will you consider addressing that?

Judith Tracey: We think that the bill enables that to happen through the flood risk management planning process. Although the plans have to be produced and reviewed only every six years, we expect that they will take a long-term view, rather than limiting themselves to the six-year planning cycle. Flood risk management planning always has to be considered in the long term. The point of taking a national overview and getting a district-level plan is that we can look across Scotland and identify priorities over the next 25 to 50 years.

John Scott: So you could be looking at a 50-year overview or projection.

Judith Tracey: Yes. Given how the bill is set out, there is no limit on how long-term the plans can be. They just have to be reviewed every six years. The bill does not say that the plans have to consider only the next six years.

Liam McArthur: Robert Irvine has clearly picked up the same straight bat that the cabinet secretary used in relation to funding at our meeting on 8 October. As John Scott said, the ABI in its evidence to the committee suggested that flood risk could be better managed if funds for flood risk management were identified separately and ring fenced for that purpose. Leaving aside some of the policy discussions around that, do you accept that there are implications for local authorities, communities, individuals and businesses of an assumption by the ABI and its members of a higher risk as a result of the approach that is being adopted in the bill?

11:30

Bob Irvine: It remains to be seen whether there is a higher risk. The cabinet secretary made it clear that during spending reviews we will continue to have discussions with local authorities about the best approach to the issue. Ministers have a strong desire to ensure that local authorities have as much opportunity and power as possible to make local decisions and to allocate local resources to what they see as local priorities. I suspect that that will continue to underpin their approach to discussions. If the present method of funding causes local authorities problems, and ministers agree that there is a better method, it will be adopted at an appropriate point in the future.

Liam McArthur: Do you accept that the evidence that we have received from the ABI indicates that the insurance industry, which is already in a high state of nervousness, has concerns about the approach that is being adopted? To some extent, it is the insurance industry, rather than local authorities, that needs reassurance.

Bob Irvine: The insurance industry can be reassured by what is happening in local authorities, where a significant effort is under way. A large number of schemes that were being planned a year or 18 months ago are in process. Nothing has changed in the progress of those schemes as a result of the change in funding that has taken place—nor would ministers expect it to. However, if matters become difficult and a better way of funding flood risk management is identified in the future, ministers will be willing to discuss that with local authorities.

Alasdair Morgan: The Flood Prevention and Land Drainage (Scotland) Act 1997, which will be repealed in toto by the bill, placed a specific duty on local authorities to cleanse and maintain watercourses in certain circumstances. It has been argued that that duty has been in useful in preventing floods from happening, but it will be taken away and replaced by a general enabling power. Why?

Judith Tracey: We removed the duty to maintain watercourses because local authorities will have an overall duty to reduce flood risk. Previously, local authorities’ only duty in relation to flood risk management was the duty to assess and maintain watercourses. We thought that the overall duty encompassed that requirement. If we included in the bill a duty to maintain watercourses, that might become the overriding duty in some circumstances, because it would be
additional to the overall duty and local authorities might look at it before considering other forms of flood risk management. Such a duty might also conflict with the overall flood risk management plan, because in some areas it may be better not to maintain a watercourse and to allow it to flood, to reduce flooding downstream. Flood risk management involves a combination of measures, so an overriding duty to maintain watercourses could cause problems.

**Alasdair Morgan:** Have there been any instances of local authorities causing flooding by fulfilling their statutory duties?

**Judith Tracey:** No. However, there could be a conflict if the duty to maintain watercourses prevented implementation of a decision in a local flood risk management plan to allow a public park to flood, as part of a suite of measures to prevent flooding downstream. At the moment, the local authority would clear the watercourse, as it would not want the park to be flooded.

**Alasdair Morgan:** Surely there is a difference between a watercourse that one blocks up deliberately in order to prevent flooding and one that becomes blocked. If someone phones a local authority to ask it to clear a watercourse, because there will be a problem if that is not done, the authority will be able to get off the hook by saying that it is not required to do that.

**Judith Tracey:** We will expect a maintenance schedule or a maintenance regime to be set out in the local flood risk management plan. It is not that there will no longer be a duty on authorities to maintain watercourses, because that duty will be subsumed within the general duty. It would not make sense to have a separate duty to maintain watercourses, because that would make it seem as though maintaining watercourses was in some way more important than other measures that local authorities could take to reduce flood risk.

**Alasdair Morgan:** I do not see that at all. I struggle to see how such a duty would cause problems, unless you can produce evidence that indicates that the existing system is causing problems. I do not see why the larger picture would be thrown out the window because an authority had to dig out a couple of ditches that had become blocked.

**Judith Tracey:** Such work would be covered in the authority's maintenance schedule in the local flood risk management plan; it would be part of the authority's overall duty.

**Alasdair Morgan:** My point is that, if an authority has to dig out ditches, the maintenance schedule has clearly not worked, as the ditches have become blocked.

**Judith Tracey:** The difference is that we are changing the duty on authorities altogether. They did not previously have a duty to reduce flood risk in their area—no such duty existed. Now that we are placing a much bigger duty on them to reduce flood risk, it is not necessary to have an additional duty that is essentially also to reduce flood risk, but by a particular method.

**Alasdair Morgan:** Local authorities have a duty to maintain roads, for which they have maintenance schedules, but that does not prevent many of our constituents from damaging their cars on potholes. Surely having such a duty is the whole point of the bill.

**Judith Tracey:** Under the existing duty, local authorities inspect watercourses and assess whether they are at risk, draw up a schedule and then deal with the watercourses. They will do exactly the same under the proposals in the bill—but as part of their overall duty to reduce flood risk. The provisions in the bill will not prevent people from phoning up and saying that a ditch is blocked or prevent the local authority from dealing with the problem. It is very unlikely that a local authority would deny that it had a specific duty to do that work.

**The Convener:** You are saying that the widening of the overall duty subsumes the duty to maintain watercourses, and that the overall duty should not be construed as indicating that it excludes the duty to maintain watercourses.

**Judith Tracey:** Such work will be part of local authorities’ duty to reduce flood risk. They do not need an additional duty.

**Rhoda Grant:** What would happen if Joe Bloggs phoned his local authority to say that a watercourse was blocked only to be told that it would not be cleared because doing so would not prevent flood risk as the watercourse was not going to flood? The removal of the duty would give the local authority an excuse.

**Judith Tracey:** The local authority would not have cleared any watercourse under the previous system if it was not a flood risk; the duty to maintain related entirely to the risk of flooding.

**Rhoda Grant:** So flood risk had to be proved before the council would maintain a watercourse.

**Judith Tracey:** Yes.

**Alasdair Morgan:** South Lanarkshire Council made the point that if a local authority digs out someone else’s ditch, there is no provision in the bill for them to reclaim the costs of doing so from the owners of the watercourse or ditch. Will you consider putting such a provision in the bill? If an authority clears out a watercourse that is on someone else’s land to maintain it properly because the landowner refuses to do so, can it
reclaim the costs from the landowner? Is there provision in the bill for that?

Judith Tracey: There is no specific provision in the bill for that.

Alasdair Morgan: Should there be?

Bob Irvine: We can consider that. Local authorities have the ability under a more general power to pursue landowners for interventions that they make in relation to safety and so on. That might cover a local authority in those circumstances, but let us consider the issue.

Alasdair Morgan: It would be helpful if you could come back to the committee on that.

The Convener: We have only about 10 minutes left to deal with the remaining parts of the bill but, mercifully, they are relatively short. Who will take charge?

Bob Irvine: Stuart Greig will deal with part 5.

Stuart Greig: I will be succinct.

The three main aspects of part 5 relate to SEPA providing advice to planning authorities and undertaking other assessments of flood risk, and to its flood warning functions.

On advice to planning authorities, the provisions in the bill are very similar to SEPA’s existing duties under the Water Environment and Water Services (Scotland) Act 2003. The only major change relates to the definition of flood risk, as set out in the bill. That creates flexibility for SEPA. When it is asked to provide advice to a local authority, it will be able to give advice not only on where flooding might occur, but on possible associated impacts.

Section 63 provides SEPA with flexibility to undertake other assessments of flood risk that may be outside the specific assessments that have been set out to adhere to the floods directive requirements. For instance, the interactive maps that SEPA already has on its website are the type of work that would fall under the provision.

There will be a new statutory duty on SEPA to provide flood warnings, whereas at present it has a discretionary power to do so. There is flexibility in the provisions, so that SEPA will be able to decide on the most appropriate way of obtaining the information and providing it to the public.

The Convener: You have built in a lot of flexibility and discretionary power. Is that simply because the expertise lies in SEPA and it will be for SEPA to make decisions as and when appropriate?

Stuart Greig: Absolutely. The only matter on which we have not provided flexibility is that, if SEPA is aware that a flooding event is happening, it must release a flood warning. In any other instance, it will be up to SEPA to work out the best approach and timing.

The Convener: We come to part 6.

Judith Tracey: Part 6 sets out powers of entry and compensation powers. It creates powers for local authorities and SEPA to enter land, which includes buildings, for the purposes of carrying out their functions under the bill. It also sets out the compensation provisions and provides that any disputes over compensation shall be determined by the Lands Tribunal for Scotland.

John Scott: As far as I can see, there is no mention of compensation to farmers when it is intended to flood land for sustainable or natural flood defences—only the use of compulsory purchase orders is mentioned. Perhaps I have misunderstood that. Will you clarify?

Judith Tracey: The process will be the same as at present. Local authorities will enter into discussions with landowners to try to work out by agreement the best way in which to use the land, and they will also work out the compensation arrangements. That happens under the existing legislation. If the parties cannot come to an agreement, they will go to the Lands Tribunal. If it comes down to it, authorities will be able to purchase land compulsorily, but only as a last resort, if they cannot come to an agreement. Local authorities and landowners almost always come to an agreement—either the local authority will purchase the land at a reasonable cost or it will provide compensation to the farmer when they undergo loss of the land because it floods.

Alasdair Morgan: You say that the power to enter land includes buildings. I take it that that power already exists. In what circumstances would SEPA want to enter a building for the purposes of the bill?

Judith Tracey: SEPA will not—

Alasdair Morgan: Well, whoever it is.

Judith Tracey: With local authorities, the provision is more to cover cases in which officers need to get through gates. It is more of a legal issue, so my colleagues might want to comment.

The Convener: Could it be for sheds and things like that?

Louise Miller (Scottish Government Legal Directorate): When the provision was discussed, it was suggested that local authorities carrying out scheme operations might need to flood proof a wall of a building that is also the wall of a water channel. Some buildings directly adjoin water, and a local authority might need access to flood proof a wall of such a building.

Lindsey Henderson: People might also have to go through a building to reach land at the back.
The Convener: We do not want to create unforeseen obstacles.

Alasdair Morgan: No, but we tend to give draconian powers in legislation to various people simply on the basis that they might come in handy at some stage. I realise that that has been going on for years, because such powers are already in legislation.

The Convener: I am having difficulty envisaging the SEPA storm troopers battering down doors.

Peter Peacock: Convener, I would like to clarify one point about the flood warning arrangements. On SEPA’s duty to issue flood warnings, is the responsibility to warn individual citizens or the responsible authorities?

The Convener: We are going back to part 5.

Peter Peacock: Indeed—sorry.

11:45

Stuart Greig: We have not specified to whom such warnings are to be made available; they are to be made available to whomever is relevant. SEPA has different ways of making information available, and there is a new project to make information directly available to citizens. SEPA already issues flood warning information directly to category 1 respondents. It can simply make information available on its website, if that is the more appropriate or only mechanism available. It does whatever is appropriate to the circumstance.

The Convener: There are no questions from the committee so far about parts 7 and 8, so perhaps the witnesses could deal with them together.

Fiona Quinn (Scottish Government Environmental Quality Directorate): Part 7 amends the Reservoirs Act 1975, which aims to reduce the risks to the public from flooding following reservoir or dam failures. It seeks to do so by ensuring that large raised reservoirs are adequately constructed and maintained under the supervision of qualified engineers.

Part 7 will enhance the safe operation of Scotland’s reservoirs through a number of changes to the 1975 act. Primarily, it provides for responsibility for reservoir enforcement to transfer from local authorities to SEPA. It also sets out transitional arrangements to ensure that that responsibility is transferred smoothly. That will involve the transfer of information and legal provision for local authorities’ work.

Part 7 also binds the Crown and provides for ministers to set out detailed provisions and regulations relating to the preparation and enforcement of incident reporting. The regulations will define what constitutes an incident. Undertakers will be required to report to the enforcement authority on incidents occurring at reservoirs. The bill provides for offences and penalty charges.

Judith Tracey: Part 8 is very general. Its provisions allow SEPA to obtain information about land where it requires that information for the purposes of carrying out its statutory functions. It makes provisions for the bill to apply to the Crown in Scotland. If an offence under the bill is committed by a corporate body, both the body and the individual who committed the offence may be prosecuted.

Section 82 enables Scottish ministers to make “incidental, supplemental, consequential, transitional, transitory or saving provision” if appropriate.

The Convener: There are no further questions. Thank you all for coming—I hope that it was not too painful. No doubt you will watch with interest the rest of the evidence sessions and our further deliberations.

You undertook to provide us with one or two bits and pieces of further information. I ask you to provide those directly to the clerk in due course.

Bob Irvine: We will do that as soon as we can.

The Convener: We will continue our stage 1 consideration of the bill on 26 November, when we will take evidence from two panels of witnesses representing various stakeholder groups.
SUPPLEMENTARY SUBMISSION FROM SCOTTISH GOVERNMENT BILL TEAM (21 NOVEMBER 2008)

During scrutiny of the Flood Risk Management (Scotland) Bill by the RAE Committee on 19 November 2008, the Committee requested information on methodologies that could be used to assess the social impacts of flooding. Scottish Government officials advised that Defra had done some work in this area and agreed to forward details to the Committee. Below are links to 3 documents produced by Defra which the Committee may find helpful.

The link below is for the Defra Project- Social Justice in the context of Flood and Coastal Erosion Risk Management: A review of Policy and Practice.


Also attached is a note published by Defra on Reflecting Socio- Economic Equity in Appraisal & Appraisal of Human Related Intangible Impacts of Flooding.


Defra has also published a supplementary note on operating authorities on Asssessing and Valuing the Risk to Life from Flooding. The method was based on the 'Risks to People - Phase 2 (FD2321) research project' part of Defra's Making Space for Water Strategy. It's main purpose is to enable the risk of fatalities to be assessed as part of a more comprehensive flood risk appraisal where the social benefits associated with any reduction in this risk are also taken into account. This document is attached below.


The Committee also requested sight of the River Basin Planning strategy prepared by SEPA. A link to this document is attached below.

http://www.sepa.org.uk/water/water_publications/idoc.ashx?docid=8d74606c-6978-4cd0-8be7-ab86f5f69bf3&version=-1

This strategy sets out details of advisory groups and steps to ensure consultation and participation. We envisage something similar for flood risk management, with SEPA and local authorities working together to produce a strategy.

In addition, the Committee raised concerns that their recommendation that there should be a presumption in favour of natural flood management had not been fully adopted in the Bill and that this may as a result of the interpretation of this recommendation. I have attached a short paper (Appendix) explaining the consideration given to Natural Flood Management in the Planning processes outlined in the Bill. We are also discussing with the stakeholder advisory group, concerns raised about the use of the term 'Natural features' rather than 'Natural processes' in Section 16 of the Bill and whether alternative wording could achieve the desired objective.

We have not included the previous duty for local authorities to maintain water courses in the Bill as the duty is subsumed within the general power to reduce flood risk in Section 49 of the Bill which is a much wider power. It is expected that local flood risk management plans will contain maintenance regimes for water courses and other assets. Section 49(c) also allows local authorities to carry out works not included in a flood risk management plan such as clearing blockages from a watercourse, if alerted by a member of the public, in order to manage flood risk.

Flooding Policy
Environmental Quality Directorate
Scottish Government
21 November 2008
Appendix

Presumption in favour of NFM

A key principle of sustainable flood management is that there should not be a presumption in favour of any particular flood management measure. This has been a key recommendation of our Bill advisory groups and their predecessors— the Flooding Issues Advisory Group, and the National Technical Advisory Group.

The measure or combination of measures, adopted must be appropriate to a particular location, objective and set of circumstances.

In considering what the most appropriate measures are, sustainable flood management requires consideration of the following objectives:

- **Social** – enhance community benefit, with fair outcomes for everyone
- **Environmental** – protect and work with the environment, with respect for all species, habitats, landscapes and built heritage
- **Economic** – deliver resilience at affordable cost; with fair economic outcomes and the protection of local jobs and wealth

The Bill provisions, and in particular Section 24, have been drafted to ensure the selection of the most sustainable flood risk management measures. For instance,

- In selecting measures, consideration must be given to, so far as is appropriate, structural and non-structural measures. This ensures that all measures, from traditional engineering through natural flood management or flood warning are considered.
- In selecting measures consideration must be given to the environmental objectives of the River Basin Plans prepared under the Water Environment and Water Services Act.
- The benefits of that are likely to be derived from the proposed measures must be considered. Benefits must consider the contribution towards reducing flood risk and other benefits. Although the nature of other benefits are not specified in the Bill, the intention is that other benefits would include those elements described above, i.e. social, environmental or economic.

The intention of the Government is to issue guidance on how cost-benefit analysis must be undertaken. This guidance will focus on assessing all costs and all types of benefits, including environmental and social. In developing this guidance, the intention is to work with those involved in implementing the Bill and stakeholders to determine the most appropriate costs-benefit tools.

We believe that these steps would ensure that where different approaches to reducing flood risk are available, the most sustainable approach will be adopted.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH GOVERNMENT BILL TEAM (14 DECEMBER 2008)

The Water Environment and Water Services Act (2003) (2003 Act) did not name any responsible authorities. Instead, it provided Scottish Ministers with a power to designate responsible authorities. Responsible authorities were subsequently designated in a Ministerial Order. A range of bodies were considered for designation, and a consultation setting out options was held before the designation order was made.

We have included a similar power to the one set out in the 2003 Act that will enable Scottish Minister to designate responsible authorities. However, due to their critical role in flood risk management, two responsible authorities are named (designated) on the face of the Bill— local authorities and Scottish Water.
The intention is to follow a similar approach to the 2003 Act and to use a designation order to identify other responsible authorities. This would be preceded by discussions with all potential responsible authorities and a formal consultation on the Government’s proposals. The Scottish Government would expect to begin this process shortly after the Bill is enacted.

In considering organisations that could be identified as responsible authorities, careful consideration would be given to (i) an organisation’s existing role in managing or reducing flood risk, (ii) how the Bill provisions could affect the current role/remit of an organisation and (iii) whether an organisation’s role in flood risk management could be fulfilled through participation in advisory groups and other consultation exercises set out in the Bill, e.g. by providing guidance or information on particular aspects of assessing flood risk. A further critical consideration would be the degree to which an organisation will be able to directly contribute to the overarching duty set out in Section 1 which requires responsible authorities to act with a view to reducing overall flood risk.

In preparing flood risk assessments, maps and plans, SEPA and local authorities must have regard to advice from advisory groups. The ‘district’ advisory groups must include representation from SNH amongst others. The sub-district group must include representation from persons SEPA deem appropriate. This was to ensure that the membership of these groups could be tailored to local issues and needs. The policy intention is for organisations like SNH to be represented on these groups where they feel their representation would be helpful. The ultimate intention is for a range of organisations and stakeholders to be engaged in flood risk management, but to also provide flexibility to ensure that consultation fatigue is avoided.

SEPA is required to consult on and issue a statement setting out the consultation steps that are to be taken in connection with the preparation of flood risk management plans (Section 25). The intention is for this statement/consultation to set out the proposed role, remit and membership of advisory groups as well as other steps that would be taken to secure participation and engagement in the preparation of flood risk assessment, maps and plans. This consultation would help ensure that the views of a wide range of stakeholders and organisation are considered and that all appropriate organisations and persons are engaged in flood risk management.

Responsible authorities under WEWS are:

- Scottish Natural Heritage,
- Scottish Water,
- Forestry Commission Scotland,
- Local authorities,
- District Salmon Fishery Boards,
- British Waterways,
- Fisheries Committee,
- National Park Authorities.
I am responding to the above call for evidence on behalf of Forestry Commission Scotland (FCS) which serves as the Forestry Directorate of the Scottish Government and is responsible to Scottish Ministers. We are happy for this response to be made public and for our response to be shared.

Our comments on the general principles of the Bill are as follows:

- The proposed Bill achieves the aim of the Scottish Government to establish the statutory framework to deliver sustainable flood management (SFM). Its provisions ensure national objectives for flood management are translated into objectives and measures suited to local circumstances. The requirements for transposing the EU Flood Directive will also be achieved.

- The Bill will ensure that the principles of sustainable flood management (SFM) are firmly embedded in legislation. While SFM is not a new concept in Scotland, to-date the design of many flood protection schemes has been dominated by traditional hard engineering. The Bill therefore presents an important opportunity to develop a common understanding of SFM across all sectors and enhance its implementation in Scotland.

- We strongly support the integration of natural flood management (NFM) techniques into the suite of sustainable flood management measures. We also support the provision in Part 1, Section 16 of the Bill to place a duty on SEPA to undertake a national appraisal of where such techniques could contribute most effectively to flood management. Additional guidance on this provision will help guide SEPA and relevant parties on the context and scope of these assessments. We would be very willing, through our involvement in the Natural Flood Management Group, to help develop such guidance.

- Through modelling and demonstration work FCS and Forest Research are developing their knowledge of NFM techniques and the contribution they can make to SFM at a catchment scale. Dr Tom Nisbet’s submission to the Committee’s Flooding Enquiry (see attached) indicated that forestry-related NFM can offer an effective, low cost, and environmentally sensitive option which, particularly if considered at a catchment level, could contribute significantly to reducing flood risk.

- The integration of NFM into the Bill provides an opportunity to ensure that such techniques are considered before, or certainly in conjunction with, hard engineering solutions. We would therefore support the general thrust of the RAE Committee’s recommendation 15 in their Flooding and Flood Management report (May 2008). Given the potential time-lag between implementing and then gaining benefit from some NFM techniques there may be merit in considering hard engineering as an immediate solution to current flooding issues, with NFM helping to address future, climate change-induced increases in flood risk.

- The Bill enables Scottish Ministers to designate public bodies as responsible authorities in secondary legislation and we note that consideration is being given to appointing Forestry Commission Scotland to this role. This would support and broaden FCS’s role as a responsible authority under the Water Environment and Water Services Act (2003) and we would welcome that. We also welcome the intention to consult further on which authorities should be designated as responsible authorities (through secondary legislation) and the nature of their functions.

- We welcome the Bill’s intention to seek integration between flood management and the Water Framework Directive by providing for close co-ordination of flood risk management planning and river basin management planning. The integration of water and land use management is fundamental to achieving this if opportunities to deliver coincident environmental, water and flood management benefits are to be captured. Forestry has an
established track record in delivering such multiple benefits. This is particularly relevant in
the context of climate change where environmental services, such as flood risk
management or water quality protection, can be delivered alongside climate adaptation
measures (such as the creation of forest habitat networks), carbon sequestration and the
production of sustainable building materials and/or wood fuel.

- Experience in England indicated that even doubling the rate of forestry support measures
was insufficient to encourage floodplain woodland creation at various trial sites. If mirrored
in Scotland, which is likely given the comparative scarcity of good quality agricultural land,
this might have implications for the cost of providing ‘environmental services’ of this nature.
However, although such costs may appear high in terms of forestry’s standard costs, the
true comparison will be with alternative, hard engineering solutions. From that perspective,
such forestry-related environmental services can be expected to be extremely cost
effective, particularly as other benefits will also accrue (such as carbon sequestration,
reductions in agricultural emissions through reduced use of fertiliser, reductions in diffuse
pollution, and biodiversity gains).

- Through its management of the national forest estate, FCS is well placed to help
implement targeted NFM techniques both on the existing estate and through helping to
create new woodlands in appropriate locations (the Scottish Forestry Strategy contains an
aspiration to expand woodland cover to around 25% of Scotland’s land area over the
coming decades century, this equating to about 10,000 ha of new woodland creation each
year). Targeted land acquisitions by Forest Enterprise Scotland, who manage the national
forest estate on behalf of Scottish Ministers, could help address the potential disconnect
between current agricultural economics, other land uses and natural flood management
techniques such as the creation of floodplain woodlands.

The role of woodland in flood control: a landscape perspective - T.R. Nisbet\textsuperscript{1} and H. Thomas\textsuperscript{2}

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Abstract

Sustainable flood management is increasingly looking to the role of catchment land use in
alleviating downstream flooding. Woodland presents a number of opportunities that are
dependent on its location within the landscape. One way that woodland can attenuate flooding
is through the greater water use by trees. The overall impact on the generation of flood flows,
however, depends on the interaction of many factors and is most marked at the headwater
level. Another way relies on the ‘sponge effect’. Improved infiltration resulting from the targeted
planting of sensitive soils or the use of down-slope woodland buffers could attenuate rapid run-
off at the local scale. Finally, the greater hydraulic roughness associated with riparian and
floodplain woodland can aid the retention and delay the passage of flood waters, potentially
assisting downstream flood defence in larger catchments. This paper examines each of these
opportunities and considers whether woodland can make a significant contribution to tackling
future flooding as part of a whole-catchment approach to sustainable flood management.

Keywords: Woodland, water use, soil infiltration, hydraulic roughness, sustainable flood
management

Introduction

A series of major floods across Europe in recent years has raised serious concern that the
frequency of extreme floods may be increasing due to climate change. Model predictions of a
35\% rise in winter rainfall and a 25\% increase in daily rainfall totals for storm events in some
parts of the UK by 2080, based on the ‘business as usual scenario’ (Hulme \textit{et al.} 2002), has
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placed the management of flood risk high up the political agenda. This has been reinforced by the fact that the consequences of flooding are expected to become more severe and expensive with the rise in the value of the built environment and pressure to build on the floodplain.

At the same time, the increasing cost of providing hard engineered flood defences and the growing emphasis on sustainable development has resulted in greater attention being given to finding more sustainable, ‘softer engineering’ solutions. This is reflected in the Government’s Flood and Coastal Erosion Risk Management Strategy ‘Making Space for Water’ (Defra, 2005). A key pillar of the strategy is to adopt a whole catchment approach and make greater use of rural land use solutions, including the creation of wetlands, washlands and effective land management techniques.

Forests and woodland have long been associated with an ability to slow down run-off and reduce downstream flooding (McCulloch and Robinson, 1993). In fact, deforestation has often been cited as a major contributing factor in the apparent rise in flood events in the developing world. Re-planting or creating new forests is increasingly viewed as offering a number of opportunities to help reduce flood risk. The potential to assist flood defence however, is highly dependent on the scale of forest cover and its location within the landscape. Other important factors include the type of forest and how it is managed. This paper examines whether woodland expansion in the UK could make a significant contribution to tackling the predicted rise in flood risk, as part of a whole-catchment approach to sustainable flood management.

Woodland and floods

Water use by trees

The most obvious way that woodland can attenuate flooding is through the greater water use by trees. Trees and woodlands can use more water than shorter types of vegetation mainly due to the interception of rainwater by their aerodynamically rougher canopies (Nisbet, 2005). A distinction can be drawn between conifers and broadleaves, with evergreen conifers tending to have a greater water use because high interception losses are maintained throughout the year, particularly during the winter when conditions are usually wettest and windiest.

Studies in the UK have found that between 25 and 45% of annual rainfall is typically lost by interception from conifer stands, compared to 10-25% for broadleaves (Calder et al. 2003). If such losses could be transferred to flood flows then forestry could make a major contribution to flood reduction. However, interception varies greatly throughout the year and in particular, declines with the size and intensity of a given rainstorm. Light showers can be completely intercepted, while losses as a proportion of rainfall decline with increasing rainfall intensity, reaching a maximum of 6-7 mm d⁻¹ for conifers (Calder, 1990). This reflects the relatively small water holding capacity of forest canopies, equivalent to only a few mm of rain water. As a result, interception losses are likely to be <10% for individual major storm events. The impact of broadleaves is even smaller, especially for events during the leafless period, which is often when the risk of flooding is greatest. Another factor is tree age, with the greater water use of forests only becoming fully established when the canopy closes, which tends to occur at around 10-15 years age in conifer plantations and even later for broadleaves.

A downside of the increased water use by trees is the potential impact on catchment water yield. Any reduction in flood flows could be outweighed by the effect on water supplies and dry weather flows, especially in catchments where water demand exceeds supply. This is likely to become an increasingly important issue as the combination of drier summers and rising water demand generates ever greater pressure on water resources. Conservation and other constraints would also limit the scope for realising the potentially greater flood benefit associated with an expansion in conifer woodland.

The ‘sponge effect’

Another way that woodland can affect flood flows is by their soils holding back and delaying the passage of rain water to streams and rivers. Woodland soils tend to have a more open structure resulting from greater amounts of organic matter, the action of tree roots and soil fauna, and the lower level of soil disturbance by man. The presence of a network of
macropores helps to transmit water quickly to depth, reducing the likelihood of surface saturation and rapid run-off. These conditions enhance the ability of the soil to receive and store rain water and are commonly referred to as a ‘sponge effect’.

Time of year and soil type affect the magnitude of the sponge effect. It is usually greatest during summer and autumn periods due to the generally drier condition of woodland soils and therefore larger capacity to store rain water. Consequently, the flood alleviation benefit could be expected to be most marked for flood events generated by seasonal thunderstorms. However, this effect can be constrained in organic soils by the tendency for soil drying to result in greater hydrophobicity, which promotes rapid surface run-off. Once woodland soils are rewetted during the autumn, they will have a reduced capacity to receive and hold storm water and thus to influence winter and spring flooding.

The sponge effect is associated with both conifer and broadleaved woodland, but is strongly influenced by management practices (see below). The benefit from new planting would be greatest where woodland replaces land uses associated with a high risk of soil damage. This is especially the case in the UK, where storm rainfall intensities rarely exceed ‘natural’ soil infiltration rates (Ward and Robinson, 2000). Recent studies at Pont Bren in Wales have found infiltration rates up to 60 times higher under young native woodland compared to grazed pasture (Bird et al. 2003). The rates under compacted pasture are readily exceeded during storm events, leading to rapid run-off and potentially higher flood flows.

Soils that are prone to structural damage such as surface capping and shallow compaction would probably benefit most from a change to woodland. Opportunities exist for targeting woodland planting onto the most sensitive soils or in key locations for intercepting and ‘soaking-up’ surface run-off generated from the adjacent ground. Examples include using woodland buffers along lower field edges or within the riparian zones of streams and rivers.

**Hydraulic roughness**

The use of riparian and floodplain woodland to delay the progression of flood flows may offer the greatest potential to assist flood control. This relies on the hydraulic roughness created by woody debris dams within stream channels and by the physical presence of trees, shrubs and deadwood on the floodplain. The net effect of these features is to reduce flood velocities, enhance out of bank flows, and increase water storage on the floodplain, resulting in an overall smaller downstream flood event.

Hydraulic modelling studies in south west England demonstrate that the planting of woodland across the floodplain could have a marked effect on flood flows (Thomas and Nisbet, 2004). The additional roughness created by a complete cover of woodland along a 2.2 km reach of the River Cary in Somerset was predicted to reduce water velocity by 50% or more and raise the flood level by up to 270 mm for a 1 in 100 year flood event. This increased the volume of flood storage by 71% and delayed the downstream progression of the flood peak by 140 minutes. These results were considered to be significant in terms of protecting downstream sites and providing more time for issuing flood warnings.

The main concern surrounds an enhanced risk of upstream flooding above the floodplain woodland due to the backing-up of flood waters. In the case of the River Cary example, the flood level was raised by up to 180 mm over a distance of nearly 400 m upstream. Another issue is an increased risk of downstream flooding due to the wash-out of large woody debris blocking bridges and other critical structures in towns and cities.

**The role of woodland design and management**

The different ways that woodland can affect flood flows are greatly influenced by design and management factors. Forest design determines species, age and structural diversity, as well as the balance of forest cover and open space. Since the water use effect is greatest for closed canopy conifer stands, the smaller that this component becomes the lesser the potential effect on flood flows. In terms of existing forests, the ongoing shift away from single aged plantations to more mixed species and aged stands with a significant component of broadleaves and open space, will act to ‘dilute’ the present water use effect on flood flows. This is despite the greater
length of edge between young and old stands within a mixed-aged forest, which enhances local turbulence and thus interception loss. Research suggests that the edge effect is limited to a very narrow band (<20 m from the stand edge) and is therefore only significant for individual stands or woodlands that are less than 1 ha in area (Neal et al. 1991). In contrast, efforts to transform conifer stands into continuous cover crops could be expected to reverse the dilution effect of mixed aged woodlands by maintaining the presence of a fully intercepting canopy.

Forest design has less of an influence on the sponge effect but is a key factor in determining the ability of floodplain woodland to slow down flood flows. To form an effective barrier, floodplain woodlands need to straddle most of the width of the floodplain, otherwise the effect will be negated by increased flows between or around woodland blocks. Relatively narrow, linear strips parallel to the river flow would have a minimal retaining effect. Location, shape, size, age and species choice all influence the flood attenuation effect.

Woodland management also exerts a marked impact on the ability of woodlands to reduce flood flows. Ground cultivation and drainage has the opposite effect of tending to speed-up the removal of water from a site. This is greatest for deep ploughing and intensive drainage, which can increase the density of surface water channels by 60 times or more. Research at Coalburn in north England showed that such ground treatments can increase peak flows by 20-30% and decrease the time to peak by about one third (Robinson et al. 2003). However, cultivation treatments have greatly changed in the last 20 years, with the focus now on scarification and mounding rather than ploughing. The need for drains has also reduced with the shift in planting to better drained soils. For new native woodlands, very wet soils are either left unplanted or mounded and planted with a species appropriate for such conditions.

Felling is the most dramatic intervention with effects on both woodland water use and run-off pathways. Clearfelling usually leaves a bare site with minimal water use apart from the interception loss associated with brash residues. The increase in run-off and therefore greater contribution to flood flows is likely to last for at least 10-15 years until the replanted trees close canopy once again. Timber harvesting and extraction, however, can have an even greater effect on flood generation. Poor practice such as the use of inappropriate machines and excessive loads can cause severe ground damage, leading to rapid run-off from compacted soil and along wheel ruts. Best practice guidance was introduced in the UK in the late 1980’s and 1990’s to prevent these problems and help protect forest soils and water. The guidelines apply to both public and private forests and together with a shift to alternative forms of felling and smaller sized clearfells, should help to preserve the forest sponge effect.

Forest roads are another important consideration. The extensive network of roads and supporting extraction and other access tracks that permeate large managed forests, together with associated drains, represent a significant surface area for the collection of rain water and its rapid delivery to streams. Older forests that predate modern guidelines will have the largest effect due to less attention being given to drainage design and preventing road drains flowing directly into natural watercourses. As with clearfelling, this factor can act against the flow reduction benefit resulting from the water use and sponge effects of the wider forest area.

The importance of scale

Scale is a key issue when extrapolating the effects of forests and woodland to the level of a larger catchment. Obviously, as the proportion of the area occupied by a forest declines, its ‘signature’ will be progressively diluted by that of the non-forest land cover. This is especially relevant when considering flood alleviation, with most serious flooding problems arising well down the catchment of major river systems. At this scale, forest cover often forms a relatively small proportion of the total land area, limiting the potential to contribute to flood defence. The diverse and mixed nature of the land cover is a key factor in the UK.

Scale appears to have less of an influence on the impact of floodplain woodland. The significant effect on flood storage and timing that was predicted by the hydraulic modelling study on the River Cary was achieved by a relatively small area of floodplain woodland, covering less than 2% of the total catchment area of 82 km$^2$. It is possible that the same barrier effect could have been produced by an even shorter reach of woodland, provided that it
straddled the full width of the floodplain. Opportunities for creating a continuous area of woodland across the floodplain will usually be greatest in the middle and upper reaches of river systems, where housing and other forms of habitation pose less of a constraint. The narrow nature of headwater floodplains and high water velocities would require extended lengths of floodplain/riparian woodland to achieve a significant reduction in peak flows.

Modelling work suggests that it should be possible to exert a significant effect on flood flows within large river systems by establishing a series of floodplain woodlands along a major river channel or across several main tributaries (Thomas and Nisbet, 2004). However, woodland location is an important consideration since planting provides an opportunity to desynchronise the flood flow contribution from individual tributary catchments. This could have both positive and negative effects depending on the overall timing and mix of flows within a large river system. A detailed analysis of the hydrographs of each tributary would be required to identify where the restoration of floodplain woodland would exert the greatest benefit in terms of the main flood peak. Site location also needs to consider potential constraints such as the presence of local buildings and transport links that could be affected by the backing-up of floodwaters upstream of any floodplain woodland.

Evidence base in support of woodland controlling flood flows

The impact of forestry on flood flows has been the subject of much national and international research. Earlier hydrological studies in the UK found little evidence of a significant forest effect either at the headwater or at the large catchment scale. For example, an analysis of 35 years of flood flow records from moorland and forest research catchments at Plynlimon in mid-Wales found that upland floods in excess of the mean annual flood were scarcely affected by land use. A later study of the impact of extensive forest clearfelling in the same catchments also failed to find a significant change in peak flows (Robinson and Dupeyrat, 2003). The Natural Environmental Research Council’s Flood Studies Report of 1975 concluded from regional flood studies in Britain that the area of forest was not a significant factor in statistical relationships used for flood prediction. This was supported by McCulloch and Robinson’s (1993) review of the history of forest hydrology, which found that forests may reduce small floods but, generally, not extreme events.

Other studies have observed that forestry can have a significant effect on flood flows at the small catchment scale but not within large basins. This was the conclusion of a major pan-European study by Robinson et al. (2003) involving hydrological data from 28 research catchments spanning a wide range of forest types, climate conditions and soil/geology. They found that forest growth could result in a 10-20% reduction in peak flows in headwater catchments, while forest drainage and felling could have the opposite effect. These effects could not be detected in larger catchments, leading them to suggest that forestry has probably a relatively small role to play in managing regional or large-scale flood risk. Similarly, a major review of the impacts of rural land use and management by O’Connell et al. (2004) concluded that there was substantial evidence of effects on local flooding at the field and hillslope scale, but little sign of these changes propagating far downstream.

These findings are in line with recent assessments by the Food and Agriculture Organisation (2005) and Calder and Ayward (2006). Both studies found that while forests around the world can play a role in ameliorating localised flooding, there is no evidence that they can prevent, or that their removal is a cause of large-scale major floods. The impact of forests on floods was considered to be limited to catchments <100 km² in area.

The downstream progression of headwater effects within larger catchments was examined by Archer (2003) in a study of the River Irthing catchment in north England. A comparison was made between the effects on peak flows recorded within the small 90% afforested headwater Coalburn catchment (1.5 km²) and the larger 19% afforested River Irthing catchment (335 km²), to which it drained. An analysis of the annual number and duration of peak flows pulses found that the significant increases recorded due to deep ploughing followed by subsequent decreases due to forest growth at Coalburn, were effectively lost at the scale of the larger Irthing catchment. This agrees with the work of Cornish (1993) in Australia, who found that
forest hydrological effects were very difficult to discern when less than 20% of a catchment was affected.

The lack of evidence of a significant impact of forestry on flood flows at the larger catchment scale may be partly due to the research focusing on conifer plantations, especially in the UK. It is possible that the contrasting effects of the mix of forest ages, species and open space, together with that of forestry management practices such as drainage and clearfelling, effectively cancel each other out. Semi-natural forests that are unaffected by these activities may offer greater scope for flood reduction, although in the case of broadleaved woodland this would be limited by its much lower water use. Unfortunately, few studies have been able to test this due to the small scale of such woodland in many countries and the reluctance to undertake sizeable felling treatments in view of the woodland’s high conservation value.

The same problem also applies to floodplain forests, with few measurements available to properly quantify their impact in terms of flood alleviation. Work is now underway to start to address this gap and help test the positive results derived from hydraulic modelling studies (Nisbet et al. 2005). Some research has demonstrated the positive effects of riparian woodland and large woody debris dams in reducing peak flows but only for smaller events at the local scale (Linstead and Gurnell, 1999). Further work is also needed on this topic.

The ability of woodland to reduce flood generation, at least within headwater catchments, also has potential benefits for water quality. Rapid surface run-off is usually associated with a greater risk of soil erosion and consequently increased pressure from the entry of sediment and chemical-bound pollutants such as pesticides and nutrients entering watercourses. Therefore forestry can provide a win-win solution by helping to tackle both local flooding and diffuse pollution issues.

Conclusions

Woodland offers a number of potential opportunities for flood control. Research and experience indicates that those provided by the greater water use by trees and the forest sponge effect are largely restricted to the headwater or small catchment level. Modelling studies suggest that floodplain woodland offers the main way of ameliorating extreme flood events at the large catchment scale, although results remain to be tested in practice. Overall, there appears to be significant scope for using woodland to help reduce flood risk, as well as to provide a wide range of other environmental, social and economic benefits. However, in order to achieve these, woodland needs to be better integrated with agriculture and other land uses as part of a whole-catchment approach to sustainable flood management.

References


Forestry Commission Scotland
11 November 2008

**SUBMISSION FROM SCOTTISH ENVIRONMENT LINK**

**Summary**

- The Freshwater Taskforce of Scottish Environment LINK welcomes the general principles for the Bill, and the new flood risk related duties for Scottish Ministers, SEPA and Responsible Authorities. However, whilst these provisions make the new flood risk related functions clear, they do not ensure the sustainable delivery of flood risk management.
There is much scope to improve the provisions and safeguard the adoption of sustainable approaches to flood management in this legislation.

- The Bill creates a new framework for the future management of flood risk. Whilst we are generally supportive of the new framework, a number of key elements could be strengthened. This includes strengthening the role of natural flood management, clarifying the role of catchment based planning and better co-operation with land uses and other relevant policies.

- The Bill should introduce clearer provisions for natural flood management and a presumption for the use of natural flood management measures in flood risk management planning, as recommended by the Committee in its Flooding inquiry.

- A stronger trigger to policy join up should be introduced for all Ministerial departments and responsible authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the flood risk management plans.

- Local Authority should be given stronger duties to work with, and co-operate with, farmers, foresters and land managers in flood risk management planning, and flexible powers to deliver changes to land management.

- A new duty on local and responsible authorities to implement/contribute to the implementation of measures in flood risk management plans is needed.

- Adequate funding must be made available to establish the framework for SFM. Funding for flood management measures should be allocated on a catchment basis for each local flood risk management plan.

Overall, we believe that the Committee should support the general principles of the Bill whilst recommending that several improvements are considered as part of stage 2.

Scottish Environment LINK is the liaison body for Scotland’s environmental organisations, the members of which are supported by around 500,000 people. LINK member organisations have been actively involved in work on water issues and have worked in partnership with the Scottish Government in the lead up to this Bill, they:

- Were actively involved in the transposition of the Water Framework Directive into Scots law, and instrumental in 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

The following organisations are members of the Freshwater Taskforce and support this submission:

RSPB Scotland, WWF Scotland, Buglife, Scottish Wildlife Trust
We would welcome the opportunity to develop any of the points here either through oral evidence or through further written submissions.

Introduction

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Rural Affairs and Environment Committee on the Flood Risk Management (Scotland) Bill. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

Whist we greatly welcome and support the general policy objectives of the Bill, as stated in the Policy Memorandum, we have some concerns as to the delivery of these aims through the legislation. This submission highlights these concerns, particularly in relation to:

- Weak duties/provisions for the sustainable management of flood risk
- Lack of clarity on the use of natural flood management as key component of flood risk management planning
- No provisions to ensure that measures contained in flood risk management plans are implemented on the ground.

We further discuss the role of farmers and land managers and the need for better integration with land use management planning, agricultural regulation and River Basin Management Planning. In addition, the financial implications of the Bill and the economic benefits of sustainable approach are discussed towards the end of this submission.

Some of these issues are fundamental to the recommendations of the RAE inquiry into Flooding and Flood Management. We are concerned that some of these recommendations have not been fully met in the new Bill. Specific recommendations from the RAE report are listed in italics at the start of each relevant section and suggestions are made on how these recommendations could be better incorporated into the Bill.

Provisions for the sustainable management of flood risk

Flood Risk Management Bill, Policy Memorandum: ‘The provisions in the Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding’

As clearly stated in the policy memorandum, the Bill’s intention is to deliver sustainable approaches to flood management. We fully agree and support this statement, but we are not convinced that the Bill’s language is clear enough to deliver this aim. The only provision made in the Bill for sustainable flood management (SFM) is in a duty on SEPA, and others ‘to promote SFM’. This duty has already been in place for 5 years through the Water Environment and Water Services (Scotland) Act 2003, but has not been implemented on the ground in any way or form. ‘Promoting’ SFM is fundamentally different to ‘implementing’. It would be a missed opportunity if the new Bill failed to deliver its main purpose due to such weak duties. We therefore recommend that the Committee considers how best to ensure delivery of SFM, and we make the following suggestions:

- Including ‘sustainable management of flood risk’ in the long title of the Bill, and
- As part of general duties on Ministers, SEPA and responsible authorities:
  - Introducing a stronger duty on Scottish Ministers, SEPA and Responsible Authorities on SFM, such as to ‘further the implementation of SFM’
  - Ensuring that social, economic and environmental impacts are considered when addressing flood risk
  - Ensuring that those responsible for flood risk management adopt an integrated approach
Provisions for catchment based approach to flood risk management

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 6: The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management.

LINK has discussed the benefits of a catchment approach to flood management in its previous submission to the Flooding and Flood Management Inquiry and we do not intend to discuss this issue here in further detail. After all, this was one of the key recommendations from the RAE Flooding Inquiry. Despite this, we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach in local flood risk management planning.

Therefore, we seek clarification as to the intention of the Bill in this regard.

Provisions for natural flood management

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 15: The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as part of each catchment plan.

We warmly welcome the proposal for the Assessment of contribution of natural features to flood management in Part 3, section 16 of the Bill. However, we remain concerned that this provision does not place natural approaches to flood management at the heart of the new Bill. We do not feel that this provision meets the recommendation of the RAE Committee in its Flooding Inquiry report to introduce a presumption for the use of NFM techniques. Furthermore, we are concerned over the wording of this proposal. Currently, it only provides for the assessment of natural features and not for the assessment of the natural processes related to flooding. Both components - natural features and flooding processes are important part of natural flood management. Again, there is much scope to improve the provisions for NFM, and we would recommend:

- Section 16 to include the assessment of natural approaches to flood management, which would include within its scope natural features and flooding processes;
- Introduce a presumption in favour of natural flood management in flood risk management plans in section 24 of the Bill as recommended by the Committee;
- Introduce timescales by which such assessment must be produced;
- Introduce requirements on SEPA to consult local authorities, Responsible Authorities and other relevant stakeholders in making such an assessment;
- The assessment should produce a 24 year vision, with a more detail assessment covering a period of/being reviewed every 6 years, and
- The assessment must consider environmental objectives in River Basin Management Plans.

We believe that if the above recommendations are taken forward the provisions for natural flood management will be greatly improved. Whilst natural flood management is a new concept, it has proven to be effective in lowering flood risk and is integral to the sustainable outcome of the new Bill.

Ensuring the funding and implementation of plans and measures on the ground

Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation: The Committee recommends that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans.

Scotland’s communities will only benefit from the new, sustainable approach if the measures contained in flood risk management plans are funded appropriately and implemented on the ground. Whilst we welcome the provisions in the Bill for identifying responsible authorities in statute and a general duty to reduce flood risk, we remain concerned over the implementation
of measures identified in flood risk management plans and the processes by which they could be funded.

**A new duty to implement/contribute to the implementation**

We believe that in order to see full benefits of the new approach, a duty to implement or contribute to the implementation must be written in the law. Without such duty, there is no guarantee that measures identified in flood risk management plans will be implemented. This is particularly important in light of the competing pressures on local authorities to deliver many other objectives. The new duty could sit in a new section 37 in a section on Local Flood Risk Management Plans.

**Funding flood management measures**

Funding which is made available for flood risk management should be spent on lowering flood risk to communities. If the funding is not linked to the flood risk management plan and there is no direct duty on local authorities to deliver the measures, then funding is likely to be re-prioritised to help meet other pressing obligations, leaving communities at risk. Funding should be allocated on a catchment basis for each local flood risk management planning area and linked to the flood risk management plan. Where necessary this means that funding could be allocated to one or more local authorities in any one area and may be best held centrally rather than allocated to local authorities through single outcome agreements. Considering the importance of this issue and the current uncertainties we would welcome further clarification as to the future of funding arrangements.

**Scottish Water and the role of the Water Industry Commission**

The above applies to other responsible authorities which need to plan for the flooding requirements as part of their spending review processes, including the Quality and Standards investment programme for Scottish Water (SW). There is a clear role for the Water Industry Commission, which is not a Responsible Authority, but which is Scottish Water’s economic regulator. SW’s investment programme is largely constrained by the level of investment agreed by Scottish Ministers and price caps set by the Water Industry Commission (WIC) for a given period. The current regulatory system involving SW, Scottish Ministers and the WIC does not appear to be ‘in tune’ with the sustainability requirement of the Water Environment and Water Services (Scotland) Act 2003 or the Water Industry (Scotland) Act 2002. The role of the WIC appears to clash with the duties of SW to contribute to sustainable development. Sustainable solutions may not always be the cheapest solutions for a specific problem in the short term, but may require a larger initial investment, with longer-term gains. Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term. Sustainable, innovative solutions should be promoted and Scottish Water encouraged by Scottish Ministers and the WIC to contribute actively to sustainable development in Scotland.

**The role of Scottish Ministers**

Scottish Ministers should also have duties to deliver sustainable flood management through their powers to set the funding for, and approve measures contained in, Scottish Rural Development Programmes and other aspects of the budget. It is therefore essential that a duty on Scottish Ministers and Responsible Authorities to deliver flood measures on the ground achieved through an appropriate funding process is introduced as part of the Bill. The duty could sit in a new section 37.

**Integration with the statutory land use planning system and other land use policies**

*Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 17:* The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development plans and structure plans.
Recommendation 18: The Committee recommends, given the importance of land use management, the Scottish Government should ensure it has the powers to require changes to land use for flood management purposes.

All land uses in Scotland impact either directly or indirectly on flooding and therefore have a role of flood management. Policy join-up needs to be effective throughout land management and in the way in which it is planned. Full integration is needed with the statutory land use system, as well as with other land use policies and regulations. Stronger emphasis on policy integration is therefore essential if the Bill is to be effective and in meeting the sustainability objectives of the new legislation. We therefore recommend that a stronger trigger to policy join up is introduced in the Bill. This should include a strong duty on all Ministerial departments and all Responsible Authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the FRMPs.

Land use planning

It is essential that the potential contribution of land uses to flood risk management is fully recognised and that land managers are awarded and compensated for their contribution to flood management. The Bill should also aim to strengthen the general duties of Scottish Ministers to integrate all relevant departmental functions in order to provide adequate support to farmers and landowners and to achieve SFM. There should also be a stronger duty on local authorities and Responsible Authorities to cooperate with farmers, foresters and landowners in the production and implementation of flood risk management plans. This could be achieved by strengthening the provisions under section 30.

Development planning

The Bill proposes a general duty on Scottish Ministers, and every public body and office holder, to have regards to the local and district flood risk management plans. This is encouraging but does not necessarily mean that local authorities will be required to assess whether FRMPs are compatible with their structure and development plans. This could be achieved by strengthening the provisions under section 36. We also recommend that this issue is considered further though a revision of the Scottish Planning Policy on flooding (SPP7) and other appropriate policies.

Financial implication of the new Bill

The key policy objective of the new legislation is to shift from our current reactive approach towards sustainable management of flood risk. This means that we need to develop new tools, improve our assessments and mapping of flood risk and put in place new structures that would allow us to make the right decisions for now and in future. Implementing the new framework will take time and resources. Initially, this may require a substantial investment the development of new frameworks and research agendas. For example, SEPA alone has identified the need for an investment of £8million up to 2015 to fund the development of new modelling tools and data sets. The current allocation of £1.7million on flooding is by no means sufficient to take this agenda forward. Costs will also fall on local authorities as they will require additional funding to support their role in local flood risk management planning. Scottish Government has been developing a research agenda to take forward work on natural flood management and demonstration projects. Despite its importance and political support, the work on NFM is currently hugely under-resourced. In future, some funding could be available through agri-environment and forestry schemes to encourage the beneficial management of land for flooding. However, this funding is likely to be limited.

The economic benefits of sustainable flood risk management

The new framework aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aims to deliver environmental and other benefits. The real benefit in introducing the new framework for flood risk management is therefore in the delivery of multiple benefits and the provision of long-term solutions. These
benefits are difficult to estimate in monetary terms, and do not fit well with the traditional framework of cost – benefit analysis.

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Traditional flood defence measures are very expensive. The present value of Scotland’s current flood defences is £1.3 million/kilometre.

It is difficult to generalise about the cost of sustainable flood defence measures as the measures vary widely. However, sustainable flood defence measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure.

We therefore seek reassurance from the Ministers that funding adequate funding will be made available to support Scottish Government, SEPA and responsible authorities in their new roles.

Cost-benefit analysis of flood management measures

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis.

We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options. The Committee should seek re-assurance that the cost-benefit analysis of flood management measures will consider non-monetary costs and benefits. Whilst this subject is still new, much research has emerged recently from the UK and elsewhere how such benefits can be incorporated into cost-benefit analysis.

Conclusions

This Bill offers a unique opportunity to deliver much improved management of flooding in Scotland. Whilst we welcome the general policy aims and structures for the management of flood risk, we remain concerned over the delivery of sustainable approaches to flood management on the ground. This is particularly relevant as the Bill lacks provisions to ensure implementation of measures on the ground. A number of provisions could be strengthened, including the provisions for natural flood management, integration with other relevant plans and policies, including the statutory land use planning system, and the duties of local authorities to implement measures on the ground. We believe that we will only benefit fully from the new approach to flood management if SEPA, the Scottish Government, local authorities and Responsible Authorities are adequately resourced to fulfil their new duties.

Annex Summary of strengths and weaknesses in the Flood Risk Management (Scotland) Bill

PART 1 and 2: General duty, directions and guidance; and principle expressions

We strongly support the following in the Bill:

- SEPA to be designated as a lead authority
- The designation of `responsible authorities`, including Scottish Water, local authorities and others with roles in flood management
- Strong duty on Ministers, SEPA and responsible authorities to reduce overall flood risk
The following issues must be addressed:

- Overall policy must aim to deliver sustainable flood management
- Ensure regard is given to three aspects of sustainability when assessing impact - social, economic and environmental

**PART 3: Flood risk assessments, maps and plans**

We strongly support the following provisions in the Bill:

- Designation of district areas as per the WEWS Act
- The principle behind the provisions for natural flood management in section 16
- Provisions for advisory groups and public participation
- Provisions for reporting and public accountability

The following issues must be addressed:

- Catchment based approach to flood risk management planning
- Stronger provisions for natural approaches to flood management
- Stronger provisions for local authorities to consult individual landowners when preparing local plans
- A new duty on local authorities and responsible authorities to implement/contribute to the implementation of measures in local flood risk management plans

**PART 4: Flood Risk Management: local authority functions**

We strongly support the following provisions in the Bill:

- Flexible powers for local authorities to manage flood risk
- Provisions for compensation

The following issues must be addressed:

- Duty to implement/contribute to the implementation of measures in local flood risk management plans
- More flexible measures for Local Authorities to manage land for flooding (such as land management orders)

SE Link
11 November 2008

**SUBMISSION FROM SCOTTISH NATURAL HERITAGE**

We welcome the general principles of the Bill as set out in the Policy Memorandum. The following comments relate to how these principles are expressed in the Bill itself.

**Spirit of the Legislation**

The Policy Memorandum sets out the intention to deliver sustainable flood management but it is not clear from the text of the Bill how this objective is to be achieved. In our judgement the Bill will create a framework that will allow sustainable approaches to be adopted but we do not think it will 'ensure' these approaches are delivered (paragraph 2 of the Policy Memorandum). We think it would be helpful if the policy intent behind the Bill was more evident within the text of the Bill. This could be addressed by adding a ‘General Purpose’ to the Bill that set out more clearly the spirit of the legislation, which involves making sure that sustainable approaches are adopted and that flood risk management is pursued at the catchment scale, with the restoration of natural habitats and processes being recognised as one tool for flood risk management.
Responsible Authorities

SNH has not been named as a responsible authority in the Bill and we understand that the Scottish Government is not planning to put us forward as a responsible authority under future orders. We are however named in the Bill as a consultee on the District Flood Risk Advisory Group (Section 42, subsection 7a, SEPA ‘must seek to ensure appropriate representation of the interests of – a) the persons specified or referred to in section 25(5)(a) to (c)’ which includes SNH) but not necessarily on the sub district groups (Section 43, subsection 7, ‘The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.’). This puts us in a position where we are still involved in the process of providing comments on flood risk management but may not be actively involved at an early stage in the development of local proposals. We have some concerns about this. In the worst case, lack of early involvement could result in us having to resort to late stage objections to flood protection schemes because we have been unable to influence their development. If, by contrast, SNH were named as a responsible authority we could play an important role in ensuring that sustainable options for flood risk management were considered and where practicable pursued. By increasing our understanding of the issues and practical options, it would also minimise the risk of our querying proposals on an ill-informed basis late in the process.

Important role of Advisory Groups

As mentioned above, Section 43, subsection 7 of the Bill says that ‘The remits, membership and procedure of sub-district advisory groups are to be such as SEPA, after consulting local authorities all or part of whose areas form part of the sub-district, may determine.’ This contrasts with the wording in the Water Environment and Water Services (Scotland) Act 2003 (the 2003 Act) which sets out a list of likely stakeholders that SEPA should involve in River Basin District Advisory Groups (Section 17, subsection 6 of the 2003 Act). There is a risk that this flexible wording in the Flood Risk Management (Scotland) Bill could be used to exclude stakeholders with a genuine and important interest in the approach to be adopted from involvement in development of the local flood risk management plans. In our view a list of stakeholders along the lines of the one in the 2003 Act should be included to guide SEPA on who should be included on the sub-district advisory groups.

Habitats Regulations

Natura 2000 sites are referred to under Section 19 on Flood risk maps and Section 24 on Flood risk management plans. In both cases, the reference is to the 2003 Act which relates to water dependent Natura features. However, under the Habitats Regulations, Flood Risk Management Plans would be considered a plan or project that would need to be considered for its effect on all Natura features. If any of the proposals were likely to have a significant effect on a Natura feature then an appropriate assessment would need to be carried out. The conservation objectives of Natura features therefore need to be considered when drawing up flood risk management plans.

Work needed beyond this legislation

There are pieces of work beyond this current bill that need to be taken forward in order for the new approaches to flood risk management to be deliverable. These include:

- The need to amend the cost benefit rules used to assess flood protection schemes. Current cost benefit rules do not take into account many of the benefits delivered by soft engineering, for example by managed realignment schemes. If these rules are not changed, these sorts of measures will still not be taken forward as their full benefits will not be recognised.
- Planning guidance on flooding will need to be updated.
- The use of SUDS for dealing with flooding and improving biodiversity as well as improving water quality should be addressed. Currently there is an increasing focus on the water
quality elements of SUDS by SEPA and SW, with less attention being given to the other
two aspects of the SUDS triangle. If this continues, it will be a missed opportunity for
realising multiple benefits from SUDS.

- Transitional arrangements will need to be put in place for the period up until the completion
  of the first flood risk management plans.

Scottish Natural Heritage
11 November 2008

SUBMISSION FROM NATIONAL FARMERS’ UNION SCOTLAND

NFU Scotland thanks the Committee for their invitation to give evidence on the Flood Risk
Management (Scotland) Bill on Wednesday 26 November. NFU Scotland appreciates that the
Bill intends to introduce new measures to reform the current legislation, the Flood Prevention
(Scotland) Act 1961, transpose the planned EU Directive on the Assessment and Management
of Flood Risks and provide a portfolio of responses for managing flood risk. The Bill intends to
allow a modernised and sustainable approach to flood prevention with streamlined decision
making.

We hope that the following brief submission will be of use to Committee members in
preparation for the meeting.

Flood Risk Management (Scotland) Bill

NFU Scotland recognises the shift in policy from ‘hard-engineered’ flood prevention and
protection to a more integrated flood risk approach, utilising natural flood management.

Prioritising the focus on managing flood risk rather than the event of flooding itself so that its
impact is minimised is, however, entirely dependant on the use of flood plains, which lie, by
and large, on Scotland’s most productive agricultural land.

Farmers occupying that land are under increasing pressure to optimise their productive
potential in order to satisfy an increasing number of demands

- running a viable business that provide the bedrock for rural economies and a host of
  ancillary industries
- producing food (and biomass) to ever increasing environmental and animal welfare
  standards
- delivering significant public benefits by way of providing access opportunity, enriching and
  maintaining Scotland’s distinct biodiversity and landscapes

In every sense, Scottish agriculture is already delivering to the Scottish Government’s

This zero sum game remains a constant dilemma for farmers and policy makers alike.
However, it is only policy makers that identify where trade-offs should take place.

NFU Scotland is firmly of the opinion that any proposed measures as a result of this legislation
must recognise the agricultural productivity or economic value of flood plains. NFU Scotland
seeks assurance that any proposed measures are fully costed to properly assess the
economic, as well environmental and/or social, benefits of taking such an approach.

Consequently, NFU Scotland considers that flood risk management measures that depend
upon agricultural land must be extremely well thought out, and any associated payments must
not simply be based on ‘income foregone’ founded on standard gross margins over the short to
medium term.

NFU Scotland considers that maintaining flood defences on rivers is not always incompatible
with good environmental and social policies. NFU Scotland supports the concept of ‘slow the
flow’ over land within catchments, but is firmly of the view that flow must not be impeded once
NFU Scotland believes there may be a direct conflict here between the intentions of this flooding legislation and the excessive demands of the Controlled Activities Regulations (CARs) as part of the implementation of the Water Framework Directive.

Any flood risk management Bill that results in legislation must take into account both the public and private costs associated with a shift to using high agricultural land as a flood plain. If public money were to be saved in preventing flooding, it should be used to offset any actual revenue (income), management and capital costs endured by individual farm businesses already struggling to meet the ever-increasing land management expectations being placed on them.

In this respect, there may also be very complicated issues for agricultural tenancy agreements that would require extreme consideration if the interests of all parties were to be treated justly.

Premium agricultural land in Scotland is already very limited, and is diminishing in area through development and other pressures. NFU Scotland does not believe that it would be of benefit to use such land as a flood risk management tool when the costs of doing so may very well prove to be the loss of vital production potential and other rural development benefits.

NFUS
20 November 2008

SUBMISSION FROM SCOTTISH RURAL PROPERTY AND BUSINESS ASSOCIATION

Introduction

The Scottish Rural Property and Business Association (SRPBA) welcomes the opportunity to comment on the Flood Risk Management (Scotland) Bill. We also look forward to providing oral evidence at stage 1 and more detailed comments as the Bill progresses through Parliament.

The SRPBA represents the interests of a wide variety of land based businesses including farming and forestry, therefore this Bill is of particular interest. We recognise that historically Scotland has not faced the same degree of river and coastal flooding as other parts of the UK, due mainly to its different topography. However, climate change is expected to potentially double the risk of flooding in some areas of Scotland before the end of this century. Flooding can have serious effects on businesses, homes, people and health and therefore Scotland needs to adopt an effective flood management system to prevent and/or minimise flood risk.

The SRPBA recognises that the framework for the Flood Risk Management (Scotland) Bill is the EC Floods Directive (Directive 2007/60/EC), which entered into force on 26 November 2007. Member States have two years to transpose the Directive into domestic law. The Directive requires Member States to assess if water courses and coast lines are at risk from flooding, to map the flood extent, assets and humans at risk in these areas, and to take adequate and coordinated measures to reduce this flood risk. The Directive also reinforces the rights of the public to access this information and to have a say in the planning process. The SRPBA therefore appreciates that the Flood Risk Management (Scotland) Bill is the first step for the Scottish Government in transposing the EC Floods Directive into Scots law.

GENERAL COMMENTS ON THE BILL

Policy proposals

The SRPBA broadly supports the policy proposals of the Flood Risk Management (Scotland) Bill and we recognise that current legislation needs to be updated in order to manage the increasing risk of flooding in Scotland caused primarily by climate change. We are supportive of a more modernised and sustainable attitude to flood risk management and are pleased that the
Bill proposes to streamline and speed up the development and implementation of flood defences. We also welcome the more joined up and coordinated approach to flood risk management at both a national and local level that the Bill proposes.

Additionally, the SRPBA recognises the importance of adopting a catchment-focused approach to managing flooding. We agree that flood risk management districts should be identified and recognise the importance of identifying potentially vulnerable areas within each district. The production of flood hazard maps will be beneficial to visually depict these potentially vulnerable areas. The SRPBA is also supportive of the publication of flood risk management plans for each potentially vulnerable area.

**Areas of concern**

The SRPBA agrees that a single competent authority should have a national remit for implementing the Floods Directive. However, we still have concerns about SEPA fulfilling this role for a variety of reasons. SEPA will have the role of both the administrator and the enforcer and the SRPBA has reservations about this approach. We also have concerns that SEPA does not have the full range of skills necessary to undertake this role. They are a regulatory body with a scientific focus but one of the main objectives of the competent authority in this process is accountability, which includes opportunities for public participation and stakeholder engagement.

The SRPBA has experience of SEPA’s approach to stakeholder engagement through the Water Framework Directive Area Advisory Groups (AAG). Although many SEPA staff worked hard to encourage widespread engagement, this was not the case with every AAG. We believe that in order for SEPA to fulfil the role of competent authority there is a need for staff training, sufficient time allocation and resources to encourage meaningful stakeholder engagement.

The SRPBA acknowledges that the flood risk assessments and the flood risk maps will be made available for public inspection when they have been produced by SEPA. We also note that district flood risk advisory groups and sub-district flood risk advisory groups will be set up to influence the preparation of these documents. The SRPBA is anxious that the most appropriate people are selected to sit on these advisory groups. We strongly recommend that relevant land managers are involved because they are closely linked to the land and are more aware of actual risks of flooding in their area. The SRPBA would also wish to see the advisory groups adequately resourced both in terms of finances and personnel, this should allow for more involved local consultation where necessary.

The SRPBA is also concerned about the delivery of soft engineering techniques preferred for sustainable flood management, such as the re-establishment of meanders and re-establishing floodplain tree cover to slow down the movement of water. Section 55 (Acquisition of land) gives local authorities the power to acquire land where it requires it for flood risk management practices and gives Scottish Ministers the power to compulsorily acquire this land. The SRPBA is anxious that land managers could risk losing large portions of their land depending on their geographical location, and in some cases this could make the remainder of their holding unviable. Land managers must be reassured that meaningful compensation will be available in order to cover the costs of sustainable flood management that will have adverse impacts on their land. Compensation should also apply where flood protection schemes are undertaken under section 53 where there are any adverse effects of the land manager’s business or property rights.

As a general concern, we found that the Bill was unnecessarily confusing in relation to the interaction between the various plans. For example:-

* there is provisions for a flood risk assessment
* under Part 3 section 13(1) the preparation of a 'document' identifying each flood risk management district - is this different to flood risk assessment?
* flood hazard map and flood risk map- is this submitted with the 'document' or is it stand alone?
* flood risk management plans - is this "the document"?
* flood protection scheme- is this a stand alone document?
We feel there could be some simplification in this regard.

Does the Bill adequately reflect the Flooding and Flood Management inquiry’s findings?

The SRPBA believes that, on the whole, the Bill does reflect the Flooding and Flood Management inquiry’s findings, for example, the catchment was recommended as being the fundamental unit for flood management and this has been adopted.

Could the implementation of the provisions in the Bill be coordinated in practice with the continuing implementation of the WEWS Act?

The Water Framework Directive (Directive 2000/60/EC) obliges Member States to take the Directive into account in all future legislation. The Directive was transposed into Scots law by The Water Environment and Water Services (Scotland) Act 2003. Consequently, there is a statutory obligation to always take water issues into consideration in Scotland and the provisions of the Bill should run in unison with the WEWS Act. The SRPBA suggests that the structures already set up for the implementation of the Water Framework Directive water basin planning are used in the implementation of the Floods Directive to save resources. However, these structures should be reviewed to ensure they are operating efficiently and effectively.

SRPBA members have been involved in the Area Advisory Groups (AAG) for river basin planning and have a number of criticisms of how the system operates, for example:

- AAG representatives are expected to represent their peers across the whole catchment. One land manager does not necessarily know what another land manager is thinking/doing on their land. For example the land management representative on a group may be a riparian owner who will not necessarily have the knowledge about the concerns of farmers or foresters in the area. The process should ensure that an appropriate level of funding is in place for adequate representation from all those with an interest and relevant expertise in advisory groups.

- meeting tight timetables can lead to rushed consultation. AAG meetings are often highly technical which excludes many of the members without technical knowledge. Non-technical members of such groups do not have the knowledge to assess whether the information is correct or how it will impact on them. If possible it would be helpful to have access to a technical support officer who can advice on the impact of the Directive and support non-technical members of the flooding steering groups.

- expenses are not paid and many AAG representatives are not employed by any organisation therefore attending meetings is at their own expense. The Flood Risk Management (Scotland) Bill (Section 43) should provide that SEPA must pay expenses of those willing to assist in area advisory groups to ensure the best representation and consultation is obtained.

Finally, the SRPBA is anxious that the introduction of the Flood Risk Management (Scotland) Bill does not lead to another layer of bureaucracy and regulation. The implementation of the Floods Directive and the Water Framework Directive should encourage a joined up approach to water management and should not further increase burdens on land managers.

Conclusion

The SRPBA is broadly supportive of the key objectives of the Flood Risk Management (Scotland) Bill. We recognise the need to develop a more robust framework for mitigating the impacts of an increased flood risk in Scotland caused primarily by climate change. However, we still have reservations about SEPA being the competent authority for implementing the Directive and would prefer to have further details about how compensation to land managers will be calculated.

SRPBA
SUBMISSION FROM SCOTTISH COUNCIL DEVELOPMENT AND INDUSTRY

The following submission is a copy of the response sent to the Scottish Government’s consultation on flooding.

- The Scottish Council for Development and Industry (SCDI) is an independent membership network that strengthens Scotland’s competitiveness by formulating policies to encourage sustainable economic prosperity. Its members are drawn from businesses, local authorities, trades unions, educational institutions and the voluntary sector from across Scotland.

- SCDI welcomes the Scottish Government’s intention to introduce a Flooding Bill in 2008 to modernise the flood risk management system in Scotland. The threat of more frequent and more severe flooding posed by climate change demands that the range of relevant legislation needs to be streamlined and updated. A catchment focussed approach must be developed across Scotland, with the responsibilities for sustainable flood risk management and the delivery of flood management capital projects defined. There is a pressing need to create a much clearer legislative framework which leads to a strategic programme of risk assessment and construction of effective flood defences.

- Managing the risks associated with flooding over the long-term would make a substantial contribution to sustainable economic growth by protecting lives, communities, businesses, property, infrastructure and the environment. There is also a shorter-term potential competitive benefit to Scotland of putting in place a clearer legislative framework, supported by the appropriate funding. The Association of British Insurers (ABI) has warned that increasing cost of flooding events and inadequate management of flood risk by government is putting the private sector funded insurance system under severe strain. This may make flood insurance prohibitively expensive or even unavailable for more businesses. SCDI members in areas such as Moray have had their insurance priced at a level that puts it beyond many policyholders. However, the ABI has indicated that, if there is a more effective framework for Scotland, its members may publish a statement of principles for Scotland, including specific references to the management of flood risk in Scotland, and: “The principle is that the better the risk management and the better the provision of data on risk, the more enthusiastic insurance companies are to provide insurance at affordable rate.” (Col 590, Official Report, Environment and Rural Affairs Committee, The Scottish Parliament, March 19th, 2008)

- While legislation is needed, government at all levels, including its agencies, should not simply concern itself with the broader environmental issues or their own statutory responsibilities, but consider in a much more joined-up way the impact on individual communities and businesses. Many SCDI members in the business community have been directly affected by flooding. In particular, the serious floods in Elgin in 1997 and 2002 damaged a number of member companies. In the aftermath of these events, SCDI met and corresponded with the then Deputy Environment Minister Allan Wilson on the insurance problems facing these businesses. SCDI submitted evidence to the ongoing Scottish Parliament’s Environment and Rural Affairs Committee’s inquiry into ‘Flooding and Flood Risk Management’ which was substantially based on members’ experience of the effectiveness of flooding management and the response to flooding events, and assisted the Committee in arranging for these businesses to give oral evidence in Elgin. Some significant business and economic issues are not included in this consultation document and SCDI believes that the final Flooding Bill should pay greater attention to them.

Business Contribution to Flood Prevention, Compensation and Insurance

- Land owners and businesses could have a much greater role in community flood prevention if supported properly by government. Following the flooding in Elgin, significant flood defences were installed by businesses to protect their properties. SCDI believes that appropriate financial grants and compensation should be available to land owners including businesses putting in place measures to reduce flood risks. Better guidance for businesses would allow them to protect their properties in line with flood management plans.
Businesses in at-risk areas often monitor water levels and this on-the-spot, real-time information could contribute to improved flood warning systems.

- Under current legislation, there is a lack of clarity around compensation issues for loss of property and infrastructure as a result of a flood prevention scheme, including the timescale for making a claim and payment after a Flood Prevention Order is granted. SCDI understands that local authorities could delay this payment for up to 10 years. Businesses also report problems in getting any information from the district valuer and concerns about whether the district valuer can be seen as genuinely independent from the local authority. The legislation needs to be enhanced and, perhaps, the period for claim has to be extended beyond 10 years. Another issue is that local authorities used to be able to claim 80 per cent of the cost of compensation from the Scottish Government. However, SCDI understands that the transfer of funding for flood risk management to local authorities means that compensation now has to come from their own budgets. When the local authority costs a flood scheme, it does not know the costs of compensation claims. If it is then faced with significant compensation claims, the burden of providing this money will be fully on its own local council tax payers.

- After the 2002 flooding, SCDI wrote to the then Scottish Executive highlighting that some of the larger employers in Elgin were being forced to operate without insurance through no fault of their own. It pointed out the potential repercussions for their operations there and in other parts of Scotland, for the wider Scottish economy and, through business rates, for public finances. SCDI suggested that an Executive backed interim flood disaster insurance scheme for larger businesses in Scotland should be introduced for such cases. The Executive, which appeared unaware that there were companies which had flood cover excluded from their insurance policies, claimed that this would infringe state aid regulations and place “an unquantifiable burden on Executive resources” In the USA some state organisations provide cover in relation to hurricane damage and SCDI continues to support a similar scheme for flooding damage in Scotland. In the light of the long delay in the government-sponsored flood prevention schemes, it can be argued that it has an obligation to support affected companies.

- It has been highlighted to SCDI that the Assessors for business rates may offer minimal relief to businesses with property which is at risk from flooding, even though their valuation on the property market is seriously affected. There is a strong argument that one way the Scottish Government could support larger businesses would be to offset their higher insurance costs through equivalent reductions in business rates to more accurately reflect the effect of flooding on property value. This would place limits on the burden on the public purse. Short-term relief can also be offered to businesses after flooding through councils’ powers to suspend or reduce business rates due to ‘hardship’. There may be a case for suspension of water charges, at least for the period of the clean-up when extra water has to be used for the purpose of clearing pollution.

Questions

Q1. Do you believe the definition of Sustainable Flood Management is helpful and of practical benefit to flood risk management?

Q2. Do you think the definition is clear and simple to understand?

- A definition of Sustainable Flood Management would be useful in creating a greater and shared understanding among public bodies, businesses and the public of the framework in which policies and measures will be developed and considered. SCDI strongly supports the Scottish Government’s intention to develop guidance, including objectives, principles and indicators, which can be used to assess the performance of flood management measures and plans.

- It is unclear in the document whether the four objectives for Sustainable Flood Management are listed in any particular order. The Scottish Government’s stated purpose is “to focus Government and public services on creating a more successful country, with
opportunities for all of Scotland to flourish, through increasing sustainable economic
growth.” The proposed economic objective of Sustainable Flood Management should,
therefore, possibly be listed first.

- SCDI is uncertain what is meant by “fair access for everyone” in the proposed social
objective and whether this relates to regional equity. SCDI believes that there is a need for
national and local prioritisation for those areas at greatest risk. Resources need to be
targeted at those areas with the highest number of people and businesses at risk and also
better protection of critical strategic infrastructure, such as energy and water facilities.
However, support should also be offered to schemes important to rural towns and
economies, where the recovery period from a flood, for example in the tourism industry,
may be much longer. While flooding often occurs outside the peak tourism season, repairs
and refurbishments to hotel accommodation and tourist attractions – often located in areas
at most risk of flooding – can take months during which time these businesses are closed
and the local economy seriously suffers.

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

- Yes. There is a pressing need for a single body to take a strategic overview and have
overall responsibility for coordinating and developing national flood risk assessments and
Flood Management Plans, looking well beyond three-year spending cycles. SCDI also
believe that there is a national role for the competent authority in promoting the skills
necessary for the design and specification of flood schemes, and in exploring innovative
methods of procurement. Ministers have ruled out the creation of a new Floods Authority
body with would have a strategic overview and co-ordinate flood risk assessments,
management plans and fund delivery of flood defences at all levels. SCDI therefore agrees
that the local co-ordination and delivery of flood defences, and local engagement should be
undertaken by the local authorities.

Q4. Do you agree that there should be a single competent authority with a national remit
for implementing the Floods Directive, and that it should be SEPA?

- Yes. SCDI supports the proposal that SEPA should become this competent authority,
given its experience in flood risk assessment and catchment planning. SCDI welcomes the
essential work which it is doing to map at risk strategic assets, including sewage treatment
works and electricity sub-stations. It is already the competent authority for River Basin
Planning in the Water Framework Directive. SCDI would suggest that another key quality
to enable the delivery of the Floods Directive is ‘Financial capability/ capacity’. The Scottish
Government must adequately fund SEPA to deliver this new national remit and, as the
competent authority, to secure the participation of responsible authorities and to consult
stakeholders. There is a particular need to address its engineering and economic capability
to understand the capital works programme and undertake cost-benefit analyses. SEPA
and the Scottish Government must also ensure that it does not become another
bureaucratic layer. Improving the information flow to businesses must be a key priority.

- SCDI welcomes the funding provided to SEPA to establish an up to date flood information
dissemination scheme. This should include the significant populated areas across Scotland
at risk of flooding which are not already covered. Businesses should be contacted through
text messages, emails and websites. In creating this system, it will be important to clarify
who has responsibility for disseminating information. SCDI recommends that SEPA has
national responsibility and works with local authorities. The Environment Agency in
England already operates a scheme in which individuals and businesses sign-up for
warnings. However, it may be necessary to extend this further by introducing an “opt-out”
service rather than “opt-in”. This would require providing SEPA with access to sensitive
personal address and other contact details and this would need to be handled extremely
carefully.
Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not, what alternative do you propose?

Q6. Should Ministers of SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

- SCDI generally welcomes the proposed hierarchal process for flood risk management planning which is set out as Box 7 of the consultation document. The integration of Local and Area Flood Risk Management Plans and co-ordination between local authorities where a catchment area crosses their boundaries are essential. SCDI has some concerns about the number of plans which it appears may be produced. While it anticipates that local authorities will normally determine the best approach to their co-operation, experience suggests that agreement may not always be possible. In SCDI’s view, it would be prudent to reserve the power for Ministers to designate a lead authority within a catchment area where the local authorities have been unable to do so.

- SCDI supports a clear and participative approach to flood risk planning. A consistent complaint from SCDI members is a lack of information. Early contractor involvement and upfront consultation with businesses would seem to be the best way to design a deliverable scheme with wide support. Evidence to the Scottish Parliament’s Environment and Rural Affairs Committee has highlighted that businesses and members of the public in Moray in at-risk areas are often not receiving flood alerts from the council. SCDI therefore suggests that all Local Flood Risk Management Plans should include a comprehensive Communications Plan covering the participation of other responsible authorities, stakeholder consultations and flood warning systems.

- SCDI acknowledges that devolving funding for flood risk management to local authorities may streamline the process of building flood alleviation schemes within local authority areas. However, it has also expressed some concerns that the transfer may make it more difficult to make progress with cross-border strategic flood management schemes as the priority attached may differ upstream and downstream, and long-term schemes would have to compete with other, perhaps more short-term, political priorities. The intention that the future allocation of that money will be based on the level of significant flood risk in each local authority is an improvement. SEPA’s new role in monitoring the performance of flood management measures and plans against objectives, principles and indicators will be an essential part of this process. However, an assessment of the flooding risk in every authority still falls to take into account which area solutions are priorities for funding and/or are ready to deliver. There is a need to look again at the funding mechanism. Another issue which should be resolved is the maintenance of assets. It seems at present that local authorities are not funded to maintain flooding schemes.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Q8. Which other bodies should be identified as responsible authorities?

- Yes, Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities. More frequent and severe rainfall in Scotland would undoubtedly lead to increased incidence of transport disruption, landslides, damage to other infrastructure or loss of services. As events such as the closure of the A83 at the Rest and Be Thankful in Argyll in 2007, and of the A96 and the Inverness-Aberdeen railway at Elgin in 1997 and 2002 demonstrate, this disruption and damage can have a serious economic impact. SCDI would suggest that Transport Scotland, Network Rail and the Regional Transport Partnerships might be identified as other responsible authorities. The clear responsibilities of emergency services in preparing for a flooding event could also be identified. Finally, while SCDI understands that, as private sector companies, they could not be identified as responsible authorities, the owners and operators of hydro power stations and other critical energy infrastructure, principally Scottish and Southern Energy, ScottishPower and National Grid Company, have clear interests, expertise and responsibilities, and there is a need to consider how best to involve them.
Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Q10. Do you agree that the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

- Yes. There should be a duty for responsible bodies to collaborate to produce Area Flood Risk Management Plans and Local Flood Risk Management Plans, and to deliver the objectives and measures agreed through these plans.

- SCDI also supports the proposal to establish stakeholder forums. SCDI believes that national and local stakeholder forums should be set up. It will be important to ensure that these forums are genuinely representative and a key constituent group should be the business community. The national stakeholder forum should lead awareness-raising of the increasing risk of flooding and what individual householders and businesses can do to protect their safety, well-being and property. There should be the opportunity for genuine dialogue at local stakeholder forums, not just with the Local Authorities, but with SEPA, Scottish Water and the other responsible authorities. These forums should not be seen by public bodies as a means of ticking the public consultation box, but as an opportunity for meaningful business and community contributions to the Area Flood Risk Management Plans and Local Flood Risk Management Plans. Many businesses have a great deal of experience and knowledge of the flood risks in their areas, and routinely monitor water levels. Nor should the plans be the substitute for wider engagement. Innovative ways should be found for harnessing the ideas and enthusiasm of the community as a whole into flood risk management planning.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for preparation by SEPA of area flood risk management plans?

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

- Yes. A similar process to the River Basin Management Planning - with its National and Area Advisory Groups - is appropriate for the preparation of Area Flood Risk Management Plans. The boundaries should be contiguous and the advisory groups should be fully aware of each other’s work streams. Over time, it may be possible to bring them even closer together. SCDI agrees that, as with River Basin Management Planning, Ministers should have the power to approve, reject or modify the Area Flood Risk Management Plans.

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

- Yes. The Metropolitan Glasgow Strategic Drainage Plan is highlighted as an exemplar in the consultation and SCDI agrees. The integrated and catchment focussed flood risk management planning framework will assist with this approach elsewhere. However, SCDI remains concerned that the differing local authority and Scottish Water budgetary cycles make it harder to take forward the simultaneous construction of flood management schemes and drainage infrastructure. Scottish Water has established an efficient four year capital investment programme which makes it very difficult for it to fund associated drainage work in a flood management scheme which is brought forward under a different budgetary cycle. There is therefore a case for transferring responsibility for funding drainage infrastructure investment to local authorities. If not, SCDI believes that a stronger role for the competent authority in ensuring compliance with the Area Flood Risk Management Plan and establishing a mechanism to agree investment plans could be beneficial.
Q14. Should Flood Risk Management Plans (FRMPs) inform the way that development plans are prepared, or should there be a stronger linkage such as requirement on planning authorities to show that they have regard to the FRMPs?

- In ‘Firm Foundations’, the Scottish Government has set out plans to increase the number of houses constructed in Scotland per year to at least 35,000 a year by the middle of the next decade, which represents a significant increase from the circa 25,000 a year trend since the late 1990s. If this ambitious, but economically and socially necessary, target is to be achieved, it is clear that development in built-up areas on floodplains will continue, and the task will be to minimise the risk. New development in areas where there is not already existing settlement should clearly generally be free from significant flood risk, but should still be considered on a case by case basis. It should also be possible for development plans to require higher flood resilience for new buildings on floodplains which may mitigate the risks. Building on the introduction of the river basin planning system and the advice which SEPA gives to planning authorities, development plans should be informed by flood management plans in areas of risk, but it would be inappropriate to insist that they conform. It should be recognised that they do not have statutory force.

- While Scottish Planning Policy 7 (SPP7) has specific requirements for undertaking all flood risk assessments, there is little advice on what constitutes an allowance for climate change. This is largely left to the discretion of those undertaking the flood risk assessment. As climate change is considered to be an important aspect of future flood risk, it is recommended that future planning policy should provide more specific guidance on climate change.

Flood protection measures – Simplifying the Statutory Process

- SCDI strongly supports the Scottish Government’s determination to radically simplify and speed-up planning permission for flood prevention schemes. The current process, which may involve two public inquiries, can be piecemeal and torturously slow. The consultation document proposes two alternative approaches to simplification. SCDI has not attempted to answer every question in this section (Q15-Q22) particularly those which ask respondents to specify appropriate timescales, and it does not have a favoured option. The Ministerial Approval system has worked well with Scottish Water’s water and sewerage capital investment programme and, if it remains responsible for funding drainage infrastructure, this is, perhaps, an argument for opting for Ministerial Approval of flood risk management schemes. However, SCDI’s comments focus on specific concerns voiced by members with either approach which it highlights as issues to be resolved before a final decision is made.

- It should be stressed that not only does the current process expose businesses and communities to greater risk of flooding and affect individuals’ sense of wellbeing, insurance companies price according to risk, so delays can lead to longer-lasting high insurance premiums for businesses which damages economic prosperity. Companies have a strong self-interest in simpler and faster delivery of flood prevention schemes, but this must also be inclusive.
Option 1 – Ministerial Approval to Also Grant Deemed Planning Permission

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

- At 3.58, the consultation document states that under either option the procedures would have to ensure “That the rights of those entitled to object under planning law and those entitled to object under [the] 1961 Act are maintained.” According to paragraph 3.49, the Act states that “Only objections from those to whom that scheme was notified and those who are likely to be affected by the carrying out of a scheme or the change in the flow of water must be considered at a public local inquiry”. However, it is said at paragraph 3.62 says that “Under [Option 1] there would only be two classes of objectors – those entitled to appear at the inquiry because the scheme was to be built on their land and those who could only appear at the inquiry by invitation.” SCDI has significant concerns that this does not appear to take into account other parties with an interest in the land or those who might be affected by flooding as a result of a prevention scheme, perhaps as a result of an error in the design. Their right to be heard seems to depend on the discretion of the Reporter, although Minister would be required to consider the objection. If the limited eligible parties withdraw their objections, then the inquiry would not proceed. Ministers would “simply” consider the remaining objections. Questions must be asked about the rigorousness which they would apply to this consideration.

- Many distilleries and other businesses in Scotland may not own a particular area of land, but they could be significantly impacted by a proposed flood scheme. For instance, an SCDI member company in Moray had interests in extracting water from an area of land which would be flooded by a scheme. It did not own the land, but had a deed of servitude allowing the extraction.

- Many flood schemes flood farm land yet the flood scheme is not built on the farmers’ land. It is not clear to SCDI whether the owner of the fields would be allowed to object and attend the Inquiry. There may also be instances in which a landowner or another interested party notices that a flood scheme calculation was incorrect and the consequence of this might mean that their property would be flooded. An example of such a design error which was spotted by a local landowner was on the drawings for the Elgin Flood Scheme. The height of the new river bank was too low and if the scheme had been constructed to this height, a large area of housing in the town would have been flooded.

Option 2 – Relying on a local authority based procedure

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Q19. What would be the appropriate timescales for notification and response?

Q20. Would it be appropriate for such a process to carry deemed planning consent?

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

Q22. Are there any additional alternatives to the options outlined above which would simply procedures?

- The transfer of funding for flood risk management to the block grant to local authorities would appear to make it logical to rely wholly on local authority based procedures for flood
prevention schemes and remove the Ministerial confirmation process. This would be consistent with a development plan-led approach and would raise the importance of Local Flood Risk Management Plans. However, based on their own experiences, SCDI members in the business community have strong concerns about whether there would be sufficient information-sharing, opportunity to comment, safeguards for land and property owners, and technical capacity in some smaller local authorities. SCDI notes that a procedure separate from planning is deemed necessary. But, given that local authorities are in effect applying to themselves for planning permissions, still has some reservations about the concentration of powers.

- SCDI has some concerns about the proposal that for occasions where local authorities could not reach agreement with a landowner on the use of land for flood management purposes, they would have the option to use powers of compulsory purchase. It does not regard the safeguards conferred by the European Convention on Human Rights as sufficient and would argue that the rights of companies and individuals have to be strengthened in the Bill. SCDI has been made aware of a specific example in Moray of the Flood Team totally disregarding the objections of a local business, which were subsequently upheld at a Public Inquiry. The concern would be that if local authorities are given rights of compulsory purchase without sufficient safeguards for companies and individuals, the only way to challenge a decision would be through a Public Inquiry and, given the costs of legal representation, few objectors could afford to go to an inquiry. It must be remembered that the costs to businesses of professional help to advise on a scheme or appear at a Public Local Inquiry can be prohibitively high.

- If this option is implemented, the lack of certain skills within local authorities, such as specialist planners, must be addressed urgently. With some current flood prevention schemes, little attempt appears to have been made to import skills from other local authorities which have completed similar projects. In view of the planned level of construction activity around Scotland, this approach cannot be adopted in the future. SEPA and the local authorities must carefully consider the options as part of the shared services/resources agenda. A pool of experienced flood engineers from local authorities in each Flood Risk Management Planning Area is one potential approach. Another idea worthy of consideration which has been suggested to SCDI is that a virtual delivery company could be created by local authorities with people seconded in from them to do all the work on flood management schemes in Scotland.

Q23. Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

- Local authorities should have sufficient powers in an emergency situation where a clear and present danger exists to take urgent remedial action, including on private land. However, the presumption should be that if possible consent is granted from the land owner and costs recovery should be on the basis that the local authority can demonstrate that such a clear and present danger did indeed exist, and that it took the appropriate remedial actions.

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

- Better guidance and joined-up working are certainly supported. The consultation paper indicates that there is a lack of technical knowledge on flooding matters within local authorities and that they employ consultants to produce flood schemes. If option 2 is implemented, it is probable that further consultants would be contracted to check the
consultants creating the scheme. At the moment Scottish Government technical staff checks the application for a Flood Order. In addition, SEPA check the application as a CAR licence is required, but SEPA does not always get access to adequate information. SCDI is not yet convinced that better guidance alone can streamline the processes.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?
- Yes. Ensuring integration and avoiding bureaucratic duplication is important.

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?
- SCDI agrees that there is no need to set out in detail in the Bill what a sustainable flood management measure might be. However, as a new and untested approach in Scotland, there is a need to move quickly thereafter to:
  - Establish what domestic and international evidence is available to guide the development of sustainable flood management
  - Consider whether further studies are necessary
  - Decide whether there should be Scottish Government funded pilot schemes by SEPA, relevant local authorities, university researchers and other responsible authorities to trial and test the effectiveness of the portfolio of potential sustainable flood management measures.
- The uncertainties around the impact of climate change suggest that there is a need to create a flexible and responsive system of management, but that sustainable flood management should be used wherever practical and appropriate. SCDI believes that rural land management and smaller scale solutions should be promoted as well as larger flood management schemes. Sustainable flood management schemes need not always be based on once-in-a-century or even rarer events, but should be capable of extension at a later date, perhaps as the impact of climate change on flooding becomes clearer.

Scottish Council Development and Industry
23 April 2008
Flood Risk Management (Scotland) Bill: Stage 1

10:03

The Convener: Item 2 is evidence taking on the Flood Risk Management (Scotland) Bill. I welcome to the meeting our first panel of witnesses: Hugh Clayden, sustainable forest management policy adviser with the Forestry Commission Scotland; Mike Donaghy from Scottish Environment LINK; and John Thomson, director of strategy and communications with Scottish Natural Heritage.

As we have the witnesses' written submissions, we will not have any opening statements and instead will go straight to members' questions. I open the bidding with Peter Peacock.

Peter Peacock (Highlands and Islands) (Lab): What does the panel think of the argument made by Government officials at last week's meeting that, as the process set out in the bill will result in better sustainability of flood management, it is not necessary for the term "sustainability" to be stated in the bill? I am particularly interested in hearing from Hugh Clayden who, as sustainable forest management policy adviser, presumably understands the legal meaning of the term.

Perhaps Mike Donaghy could go first.

The Convener: Don't all rush at once.

Mike Donaghy (Scottish Environment LINK): I am happy to go first. One of the bill's main principles is sustainability, which is our key to the future—for Scotland and everyone. We must understand that although sustainability is complex and sometimes difficult to define, we must work in a sustainable way. Taking a sustainable approach to flood management will allow us to deal with the unit, and in dealing with flooding we must understand that the unit is the river catchment, which is where all the problems start and where they have their effects.

How would we go about dealing with flooding? We would start by talking to everyone who is impacted by it or has a role in cutting down the impact or influencing it in some way. We would identify such people and groups, then we would get them to work together in a coherent and effective way for the long term. Having an integrated catchment approach and considering everything that must be done is the way forward for modern flood management. That is the sustainable approach.

Peter Peacock: In a sense, you are arguing what the Government officials argued at last week's meeting, which is that the process that the bill will set up embraces the sustainable approach. However, is the bill lacking because it does not contain the word "sustainable" per se?

Mike Donaghy: Yes. It is great that the bill is about taking a sustainable approach, but where is that said in the bill's long title or short title? If we could get that into, say, the long title, anyone who picked up the act in future would know right away that the legislation was about sustainability—that would be up there in black and white and there would be a line in the sand. The bill is not about saying, “Let's see what we can get away with,” as we used to do; it is about a new approach.

Peter Peacock: I would be grateful for comments from the other witnesses on that.

Hugh Clayden (Forestry Commission Scotland): In forestry, we now take sustainability as read in everything that we do. The way in which the industry has developed over the past 15 to 20 years is entirely predicated on sustainability being taken as read, so we do not need telling that sustainable flood management is what is meant in the bill. That approach pervades everything that we do; it is the combination of the social, environmental and economic, with good buy-in through consultation and sharing of ideas, and it is based on good if not perfect evidence. Sustainability is part and parcel of everything that we do and of whatever the Scottish Government proposes.

The Convener: Before John Thomson comes in, I have a question. Is the argument that the bill does not deliver sustainable flood management, or is it that it does, so the argument is about the small bits and pieces? Mike, are you saying that the bill should say that it delivers sustainable flood management? Is the argument about the bill as a whole, or is it simply about having the word "sustainable" somewhere in the bill?

Mike Donaghy: It is more the second, convener.

The Convener: Right. So it is not a substantive argument with the bill itself; it is more about putting something about sustainability on the face of the bill.

Mike Donaghy: Yes, and making the intentions clear from the start.

John Thomson (Scottish Natural Heritage): In our written evidence, we argued that it would be helpful to have a specific reference to sustainability in the bill. We believe that the bill will create a framework in which sustainable approaches can be adopted. Certainly, the policy memorandum suggests that that is the intention. However, we suggest that it would be helpful to have a statement of purpose that makes it clear...
that we seek sustainable approaches. Apart from making it clear that that is the intention, such a statement would provide a peg that would, if need be, allow sustainability to be defined and, indeed, redefined. Although, as Hugh Clayden said, the concept has been around for a long time, we are still learning. We are certainly learning what sustainable flood management means in practice. Therefore, it would be helpful to have the word “sustainability” in the bill and to have the opportunity, if need be, formally to interpret and reinterpret the word in the context of flooding.

**The Convener:** Can I just press you on that? Is the argument that the word should be in the bill but there should be no definition of it?

**John Thomson:** Ideally, there would be a definition of it in the bill as well.

**The Convener:** Is there unanimous agreement—not just among the three of you, but across the board—on what that definition would be? If we examine the word “sustainability” and the arguments about its definition, will we open up an entire debate about what an interpretation section might say?

**Mike Donaghy:** It might help if we accept a number of points. First, the Parliament has already produced pieces of legislation that use the word “sustainable”, so we should not redefine it. Secondly, sustainability in flood management is about an approach; it is not about the approach. There might be several choices, all of which are sustainable. It is not desirable to identify only one way of doing things. There will be a range of options.

**The Convener:** So you do not want too specific a definition.

**Mike Donaghy:** There is already a pretty good definition of sustainable flood management. I was involved in coming up with it through the flooding issues advisory committee and the flooding bill advisory group. I am quite comfortable with the existing definition, but I know that there are groups that are less comfortable with it, because they find it too technical to understand. I do not want too specific a definition, but we will still need a working definition.

**The Convener:** I think that Bill Wilson wants to follow up on that.

**Bill Wilson (West of Scotland) (SNP):** I have another question for SNH, which is not specifically on that area.

**The Convener:** You do not want to come in on question 1.

**Bill Wilson:** No—that was Peter Peacock’s question.

**Peter Peacock:** My next question moves on rather neatly from what the witnesses have just said. The bill will help to deliver sustainability, but another aspect of it relates to the use of natural flood management methods, techniques and approaches. Last week, Government officials argued that it might be problematic to define too tightly a presumption in favour of the use of natural flood management techniques. Part of their argument was that highlighting that approach could be problematic for the management of the process as a whole. Will you comment on the desirability of having a presumption in favour of the use of natural flood management techniques and on the Government officials’ point that that could be problematic?

**John Thomson:** I have read last week’s exchanges. I feel that there is merit in having a presumption in favour of natural flood management. Like Mr Peacock, I feel that that in no way would amount to prescribing that that must be the outcome; it would merely be a statement that natural flood management is an option—indeed, the first option—that should be examined.

The reasons for that are several. First, natural flood management captures a concept that is fundamental to the idea of sustainability, which is about working with rather than against nature. In addition, natural processes are much more likely to deliver associated multiple benefits than other approaches, so there is a presumption that the natural flood management option, if it is feasible and will deliver the desired outcome for flood risk management, is the one that is likely to bring the widest set of benefits beyond that primary purpose.

**Mike Donaghy:** I agree completely with what SNH has just said. I think that the Scottish Government has viewed a presumption in favour of the use of natural flood management as prioritising that approach and saying that it must be followed. I would argue that given the number of benefits that come from having natural flood management as a tool in one’s toolkit for achieving sustainable flood management, if one has the option to incorporate natural flood management in one’s approach, one should do so. Maybe it is the idea of having a presumption in favour of natural flood management or of prioritising it that is causing problems. We might need something that is a little stronger, such as a duty to consider it, or even something that is a bit more definitive, but we do not want babies to be thrown out with bathwater. If natural flood management can be done, it should be done.

10:15

**Hugh Clayden:** Our locus is always in the natural flood management part of sustainable
flood management, so that would be our starting presumption—that is where we would come in. I can see the argument that an overemphasis on the word “presumption” might make people feel that that must always be the solution, but sustainable flood management should always consider natural flood management as part of the suite of objectives.

Part of our experience—and, having been flooded, I can speak personally—is that people can doubt that a natural flood management process will work in the here and now, although it might work in future, and might well need a great deal of persuading that natural flood management is the solution in all cases. Therefore, we should have a presumption that natural flood management will always be considered, but I would fight against saying that it will always be the solution.

Peter Peacock: That is a helpful clarification; I thank all the witnesses.

Government officials and, to some extent, the policy memorandum argue that capturing a duty on the Scottish Environment Protection Agency to consider natural features has gone a long way towards meeting the requirement for a presumption in favour of natural flood management. What is your view on that?

Also, several people, including Scottish Environment LINK, have argued that we need to capture a definition of natural flooding processes as opposed to just features. What do you mean by processes? Is that essential, or even desirable?

It is not clear to me that section 16 of the bill is sufficient to have an impact other than on SEPA at a high level. What would the impact of section 16 be on local flood management plans? Notwithstanding the point about processes, is section 16 strong enough?

Mike Donaghy: I will deal with those points.

The first question was about whether such a definition is essential or even highly desirable. A key message that we must get over about the new theme of natural flood management is that it is about more than just features. Features can be wetlands, flood plains, or wet woodlands, for example. If someone who does not know anything about natural flood management—and there could be a lot of them about—takes that at face value, they could just think, “Well, we’ll just put those features in,” and think that processes will be associated with the features. However, they could put the wrong feature in the wrong place at the wrong time.

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

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

The second point is fundamental. Section 16 looks a little bit odd. In effect, it asks SEPA to take a low-resolution, national look at the potential or capacity for natural flood management in the Scottish river basin, although that information will be used and implemented right down at the local plan level, through local authorities. That is probably the wrong resolution if we want to achieve anything. SEPA will be looking at the top level of detail that will be used at a catchment or subcatchment level, and that is a mismatch. We have section 24, and then there will be implementation through section 29, on local flood risk management plans. We must find a way of getting SEPA, the local authorities and the other responsible authorities to work together to get the right resolution for the approach to implementation.

Peter Peacock: I accept your argument on my first point, but on your second point, are you saying that although section 16 places a duty on SEPA to look at natural features at the national level, it does not place a duty on local authorities and others when they are developing local plans to have the same regard to natural features? Is there a disconnect in that sense?

Mike Donaghy: A disconnect exists, but not precisely in the way that you describe. The disconnect relates to the resolution or level of detail. The proposal is the equivalent of handing a big map of Scotland to someone in Edinburgh and telling them to use it to reach Leith. The resolution and the scale would be wrong. We need to find a way of collecting the information at the correct level, so that it is useful locally.

Peter Peacock: I would be grateful for comments from John Thomson or Hugh Clayden on natural processes and the other issue.

John Thomson: I support what Mike Donaghy has said on both counts. I acknowledge that some reluctance might be felt about using the word “processes” in the bill, because it might not be readily defined. I am not sure whether it has been customarily used in legislation, but Mike Donaghy is right to say that processes are fundamental, that we should recognise that and that the bill should be explicit about that.

Hugh Clayden: The issue is all about definition. We work in forestry, where natural features are part and parcel of processes. We do not regard a woodland as anything other than a process, too—
it is not about the trees but about everything else that goes on. The key point is that a feature must be functional—that can be dealt with through a definition or through inclusion of a process. I take it on board that a feature without due process and functionality will not do what it should do. There is something in how the term “feature” is defined. That is not an issue for us; we understand that a feature includes processes. However, if the bill is to be used as a tool to help others, more definition would help.

I take the point about the resolution, but SEPA will have a key role in setting the tone and the frame for looking closely at natural features. The resolution at local plan level is less of an issue. The various advisory groups will involve a range of people who press home the point that processes are important at the local level. Nationally, it is difficult to define processes other than by setting the tone broadly. The concern that exists can be accommodated within the existing advisory structure.

**Liam McArthur:** You all unequivocally support a presumption in favour of natural flood management, which the committee supported in its inquiry into flooding. The Forestry Commission’s submission mentions the time lag between the implementation and the effectiveness of natural flood risk management projects—Mr Clayden mentioned that in an earlier response to Mr Peacock. Does a conflict exist between the implementation and the effectiveness of processes other than by setting the tone broadly. The concern that exists can be accommodated within the existing advisory structure.

**Hugh Clayden:** That question is hard to answer in the abstract, because the answer depends on local circumstances. I did not intend to say that natural flood management processes are always long term. If a site has an existing woodland or wetland feature, quick wins can be obtained by undertaking simple and inexpensive measures such as drain blocking. However, I had been thinking of the establishment of a flood plain woodland, for instance. By definition, it will be several years before that starts to make an impact and years beyond that before the maximum impact is achieved.

The issue is how the two elements work together. I am conscious that people are being flooded now and that they want a solution now as well as for the future. A parallel system might be worth thinking of. When a natural flood management process cannot be implemented immediately because we have nothing on which to implement it, we might need to rely first on hard engineering for today’s events and increasingly flow in natural flood management to cope with the longer-term, larger events that might occur. That will always come down to local interpretation. Local circumstances will dictate the mix.

**Mike Donaghy:** Let me take Hugh Clayden’s point a little further. The quality of the Scottish Government team that we have been working with is very high, and its outputs are good. On the point about whether there are natural flood management measures that we could take right now, I am a bit frustrated by the fact that we saw things that could be done right away in 2004, when WWF started its demonstration site.

Hugh Clayden gave the example of a flood plain forest. That will indeed take some time to have an effect—trees grow slowly. However, if we were to block off drains in uplands that are not used any more, that could have an almost instant effect. There are things that can be done right away. My frustration is that we have been saying that for many years now and we are only now about to embark on the whole project of natural flood management demonstration sites. One focus should be on what we can do right now that would start to make a difference. We could do something in the uplands, probably. If there is a lot of uncertainty about it, let us go to an area where there is less risk of getting things wrong. There are areas in the uplands where we could do things and measure the effects. Let us not use a project that will last about 10 years as an excuse not to do anything for the next 10 years.

**Peter Peacock:** I wish to move the discussion on again. You will be glad to know that I will shut up shop soon—I am sure that the committee will be glad to know that, too.

**The Convener:** I am anxiously looking at the clock.

**Peter Peacock:** Absolutely. I am conscious of that.

We will be going through all the processes that are contained in the bill and we will get all the local plans and so on sorted out, but people have been surprised that there is no specific duty under the bill to implement any of those plans. We heard arguments last week about why that is the case, including the contention that to provide a specific duty to implement might supersede other general duties. Do you think that the bill would be strengthened by a specific duty to implement the plans that are agreed to?

**John Thomson:** I was a bit puzzled by that argument. I might be wrong, and I am certainly not an expert on much of the legislation under which local government operates, but my understanding is that local government has many mandatory duties. In debates on local authority budgets, the decision on where the money should go is very much influenced by whether a duty is mandatory.
or discretionary. I was surprised by the argument that a mandatory duty could not be imposed on a local authority. I would have thought that Government imposes such duties all the time. People might ask whether the matter is felt to be so important as to justify such a duty, but I would think that the mounting evidence of growing flood risk is a good reason for making the duty mandatory.

Mike Donaghy: We strongly agree with a duty to implement. We are dealing with a new theme, sustainable flood management, and other sub-themes such as natural flood management. We are finding our way with that. There will be a natural reticence among practitioners to get involved—they might say that they simply do not understand. Allied to that is a piece of proposed legislation showing that flood hazard maps must be produced. However, the bill is weak on saying “Go out and do it.”

The dangerous thing is that local authorities and other organisations are already indicating that they do not have the money. We can just imagine what will happen: authorities will retreat into themselves and do the absolute minimum to meet the requirements of the law. That means that even a really good piece of legislation will produce only a limited effect on the ground.

10:30

Hugh Clayden: I appreciate the complexity of the arguments about implementation and duties, so I will restrict my comments to the Forestry Commission Scotland, which, as the Scottish Government’s forestry directorate, has a duty to implement Scottish Government policy. Therefore, we will have a duty to implement what is in the bill.

The Convener: That is helpful.

Elaine Murray (Dumfries) (Lab): We talked about the duty on local authorities, but there are other responsible authorities, such as SEPA and the Scottish ministers. Should a duty also be placed on them, particularly given the issue to do with funding flood defence schemes?

Mike Donaghy: Yes, I absolutely agree with that suggestion. The whole point is to achieve change on the ground that will lower flood risk and secure benefits for people. Anything that makes that happen is a good thing.

Elaine Murray: This question is for SNH and Forestry Commission Scotland. SNH expressed concern that it might not be designated as a responsible authority, which might mean that its input to the process would come too late to be effective and might even be counterproductive. At last week’s committee meeting, Government officials countered that argument by explaining that they were saying not that SNH would not be a responsible authority but that they would put the matter out to consultation, given that the general duties on responsible authorities will be onerous. Will you elaborate on whether you should be a responsible authority?

The Convener: I take it that the witnesses from Forestry Commission Scotland and SNH have read the evidence that we heard last week.

Hugh Clayden: Yes.

John Thomson: Yes. The key point is that we want to be involved at an early stage, as Dr Murray said. Whether that requires us to be designated as a responsible authority is perhaps debatable, but there would be great benefit all round in our being involved at an early stage. In our submission, we highlighted the dangers that could arise if we are not involved at an early stage.

The Government has onerous responsibilities under European directives, including the Natura directives, and we have safeguarding responsibilities in that regard. It is our fervent desire to find ways of reconciling those duties with sustainable flood management and the mitigation of flood risk, but we can do so only if we are brought into the process at an early stage, so that we have an opportunity to explore the options. We want to have that role, whether or not we end up being designated as a responsible authority, and we are pleased that the Government seems to have in mind such a role for us. However, it might be good to consolidate our role by formally making us a responsible authority.

The Convener: Government officials argued that doing so would place far more duties and obligations on you than you might be prepared to shoulder. Do you understand that that was their concern?

John Thomson: Yes, I understand that. There would certainly be resource implications, which are always a concern for us, but we think that great gains could be achieved.

Hugh Clayden: Forestry Commission Scotland would welcome the opportunity to become a responsible authority, but before legislation committed us to such a role we would want to know a great deal about what it would mean. We are fairly relaxed about responsible authorities being designated in secondary legislation.

The principle is important. We want to be involved in discussions early, so that we can help the process rather than come in at a late stage to criticise. We have had experience of being a responsible authority under the WEWS act—

The Convener: Will you expand the acronym, for the purposes of the Official Report?
Hugh Clayden: Yes, I am talking about the Water Environment and Water Services (Scotland) Act 2003. There is no doubt that whatever one feels about the WEWS act, being a responsible authority concentrates the mind wonderfully.

Alasdair Morgan (South of Scotland) (SNP): Involvement is fine, but given the general duties that fall on responsible authorities—some people suggest that almost every quango in Scotland will be a responsible authority—is there a danger that when too many people are involved, nobody will take proper responsibility? The advantage of the current situation is that we have a short list, potentially, and we know where the responsibility lies. Will there not be an awful lot of opportunity for buck passing if we designate you all as responsible authorities?

Hugh Clayden: It depends on what we are responsible for. Although I recognise your point, you can define the levels of responsibility and make things happen.

John Thomson: I echo that and add that engagement in initial discussions about appropriate management is critical. When it comes to delivering that management, I see great advantage in responsibility being relatively concentrated, albeit with an obligation on bodies that might have only a minor part to play to play that part nonetheless. However, it is engagement in the initial analysis and decision-making process that is critical.

The Convener: Do you agree that there might be a danger of a protracted debate about levels of responsibility because different organisations will be looking for different definitions?

Hugh Clayden: Perhaps it would be helpful to reflect on the role of a responsible authority under the WEWS act. Had that responsibility not come to us, there would have been difficulties for organisations such as SEPA in talking knowledgeably to the forestry industry. Being a responsible authority helped us to go out and do that work for organisations such as SEPA. There is a level of understanding out there, and bridging the knowledge gap was a fundamental part of our role.

The Convener: Mike Donaghy nodded his head. It looked as if you were agreeing with the concerns about dissipating responsibility among too many organisations. Do you want to say something about that, briefly?

Mike Donaghy: The point comes back to the overarching principles behind the bill: it is about taking a new approach, which means identifying who is likely to be effective in trying to achieve it. We have to identify at an early stage who we need to talk to and who needs to be involved. I do not want to get down to the nitty-gritty here and say to those involved, “This is your exact role and this is where you come in.” The principle is to involve the people whom we need to achieve the purpose of the bill.

John Scott (Ayr) (Con): For the sake of a rounded and integrated approach, would it make sense to have the same responsible authorities under the bill as under the WEWS act? Otherwise, it would be anomalous to have different responsible authorities under two different but complementary pieces of legislation.

Hugh Clayden: We would welcome the dovetailing of flooding issues with water framework issues to do with water quality and quantity. In relation to our role, we see those areas working together logically.

John Thomson: I echo that.

Rhoda Grant (Highlands and Islands) (Lab): Evidence has been submitted to the committee regarding community and public consultation and concerns that the bill might not afford adequate space for the public to take part, especially given that planning procedure will be involved. Do panel members think that the bill provides adequately for participation? If not, how can it be improved?

The Convener: The witnesses appear to be silent. If you do not have any suggestions or comments, please say so and we will move on.

Hugh Clayden: Our only comment is that community buy-in is essential. If we have learned one lesson, it is that that is how you get effective delivery—you have to bring people with you if you want legislation to be effective.

Mike Donaghy: That is important. We have evidence, particularly to do with measures on the ground, that if you do not involve the local community you can end up with lots of problems. However, you must look at the mechanisms that enable the community to engage properly rather than simply be consulted. That works both ways, because members of the public or stakeholders have to be aware of their role in the process.

John Thomson: I refer to Hugh Clayden’s comments about the importance of dovetailing river basin planning under the water framework directive with flood risk management. Community engagement is important in both processes. The scales may be different at times, but such engagement is important. Obviously, there are benefits in not overloading communities, but opportunities need to be sought to integrate involvement across the board.

Bill Wilson: SNH’s evidence refers to the need to amend the cost benefit rules to take fully into account the benefits of soft engineering. Will the SNH representative and the other witnesses expand a little on that?
John Thomson: I am not an expert on the details of the cost benefit techniques that are used, but our point was that the scope of those techniques is too narrow, which means that some wider benefits cannot be taken into account in reaching conclusions. The thrust of our argument is that multiple objectives and benefits should be considered and we must ensure that the methodologies that are used to assess the cost effectiveness of individual schemes take those objectives and benefits fully into account.

Mike Donaghy: I welcome Mr Wilson’s question and thank him for asking it. WWF and RSPB Scotland have tried to address the issue during the process. We have found that there is a dearth of information to help in considering benefits other than monetary benefits. Of course, much of a cost benefit analysis involves economic analysis, but we must start to explore ways in which we can allow social and environmental benefits to be given a value and considered. In a sustainable context in particular, it is essential that we allow appropriate assessments of costs and benefits, which includes non-monetary costs and benefits.

Hugh Clayden: Considering such benefits is a particularly important part of considering natural flood management. It is hard to conceive of something that could be done for natural flood management that would not have a non-market benefit. Such benefits ought to be considered.

Of course, the difficulty lies in valuing non-market benefits. We know from the past 20 years in forestry that it is difficult to put a precise value on such benefits, but techniques are being developed. Our forest research agency has done a great deal of work on valuing social benefits. More research needs to be done on evaluating strict environmental benefits, but there is already fairly good empirical evidence on some non-market benefits.

I suspect that the answer to Bill Wilson’s question is that the benefits of soft engineering must be considered. The information might not be perfect at the moment, but I am sure that there is sufficient information to add to an evaluation.

The Convener: We are running well behind if we want to reach our time target, so I ask members and witnesses to be as succinct as possible, otherwise, at this rate, we will be here until around half past 1. Committee members may not wish to be sitting here at that time.

Liam McArthur: The bill will create a requirement for local authorities to prepare rolling six-year flood risk management plans. I think that Scottish Environment LINK in particular has argued in favour of setting out a longer-term vision in the bill. I would welcome an explanation of the reasons behind that argument.

SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?

Mike Donaghy: I feel qualified to talk about the first issue, but I will have to get my colleague from the RSPB to give a more detailed written answer on the second one.

The Convener: We can follow up the second issue.

10:45

Mike Donaghy: If we want to plan for anything, especially to do with flood risk management, we cannot tell people not to worry because we have it all planned for the next five or six years. We must look much further into the future and take a much more cohesive approach. A good timescale for flood risk management is probably 24 or 25 years. There must be a funding mechanism to support such plans. Scottish Environment LINK believes that a 24-year timescale would fit neatly with the six-year cycle for reappraisal of all maps and plans. We think that the timescale should be much longer than six years, as flooding is a long-term issue and we must find ways of supporting and funding plans.

John Thomson: A longer-term perspective is essential. It is part of the answer to Mr McArthur’s earlier question about whether we will need to use more hard engineering solutions in the short term. As Mike Donaghy said, that may be the case, but often such solutions are needed because of mistaken decisions that were taken in the past. If we want to avoid that situation in the future, we need to take a much longer-term view.

There are upland sites in the Natura 2000 network that are not water-dependent features but may be affected significantly by measures that we want to take under flood risk management plans. For example, afforestation of upland catchments would affect Natura 2000 sites. The issue is important.

The Convener: I will allow this evidence-taking session to run until 11 o’clock. We will follow up with written requests any questions that are outstanding at 11. That is the best and fairest way forward for the witnesses and everyone else.

Elaine Murray: Concerns have been expressed about possible conflict over land use. The organisations that will be represented on the next panel—the Scottish Rural Property and Business Association and NFU Scotland—suggest that there may be a conflict between the use of land for agriculture and the use of land for flood risk...
management. They are concerned about whether the use of land as flood plain will make the remainder of estates unviable and threaten future security. Would you like to comment on that?

We are aware that the climate change bill consultation includes a proposal to lease 25 per cent of the Forestry Commission’s estate to the private sector on 75-year leases. Is that proposal of concern to the commission? Will it affect the commission’s duties and ability to use its estate for flood risk management?

Hugh Clayden: We understand the potential conflict that the NFUS, in particular, has highlighted in relation to the value of prime agricultural land. Currently, such land represents about 6 per cent of Scotland. As climate change happens, the figure will probably rise to 20-odd per cent, according to the latest thinking on mid-scenario assessments, so we need to be aware of the issue. In my view, most of the impact of natural flood management techniques that involve forestry will be further up the glen, rather than in prime land at the bottom, although we need a great deal more evidence on that. Desynchronising flood peaks in smaller catchment areas is likely to have the biggest impact; down at the level of prime agricultural land, the catchment is on a much larger scale, so the battle will probably have been lost by then. I do not rule out entirely action at that level, but we must address the significant issue of food security and the best use of prime land. The problem need not be on quite the scale that has been suggested.

On the climate change bill consultation, forestry will require to be managed to the United Kingdom forestry standard. That in turn will relate to guidance, such as the forest and water guidelines, which will be revised next year. I am quite certain that, in that revision, we will take into consideration not only the water framework directive but the new flooding legislation. That will be reflected in forest and water guidelines that are an adjunct to the UK forestry standard. There will be a protection on woodland management that will not be on estate management.

The money that might be freed up for use on climate change may be targeted at flooding measures as well as other environmental and connectivity measures. There could be benefits from that and safeguards against what I suspect you are asking about.

Elaine Murray: My perhaps simplistic concern is about what happens if you lease out part of a forest and subsequently some of it is required for flood risk management after the development of flood risk management plans. If you lose control of that land, is it not more difficult to use it in the most appropriate way?

Mike Donaghy: One good principle of the bill is that it will allow grown-up, sensible discussions to be had. For example, there is the question of food or flood. What is the value to society of a big haugh or arable field? If it is identified as both lowering flood risk and being important for food production, the decision must be made, in a democratic and fair way, on its inclusion or exclusion from a flood risk management plan. However, if we know that we can store water on such a field but that we do not, that risk must be paid for and reduced somewhere else in the catchment.

The discussion appears to assume that fields are not flooded. Under big floods, they are flooded, no matter what is in them. Floods do not respect what crop is in them, so they are flooded under certain floods. They are also defended by non-engineered banks. Although they primarily protect fields, they may also afford some protection to communities downstream, so we have to be careful before mucking about with them. The hydrologists lead on that one.

We must make decisions at a catchment level. We need more locally grown food, but we also need flood protection. The bill should allow us to make the grown-up decisions on how to achieve that. There is a limited number of huge arable areas in Scotland, and they are usually where rivers are extremely large, so there is little that we can do in any case—such areas are where water stores itself during big floods. Natural flood management will largely be concentrated further upstream.

John Thomson: I endorse what has been said and will add one point. When we talk about resources, we must recognise that, if flood risk management is to work, money may need to be transferred between different budgets to ensure that it is available for the most cost-effective solutions to the flood risk management problem.

Bill Wilson: The Scottish Environment LINK submission says:

“we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach”.

We have a letter from the Government that states:

“The intention is for catchments (basins or sub-basins) to be the primary unit for managing flooding”
and that it is
“considering an amendment that would clarify the basis on which SEPA are to identify local plan districts.”
Would that satisfy your concerns?

Mike Donaghy: It would largely satisfy our concerns. What matters is that the appropriate unit is used.

The Convener: Does Bill Wilson have another question?

Bill Wilson: I had one, but it related to my earlier question about ensuring that social, economic and environmental factors are considered when flood management is addressed.

The Convener: Are you happy with the answer that you were given earlier?

Bill Wilson: I think so, to be fair.

Elaine Murray: The Government has indicated that it is considering lodging amendments at stage 2 on surface water management. There is no mention of coastal flooding in the bill. Are the witnesses content that the bill adequately covers coastal flooding as well as surface water flooding?

Mike Donaghy: No, we are not content. That is the Cinderella issue. Two things are missing from the bill: we need much more on surface water in urban areas, and we need much greater consideration of how we work with coastal processes to protect people and reduce flood risk.

Elaine Murray: Can you suggest amendments that would address your concerns?

Mike Donaghy: Yes.

Elaine Murray: Concern has been expressed about the period before the provisions on flood risk come into effect in 2015. Local authorities have said that they do not have enough money in their budgets to address issues in areas that suffer from severe flooding. Do the witnesses have a view on the potential impact of delays in implementing the bill’s measures as a result of inadequate funding? What should local authorities’ priorities be, if funding is limited, as they say it is?

Mike Donaghy: Your second question is the easiest to answer. The first priority of local authorities is to protect their constituents—the people. That is what flood management is about.

Your first question was more interesting. In Europe, Scotland is regarded as a leader in the modernisation and development of flood management—people are looking to see how we do it. If we produce a good piece of legislation that is appropriately funded, we will have a great opportunity to do a good job. We must get away from the mindset according to which there is a great big muckle fund that we must all go for. Sustainable flood management does not work like that; it opens up other funding streams. We have to be clever and innovative in how we access those funding streams, so that the strain is taken off one pot and shared among a series of pots.

The Convener: Do other witnesses want to comment on funding?

John Thomson: Mike Donaghy’s point is, in essence, the same as the one that I made about the need to bring together moneys from different sources.

The Convener: Peter Peacock has a question, but I warn him that I will hold fast to what I said about ending this part of the meeting. You have two minutes.

Peter Peacock: I will be brief. Scottish Water has a role to play and will have funding needs. Will its ability to fund schemes properly be impacted on by the Water Industry Commission for Scotland’s role?

Mike Donaghy: Scottish Environment LINK is concerned that Scottish Water’s regulator—the Water Industry Commission for Scotland—seems to be dominated by the economic approach. WICS claims that it allows Scottish Water to do everything in respect of its sustainability duty, but we see with our own eyes evidence that Scottish Water does everything as cheaply as possible, and probably with the short term in mind. If a duty in relation to sustainability were placed on WICS, it could take a longer-term approach and encourage Scottish Water to retrofit sustainable urban drainage systems. SUDS are extremely expensive, so members can imagine that Scottish Water tends to install a big pipe rather than something that is more sustainable and sensible.

11:00

The Convener: Members had a few more questions to ask, but we will follow up our inquiries after the meeting. I thank the witnesses for coming. No doubt there will be a continuing exchange between you and the committee during the next few weeks and during stage 2.

I welcome to the meeting the next panel of witnesses: Nigel Miller, vice-president of NFU Scotland; Dr Karen Smyth, rural development manager for the Scottish Rural Property and Business Association and a frequent flyer with the committee; and Gareth Williams, policy manager north with the Scottish Council for Development and Industry.

Because of time constraints, I will first take questions from members who are interested in funding, to ensure that the matter is covered.
Rhoda Grant: Councils are obviously responsible for their own maintenance but, in submissions to the committee, some have expressed concern that under the bill they will be unable to recover costs from landowners who have not maintained their flood management schemes. I would like to hear whether the panel thinks—

The Convener: Rhoda, will you speak up a bit? It is very difficult to hear you at this end of the table.

Rhoda Grant: Sorry.

The Convener: It is probably because you are turning your face away from us.

Rhoda Grant: Is the panel happy with what I said?

Dr Karen Smyth (Scottish Rural Property and Business Association): I am sorry—I did not quite get it.

Rhoda Grant: Local authorities have expressed concern that, under the bill, they will be unable to recoup expenditure incurred in carrying out flood prevention work on land where the landowner has not completed such work. What is the panel’s view of the suggestion that councils should have the power to recoup that money from landowners?

The Convener: Quickly, please.

Nigel Miller (NFU Scotland): Our strong view is that if the work is for public good the public should pay for it. Under the proposed integrated approach, agricultural land will be used as a safety net to protect other communities or interests. There will, of course, be costs and benefits, but many of the costs will be pushed on to landowners and agriculture, while many of the benefits will be felt by other communities and land users. That might well be correct, but I feel that land managers and agriculture should not foot that bill.

Dr Smyth: I was not aware that local authorities were seeking to draw down money from landowners for such work. In that case, I agree with Nigel Miller. I also agree with the previous panel’s point that there should be mechanisms to allow funding for flood prevention and the management of land for flood-related purposes.

The Convener: Does Mr Williams want to comment?

Gareth Williams (Scottish Council for Development and Industry): It is probably not so much of an issue for our membership.

Peter Peacock: I have a question on finances that probably is for Gareth Williams. In its evidence, the SCDI raised issues to do with funding. Some of your members have spoken about their difficulties in getting insurance for their premises or property. At a UK level, a deal has been done by the insurance industry to stick with flood insurance, provided that sufficient long-term public investment is made in better flood management.

Is the bill adequate, or could it be stronger in requiring consideration of long-term flood investment, which would have the benefit of improving businesses’ ability to get insurance?

Gareth Williams: We welcome the indications that thinking will cover a 25-year period, although come in and sort it out and we’re going to get the money back from you.” The position is slightly different.

Dr Smyth: It is.

Nigel Miller: Such work would be part of an integrated plan with wider impacts on land management as a whole.

The Convener: Not necessarily. It might be work that should have been done anyway. Do you see the difference?

Nigel Miller: Could you give us a specific example of the kind of maintenance that you think landowners might not be doing?

The Convener: Clearing blocked culverts.

Nigel Miller: If a blocked culvert on somebody’s property was causing a problem, it would be reasonable to ask them to maintain it.

Dr Smyth: If it is a legal matter, it should go through the appropriate channels, with fines imposed if necessary. However, cases would have to be dealt with individually, so it is difficult to comment.

Nigel Miller: You have to take into account the implications of the water framework directive, which makes the maintenance of some channelling quite difficult for farmers and landowners. A SEPA process, which is not easy, has to be gone through. Constraints relating to drainage and to channelling watercourses are being put on farmers. Those constraints almost negate the farmers’ own interests, but they are being put on the industry because of wider benefits.

The Convener: Does Mr Williams want to comment?
we would like it to go even further ahead if at all possible. I understand that the Association of British Insurers is in talks on a statement of principles, which would cover Scotland, and that the ABI has welcomed the bill. It is good that we appear to be ahead of the game.

We have some concerns over the lack of detail on investment and on the development of plans, and we would like more detail on the funding over a long period. How will the funding feed down to a local level? We are concerned about flood management schemes being given the priority that they deserve.

Alasdair Morgan: We have just had an emergency budget statement, and the chancellor has said that, beyond 2010, public expenditure will be severely constrained. Do you really expect the Scottish Government to give commitments to really long-term funding?

Gareth Williams: It will never give hard-and-fast commitments to long-term funding, but it could give us some idea of the funding that would be required as part of future plans. Decisions would be taken in each budgetary cycle, but it would be clear that the Government was working towards longer-term improvements.

John Scott: My questions are for all the panel members and are more general. What impact will the bill have on the people whom you represent? What problems and burdens do you foresee? How might they be addressed?

The Convener: Discuss—briefly.

Nigel Miller: As representatives of farmers, we think that, at a strategic level, a lot of priorities are already laid on agriculture, whether in relation to access, food production, biodiversity or landscape. Those issues all underpin communities. If we are to address them all and are given an additional focus or burden, it is inevitable that we will not be able to deliver quite as well on some of them. That should be taken into account in the national picture.

As far as the bill’s impact on small businesses is concerned, there has already been a discussion about the loss of some of the best land in Scotland. There is obviously not a lot of good land in Scotland—only two farms have grade 1 land on them, and one of them is right next to the River Tweed. We are already losing good land for food production due to increased building. There is a more pertinent issue further up the hill, in that very small flood plains are likely to be key in natural flood management schemes. Those small flood plains are crucial to the overall economics of agriculture in the areas concerned. If they are removed or if real constraints are put on their use, large areas will become unviable and land may be abandoned in some hill areas. We are all pretty supportive of natural flood management, because it makes a lot of sense, but in reality flood management is not very natural; it is about selectively deciding where we want a flood to go.

We must look carefully at the cost benefit analyses, because being under such constraints raises issues for farmers. Obviously, their management options and the procedures that they carry out on the land will be constrained if the land is in a flooding area, so that will have an economic impact. Beyond that, if the land is lying wet, there will be constraints in relation to poaching and spreading fertilisers or muck. Constraints may be placed on wetlands for dirty water control if the area is likely to be flooded. There are also implications for how a tenancy is valued if those pressures are put on a tenant. There are many practical issues. As well as the direct implications for the land involved, there are also implications for the surrounding land. Those factors must all be taken into account and costed, and the money must be recouped in some way if rural areas are to remain viable. That is a real challenge and it is not clear that it has been taken up in the bill.

Dr Smyth: I agree with Nigel Miller. It has already been proposed that land managers or farmers may have to change watercourses or plant additional trees, or that lower-lying land may need to be flooded. Such measures could have a significant economic impact on land managers or farmers, and that needs to be adequately costed.

The lack of information on costs does not give land managers great security. As Gareth Williams said, a 25-year funding strategy would be beneficial. I acknowledge that because of the economic situation it is difficult to ensure that level of commitment for 25 years, but we must provide some level of security to land managers. If they are going to have to change watercourses and plant trees, where will they get money from in five years’ time when the SRDP is not focused on those agendas? They need security beyond that timeframe.

Gareth Williams: Businesses make their investment decisions 25 years in advance in relation to both investing in their own businesses and moving into new areas. If they are making decisions based on that period of time, they need security for that period.

The Convener: Even if the Government was in a position to put forward a notional figure for a strategy that would continue for 25 years, it could not bind any future Governments.

Gareth Williams: I acknowledged that earlier. I accept that decisions will be taken on a budgetary cycle, but a wider buy-in to those plans, which seems to be the bill’s objective, would provide greater reassurance for businesses that the plans
We do not have anything against SEPA and the Government will give guidance and overview of the way in which SEPA carries out its role. There will be Government ombudsman or a different body to watch how SEPA performs. There might be Government ministers who will be able to give directions to the competent authority. We have heard evidence that SEPA is checked in some way. Anything that SEPA undertakes its duties. We want to ensure that SEPA is checked in some way. Anything that SEPA undertakes its job appropriately. Procedures should be put in place to ensure that SEPA undertakes its job appropriately. For example, an ombudsman could oversee how SEPA undertakes its duties. We want to ensure that SEPA is checked in some way. Anything that attempted to do that would be a form of reassurance.

Dr Smyth: Our concern is that SEPA is a regulator and not a facilitator or co-ordinator. Procedures should be put in place to ensure that SEPA undertakes its job appropriately. Example, an ombudsman could oversee how SEPA undertakes its duties. We want to ensure that SEPA is checked in some way. Anything that attempted to do that would be a form of reassurance.

Rhoda Grant: The proposal is not to create an ombudsman or a different body to watch how SEPA performs. There will be Government overview of the way in which SEPA carries out its role and the Government will give guidance and direction.

Dr Smyth: Guidance and direction will be helpful but, in our experience of working with the water framework directive and the area advisory groups, we found problems on a range of levels. Therefore, advice and guidance may not be the only answer. There is perhaps a need for training and additional resourcing. I do not know whether you want me to go into the details—I submitted evidence on that in our written submission.

The Convener: Yes, we have that.

Dr Smyth: It highlights some of our concerns with the area advisory group process. We would like those to be addressed to assist in the implementation of the bill.

Alasdair Morgan: I will continue on the issue of the role of various organisations. In written evidence, the NFUS has expressed “doubts as to whether local authorities, who should be accountable to all local interests, are best able to judge the needs of their areas.”

What is behind that? If the local authorities are not best placed, who is?

Nigel Miller: We want a coherent and integrated plan, but having SEPA defining the overall goals at district level and then rolling that down to a process that is driven by local authorities will not necessarily feed through seamlessly the policy priorities and likely solutions. At times, local authorities, by their nature, will be driven by particular interest groups, rather than take an holistic approach.

The Convener: So who should do it?

Alasdair Morgan: The idea is to have a cascade down from a central view, which will get gradually more local. Obviously, each solution must be implemented locally. I do not know exactly what you have against local authorities, but if they are not given the role that they are to be given under the bill, who will do that instead?

Nigel Miller: We do not have anything against local authorities. However, in our experience, in a forum that is chaired by a local authority with various competent authorities feeding into it, it is difficult to get a meaningful view in for those who are directly affected or the land managers who are involved. Some helpful comments have been made about the need for a robust advisory board. If such a board were feeding into the process, that might protect those people. If there was some sort of ombudsman to ensure that those interests were taken into account and balanced in the overall outcomes, that might be a solution that we could support.

Alasdair Morgan: Is there something specific about the way in which local advisory boards are itemised in the bill that you have concerns about?
Elaine Murray had some questions on the same issue. Are you content with what you have heard, Elaine?

Elaine Murray: Yes.

The Convener: Excellent. Rhoda Grant wants to ask about public participation in consultation.

Rhoda Grant: Some of the submissions that we have received express concerns about public participation, how that would be resourced and whether the bill adequately allows for it. The previous panel talked about public engagement and said that it should be more than consultation. Does this panel agree with that? If so, is the matter adequately covered in the bill? If not, what steps should be taken to allow members of the public, communities and stakeholders to engage with the process?

Dr Smyth: We raise that as a concern in our written submission. In our experience, the area advisory groups have not been sufficiently funded and representatives have not been able to represent their whole catchment. For example, an SRPBA representative may not necessarily know what the farmer two miles up the road is doing to his land and how he is dealing with it. It is difficult to represent a whole catchment, so we asked SEPA whether village hall consultations could be carried out. SEPA's response was that it was concerned that the resourcing was not in place to do that. The bill should be adequately resourced to allow for more community-level participation where required and when advisory groups feel that it is necessary for and beneficial to the development of the plans.

In our submission, we note that section 43(8) says that financing “may” be made available to members of a subdistrict flood risk advisory group. Many advisory group members have to pay out of their own pockets to attend meetings and some will have to travel long distances to participate in meetings. We encourage the committee to consider providing financing for those people who represent their communities at a local level.

Rhoda Grant: Is that an either/or suggestion? Do you want funding for village hall consultations or for advisory group members?

Dr Smyth: Both.

Nigel Miller: I have already touched on the matter and my comments run along pretty similar lines to those of Karen Smyth. There is a requirement for producer organisations to be represented on the relevant body.

The key point that Karen Smyth made is that it is difficult for any representative to get a handle on the requirements of all the communities and individuals whom they represent, and there will be some pretty extreme impacts on some of them. SEPA or the local authority should appoint someone to be a point of contact to whom local people and communities could feed their issues by way of local meetings, individual interview or letter.
The point-of-contact person could sift through the issues, prioritise them and feed them into the process to ensure that individuals are not disfranchised. That is a real danger, given the level of representation that is likely to be put in place and the cost constraints on people in trying to make inputs. There is also the issue of trying to keep the relevant bodies manageable in size.

There will be extreme impacts on some communities, businesses and land managers. The concerns of those people should be fed into the process. Perhaps the word “ombudsman” is not the right one to use, but funding for advocates of some sort should be found so that such persons can be put in place and play a part in the process.

**Dr Smyth:** I agree with Nigel Miller. I have received a number of comments from our members about their involvement in the area advisory groups. One suggestion was that there should be a technical support officer whom they could approach for information. Much of the information that is provided at flood risk meetings is high level and technical. If you are a farmer or land manager without a scientific background, it is difficult to get up to speed on some of the issues and the pace has also been very fast. I encourage the committee to consider how the issue could be addressed.

**Gareth Williams:** I want to echo a couple of points that have been made thus far. First, our members are looking for an influencing role, rather than one that is simply advisory. Secondly, I agree about the technical nature of the discussion. We have found that in our involvement in river basin management planning. Also, meetings tend to be dominated by those with scientific knowledge. It would be helpful if some way could be found for communities and businesses to engage fully in the process and understand what is being discussed.

**The Convener:** We turn to questions from John Scott on the Water Environment and Water Services (Scotland) Act 2003.

**John Scott:** In its submission, the SRPBA argues that

> “the structures already set up for the implementation of the Water Framework Directive water basin planning are used in the implementation of the Floods Directive ... However, these structures should be reviewed”.

Which aspects of the WEWS act structures are in need of review for the purposes of implementing the flood risk management process?

11:30

**Dr Smyth:** I have probably covered part of that already. It is about how the area advisory group structure operates. There is a need to step back and consider how the groups have functioned and what can be done to improve the way in which the area advisory groups and the national flooding advisory group interact and work together in order to make the process more streamlined and effective. The technical support that I suggested would be useful must also be considered.

**The Convener:** I take it that the other witnesses agree, given that they are nodding.

I know that Elaine Murray wanted to ask about flood risk management plans and land use, but I think that we have dealt with that already. I invite Peter Peacock to ask about natural flood management techniques and the ability to strengthen them.

**Peter Peacock:** I think that you were all present for the previous evidence session. There are arguments for strengthening the bill’s provisions on national flood management techniques. The SRPBA and the NFUS have both expressed concern about that, which they articulated in earlier answers. Would you be concerned about that? Would your concerns be eased if there were adequate compensation packages for the impact on farm activity or land owning activity?

**Nigel Miller:** We would certainly be concerned if there were a presumption that natural flood management should take precedence over other systems. We see natural flood management as part of a suite of measures that should be used in an integrated way. Hard engineering would be part of that suite in some cases but not in others. We have to consider how we can manage the water flows in upland areas more rationally, too. That is what we are looking for. Certainly, there will be times when some areas will have to be used for natural flood management. In such cases, we would definitely look for compensation, not just for the direct impact on the land and the management constraints that were imposed, but for the impact on the overall viability of the business unit. In the uplands, such land is likely to be a key part of the viability of the unit. Compensation is vital for individuals, but before we get to that stage, we want the plan to be right. If we get the planning right, we can minimise the number of areas that are blighted, which would be a real win for everybody.

**Dr Smyth:** The most appropriate method must be implemented, whether it is hard engineering or soft engineering. By introducing a presumption in favour of soft engineering, you might not be implementing the most appropriate method. As part of sustainable flood management, you have to have a toolkit of methods to implement.

We want to raise points about compensation, but perhaps we had better do so in writing. As a general principle, it is vital that the compensation provisions are right, so that land managers are not
dissuaded from becoming willing participants. SEPA and local authorities need to work with land managers to ensure that the appropriate compensation is in place. We have concerns about the wording of the compensation provisions in part 6, but I am not a legal expert, so I think that it would be better if we provided a written submission on that.

Peter Peacock: I want to pin you down on this a bit more. I take the point about compensation; you can write to us about that.

I want to clarify what Mr Miller said. Am I right in thinking that you are not opposed to a duty that requires the relevant authorities to consider natural flood management methods and that you would be concerned only if flood management had to be delivered through natural mechanisms, rather than hard engineering, in all circumstances?

Nigel Miller: We accept that, in some circumstances, natural flood management would be the correct way forward. It might be uncomfortable for the business or the land manager involved, but it would be the optimal solution. In some cases, it might be the only solution if we wanted to protect a certain community. However, the costs, benefits and other practicalities of the individual situation would have to be considered.

The Convener: Do the witnesses from the SCDI have anything to add?

Gareth Williams: We will need a mix of measures.

John Scott: I declare an interest as a farmer. I understand what Nigel Miller said about the disproportionate effect that using flood plains would have on the viability of upland farm units, but perhaps he might like to discuss it a bit more to point out the importance of flood plains to such units.

Nigel Miller: More than 80 per cent of Scotland is under the less favoured area scheme, so huge areas fall into that category. Upland farming is very much livestock oriented, but overwintering the livestock requires some sort of area for cropping to get winter keep. In most of our upland areas, that cropping area will probably be on or very close to the flood plain. Beyond that will be grazing, permanent pasture and hill ground. If the flood plain is taken out of the equation and is no longer part of the business, the unit is not viable because the farmer cannot produce winter feed or does not have sheltered or safe areas for lambing.

Even if the land is not flooded a lot of the time but is open to frequent inundation or lies wet, there are real constraints on cropping. Under regulations concerned with maintaining good agricultural and environmental condition, farmers are not allowed to spread manure or fertiliser on waterlogged land. That also constrains grass production on such areas. If there is frequent inundation, there will be gravel deposits, which might prevent the farmer from cutting grass. Those deposits would have to be removed. There will also be ingresses of weeds—ragwort, for example, which is poisonous—to which there is a cost and which cause problems. Moreover, Scottish Water has agreements with SEPA, certainly in southern Scotland, whereby the local sewage works can discharge pure sewage into the watercourses in flood conditions. If that inundates land, there are issues not only with animal health but with public health and farm assurance status.

The use of flood plains has a huge impact on one’s ability to manage a farm and get a viable system within the constraints of Scottish agriculture. In many cases, a small area of quite good land on the flood plain can ensure viable activity over an area 10, 20 or 30 times larger than that flood plain. In small valleys, if two or three of those areas are taken out of use, whole communities will be lost and the landscape will change. We have real fears that that might happen.

The Convener: The SRPBA and SC DI both have some concerns about compulsory purchase in the context of flood management. I ask them to expand a little on those.

Dr Smyth: I have already raised some issues on compensation under part 6. If possible, it would be better to incentivise or provide funding rather than use compulsory purchase. If compulsory purchase is necessary, we would like a bit of work to be done on it, but I am not part of the legal team so I cannot really expand on that.

Gareth Williams: We accept that there is a case for compulsory purchase but are anxious that businesses receive fair value when it takes place and that there is also an independent element to any appeals process.

The Convener: Would the same concerns also apply to the powers of entry for SEPA that are contained in the bill?

Dr Smyth: I would have to go back to the legal team on that. Nigel Miller mentioned that, if land is moved into flood plain management, it means that part of a farm is taken out. That is a real concern for us. If the overall size of farmland is reduced, it can have a significant impact on farming practice. That needs to be given full consideration.

The Convener: Would Gareth Williams like to say something on the powers of entry?

Gareth Williams: The presumption should be that there is agreement with the landowner. If the powers of entry are used, the local authority, or
whoever enters the property, should be able to justify doing so and there should be compensation for any damage that might occur.

**The Convener:** Okay. Rhoda Grant wants to ask about the linkage between structure plans, development plans and flood risk management plans.

**Rhoda Grant:** The SCDI’s written submission talks about the conflict between Government policy on house building and flood management plans. It says that it would be “inappropriate” to insist that development plans conform to the flood management plans. What should the balance be between those two kinds of plan? There is an obvious need for house building, but there is an equally obvious need to protect people from flooding. How should the plans interlink and where should the balance of power lie between the plans?

**Gareth Williams:** The development plan would take precedence and the flood management plan should inform the development plan. We take the view that some building on flood plains is inevitable and desirable, given the wider social and economic context. The insurance industry, too, accepts that that will take place. However, we recognise the need to include flood resilience measures in those developments.

**Nigel Miller:** There is general agreement that flood risks are increasing, that we need to look to the long term and that not taking flood risk into account in a development is a big mistake. That would multiply or generate the challenges that we would face. It would also increase costs not just on the farming industry, but on other sectors and local government as well. That does not make sense.

Scotland is lucky in that it has quite a small population and there is a reasonable amount of land. For goodness’ sake, let us develop in areas where that will not increase pressures and costs or blight large areas of productive land.

**The Convener:** Bill Wilson has a supplementary question to ask.

**Bill Wilson:** According to global warming predictions, the sea level will rise by anything between 10cm and a catastrophic 5m and there will be an increase in the number of storm surges. What is your view on the Government saying that significant developments cannot be built below, let us say, a height of 1m at coastal sites?

**The Convener:** Should the Government do that? I do not think that Bill is suggesting that that is what the Government has decided—he is asking what your view on that would be if the Government were to do that.

**Nigel Miller:** As somebody with no expertise at all in the matter, I totally agree with you.

**Bill Wilson:** I am delighted that you agree with me.

**The Convener:** I am not sure what level of concern the SRPBA would have about building in very coastal regions.

**Dr Smyth:** We probably have some members in those areas, but I cannot really comment.

On planning more generally, the SRPBA has advocated an integrated land use plan since at least 1995. We were therefore heartened to see the Government launch its rural land use study. We hope that that will start people thinking about how we can link different land use issues more closely in the future. That may form a useful framework in which to address flooding and other issues.

**The Convener:** The SCDI might have more members who are affected in coastal areas.

**Gareth Williams:** I am trying to imagine what areas would be covered by a 1m limit.

**Bill Wilson:** I am thinking specifically of coastal areas, not of a 1m limit 10 miles inland.

**The Convener:** It is about coastal inundation where there are roads and other transport infrastructure.

**Gareth Williams:** Some of the tourism developments that are taking place around the country might be affected by setting a barrier at 1m. They are significant investments for the economy, and I would have thought that such decisions should be taken at a local level rather than being controlled by Government regulations.

**The Convener:** We have exhausted our questions. I thank the witnesses for coming along. If there is anything that we want to follow up on, we will do that. Equally, if there is something that you feel that you missed saying to us, you are welcome to get in touch with us hereafter. I am sure that you will follow the progress of the bill with interest.
Thank you for your request for supplementary information following our meeting with the Rural Affairs and Environment Committee on 26 November.

Our comments on the additional questions are as follows:

[Questions posed by the Committee appear in italics]

Question 1: Interim arrangements

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 2015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

FCS is designated as a Responsible Authority (RA) under the WEWS Act and we are pleased that consideration is being given to the designation of a similar RA role for FCS under the Flood Risk Management (Scotland) Bill. During the transitional period, and with our potential role as a RA in mind, we would anticipate being involved in appropriate catchment-scale, natural flood management measures on the national forest estate and on private land (supported through the SRDP). We would, therefore, like to see FCS’s prospective role reflected in any transitional arrangements.

We welcome the establishment of the Scottish Government’s Natural Flood Management Group, of which FCS is a member. The group is developing a scoping study to frame a 10-year research strategy for natural flood management (NFM) techniques and this will include the establishment of demonstration projects. The outputs from this research will help develop the empirical evidence required to support, and build confidence in, NFM during and beyond the transitional period.

Question 2: Flood warnings

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This question is not within our competency to answer.

Question 3: Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

It is essential that assessments of flood management schemes incorporate the wider range of environmental and social benefits/services provided by NFM. For example, appropriately designed woodland can provide, simultaneously, climate change mitigation benefits (e.g. carbon storage, wood for fuel) and adaptation benefits (e.g. enhancing the functional connectivity of habitats), recreational potential and wider, water-related environmental benefits such as temperature control and reductions in diffuse pollution and/or sedimentation. Such ecosystem services would be part of the economic case for supporting land use change in appropriate locations.
A holistic approach would be a prerequisite for assessing the true value of NFM. Some of the wider environmental benefits could be captured using simple cost-benefit analysis. However, a complementary approach could be the use of multi-criteria decision analysis (MCDA) tools. Such approaches tend not to compare monetary costs and benefits, but instead provide a way of comparing scenarios in terms of the benefits perceived by stakeholders. Crucially, the approach provides a transparent, repeatable, and auditable mechanism for public participation in MCDA. Our Forest Research colleagues would be pleased to provide additional information on such tools to the Committee.

**Question 4: Coastal flooding**

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

This question is not within our competency to answer.

**Question 5: Natura**

Finally, during the evidence session Liam Mc Arthur specifically asked ‘SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?’

If these issues read-across to other legislation it would seem appropriate to refer to them in the Flood Risk Management (Scotland) Bill. However, SNH would be the competent body to advise the Government on this matter.

**SUPPLEMENTARY SUBMISSION FROM SCOTTISH ENVIRONMENT LINK (RSPB SCOTLAND AND WWF SCOTLAND)**

**Interim arrangements**

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 2015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

One of our main concerns with regard to interim arrangements is the means by which funding of flood risk management measures is distributed to local authorities. Funding which is made available for flood risk management should be spent on lowering flood risk to communities. Currently, the funding is distributed to local authorities as part of a block grant. There are concerns that funding could be re-prioritised to help meet other pressing obligations, leaving communities at risk. In some cases, funding may need to be allocated to one or more local authorities in any one area. In these circumstances, funding for major flood protection schemes may be best held centrally rather than allocated to local authorities through single outcome agreements.

In light of achieving multiple benefits it will probably also be appropriate to seek funding from more than the traditional flood sources, and this may require integrated funding streams.

**Flood warnings**

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty
about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This is not our area of expertise.

Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

The value of ecosystem services is difficult to value and so is often neglected in traditional cost-benefit analysis. This is because, traditionally, the cost-benefit analysis only assesses monetary values in a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis.

Whilst the evaluation of non-monetary benefits in economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding.

We would suggest that the best way forward would be to introduce a hybrid of cost-benefit analysis with multi-criteria analysis to capture the non-monetary factors. A shift to a broad definition of the purpose of flood risk management (including social, environmental and economic objectives) combined with cost-effectiveness analysis (CEA) would broaden the range of options considered, and drive the adoption of multi-functional solutions. This is because CEA places an emphasis on meeting the objectives set in a way that maximises value for money, and not in meeting a Cost Benefit Analysis threshold within a tight framework of flood defences.

CEA is used widely in the implementation of the Water Framework Directive and in the decision making process about the most cost-effective programme of measures. CEA helps to select the best combination of measures to achieve a particular objective. The steps taken in cost-effectiveness include:

- Identify nature and scale of the problem
- List potential measures to achieve reduction in flood risk
- Assess the cost of individual (or package of) measures
- Assess the effectiveness of individual (or package of) measures
- Combine cost and effectiveness information for ranking measures based on cost-effectiveness ratio

Both costs and effectiveness analysis should in this case include both monetary and non-monetary information.

Coastal flooding

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

This estimation of uplift in Scotland has recently been put under scrutiny in a study of coastal flooding by Dundee University¹, which suggests that the uplift of land due to the melting of Scottish ice sheets has been over-estimated and potentially Scotland will in future experience more extreme rises in sea levels than previously predicted. For example, it has been estimated that future sea level rise by 2080 could be 20cm higher in the Clyde estuary and 28cm higher

¹ Coastal Flooding in Scotland: A scoping study, 2008, SNIFER report
in Moray and Aberdeenshire than previously estimated. It is also likely that the net sea level changes in the Firth of Forth had shifted from a net fall to a net rise since the 1970s. Whilst the estimation of sea level rise in Scotland requires further exploration, it is clear that developments taking place within the 1m contour could, in the near future, experience high risk from coastal flooding and sea level rise. We would therefore agree and strongly support the view that no further development should be allowed to take place below the height of 1m. However, at certain locations, the risk of coastal flooding may be further exacerbated due to the increased risk of storm surges and riverine flooding, in particular in estuarine locations. This needs to be further factored in the assessment of flood risk for a particular location.

Natura

Finally, during the evidence session Liam McArthur specifically asked 'SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?'

Section 19 of the Bill on Flood Risk Maps (subsection (v)) includes the assessment of areas designated for the protection of habitats and species where the maintenance or improvement of the status of water is an important factor in such protection. This definition is very limited as it only considers water dependent sites. It therefore potentially excludes Natura sites which do not directly depend on water, including many terrestrial sites and upland sites, but nevertheless could potentially be damaged by flooding (e.g. impacts of flash floods, sea level rise impacts to terrestrial habitats).

We would recommend a very small change to include all Natura sites in the Flood Risk maps section of the Bill, in order to assess potential adverse consequences associated with flooding to Natura sites.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Interim arrangements

Many submissions, including SE Link’s, expressed concerns about interim arrangements between the enactment of the Bill and the development of the first flood risk management plan in 20015. On 19 November, Government officials stated that transitional measures will be drawn up. Does your organisation have any specific concerns that they would like to see addressed in the transitional arrangements planned by Government officials?

There is uncertainty about what the arrangements will be between the passing of this new legislation and the development of the first flood risk management plans. Clear transitional measures need to be drawn up so that responsible authorities and stakeholders know to what standards they should be working.

The process of preparing plans will in due course help to prioritise work on flood risk management, and to gather the data needed to inform these decisions, but if schemes are taken forward in the meantime, they need to be developed in the spirit of the new legislation.

The new legislation should help responsible authorities to take forward new approaches to flood risk management even without plans being in place. A catchment approach to flood risk management could be adopted and natural flood management measures could be included in flood protection schemes. We would very much hope that any guidance on the transitional period would make this clear so that an immediate start could be made in implementing the new approach to developing flood protection schemes. We would also wish to see any cost benefit analysis carried out to assess schemes broadened to take into account the wider benefits of natural flood management measures, even when it was not possible to ascribe a precise economic value to them.
Flood warnings

During the evidence given by Government officials on 19 November it became clear that the flexible and discretionary provisions related to flood warnings meant that there is uncertainty about who SEPA must provide warnings to. Does your organisation have any concerns about this or any other aspects of the flood warning provisions?

This is not an issue on which we feel competent to comment.

Cost benefit analysis

What do you consider to be the most appropriate means of assessing the benefits of potential approaches to flood management to ensure natural flood management schemes are assessed fairly against other approaches? Do you consider that assessment tools other than cost benefit analysis are required and, if so, which specific methods would you advocate?

In some cases, economic benefits arising from natural flood management measures can be quantified and where well-founded figures are available, SNH would wish to see them used. But an absence of calculated economic values should not result in these benefits being overlooked. Any analysis of the benefits of flood management measures should take account of all potential benefits, even if a monetary value cannot be assigned to them. This can be achieved, for example, through multi-criteria analysis.

Adopting an ecosystem approach can help to identify the benefits of natural flood measures, for instance for managed realignment. The following extract is taken from an Environment Agency report:

“Looking at the benefits from managed realignment schemes, the main one (up to now) has generally been flood defence. The newly created inter-tidal zone acts as a natural sea defence, dissipating the energy of incoming waves and water. The new defences (if any) are set back from the sea, cheaper to build and often shorter. The saltmarsh also acts as a sponge, absorbing flood water and thus increases the storage of flood water, which would otherwise be flooding dry land.

The re-creation of inter-tidal habitat as a result of coastal realignment also has a number of other benefits, both economic and environmental. These benefits depend on the amount and the type of the habitat created and the speed of that habitat recreation. Location within the estuary and the salinity and topography of the site also matter. Taking an ecosystem services perspective, the benefits of new inter-tidal habitat also include:

• Benefits to commercial and recreational fisheries: increased fish populations as the new habitat acts a feeding ground for juvenile fish;
• Carbon sequestration: as the new habitat builds up, it absorbs carbon;
• Water quality benefits: for example, the stripping of polluting nutrients from the water course and the absorption and/or metabolism of contaminants such as heavy metal, nutrients, toxic organic compounds, and so forth;
• Air quality benefits: it may be that inter-tidal habitats are particularly good at absorbing PM 10s and some ozone precursor chemicals, through dry absorption as well as the more normal processes of wet deposition. These benefits are likely to be greatest close to people in urban areas;
• Biodiversity benefits: many birds home in on inter-tidal habitats and the fish they attract. Thus there are also broader ecological, recreational and tourism benefits; and
• Regeneration benefits: the creation of new wet habitats in an urban area provides a welcome respite from the built-up city.”

Valuing ecosystem benefits

By William Watts and Ino Kremezi, Environment Agency.  
http://www.environment-agency.gov.uk/commondata/103599/ecosystem_benefits_2146628.doc
Coastal flooding

According to global warming predictions, the sea level is set to rise by anything between 10cm and 5m and there will be an increase in the number of storm surges. What would your view be on a proposal that significant developments cannot be built below a height of 1m at coastal sites?

It would seem reasonable to question the sense in building close to sea level when levels are expected to rise and storm surges are likely to increase. Any significant development close to sea level is likely to lead to calls for flood protection in the future. The simplest measure for avoiding flooding is to avoid developing in areas likely to flood.

Natura

Finally, during the evidence session Liam Mc Arthur specifically asked ‘SNH and Scottish Environment LINK have referred to the inclusion of Natura and water-dependent sites in the mapping assessment exercise. Will the witnesses comment on that and on any amendments that they would like to be made to the bill to rectify such shortcomings?’

Our evidence drew attention to the fact that when flood risk management plans are being developed they will need to consider whether any of the measures in the plan would be likely to affect Natura features. The Bill as it stands only refers to water dependent features. Flood risk management plans might well have a significant effect on other types of Natura feature. If that were the case the competent authority would have to conduct an appropriate assessment to determine if the plan would have an adverse effect on the integrity of the Natura site. The question therefore arises as to whether the Bill should make specific mention of this requirement, which stems from other, existing, legislation

The Conservation (Natural Habitats, &c.) Amendment (No.2) (Scotland) Regulations 2007 at regulation 2(2)(f) amends regulation 47(1) of the Habitats Regulations by inserting at (b) 'in relation to all other plans and projects'. This acts as a safeguard to ensure that plans and projects not specifically referred to in regulations 69-85(e) of the Habitats Regulations are subject to the requirements of regulations 48, 48(a) and 49. It is for the drafters of the legislation to consider whether this is sufficient or whether they feel that specific amendments are required such as inserted by regulation 20 of the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007, which introduced a new regulation 84(b) to the Habitats Regulations that specifically refers to abstraction and works authorised under water legislation.

SUPPLEMENTARY SUBMISSION FROM SRPBA

The Rural Affairs and Environment Committee has asked the SRPBA to comment on the written evidence of South Lanarkshire Council in relation to recovery of costs from landowners who have failed to adequately maintain watercourses on their land.

SRPBA comments in response to South Lanarkshire Council (the Council) evidence:-

- One of the aims of the Bill is to “establish a clear framework of responsibility with duties and powers defined so that each organisation involved knows exactly what is required”. This has been partly achieved by defining SEPA’s and Local Authorities’ responsibilities but it is not clear how far landowners’ responsibilities extend. The Council’s evidence has helpfully raised this issue.
- Our understanding is that currently property owners have primary responsibility for flood protection for their own property. This is to be distinguished from flood prevention which may go further. It is reasonable to expect property owners to be responsible to protect their own properties. Landowners would also be bound by the common law prohibiting them from doing anything to inhibit the enjoyment of another’s property and from interfering in the natural course of water on their land.
- It is not clear whether the Council would expect property owners to have responsibility for flood prevention works which have a wider benefit to the general public.
- Individual landowners and the general public cannot be expected to have full information and technical expertise to take on principal responsibility for proactively assessing and responding to flood risks.
- The standard of maintenance and protection required would naturally be subjective. The standard required for flood risk management could differ from that required for flood prevention. The standard could be difficult to assess without technical expertise. It could be difficult to enforce and could lead to a rise in claims against landowners.
- Local authorities are empowered by Clause 49 to do anything necessary to implement measures described in a Flood Prevention Management Plan and to do anything necessary to reduce flood risk in its area. As indicated above landowners would be restrained by the common law. The Bill would have to be very clear that any interference in a watercourse or another’s property was justifiable in the interest of flood risk management, and protect landowners against claims in this respect.
- Section 57 allows local authorities to recover expenses from landowners for repairs or reinstatement of flood protection work carried out under section 49 which is a result of the landowner’s actions. Does this not give the Council enough comfort as regard works which are for the wider benefit?
- Maintenance of watercourses could provide minimal benefit to the proprietor but be of huge benefit to neighbours’ and the general public. E.g. A bund could be on agricultural property to protect one field from flooding. An indirect consequence of this bund is that a low-lying local village is also protected from flooding. We would be concerned that the Council’s proposals would allow the local authority to recover costs for ‘lack of maintenance’ where the landowner could not be reasonably expected to individually bear the costs of maintaining the watercourse for flood management purposes to benefit the general public. Would there be provision for all properties benefited by flood risk reduction and watercourse maintenance to share the costs of doing so? The local authority, as funded by taxpayers, would be in a better position to fund flood risk management and watercourse maintenance for these purposes.
- The Bill makes provision for identifying flood risk and taking steps to prevent damage, but it is impossible to predict accurately how flooding will occur. To lay responsibility on individual landowners or allow local authorities to recover costs for lack of maintenance from landowners would be unfair as the persons assessing risks and maintenance standards would be the local authority and SEPA.

SUPPLEMENTARY COMMENTS ON COMPENSATION PROVISIONS

Land Acquisition - Part 4, section 55

Section 55 permits a local authority to acquire land for the exercise of its functions under Part 4 (i.e. flood risk management). The provisions on compulsory purchase incorporate the Land Clauses Compensation (Scotland) Act 1845 by incorporating the 1947 Act (which incorporates the 1845 Act).
It would be preferable to state clearly that the 1845 Act is incorporated and compensation is to be assessed in accordance with the Compensation for Land (Scotland) Act 1963. That way you would be confident that any land take will be compensated in accordance with the existing compulsory purchase compensation legislation. At the moment that is not clear. The provisions mirror the Flood Prevention (Scotland) Act 1961 Act but that does not mean they should just be accepted and this is an opportunity to improve on them.

Compensation

Part 6 deals with compensation for other disturbance to land etc and, in summary, provides as follows:-
Section 71:
- Compensation for damage caused by SEPA in installing or maintaining apparatus or building or engineering works in respect of a flood warning system under section 66
- Compensation for damage caused by Local Authority in consequence of:-
  - Scheme operations - defined as an operation described in a flood protection scheme in pursuance of section 52 (2) (a)
  - Any other exercise of LA's general powers to manage flood risk under section 49 (1)
  - The exercise of a right of entry under section 68(2)

SRPBA Comments:-
- The onus is on the landowner to notify SEPA or the LA within a defined period and make a claim stating the heads of claim and the amount claimed.
- Any disputes are to be determined by the lands tribunal - although the Bill does not state at whose referral but presumably it should be by either party. This could be specified for clarity.
- In section 72 (2) compensation only payable if the damage is not attributable to an act or omission of the landowner in question. It is not clear what happens if it is partly attributable to him/her or his/her actions have made it worse but there was nonetheless damage. This needs clarified.
- Compensation is also not available where there is an omission by the landowner. This is unfair, particularly if the landowner does not know that the omission is happening or that it might have consequences that result in damage.
- Damage is defined in section 72 as being depreciation in value. We believe this would in practice cover injurious affection and severance, but it would be helpful if this was specified for the avoidance of doubt. Damage also includes being disturbed in the person's enjoyment of the land, but there is no clear inclusion of the 1845 Clauses Act nor any specific provisions that say that compensation will be paid for the value of the land taken (if any). We have to assume it is covered under s 72(1)(b) but it would be better to clearly state that.
- There is no express link between section 55 (land acquisition) and the compensation provisions.
- The provisions do not seem to provide compensation for loss or damage from temporary works - e.g. for SEPA under 66 1(a) or (b) but such works could give rise to damage.
- The term "scheme operations" is defined in section 84 by reference to s 52(2) (a) - that is the section which deals with the local authority's definition of the scheme - but you would be dependent on how the local authority has described the scheme - it might be vague or unclear, and most importantly, there may be unintended consequences which would not be compensated as this is drafted at present.
- It would be preferable to add a clause stating that compensation is available for land take and for damage or loss caused by any and all operations by the local authority or SEPA under the authority contained in this Act or something along those lines - although Parliament may want to limit compensation in some respects.
- Regarding local authority compensation, damage under section 49(2) appears not to be compensated
- There is a time limit right to compensation s 72(2) (d) - apart from in the General Vesting Declaration procedure (under the Town and Country Planning (S) Act 1997 Sch 15, (which is 6 years) there is no time limit elsewhere in compulsory purchase compensation so this seems harsh and should be reviewed.
- There is also a need to give notice to claim compensation which is not usual. In normal circumstances it is sufficient simply to write a letter (no set style) claiming compensation. It needs to be clarified what is meant by notice - is it enough just to claim? Or do you need to raise an action in the Lands Tribunal to protect entitlement to claim to stop the 2 year cut off period?
INTRODUCTION

Scottish Water welcomes the opportunity to provide further evidence to the Rural Affairs & Environment Committee (RAE) on the proposed Flood Risk Management (Scotland) Bill.

Scottish Water provided evidence to the Committee in May 2008 and responded to the consultation “The Future of Flood risk Management In Scotland”. We are satisfied overall with the framework provided by the Bill and we welcome the collaborative approach taken to ensure the delivery of its requirements.

We would like to highlight the following issues which we feel have not been fully addressed by the draft Bill.

INTEGRATED URBAN DRAINAGE & SURFACE WATER MANAGEMENT PLANS

If Scotland is to properly address urban flooding in the future then new urban developments have to be designed so that they do not add to the risk of flooding and integrated urban drainage and flood resilience must be built in from the start.

Surface Water Management Plans, such as those being developed for the Metropolitan Glasgow Strategic Drainage Plan (MGSDP), cover the interactions between sewerage systems, watercourses and surface water drainage to ensure that flood risk is appropriately addressed with the added benefit that development constraint, water quality and amenity issues can also be targeted in an holistic manner. The aim is to manage the flow of surface water through the urban environment using sustainable techniques such as Sustainable Urban Drainage Systems (SUDS), flow routing and the provision of undeveloped spaces that can be used as flood storage areas.

We believe it is essential that the development of Surface Water Management Plans should be one of the measures considered in achieving the objectives set by SEPA to manage flood risk within the Flood Risk Management Plans. Local Flood Risk Management Plans should then incorporate the Surface Water Management Plans. Scottish Water believes that Surface Water Management Plans should be referenced in the Bill under the Flood Risk Assessment and form part of the Local Flood Management Plans.

Scottish Water is currently looking to form standard agreements with all Scottish Local Authorities for the provision of integrated drainage arrangements. We are concerned that this approach is extremely difficult to organise with 32 Local Authorities and that such agreements may take years to put in place. We therefore believe that standardised agreements between Local Authorities and Scottish Water should be included as part of Local Flood Risk Management Plans.

FUNDING

Scottish Water is funded by customer charges. The priorities for what we spend customers’ money on are set by Government and Regulators through the Quality and Standards process for each four year regulatory period. We have assumed that Scottish Water will be funded through customer charges to deliver the requirements of the Bill.

We remain concerned that it is not clear how the various funding routes of all the organisations involved will be linked to allow efficient delivery of schemes to reduce flooding risk. We recognise that the Government decided not to proceed on the basis of creating a single national authority with a secure funding route. The proposed arrangement of Competent and Responsible authorities can work but its success will be reliant on the proper allocation of funding. The challenge for the Government will be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body.
As implementation proceeds the Government will have to keep the arrangements under careful review to ensure that Scottish Water securing funding through customer charges, for our capital contributions to any Flood Risk reduction scheme, remains the most appropriate route of financing. Alternatives may include relevant capital contributions to any Flood Risk Reduction Scheme being allocated entirely to the relevant Local Authority responsible for the scheme.

If Scottish Water is to be funded to contribute to specific flooding schemes then the flood management plans and costed solutions would have to be sufficiently developed to be included in Scottish Water’s Business plan two years prior to the start of the regulatory period. This will not be possible without a nationally prioritised list of flooding schemes. Producing this list and ensuring that it is included in the Quality and Standards process is the responsibility of the Competent Authority.

Water Environment and Water Services (Scotland) Act 2003 (WEWS)

Scottish Water believes that coordination between the River Basin Management Plan (RBMP) process and the Flooding Bill is essential. To ensure better coordination between the provisions in the Bill and the continuing implementation of the WEWS Act we suggest the Scottish Government may wish to consider the following issues.

- Data used by SEPA to develop RBMPs and Flood Risk management plans should have the same level of control and scrutiny.
- It would be advantageous to ensure that Flood Risk Maps and Flood Hazard Maps are compatible with the maps developed under the requirements of the Water Framework Directive so they can be displayed using the same GIS system and provide a comprehensive picture of Scotland’s water environment.
- Activities under the Flood Risk Management Plans (FRMP) and RBMPs should be streamlined to ensure the most efficient use of resources for the Responsible Authorities.
- Careful consideration should be given to how coordination between the activities under the Flooding Bill and WEWS Act will be carried out. Adequate time should be given to the Advisory Groups formed under the two regulatory regimes to consider issues requiring coordination.
- SEPA should demonstrate that the Programmes of Measures (POMs) developed under the WEWS Act do not conflict with the measures identified within the FRMPs and that the timescales for delivery are consistent with each other.

A wider vision for Water Management

Scottish Water believes that a long term objective for Flood Risk Management should be to reduce the overall level of flood risk in urban areas while facilitating the development of urban areas.

In the consultation document “Making space for water”, Defra outlined a strategy to address flooding and coastal erosion risk within the context of a long term overall vision. This approach sets the context within which all future legislation and strategies relating to the water environment can be developed.

Scottish Water believes that, to ensure that the framework set by the Bill achieves its full potential, it is essential a similar approach is taken and that all aspects of water management are brought together under a strategic vision in line with the Government’s objectives for Scotland.

In order to deal with the future demands on Scotland’s water resources brought about by climate change the strategy should cover issues such as green roofs, grey water re-use, minimising impervious area and proactive disconnection of surface water from combined sewers. Scottish Water believes that such a strategy could bring benefits by:

- reducing our carbon footprint (through reduction of energy used for treating and pumping both drinking and surface water);
- creating a better environment for people to live in through the provision of amenity and improved biodiversity;
- reducing pollution events caused by combined sewers overflows discharging excess wastewater during heavy rainfall; and
• reducing flood risk.

This would have to be a long term approach with investment being put in place now in the knowledge that it may take many years for the benefits to be realised.

Scottish Water
11 November 2008

SUBMISSION FROM SCOTTISH BORDERS COUNCIL

In general Scottish Borders Council welcomes the overall direction of the draft Bill but would like to make the following comments. Reference is made to the relevant section / paragraph of the Bill or other accompanying documents to which the comment relates:

Comment 1: - Scottish Water Responsibilities

Part 1: Section 1 – General Duty
The above sections places a general duty on the Scottish Ministers (SM), SEPA, and responsible authorities* to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, they must exercise their function under Part 3 so as to secure compliance with the Directive.

*Responsible Authorities are defined in the draft Bill as Local Authorities (LA), Scottish Water (SW), and any other public bodies and office holders as designated by SM.

Part 4: Section 49 – General Power to manage flood risk
The above section states that a LA may do anything which it considers;
(a) will contribute to the implementation of current measures described in any relevant local Flood Risk Management Plan (FRMP)
(b) is necessary to reduce the risk of a flood in its area which is likely to –
(c) occur immediately, and
(d) have serious adverse consequences for human health, the environment, cultural heritage or economic activity, or
(e) will otherwise manage flood risk in its area without affecting the implementation of the measures mentioned in paragraph (a).

Comment: - The above 2 sections give Local Authorities wide ranging powers to reduce the overall flood risk within their area. All forms of flooding are now covered by the Bill except where flooding relating to the failure of a sewage system is caused solely by a blockage or a failure in the sewage system. However it is not clear who would be responsible for upgrading a public sewer system, whether it be a foul or surface water sewer, if it was causing flooding of land following heavy rain. It is Scottish Water as a responsible authority and as the publicly owned company with responsibility for the public sewage system?

Comment 2: - Funding and potential Legal Challenges

Financial Memorandum - Paragraph 288
The Bill does not place a specific duty on LA to implement flood risk management plans. However, they will have an overall general duty to act, with a view to reducing flood risk and the Bill provides the framework to help local authorities and others to identify the most appropriate measures to address flood risk.

Comment: - One significant measure allowed for in the Bill is the implementation of Flood Protection Schemes (FPS) but it is unclear how these high capital cost schemes will be funded. A wholly transparent funding process needs to be put in place.
If due to lack of funds LA’s are unable to implement measures to reduce the overall flood risk to a level considered acceptable by the public are LA’s at risk of legal challenge?

Comment 3:- Ultimate Responsibility for Managing Flood Risk

Policy Memorandum - Paragraph 31

Although ultimate responsibility for avoiding or managing flood risk would still lie with land and property owners, the clear expectation is for certain public bodies to take a proactive role in managing and, where achievable, lowering overall flood risk. This new duty will, for the first time, place flood risk management on the same footing as other general duties on local authorities, such as the provision of education and other services.

Comment: -The policy memorandum repeatedly states that ultimate responsibility for avoiding or managing flood risk lies with land and property owners. This responsibility should be contained within the Bill.

Scottish Borders Council
11 November 2008

SUBMISSION FROM FIFE COUNCIL

It is considered that the Fife Council Corporate Response to The Future of Flood Risk Management in Scotland has been adequately addressed by the proposed Flood Risk Management (Scotland) Bill.

However, the following should be considered:--

Part 4: Section 57; This Section requires to more specific regarding the recovery of costs associated with the removal of debris, fallen timber and obstructions that are an identified flood risk, where private land owners do not act to remove the obstruction. This then normally falling to the Local Authority to act in order to reduce flood risk and to incur the associated costs. These costs should be recoverable from the private land owner by the Local Authority. This should also apply to general maintenance works. Section 57 appears to restrict the recovery of costs to repairs or reinstatement of flood prevention works. This is too restrictive. Section 57 should be linked to Section 49; General power to manage flood risk and Section 56; Assessment of watercourses etc.

Part 4: Section 60; Interim transitional guidance needs to be issued to cover the time gap between the Repeal of the Flood Prevention (Scotland) Act 1961, the enactment of the Flood Risk Management (Scotland) Bill and the preparation of Local Flood Risk Management Plans. Ongoing inspection, assessment and maintenance of watercourses require to continue throughout the transitional period and beyond. Will the transitional period retain the need for biennial flood alleviation reports, until such time as the three year cycle kicks in under the Section 32; Local Flood Risk Management; Interim Report?

It is considered that the preparation of process maps defining procedure, output and timeline regarding flood risk assessment, flood hazard maps, flood risk management plans and local flood risk management plans would provide useful supplementary guidance.

Fife Council
11 November 2008

SUBMISSION FROM LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY

Thank you for the opportunity to comment further on the Flood Risk Management (Scotland) Bill and the Scottish Government’s aims for implementing a comprehensive approach to sustainable flood management. In February 2008 the National Park Authority submitted a response to the
consultation document “The Future of Flood Risk Management in Scotland”. In this response the Park expressed the following views:

- The National Park Authority should be recognised as a responsible authority and should have a participatory role in the development of district and local flood risk management plans.
- There should be a clear process for National Parks to access funding for developing and implementing district and local flood risk management plans.
- The National Park Authority should have representation on Flood Advisory Groups where they are relevant to the Park boundary.
- Planning Authorities (including National Parks) should be required to take account of Flood Risk Management Plans when developing Local Development Plans.
- Ministerial approval should be sought for Flood Risk Management Plans and flood prevention schemes to ensure that the national values of the Park are taken into account.

The Bill in its current form provides for the National Park Authority’s interests in the following ways:

- There is provision in the Bill for the National Park Authority to be designated as a responsible authority if approved by Ministers. If the Park seeks to acquire this status it would be required to assist SEPA prepare flood risk management plans, flood risk assessments and maps.
- The National Park Authority will be consulted by SEPA and involved where appropriate in the development of District Flood Management Plans and flood risk assessments.
- The National Park Authority will be consulted by local authorities on draft Local Flood Risk Management Plans.
- The National Park Authority must have regard to district and local flood risk management plans when exercising planning functions.
- The National Park Authority will have membership on Flood Risk Advisory Groups at the district and sub-district levels.
- Ministers will have the authority to call-in proposed flood prevention schemes where the National Park Authority objects. Local authorities will not be able to apply section 54 for deemed planning consent to schemes that affect the Park area.

The National Park Authority is supportive of the way in which the Bill provides for the Park’s interests, however, would like to reiterate the importance of providing clarity for the Park’s involvement in the development of district and local plans, risk assessments and flood risk advisory groups. The Park is currently represented on four area advisory groups for the River Basin Management Planning process. The advisory groups represent the four catchments across the Park. Participating in more than one flood risk advisory group would be resource intensive. The Park is supportive of minimising the number of advisory groups that require its involvement and looks forward to negotiating the most workable and resource efficient way of securing its participation. I look forward to the Park’s continued involvement in the Bill process.

Loch Lomond and the Trossachs National Park
12 November 2008

SUBMISSION FROM ASSOCIATION OF BRITISH INSURERS

The Association of British Insurers (ABI) is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. They control assets equivalent to a quarter of the UK’s capital. They are the risk managers of the UK’s economy and society. Through the ABI their voice is heard in Government and in public debate on insurance, savings, and investment matters.

The ABI considers that the above Bill does generally provide an appropriate framework for flood risk management in Scotland. In particular, we note the arrangements being made to ensure that all authorities coordinate their activities and cooperate in addressing the risk of flooding. This will
allow the difficult issues arising from the increasing risk of surface water flooding to be addressed much more effectively than at present.

The key to achieving better management of flood risk in Scotland, beyond the introduction of the Bill itself, also depends very much on how it is implemented. We have, therefore, also commented on some aspects of this below.

We are currently discussing a Statement of Principles for flood insurance with the Scottish Government and as part of this we have identified that measures to achieve the following must be taken by the Scottish Government, working together with insurers:

- improve our understanding of flood risk through assessing both the probability and consequences of flooding from all sources including surface water;
- put in place a long-term (25+ years) strategy to reduce flood risk; set out the Scottish Government's objectives and measures at a national level, ensuring effective and prioritised allocation of resource across each 6 year planning cycle, backed by local plans with realistic and deliverable objectives and measures; agree long-term outline spending plans that are aligned with funding arrangements for all responsible authorities.
- ensure that the planning system prevents inappropriate development in flood risk areas, and that any essential new development in high flood-risk areas is flood resistant and/or resilient;
- raise awareness in areas where flood risks are significant, encourage actions to mitigate and minimise the risks and costs of being flooded; and provide information about how to obtain flood insurance; and
- promote access to insurance for low-income households.

**Flood Risk Assessment**

We look forward to discussing the assessment of flood risk in detail with the Scottish Environment Protection Agency (SEPA). The Bill clearly identifies SEPA as the authority with responsibility, as well as the delivery, of this as required under the EU Floods Directive. However neither the Bill, nor the Floods Directive is specific on the detail and quality of the information to be delivered. We would like to discuss plans for more accurate identification of flood risk and better communication of this risk to both the public and insurers, for flooding from all sources.

Currently information on properties where the annual probability of flooding from rivers or the sea is higher than ‘1 chance in 200’ is not sub-divided at any higher annual probability level for the public and only to a limited extent, for insurers. This limits the extent to which insurers are able to charge premiums that equate with flood risk. As insurers seek to manage their exposure to risks that they can’t quantify, this could affect the availability of affordable insurance against flooding in parts of Scotland.

We would also like to see more accurate assessment of flood risk from the sea and from surface water, although we recognise that assessment of the latter is a developing science, both in Scotland and elsewhere in the UK. Despite this, it is important for Local Authorities to assess and take measures to address this risk in towns which both have and have not previously suffered from surface water flooding. The events in England in 2007 highlighted how serious this can be in areas which, with the benefit of hindsight, should have been seen to be at high risk of flooding, but which weren’t.

**Long-Term Strategy**

The development of a long-term (25+ years) strategy to reduce flood risk is potentially achievable under the framework that will be created by the Bill. However, we are concerned that the funding for this is provided from several streams, which are not aligned with each other or with the 6 year planning cycles required under the EU Floods Directive and that these funds are not ring-fenced.
Flood risk could be better managed if funds for flood risk management were separately identified and ring-fenced for this purpose.

The long-term strategy needs to identify those areas that don’t meet an agreed minimum standard; those areas that can be defended to this standard cost-effectively, with an investment strategy and timetable in place to do this; and a proposed approach to support property owners in areas that cannot be defended to this standard cost-effectively.

Planning System

We note that, generally, the Scottish Planning Policy (SPP7) does already ensure that planning applications are considered based on a proper assessment of drainage issues and flood risk and that there are plans to review this policy following introduction of the Bill.

On recommendation 23 in the Committee’s report and the response from the Minister for the Environment, we are pleased to note that a question asking previous owners whether the property has previously flooded, is to be included in the Property Questionnaire, which will be made available in a Home Report to all prospective purchasers of a property.

With regard to the recommendation that developers should be required to provide flood risk assessments for new developments to new purchasers, the Statement of Principles for flood insurance is not intended to apply to new developments. We will be making this clear when this is revised for Scotland (as we have already done in England). We also intend to provide guidance to developers on how they can provide prospective purchasers with the information they might need to obtain flood insurance. We will be recommending in this guidance that they provide them with the valuable information that they have already provided to planning authorities on the assessment and management of flood risk to the development. It will be a matter for individual insurers to decide if and when to request this information for assessing the insurance risk.

On recommendation 16 in the Committee’s report - that an appropriate maintenance regime for any sustainable urban drainage system should be a requirement for planning permission - and the response from the Minister for the Environment stating that where this is not to be vested in Scottish Water, and the resources are to be owned by a number of domestic householders, Local Authorities have the power to enter into such agreements; we will also recommend in guidance that we intend to provide to developers that information on this should be provided to prospective purchasers.

Flood resistance and resilience

We support proposals for flood resilience for new developments and look forward to discussing any proposals brought forward.

On recommendation 19 in the committee’s report, that enhanced reinstatement following flooding is the best way to minimise the cost implications of further flooding incidents, we note the recent research from the Department of the Environment, Food and Rural Affairs in England, that this is really only cost-justified where the annual risk is higher ‘1 chance in 50’. However insurers are keen to encourage such action by property owners and the ABI is currently carrying out research on the increased cost of repairing properties using resilient measures by analysing recent flood claims. We are also very mindful of the implications that this might have on the cost of insurance for those at highest risk of flooding, if this was to be made a mandatory requirement.

We believe that the best way to encourage this is through:

- Clearly identifying those properties at a very high risk of future flooding
- Clearly Identifying those properties that are very unlikely to benefit from community flood protection schemes
- Development of expertise to provide property owners with a flood-reduction survey.
- Financial support for the cost of carrying out such a survey and implementing the recommended measures.
Where all of these are available – accurate knowledge of risk, knowledge that community funded defences cannot be cost-justified and recommendations on what can be done to manage the risk by the property owner - insurers can advise on the impact that possible actions would have on future insurance arrangements.

**Raising awareness of significant flood risk; encouraging action by property owners and promoting wider uptake of insurance, particularly by low-income households**

This is addressed in recommendation 24 from the Committee. We have indicated above that we want to work with SEPA to see how flood risk can be better communicated to the public and insurers. Over time this will also impact on insurance premiums for those worst affected, reducing premiums for others. The premiums for those worst affected will also be reduced (or may not need to be increased so significantly) provided that effective protection can be implemented either through community or individual property owner flood protection measures, as referred to above.

The ABI is taking steps to encourage the development of ‘insurance with rent schemes’ to promote increased take-up of insurance by low-income households and will welcome support from the Scottish Government in this.

Over recent months HM Treasury’s Financial Inclusion Taskforce has been considering access to insurance for financially excluded groups and the ABI has agreed to take forward its recommendations on access to home contents insurance. As part of this work Norwich Union and Aon are hosting a workshop to discuss insurance for tenants in social housing at the Mitchell Library in Glasgow on Tuesday 9th December.

The workshop will provide a key opportunity for delegates to discuss different approaches to running contents insurance schemes, explore the challenges to running a successful scheme and how to overcome barriers for development. Representatives from local authorities, housing associations and other stakeholders have been invited. Mick Johnson from the DWP’s ‘Now Lets Talk Money’ campaign is the keynote speaker and Anne Feeney from Inverclyde Council, the recently appointed Financial Inclusion Champion for Scotland, is also due to attend.

The ABI supports the recommendations for better flood warning measures as an important way of reducing the damage caused by flooding.

Association of British Insurers
November 2008
Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 10 December 2008

[F]THE CONVENER opened the meeting at 10:00]

Flood Risk Management (Scotland) Bill: Stage 1

The Convener (Roseanna Cunningham):
Good morning, everybody, and welcome to this meeting of the Rural Affairs and Environment Committee. I ask everybody in the room, including those in the public seats, to switch off their mobile phones and pagers. We have received apologies from Karen Gillon, who is on maternity leave. Rhoda Grant is her long-term substitute. No other apologies have been received.

Agenda item 1 is to take evidence on the Flood Risk Management (Scotland) Bill at stage 1. There are three panels of witnesses, the first of which consists of Scottish Water representatives. I welcome Geoff Aitkenhead, who is Scottish Water’s asset management director, and Jim Conlin, who is Scottish Water’s regulation manager.

We have received a written submission from Scottish Water, so there is no need for opening statements. We will go straight to members’ questions. I will ask the opening question, if I may.

Why does Scottish Water believe that a broader strategy is required in addition to the planning process that is set out in the bill? I think that Scottish Water said that in its written evidence.

Geoff Aitkenhead (Scottish Water):
We believe that it would be helpful to have a long-term strategy for Scotland’s water resources and water-related issues, including drainage issues. I will put things in context. Our investment needs require considerable forward planning. We are closing off our work on the business plan for 2010 to 2014, which we are still two years away from starting to implement, and we are starting conversations with the Scottish Government about quality and standards IV, which will run for an eight to 10-year period from 2014—the timescales have not yet been determined. To make decisions about objectives for Q and S IV through to 2024, we need an overarching, long-term strategy. I am talking about the sort of thing that has been done elsewhere. The Department for Environment, Food and Rural Affairs has promoted a long-term strategy for water resources in England and Wales. We believe that having a similar strategic document in Scotland would be helpful.

Jim Conlin (Scottish Water):
One reason why we made that proposal is that it would allow us to take account of new ways of doing things and things that we would want to change for sewerage and drainage systems in the future. In our submission, we specifically mentioned “green roofs, grey water re-use … and proactive disconnection of surface water from combined sewers.” Those things can help to deal with flood risks, but they also help with the management of Scotland’s wider water resource. The issue is linking flooding with the drinking water supply, droughts and other things.

The Convener: How do you see such a strategy fitting in with how the bill is structured?

Jim Conlin:
Such a strategy would help the bill. The bill provides a framework for partnership working and for people to consider how they are developing their strategies for dealing with flood risk management. Our long-term vision of what we are trying to do—

The Convener: I will stop you there. Are you saying that what you have described does not necessarily need to be included in the bill?

Jim Conlin:
I do not think that it does. It is a separate strategy for water resources.

The Convener:
Clarifying that is useful. If a broader strategy does not need to be included in the bill, you are looking for reassurance from ministers that it will be forthcoming as part of the process. Do members have any supplementary questions?

John Scott (Ayr) (Con):
One or two things have been mentioned, but have the witnesses given an exhaustive list of the things that need to be considered? I am sure that if you are in constant contact with the Minister for Environment, you are making him aware of what you see as the objectives in the mid and distant future.

Jim Conlin:
We have not given an exhaustive list; rather, we have given examples of things that need to change.

John Scott (Ayr) (Con):
Briefly, are there other things that you would like to see on that list? You have an opportunity to put those things on the record, and they would help to inform the committee.

Jim Conlin:
The main issue for us is how we deal with surface water and excess surface water. We must invest now to remove surface water from combined sewer systems. The majority of large urban areas in Scotland have combined sewer systems—rain mixed with sewage. We must start actively to deal with that issue by seeing how we...
can remove surface water from sewers and futureproof systems.

**Peter Peacock (Highlands and Islands) (Lab):** You say that a long-term strategy for water in Scotland is needed. Would that be a conceptual document? Would it be about philosophy and the direction in which we ought to move, or long-term public sector finance planning? What would the document be for?

**Geoff Aitkenhead:** It would deal with both of the issues that you raise. The long-term plan would be less detailed than the short-term plans, so it would inevitably be a conceptual document at the outset, but it would set a clear direction. We support the bill on the need for collaborative working between Scottish Water and local authorities, especially in relation to the roads and planning aspects of local authority work. In that context, the long-term plan would set a strategic direction for how we in Scotland will deal with surface water flows not tomorrow but in 20 years’ time.

**Peter Peacock:** Would it look at the quantums of cash that would be needed in 15 or 20 years? I accept that it could not be precise on that issue.

**Geoff Aitkenhead:** It might be possible to include broad indications of funding requirements, but we would have to be cautious about that.

**Alasdair Morgan (South of Scotland) (SNP):** My question relates to Mr Aitkenhead’s comments on the business case for Q and S IV, which covers the period 2014 to 2022. According to Glasgow City Council, in 2014 you will estimate to within 5 per cent the cost of the capital works that you will carry out in the Q and S IV period. However, the council makes the point that local plans will not be concluded until 2016—two years into that period. If particular works are required or expected of you under local plans, how will you build them into a programme that you costed two years previously?

**Geoff Aitkenhead:** One of the challenges that we face when pursuing the collaborative approach is to align the funding streams of participants in flood risk management and flood alleviation measures. The committee will be aware that Scottish Water’s funding is set out in four-year price review periods, clear objectives are set for each of those periods. The level of detail in a four-year plan is quite granular, whereas in a 10 to 25-year plan there is less detail but a positive direction of travel is set out. It will be important for us to understand how funding can be aligned to deliver objectives that may take longer than one of our regulatory periods to achieve.

We have not discussed with the Water Industry Commission for Scotland, the body that sets our funding for each price review period, about how we will manage projects such as the Glasgow strategic drainage scheme, which needs to be implemented over multiple regulatory periods. We do not yet have an answer to that question, but we have an open dialogue with the commission. We need to develop an understanding of how future provision can be made. There needs to be recognition that projects will have to be seen through over multiple regulatory periods. I am not sure that we have clarity yet on how the funding that the local authority will bring to the Glasgow strategic drainage scheme will be aligned with the funding that Scottish Water will bring to it.

**Alasdair Morgan:** The implication of what you are saying is that you will not implement anything that Glasgow City Council comes up with in its local plan and is not in your programme until after 2022, because you are already committed up to that point. Is that a fair assessment?

**Geoff Aitkenhead:** It is important for Scottish Water to get to a position that allows it to carry out investigations and feasibility work in the period prior to the period of execution of our investment plan.

I will use Glasgow as an example. We are making provision in the 2010 to 2014 period for the study work that requires to be done on the long-term strategy for the treatment of waste water in Glasgow and on what sewerage and drainage upgrades are required in Glasgow. That will enable us to be clear about what we call the executable plan for Glasgow; on what needs to be done and what it will cost. When we have that degree of clarity, we can plan with much greater certainty for future regulatory periods. It is important that we have funding in the immediate period to do the modelling and the studies on the drainage systems, so that we understand exactly what is needed.

**Alasdair Morgan:** Is the Q and S period from 2014 to 2022 longer than previous periods?

**Geoff Aitkenhead:** No. Objectives for Q and S III were set for eight years from 2006 to 2014, and they are then delivered in two price review periods.

**Alasdair Morgan:** And the same will apply in Q and S IV.

**Geoff Aitkenhead:** For Q and S IV, we are being asked to prepare our thinking for a 10-year period from 2014. We are not yet clear whether the price review periods will remain at four-year intervals, but we anticipate an eight to 10-year period for Q and S IV, which would be broken into two price review chunks.

**Liam McArthur (Orkney) (LD):** You talked about the difficulties of alignment and referred specifically to the WIC’s role. You may be aware that Scottish Environment LINK and others have
raised concerns about the statutory remit of the WIC. Its submission states:

“The role of the WIC appears to clash with the duties of SW to contribute to sustainable development.”

It explains that

“Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term.”

Does the remit of the WIC need to be reviewed or reformed to meet the requirements of the bill? Do you see any conflict now between what you deliver and the statutory remit of the WIC?

Geoff Aitkenhead: I will ask Jim Conlin to comment on that matter, because he is much more familiar with the detail of Scottish Environment LINK’s point. A general point is that the role of the WIC is to ensure that Scottish Water is funded to deliver ministerial objectives. Whatever objectives are set for Scottish Water by Scottish ministers, the WIC has to determine the lowest reasonable cost for us to deliver them and, through that determination, set customer prices. Therefore, the WIC cannot decide Scottish Water’s objectives; they will always be determined by Scottish ministers.

Jim Conlin: To be slightly more specific, a duty is placed on us by the Scottish Government to take account of sustainable development and we have a sustainable development strategy that works towards that duty. As Geoff Aitkenhead said, it is our responsibility to put forward plans that take account of our duty for sustainable development and it is for the WIC to consider how those plans should be funded. We do not see a conflict in that arrangement. The Water Services Regulation Authority—Ofwat—which is the WIC’s opposite number in England and Wales, has a duty to take account of sustainable development. In Scotland the duty was placed on Scottish Water rather than on the WIC.

The Convener: Does Scottish Environment LINK misunderstand the way in which the system currently works?

Jim Conlin: I think that Scottish Environment LINK would like the WIC also to have a duty on sustainable development. I think that that is the point that it is making in its submission.

Liam McArthur: I will use an example from another sector. It is suggested that the problems in which the Beauly to Denny power line has become mired are a result of directions set by regulators that were delivered against the lowest cost, which meant that options such as undergrounding cables were not feasible. The concern on sustainable flood risk management is that there will continue to be a tendency to err on the side of hard engineering solutions, which may in the first instance appear to be cheaper but which, over the longer term, may not necessarily be in the public interest. Are you saying that that could not happen in the water sector?

Jim Conlin: We are considering the most sustainable solutions that it would be possible for us to introduce. Scottish Water is the only water authority in the United Kingdom that currently has sustainable urban drainage systems as part of its design manual. We are at the forefront of developing such systems, and we view them as linking in directly with the sustainable flood management requirements in the bill. We want to find the most sustainable solutions—not just to build bigger pipes and pumping stations. We believe that that fits with our duty to consider sustainable development as a whole.

10:15

Liam McArthur: But if, as you say, the work that you are undertaking on that within your remit is absolutely fine, why are we sitting here considering a bill to tighten it up further?

Jim Conlin: The bill promotes sustainable flood management, which we have not done in the past. I was saying that, as part of our contribution to the issue, we have been working on sustainable urban drainage systems anyway, within our own requirements. We have been moving forward on sustainable ways of dealing with drainage, which link in with the bill’s approach to sustainable flood management. The previous approach to flood defences was not a sustainable flood management approach.

Peter Peacock: Does Scottish Water ever find itself under pressure from the WIC to set a price that is less than it would like, notwithstanding the compatible duties between the two bodies? Alternatively, is the relationship entirely harmonious, in that Scottish Water always strikes an agreement in which exactly the right price is set for it to achieve what it wants? Does it find itself under cost pressure because of the WIC?

Geoff Aitkenhead: There are cost pressures, because we are asked in each regulatory period to deliver efficiencies at a defined level, both in the operating cost of Scottish Water and in the cost of delivering the capital programme. However, that is not played out at an individual project level, or even at a sub-programme level. The settlement is in the round, so we are allocated a certain sum of money to deliver the capital programme. In the current regulatory period, the estimated outturn cost is £2.5 billion over four years. Within that, the challenge is for Scottish Water to deliver all the regulatory outputs that ministers ask of us. There is—quite rightly—cost pressure for us to deliver
that capital programme in the most efficient way for our customers, and it is for us to determine at each individual project level the lowest whole-life cost to deliver the output.

**Peter Peacock:** Is it conceivable that seeking to meet those efficiency objectives might impinge on the sustainable nature of the delivery of the projects that you are working on in aggregate, or is that unlikely to happen?

**Geoff Aitkenhead:** It is for Scottish Water to be innovative in finding the right solution, while always keeping the sustainability agenda at the forefront of our thinking when we are examining our specifications and standards and our standard solutions. We need to keep searching for better ways of doing things, so that we achieve the required efficiencies but also deliver the required outputs and the objectives.

**Peter Peacock:** With regard to finance, you say in your submission that Scottish Water assumes that the extra costs that may well arise from the provisions of the bill and the direction of travel will be met “through customer charges”. Have you any indication of what the impact might be on customer charges, or has that not yet been assessed?

**Geoff Aitkenhead:** It is too early to say. At the moment, we are looking at the early stages of the bill’s implementation, which revolve around the modelling of the capacity of sewerage and drainage infrastructure. We will then move on to understand the capital investment that is necessary to put in place new flood management systems. Only when we reach that point can we assess the significant spend that we suspect might be required, and how that will affect customer pricing.

**Peter Peacock:** You also mention in your submission that a potential alternative to customer charges would be capital contributions from local authorities, if funding was channelled through those authorities. Would you prefer there to be a clear division between those two matters, and to deal with your costs through customer charges? Alternatively, are you hinting in your submission that you would like the local authorities to pick up the cost, whether or not that is through Government capital consents? Is it a mix of the two?

**Geoff Aitkenhead:** We have an open mind. As I said, we support the concept of working in collaboration with other parties to deliver the right answer for customers and the people of Scotland. Our suggestion was an attempt to address that question of alignment to funding. We are simply suggesting that the Scottish Water element is not large in a lot of the flood alleviation or prevention schemes that we have seen around Scotland in recent years. For example, Scottish Water’s component of the Water of Leith scheme was quite small. We are simply suggesting that the entire funding should sit with one body to deliver the whole project, which would make project management a lot easier and would align the funding.

**Peter Peacock:** Is this an issue that cannot be left for much longer? We have to come to a clear resolution in advance that it is going to be funded either by customer charges or by local authority capital, so that we never find ourselves in a position where we assume that we are going one way but someone else assumes that we are going another, and no one is responsible. Do we need absolute clarity?

**Geoff Aitkenhead:** We do.

**Peter Peacock:** I am not sure about the context of the bill, but do we need clarity as the bill goes through?

**Geoff Aitkenhead:** Yes, and we should bear in mind that there are time thresholds for regulatory periods. Scottish Water is now closing off the regulatory business plan for 2010 to 2014 so, four years from now, we will be closing off the business plan for 2014 to 2018. We have made provision in the 2010 to 2014 period for the studies that are required for work with the local authorities on the bill requirements. Therefore, for Q and S IV from 2014 onwards, we will need absolute clarity by 2011-12.

**Bill Wilson (West of Scotland) (SNP):** I have a short question. Previous witnesses have emphasised the importance of how the costs are calculated when working in sustainable development. Specifically, they have asked whether the costs are simply the costs of construction, or whether they take into account possible environmental and social advantages and disadvantages. Do you include social responsibility indices as part of your cost calculation, or is it a strictly financial calculation?

**Jim Conlin:** As we say in our submission, we think that the way to deal with that in a flooding context is through surface water management plans for the area in question. Such plans bring together all the partners and can be used to deal with a number of issues in addition to flooding, such as development, planning and habitats in green urban areas. All those issues can be co-ordinated and we can get extra advantages out of what we do to deal with sustainable flood management. Glasgow City Council, for example, is considering having green corridors through the city, and we are looking at working with the council to integrate its drainage system and our sewerage system in the green corridor. In that way, surface water could be dealt with sustainably, and it would add to the city’s environment.
Scottish Water should indicate that he wants to ask a supplementary question on the issue and then we need to move on a bit.

Bill Wilson: My question is more specific. Let us say that you have two options. Option A is a hard engineering option and option B is a slightly more complex sustainable engineering programme. There are two ways of estimating the cost difference between the two. One is simply to look at the finances and say, “It costs X to do this and Y to do that.” The other way is to say that there are additional costs that could be calculated—including sustainable responsibility indices, for example—and to include a cost estimate for environmental and social benefits and disbenefits. When you are estimating the costs of various options, are you looking at strictly the financial cost of putting that in place, or does your cost estimate include the social and environmental benefits and disbenefits?

Geoff Aitkenhead: No, we focus on the financial costs of constructing the solution, which would be the immediate capital cost, and the operating costs throughout the life of the asset.

Bill Wilson: Does that not mean that you will probably be slightly biased against more sustainable developments because they might cost more, even if their overall social benefits might be far greater than the financial cost of the development?

Geoff Aitkenhead: I think that that is right. However, I should point out that there are two stages. There is a need for cost benefit analysis at the point of defining the objectives for Scottish Water. We work with the drinking water quality regulator for Scotland and the Scottish Environment Protection Agency to debate priorities and needs but, in the end, they decide what advice to give ministers on the objectives that should be set for Scottish Water. That is the point at which the cost benefit analysis should be done, taking on board the factors to which Bill Wilson refers. Once the objective is set and the outputs that Scottish Water must deliver are clear, it is entirely right and proper for us to focus on achieving best value in delivering those outputs.

Bill Wilson: I ask Liam McArthur whether—

The Convener: Bill, do you want to ask a follow-up question? I am not entirely clear that that is an answer to the question that you asked.

Bill Wilson: I am not sure that it was. It was an interesting answer.

The Convener: It was an answer to a different question.

Scottish Water’s written submission talks a great deal about the importance of developing integrated surface water management plans with local authorities. Do you want to add to what you have said in your written submission, as you obviously feel strongly on the issue?

Jim Conlin: We feel that surface water management plans are the key to making the collaboration between all the authorities work. The plans can set out clearly who is responsible for what and can deal with how systems will be managed and operated. They can clearly align and highlight other benefits—that is the point that I wrongly made in answer to the first question. One issue with other benefits is that they tend to be the responsibilities of other authorities. We need a way in which all the authorities can come together and plan. We can deal with the sewerage infrastructure but, within the plans, we can take cognisance of issues such as councils’ requirements for green areas for amenity. We can work together so that we get, for want of a better expression, a bigger bang for our buck.

Geoff Aitkenhead: It is worth mentioning the carbon reduction challenge that we will all face in coming decades. To continue pumping and treating surface water as we do at present is not sustainable, so we must consider ways of managing surface water differently.

The Convener: Elaine Murray is interested in local authority responsibility, or otherwise.

Elaine Murray (Dumfries) (Lab): My question leads on from the need for integrated plans, which we have been talking about. Have you seen the letter from the Minister for Environment that proposes amendments at stage 2?

Jim Conlin: Yes.

Elaine Murray: The Government suggests certain ways in which it could clarify who is responsible for doing what. The letter states that the Government is considering imposing “an explicit duty on local authorities to prepare information on flood risk management infrastructure in their areas”, but that “would not overlap with the information Scottish Water are required to prepare under the Sewerage (Scotland) Act 1968”.

Should you or local authorities be responsible for the assessment of drainage infrastructure? Who should be responsible for sustainable urban drainage systems?

Geoff Aitkenhead: Scottish Water should provide the information on the capability of our assets. We hold records of all our sewerage assets on geographic information systems, which
we can and do share with other utilities and local authorities. We also have the capability to produce models of the hydraulic capacity of those systems. We therefore know about the flooding thresholds for those systems—the point at which they reach capacity. In the context of the bill, it is important that we share that information with local authorities and that we understand the totality of the flood risk management plan, the action plans at the area level and our part in improving the situation.

**Elaine Murray:** You have spoken about the need for integrated plans to address surface water management issues. What is your opinion of the proposed amendments in the ministerial letter? Are they adequate, or do you want amendments that relate more specifically to integrated plans?

**Jim Conlin:** We would like surface water management plans to be mentioned in the bill. That is our input.

**The Convener:** So you want them to be mentioned in the bill.

Rhoda Grant has questions about information release.

10:30

**Rhoda Grant (Highlands and Islands) (Lab):** The bill gives SEPA and other lead authorities powers to get information from others in order to carry out their duties. Evidence from Perth and Kinross Council shows that the level of information sharing at the moment might not be as good as it could be. The council noted that Scottish Water says that certain information is protected under data protection legislation. What information would you be able to share under the current data protection regime? Would the bill enable you to share relevant data?

**Geoff Aitkenhead:** The information that is deemed to be sensitive by United Kingdom Government security advisers to Scottish Water relates to drinking water provision and the exact locations and nature of the sources of drinking water. In the context of the bill, that leads us into the management of reservoirs and dams rather than the sewerage and drainage system, which we have been discussing this morning. The information on the sewer network that Scottish Water holds is not security sensitive and is shared with other utilities and local authorities.

**Rhoda Grant:** Why would it be a problem to share drinking water information with other authorities? We are talking about sharing it with people who have a duty to implement flood management procedures, such as Perth and Kinross Council, not making it public.

**Geoff Aitkenhead:** It depends on the nature of the information that we are talking about. In some cases, the issue comes down to what the Data Protection Act 1998 has to say about customer details that we hold. In other cases, it relates to the security and emergency measures directions from UK security advisers, which guide us on what we can and cannot divulge about drinking water systems.

**The Convener:** I take it that the concern is about people contaminating drinking water, which might become a problem if the places where the supplies emanate from were too widely known.

**Geoff Aitkenhead:** That is correct.

**Rhoda Grant:** Does the bill do enough to ensure that the relevant information can be shared, or will that be a problem?

**Geoff Aitkenhead:** The information that relates to flooding is adequately covered by the bill.

**Rhoda Grant:** But the bill covers reservoirs as well. Could information on reservoirs be shared under the bill?

**Geoff Aitkenhead:** That information can be shared with local authorities. The bill focuses on issues such as inundation mapping and the impacts of dam break. Across Scotland, we own just under 400 dams, just under 300 of which are in active use as water supply sources. We have only partial inundation mapping for those dams, but we share that information with all category 1 responders, in line with the Scottish emergency response procedures.

**The Convener:** Perth and Kinross Council says that it is often told that information that it requests from Scottish Water is protected under data protection legislation. From what you are saying this morning, however, it seems that that should not happen often. Clearly, certain people’s understanding about what can and cannot be released is different from yours. I accept the security point but, leaving it aside, are there other data protection issues that it would make sense to resolve?

**Jim Conlin:** I do not think so. We are not sure exactly what the problem with Perth and Kinross Council is. The only other issue that I can think of involves the provision of customer addresses in relation to sewer flooding. However, we can deal with that by issuing postcode information rather than house addresses. I am not sure what—

**The Convener:** I will ask our clerks to ask Perth and Kinross Council for examples of refusals and for information on their frequency. We will have to do that extremely quickly. The minute I get that information, I will ask the clerks to get back to you for a response. I would appreciate it if you responded quite quickly. We do not have a great deal of time.
Geoff Aitkenhead: Absolutely.

The Convener: If there is an issue, it would be good to resolve it at this stage.

Thank you for answering our questions. If there is anything further that you would like to raise with us, please do so in writing as quickly as possible.

With us on our next panel, which will focus on the planning authorities, are: Paul Frankland, the civil engineering design manager from Scottish Borders Council; Jim Moodie, the lead officer of the harbours, flood and coast division of Fife Council’s transportation services; and Gordon Watson, the director of planning for the Loch Lomond and the Trossachs National Park Authority.

We have received written evidence from the witnesses, so we will not have opening statements from them. We hope to finish this evidence-taking session by 11.40 at the latest, which gives us an hour.

Rhoda Grant: How do you think that flood risk management plans will interact with local development plans? Which will take precedence?

Gordon Watson (Loch Lomond and the Trossachs National Park Authority): Overall, they will interact in a beneficial way. Generally, we want local development plans across Scotland to be more proactive than previously, and to include sustainable economic development action plans and so on. We hope that that will apply equally to flood management. At the moment, people perhaps identify development opportunities and consider flood mitigation as opposed to flood management, but we hope that the new approach will enable local development plans to take on board physical flood management projects.

The Convener: Does anyone else have a view? I should note that, if one of you says something that you all agree with, you do not all have to repeat the point. If you agree, you need only say so; that way, we will not end up with three identical answers to every question.

Rhoda Grant asked whether you feel that flood risk management plans will interact with local development plans? Which will take precedence?

Paul Frankland (Scottish Borders Council): We feel that they should be on an equal footing, and that there should be a bit of give and take. In some cases, the development of a site will be so important that it will have to inform the flood risk management plan, and it should be allowed to go ahead, with resilience measures and so on being put in place. The flood risk management plan will usually inform the development plan, but in some instances the opposite will happen.

The Convener: For instance?

Paul Frankland: When the development of a site on a flood plain is believed to be of paramount importance to the economic development of a small town. We believe that discussions would be held around that.

The Convener: Right. Who would hold the jackets?

Paul Frankland: I do not know.

The Convener: Someone would have to hold the jackets during that discussion.

Paul Frankland: Perhaps it would be the councillors.

The Convener: You do not have a view on how the issue would be resolved, unless SEPA stepped in.

Paul Frankland: No.

The Convener: Do you have any view on how it could be resolved, Jim?

Jim Moodie (Fife Council): No.

John Scott: You listened to the Scottish Water representatives. Do you have any views on the development of surface water management plans, for example, which might help to resolve such issues?

Jim Moodie: Surface water management plans will contribute to future flood risk management, but we must bear in mind the fact that Scottish Water has inherited certain liabilities from previous water and drainage arrangements. Often when we enter into discussions with Scottish Water, our legal advisers advise us that we are transgressing the bounds of responsibility, because Scottish Water already has inherited liabilities for dealing with surface water within older towns and communities that have combined systems. In new developments, sustainable urban drainage and best management practice contribute to flood risk management, because we control the forward flow of water jointly.

Rhoda Grant: Is the bill sufficient to ensure that that happens? Do other powers need to be put into the bill to ensure that it happens?

Paul Frankland: I assume that you are talking about surface water management plans. I foresaw that those plans would play an inherent part in local flood risk management plans. Scottish Water is obviously keen to include them. I would think that the bill allows for that.

Rhoda Grant: We have heard evidence of an apparent gap in the bill, because there is no duty on local authorities to implement the management plans. We have also heard that there is a duty on local authorities to carry out everything that is
within their remit, and that including a specific duty in the bill would interfere with the way that they carry out their other works. If they had a duty to implement the management plans, doing so might be given a higher priority than their carrying out their education function, for instance. Is that right? How will local authorities react to the management plans and how will they carry out their functions? Will they have an action plan for delivery?

**Paul Frankland:** The duties that the bill places on us are quite big—a lot bigger than the duties under the Flood Prevention (Scotland) Act 1961. Given that our constituents are concerned about flooding, we will be looking to implement stuff in the local flood management plans as quickly as possible. We do not believe that a duty needs to be placed on us, for the very reason that you suggest: putting such a duty in the bill would place flooding issues on a higher level than education and other services that the council also has a general duty to provide. We are content that the bill is sufficient as it stands.

**Elaine Murray:** Should a duty be placed on other authorities, such as SEPA or the Scottish ministers, to ensure that the plans can be implemented?

**Paul Frankland:** I was under the impression that the general duty at the start of the bill places such a duty on SEPA, the Scottish ministers and Scottish Water. We all have a duty to reduce flood risk.

**Elaine Murray:** Does that duty include the duty to fund local authorities and other responsible authorities adequately to undertake such work?

**Paul Frankland:** It suggests that the Scottish ministers would have to ensure that funding was available to allow the work to be continued.

10:45

**Peter Peacock:** We have heard evidence about section 16, which places a duty on SEPA to consider “natural features”. There have been arguments that the bill should define natural flooding processes, as well as natural features. It has also been argued that, if SEPA’s assessment is at a national level, that is too high a level for the purposes of informing the local delivery arrangements and plans that will be required. Do you have a view on both or either of those points? Should the bill refer to natural processes as well as natural features? What is the right level at which natural features and/or processes should be examined and mapped in detail?

**Gordon Watson:** I agree with the point about processes, if you are referring to river meanders, the reconnection of rivers with natural flood plains and so on. That would mean reintroducing a process. Perhaps the introduction of the term “process” would be helpful, as it provides a broader definition of natural flood management.

The resolution at which SEPA examines things is a difficult issue. The higher the resolution at which matters are considered, the more onerous the task of identifying natural features. Inevitably, there will be localised opportunities to introduce natural flood management, which might be at a higher resolution than SEPA’s initial overview. I do not quite know the answer to that question, I am afraid.

**Paul Frankland:** I have no concern about the word changing from “features” to “processes”.

**Peter Peacock:** Or adding the word “processes”.

**Paul Frankland:** I have no concern about adding the word “processes” either. When SEPA prepares its district plans, people from local authorities and Scottish Water will be present, too: we will all hear the discussions. District plans will inform local plans. The natural processes will be considered down at the local level. We in local authorities will look for areas where we can do the things that SEPA identifies. The link will come through between the district and local plans. Our council is keen on natural flood management techniques, and will seek to incorporate them where possible.

**Peter Peacock:** Under the bill, will you actually be under a duty in that regard?

**Paul Frankland:** Yes. Under the general duties, we will have a duty to promote sustainable flood management, part of which will mean examining all possible toolkits to reduce flood risk, including natural processes.

**Peter Peacock:** There have been arguments that a presumption in favour of implementing natural flood management techniques should be in the bill. The Government is resisting that, but what is your opinion, from a local authority point of view, about a presumption in favour of at least considering natural flooding processes?

**Jim Moodie:** In my opinion, there should not be a presumption for natural flooding control. Any strategy worth its salt will include elements of both hard engineering and soft engineering, or what you are calling natural processes, so they are part of the overall process.

**Peter Peacock:** There is possibly a desire for a shift in that regard. I am not saying that you should not consider hard engineering but, before you consider it as part of a package, you could consider whether natural flood management techniques could assist by taking the peaks off floods and so on. There is a suggestion that you ought to pursue natural flood management first,
and then think about hard engineering, but you are opposed to being required to think about natural flood management first.

Jim Moodie: It should be included, but there should not be a presumption that it is the only way to address the problem.

Peter Peacock: I am trying to make the distinction—it is a different point—that the presumption would be that you would be required to consider natural flood management first. You might rule it out, but you would be required at least to consider it.

Jim Moodie: Yes.

Peter Peacock: You would not be unhappy about that.

Jim Moodie: No, I would not be unhappy about that.

Peter Peacock: But you would be unhappy if you were required to use natural flood management techniques irrespective of the evidence.

Jim Moodie: Yes.

The Convener: What do the other two witnesses think about that?

Gordon Watson: There are always dangers in being overprescriptive in primary legislation. Different planning areas have different characteristics, which inform different solutions. I assume that further documentation that flows from the bill will provide an imperative to consider natural solutions in preparing plans and to justify instances when they are not taken up.

From a national park point of view, we would very much like natural flood management opportunities to be taken up, but I am—naturally—cautious about prescribing that in primary legislation. Further down the line, there might be perfectly good reasons why a natural flood solution is not appropriate in a given situation.

The Convener: I think that you have misunderstood the point. The suggestion is not that we mandate the use of natural flood management regardless of whether that is the better system, but that we ensure that all planning authorities consider natural flood management as part of the process of deciding the best way forward.

Gordon Watson: I think that we all take it as read that natural flood management must be considered. I have no problem with stating that explicitly in the bill, if there is a desire for that.

Paul Frankland: As a general duty is placed on all responsible authorities to consider sustainable flood management, and as section 16 specifically mentions “natural features” and might be amended to include “natural processes”, I think that natural flood management is given quite a high priority in the bill as it stands.

John Scott: I have a question specifically on paragraph 1 of schedule 2, which states:

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

City of Edinburgh Council’s submission states:

“Paragraph 1 (d) (ii) needs to be clarified, as it would appear that everyone on the flood plain downstream of the operations should be notified.”

Do other local authorities share that view? If the paragraph needs to be clarified—I appreciate that none of the witnesses is from City of Edinburgh Council—what alterations should be made to it?

Jim Moodie: I have dealt with flood prevention schemes in Fife where we have had to notify all landowners and others who would be affected. Luckily, we had no further urban development downstream. In my opinion, if there is urban development downstream from where a flood prevention scheme is to be constructed, the individuals should be advised of the proposals.

John Scott: I suppose that I am trying to find out why City of Edinburgh Council has a difficulty with the provision. Perhaps you can help me in that regard. It seems perfectly reasonable that everyone downstream of a proposed flood protection scheme should expect to be notified. Why should City of Edinburgh Council have difficulty with that suggestion?

Jim Moodie: I think that people should be notified, because a flood protection scheme is liable to result in more water being passed forward than was the case, when the water might have gone on to a functional flood plain.

The Convener: Would you automatically notify people downstream in any case? Is that what you would do even now?

Jim Moodie: Yes, I would.

John Scott: So why should City of Edinburgh Council take exception to the idea? Perhaps the council does not take exception to it, but its submission suggests that the provision should be clarified.

The Convener: We cannot ask these witnesses why City of Edinburgh Council has taken that view. We can ask them only for their own view.

Paul Frankland: My view is no different from the view that Jim Moodie has expressed.

The Convener: Mr Watson?
Gordon Watson: As a park authority, we would only be a consultee on such schemes.

The Convener: Jim Moodie’s position is that he would notify people downstream as a matter of course anyway, but he cannot speak for City of Edinburgh Council on why that council should have a difficulty with the provision.

Jim Moodie: At a meeting with the bill team in Stirling on Wednesday, it was explained to us that, unlike under the 1961 act, the local authority will no longer need to provide packages of drawings and scheme details to the affected parties. Under the bill, the local authority will be required simply to issue a letter. Perhaps City of Edinburgh Council’s point is about the amount of information that must be issued.

The Convener: I cannot imagine that City of Edinburgh Council is arguing that more information should be included. For most councils, any provision that resulted in their being required to provide less information would be regarded as a move forward. City of Edinburgh Council’s submission is still a bit of a puzzle. We might need to chase that up as a matter of information.

Liam McArthur and Elaine Murray have questions on funding.

Liam McArthur: Mr Frankland touched on the issue of funding in response to an earlier question. Scottish Borders Council’s written submission was not alone in raising concern about the lack of a central mechanism for allocating funding for flood risk management schemes, particularly given the costs of some of those schemes. He also mentioned the potential risk of legal challenge in that regard. The park authority appears to have different concerns about the absence of a central funding pot. Can you develop some of your concerns about funding?

Paul Frankland: We raised the point that a major part of our general duty to reduce flood risk will be to install not just schemes but smaller works. Our concern is about what the legal position will be if the funding for that is not clear and transparent and we are unable to do as much as we would like. Our ultimate goal is for the funding arrangements to be as clear and transparent as they can be, so that we can all move forward.

Liam McArthur: We have heard much from Government ministers about the historic concordat and the de-ring fencing of certain pots of money. Are you saying that you do not support the de-ring fencing of flooding funds because of the implications for your ability to deliver sizeable schemes?

Paul Frankland: I am not sure what the best funding mechanism would be. As a local authority, we just want to ensure that we know that money is coming through to cover the commitments in our local plans.

Liam McArthur: The park authority had a separate concern.

Gordon Watson: We agree with our sister national park that other funding streams could be brought to bear on natural flood management. For example, the Scottish rural development programme and rural development contracts could be used to provide support to land managers who undertake works on their land. There could be a process of offering incentives in addition to funding significant schemes that councils will be involved in. The national parks could play a role in supporting the heightened emphasis on natural flood management. We support the point that the Cairngorms National Park Authority made.

Liam McArthur: We will have an opportunity shortly to ask the Association of British Insurers about its submission, in which it suggested that the use of multiple funding streams was a riskier approach to the delivery of sustainable flood management. In your view, will that risk increase the cost of delivering various schemes or will it mean that some schemes will not be delivered at all?

Jim Moodie: In my opinion, it will mean that many schemes will not be delivered at all, because the funding will be allocated to what councils consider to be other priorities. We face that issue at the moment. I am an engineer for a council, not a planner. Our budgets are defined by accountants and asset management people who are not directly affected by flood prevention issues or functions. They might have higher priorities, such as education or social work.

John Scott: On the balance of probabilities—

The Convener: Hang on, John. Elaine Murray still has a question to ask.

Elaine Murray: I think that you heard the evidence of Scottish Water’s representatives, who talked about the capital charging of local authorities. What is your view on that?

Jim Moodie: I am sorry, could you repeat that?

Elaine Murray: Scottish Water mentioned that funding could come from a system of capital charging local authorities. Do you have any concerns about that?

The Convener: We asked Scottish Water whether it would prefer to meet the cost of the proposals through customer charges or whether it would prefer to be given capital by local authorities. Do you have a view on that?

Paul Frankland: Yes. We would be slightly concerned if all the money were given to local
authorities, because we want Scottish Water to undertake the responsible authority role, to be a full part of the team and to take ownership and responsibility for works. Scottish Water would be better placed to do that if the money was given to it rather than to us.

**The Convener:** So you would rather not have the big cheque book.

**Paul Frankland:** No. It is true that in a large prevention scheme, Scottish Water’s involvement might not be that significant, but there will be many small areas that want to tackle flooding issues. I worry slightly that giving the funding to us might weaken the co-operation that we want to achieve. We would prefer the funding to be dealt with through Scottish Water.

**The Convener:** So you think that, psychologically, it would change the balance of power.

**Paul Frankland:** Yes.

**John Scott:** I am concerned about your concerns about the lack of funding and the other priorities for which you feel elected members might use the money, notwithstanding the fact that some of it is meant to be used for flood prevention schemes. Can you expand on that? You are almost saying that you had rather the money was not given to local authorities because—

**The Convener:** They cannot be trusted.

**John Scott:** I would not have put it so indelicately, convener, but, in essence, is that what you are saying?

**Jim Moodie:** I am saying that elected members will allocate funding to the projects that are of the greatest priority to them, and that flood management may not be one of them.

**Alasdair Morgan:** But it may be.

**Jim Moodie:** But it may be, yes.

**John Scott:** You are also concerned about possible legal challenges if flood management schemes are not implemented; you are concerned that councils would be liable. I suppose that that would all be part of the consideration.

**Jim Moodie:** It was explained to us that there is no duty on a local authority to implement flood prevention schemes. The power is, basically, permissive, so there should be no legal comeback if a scheme is not built, but the public would expect all the relevant stakeholders to address the issue.

**The Convener:** Let me put it in the plainest possible terms. Do you consider that funding for flood management should be explicitly excluded from the concordat and that it should be ring fenced?

**Jim Moodie:** I would agree with that entirely.

**Paul Frankland:** Our local administration is keen on flood prevention, so the moneys that it has allocated to flooding are reasonable.

**The Convener:** That is not what I asked.

**Rhoda Grant:** That was a diplomatic answer.

**Paul Frankland:** I am not sure which is the best way to go. I understand that, if the funding were ring fenced, it would be easier for people to see what was coming through.

**Alasdair Morgan:** Would your colleagues in other departments of the council say exactly the same thing about their particular budgets?

**The Convener:** There is a sucking of teeth from our witnesses, which sounds like welly boots.

**Alasdair Morgan:** If they do not want to answer, that is fine.

**Peter Peacock:** My question has partly been answered, but I want to pick up the point that Alasdair Morgan made. What distinguishes funding for flood management from other expenditure is the fact that it is ultimately about public health and safety. At least one of you has argued against there being an explicit duty to implement flood prevention schemes. As front-line delivery guys, you are both saying, “All we want is the cash.” Is there not a contradiction in that? Is it not the case that unless the bill contains a duty to implement flood prevention schemes there will be no guarantee that you will get the cash—for the reasons you have described?

**Paul Frankland:** As I understand it, the bill would place a duty on us to promote flood prevention schemes. It is no longer discretionary, as it was under the 1961 Act; I think that it has been cranked up and is now a true duty on us. That is one of the reasons why the 1961 act has been updated.

**Peter Peacock:** With respect, we have just heard that, at the briefing that you received last week, you were told that there is no duty on councils and that, therefore, there could not be a legal challenge. You are saying that there is a duty on you to promote—

**Paul Frankland:** Flood risk management.

**Peter Peacock:** But that once you have promoted it there is no duty on you to implement any schemes; you will draft schemes and I am sure that your councils will want to implement them, but there is no legal requirement to implement them at a certain point.
Paul Frankland: That is not what I understood from the presentation on Wednesday. It depends on your definition of the general duty to reduce flood risk.

The Convener: There is obviously an issue about what exactly the position is. We need to pursue that.

Elaine Murray: The bill will not be fully implemented until 2015. Fife Council has raised concerns about the interim arrangements and how flood prevention schemes will be funded until then. Do you have anything to say about that?

Jim Moodie: There seemed to be a gap in the bill; it looked as though the 1961 act was to be repealed and that there were to be no proposals for what is to happen in the interim in respect of watercourse assessments, watercourse maintenance and biennial flood prevention reports. We wondered whether the work that we do at the moment is supposed just to stop and then start again in eight or nine years’ time, but I am advised by the bill team that it is considering introducing a new section to deal with the carrying out of water course assessments. My understanding of a water course assessment is that it should identify immediate flood risks and debris collection points that could cause flooding.

The Convener: Mr Frankland, are the interim arrangements a concern for your council?

Jim Moodie: They are a concern because there is nothing in the bill to say that councils have to do anything until the management plans are in place.

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

The Convener: It is not an issue for you.

Gordon Watson: This is a technical point. We know from our work with local authorities that they are gearing up for the bill and that they will not suddenly stop doing the work that they do. Perhaps the point can be picked up in the final draft.

The Convener: We will need to pursue the interim arrangements with ministers.

Elaine Murray wants to ask about the reclamation of costs.

Elaine Murray: Flooding sometimes occurs because private landowners have not undertaken the work that they ought to do to keep water courses clear. It has been suggested that local authorities should be able to go in and do the work and reclaim the costs from the landowner, but there is no provision for that in the bill. How much detail should the bill contain on local authorities’ ability to reclaim the costs of work that requires to be done to prevent flooding from private land? Has that been an issue for flood risk management in the past?

Jim Moodie: The bill contains a mechanism to allow local authorities to recover costs when the repairs are due to damage or reinstatement of flood prevention works, but there is no mechanism to allow the authority to be reimbursed for work to clear from private land debris such as fallen trees or timber. There are instances of landowners walking away when they find that they cannot develop land because it is on a flood plain. Under the 1997 amendment to the 1961 act, the local authority has a duty to go in and clear out the water courses, which often costs thousands of pounds—it is not just a £500 job to remove some debris from a burn.

In our written submission, we express hope that the committee will get into the bill a mechanism that will give councils at least a chance of recouping some costs when they deal with private landowners.

Paul Frankland: We have not experienced a big problem with that. I support the idea, but the trouble is that we would have to show that there was negligence on the part of the landowner, and I worry that that might not be possible legally. I return to my comment that it would be useful if the bill contained a statement that landowners have a responsibility, so that when we speak to them we can explain that they should be doing something. We might never be able to get any money from them, but that would at least show them that they have a responsibility, as do property owners.

Gordon Watson: I suppose that, as in the planning system, that sort of action is the point of last resort. Perhaps there is scope for the bill to set the scene for the use of other mechanisms, such as discussion and persuasion. It is difficult in planning, never mind in flood risk management, to carry out work directly and then recoup the costs.

The Convener: Let us move on to drainage.

Alasdair Morgan: Officials who were before us last month said that they are thinking of giving Scottish Water a duty to assess infrastructure drainage, yet the Minister for Environment’s letter on possible amendments suggests that at least part of the duty will be placed on local authorities, so it seems that there is some uncertainty. Where should responsibility for the assessment of infrastructure drainage lie—with Scottish Water, with local authorities, or with both?

Paul Frankland: It would be shared. If Scottish Borders Council was preparing a local flood risk management plan, Scottish Water would be sitting round the table too. We would bring all our information, it would bring all the plans and information that it has, including information on its...
sewer network, and, ultimately, as lead authority, we would have to pull it all together.

Alasdair Morgan: So the assessment would be your responsibility, but Scottish Water would have to provide you with information?

Paul Frankland: Yes.

The Convener: You will have heard the exchanges about Perth and Kinross Council’s concern that it does not always receive information from Scottish Water, which has quoted data protection issues. Have you come across similar issues in Fife or the Borders?

Paul Frankland: No.

Jim Moodie: In Fife we have.

The Convener: Does it happen often or only infrequently?

Jim Moodie: Fairly infrequently. I can clarify one point that Scottish Water made about the source of water supplies. Councils already deal with the Reservoirs Act 1975, so they know where the reservoirs and water supplies are.

The Convener: I think we all know where the reservoirs are.

Alasdair Morgan: What kind of information would Scottish Water not give you? Can you give us an example?

Paul Frankland: I wonder whether it is the inundation maps that show which properties and areas would be at serious risk if a reservoir were breached.

The Convener: Perth and Kinross Council did not elaborate. We will follow that point up. I was just curious to know whether the two local authorities that you represent have come across similar issues. There has obviously been a similar issue in Fife from time to time.

Jim Moodie: We have issues with when Scottish Water terms a drainage system a water course. A water course does not fall under Scottish Water’s responsibility; it is referred to the local council as a natural water course.

The Convener: What would the data protection issues be for Scottish Water?

Jim Moodie: I do not think that it is a data protection issue; it is just a lack of provision of information.

The Convener: You are saying that information from Scottish Water is not always forthcoming.

Jim Moodie: Yes.

John Scott: I have a question about SUDS. You represent other councils, but North Lanarkshire Council raised the issue of who will maintain SUDS that are not adopted by Scottish Water. Similarly, the Society of Chief Officers of Transportation in Scotland stated in its submission that clarification about the adoption and maintenance of SUDS is required in the bill. Does the bill adequately address the adoption and maintenance of SUDS so that it is clear who has responsibility for them in all circumstances? There appear to be some question marks about that.

Jim Moodie: In my opinion, the bill does not clarify who is responsible for SUDS. Scottish Water has introduced a second edition of the “Sewers for Scotland” documentation and design manual. It restricts SUDS to only a couple of things, such as detention basins and attenuation ponds, and excludes all the other facilities, such as swales and filtration trenches.

Since 1997, best management practice on SUDS has been used in various areas in Scotland to allow development so that we can reduce flood risk, but there is still a question mark over who will adopt all the SUDS features in places other than where a council has already put in place a system in which a factor looks after, for example, an attenuation pond or a detention basin. Many are not covered by a maintenance agreement.

John Scott: So in your view there is an omission?

Jim Moodie: It is not an omission; it is a sidestep by Scottish Water to avoid taking on responsibility for SUDS.

John Scott: What should be done to address that? Are you saying that Scottish Water should be made to address it and presumably, in fairness, be given the funding to do so?

Jim Moodie: Yes.

The Convener: Mr Frankland?

Paul Frankland: I do not deal with the SUDS side of things, so I do not have anything to add.

Gordon Watson: I concur that it is an issue from a planning point of view. We require schemes with such elements to them more and more, and if only parts are being adopted, particularly considering that we are encouraging more swales and so on, the system will—

11:15

The Convener: Can you tell us what a swale is?

Gordon Watson: A swale is part of the attenuation within a scheme. A SUDS scheme might include wetland swales where water is slowed down and held—

The Convener: That still does not tell us what a swale is.
Paul Frankland: It is a nice-looking ditch.

John Scott: It is also a breed of sheep.

The Convener: Let us not get into sheep. I just want to know that it is a ditch and not something more exotic.

Jim Moodie: It is a depression in which grass is allowed to grow. As the water percolates through the grass, it takes out the heavy metals and—

The Convener: So it is a camouflaged ditch.

Jim Moodie: No. It is just a slight depression.

The Convener: So it is something that people crossing a field break their ankles in if they do not know it is there.

John Scott: Well, thank you for that.

The Convener: We have our explanation. We will move on with Elaine Murray, who obviously wants to talk about cross-border issues.

Elaine Murray: This question is more for the representative from Scottish Borders Council than the other witness. In its submission, the Macaulay Land Use Research Institute has suggested that in the implementation of the Water Environment and Water Services (Scotland) Act 2003 certain river basin management planning issues have arisen as a result of the different ways in which data are collected across the border, the different regulatory frameworks and so on. Do you agree with that view, Mr Frankland? If so, do you think that similar implementation problems will arise with cross-border flood management planning? Have you had any preliminary discussions about joint responsibilities with authorities on the other side of the border?

Paul Frankland: The Scottish Borders area is covered by what is called the Tweed catchment plan, which has been put together by an organisation called the Tweed Forum. The forum, which pulls together representatives from both sides of the border, has tried to tackle issues such as controlled activities regulations licences on one side of the river and the other. There are slight difficulties, but we are trying to resolve them and ensure that both sides understand that flexibility is needed in the area adjacent to that particular boundary.

Elaine Murray: Could some of the WEWS act implementation work that you have done be translated into this area, to solve some of the problems?

Paul Frankland: I think so. We and the Tweed Forum have been trying to manage those issues and ensure that things work smoothly.

John Scott: This might also be an issue for us, but do you know whether sufficient funding for schemes is likely to be available on the other side of the border? After all, it would be a shame if you could fund a scheme and authorities south of the border could not.

Paul Frankland: Given that not too many schemes are right next to larger schemes, I hope that the issue will not crop up. I do not know anything about funding south of the border.

The Convener: Bill Wilson has some questions on coastal flooding.

Bill Wilson: In previous evidence, Scottish Environment LINK suggested that much more consideration must be given to how we work with coastal processes to protect people and reduce flood risk. Given global warming and a predicted sea level rise of between 50cm and 5m, do you think that the bill needs to be more specific about coastal provision? With regard to developments near the coast, is there any particular height above sea level above which you would generally allow development or below which you would generally be disinclined to allow development?

The Convener: I think that Fife Council has the longest coast.

Jim Moodie: Scottish Government guidance notes suggest that a coastal flood risk assessment be carried out for any development built below a 5m contour line around the coast but, because of the variable exposure on its coastline, Fife has stipulated that, for any development below 6m, developers must produce coastal flood risk management plans.

Even before climate change and the possibility of a rise in sea level, Fife’s policy was that sea walls should allow for a 350mm rise in sea level. As a result, we already have mechanisms for triggering requests for coastal flood risk reports to allow certain developments to proceed.

Bill Wilson: Do the other witnesses wish to comment?

Paul Frankland: As I do not have that much to do with coastal matters, I will let Jim Moodie respond to that question.

John Scott: Will the bill meet the potential threat of coastal inundation?

Jim Moodie: Yes. The bill includes provisions for coastal flooding but not for coastal erosion, which is covered by the Coast Protection Act 1949. They are separate issues.

John Scott: And where the two overlap, if erosion causes flooding—

Jim Moodie: That is called coastal defence.

John Scott: Is there further legislation that deals with that?
Jim Moodie: No. In the past, under the 1949 act, we received only 45 per cent grant funding. Under the Flood Prevention (Scotland) Act 1961, we were allowed 50 per cent funding. Whether you got the maximum funding would be determined by which act you followed and the scheme that you used to tackle the issue.

John Scott: Are you content that the bill is adequate to provide coastal protection?

Jim Moodie: I accept that the bill is adequate to deal with coastal flooding.

Liam McArthur: This may not be so much of an issue in Fife, but there is some concern about the lack of detail about tidal flows in and around parts of Orkney, which has a very real bearing on coastal flood risk. Is the nature of the Fife coastline such that the level of detail that you have on tidal flow and therefore risk is adequate, or does there need to be a requirement on SEPA to delve a bit deeper to provide a more accurate analysis of what will happen in specific locations?

Jim Moodie: It is my understanding that under the Marine and Coastal Access Bill, requirements will be placed on SEPA and other organisations to come up with data regarding coastal processes. That would affect the amount of information that is available to local authorities and developers. The marine bill will provide a sort of one-stop licence shop for someone who wants to develop something. I believe that SEPA is also carrying out an exercise to provide a coastal flood warning information system.

Bill Wilson: When we took evidence before the bill was published, the committee visited various sites. At one point we were shown a coastal housing development that was not 1m above sea level. Fife may have a different attitude from other councils. Some councils are allowing developments on the coast at well below 1m above sea level. In the light of that, should we consider global warming and sea level rises in flood planning—at least in the maps—or are you saying that that is not necessary?

Jim Moodie: It may be necessary if you are talking about a global or corporate response throughout Scotland to put something in the bill. I was speaking from a Fife perspective.

Bill Wilson: I did not mean a global response. If I understand it correctly, Fife’s approach is not to build below 5m above sea level unless there are unusual circumstances, but that does not appear to be the practice of all councils, which suggests that the measures that you are talking about may be interpreted differently by different councils. If that is the case, there might be value in recognising in the flooding bill—and therefore in the flooding maps—the likely effects of sea level rises on developments.

Jim Moodie: I agree, but it would appear that the council that you are talking about is not complying with Scottish planning policy 7 on flooding, or with the national planning policy guideline on flooding, which states the 5m contour level. That requirement is already in the policy documents.

The Convener: Thank you. That is helpful. Bill Wilson wanted to ask about reservoirs.

Bill Wilson: The bill transfers responsibility for reservoirs from local authorities to SEPA and sets out transitional arrangements. Are you comfortable with the arrangements as set out in the bill?

Jim Moodie: Fife Council has no problem with the transfer of reservoir information to SEPA. As far as I am aware, there is no transitional arrangement in place at the moment to suggest how that information is to be transferred between one authority and the other.

At the meeting that I attended in Stirling on Monday, I was advised that transferring the information might take two or three years, but that should be relatively simple for my council, because everything on the public registers and databases on reservoirs will just be transferred to SEPA.

Bill Wilson: If the task would be fairly straightforward for your council, but other local authorities need two to three years, what are they missing?

Jim Moodie: I am sorry—it was the bill team who advised local authorities that it might be two to three years before the whole transfer takes place, because a transition will have to occur.

The Convener: I do not understand why passing over information should take so long. It is obvious that you assume that we know about a bit in the middle that we do not know about.

Paul Frankland: Perhaps I can help. I took notes at the meeting. The suggestion was that the work would take 18 months because the flood and water act down south will drastically change reservoir regulations, so the intention is to wait for that to be implemented before transferring responsibility for reservoirs from local authorities to SEPA.

The Convener: So the delay in transferring responsibility will be the result of waiting for legislation at Westminster?

Paul Frankland: Yes—I hope that I got the name of the legislation right. The title “flood and water act” was used. If that is an act, I presume that it is going round down south. Given that, it was felt that waiting was better.
The Convener: I presume that information can still be passed over in anticipation of implementation of that act.

Jim Moodie: I presume so.

The Convener: That would minimise the time that is taken. Has that process begun?

Jim Moodie: It has not begun, because I am not aware that the relevant legislation has been enacted yet.

The Convener: So everybody just sits about and waits.

Paul Frankland: No—local authorities continue to be responsible for reservoirs until the bill comes into force.

The Convener: I appreciate that, but responsibility and information are two different things.

Bill Wilson: Do local authorities think that they can pass over the information very quickly? When the bill changes who is responsible and you have to transfer responsibility, will you be able immediately to pass over the information and any expertise that is required? You imply that no lead-in time is required for the transfer.

Paul Frankland: No—some time is always required for a transfer. Under the Reservoirs Act 1975, the undertakers perform more complicated tasks with reservoirs and local authorities just ensure that they are doing their job. Our role is more to do with administration, which is what SEPA will do when it takes over that role. We will pass across all the information that we have.

The Convener: That can be done easily?

Paul Frankland: Yes—I think that that can be done fairly easily, although not instantly.

Bill Wilson: I presume that some people have the expertise to take an overview of the undertakers and that that expertise will remain with local authorities. Is that expertise easily transferred?

Jim Moodie: The enforcement authority is required to ensure that any measures that are identified in the interests of health and safety and public safety are taken. The 1975 act provided for panel engineers of different degrees and qualifications under the Institution of Civil Engineers, who do all the supervisory inspections and 10-year inspections. As Paul Frankland said, local authorities perform an administrative function rather than an engineering function.

Bill Wilson: Those engineers are contracted temporarily, so they are available?

Jim Moodie: They are consultant engineers from private companies.

The Convener: Has Bill Wilson covered all his reservoir issues?

Bill Wilson: I think so.

The Convener: That is the end of the panel’s session, for which I have no doubt you are grateful. I leave it to you to return to your elected members and explain some of the positions. I thank you for coming along. You are of course welcome to stay to listen to the evidence from insurers.

While the witnesses on the third panel, who represent the Association of British Insurers, take their seats, I advise the committee that we will ask the Scottish Parliament information centre to examine the differentiation between coastal erosion and coastal inundation and some of the bits and pieces of the legislation that is involved. I will also ask SPICe to chase up the Westminster legislation that has suddenly appeared on the horizon, so that we can understand the issues in relation to reservoirs a bit more clearly.

11:30

Rhoda Grant: It would be useful to pick up on expertise on that legislation.

The Convener: Yes. It is the first time that we have heard of it.

From the Association of British Insurers, we welcome Justin Jacobs, who is the assistant director of property, liability and motor, and Arthur Philp, who is the policy adviser on floods. We have received your written evidence so we will not have opening statements but will move straight to questions. I advise committee members and the witnesses that we have allocated about 35 minutes to this session. If we finish earlier, you will get an early lunch.

Liam McArthur: The witnesses may have seen the evidence from the session that the committee held with Government officials last month. I asked them about concerns that you had raised in your written evidence. You were concerned about the alignment of the different funding streams and planning horizons, and you suggested that flood risk could be better managed if funds for flood risk management were separately identified and then ring fenced. We heard echoes of those views from the council witnesses on the previous panel. Will you elaborate on the nature of the risk? How would an increased risk play out in terms of costs to individuals, businesses, communities and councils?

Justin Jacobs (Association of British Insurers): First of all, thank you for asking us here to give evidence.
For us, two different funding issues arise: the first relates to willingness and the second to ability. As the committee heard in evidence earlier this morning, the fact that money is no longer ring fenced means that, depending on the particular pressures on them, some councils may be willing to spend even more on flood measures than they would have spent before, especially if there has been a recent flood and flooding is an issue that grabs the electorate’s attention. However, other councils may feel that flood measures are less of a priority, especially if there has not been a recent flood.

What distinguishes flood expenditure from health or education expenditure is that the up-front cost is real but the payback period has a very long time horizon. People may therefore feel that the expenditure is less worth while and can be put off. Education and health expenditure, on the other hand, is real and immediate, and people feel that it is more worth while and that the payback is quicker.

The second funding issue is the ability to invest the necessary amounts, and that issue can be further split into two bits. The first is that a project might be of such national importance that it would not be reasonable or appropriate to expect one affected local authority to fund it. In the committee’s inquiry into flooding and flood management earlier in the year, the possibility was raised of having a national pot for significant projects.

The second bit is that different funding mechanisms may not be sufficiently aligned. You heard this morning from Scottish Water that its funding cycle is very different from a local authority funding cycle. If efforts at joint planning were made, Scottish Water might say, “We agree with you but we don’t have the money just now. We’ll have to wait for the next business cycle.” That might be four or six years away, which would prevent any sort of co-ordinated and managed programme that the Government had in mind.

Justin Jacobs: Among the witnesses on the previous panel, there seemed to be some debate over whether councils would be susceptible to a legal challenge. You have described a higher risk in the approach that is being adopted and, in the insurance business, higher risk inevitably entails higher cost. How does that affect the way in which the ABI’s members approach specific projects, and how does it affect the cost that they will pass on?

Liam McArthur: Among the witnesses on the previous panel, there seemed to be some debate over whether councils would be susceptible to a legal challenge. You have described a higher risk in the approach that is being adopted and, in the insurance business, higher risk inevitably entails higher cost. How does that affect the way in which the ABI’s members approach specific projects, and how does it affect the cost that they will pass on?

Justin Jacobs: We want to ensure that the industry can offer affordable flood insurance to all our customers who want it. The key to that is the information on flood risk that, primarily, we receive from the Scottish Environment Protection Agency. That information allows us to understand the flood risk and therefore calculate the premiums to cover the risk.

I will try to put the figures in context. If there is a one-in-100-year risk—that is one of the measures that SEPA uses—and if the average flood claim is £30,000, an insurer would have to charge a premium of £300 a year for flood insurance. However, average premiums for home insurance are only around that level—and they also cover theft, fire and many other risks. The challenge is to ensure that we can continue to offer such affordable insurance. The sooner flood projects happen and flood risk is managed, the easier it will be for us to offer more affordable insurance.

Liam McArthur: In your view, is the bigger challenge ring fencing or specifically dedicating funds, or getting better alignment of the horizons in the overarching strategy?

Justin Jacobs: It is a bit of both. We need to ensure that the money that would have been put aside for flood prevention measures is still spent on those. Ring fencing may be necessary—we listened to the earlier debate on the issue with interest. If the legal duty is sufficiently clear, it may not be necessary to ring fence the money, because the legal obligation on authorities to put in place flood prevention measures is so strong that they do that anyway.

The bill does not address the challenge of ensuring that different funding sources are aligned. To deal with the fact that individual funding cycles are slightly out of sync, we need a longer-term strategy that allows us to plan funding 10 years in advance.

Liam McArthur: You heard in the previous exchanges that there is some confusion about the presumption in favour of natural defences for which the committee pressed in its inquiry into flooding and flood management. In your view, would such a presumption present a lower or a higher risk? Would it make a great deal of difference?

Justin Jacobs: I understand that it would make no difference, as the committee’s view is merely that authorities should consider natural defences, before adopting the best solution. That is a sensible approach. We do not favour one form of flood defence over another. The key issues for us are residual risk and the risk of flood defences failing. As long as those issues are addressed, from a narrow risk perspective it makes no difference to us what form of defence is used.

Funding and resourcing are a key challenge for the Government, SEPA and local authorities. The measures that we are talking about are challenging, so the right expertise, skills and resources are required to implement them.
Alasdair Morgan: Do you have any evidence that the removal of ring fencing will reduce the amount that is spent on flood prevention? Is there not a danger that ring fencing will set an upper limit on spending and lead local authorities to spend only what has been allocated to them, instead of going beyond that? Is the real problem not the allocation of funding by central Government? You have spoken about the pressures that exist and the fact that there is a long lead time before benefits are seen, but does that not apply to the allocation of funding by central Government in the first place?

Justin Jacobs: Yes. The issue is how we ensure that the right amount is allocated. Ring fencing is one way of doing that; the other is to ensure that legal responsibilities are sufficiently tight, as I mentioned. We are cognisant of the fact that flood risk is not brilliantly well understood by the public at large and we think that everyone—including the insurance industry—needs to do more to explain it. At the moment, people do not see it as a real risk unless they have experienced a flood recently, so there is not the same demand for expenditure on flood prevention as there is in areas such as health and education. That is why we are worried that its priority will slip.

Alasdair Morgan: Presumably you adjust your premiums in areas where is a flood risk. Is there not a mechanism for demand for flood prevention measures to express itself via the electorate?

Justin Jacobs: There is, but at the moment premiums are sufficiently low, thankfully, that insurers raising them by £20 or £30 would not change the equation tremendously.

Alasdair Morgan: I did not think that mine was low, but there you go.

Peter Peacock: In recent years, the effects of climate change have started to become apparent—there were big floods in England last year. Essentially, a deal has been done between the insurance industry and Government, the basis of which is that you will keep insuring if Government keeps investing. There will always be arguments about the quantity of investment.

What you have said so far has been illuminating. Would the potential for the deal that you have to maintain or strike over time with the Scottish Government be strengthened if the duty on local authorities to implement designed schemes was clarified? Would that clarification help to cement the deal or have no impact on it? Would it give you more reassurance?

Justin Jacobs: We are in the final stages of discussing a specific agreement on flood insurance with the Scottish Government. I hope that we will be able to finalise that agreement over the next week perhaps and send information about it to the committee.

A key aspect for us is having a long-term strategy and long-term thinking. I will put in context why we talk about the long term. We know that climate change will affect Scotland within a decade or two or three decades. Next year, the United Kingdom climate impacts programme will publish the latest research on how climate change will affect Scotland and the rest of the UK; we know that it will have a significant effect. Obviously, there are continuing urbanisation processes, which mean that there are more people in the cities. That presents different sorts of flood risks. There are also demographic changes; the existence of more single-person households has an impact on flood risks. We should consider all the things that are happening, look 20 to 30 years ahead, and ask how flood risks in Scotland will change. We need to consider all sorts of flooding—that has been touched on. We must consider not only traditional river flood risks, but coastal and surface water flooding, and how things will change over that period. We need to ask what the country, local authorities, Scottish Water and so on can afford to defend, and whether every person, asset, home and business can be defended. Can 99 per cent or whatever of people, assets, homes or businesses be defended? We should have a target or ambition over that time horizon, particularly if there are areas that cannot be defended. Everyone could then work together to help the people in those areas in an appropriate way.

If we have a long-term vision, funding issues will come into play and they can be resolved, because people will be able to plan over the timescale and ensure that everyone sequences plans. The Government has said to the Association of British Insurers and, I think, in evidence to the committee that the six-year plans that the bill mentions are intended to consider the much longer term and to include specific details for the six years. If that is the case, we are reassured that there will be long-term thinking, but it would be great to see such thinking enshrined in the bill.

Peter Peacock: Let us consider that longer-term concept and the practical reality. Would it help your perspective on the problem and your financial investment in dealing with the issue, which is huge, if, for example, SEPA was under a duty to have a longer-term horizon and had to begin to put investment towards that? It is probably technically difficult to bind ministers to particular financial decisions at any point in time, but it would be possible to bind SEPA to having a view on investment needs. One can argue about that. Would such an approach give you greater reassurance that the deal that you have struck can continue?

Justin Jacobs: I think that it would. The more we can ensure that there will be longer-term
Generally, we welcome flood insurance. They are heading in the right direction or do they cover exactly what you want? The Convener: I return to a point that the committee discussed with Scottish Water. The key issue will be how different funding streams are aligned so that they can be synchronised and we do not end up with a period of inactivity because one funding stream is out of sync and is not available to release funds.

Peter Peacock: Okay.

Secondly, I want to return to the extent to which a local authority will be under a duty to implement the plans that have been created. Local authorities will be under a duty to help to create the plans, but if they did not implement them and flooding occurred, would they have an increased risk of being legally pursued and sued?

Justin Jacobs: Yes.

Peter Peacock: I have questions on two specific matters. First, you touched on surface water management. The Government has set out stage 2 amendments in a letter. I presume that you have seen them.

Justin Jacobs: I completely agree with that but, given that the world is not always like that, will the bill result in an increased risk of councils being sued if they do not implement all aspects of the agreed plan and things go wrong?

Justin Jacobs: It is a statement of fact that the clearer a legal responsibility is, the clearer the potential liability is if the responsibility is not carried out.

The Convener: Liam McArthur has questions about coastal flood risk.

Liam McArthur: Colleagues will probably come in with more substantive questions. One concern for me in the Orkney context, which is probably reflected elsewhere, is that the information on tidal flows and, therefore, on the risk and impact of coastal flooding, is perhaps not as sophisticated or as detailed as it might be. Obviously, insurers need to factor in that information in assessing risk and setting premiums. Have you expressed that concern to the Government or SEPA? Should the information be tightened up?

Justin Jacobs: The general point is that the more uncertainty and potential risk there is, inevitably, the higher the premium will be. It is difficult to know the risk, so we have to set prices on that basis. We are reasonably confident that the provisions on starting to map out the risk in more detail will help to clarify the situation. The issue for us will then be how we can access that information in a way that will allow us to reflect it in premiums.

Liam McArthur: In my local experience, the ABI has been more comfortable than SEPA has with assessments of risks to development in particular areas. Do you have access to information and intelligence on flood risk to which SEPA does not have access? If so, could you helpfully share that information with SEPA?

Justin Jacobs: We do not have access to better flood risk information. Individual insurers have their flood claims data, which may provide them with additional experience on which to base their rates. We have said to SEPA and other bodies in the UK that we are happy discuss whether we could usefully share data with them to inform their understanding of flood risk. There may be the usual practical or legal hurdles to that, but we want to have those discussions and would enter them in a positive frame of mind.

Liam McArthur: That is very helpful.

John Scott: On dissemination of information to your customers, your written submission raises concerns about SEPA passing on flood risk warnings. Will you discuss that and say what you think could be done to improve that?

Justin Jacobs: Generally, we welcome flood warning measures because they help people to prepare and to take last-minute measures to protect themselves and their homes. Some insurers are beginning to be proactive on that. If they know that a major flood is coming and their customers will be affected, they make outbound calls to warn them. The companies play a role in providing advice about personal safety and how to protect valuables. However, I do not think that we have any concerns about SEPA doing that.

Arthur Philp (Association of British Insurers): No—we do not.
The Convener: Do you ask your members to ensure that they provide practical information to customers who live in areas where there have been flooding issues, or is that left to the individual companies?

Justin Jacobs: It is more the latter. It is not our role to tell members to do that. However, it is in insurers’ interests to ensure that customers who are at risk know what to do if that risk becomes a reality. When I got my home insurance recently, I received a leaflet telling me that the area has a high incidence of theft and setting out some measures that I could take. Similarly, if I was in a flood risk area, I might get a leaflet with five basic points to think about.

John Scott: The Scottish Government officials do not tell SEPA how that should be done, nor does the bill prescribe how it should be done. Are you none the less confident that SEPA will—whether out of the goodness of its heart or in the spirit of good practice—adequately disseminate the information to people who are likely to be flooded?

Justin Jacobs: I think that I misunderstood your previous question slightly. I thought that you were talking about when a flood is imminent.

John Scott: I was, but I suppose both—

The Convener: I am curious about both circumstances. When a flood is imminent, it might be too late to put in place some measures. However, such measures could be put in place in advance of an imminent flood in an area that has had issues with flooding before. There are two separate sets of advice: emergency advice and longer-standing advice.

Justin Jacobs: Increasingly, insurers issue both sets of advice but—as I said—I do not think that flood risk is sufficiently understood. We should explore further any ways in which SEPA could raise awareness of flood risk with our members: making that requirement for SEPA clear in the bill would be worth while.

Bill Wilson: On coastal flooding, are insurance premiums being affected by the debate over global warming? If so, how?

Justin Jacobs: That is a trend that is likely to develop, unless some of the impacts of global warming are managed effectively. Insurance works primarily on an annual contract basis. Therefore, the risk that might be present in 20 years will not necessarily affect the price today. However, we are worried about what will happen in 20 years if that risk is not managed. We do not want to be able to offer only prohibitively expensive insurance in 20 years, which is why we are doing a lot of work on the impact of climate change.

Bill Wilson: Is it likely that you might issue a warning to customers that you might not insure them five or 10 years down the line?

Justin Jacobs: We want to ensure that we never have to say that. That is part of the agreement on flooding that we are discussing with the Scottish Government. The Scottish Government is the first in the UK to consult on a climate change adaptation strategy, which we support. The idea of long-term strategies applies not only to flood risk, but to the other impacts of climate change.

The Convener: We have before us a petition that suggests that SPP7 is not being followed by some councils. As it happens, Jim Moodie from Fife Council clearly stated earlier in evidence that, if building is happening within a 5m above sea level contour line around the coast, that means that there must be councils that are simply ignoring the guidance, which substantiates the petitioner’s view to an extent.

The Government has said that, in the light of the Flood Risk Management (Scotland) Bill, it will revise SPP7 and that, because of the problems we have talked about today, it will introduce further legislation in respect of planning processes. It does not have a timescale for that work, but it has made it clear that it does not think that it would be appropriate to use the bill as a vehicle for those changes.

Do you have concerns about whether the planning process will take flood risk into account in advance of any future legislative changes, or is that not something that has been a big issue for you?

Justin Jacobs: We think that SPP7 provides quite robust and tight planning guidance in relation to flood risk, so we are supportive of it. If it is not being followed, that is a concern, but we are not aware of that.

The Convener: You are not conscious that problems are arising because people are blatantly ignoring SPP7.

Justin Jacobs: That is not an issue that we are aware of.

Liam McArthur: I can offer a specific example of something that might be a problem. The local council in my constituency did not accept the recommendations of SEPA with regard to a particular development, and the matter was referred to ministers. The ministers passed it back to the council for approval, but the development had already passed the ABI threshold of risk. Clearly, however, SEPA continued to have concerns. SPP7 was at the heart of that matter. It could be argued that the local council was overriding or ignoring aspects of the guidance, but
ministers and the ABI seemed to be comfortable with that.

The Convener: You cannot be expected to answer on an individual case, Justin, but are you aware that that kind of thing happens?

Justin Jacobs: No. I am not entirely sure what you mean when you refer to the “ABI threshold”. However, next month, we will publish draft guidance for developers on how they can ensure that their future developments are insurable. In Scotland, that guidance will suggest that developers confirm that they have followed SPP7 and that SEPA is happy with the flood risk level. We are less concerned about SEPA’s opposition to a development on technical grounds—for example, if the developer did not do the right thing at the right point in the process—than we are about its opposition on the ground that there is a substantive flood risk.

The Convener: When will that draft guidance be available?

Justin Jacobs: It will be published either late this month or, more likely, next month. It will be UK-wide, and will take into account the various planning regimes.

The Convener: Could you ensure that the committee is on the distribution list for that?

Justin Jacobs: Of course.

The Convener: We have no further questions. I thank you both for coming along. You are getting out of the meeting a little bit earlier than you might have anticipated.

11:55

Meeting continued in private until 12:34.
SUPPLEMENTARY SUBMISSION FROM SCOTTISH WATER

Thank you for your enquiry regarding the release of information to local authorities and in particular to Perth and Kinross Council and Fife Council.

I would like to assure the Committee that Scottish Water is committed to working in partnership with SEPA and all local authorities to ensure that together we address flooding issues across Scotland. I can advise that we are in regular discussion with many councils regarding our drainage area plans to ensure they have a complete understanding of our data, for example, if flooding is a result of severe weather or the operation of our sewer. As it is not clear exactly what information the enquiry refers to we will contact Perth and Kinross Council and Fife Council to clarify their particular concerns.

Scottish Water is happy to provide information that will assist local authorities fulfil their duties. However it is our policy not to provide information covered by the Data Protection Act. This refers to data that would identify customer’s personal details such as name and/or specific address of properties on Scottish Water flood register. We can however provide postcodes which we believe provide an appropriate level of detail without breaching the Data Protection Act 1998.

As Geoff Aitkenhead advised the Committee on 10 December, Scottish Water will provide all reasonable information on reservoirs. We are, however, guided by the security and emergency measures directions from UK security advisers regarding what we can and cannot divulge about drinking water systems.

I hope this response is of assistance to the Committee but please contact us again if we can provide further information.

Scottish Water
16 December 2008
SUBMISSION FROM SEPA

SEPA welcomes the opportunity to respond to the Rural Affairs and Environment (RAE) Committee following the introduction of the Flood Risk Management (Scotland) Bill, referred to hereon as ‘the Bill’, to the Scottish Parliament. This response provides feedback to the Committee covering the four specific areas for which comments were requested.

General Principles and Policies

SEPA is encouraged by the general principles of the Bill and believes that the broad areas of policy provision set out in the legislation will create a framework to deliver a more sustainable approach to flood risk management. The Bill makes policy provision in five key areas:

- coordination and cooperation in flood risk management;
- assessment of flood risk and preparation of flood risk management plans, including transposition of the EC Floods Directive (2007/60/EC) (the Directive);
- amendments to local authority and SEPA functions for flood risk management;
- a revised statutory process for flood risk management measures; and
- creating a more uniform approach to the enforcement of the Reservoirs Act 1975 (the 1975 Act).

SEPA welcomes all five policy provisions which together create the strength and flexibility that will be required to enable strategies to be adapted to the changing needs, pressures and techniques of flood risk management. The new statutory process allows for the adoption and funding of measures previously not eligible under the former legislation. It will also enable flood management planning to respond to the future impacts of climate change.

The Bill effectively transposes the EC Floods Directive, which focuses on sustainable flood management at the catchment scale as the basis for the reduction of adverse consequences of flooding on all aspects of society.

Significantly, the Bill places a general duty on all responsible authorities (including Scottish Ministers) to exercise their flood related functions with a view to reducing overall flood risk. This is the first time any such duty has existed in Scotland and will help to focus attention on flood mitigation across all areas of public life.

The role of SEPA

Under the provisions of the Bill, SEPA will become the prime organisation responsible for delivering the work required under the EC Flood Directive. Although not explicitly named as the competent authority in the Bill, by being given the role it is given in Part 3, SEPA is identified as the competent authority for the Directive.

In addition to this important overarching new role for SEPA, the Bill also introduces other significant changes for SEPA: - to our statutory duties in relation to flood risk advice for planning and development; to our role as flood warning authority (which becomes statutory, not discretionary); and to reservoir safety provisions, where SEPA will become the enforcement authority for reservoir safety in Scotland.

SEPA will assume a new strategic flood risk management role and, working with the Scottish Government and the responsible authorities, SEPA will help set the national policy framework and develop national flood risk management priorities.

Co-operation and co-ordination

Joint working between SEPA, the Scottish Government and the responsible authorities will be vital to the success of the framework that the Bill establishes. Responsible authorities must exercise their flood risk management functions and assist SEPA in preparing flood risk assessments, maps and plans.
The Bill places a duty on all responsible authorities to co-operate and share information. SEPA recognises that to establish and maintain close co-operation and co-ordination between all the responsible authorities will be a challenge. Tasks such as aligning funding streams may prove to be difficult and ultimately may require guidance and support from the Scottish Government.

The Bill requires the development of Local Flood Risk Management Plans, covering areas identified as being at risk of flooding (which may encompass a number of Local Authority areas). It will be vital to ensure local co-ordination in the development, financing and delivery of measures to reduce flood risk in these areas. Local Authorities will lead on the production of these plans, supported by SEPA via its role in the production of the overarching national (Scotland District) flood risk management plan – it is this national plan that is reported by the Scottish Government to the European Commission.

**Issues and concerns**

As stated above, SEPA welcomes and is broadly satisfied with the overall content and direction of the Bill. There are however some detailed issues that SEPA wishes to bring to the attention of the RAE Committee, including some issues which are not contained within the Bill.

**Duty to implement**

Section 29(1) of the Bill only refers to the timetable and description of an implementation plan, as opposed to placing a duty upon responsible authorities to implement the measures in a Local Flood Risk Management Plan. Whilst recognising that Part 1, Section 1 (1) of the Bill provides a general duty for all relevant authorities to “exercise their flood risk related functions with a view to reducing overall flood risk”, without a duty to implement the actual plans there may be a danger that not all of the various measures identified in the Local Flood Risk Management Plans will be realised. Ultimately, this could also potentially adversely impact on the national ‘District’ Flood Risk Management Plan submitted to Europe.

**Capacity building, recruitment and training**

Scotland already faces an acute shortage of trained hydrologists and flood risk management professionals. SEPA highlighted this in its previous evidence to the RAE Committee and it is widely recognised by the Committee, Ministers and others that this will be a severe challenge to SEPA, Local Authorities and all others involved in the delivery of the Bill.

**Funding**

No strategic road map is set out for investment in flood management over the long term. However, the District plan should set out the long-term national priorities and therefore aid the targeting of investment. The timings of the existing funding mechanisms for Local Authorities, Scottish Water and SEPA do not coincide. This may lead to problems in terms of being able to plan for and ultimately fund joint work at the appropriate times to meet future deadlines. There is also uncertainty as to the long-term maintenance of flood risk management measures and whether this will be the joint responsibility of all partners.

**Planning and flood risk**

SEPA’s current role in providing advice to planning authorities as to flood risk is maintained under the provision set out in the Bill (Section 62). However, the definition of flood risk from Part 1 of the Bill means that SEPA will now be required to advise on the likelihood of flooding and, where information is available, on the potential impacts for human health, the environment, cultural heritage and the economy in relation to planning policies and proposals.

We feel that this change in our statutory duty could be made more efficient and effective by establishing:

- a new **statutory** requirement for planning authorities to produce a strategic flood risk assessment of proposed development plans within statutory planning guidance;
- clearly defined guidance to manage expectations about the provision of future flood advice to planning authorities relative to planning applications; and
- clarity on the use of SEPA objections to development plans and planning applications relative to flood risk; SEPA should not be expected to object to a
planning authority on flood risk grounds where an adverse impact solely relates to matters regulated by another other statutory body.

There is an opportunity to require Strategic Flood Risk Assessment (SFRA) of development plans within the secondary legislation and associated guidance that is being developed to implement the Planning etc (Scotland) Act 2006. SEPA made representations about the importance of SFRA of development plans in its response to the draft development planning regulations and in giving evidence to the Flooding Inquiry.

SEPA strongly recommends that the ‘expectation’ that planning legislation will include a specific provision requiring local authorities to have regard to flood risk management plans when preparing development plans, should be followed through.

As the Bill requires consideration of development planning when setting objectives to manage flood risk, the intention is for flood risk management plans to include measures to avoid flood risk. Such an avoidance principle links directly to SPP7 which the memorandum anticipates will be reviewed as a result of the Bill. SEPA strongly recommends that SPP7 is reviewed and re-written to reflect the Bill (once enacted), particularly the new definition of ‘flood risk’.

**Sustainable Urban Drainage Systems**

The Bill makes no mention of Sustainable Urban Drainage Systems (SUDS) and their potential role in urban flood mitigation, particularly with respect to pluvial and sewer flooding. SUDS form part of Scottish Water’s responsibilities under the Water Environment and Water Services (Scotland) Act 2003 with which the EC Floods Directive has to align. The role of SUDS should be considered within the Bill to maximise opportunities for “source control” measures for flood mitigation.

**Sewer flooding**

Mapping sewer flooding is a technically difficult task which should, we suggest be undertaken by the expert authority in this area. SEPA would recommend that the Bill should contain a statutory duty on Scottish Water to (i) assess the risks associated with sewer flooding and (ii) undertake flood mapping for the surcharged sewer scenarios. We would suggest that the Bill should require sewer flooding to be included on the flood hazard and flood risk maps. Scottish Water would need to provide this information to Local Authorities, SEPA and other responsible authorities in order that they can undertake their respective duties under the Bill.

**Natural Flood Management**

SEPA welcomes the inclusion of the assessment of the possible contribution that natural features can make to effective flood risk management. We consider that the duty placed upon SEPA will allow a national overview of the potential of such forms of natural flood management to be produced. We would also strongly support the idea of undertaking a series of scientifically based pilot catchment studies to adequately investigate their technical effectiveness.

However, SEPA strongly recommends that Section 16 of the Bill should be re-written to read ‘natural processes’ as opposed to ‘natural features’, as it is the enhancement of the ‘process’ (i.e. the amount of flood attenuation), rather than the alteration or restoration of a feature, that will lead to a reduction in flood risk.

Article 7(3) of the EC Flood Directive recognises this when it refers to sustainable land use practices and improvement of water retention, which is an alteration to a process (which may be achieved via man-made structures/intervention/land-use change as well as by the impact of ‘natural features’). SEPA is therefore concerned that the Bill may be limiting what can be considered as a viable measure to alter, enhance or restore natural processes by the way Section 16 is currently written.

In addition, it is essential that any assessment of the effectiveness of natural features in changing flood processes is underpinned by scientific and technical proof of its capability in attenuating flow at a range of flood scenarios.
Sustainability and balancing duties
Flooding is a natural environmental process and can (in some instances) be a significant pressure on the ecological status of water bodies. We suggest therefore that under the general duty of the Bill under Part 1, Scottish Ministers, SEPA and responsible authorities should not only have regard to the social and economic impacts of exercising their flood risk related functions, but all should also have a duty to have regard to the environmental impacts of exercising their functions.

Drainage assets
Surface water management is a key issue to be addressed, especially within urban areas. As an aid to clarifying responsibilities for assessing and managing surface water flood risks, we suggest that a provision could be added into the Bill that would require Local Authorities to prepare (each 6-year Flood Risk Management Plan cycle) an assessment of the condition of the artificial drainage structures in their area. SEPA could then obtain this information from the Local Authorities via the data exchange provision already in the Bill.

Interim measures
Section 82 in the Bill allows for transitional arrangements to be set in place. However, SEPA would welcome guidance on interim arrangements between the Bill being passed (2009) and the first flood risk management planning cycle (beginning 2015). This has implications in two areas: (i) with respect to design, funding and construction of flood management measures, including flood warning schemes; and (ii) with respect to Development Plan progression in the absence of being able to refer to any Flood Risk Management Plans.

With respect to the first point, it may be assumed that these will be undertaken via the provision in Part 4 of the Bill which allows Local Authorities to undertake work outwith the context of a Local Flood Risk Management plan, provided any work undertaken does not have a detrimental impact on the objectives of the plan. It could be argued that until such times as the first plans are set (2015), Part 4 of the Bill will provide the required mechanism to undertake any such measures.

It would also be helpful if current planning legislation could be updated to refer to the Flood Risk Management (Scotland) Bill, such that flood risk assessment and mapping work carried out prior to the first flood risk management planning cycle (beginning 2015) will have to be referred to in setting Development Plans.

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

RAE Committee Inquiry findings and the Bill
The Bill provides the framework for addressing the Inquiry recommendations. To assist our response, SEPA has summarised in Annex 1 our comments on how the Bill reflects each of the Committee’s recommendations. Other issues we have already outlined in section 2, above.

Co-ordination with the Water Environment and Water Services (Scotland) Act 2003 (WEWS)
This section sets out how the various duties and responsibilities placed on public bodies under WEWS can be aligned with the proposals in the Flood Risk Management (Scotland) Bill.

Integration of flood risk management and the management of the water environment is a key goal of this Bill and the associated EU Directive. By integrating the proposals in the Bill with our existing duties under WEWS, SEPA will be able to gain efficiencies in administrative arrangements, promote sustainable flood management, and make the most of the overlaps between natural flood management and protection/restoration of the water environment.

Where flood risk and the management of the water environment need to be considered together - such as in license applications or planning consents - our aim will be to provide our customers with a single, simple and transparent approach to regulation and the provision of advice, in an effective and efficient manner.
WEWS has several components that are particularly relevant to the Bill:

- WEWS already places a duty on Scottish Ministers, SEPA, Local Authorities and Scottish Water to promote sustainable flood management. In addition, every public body and office-holder must have regard to the desirability of contributing to mitigating the effects of floods. Whilst these duties will be superseded by the Bill, the policy intention was clearly that flood management is an important element of WEWS;

- The administrative system established for River Basin Management Planning under WEWS (both internally within SEPA and externally), and the systems set up to engage with stakeholders can both be used in the efficient delivery of Flood Risk Management Plans;

- Through Controlled Activity Regulation (CAR), all such activities can be managed to contribute to flood risk objectives. CAR can also be used to ensure new flood protection measures align with the objectives of WEWS. This complements the requirements under the Bill to coordinate objective setting with River Basin Management Plans;

- It’s important to stress that there should not be any conflict between flood risk management measures and WEWS objectives. Coordination of WEWS and flood risk management will ensure measures are planned with consideration of environmental impacts and that all reasonable and practical mitigation of those impacts is considered;

- The structure of the proposed planning mechanism under the Bill and WEWS are intentionally similar. Each operates on a 6-year planning cycle, with the first Flood Risk Management Plans due at the same time as the second River Basin Management Plans (December 2015). The stages that lead up to the production of the plans – namely risk assessment (characterisation), identification and reporting of significant issues, and the objective/measures setting process in draft plans and final plans - also share the same deadlines;

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

- The Bill requires coordination with WEWS in objective setting. This provides an opportunity to ensure public and private sector investment deliver multiple benefits, and an opportunity to ensure flood risk management measures meet the sustainability criteria of WEWS and vice versa;

- Given the points above regarding planning structures, stakeholders and objective setting, there will be significant opportunities to coordinate and integrate the planning systems to ensure maximum efficiency and synergy between these two key policy areas;

- In addition, given SEPA’s lead role in WEWS and River Basin Management Planning, and its proposed role under the Bill, SEPA is in an ideal position to ensure the two planning mechanisms are coordinated. SEPA is also well placed to ensure that a coordinated WEWS/flood risk management planning system also integrates with wider government initiatives such as climate change and sustainable rural development.

SEPA
10 November 2008
### RAEC inquiry recommendations vs SEPA comment on the Bill

<table>
<thead>
<tr>
<th>RAEC inquiry recommendations</th>
<th>SEPA comment on the Bill</th>
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<tr>
<td><strong>R1:</strong> that the Scottish Government fully consider the recommendations contained within this report before introducing its bill on flooding and flood management.</td>
<td>No comment.</td>
</tr>
<tr>
<td><strong>R2:</strong> that the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding.</td>
<td><strong>This is partly addressed in the Bill.</strong>&lt;br&gt;&lt;br&gt;The Bill allows for the mapping and addressing of pluvial flooding. However, there are no specific funding mechanisms set out for pluvial flooding in the Bill, and pluvial flooding is not defined anywhere in the Bill or in the EC Floods Directive. Given that the Directive refers to ‘urban flooding’ and does not exclude any type of flood hazard from being considered (except floods from a sewerage system) and because the Bill does similar, SEPA consider that pluvial flooding will be included. Pluvial refers to the ‘origin’ of the flood (i.e. the generating mechanism), which in this instance is rainfall. Pluvial flooding should not be mistaken for sewer flooding, although heavy rainfall can cause an exceedence in the design capacity of sewer systems leading to localised surface water flooding. These two flood hazards can be similar and in some situations are linke, but, for the most part are separate processes. Although most commonly associated with urban areas, pluvial flooding can also occur in rural areas. However, the greatest impacts in terms of flood risks from heavy rainfall will most likely arise in the densely urbanised zones.</td>
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<tr>
<td><strong>R3:</strong> 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.</td>
<td><strong>This is not addressed in the Bill.</strong>&lt;br&gt;&lt;br&gt;The Bill does not make specific provision for this but provides the framework under which it could take place. Scottish Government (Scottish Resilience) and SEPA have identified a programme of work to define Critical National Infrastructure (CNI) at risk from river and coastal flooding and are currently in discussion as to how best that can be progressed. Recommendation 3 was to conduct an assessment and although this may not have been done prior to the writing of the Bill, it is a task that SEPA consider worthwhile given the impending uncertainties associated with coastal flooding in future. SEPA expect that CNI should form part of the risk receptor categories examined under the PFRA (by Dec 2011) and will be examined further under the subsequent mapping and planning tasks.</td>
</tr>
<tr>
<td><strong>R4:</strong> 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.</td>
<td><strong>This is addressed in the Bill.</strong>&lt;br&gt;&lt;br&gt;Part 1 of the Bill requires SEPA and responsible authorities to have regard to social and economic impacts in the exercise of their flood risk management functions. SEPA is unaware of any specific new tools which have been developed in this regard and recognise that accounting for such factors properly is difficult. However, similar to the findings of the</td>
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<tr>
<td>Social Impacts of Flooding report (2007), SEPA suggests that traditional cost-benefit analysis techniques are not best suited to accounting properly for all social and human factors and believe that alternatives methods may need to be found. In setting objectives and measures to reduce flood risk, analysis of the benefits of any proposed measures (in terms of reducing the adverse consequences of flooding for human health, amongst others) is required. Such Bill provision should be regarded as a positive step in the right direction to better accounting for the intangible costs of flooding, despite a lack of specific guidance on how social and human costs might be included or prioritised.</td>
<td>This is not addressed in the Bill.</td>
</tr>
<tr>
<td>R5: that the Scottish Government establish how it can best contribute to building capacity in hydrological expertise.</td>
<td>This is not addressed in the Bill. We consider that this is a very important area. Please refer to section 2.2 in the main document for our more detailed response.</td>
</tr>
<tr>
<td>R6: that the Scottish Government adopt the catchment as the fundamental unit for flood management.</td>
<td>This is addressed in the Bill. The Bill transposes the EC Floods Directive so therefore upholds the ‘catchment approach’ defined in it. The Bill makes provision for two levels of flood management unit, i.e. the national (District) level and the sub-district level which will relate to local flood risk management plans. The Bill places a duty on SEPA to define these sub-distric units and in doing so SEPA must have regard to river basins and sub-basins. Provision therefore is made in the Bill for the ‘catchment’ to be adopted as the fundamental unit for flood management if this is deemed most suitable.</td>
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<tr>
<td>R7: that SEPA should be given the role of competent authority and take the lead at a national level in flood risk management, with suitable further safeguards to its independence.</td>
<td>This is not fully addressed in the Bill. Although not explicitly named as the competent authority in the Bill, by being given the role it is given in Part 3, SEPA is identified as the competent authority for the Directive.</td>
</tr>
<tr>
<td>R8: that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans.</td>
<td>This is addressed in the Bill. SEPA, Local Authorities and Scottish Water all have their roles clearly identified in the Bill. There is provision to designate others (Scottish Natural Heritage) as responsible authorities if required. The Bill places a duty upon all bodies formally identified in the Bill to cooperate in order to achieve the objectives of the Bill and the EC Floods Directive.</td>
</tr>
<tr>
<td>R9: that the Scottish Government place significantly greater emphasis on pluvial flood management in setting future objectives for Scottish Water.</td>
<td>This is not addressed in the Bill. As stated above in our response to R2, pluvial flooding is not specifically mentioned anywhere in the Bill. Scottish Water is only responsible for sewer flooding, which can be caused by either a mechanical failure of a system (e.g. a blockage) or the surcharging of a system due to an exceedance of it's design capacity. Pluvial flooding, although related in some cases to the second sewer flood process described above, is</td>
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### RAEC inquiry recommendations | SEPA comment on the Bill
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| R10: | technically neither of these (as explained above at R2). | Following the devastating flooding in England and Wales in 2007, the Pitt Review recognises both issues and makes strong recommendations to address these. |
| | | This is partly addressed in the Bill. |
| | | The Pitt Review recognises both issues and makes strong recommendations to address these. |
| | | The issue appears to be how this road map would be delivered given the complex nature of funding. |
| | | Refer to para. 2.3 in the main document. |

| R11: | The Bill does not include explicit criteria for prioritising future funding for flood management. | This is not addressed in the Bill. |
| | | The Bill does not include explicit criteria for prioritising future funding for flood management. |
| | | However, the Government has suggested that the first cycle of the Preliminary Flood Risk Assessment will significantly influence where effort is concentrated in terms of attempting to reduce the adverse consequences of flooding. This will in turn provide the Government with a clearer picture of where the most potentially vulnerable areas of Scotland exist and within which Local Authorities they reside. Prioritisation on this basis could also help inform national versus local need, as well as the overall level of risk. |

| R12: | This is not addressed in the Bill. | The Bill does not set out how flood risk management measures will be funded. |
| | | The Bill does not set out how flood risk management measures will be funded. |

| R13: | This is addressed in the Bill. | The Scottish Government can 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. |

| R14: | This is not addressed in the Bill. | The Scottish Government has set up a natural flood management group to consider these issues. The first task of this group is setting up a project to develop a long term research strategy for natural flood management. We would stress that this should examine the impact of such features on flood processes, as currently there is a paucity of quantitative information to assess the effectiveness of such natural features on the attenuation of flood flows, especially within the context of overall flooding. |

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<td><strong>R15:</strong> that the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale.</td>
<td>Section 16 of the Bill places a duty upon SEPA to assess the potential for natural flood management to contribute to sustainable flood management. This creates a formal mechanism through which natural features can be properly quantified in terms of their impact on flood processes and their potential role in flood mitigation. Identifying the impact of different natural features on flood processes is an urgent need, as in certain situations they can be one of the most important parts of a catchment approach to sustainable flood management. There should be no presumption in favour of any single specific flood management technique, but we do need to take a whole catchment approach to flood management, and to assess the effectiveness of different techniques in combination against a range of flood scenarios. The most appropriate and sustainable flood management measures should be determined on a site-by-site basis or on a catchment-by-catchment basis, depending on the local hydrological, hydraulic and catchment circumstances.</td>
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<td><strong>R16:</strong> that local authorities ensure that, when planning permission is granted for new developments incorporating sustainable urban drainage systems, and where Scottish Water is not adopting the system, an appropriate maintenance regime is a requirement of the planning permission.</td>
<td>This is not in the Bill. Reference to SUDS and its role in urban flood mitigation is not in the Bill; also see section 2.5 in the main document.</td>
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<td><strong>R17:</strong> that, given the importance of land-use management, the Scottish Government should ensure it has the power to require changes to land use for flood management purposes. Such a power would have to be accompanied by a provision for landowners to be compensated.</td>
<td>This is addressed in the Bill.</td>
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<tr>
<td><strong>R18:</strong> 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.</td>
<td>This is addressed in the Bill. Currently there is no requirement for Local Authorities to undertake Strategic Flood Risk Assessments (SFRA) similar to that which is done in England and Wales. SEPA is aware of only two SFRA’s in Scotland (Dumfries &amp; Galloway Council and Loch Lomond National Park Authority). SEPA, in providing enhanced flood risk advice under the new flood risk definition, considers it vital that SFRA’s become a mandatory element of the Development Planning process – more detail on this is already outlined in section 2.4 in the main document.</td>
</tr>
<tr>
<td><strong>R19:</strong> 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</td>
<td>This is not addressed in the Bill.</td>
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### RAEC inquiry recommendations

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<td>way to minimise the cost implications of further flooding incidents.</td>
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<td>R20: that the Scottish Government develops a flood warning strategy and, in doing so, addresses SEPA’s other eight recommendations regarding flood warning</td>
<td>This is addressed in the Bill. The Bill makes provision for SEPA to develop a national flood warning strategy for Scotland and provides the flexibility and power to address all other eight points raised in our previous RAE submission.</td>
</tr>
<tr>
<td>R21: that the Scottish Government ensures that SEPA has the necessary funding to enable it to collaborate with the Meteorological Office to provide an effective flood warning system for all types of flooding.</td>
<td>This is not addressed in the Bill. SEPA fully supports the need to work more closely with the Met Office in developing improved flood forecasting for all types of flooding across Scotland. A key recommendation of the Pitt Review following the Floods in England in 2007 is to set up a Joint Forecasting Centre for England and Wales to improve the links between meteorological and flood forecasting. We would strongly support the setting up of a similar joint forecasting centre in Scotland between SEPA and the Met Office.</td>
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<tr>
<td>R22: that the Scottish Government take steps, including by making representations to the UK Government, to ensure that high-resolution radar coverage is established throughout Scotland to ensure that flood warning is as effective as possible.</td>
<td>This is not addressed in the Bill.</td>
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<tr>
<td>R23: that the Scottish Government investigates the possibility of individual property vendors providing information on previous flooding incidents associated with a particular property to potential purchasers and requiring developers to provide flood risk assessments for new developments to potential purchasers.</td>
<td>This is not addressed in the Bill.</td>
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<tr>
<td>R24: that the Scottish Government takes steps, together with SEPA, local authorities, the emergency services and the insurance industry, to consider how it can educate members of the public at risk of flooding of how they can best protect themselves and their property.</td>
<td>This is addressed in the Bill. The Bill places a general duty on Scottish Ministers, SEPA and responsible authorities to “act with a view to raising public awareness of flood risk.” SEPA continues to raise awareness of flooding issues through our annual campaigns.</td>
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<tr>
<td>R25: that the fire and rescue service be tasked with coordinating all flood-related rescue activities.</td>
<td>This is not addressed in the Bill.</td>
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<td>R26: the Scottish Government explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency.</td>
<td>This is not addressed in the Bill.</td>
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</table>
In their recommendation letter, the Finance Committee suggested that the RAE Committee may wish to seek clarification from the Scottish Government on a number of issues.

I appreciate that the Committee would like to discuss these issues with me, but I also thought it would be helpful to provide a written response to the Finance Committee recommendations. Please find my response attached.

Please don’t hesitate to contact me if you have any further queries, and I look forward to future discussions on these and other matters.

Michael Russell, Minister for Environment
16 December 2008

Response to the Recommendations in the Finance Committee’s report on the Financial Memorandum

Recommendation 1 - Whether the cost estimates for local authorities, which are presented as abbreviated overall totals, include costs for all the expected responsibilities and are as comprehensive and robust as possible (paragraphs 36 and 37 above).

As far as possible, the Scottish Government has considered how flood risk varies across the country and the different levels of effort that different local authorities will need to put into assessing and managing that risk.

The figures in the financial memorandum and supplementary note were based on information provided from 6 local authorities representing a range of flooding issues and circumstances, including rural, coastal and urban flooding problems. This enabled us to produce an average figure for the financial memorandum.

For the supplementary note, we included an upper cost estimate that was based on the cost estimates that were presented to us from those local authorities that have long history of tackling complex flooding issues, and in particular surface water flooding, which experience has shown requires the greatest level of assessment, planning and cooperation to address effectively.

The Scottish Government has worked closely with CoSLA and a range of local authorities to promote wide understanding of the new responsibilities set out in the Bill, including the types of tasks that fulfilling these responsibilities will entail. This has included established a network of advisory groups on the Bill and its implementation. These advisory groups include representation from a subset of local authorities that have experience of tackling common flooding problems in Scotland.

The Scottish Government has noted that the local authorities that provided evidence to the Finance committee did not include any of those that had provided information to CoSLA and the Scottish Government on the costs of implementing the Bill, which was incorporated in the financial memorandum.

Recommendation 2 - Whether the Scottish Government intends formal reporting to the Parliament on implementation of the Bill to include information on the actual costs on all public bodies (paragraph 40).

We are happy to consider this issue further.

Recommendation 3 - How the Scottish Government will be able to build the implications of the significant uncertainty about the extent of future responsibilities into the different financial planning frameworks for the different public bodies involved (paragraphs 42-44).
The Scottish Government, through its network of advisory groups on the Bill, is working with each relevant public body to ensure that responsibilities are clearly understood.

The Scottish Government is working with these public bodies to investigate options for ensuring that funding available to public bodies can be aligned to deliver the plans established under the Bill, and to the timetables set out in the Bill. This includes considering how best to align funding streams that come online at different times during the flood risk management planning cycle.

A summary of funding streams is provided below.

Local Authorities

Any additional funding pressures for local government would be discussed and agreed with COSLA, as part of the new process detailed in the Concordat. Funding is allocated on a three year cycle, and the next funding period will be from the 2011-2012 financial year.

Scottish Water

Scottish Water is funded through customer charges and government lending. The amount of money available to Scottish water in 2010-14 to tackle flooding will be determined as part of the current price review process for 2010-14 being undertaken by the Water Industry commission.

Ministerial Objectives for Scottish Water for the period 2006-14 were set in February 2005 to be delivered over two regulatory periods, 2006-2010 and 2010-2014. These include a specific objective for Scottish Water to reduce the number of properties at risk of internal flooding. Ministers are currently considering and will shortly confirm their objectives for the 2010-2014 period.

The Scottish Government is also about to start the process to identify objectives for Scottish Water for the regulatory period commencing April 2014 and beyond. Those objectives will be set in full consultation with all stakeholders, and will take into account the new flood risk management duties placed on Scottish Water by the Flooding Bill.

SEPA

Additional funding pressures on SEPA would be discussed and agreed with SEPA as part of the spending review process. As with the local authorities, funding is allocated on a three year cycle and the next funding period will be from the 2011-2012 financial year.

Recommendation 4 - Whether the current spending review period allocations to local authorities include sums to cover the responsibilities in this Bill and, if so, how these sums have been allocated among local authorities (paragraph 44). If not, the lead committee may wish to seek clarification on the mechanisms the Scottish Government will use to allocate additional funds where new responsibilities have been imposed on public bodies within a spending review period.

The total package of funding for local government sees an investment of £34.9 billion over 2008-11 - an increase of 13.1% across the period. Any additional pressures on local government, including the new responsibilities set out in the Bill, will be discussed and agreed with COSLA, as part of the new process detailed in the Concordat.

Recommendation 5 - How the Scottish Government will ensure that future local authority funding allocations will reflect actual costs rather than averages and, specifically, how the different burdens on rural and urban authorities and those with different flood risk issues will be equitably reflected in funding (paragraphs 45 and 53).

The Scottish Government’s criteria for prioritising funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

Flood risk management plans will include information on flooding problems, and the actions needed to address these problems across the country, which will include actions in urban as well as rural areas. The expectation is therefore that flood risk assessments and flood risk management plans prepared under the Bill, which will include a nationally prioritised set of objectives and...
measures to manage flood risk, will form a valuable piece of information that can inform the allocation of funding to local authorities.

Recommendation 6 - How the Scottish Government will distribute block grant for the capital cost of flood management measures equitably to local authorities in future (paragraph 57).

The Scottish Government’s criteria for prioritisation of funding for flood risk management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

The expectation is that flood risk assessments and flood risk management plans (which will include a nationally prioritised set of objectives and measures to manage flood risk) prepared under the Bill will form a valuable piece of information that can inform the allocation of funding to local authorities.

LETTER FROM SCOTTISH GOVERNMENT AND ASSOCIATION OF BRITISH INSURERS

ABI AND SCOTTISH GOVERNMENT STATEMENT ON FLOODING AND INSURANCE FOR SCOTLAND

We are writing to inform you about the agreement announced today between the Association of British Insurers (ABI) and the Scottish Government on flooding and insurance for Scotland.

This new agreement represents the first time that the ABI and the Scottish Government have directly agreed a statement on flooding that is tailored to the specific circumstances in Scotland. It confirms our shared commitment to work together to provide a long-term solution that will enable flood insurance to continue to be as widely available as possible without distorting the insurance market. To achieve this, we have agreed on a range of measures to:

- improve understanding of flood risk and raise awareness in areas where flood risks are significant;
- put in place a long-term (25+ years) strategy to reduce flood risk and encourage actions to mitigate and minimise the risks and costs of being flooded, including reinstatement of flood damaged property in a more resilient way;
- prevent inappropriate development in flood risk areas and ensure that any essential new development in medium to high flood-risk areas is flood resistant and/or resilient as appropriate;
- provide information about how to obtain flood insurance and promote access to insurance for low-income households.

These measures enable ABI members to commit to continue to make flood insurance available for the vast majority of domestic properties and small businesses until 30 June 2013. Beyond this date, it is anticipated that no such commitment will be necessary because insurance will anyway be widely available if the measures outlined above are implemented as planned. This commitment does not affect the premiums charged and policy terms which will continue to reflect the level of risk presented. It also does not apply to any new property built after 1 January 2009. The ABI encourages developers and customers purchasing a property in a new development to ensure that it is insurable for flooding and intends to publish guidance on insurance for new developments shortly.

The ABI and Scottish Government have agreed to review this statement on an annual basis to provide an opportunity to review progress together.

ABI / GOVERNMENT STATEMENT ON FLOODING AND INSURANCE FOR SCOTLAND

1. The Scottish Government and the Association of British Insurers (ABI) agree on the importance of managing the risk from flooding to people and property. As previous floods in Perth, Glasgow and Moray have demonstrated, flooding can have devastating impacts: it can cause loss of life, displace thousands of people, and can cause major economic and social dislocation.
2. While flood defences, effective surface water management, flood warnings and other policies can reduce the risk from flooding, this risk can never be completely eliminated. In the UK, unlike in most other countries, insurance against the impact of flooding has been a standard feature of household and many small business insurance policies since the early 1960s. This enables households and small businesses to plan for and minimise the financial cost of flooding while insurers provide effective and efficient claims services and repair teams if flooding does occur.

3. The ABI and the Scottish Government both want to ensure that the risk from flooding is managed effectively and that flood insurance remains as affordable and widely available as possible so that consumers and small businesses continue to be able to protect themselves from the financial cost of flooding. Since 2000, this has been achieved through a ‘statement of principles on flood insurance’: in the short term this commits insurers to continue to provide flood insurance under certain scenarios and the Scottish Government to manage the risk from flooding. However, we recognise that the statement of principles may distort the market, hinder the development of specialist flood insurance for the more difficult cases and limit incentives for the uptake of cost-effective resilience measures to protect individual properties.

4. The ABI and the Scottish Government have agreed to work together to provide a long-term solution that will enable flood insurance to continue to be as widely available as possible without distorting the market. To achieve this, we have identified the following measures that must be taken:

- improve our understanding of flood risk through assessing both the probability and consequences of flooding from all sources including surface water;

- work towards putting in place a long-term (25+ years) strategy to reduce flood risk; which will set out the Scottish Government’s objectives and measures at a national level, ensuring effective and prioritised allocation of resource across six year planning cycles, backed by local plans with realistic and deliverable objectives and measures and agreed outline spending plans that are aligned with funding arrangements for all responsible authorities;

- retain national planning policy so that planning authorities should prevent inappropriate development in flood risk areas, and that any essential new development in medium to high flood-risk areas is flood resistant and/or resilient as appropriate;

- raise awareness in areas where flood risks are significant, encourage actions to mitigate and minimise the risks and costs of being flooded, including reinstatement of flood damaged property in a more resilient way; and provide information about how to obtain flood insurance; and

- promote access to insurance for low-income households.

5. The ABI and the Scottish Government agree that implementing these measures over the next five years should that flood insurance continues to be as widely available as possible without the need for the statement of principles from 1 July 2013. Until that date, subject to annual reviews to confirm continuing progress and to update commitments as necessary, the ABI and Scottish Government have agreed that the statement of principles will remain in force.

6. The revised statement of principles, published on the ABI website, will apply from 1 January 2009. It remains subject to additional review in the event of any significant external shocks, such as a withdrawal of flood reinsurance. The statement of principles will not apply to any property built after 1 January 2009.

SCOTTISH GOVERNMENT
ASSOCIATION OF BRITISH INSURERS
DECEMBER 2008
SCOTTISH GOVERNMENT COMMITMENTS ON FLOOD RISK MANAGEMENT

The Scottish Government has agreed the following as part of the joint statement on flooding and insurance for Scotland:

Improving flood risk assessment

• Establish how to streamline arrangements for providing available flood risk data from the Scottish Environment Protection Agency to insurers in an appropriate format under agreed licensing and charging arrangements that enable insurers to use the data for assessing risk, underwriting, pricing and administering insurance.

• Scottish Environment Protection Agency to prepare Flood Hazard and Flood Risk Maps covering flood risk from all sources with appropriate arrangements for communicating this effectively to the public and insurers in a convenient administrative format that provides as accurate and specific data as possible whilst recognising the appropriate degree of uncertainty that attaches to the data.

• A work plan for delivery of the commitments under this section, covering the period through until 2013, will be agreed by end of March 2009 with early release to insurers of maps currently available on river and coastal flooding.

Reducing flood risk

• Scottish Government to ensure that Scotland benefits from the lessons learned in England and the action points identified in the Pitt report, wherever they are relevant.

• Scottish Government to provide data to identify locations that are expected to benefit from improved flood defences against flooding from main rivers and the sea within the next five years by January 2009 and to update this annually thereafter, data to be included is to be agreed by March 2009.

• Take forward a new Flood Risk Management Bill that ensures an appropriate regulatory environment and establishes the responsibilities and powers needed for those responsible to ensure the maximum possible social and economic resilience against all forms of flooding, covering assessment of flood risk from all sources and preparation of flood risk management plans, including transposing the EU Floods Directive.

• Scottish Government to work towards putting in place a long-term (25+ years) strategy to reduce flood risk; which sets out the Scottish Government's objectives and measures at a national level, ensuring effective and prioritised allocation of resource across six year planning cycles, backed by local plans with realistic and deliverable objectives and measures; agree outline spending plans that are aligned with funding arrangements for all responsible authorities; report annually on progress towards developing and implementing the plans.

• Produce the first version of long-term (25+ years) objectives and measures for managing flood risk at a national level in 2015, prioritised over six year planning cycles, based on available information about flood risk.

• Ensure local authorities publish local flood risk management plans, that include realistic and deliverable measures that align with national plans over the current planning cycle.

Development planning policy and building design

• Scottish Government to review the planning policy framework for flood risk to ensure that it aligns with the new Flood Risk Management (Scotland) Bill and continues to prevent inappropriate development in flood risk areas.

• Establish how to improve building design in flood risk areas; and how to encourage homeowners to take steps to protect their homes.

ABI STATEMENT OF PRINCIPLES ON THE PROVISION OF FLOOD INSURANCE
• The Scottish Government and the insurance industry have agreed that the conditions should be in place to enable the insurance market to be able to provide flood insurance to the vast majority of households and small businesses efficiently and without the specific commitments below from 1 July 2013. Thereafter, the industry will continue to work with existing customers to explore insurance options for domestic property and small business customers where the flood risk is significant and no public plans are in place to defend the property. Throughout this period, ABI members commit to making advice available to customers which will encourage them to increase the resilience of their property as part of its reinstatement, following flood damage.

Until 30 June 2013, ABI members commit to:

• Continue to make flood insurance for domestic properties and small businesses available as a feature of standard household and small business policies if the flood risk is not significant (this is generally defined as no worse than a 1.3% or 1 in 75 annual probability of flooding).

• Continue to offer flood cover to existing domestic property and small business customers at significant flood risk providing the local authority has announced plans and notified the ABI of its intention to reduce the risk for those customers below significant within five years. The commitment to offer cover will extend to the new owner of any applicable property subject to satisfactory information about the new owner.

It is important to note that:

• The premiums charged and policy terms will reflect the level of risk presented and are not affected by this commitment.

• This commitment does not apply to any new property built after 1 January 2009: the ABI encourages developers and customers purchasing a property in a new development to ensure that it is insurable for flooding. The ABI intends to publish guidance on insurance for new developments later this year.

This commitment is subject to annual review that will consider progress in resolving the areas of continuing work and implementing the Scottish Government's commitments and to additional review in the event of any significant external shocks, such as a reduction in the availability of flood reinsurance or major changes in the UK insurance market.

Michael Russell, Minister for Environment
Justin Jacobs Assistant Director, Property, Motor and Liability, Association of British Insurers
17 December 2008
The Convener: Under agenda item 4, we have two evidence-taking sessions on the Flood Risk Management (Scotland) Bill. I welcome to the committee David Faichney, flood warning unit manager, and Chris Spray, director of environmental science, both from the Scottish Environment Protection Agency.

We have received written evidence from SEPA, so we will not have opening statements but will go straight to questions from members. First up is Peter Peacock.

Peter Peacock (Highlands and Islands) (Lab): Good morning, gentlemen. In much of the evidence that we have heard in the past few weeks, concerns have been expressed about the absence of the word “sustainability”, or of a definition of sustainability, from the bill. It has been argued that there should be an explicit reference to sustainability. Government officials argue that the whole bill is about sustainability, so the argument that the long title should explicitly mention sustainability is not upheld. What are your views? Do you agree that the bill is implicitly about sustainability, or should sustainability be mentioned explicitly in the bill?

Chris Spray (Scottish Environment Protection Agency): We regard both the bill and the directive—to which some parts play—as being ultimately about sustainable flood management. I do not think that we necessarily need the word in the bill. My colleagues tell me that it is a difficult word to define, but in any case the whole bill is about sustainable flood management. It talks to long-term planning and geographically large-scale planning, and it even talks to the benefits and costs. I am quite happy with it as it is, because the whole thing revolves around sustainable flood risk management.

Peter Peacock: Is it possible that, because the bill does not explicitly mention sustainability, your interpretation of your role and duties under the bill might be open to debate and argument in the future? If sustainability was mentioned—to the extent that it can be defined—might that put your role and duties beyond doubt?

Chris Spray: I do not think that it matters, because the legislation under which SEPA was created already requires us to take account of sustainable development in all that we do, so that is pretty well covered already. Outwith discussions on the bill, we have done quite a lot of more general work with the Government on how we define sustainable development.
Chris Spray: Ultimately, we regard the Scottish Government and the minister as the final arbiter, but I think that all of us who are involved would feel that we had failed in our duties if the matter got that far. Indeed, we would have failed, because we all have responsibilities to co-operate with each other and to co-ordinate our actions. We would not wish the matter to get as far as the Government.

The challenge is huge, and the legislation makes it clear that we all have a role to play in working together on the issue. The first cycle of the iterative process will be the most challenging, because a certain amount of learning will be required. There is good evidence that the more work that we have done on the flooding bill advisory group, which brings together the various relevant organisations, the better we have become at working together and understanding where we are coming from and what we have got to deliver jointly. Clearly, we have a role to play in bringing people together, but it is a facilitating role rather than an overseeing role—we do not give directions to folk, as that would be the wrong role for us to take.

We will learn as we go along. We all need to work together towards a common vision.

Elaine Murray: It has been pointed out that there must also be co-operation on river basin planning under the Water Environment and Water Services (Scotland) Act 2003. How can you ensure that flood risk management co-ordinates with river basin planning?

Chris Spray: From a policy point of view, the Water Environment and Water Services (Scotland) Act 2003 views flood management as part of the deliverables. To a certain extent, we have been waiting for that to occur, and that is what we expect to happen.

There are already water framework directive area advisory groups in the eight sub-basin districts around Scotland, and there is a national one as well as a cross-border one that involves the Tweed and the Solway, which I chair. Those groups work well. They have improved over time, as people have got to grips with their roles.

We desperately want not to roll out yet more consultative and advisory committees than we absolutely have to, as there is a danger that consultation fatigue will hit all of us. Therefore, we want to build on the work that is already being done, although the local area groups for flood risk management will be led by local authorities, with us leading the national one. We hope to take what we can from the existing situation rather than duplicate structures.

Elaine Murray: The Scottish Rural Property and Business Association was a bit concerned about SEPA having the lead role as competent authority, as it felt that you were acting as both administrator and enforcer. We have also heard about the importance of putting in place safeguards to ensure the independence of SEPA. Do you have any concerns that people might see you as not being independent and, instead, being a Government body imposing the will of ministers on other recalcitrant authorities?

Chris Spray: Sometimes we are seen as a Government body and sometimes we are not. That is partly to do with who is looking at us and partly to do with what we are dealing with.
We have some clear regulatory functions around the control of abstractions, discharges, industry and so on. However, particularly with regard to hydrology, we have a remit, under the Civil Contingencies Act 2004, to warn and inform people. We also have an important remit to report on the state of the environment.

I think that the SRPBA took a mistaken view of the pulling together of some of those roles. We are not coming into this area wearing our regulator hat. Rather, we are wearing our co-operative, co-ordinating, facilitating and expertise-sharing hat. It is true that we issue licences under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 but, alongside that, we do an awful lot around enabling regulation—I think that that is the buzzword at the moment.

Peter Peacock: It is commendable that you see your role as being more to do with bringing people together than directing people to do things. However, given the powers that you have under the bill, what would be your position if the efforts that you were making to encourage co-operation were not delivering what you believed had to happen, strategically? How could you make things happen?

10:15

Chris Spray: I said before that, ultimately, we would have to go back to the Scottish Government. There will be some tensions, especially the first time around, between our role, which is to put in place the frameworks and high-level district achievements and aims, and that of sub-district, local authority-led groups, which is to build management programmes within those frameworks. We are aware of that issue and need to work through it in a co-operative way, so that we do not appear to be putting in place frameworks that are entirely unreasonable environmentally, economically or otherwise and do not play to a local group’s priorities. The system will be built up mostly from the bottom, but we will be involved at the top level. Ultimately, we would look to the one final arbiter—the minister. However, we all have a duty to collaborate, so if we got to that point we would have failed miserably in the co-operative effort to reach an agreement.

Alasdair Morgan (South of Scotland) (SNP): In paragraph 2.2 of your written evidence, you say that Scotland “faces an acute shortage of trained hydrologists and flood risk management professionals.”

I am filled with horror at the thought of yet another group of management professionals running our lives, but in evidence to the committee the Government, too, referred to a shortage of hydrologists, trained engineers and so on. Can you give us a feel for the size of the shortage? How many people are required, over what period of time? How does that figure compare with the current levels of recruitment to the professions?

Chris Spray: I may have to submit further written evidence to the committee with the exact details, as they are always changing. Of all the professions with which SEPA is involved, at the moment it has the most difficulty recruiting hydrologists and hydrogeologists. We regularly lose competent staff to consultancies, which walk in and offer people jobs—almost the same jobs, from the other side—at salaries that we cannot match. We know that local authorities are in exactly the same situation; consultants are also fighting hard. South of the border, the Environment Agency is in a poor state. In previous evidence, I noted that, according to the United Kingdom Parliament, 200 flood risk manager and engineer posts were vacant in England and Wales at one time.

We are not that far off, but some of the recruitment campaigns that we have run for hydrologists have resulted in our recruiting one person for two or three vacant places or having only six people apply for a post, only two of whom were competent to fill it. I know from talking to my local authority, Stirling Council, that it has been in similar situations. Recruitment of professionals is a real challenge for us all.

What are we doing with the Scottish Government and others to tackle the problem? In Scotland we have centres of excellence at the University of Dundee and the University of Stirling. We have talked to the universities about how they might modify their existing MSc courses to take a wide range of professionals—engineers, people involved in geographic information systems or mapping and eco-hydrologists—rather than just one type of engineer or hydrologist. We have suggested that they build on existing one-year or two-year part-time courses to turn out people who can meet our and local authorities’ needs. The initiative is at a fairly advanced stage and the universities can do what we want—all that is lacking is money. It is vital that we address the issue. Inducement money such as bursaries, rather than funding that covers the full costs of an individual’s course, may be enough to attract students. Working with the two universities, we have developed a fairly advanced potential programme.

Alasdair Morgan: What is the current production—if “production” is the correct word—of suitable people? Do we need a 50 per cent increase or a doubling of numbers? Can you give us a sense of how big the challenge is?
David Faichney: The financial memorandum suggests that SEPA will require between 40 and 60 extra staff over the next few years. Those include a maximum of between a dozen and 15 flood risk management professionals—the people responsible for flood risk assessment. We will need to bring in about three or four people a year and to work out where they will come from. However, that is the number required by SEPA alone—others will be in competition with us.

We have been looking elsewhere as well as working with universities. We understand that the Met Office is running a model to examine other ways—rather than going through the university system—of bringing in experts to join it. That involves working with school leavers, and identifying people who are ready for a career change and who can be encouraged to join the organisation and be provided with internal training. In the longer term, we need to consider at which points people will join the organisation and how we develop and retain people who have the exact skills to deliver what we require.

Alasdair Morgan: But that will presumably be counterbalanced, as the consultants you mentioned will also be recruiting more people. Everybody will be getting their own flood risk management consultant.

Chris Spray: That is correct. The one existing MSc course that is key for this field, at Stirling, will turn out only a maximum of about a dozen people in any one year. Some of them will go overseas and, as you say, the rest will disappear into consultancies, local authorities, SEPA and elsewhere. The demand will be greater than the current production by a significant amount, certainly in the first five years. After that, it might begin to level off, but an injection of cash into the relevant universities in Scotland is urgently needed to attract folk on to those courses. We in SEPA—as well as local authorities—need to build mechanisms to ensure that those people then come to work for us.

Liam McArthur (Orkney) (LD): Alasdair Morgan mentioned a concern about an explosion of additional professional managers. To what extent are you able to diversify to meet the new demand for the skills that are required? If local authorities were simply to expand the workforce by adding hydrologists and did not make reductions elsewhere, they would quickly come under severe financial and public relations pressure.

Chris Spray: That is a good point. We discussed with the guys at Stirling and Dundee universities the extent to which the courses can be made modular, so that we can tell current professionals that if they take modules 2 and 3, it will give them the skills to start working on a particular project. As David Faichney said, some of the skills relate to GIS and mapping, and the need for an understanding of hydrology is not that great as long as you have experts elsewhere to whom you can refer.

We have discussed the matter with the Convention of Scottish Local Authorities, which floated the concept of building up a central Scottish resource. We had not had such an idea, but COSLA said that if SEPA perhaps held a central resource, everyone could tap into it. I am not necessarily keen to go that way, but I can see where COSLA is coming from. I think that the universities can build on the modular approach to do exactly what you are saying—that is what we will do.

The Convener: Where do you recruit? For example, over a number of years the national health service has become accustomed to being raided by other countries that are recruiting; but, equally, it recruits in other countries. Has SEPA looked elsewhere to recruit suitably qualified staff?

Chris Spray: We increasingly do—you are right. We are slightly helped by the fact that the floods directive, and the water framework directive before it, is European legislation, so there are people in other countries who face exactly the same challenges and have the same skills.

The Convener: Because it is European legislation, however, those people will presumably be needed in their own countries to do precisely what we are doing here.

Chris Spray: That is true.

The Convener: I was thinking that SEPA might recruit from further abroad.

Chris Spray: We will certainly consider that—we have had inquiries from Australia and elsewhere. We have a slight advantage over the rest of Europe, in that Scotland is leading the way: we are the first country that is introducing legislation to put the EU framework directive in place. If we act fast, we might get people ahead of other countries—although we may lose them later on.

Peter Peacock: I will move on to the question of duties on some of the responsible authorities that are listed in the bill, which perhaps relates to my previous question and follows what Elaine Murray said. In your submission, you state:

“without a duty to implement the actual plans”

—the flood risk management plans—

“this could … potentially adversely impact on the national 'District' Flood Risk Management Plan submitted to Europe.”

Will you expand on those concerns about the lack of an explicit duty to implement the plans in the bill?
Chris Spray: We want a better linkage between the beginning of the bill, which deals with the correct and understandable general duty of responsible authorities and others to reduce flood risks, and the mechanisms for producing and implementing plans. That linkage needs to be tightened up; indeed, the supplementary evidence that the Scottish Government provided after the first evidence sessions began to address the matter.

Catchment management planning is mentioned throughout the European Union floods directive, but my understanding is that the directive includes no duty to implement. Relying only on a general duty to reduce the risk of flooding does not tie in closely enough with all the work on producing catchment flood risk management plans; a better link is needed. At this stage, I am not sure whether there should be an absolute duty to implement plans or another approach—I think that the supplementary evidence proposes that—but the link needs to be encouraged and strengthened.

Peter Peacock: You referred to the Scottish Government’s supplementary evidence. I think that Government officials said that they want to strengthen slightly the duty to implement and that the minister gave his signature to that—I hope that I am not misrepresenting what was said. I suppose that the issue is how slight the strengthening should be. I want to be clear. Given your role, you are clear that in the great scheme of things an explicit connection to implementing plans, however that is expressed, is important in delivering what communities need.

Chris Spray: We think so. The issue is linking what the sub-district local flood risk management plans say with the district plans, which we must finally send to Europe. Such an approach would give us greater surety that we will move forward. Otherwise, I think that there would be a risk that, for all sorts of good reasons and priorities, very little would happen.

The Convener: I want to ask about the change in SEPA’s culture that the bill will bring about. At the moment, SEPA prioritises the environment for obvious reasons, but the bill will impose on it duties to protect communities, households, property and so on. How will you balance your duties come the enactment of the bill? With the existing culture, primacy is given to the environment. The River Earn in my constituency provides an example: its flood risk is put secondary to the environment. When we asked a Government official about the matter, he said that it was impossible to say how SEPA would balance its duties. I would like to hear about that directly from you.

Chris Spray: That is an interesting observation. As we speak, SEPA’s culture is changing dramatically fast. As our corporate plan shows, we have put a new emphasis on customer focus, which involves addressing not exactly the issue that you raise, but the area that you rightly highlight.

As we mentioned earlier, part of our culture is determined by our being a regulator, but we have an increasing culture as an enabling regulator that looks to planners and considers how we can help development and communities. With the growing emphasis on community partnerships and areas at local authority level, we will have to move further into such working. Therefore, seeds have already been sown in SEPA. The mere fact that we realise and are discussing what should happen will help us, but I acknowledge the conflict that you are talking about.

The Convener: It will be quite difficult to change the culture of the entire organisation quickly.

Chris Spray: I understand the challenge but do not think that that is so. We have already effected a massive change in focusing on the customer; I can give further evidence of what is involved in that.

In essence, parts of SEPA must change pretty fast. The parts of it that are already working on the water framework directive with area advisory groups already have to deliver things in partnership with a range of other stakeholders.

Rhoda Grant: There is a duty under the bill for the assessments to include social impacts. Given that we have had evidence that very few tools, if any, are available for assessing social impacts, how will SEPA fulfil that requirement under the bill?

Chris Spray: Rhoda Grant is quite right that the bill includes duties to assess social and economic impacts, which are not necessarily matters that we deal with regularly at the moment. We see the main task as being to use the evidence that is already available. Some excellent work has recently been done at the University of Dundee on the social impacts of flooding, so our aim would be to build further links with Professor Alan Werritty and the folk who have done that work.

10:30

David Faichney: There is no doubt that we need to expand on those skills and to understand not just the social impacts but the economic impacts of flooding.
Some tools are already available that we are beginning to deploy to understand how effective flood warning systems can be in mitigating flood risk. Those tools take account of social and economic impacts, so that we can balance the spend on a flood warning system with the benefits that it will bring. Some of the processes and thinking behind the cost benefit work that we are starting to do on flood warning systems would be applicable to other mitigation measures, to ensure that the costs and the benefits balance. Analysis of the benefits must obviously take account of social benefits.

Rhoda Grant: Are you confident that you can fulfil that duty under the bill?

David Faichney: I am confident that the means are available to us to explore the issue externally with academics who have done work in that field. We can examine the systems that we are already using for flood warning development to identify how applicable they are, but there is a fair amount of work to be done on that.

Reducing the social impacts of flooding is about reducing the impact of flooding on communities and people as well as its impact on the environment and our cultural heritage. There is a hierarchy, and communities would come first.

Peter Peacock: I want to move on to natural flood management and the evidence that we have taken on SEPA’s responsibilities under section 16, which requires the organisation to map natural features. There has been discussion about whether the requirement to carry out that process at national level is the right resolution to achieve local implementation of natural flood management methods. In addition, it has been argued that not just natural features but natural processes should be considered, and that that ought to be defined in the bill. Will you give your views on both those issues?

Chris Spray: We were quite keen for the bill to refer to natural processes. That is mainly because we are hydrologists, so we understand and are capable of measuring processes. Many of the questions about natural flood management are about how effective such techniques are. To define effectiveness, one must say on what the techniques have an effect. The answer is on the hydrograph—the height to which a river or body of water will go over time, which obviously equates to a flood. That is influenced by all sorts of processes, such as run-off. We have always been of the view that we would prefer reference to be made to processes, but we will not lose too much sleep about the bill’s reference to features; we will work with that. If, ultimately, that means building a feature that has an influence on processes, we can work that way. The key element is that it is understood that we are talking about processes.

The question about whether the national level is the right level is interesting because, for us, the problems or challenges to do with natural flood management are really about scale and time, as the committee has picked up. At the moment, we do not know enough about how quickly or for how long different techniques would work. For example, when woodland is planted, it takes quite a while for the trees to start to have an impact. Maintenance of such features is another issue. There are many unknowns when it comes to determining how much one would have to do to have an effect down stream.

In essence, what the bill proposes seems to be a very good idea. We recognise the opportunity that it presents to define the issue and get some evidence on it at the top level. In my trees example, one would want to know, in theory, how many trees one would have to plant and over what area to get a particular reduction in a flood hydrograph. Such work can be done at an extremely high level—that is the role that we see ourselves picking up. We will examine what other measures are available and will look to studies in Europe and elsewhere to find out what is known about the effectiveness of such measures. We would definitely go global to get such information, although as we have said elsewhere, studies in Scotland are essential. That is the level at which we would operate.

I will leave David Faichney to talk about connectivity down to local level.

David Faichney: Section 16 is about our getting a national overview and an understanding of where there is potential for natural flood management measures; that is, where we are likely to be able to make land use changes or capture land that would enable our doing something to mitigate flood risk. That work will be done throughout the country, so it will be at a level greater than the catchment scale. Once the potential areas for natural flood management throughout Scotland and the areas of significant flood risk have been mapped, we can put the two layers together, which will allow us to decide whether opportunities exist for natural flood management where there is significant flood risk. That is the level of work that SEPA will do under section 16.

At the next layer, that work will have to be underpinned by really robust science and research. As Chris Spray said, it will be difficult to understand issues such as the scale and time that are required, whether the land is available, whether changes can be made, and whether they can be sustained for long enough to demonstrate conclusively that they are having a positive impact on the flood hydrograph. We will also need to understand how the measures will benefit the
community—or whatever else we want to protect—downstream. An awful lot of research and science will be required to provide conclusive proof such that the cost-benefit decisions that we talked about earlier can be made. That will involve weighing up natural flood management measures against other measures so that we are sure, before money is spent, that we will get the most benefit from it.

Through the flooding bill advisory group, the Government has already set up a natural flood management group, which is starting to initiate research. A contract is about to be let to an organisation or company—depending on who gets it—to start work on natural flood management issues. That will involve considering what we really need to understand and what is achievable at the catchment scale to make a difference to flood risk.

**Chris Spray:** There are already examples in Scotland of that process working. The convener will know that when the Perth flood defences were being considered, detailed discussions were held on the extent to which the upland catchment could have an impact and help with mitigation downstream. There are similar good examples in Glasgow, where people have considered those issues. That is the sort of thinking that needs to be done: we can certainly influence that.

**Peter Peacock:** That is a helpful description of SEPA's role and the level at which you will operate. I have a question that follows on from that. Once you have done the work that you describe and it has left your hands, so to speak, what imperative or force will act on those who are responsible for implementing schemes locally? Those people could say, "That's helpful and interesting, but we're going to do something entirely different."

**David Faichney:** If research has been done and we have tools to demonstrate where natural flood management could provide a benefit, we will look to everyone who is putting together the flood risk management plan in an area to show that they have taken notice of the potential for natural flood management and have done further scoping. By that, I do not mean the high-level work that SEPA might have done nationally, but work to identify whether potential exists and to consider that in detail. I suppose that the level of detail that the authorities go into will depend on the potential for natural flood management measures. In areas such as Glasgow, where it is important to keep water above ground and capture it at source, even small parcels of land could be useful in small catchments in reducing flood risk.

**Peter Peacock:** Indeed. You suggest that you would hope and expect those who are responsible to do that, but what would require them to think about the issues further?

**Chris Spray:** I guess that the starting point will be for us to work with them to find out whether a cost-benefit case can be made for such measures. The challenge in considering the cost-benefit ratio is that, understandably, communities fairly often want their area to be defended right now. As I said, one problem with many catchment management measures is that it takes time before they start working, so there are long and short-term considerations. We must accept that sustainable flood management will involve considering the short term—which may mean more hard defences and better flood risk management and warning—alongside the long term, which may be more about a whole-catchment approach. Ultimately, if we say one thing, local authorities say another and we cannot reach agreement, we will have to go back to the ministerial position. That can happen at present in the planning process when development is considered, although the option is rarely used.

**Peter Peacock:** Would it be fair to say that you are presuming that natural flood management measures will be used? In a previous report, the committee talked about making it a requirement that there be a presumption in favour of considering—not necessarily implementing—natural flood management measures. If such measures were to be ruled out, that decision would have to be justified. In the flow of work that you have described, would it help if the bill contained a presumption that local authorities and their partners would consider such matters?

**Chris Spray:** "Presumption" is probably the wrong word. The bodies must consider such matters, but must do so in the context of all the existing opportunities. To talk about a presumption in favour of or against something is probably the wrong way to go about things. As I have suggested, time and geography would have to be taken into account.

**The Convener:** We have many issues to cover, and I do not think that we will be able to cover them in the time that is available. I am not disposed to extend the hour that we have allowed for this panel—although that is not because of the witnesses. I want to jump to issues that we will have to deal with. If other issues cannot be fitted in, we may have to write to you.

**Chris Spray:** We would be happy for you to do that.

**The Convener:** Alasdair Morgan has a question about reservoirs, and Bill Wilson has a question about flood warnings. I would like them to ask those questions, so that we have responses for our report. After those questions have been answered, we will devote the remaining time to funding, which will also be important for our report.
Alasdair Morgan: Paragraph 2.11 of SEPA’s written submission is headed “National security considerations” and relates to reservoir inundation plans. Will you go into more detail on those plans?

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

Chris Spray: In my previous job at Northumbrian Water, one of my responsibilities was looking after Kielder Water. It was alarming to find that, at the height of some of the terrorist troubles, one of the cells operating out of Newcastle had details of Kielder Water.

Alasdair Morgan: You are suggesting that, if someone knew sensitive details of what would flood if a dam broke, that could make the dam a target—although, at the level at which these people operate, they might think, “It’s pretty obvious what’s going to be flooded if we blow up the dam.”

Chris Spray: I would not disagree with that.

David Faichney: The bill requires SEPA to map the areas where we think there are significant flood risks in Scotland. That will include mapping of areas downstream of reservoirs. Consideration would have to be given to the level of detail, where the details were to be held, and whether they were to be publicly available. There would be a tie-in between general maps showing the extent of possible inundations and the sort of maps that are wanted by emergency planning agencies, which would indicate the possible impact of flooding—the number of deaths, perhaps, and the number of key properties downstream, such as schools, old-folks homes, fire stations or critical national infrastructure. The agencies do not want that kind of information to be made public.

However, discussions are continuing, and it seems to me that the issues will be resolved in the revisions that are being made to the Reservoirs Act 1975 in England and Wales. That is UK legislation, and there should be a benefit to us in hearing the result of the discussions between EA, DEFRA and the security services.

Alasdair Morgan: You are fairly hopeful that the requisite information will be available to those who need it.

David Faichney: Absolutely.

Chris Spray: And that it will not available to those who do not.

Alasdair Morgan: Those who need it will include a wide range of people, not all of whom will have signed the Official Secrets Act.

David Faichney: If information has to be held separately or securely, or in different forms, there will be an impact on resourcing. We are concerned about that.

Chris Spray: We are in separate discussions with the Scottish Government about assessing for all critical national infrastructure the risk of flooding—whether that is coastal flooding, storm surges or whatever. Those discussions are separate but tie in to this one.

Bill Wilson: Various discussions have taken place on to whom SEPA should provide flood warnings, and Government officials have told us that they have not specified that. The Association of Chief Police Officers in Scotland has suggested that SEPA should notify all category 1 responders. To whom do you provide flood warnings at present, and do you expect any changes to that in the light of the bill?

10:45

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

Chris Spray: It is worth reassuring the committee that we are working on a new flood warning dissemination system for Scotland. It is a £7 million project. The advisory board for that includes ACPOS, the Society of Local Authority Chief Executives and Senior Managers, COSLA, and fire and rescue services. We are also going to bring the national health service on to the board. The new system will enable folk to get individual messages. It is key that everybody understands the messages and how they are produced. It is not a SEPA system; it is for all of those groups.
Bill Wilson: Does that mean that in every circumstance—apart from minor floods perhaps—those people would always be informed?

Chris Spray: As a category 1 responder, that is what we have to do. It is one of our key roles under the Civil Contingencies Act 2004.

Bill Wilson: Do you have a feedback mechanism to check that when you send those flood warnings out they are acted upon?

David Faichney: We get feedback from our key customers. We work closely with local authorities and the police during and after flood events, and we do debriefings with them for significant flood events. A few years ago, we operated cascade systems that went to the police and then on to the public, and we would carry out an annual survey to ensure that people were receiving those warnings. When that was in place, we were getting feedback that about 80 per cent of people had received and understood the warnings. However, that was a distinct group of about 200 people. It is different from what we understand is the EA’s experience, which is to work with much larger numbers. It is challenging to engage with people and to help them to understand what flood warnings are about and what they should do when they receive a warning.

SEPA’s flood warning dissemination project for our existing flood warning schemes will ensure that community engagement is at the forefront of the process. It is about ensuring that people know that they are at risk and that they are in a warning system, and that they know what to do when they receive a warning.

Chris Spray: We are working closely with the Met Office, which has for the past six months been trialling some new work on severe weather warnings. That enables the Met Office and us to give much more information about random events, such as intense rainfalls that do not necessarily build up over a long time. We aim to continue working closely with the Met Office—indeed, that is one of the committee’s recommendations—to develop that further into a sort of joint forecasting procedure.

The Convener: I want to move to funding, which is the key to much of the bill.

Peter Peacock: You indicated in your evidence that the task of aligning funding streams might prove difficult and that it may, ultimately, require guidance from the Scottish Government. You also indicated that the timing of existing funding mechanisms for local authorities, Scottish Water and SEPA are not in sync, and that funding is not in sync with your programme planning periods. There may also be uncertainty about the long-term maintenance of flood risk management. Those are clear descriptions of the problem. What do you think the solutions would be?

Chris Spray: I like the easy questions. The processes of various funding streams do not coincide, but that is just a fact of life—they were all setup for different reasons. Quality and standards III and Q and S IV do not have the same timescale as us. Some of us work to comprehensive spending review periods; others do not and we all need to recognise that. To have some centrally held funds that we could draw down—which I think was one of Scottish Water’s ideas—seems to be an eminently suitable way of going forward.

I think that, in the first year, we will have to muddle through. As I said, it is an iterative process and we are at the start-up point. As we go forward, we need to embed the funding so that aligning it is high up on the agenda in the next Q and S period and so that local authorities can plan for it as well. The role that SEPA plays is less of an issue for us, but others need to acknowledge that funding alignment is a challenge. We and others should not miss that challenge.

Peter Peacock: Do you regard funding alignment as an interim issue until such time as there is much greater clarity about the planning processes and schemes that are coming on stream five or 10 years down the road? Is the idea of the centrally held fund simply to smooth the apparent differences in funding streams and when they might switch on and off currently? Does it have no other purpose?

Chris Spray: You are right that it will be an interim issue, because we are being parachuted into a new set of timescales to which no one was previously working. We must realise that. The current planning period runs to 2015, so by the time we are looking to the next six-year period, a lot of folk will be able to think about the matter.

Scottish Water’s option for raising funds is to raise them from customers. Its money-raising powers are controlled fairly well by the Water Industry Commission for Scotland and by the Office of Water Services. That is why I think that a centrally held fund from which we could draw down funding would allow us to get smoothly through the first period and into a much better-planned future.

Peter Peacock: I follow that. What time horizon ought we to have for planning what will sometimes be major items of expenditure in Scottish and, certainly, local authority terms? We have had evidence from the Association of British Insurers, Scottish Water and others that it should be 25 years and, in a committee report, we talked about long horizons, but in the answer that you have just given, you mentioned a 12-year horizon. What is your feel for the longer-term planning lead?
In evidence, Government officials said that because of your overview of the system, SEPA would have a role in advising ministers about the longer-term or medium-term financial requirements that might arise, but there is in the bill no requirement on you to do that. Will you comment on that?

Chris Spray: There is a six-year planning cycle. As I said, we are in one at the moment, so let us think about how we will do the next one. We should look 20 or 25 years ahead. The Scottish Government has given us a steer to consider the strategic needs for flooding in that time period so that we can start building in what we know about climate change, and so that we can set priorities—whether it is coastal flooding, which areas it affects and what we need to look for. That will also start us looking to longer-term natural flood management.

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

Can you remind me of what your second question was?

Peter Peacock: That is a good question—you should give me notice of such requests. My second point was that the Scottish Government has indicated that it expects you to advise ministers as part of the normal exchange of information with them, but you are not under any obligation to do so because there is no duty on SEPA to provide a strategic view of funding such as you describe.

Chris Spray: I must admit that I had not realised that we did not have such a duty. I am not being arrogant; we expect to work closely with the Scottish Government. Our role is not in telling it where finances go but in creating the road map for the future.

Peter Peacock: The role is about the quanta of cash and big schemes that are required. It is strategic.

Chris Spray: That is right—the role is very strategic. The costs of a single flood scheme are huge. I was recently considering a flood scheme for Hawick with Scottish Borders Council. We are talking about £50 million at a snip. There are a lot of places the size of Hawick scattered around Scotland with greater or lesser demands and needs right now. The amounts of money are large, but we need to project a long way into the future.

David Faichney: The flood risk management planning process, as fed from the local plans up through the district plans, should set out where all the priorities are across Scotland. It should give us an idea of the hierarchy of those priorities—what is top of the list and where the big spends are. You will not be able to achieve all the priorities over one or two cycles; it will be many cycles before they are all achieved. There is a need to understand the relative benefits of projects nationally, and it will be very difficult to convey that at local level and to explain how the money that will be used to fund them is going to come from the bottom up. That will be a bit of a challenge.

Mr Peacock mentioned the maintenance of structures. Some of the Scottish Government’s proposed amendments, including those on surface water management, will help if we understand where our assets are and who owns them. It will also help to have clarity about the ownership and roles of the various different structures. The Government’s proposed amendments are an important first step.

Peter Peacock: Mr Spray mentioned Hawick, and there are many other such schemes, which you have to an extent to aggregate with your knowledge of what is needed and what is coming up.

There has also been mention of a hierarchy. Will that become evident in the course of your work, so that it can then be debated and discussed? Overall figures will emerge, and SEPA will be able to say what it thinks ought to be the next major sets of schemes, strategically and nationally. That will allow ministers to make their decisions.

Chris Spray: That would be very good. The current system is not like that. It is reactive to the demands that are—understandably—made in various areas about what the next key priorities should be. We need to get above that.

We must also consider the increasing conflict between the legacy of decisions that were made a century or two centuries ago, which have determined where some of our communities now are, and changing flow patterns and climate patterns, which might determine that some communities are simply unsustainable 50 years hence—and I say that in the sense of buildings existing as bodies of bricks and mortar. That debate is better started now, informed by the correct data, so that we can make the right decisions 50 years down the line. Let us start thinking that way now.

Peter Peacock: You are not looking for powers to remove settlements, are you?

Chris Spray: I am not asking for that. However, let us consider the options for the south-east of England. The Essex coast is retreating at a rate of 12m a year. Luckily, that is not the case up here.
We must recognise that there are some serious questions, but if we think about them now, we can plan into the future.

**Liam McArthur:** I take you back to the discussion about the proposal for a central pot of money. If I understand correctly, part of the purpose of that would be to smooth the transition and to provide some certainty. There has been quite a debate with many local authorities about whether or not re-ring fencing or having a central pot would be beneficial. From your point of view, and considering the job that you need to do, would certainty be provided if local authorities had such a ring-fenced pot from which they would be expected to draw resources for flooding?

**Chris Spray:** The real challenge for local authorities is around what to do in the current comprehensive spending review round. That is why we have spoken more about smoothing the differences in funding streams, rather than all the funding going into a central pot. I am not sure whether or not a central pot is needed in the long term. If we can plan, we might not need that. However, the allocation needs to stack up against the correct bit of demand. At the moment, we are in a very difficult transitional period, which is why we need the smoothing money. The debate on central funding might re-emerge in the future but, at the moment, we can probably plan ahead and plan that debate out, so to speak.

**The Convener:** There are some outstanding issues relating to the planning process, and we will follow up on them as soon as possible after the meeting, so that we can get responses from you. I am not disposed to extend this evidence session any longer.

I thank you both for coming along to the committee—not for the first time, and not for the last time either. You are of course welcome either to sit and listen to the minister’s evidence or to leave at this point—as you prefer.

**11:00**

I welcome to the meeting Mike Russell, who is the Minister for Environment, and his officials. Judith Tracey is the flooding policy team leader and Dr Stuart Greig is a senior flooding policy officer.

We understand that some difficulties exist this morning and that you will forgo an opening statement, so we will go straight to questions. The timescales—including that for taking evidence—are quite challenging, so if anything is outstanding at the end of the hour and 10 minutes that we have allocated to evidence, we will follow it up with a written request for a response, which we hope would be dealt with as expeditiously as possible.

**Elaine Murray:** I commiserate with the minister on his ill health. Something seems to be going round the Parliament—I blame the First Minister for introducing the illness to the rest of us.

**The Minister for Environment (Michael Russell):** I am sure that I can rely on Dr Murray not to take unfair advantage of me.

**Elaine Murray:** I will not. The mind boggles.

We have received evidence from Scottish Water, the ABI and—[Interruption.] Excuse me for coughing.

**Michael Russell:** You are not sounding too good yourself.

**Elaine Murray:** I had the illness two weeks ago.

**Michael Russell:** Shall we just call it a day?

**Elaine Murray:** We received evidence from Scottish Water and the ABI that we require a long-term strategy for flood risk management over perhaps 25 or 50 years. When the minister’s officials were asked about that on 19 November, they said that the six-yearly planning process could cope with that. The ABI would like the bill to require a long-term strategy. Does such a proposal have merit?

**Michael Russell:** Nothing in the bill prevents the creation of a long-term strategy. In fact, much in the bill encourages such a strategy. I know that you have talked to SEPA, among others, about that.

To an extent, the process has not only started but is well under way. Scoping what will happen with flooding in Scotland as a result of climate change is a long-term process. We do not know all the answers, but we are beginning to see some of the questions and issues. When SEPA starts putting together its first plan, it will not do that with a six-year horizon that limits it; it will look much further forward. SEPA will consider what needs to be done in the first period, but it will also have an idea of where things are going.

The bill encourages long-term thinking; it does not limit that. It joins things up. It replaces the Flood Prevention (Scotland) Act 1961, which is very prescriptive about what can and cannot be done, and opens up a range of much wider possibilities. That is exactly what we need at a time of change.

It is almost impossible for me, you or anybody in the room to say that we know what will happen with flooding in five, 10, 15 or 20 years. We need to put together all the tools, the planning abilities and our thinking and to work forward from that. The bill achieves that. I am not worried about the timescale. We have the right tools for the job, which will work well.
Elaine Murray: You do not think that wording is needed to encourage partners to look a bit further over the horizon.

Michael Russell: No. The debate has clarified and will continue to clarify many issues. Such wording is not needed, because the whole process focuses on moving Scotland forward on sustainable flood management.

Bill Wilson: Unsurprisingly, I will return to sustainable flood management. What are your views on the concern that the bill does not mention sustainable flood management? Does the bill contain a sufficient presumption in favour of natural flood management?

Michael Russell: Absolutely. Two points are involved. As the committee has taken evidence, it has debated the question whether the long title should refer to sustainable flood management. The committee will understand that I must defer to lawyers on such matters, and they say firmly that a bill’s title is a description and not an aspiration. The title of the bill is therefore a description, but I fully accept that the aspiration is to have a system of sustainable flood management. Everything in the bill points towards that and towards ensuring that flood management is sustainable and that we are adopting a progressive policy. That is inherent and clear in the bill, and I want it to continue to be clear. I am afraid that we cannot change the long title; our legal advice is very firm on that.

Bill Wilson: Presumably, the aspiration could be mentioned elsewhere in the bill.

Michael Russell: Section 1 includes the promotion of sustainable flood management.

Bill Wilson: There is a concern that people have been working in a particular way for some time now, so we need actively to encourage engineers and planners into a new way of working. When Scottish Water estimated the cost of development, it did not seem to include either environmental or social costs. Is it possible for the bill to include a method of ensuring that, when new developments are considered in the future, the costs of environmental and social benefits or disbenefits must be estimated?

Michael Russell: SEPA’s evidence this morning is that it is increasingly focused on the economic and social costs of flooding. Rhoda Grant asked a specific—and very good—question about that. That is where the focus lies, and SEPA is leading the way. However, I do not get the impression that any of the people who are involved in flood management require to be motivated to think about such matters. They are very much up to speed with and focused on them.

We have to be absolutely clear that the bill is trying to join up various resources, abilities and organisations to focus on the task in hand, and we are trying to ensure that we do that entirely within the context of a positive environmentalism that should permeate all our policies in Scotland. The bill achieves that, although if you think that amendments could be made to the bill that would strengthen that focus, I am open to considering them.

Peter Peacock: You have referred to an issue, that, as I recall, formed part of the debate that we had in Parliament some months back. There is a presumption in favour of natural flood management methods, and I suspect that there has been a bit of confusion about what that means. To be clear, it is not that natural flood management must be used in all circumstances in which it is possible to use it. It is more about creating the imperative that it must be considered and, if it is not used, that must be justified. You indicated that there is a double benefit, not just for flood management but for habitat creation, for example. Would you consider lodging an amendment to the bill to make it clear that natural flood management must be considered? I am relaxed about the wording.

Michael Russell: The bill is already pretty clear about that. I can be positive about this, although there is a slight caveat. The positive nature of our approach to the bill is to make sure that the toolbox contains a range of tools. The 1961 act was too prescriptive; it was an act for another time. We now want to offer people a range of tools to mix and match as they wish, but the key tool among them all is natural flood management. We entirely accept that; that is how it should be.

However, you are right to say that natural flood management is not the solution to every flooding problem, and that must be borne in mind. I have a slight resistance to your idea because, if we have an extremely heavy rainfall event in an urban setting, natural flood management will almost certainly not be the answer. Other engineering solutions are in place, or need to be put in place, to deal with such events.

Natural flood management should, however, be in the toolbox. If I might put it this way, it should be the first tool that is considered. If there is a measure that will encourage that view to continue to strengthen, we will look at it.

Peter Peacock: That is helpful.

Bill Wilson: Our concern is that natural flood management is not the current culture. That is part of the reason why I asked about the cost benefit issue. If we can, we should ensure that the costs of the environmental and social benefits and disbenefits are included in the calculations.

Michael Russell: I disagree with you: natural flood management is increasingly the culture, and
I suspect that, by the time that the bill is fully implemented in 2010, it will be if not the only show in town—I do not think that natural flood management is the only show in town—then at the centre of things. You have heard that opinion from SEPA and a range of other organisations, and there will be a duty to choose natural flood management. It is important, and everyone involved in flooding now understands that.

Perhaps Judith Tracey could say a word or two to reassure you even further, should that be possible.

Judith Tracey (Scottish Government Environmental Quality Directorate): There is a requirement on SEPA, when it sets objectives and measures, to take specific account of environmental benefits among all the benefits that result from a particular measure. It has to take into account the potential adverse consequences of flooding on human health, the environment, cultural heritage and economic activity. Therefore, the environment is clearly part of everything that a flood risk management scheme will address.

Bill Wilson: My concern comes from having heard that, when Scottish Water calculated cost, it had no system for including the cost of environmental damage or social disbenefit. I want to be reassured that, when future possible flood prevention developments are compared, the potential costs, such as environmental and social disbenefits, will be included as part of the cost estimate. That will give a fair comparison between natural and alternative methods of engineering.

Michael Russell: It is important that, as Scottish Water’s actions under both the developed plan for 2010 to 2014 and the new plan for 2014 onwards go ahead, that point is drawn to its attention. It is probably best to include that in the ministerial instruction to Scottish Water, and I can perhaps assure you by saying that I need to discuss that point with my ministerial colleagues who deal with Scottish Water. We can take a belt-and-braces approach to that.

The Convener: By now, you will have picked up the fact that the committee has some concerns about whether there can be a sufficiently robust culture change in the various organisations to encompass what the bill wants to achieve. I put a question to SEPA this morning about its ability to decide between what are perceived to be competing priorities—the priority mandating its concern about the environment and water quality and the new priority that relates to safety from flooding of communities, households and property. At the moment, it tends to prioritise one over the other. Are you confident that there is enough in the bill to ensure that SEPA shifts that culture by 2010?

Michael Russell: I find that SEPA is ever more aware that it has to balance all its actions by considering their social and economic cost and its own environmental and regulatory duties. We have seen a development in SEPA’s culture. It recognises that balance, and its work and innovations in planning show that. The bill will reinforce the fact that SEPA as an organisation will always have to make intelligent choices about its work, and I do not see anything in the bill that contradicts SEPA’s primary environmental and regulatory duties. The two priorities will go hand in hand.

I know that there is constant talk about culture change, which is important. However, a dispassionate observer would agree that there has already been a culture change in SEPA. That process will continue.

The Convener: So you would be interested to hear of specific examples of where SEPA’s priorities may be questionable.

Michael Russell: I am always interested in those examples.

The Convener: That is an invitation to committee members to let the minister know about any problems in their own areas.

Michael Russell: The chair of SEPA will be interested in those, too, as he is focused on the issue.

The Convener: Okay. Rhoda Grant has questions about planning and flood risk management processes.

Rhoda Grant: My question is on the interaction between flood risk management plans and local development plans. We have heard in evidence that local authorities will have regard to flood risk management plans in their development plans but that they will still consider economic developments despite what is in a flood risk management plan. Where do the different plans fit together? Should the bill emphasise that local authorities need to make flood risk management plans part of their development plans?

11:15

Michael Russell: Section 24 in part 3 makes specific reference to development plans. However, I would place the issue in a slightly wider context. Clearly, development planning must take account of flood risk. If it does not, something will go badly wrong at certain stages. There is therefore an inextricable link between development planning and flood risk planning. The existing planning system recognises that because it applies special provisions to building on a flood plain. Development planning and flood risk planning must therefore go hand in hand. The development
of local flood plans must take account of development activities, and vice versa.

Rhoda Grant: We are considering a petition as part of our evidence taking on the bill. The petitioners state clearly that the current planning policy guidelines are not being adhered to by some local authorities, which continue to plan for developments on flood plains. [Interrupted.] Sorry, that cough is catching.

Michael Russell: I would just like to say that it is not my fault.

Rhoda Grant: I hold you responsible.

Michael Russell: It seems to be spreading like wildfire.

Rhoda Grant: Yes.

Although the existing legislation does not seem to work, there appears to be nothing in the bill to strengthen the link between flood risk management plans and development plans by forcing local authorities to ensure that the flood risk plans take precedence over development plans.

Michael Russell: There is a clear set of provisions on building on flood plains, but we must recognise that building is sometimes necessary. For example, brownfield and other development land beside the River Clyde is on a flood plain. Clear regulations apply in such circumstances, and there is a clear procedure to be followed. We expect it to be followed and we believe that it is being followed. People tend to say that no building or developments should take place on flood plains. Regrettably, that is not possible. We therefore want to ensure that such developments are done within the planning system and that we have much more regard to ensuring that buildings on flood plains are resilient in relation to flooding. A lot of good work has been done on that. I am keen to encourage that approach, particularly with insurers.

Rhoda Grant: We had evidence from SEPA about the huge cost of even small flood alleviation schemes. Economic development has been used as an excuse to build on flood plains. However, what is the balance? How does a flood alleviation scheme costing the public purse £50 million—that figure was quoted for one scheme—fit in with economic development?

Michael Russell: That is an interesting and important question that local authorities and SEPA should sometimes ask. The balance has shifted greatly over the years in other countries. For example, Japan spent substantial sums on flood defences, even during the second world war, but it now spends far less on them because it does not believe the task can be adequately undertaken. We must constantly balance what is taking place, keeping the tool of natural flood management very much in mind as well, to hark back to an earlier question. One of the strong lessons from the bill is that the era of saying, “We will build a wall,” is well and truly over. It has been substantially over for some time and, frankly, the bill is putting it to death.

The Convener: Elaine Murray has follow-on questions on flood risk management plans.

Elaine Murray: We have spoken about the need to join up resources and so on. Currently, Scottish Water goes through the Q and S process and consults every four years. It then draws up its scheme of priorities for investment for the next four years. Do you intend to take any action to try to align flood risk management plans with Scottish Water’s business plans? There are also issues around funding streams, which we may come on to.

Michael Russell: I heard Chris Spray’s earlier evidence on the issue. It is right that we take certain actions over a period of time. However, we have identified the problem involved. Perhaps Dr Greig would like to say a word or two about that.

Stuart Greig (Scottish Government Environmental Quality Directorate): We have set up advisory groups on the bill and its implementation. Scottish Water is well represented on those groups, one of which has started to look closely at the issue of aligning funding streams. We understand the problems around aligning the CSR and quality and standards, given the different timelines involved.

Under the process set out in the bill, however, an assessment of the areas in Scotland most vulnerable to flooding will be carried out early on, and that information will be available in time to inform the Q and S IV process. Although we might not have all the information on specific measures and objectives, we will have an understanding of where certain problems might arise. That will allow us to undertake some advance planning. Indeed, that principle of basing advance planning on available information will be at the heart of each of the iterative cycles that we need to take forward.

Elaine Murray: The funding of the local plans—[Interrupted.] I think that my cough is more to do with last night’s partying than the cold.

The Convener: I advise the minister that the Labour Party’s Christmas party was last night.

Michael Russell: That is not responsible for the way that I am feeling.

Elaine Murray: Given that one of Scottish Water’s principal funding sources is customer charges, if Scottish Water is required to provide funding the general customer will have to come up with some of that money. Obviously, the other
source of funding would be local authorities. Is it expected that flood risk management projects involving Scottish Water will be funded through customer charges, or will funding be directed through local authorities?

**Stuart Greig:** We are discussing that issue with Scottish Water, but it is most likely that we will continue to fund investment through current routes rather than look to local authorities to provide money to Scottish Water. That said, if local authorities want to develop, say, urban drainage management measures, they can use their own money for that and easily share the funding with Scottish Water. We will take a flexible approach that accommodates different sources of funding but, as I say, we will probably want to retain the current funding routes. A lot of work is being carried out on that and there are things that we can do to make the process work better, but I do not think that we need to change it significantly.

**Michael Russell:** A hallmark of the bill is its emphasis on collaborative effort. All the organisations that have been referred to, as well as many others, will be involved in the process. Obviously, those organisations will have their own funding priorities, but we are looking for collaboration. After all, the essential point behind the bill is that the work cannot be carried out by one organisation alone.

**Elaine Murray:** Scottish Water has a national pot, but what about local authority contributions? When an authority’s local plan is established, it will want to bid for Government funding. What might be the process for identifying that funding?

**Michael Russell:** The committee is well aware of how funding has been allocated in the present spending round, so I will not labour the point. Essentially, for schemes that were already known about, resources were applied under an agreement with COSLA on folding money for flooding into the local authority settlement. Allowances were also made for schemes in development, and a proportion of funding was distributed to deal with properties at risk.

The allocation of further funding in other spending reviews will be a matter of negotiation with COSLA. The process has been—and, I hope, will continue to be—perfectly responsible, productive and positive, and it will be up to local authorities to say how all that should happen. We have made it absolutely clear that, as the concordat allows, there can in exceptional circumstances be discussions about other resources that might be required. No one has had such a discussion with us, and we are waiting to see what happens.

As I think Dr Murray will be aware, part of the issue is long-term planning. An awful lot of schemes have been discussed at great length—indeed, she and I can think of one particular scheme immediately—but no plans have been drawn up, no cost estimates have been made, no drawings have been done and no hydrologists have been engaged. People in a number of places in Scotland have asked me, “What about the resources for such and such a scheme?” when, in fact, no such scheme exists. Perhaps, as they draw up plans and think about the various possibilities, local authorities will be able to identify areas that might require small, medium or large-scale schemes and roll all that into the process. The bill team officials have worked very closely with local authorities—which, after all, know where the needs arise—on the issue, and the mapping that will be carried out will create a long-term pathway for ensuring that everything that needs to be done in Scotland continues to be done.

**The Convener:** Peter Peacock’s questions on the duty to implement flood risk management plans follow on from those remarks.

**Peter Peacock:** The ultimate aim of the technicalities around the bill is to provide better protection for homes, public buildings, public services and so on in flooding incidents. In the evidence that we have received, a lot of people, from agencies, non-governmental organisations, local authorities and so on, have expressed surprise that, although they are obliged to work with others to come up with flood risk management plans, there is no explicit duty to implement those plans. Your officials have indicated that you are beginning to think about promoting a link between the general duty to make plans and the specific duty to implement them. Can you tell us more about your intentions in that regard? Will the duty to implement the plans be explicit, or will the existing situation merely be tweaked?

**Michael Russell:** The context in which I will address those questions is one in which, for the first time ever, we have legislation that creates a general duty for local authorities and others to take responsibility for flood management, just as they take responsibility for education, road maintenance and so on. That is a big step forward.

The context is also one in which the Government’s relationship with local authorities is positive and—I hope—trusting, with the Government encouraging local authorities to do the things that they have a democratic duty to do.

I have heard the evidence to which you refer—for example, I heard SEPA talking about the matter this morning—and I am prepared to try to find ways of tightening up the bill in that regard. However, I do not think that we should be saying to people that they must implement their plans in a certain way. Local authorities have a duty to draw
up their plans and then to work out how they want to ensure that they are put in place.

There is a democratic check and balance. If the administration in a local authority refused to implement a plan of action that it had identified as being necessary to protect lives and property, it would not last very long. First, there would be an electoral price to pay, and, secondly, the bill provides for the minister to intervene in such a circumstance and say that the local authority must take the actions that it has a duty to take, under its general duties.

The bill tells local authorities what they need to do and lets them get on with it. That strikes me as being the ideal way in which to work with people. However, in light of the concerns that have been expressed, we will continue to try to find ways in which it can be tightened slightly in that regard.

Peter Peacock: I welcome that indication, but I will reserve my position on the matter until I see the details.

You and I have political differences about the nature of the concordat, but we should put them to one side because, in a sense, that is not relevant to this argument, as the concordat is an instrument of current Government policy and, as you might—or might not—accept, the Administration will change at some point.

Michael Russell: At some point, I am sure, but not yet.

Peter Peacock: Nevertheless, a subsequent Government might have a different policy. Therefore, in the interests of good governance over the long term, it is important to move beyond a view that considers only current policy and to ensure that the bill delivers a way of ensuring that certain things will happen. Do you accept that point?

Michael Russell: I do not accept it as an absolute, because all legislation expresses Governments' views and reflects the way in which those Governments see the world politically. However, I accept that we have to create a piece of legislation that is fit for purpose in the longer term.

Alasdair Morgan: You suggested an analogy with local authorities' duty to maintain roads. If I damage my car in a pothole I can sue the local authority, but I will not be able to sue the local authority if it has not implemented a flood risk management plan. Indeed, Fife Council told us that your officials have assured it that it would not be open to legal challenge. Do you accept that difference between the two situations?

Michael Russell: I would not necessarily accept it; I will have to think a little more about it. You seem to have stretched the analogy a little farther than it ought to have been stretched.

The general duty to protect against flooding is a considerable step forward in legislation. In those circumstances, it provides a considerable protection for citizens in each local authority.

Going to the extent of saying, “Once we have the plan, we have to implement it!” is a step that we do not need to take. Furthermore, in terms of my view of our relationship with local authorities, we should not take it, although I accept that if there is concern about how the plans are to be implemented we should continue to look at the matter. I have given that assurance to Mr Peacock.

11:30

Alasdair Morgan: Okay. I take the point. My view is that you cannot give people a guarantee against flooding in the same way as you can with roads—there is a difference in the level of guarantee that can be given.

Michael Russell: There are difficulties in giving any guarantee on flooding. We know quite a lot about roads: we know where they go and how they should be constructed. In flooding, there are still some uncertainties. As a committee, you have discussed those issues as part of your inquiry and, again, in your consideration of the bill. Not least of the uncertainties in terms of pluvial flooding is where the rain falls.

The Convener: One question that follows on from that concerns the process of co-operation and co-ordination. The local authorities, SEPA and Scottish Water have flagged up to us their concerns, particularly about the potential misalignment of roles. Who, ultimately, will crack the whip and say what gets done and when? There is still some uncertainty about who will hold what responsibility. Will SEPA’s role include the resolution of those issues or will you—or another minister—do that?

Michael Russell: The committee helpfully flagged up that issue in its inquiry into flooding. I recollect that from giving evidence to you. As a result of what you said, we took the issue on board when we drafted the bill, which strengthened the provision. The minister has an interventionist role, should that be required. That provision has been included in the bill as a result of questions that the committee asked.

The roles are quite clear. SEPA’s role is entirely clear. The drafting of the bill has a certain elegance to it in terms of how it sets out the responsibilities. There is the national plan—well, two river basin plans, with a third one in the corner of the Borders that needs to be tweaked slightly, but we will not worry too much about that. There are also the catchment area plans, although we are not entirely sure how many of those there will
be. That said, as they develop, things will become absolutely clear.

Furthermore, there is the process of mapping, by which the information is built up. Once the plans are in place, there is the responsibility of ensuring that they are implemented in some way or another.

The responsibilities are clear. The only slight vagueness relates to Scottish Water. As Dr Murray and other members indicated, once its flooding spending priorities and timescale of spending are aligned, the matter becomes entirely clear. In the end, the buck stops, as it has to stop, with the minister. If things are not happening, the minister will have to ensure that they do happen.

The Convener: A slight concern for us is that although you say things are clear, local authorities and Scottish Water are not taking quite the same position; they are telling us that they do not feel that it is clear. They say that they are not entirely certain who has responsibility for taking the lead on specific tasks. Although your clarity on the matter is not in doubt, lack of clarity continues to be an issue for local authorities and Scottish Water. The issue will have to be looked at.

Michael Russell: I take on board the fact that I have a role to spread clarity. We will certainly endeavour to do so.

The Convener: Thank you.

Peter Peacock will lead our questioning on funding.

Peter Peacock: There is a range of areas that we could get into; I will try to address some of them. Elaine Murray made the central point that also arose in the evidence that we heard from SEPA earlier this morning: like many others, including Scottish Water, SEPA made it clear that it sees merit in the long-term strategic view being taken. You have told us that you agree with that view. An allied issue is the need for an element of understanding—publicly and nationally—on the costs over a long period of time. What is your view of SEPA’s role in all this? It has set out its view; do you share it? Is the view absolutely and explicitly agreed? Can you help me to understand whether SEPA has a duty under the bill to provide ministers with the kind of advice that it set out fully this morning?

Michael Russell: Allow me to make several points about funding in response to that.

It is clearly understood that the means by which we have resolved to go forward is for local authorities to spend the money on flood management. There are other models: south of the border, the Environment Agency takes full responsibility for spending the money. That approach was a possibility for us, but from the beginning of the process of thinking about the bill—some of you were at the flooding summit that we held in Perth well over a year ago—it was absolutely clear that the vast majority of organisations in Scotland did not want that to be our approach. Instead, they wanted local authorities to be the key players. The implication is that the resources will be spent by local authorities. Therefore, in the spending review, we rolled up in the local authority settlement the money that is available in Scotland—the record sum of £42 million a year—on the basis of the formula that I outlined, which is well known to you.

If you accept that local authorities are the delivery mechanism, some other things flow from that. What other resources are required in relation to flooding and how should they be spent? I am thinking of flood warnings and flood alerts, the provision of which is a role that SEPA has undertaken. I have to say that it carries out that role, which will continue to be important, extremely well.

Given that the role of the responsible authority—the authority with the national responsibility—is a role that SEPA should take, I accept that it should say to Government a variety of things about money. I heard the witnesses from SEPA mention one of those things this morning—the alignment of finances and how that should be managed. That is an entirely legitimate area for discussion and we need to examine it closely.

On the question of the research that needs to be undertaken into flooding, there is no point in a body such as SEPA carrying out its role if it cannot make recommendations and access research. Some money is spent on a national basis in relation to management, and that is SEPA money as well.

When we accept that there is a front-line delivery role and a national role in drawing up the plan—obviously, that is in the bill—we begin to understand much more clearly the lines of responsibility in relation to money. I do not foresee any difficulty with accruing the figures in the accounts and bringing together on an annual or triennial basis the money that is spent by Scottish Water, the Scottish rural development programme and other bodies to create an overall total for spending on flooding. It is a different argument to say that the money should start from a central pot and be distributed by Government. That is not what has been decided, so we are not operating in that way.

We are clear about how the money should be spent. I have read the committee’s deliberations in the past month to six weeks. If the local authorities had said, “We do not want to spend this money. We want to give it back to the Government, which can make all the decisions on it,” that would run
counter to the bill and what we are doing. If COSLA had said that I would be honour-bound to consider the matter, but it has not said that and nor have the local authorities. In those circumstances, we are proceeding on the basis that the money will remain part of the local authority settlement and that the decisions will be made by local authorities.

I ask Dr Greig to comment.

Stuart Greig: There are two provisions that address the point about SEPA not having a duty and where the information on costs might come from. When it produces district plans, SEPA has to undertake a cost benefit analysis. It will not do such work on individual schemes—local authorities are well placed to do that—but it will undertake a cost benefit analysis of the plan, and that will provide information on the costs. Because it is a long-term plan, the analysis will give an understanding of the long-term costs and benefits, and that information will be made available to ministers.

The bill requires SEPA to set out an outline implementation strategy for the plan. Local authorities will be responsible for detailed planning of implementation, but SEPA has to produce an overview outline implementation strategy, which could consider specific issues such as recommendations on how things can be done better to make the plan work and be more easily delivered.

Those specific provisions allow for some of the things Peter Peacock suggests.

Peter Peacock: I accept what you say. I suppose my answer to the minister might be that, notwithstanding that, there is a need to be quite explicit. Given climate change and the need to protect communities, we have to have an open and clear debate about what it will cost. SEPA clearly thinks that it can play a role in that.

If we can find a mechanism to require such information to be in the public domain, we will be clearer about the decisions that are made on the basis of it, about the hierarchy of projects that SEPA talked about and about whether the £42 million is still correct. I am quite relaxed about local authorities spending the cash. The opinion has been expressed that we should firm up the bill to ensure that SEPA is clear about its strategic role in advising ministers about financial needs. It has also been suggested that the bill should require ministers to have regard to that when they are thinking about distributing cash to local authorities.

Michael Russell: You are addressing transparency about what we spend on flooding management in Scotland. The most negative debate would be reduced to, "You're no spending enough," "Aye, we are."

The money that is being spent is clearly going into recognised schemes that we all know are required. You know about the schemes in Elgin and other parts of Moray, and about a range of others in places such as Edinburgh, Glasgow, Renfrew and Argyll.

I would be happy if a system were developed that showed what is being spent and what the plans expect to be required, in the context of a series of variable estimates. There are no absolutes in this situation—I will give you an interesting example involving coastal flooding. It is possible to construct a series of estimates for what coastal flood defences might be required in various parts of the Western Isles—they would be on an enormous scale—and equally possible to make a smaller estimate on the basis that some of the current problems have been caused by bad engineering in the past; I refer to the issues with the South Ford causeway.

I would be happy if a range of estimates was made and there was transparency about resources. If we could find a way in the bill to ensure that that happens—we must remember that it is about structures and regulations, not specific sums of money—I would be happy with that.

Peter Peacock: I welcome that and look forward to seeing how it might develop. I am not talking about specific sums of money, which is to do with detailed decision making during any particular financing period.

Concerns have been expressed about whether ministers should be required to think about certain issues when they consider how to allocate the available money, so that they ensure that the big schemes that might require to be done in a particular time period are financed with help from the centre, through the distribution mechanism. I accept that it is difficult to tie ministers' hands—although we might try—but do you accept that there might be some benefit in setting out in statute the kind of considerations that ministers ought to take into account when they decide how to meet national priorities?

Michael Russell: The bill already does that to some extent. Its very construction covers the existing need, the social and economic considerations, the way in which flood risk management has to build and develop, and how it must be a collaborative activity that takes account of development planning—we heard that question earlier. The criteria that should be applied are in the bill. If we go further than that we will be pretty close to telling a local authority that it has to have a local plan and telling it how to implement it. There is an element of flexibility on that in the bill, which recognises that there are various tools in the box, including natural flood management.
We are pretty close to what you are saying, although on this as on all other matters I stress that there is no such thing as a perfect bill or a perfect piece of drafting. If issues are not adequately covered in the bill, we will debate and discuss them. We are constantly aware of the issue of transparency.

11:45

**Peter Peacock:** Scottish Water’s activities are, to some extent, regulated by the Water Industry Commission. We have heard concerns that although Scottish Water might be under a duty to think about acting sustainably—as we heard in evidence last week—the WIC is not under a similar duty and it is possible that Scottish Water, in seeking to fulfil its duties, will operate under one set of criteria while the WIC, in helping to regulate pricing and charging, will not embrace the full range of considerations as Scottish Water has to, so its actions might be more limited than would otherwise be the case. Do you think there is a case for examining the operating instructions to the Water Industry Commission or what governs them, to try to ensure alignment?

**Michael Russell:** As I said in my response to Dr Wilson, there is a case for discussing the instructions to the Scottish Water Industry Commission with the responsible ministers. I do not need to remind you, Mr Peacock, that the Scottish Government has the word “sustainable” tattooed in the middle of its objectives. I do not think that any part of Government should operate in any other way but a sustainable one—and every part of Government should know that.

**Peter Peacock:** I readily accept that you have a tattoo somewhere that says “sustainability”, but that is not the point—we need to know what the law says. If there is a disagreement in terms of the law, and requirements are placed on the Water Industry Commission, would it not be as well to tighten that up now while we have the chance, rather than leave the matter open to any doubt?

**Michael Russell:** I agree—that is why we are discussing instructions to the Water Industry Commission. I return to the point that I believe that every part of Government would want to look at its actions and ensure that it is operating sustainably—that includes the WIC as well as everyone else.

**The Convener:** I do not know whether there is anything left for Elaine Murray to ask.

**Elaine Murray:** Peter Peacock has covered a lot of the issues that the Finance Committee raised in its report. Scottish Government officials apparently confirmed to the Finance Committee that information on the costs that are incurred by various public bodies in delivering their new responsibilities could be included in the formal mechanism that the bill provides for reporting to Parliament. The committee wondered whether the Government intended to report formally to Parliament on the implementation of the bill and to include the costs in that.

**Michael Russell:** All three of us have said the same thing: we will look at it.

**Liam McArthur:** The Association of British Insurers raised concerns in its evidence to the committee about the need for a long-term strategy. It also suggested, in relation to the higher risk from multiple unaligned funding streams, that flood risk could be better managed if funds for flood risk management were separately identified and ring fenced for that purpose.

We have just received, before your arrival, what will no doubt become the historic concordat between the Government and the ABI. It appears—as an early success of your mission to spread clarity—that the issue of the long-term strategy has been addressed within it, but from the cursory glance that I have been able to give it I cannot see where the issue of multiple funding streams and unaligned funding streams has been addressed. Perhaps, as part of your mission to spread clarity, you could explain where that may have been addressed.

**Michael Russell:** I shall take it as a challenge to spread clarity to you, Mr McArthur. The historic concordat with the ABI, which I am pleased to be able to bring to fruition today, certainly considers the long-term window. We do not accept the point of ring fencing—I think I have made that clear in what I have said here; we accept the democratic right of bodies and organisations to spend the resources that they have. I am in favour of transparency in relation to those resources so that we know where the money is coming from and what the totals are, and where it is being spent. We will do our best to achieve that, but we have made a decision—not just in this area but in every area—that we should rely on local authorities to make their own decisions, and we will stick with that.

**The Convener:** Bill Wilson has questions on coastal inundation, which is no surprise to the rest of us.

**Bill Wilson:** We heard evidence from SEPA earlier that 12m of Essex is being lost each year, and it referred to the possibility of our having to abandon some settlements in Scotland as sea levels rise. In view of that evidence, will you consider the possibility of prohibiting developments below a certain height above sea level? I mean in coastal areas; I am not talking about throughout the country. The ABI stated that its members use SEPA’s maps and information
when they determine the possibility of insuring new developments. Will you instruct that those maps allow for climate change in the coming 20 or 30 years?

Michael Russell: On the second point, I can see no reason why there should not be an estimate of possible climate change effect, although it is hard to make that estimate precisely.

On the first point, I am reluctant to give a blanket answer that we should prohibit development of any description. There are circumstances in which development in such areas is required, is desired by people and is a good thing. We must weigh the advantages and disadvantages carefully. Nobody can be in any doubt that development in an area that is at risk of constant inundation would be foolish. Nobody would want to do that. However, in other circumstances, if suitable defences can be found, development is the right thing to do. It would be foolish to talk about abandoning settlements or starting to name settlements and point the finger at them. People have lived and continue to live in areas that are at risk in a variety of ways and we must help them to do so if at all possible. I know some of those areas extremely well. In those circumstances, I want to help people adapt to change, rather than throw in the towel.

Bill Wilson: I accept that not every development should necessarily be prohibited. To take a simple example, if a farmer chooses to build a byre 10cm above sea level, that is his decision and it is hardly the end of the world.

Michael Russell: You are refining your question. You began by saying—

Bill Wilson: Okay, I spoke broadly. I am thinking of more significant developments, such as housing developments. The sea level rise may be 50cm, which we might be able to cope with, or it might be 5m, which we would have considerable difficulty coping with. A presumption against developing new settlements at, say, less than 1m above sea level would be a sensible precautionary move.

Michael Russell: Every planning authority is aware of such issues—they need to be aware of them. I cannot imagine a planning authority in Scotland that is not aware of the climate change issues. Authorities that have affected areas will want to bear those issues in mind but, at the end of the day, it will be their decision. I would be surprised if any major new settlement was planned in Scotland at 10cm above sea level. I would certainly not purchase property there.

Bill Wilson: Right—I will move on. A concern has been expressed to me that conflict might arise between the bill and the Coast Protection Act 1949. Are you aware of that concern and, if so, do you have any comments on it?

Michael Russell: That sounds like a concern on which Judith Tracey will be more than well informed.

Judith Tracey: Section 36 would place a duty on all public bodies to have regard to district and local flood risk management plans when exercising any functions that affect a flood risk management district. Under the Coast Protection Act 1949, local authorities are the competent authority on coast protection. In future, when an authority plans any coast protection work, it will have to take into account its flood risk management function. Therefore, the two could not possibly be in conflict.

The Convener: Alasdair Morgan has a couple of questions about reservoirs and hydrologists, so we may as well move on.

Alasdair Morgan: My first question is on national security, which I know is an issue that is dear to the minister’s heart. SEPA told us that it wishes to have clarification on security issues in respect of reservoir inundation plans. Discussions seem to be on-going with DEFRA on that. People who are involved in flood management need to know what is likely to be flooded if a reservoir has a problem, but DEFRA seems to be unwilling to spread that information about, on national security grounds.

Michael Russell: It is even unwilling to give that information to ministers—officials get told such things more than ministers. Judith Tracey will, no doubt, have a response on that, although I am aware of the problem and that it is difficult to crack. I should make the serious point that our work on reservoirs is being done hand in glove with DEFRA—we think that that should be the case. That has been useful to us because aspects of reservoir legislation in Scotland need tidying up for two reasons. The first is that advantageous changes have occurred south of the border and the second is that the proposed floods and water bill south of the border will have a major impact on reservoir legislation and on the issues that the member raises. We are considering whether it would be appropriate to have a legislative consent motion on aspects of that proposed bill. However, a decision on that is some time away—it will certainly not happen in the present parliamentary session.

People who followed the Renfrewshire incident earlier this year will have realised that reservoir legislation in Scotland needs sharpening up. I have been concerned about the matter for some time. How best we sharpen up the approach is the issue. The bill is only the start of the process.

Judith Tracey: National security has been extensively discussed since the issue came up when the Water Act 2003 conferred on ministers a
power to acquire inundation maps. The power has not yet been enacted, for the simple reason that there has been much discussion about who should see the maps, how they should be stored and who should have access to them. Much discussion has focused on security, and inundation maps have not yet been produced in England and Wales.

Agreement has been reached with the security services that category 1 responders should have access to the inundation maps. I think that it was agreed that that will happen in a controlled environment. Maps will not be handed out to everyone; the people who produce them will hold them and give access to the equivalent of strategic co-ordinating groups in Scotland, for civil contingencies and emergency planning purposes. The maps will not be distributed more widely.

**Alasdair Morgan**: How does that affect timescales for planning that must be done in the event of a legitimate emergency?

**Judith Tracey**: That is a bit of a moot point, given that the inundation maps have not yet been produced. Some larger reservoir undertakers have produced inundation maps for their own purposes, so that they know where the water would go. I think that it has been agreed that they will make their maps available to the English equivalent of our strategic co-ordinating groups, to be used for emergency planning purposes.

In Scotland, the general approach is to have a generic emergency plan, which can be used in all circumstances and can be adapted to a particular emergency.

**Alasdair Morgan**: Is the current situation satisfactory?

**Michael Russell**: I do not think that it is satisfactory, which is why we have strengthened the approach by including reservoirs in the bill and are considering moving our legislation forward, in line with legislation in England and Wales.

I was particularly concerned by the incident in Renfrewshire, which involved a reservoir that was in a category lower than the category that would be reported and had the potential to cause damage. The weakness in the reservoir was not anticipated—it seems that something had gone wrong with the maintenance. In such circumstances it is clear that the legislation in Scotland needs sharpening up. That is why reservoirs are in the bill, but we have more to do in that regard.

I understand the security issue and I appreciate its sensitivity. We need to resolve it in the Scottish context as soon as possible, with the assistance of DEFRA. To be fair, DEFRA is being positive in giving such assistance.

**Alasdair Morgan**: When might inundation maps be available—at least to someone—for all major reservoirs in Scotland?

**Judith Tracey**: We informed the committee that we intend to lodge an amendment on on-site plans. Such plans are likely to require maps that show where the water would go. If the amendment is agreed to at stage 2 and the bill is subsequently passed, I imagine that it will take a year or two to produce plans.

**Michael Russell**: Mr Morgan is a fair-minded man and will realise that the emergency services in areas that are served by large reservoirs are aware of the issues and factor into their thinking the possibility of difficulties with dams or similar structures. What the emergency services have is not as good as a full inundation map, but it is not nothing; we are assured that they are prepared for such circumstances.

**Alasdair Morgan**: My second question is about the difficulty that various people have flagged up to us about the current shortage—which may get worse—of hydrologists and other trained engineers. The shortage will be affected by the fact that other countries are due to implement similar measures and by the fact that such engineers seem to be easily attracted by private firms to act as consultants. Presumably the demand from those firms will increase. How will we address the current shortage, which will get worse in the very near future?

12:00

**Michael Russell**: It strikes me that SEPA gave a positive answer to that question earlier. Positive engagement is taking place with universities, trainers and others to ensure future supply. We are looking at retraining people with other engineering skills. I am in contact with my opposite numbers in the education portfolio to encourage them and to highlight the opportunities. We should also tell people that, for the foreseeable future, there will be major opportunities to become an hydrologist. It strikes me that if anyone in the room is thinking of retraining, that would be a good opportunity.

**Alasdair Morgan**: Thank you, but I will not take up the option just yet.

As always, cash seems to be an issue on the education side. Where does the budget for such retraining lie? Will it need to be funded by education in competition with other priorities?

**Michael Russell**: I am not sure that there is a major cash issue, as that issue has not been central to our thinking. It should be possible for small amounts of resource to be found from flooding research and other areas if new courses
need to be provided. However, I think that the issue is getting the individuals rather than the cash.

**The Convener:** That completes our questions to the minister. We have given him mercy for the final 10 minutes as we will now move on to a different agenda item. I thank the minister and his officials for their attendance.
SUPPLEMENTARY SUBMISSION FROM SEPA

[Questions asked by the Committee are in bold, the background to questions is in italics]

Probability

In its submission to the Committee, Mountain Environments suggest that for “flood risk assessments, the description of a flood which has occurred should always include the estimated return period of that flood.” Lanarkshire Council was also concerned about the definition of high, medium and low flood probabilities, and asks whether these might usefully “be linked to return periods to ensure national standards.”

In discussions with the ABI on the 10 December, the Committee noted differences in return periods between SEPA’s flood risk maps and the return period that ABI uses in their assessments.

Section 18 (8) of the Bill a low, medium and high probability of a flood is defined as:

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

Q1 How would SEPA wish high, medium and low floods to be defined, and what return periods these probabilities should be linked with as standard to ensure consistency?

The EC Floods Directive (and the Flood Bill) requires consideration of high, medium and low probability floods. Low probability floods are described in Chapter 3 of the Directive as ‘extreme event scenarios’ while medium floods are categorised as having a return period equal to or greater than a 100 year event. There is no specific guidance on what may constitute a high probability (frequency) flood event other than they have to be considered ‘where appropriate’.

To ensure consistency with current flood risk design standards for planning purposes as set out in SPP7, the ‘medium probability’ flood should equate to 0.5% Annual Probability (AP) (or 200-year return period event). The recommended design standard for flood prevention schemes in recent years has also conformed to the 0.5% AP standard.

SEPA considers that ‘low probability’ events (extreme events) are more extreme than the 200-year (0.5% AP) flood. A flood event, such as that associated with a reservoir failure, would be classed as an ‘extreme event’.

‘High probability’ events could fall within the range between the Mean Annual Flood (1 in 2 year event statistically) and the 200-year flood, although this range appears rather large. Design standards for drainage assets both above ground and below, for many years now have used the 1 in 30-year design standard. This may provide a useful benchmark for consideration of how to define a high probability flood.’

Discussion and agreement with Government (and partner bodies involved in planning and engineering processes) on what level of “future-proofing”, resilience and protection we wish to achieve would be extremely helpful.

Planning

In their submission SEPA request greater “clarity on the use of SEPA objections to development plans and planning applications relative to flood risk; SEPA should not be expected to object to a planning authority on flood risk grounds where an adverse impact solely relates to matters regulated by another statutory body.”
Q2 Could SEPA elaborate on this and state how they would like their objections to development plans and planning applications to be used?

This refers to how SEPA proposes to provide advice to local authorities, which of course are the lead bodies in making land use planning decisions, given the new definition of flood risk in the Bill.

Currently SEPA objections to development plans and planning applications are founded in SPP7 – Planning and Flooding. Following the "avoidance" principle and sticking to the risk framework set out in SPP7 maintains the sustainable approach to planning and flooding that must underpin flood risk management plans. Objections by SEPA to development plans and planning applications are based on SPP7 and are a clear indication of the presence of an unacceptable flood risk.

SEPA’s objections should be used to ensure that no inappropriate development takes place on floodplains i.e. to prevent further development which would have a significant probability of being affected by flooding or which would increase the probability of flooding to existing settlement or elsewhere.

The Scottish Government is presently consolidating the 19 Scottish Planning Policies (SPPs) into a single document. It is vital that key elements of SPP7 are retained and developed to enable us to play a more effective planning role under the reformed planning system and this ensure our assessments are effective.

We are also reviewing how we respond to flood risk consultations within SEPA as part of the Government’s “Delivering Planning Reform” initiative.

We will develop clearly defined guidance on the provision of advice to planning authorities on planning applications and development plans and on how SEPA will liaise with other relevant statutory bodies where comment is required on flood impacts to human health, cultural heritage or economic activity.

For SEPA staff to be able consistently, timeously and effectively to provide robust flood risk advice, it is essential that the expectations of those receiving the advice and its force are very clear. Whilst not perfect, SPP7 has provided a framework hitherto. It is essential that for the future a suitably robust framework exists.

The Committee agreed to consider public petition PE1207 – a review of SPP7 - planning and flooding, as part of its Stage 1 scrutiny. Petition PE1207 suggests that planning guidance SPP7, which is intended to prevent development which would have a significant probability of being affected by flooding, may not be being followed appropriately. The ABI submission also highlights the importance of "ensuring that the planning system prevents inappropriate developments in flood risk areas".

Government officials have stated that the intention would be to revise SPP7 in light of the Bill and to introduce further guidance revising planning processes to strengthen the link between flood risk management planning and local development plans. No timescale has been suggested for this and officials have stated that such provisions would not naturally fall within this bill.

Local authorities suggested in evidence on 10 December that there may be conflict between development plans and flood risk management plans and that it was unclear how this would be resolved or which would take precedence, which would suggest that legislation to clarify this situation could be useful.

Q3 How does SEPA think that flood risk management plans will interact with development plans in practice?

Strengthening the link between flood risk management plans and development plans is key to meeting the objectives of the Bill, i.e. delivering sustainable approaches to managing all forms and consequences of flooding.

Under the Bill, all responsible authorities must exercise their flood risk related functions with a view to reducing overall flood risk. The planning and development responsibilities of the Local Authorities are potentially the most powerful way of reducing overall flood risk. By carrying out
strategic flood risk assessments of their area, local authorities will be able to zone land according to flood risk and ensure that future developments are not exposed to unacceptable flood risk and that both sustainable flood and sustainable land use management are achieved.

Development plans should take due consideration of both district and local flood risk management plans.

Where conflicts occur between the objectives in development plans and in flood risk management plans, guidance will need to be established on how to integrate the requirements and purposes of the two processes.

Q4 Does SEPA consider that local authorities are currently adhering to the requirements in SPP7 not to develop in areas at high risk of flooding?

In SEPA’s experience adherence to SPP7 can vary across local authorities.

In some cases it appears that flood risk is not given due weight on development plan allocations when balanced with other locational factors. This can cause considerable delays and frustrations when planning applications come forward for these sites and the flood risk issues have to be fully addressed at this late stage.

Issues may arise where a Local Authority allocates sites in development plans that are either within, or partially within, areas at high risk of flooding, thereby establishing the principle of development on these sites.

Some planning authorities choose to deal with flood risk issues by attaching conditions to a planning application. SEPA considers this approach is not the most appropriate nor is it in accordance with SPP7 as it implies that flood risk can be dealt with once the principle of development (and often the exact siting and design) has been established.

Some local authorities are reluctant to consult SEPA on flood risk issues, whilst others consult extensively. There may be a link here as to how seriously flood risk issues are being considered. Clarity, simplicity, robustness and consistency seem the best way forward.

Q5 Does SEPA consider that planning provisions to resolve this issue within the Bill might be useful?

Yes.

Strengthening the Bill or including provision in secondary legislation and revised planning policy would be helpful and therefore is in our view essential.

The opportunity should be taken to require strategic flood risk assessment (SFRA) of development plans within the secondary legislation and associated guidance that is being developed to implement the Planning etc. (Scotland) Act 2006.

A duty upon planning authorities to give timely and full consideration to flood risk when dealing with development plans and/or planning applications would be very useful.

This would help ensure that flood risk issues are given due consideration when allocating sites in a development plan (rather than at the planning application stage). SEPA would advocate that this should be achieved through a Strategic Flood Risk Assessment.

This would also help ensure that flood risk considerations are used when considering the principle, siting, potential infrastructure needs and consequentials and specific design of a development rather than using conditions.

In evidence to the Finance Committee Angus Council expressed concern about the way in which SEPA will conduct national planning work and then local authorities will apply their local expertise to their area plans. Angus Council suggested that this could cause some delay in clarifying costs and expressed concern that, “The local authority may in consequence be heavily constrained by and obliged to the financial consequences of decisions made by the unelected authority.”
Q6 To what extent does SEPA consider that local authorities will (or will not) be bound by the District (national) flood risk management plans developed by SEPA?

The District and local flood risk management plans will need to be prepared in parallel. The deadline for the completion of the local plans is six months after the completion of the District plan (or such other date as the Scottish Ministers may direct) and as such the expectation is for a two-way interaction between each set of plans as they are developed. It is not envisaged that the preparation of the District plan will delay the preparation of Local plans.

The District flood risk management plans developed by SEPA will be high level plans that set the national and strategic framework for flood risk management in Scotland. They will be informed by local flood risk management plans and will identify Scotland’s priorities for objectives and measures. District plans prepared by SEPA will be approved by Ministers.

SEPA and the responsible authorities have a duty to collaborate in carrying out their flood risk management planning duties under the Bill.

We would also hope that if the issue is one of elected status or accountability, local authorities will continue to set considerable store by the protection from flood risk of their electorate and indeed protection of the environmental asset base of their areas generally. We remain ready and willing to support local government to ensure that it has the quality of advice needed and will work very closely with it to discharge our duties and theirs.

Maps

Q7 Finally, members would be interested to know to what extent coastal flood maps take into account climate change - for example does SEPA produce model maps based on a series of possible outcomes (i.e. different sea levels) as a result of climate change?

SEPA’s current flood maps do not take climate change into account. The flood outline shown on the Indicative River and Coastal Flood Map (Scotland) is based on a level of flood risk (flood probability) estimated under current climate conditions.

The flood hazard and flood risk maps of potentially vulnerable areas required by the Bill for 2013 will need to take account of potential future risks. These will include climate change and a methodology will need to be developed for these maps to account for future trends.

Mapping flood risk at our coast under a range of climate change scenarios would also be helpful in understanding those areas most susceptible to increased risk in the future. Such maps would be useful in flood risk management planning and raising awareness of future risks.

We consider this approach and the tasks entailed to be desirable, considerable and essential in order to provide a robust service for the future.
ANNEXE E: Other Written Evidence

SUBMISSION FROM ABERDEENSHIRE COUNCIL

I refer to your call for evidence regarding the above and attach a copy of the report to the Council’s policy committee which dealt with the issue. An extract of the minute is also attached.

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE - 13 MARCH 2008

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND- ABERDEENSHIRE COUNCIL’S RESPONSE TO CONSULTATION

Purpose of Report

This report asks the Committee to endorse the proposed response to the Scottish Government on the above consultation document.

Background

The Scottish Government is proposing to introduce a Flooding Bill later this year to modernise the flood risk management system in Scotland which is regarded as outdated and dealt with in a piecemeal fashion.

At present there are a large number of key players dealing with flooding from various sources and this leads to confusion. It is also generally felt that there is a lack of co-ordination between the different powers and duties under different legislation.

The Government’s draft proposals are intended to develop a more co-ordinated, integrated and streamlined approach to flood management through a national approach, delivered at a local level.

On 15 February 2008 the Scottish Government published a consultation document entitled “The Future of Flood Risk Management in Scotland” and invited comments from interested parties on its contents, by 23 April 2008. The consultation document, which is available on the Government website, [http://www.scotland.gov.uk/Consultations](http://www.scotland.gov.uk/Consultations), poses a number of questions and the proposed responses are contained in Appendix A to this report.

Proposals

To endorse the proposed response to the Scottish Government’s consultation document “the Future of Flood Risk Management in Scotland”, as contained in Appendix A to this report.

Discussion

The proposals set out by the Government are designed to establish a framework within which sustainable flood risk management will operate more effectively than at present. They are intended to ensure a modern risk based approach, complemented by a streamlined decision making process.

The term “sustainable flood management “ is used frequently throughout the consultation document and is defined as follows. “Sustainable flood management provides the maximum possible social and economic resilience against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”

The main piece of legislation relating to flooding is the Flood Prevention (Scotland) Act 1961, which was written for previous local government structures. It does not interact well with the newer duty to promote sustainable flood management, required under the Water Environment and Water Services Act 2003.

The 1961 Act places emphasis on large scale engineering measures rather than considering catchment wide solutions. It does not address all types of flooding, and the statutory processes which it contains in relation to the promotion of Flood Prevention Schemes do not integrate well with planning procedures and the recently introduced Controlled Activities Regulations. (All
engineering works in or in the vicinity of rivers, lochs and wetlands now require authorisation under these latter regulations.)

Another problem is the lack of integration of water industry infrastructure and other drainage and flooding infrastructure. With the split from local authorities of Water Services, there are difficulties when flood alleviation measures require the upgrading of sewers which are not in Scottish Water’s future works programmes. Surface water has also become a grey area with local authorities being responsible for water on the road surface and Scottish Water becoming responsible once it enters their sewers. There may also be issues with poorly maintained SUD systems discharging from private ground to drainage systems.

To overcome the above and other deficiencies, a number of changes are proposed in the new Flooding Bill and the key features are summarised in the subsequent paragraphs.

The most significant is the identification of a lead (or as it is termed “competent”) authority to fulfil a strategic, coordinating role in flood risk management throughout Scotland. It is proposed that this role be undertaken by SEPA.

Informal Government consultations previously undertaken indicated that there was no support for a single flooding authority, as creation of a new body would require functions of existing bodies to be dis-aggregated and thus be very resource intensive. They concluded that setting up a framework with a lead authority providing a strategic overview and local authorities undertaking the important supporting role of implementing measures and engaging with stakeholders at a local level, was the best way forward.

SEPA is already heavily involved in flooding and water/environmental quality regulation work, and has the technical and operational capacity to take on these additional functions. It also has the ability to adopt both a national perspective and to reflect regional and local issues.

The competent authority’s duties will include the preparation of high level Area Flood Risk Management Plans, covering single large catchments or multiple smaller catchments, which will set the framework for flood risk management in Scotland. These plans would summarise significant flood risks, map flood hazards and risks, set objectives to manage flood risk and set out broad measures to address flood risk. The plans will also be required to prioritise flood risk at a national level and integrate with other aspects of land and water management.

In preparing these plans, the competent authority will be required to consult and collaborate with local authorities and other stakeholders.

Area Flood Risk Management Plans (AFRMP’s) must be completed and submitted to the European Commission by December 2015 as required by the EC Flood Directive which came into force in December 2007. There are also intermediate deadlines within the Directive for the components of the AFRMP’s.

At a second tier level, the competent authority will require local authorities to prepare detailed Local Flood Risk Management Plans (LFRMP’s) for single small catchments. These will translate the strategic objectives from the AFRMP’s into locally focused sets of measures to address flood risk.

In preparing these secondary plans, local authorities will have to assess catchment characteristics, undertake detailed appraisals of flood risk, consider management options, prioritise implementation measures and establish funding and timescales for works. It is anticipated that the latter two requirements may form part of an asset management strategy.

The LFRMP’s will also be able to inform local authorities’ development plans and help planning authorities to make informed judgements on flood risk to complement the advice already given by SEPA.

None of these functions are new to Aberdeenshire Council which already undertakes flood risk assessments for “at risk” areas, but the proposals will require a more rigorous and formalised approach in the future.
At a third tier level, the detailed design and implementation of measures identified in the LFRMP’s will be undertaken by an appropriate organisation. This could be local authorities for engineering works, Forestry Commission for upland planting or Scottish Water for urban drainage infrastructure improvements.

The identification of areas of significant flood risk will be a collaborative process between the competent and responsible authorities, and it is proposed that the Bill will impose a duty on all parties to collaborate on flooding matters. This collaboration will include dealing with cross authority boundary situations. (The term “responsible” authority is defined as including Scottish Water, Local Authorities, SNH, Forestry Commission and possibly other bodies still to be identified.)

This proposed structured hierarchical approach is considered sound. It should ensure that the national and catchment focused approach to flood risk management planning is underpinned by local co-ordination and delivery of measures by those bodies with direct experience of implementing measures on the ground. It must, however, be recognised that there will be staffing and financial implications for the Council, as described in sections 7 and 9 below, which must be addressed.

The consultation document proposes that the existing duties on local authorities, introduced through the Flood Prevention and Land Drainage (Scotland) Act 1997 amendment, of assessing, managing and maintaining watercourses and publishing biennial reports on flooding action will remain. A standardised format for the presentation and content of biennial reports may however be developed and this is welcomed.

It is proposed that local authorities will have powers to carry out flood risk management measures for the protection of any land or property. This would enable them to implement measures agreed in LFRMP’s, and is supported. The 1961 Act covers the alleviation of flooding on non-agricultural land only, and so the extension to include any land is a notable and worthwhile change.

The current process for the approval of Flood Prevention Schemes is complicated, with overlaps between the statutory confirmation, planning, and most recently introduced Controlled Activities Regulation (CAR) requirements, which result in long lead-in times for projects.

It is proposed to simplify matters by either retaining a statutory process for the approval of flood risk management measures, but with Ministerial confirmation carrying deemed planning permission, or by removing entirely the Ministerial confirmation process.

There are pros and cons for both options but overall the first option is preferred for consistency of approach throughout the country.

The final major change is a proposal to transfer responsibility for the enforcement of the Reservoirs Act 1975 from local authorities to a single enforcement authority. It is proposed that this be either SEPA or a separate new authority.

There are 19 reservoirs in Aberdeenshire falling under the Act, only one of which, in Haddo Country Park, is controlled by the Council.

A single national body would ensure consistency of approach and have more strength to implement enforcement powers, and is therefore supported. The appointment of SEPA to fulfill this role would be consistent with practice in England and Wales where the Environment Agency is the enforcement authority, and this option is considered to be the preferred choice.

**Area Implications**

The proposals contained in the consultation document will have an equal effect on all Areas of the Council.

**Policy Implications**

The proposals, if implemented, will introduce a new more structured approach to flood management involving wider community participation and greater collaboration with other agencies and will necessitate a review of existing policies and procedures.
Staffing Implications

The preparation of local flood risk management plans is expected to involve a considerable amount of additional staff time. There will also be a staff resource requirement for local authorities if it is decided to remove the Ministerial confirmation process and undertake the scrutiny and approval role of flood risk management measures independently in-house.

There is a concern that it will prove difficult to recruit additional staff with sufficient technical experience in flooding to perform these functions in a period of exceptionally high demand.

The proposed transfer of duties from local authorities to a single authority for the enforcement of the Reservoirs Act 1975 may result in some small savings in staff time.

Sustainability Implications

The proposals are built round a desire to develop a sustainable approach to flood management, with an objective being to strike a balance between current needs and those of future generations.

Financial Implications

- Up until 2007/08, funding for Flood Prevention Schemes has been ring fenced, and authorities have been able to apply to the Scottish Government for funding of 80% of the capital cost of such schemes. From 2008/09 onwards, this funding is no longer ring fenced, but has been allocated as part of the block capital grant settlement. In reality, all of the funding for 2008/09 and 2009/10, plus the majority of the funding for 2010/11 has been allocated on the basis of previously committed schemes, and is still ring fenced. However, the Government envisages that the future allocation of this money will be based on the level of significant flood risk in each authority. This will mean that for future flood prevention measure

- The Government is expecting that responsible authorities, including local authorities, will ensure that their investment plans are aligned with the measures and objectives agreed through the flood risk management process. This will require councils to make a clear commitment to making funding available to implement measures at the Local Flood Risk Management Plan development stage. It is anticipated that this could happen through the internal Asset Management process.

- The new duties involved in preparing flood risk management plans and, if adopted undertaking the scrutiny and approval role, will have cost implications in terms of additional staff time. It is not possible to quantify these costs at present.

Consultation

The Director of Finance has been consulted and his comments are included in section 9.1 above.

The Director of Law and Administration has also been consulted and is satisfied with the contents of the report.

The Director of Planning and Environmental Services has been consulted and her comments are covered within the report and accompanying appendix.

Officers from the Flood Prevention and Coastal Protection Unit of Transportation and Infrastructure and from the Planning Policy and Environment Section of Planning and Environmental Services have also been consulted and their comments are included throughout the document.
Recommendation

The Committee is recommended to:

Endorse the proposed response to the Scottish Government’s consultation document “the Future of Flood Risk Management in Scotland”, as contained in Appendix A to this report.

Director of Transportation and Infrastructure
Report prepared by W. R. Murdoch
28 February 2008

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND - RESPONSE TO SCOTTISH GOVERNMENT’S CONSULTATION DOCUMENT

Sustainable flood management

Q1- Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

The definition is helpful in the sense that it provides an understanding of the issues which need to be considered when undertaking sustainable flood management planning. These issues are clarified further by the series of more explicit associated objectives and principles which attempt to set out in more detail what is trying to be achieved. One small criticism perhaps is the omission of any reference to the opportunities for enhancement to habitats and, hence, biodiversity that SFM can bring.

Q2- Do you think the definition is clear and simple to understand?

The wording is considered reasonably comprehensive and simple to understand, whilst retaining a degree of flexibility in interpretation.

Appointment of Competent Authority

Q3- Do you agree with the conclusion as set out in paragraph 3.17?

Essentially yes. There does seem to be a need for a lead authority to provide a strategic overview and to ensure that there is a focused and consistent approach to flood management throughout the country. It must be clear however that the important roles which local authorities can play in engaging communities and in implementation of measures must be maintained. There must also be a mechanism for ensuring a fair and equitable distribution of funding across the country based on need rather than political bias.

Q4- Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

Yes, for reasons given in answer to Q3 there should be a single lead authority. SEPA seem best placed, based on skills and experience, to fulfil this role. They already deal at national level with flood risk assessment and with river catchment management planning and the extension to include this role should be relatively straightforward. The roles and responsibilities of the respective authorities must however be very clearly defined to avoid confusion and duplication of effort.

Flood risk planning

Q5- Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not, what alternative do you propose?

Yes, developing a hierarchical approach seems a reasonable way forward with a broad brush overview at national level drilling down to catchment and project level action locally. The development of these plans, which it is hoped will provide far more accurate information than the existing flood maps, should prove to be of considerable assistance to planners in informing the decision making process in relation to controlling development in flood risk areas.
Q6- Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

If deemed necessary fall back powers could be included but better to allow partners to come to a mutual agreement on choice of lead authority by themselves. There may be occasions, say due to resource issues, that one may be in a better position to be lead authority than the other.

**Responsible authorities**

Q7- Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, these are considered to be the main partners.

Q8- Which other bodies should be identified as responsible authorities?

It is assumed that SEPA is omitted because it will be identified as the Competent Authority and that it doesn’t actually implement measures anyway.

There will be occasions however when landowners could be considered as responsible authorities and a mechanism for including them or a body representing them, such as the National Farmers Union or Landowners Federation, might be appropriate.

Though not a responsible authority, the Insurance Industry can play an important role in identifying issues, providing advice and as drivers of change. It is felt therefore that it should have a recognised role somewhere in the process.

**Flood risk planning participation**

Q9- Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

There is absolutely no doubt that authorities must work together to produce plans if the Bill is to succeed. An effective forum involving all responsible authorities has already been developed through the Flood Advisory Groups, and it seems reasonable that sub groups of these bodies be established to produce the management plans. It may however be appropriate, given their wider strategic role, that SEPA takes over leadership of the Flood Advisory Groups.

Q10- Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

Yes, the establishment of stakeholder forums should be sufficient to capture ideas and communicate proposals.

**Approving the plans**

Q11- Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

If the River Basin Management Planning process works, it makes sound sense to adopt a tried and tested process for consistency and ease of understanding. Officers from the Council’s Planning and Environmental services have been engaging with SEPA from the beginning of the RBMP process. However, even though the approach and principles appear sound, until a RBMP is prepared and it’s outcomes incorporated into the development plans, it is difficult to say if it will have been a complete success.

Q12- Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Yes, they do so already with Flood Prevention Schemes and the proposal is only really an extension of the current process. The fact that Ministers are accountable to the Scottish Parliament should ensure that the process is fair and transparent which will be of paramount importance in ensuring the success and credibility of the approach.
Managing urban drainage

Q13- Do you think that integrated urban drainage plans should be included as part of a local Flood Risk Management Plan?

Yes, without a doubt. Dealing with flooding from surface water run-off and sewers must form part of any management plan which hopes to achieve effective results. SUDS and flood routes are expected to be essential components of most integrated urban drainage systems. There is however a major issue surrounding the ongoing maintenance of SUDS with Scottish Water being very reluctant to adopt many kinds of SUDS, presumably because of potential practical difficulties and future cost. Like other responsible authorities, they will have a duty to comply with good practice in flood risk management planning and this needs to be emphasised. It may be that the Government could do more to ensure that Scottish Water are adequately financed and equipped to be more supportive of SUDS. However, to achieve successful integration, Scottish Water will have to be more compromising and accommodating in the way that they operate, than has hitherto been the Council’s experience.

The planning system

Q14- Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

Yes, but development plans ought to be heavily influenced by Flood Risk Management Plans and this should be emphasised through documents such as SPP7. It makes little sense to allow development in areas identified as being at risk unless there are very exceptional circumstances.

Simplifying procedures- option 1 (Ministerial route)

Q15- Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Yes, the effective removal of one set of procedures with an overlap of processes, associated administrative burdens and potential duplication of public inquiries must speed up the overall delivery process to some extent. It may however be necessary to modify the requirements of the confirmation process to ensure that all aspects/requirements normally included in the outline planning process are covered.

Q16- Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Strictly speaking Ministerial confirmation should not be necessary for features which do not require planning permission but it is assumed that approval would be for the whole package and it would not be unreasonable for them to include the said features as part of the package.

Q17- Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

The Council has only very limited experience of this process, but is not aware of any reason why the current timescales cannot at least be maintained or, better still, improved upon.

Simplifying procedures- option 2 (local authority route)

Q18- Do you think the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Though this would have the advantage that most decision making would be at a local level, there could be complications when proposed measures cross Council boundaries. There is also a potential loss of consistency of approach and transparency which a single central body is better placed to ensure. There is also a concern that local authorities will not have, or be able to recruit,
sufficient experienced staff to independently scrutinise proposals. However, a local process could raise greater awareness of Local Flood Management Plans.

Q19- What would be the appropriate timescales for notification and response?

It is assumed this question relates to advertisement and consultation timescales and, if so, a total period of say 3 months would be considered sufficient.

Q20- Would it be appropriate for such a process to carry deemed planning consent?

Yes, this would be part of the streamlining process to speed up delivery of measures.

Q21- How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

This could be a major stumbling block, as experienced flood engineers are already in short supply. “Pooling” of engineers across areas may be a partial solution but it is thought that drawing in expertise from consultants will also be necessary, if only to fill the voids created by pool engineers working in other authorities. An alternative might be for local authorities to go together and appoint a term consultant as specialist flooding advisor to undertake the entire scrutiny/approval role for the whole of Scotland.

Q22- Are there any additional alternatives to the options outlined above which would simplify procedures?

The Council is not aware of any.

Flood measures beyond the 1961 Act

Q23- Do you consider local authorities powers are sufficient to take necessary action to avert danger to life and property?

Yes, powers are considered sufficient to act to avert danger. The real problem, in many cases, is in identifying who is responsible for what, especially when the recovery of costs is involved or when further costly action is required to avoid a repetition occurring. Improved clarity of responsibilities is therefore essential.

CAR authorisation

Q24- Do you agree that streamlining the CAR and flooding/planning process can be managed through better guidance?

Yes, it should be possible to progress CAR authorisation in parallel with confirmation to further reduce timescales for delivery. This could best be achieved by ensuring collaboration and compromise between local authorities/appropriate organisations and SEPA at an early stage in the statutory process, so that measures being promoted are broadly consistent with the needs of SEPA in terms of CAR provisions. The CAR approval process should then be a simple “rubber stamping” exercise.

Q25- Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Not really, coordination and simplification of the confirmation, planning and CAR processes to minimise timescales is probably as far as it is possible to go. It will though be necessary for SEPA to operate in a spirit of co-operation rather than as regulators, which is the role with which they are likely to be more familiar.

Q26- Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the government should consider?

None really come to mind. However, there may be a case for distinguishing between the treatment of measures arising from flood risk management plans and unforeseen minor flooding measures, with a very localised impact, which can occur from time to time. For example, could a simple
assessment matrix be developed, to take account of the number of properties affected, the cost (which could be subject to a de minimus value), habitat impacts etc., which, if a threshold was met, would allow a small measure to be implemented without recourse to the full and lengthy approval process.

**Duties under 1961 Act**

Q27- Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

A standard format would be desirable but it should avoid creating excessive preparatory work which might be of limited value.

**Delivering sustainable flood management**

Q28- Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The proposals will lead to a more structured approach to flood management. However, they will not be without considerable resource implications for local authorities and there will be an expectation that measures identified through the agreed management plans will be delivered on the ground. Local authorities will therefore have to commit to using funding provided for flooding measures even though it will not be ring fenced. However, key to the overall success will be the demonstration that a fair and equitable system of allocating funding across the whole of Scotland has been adopted by the Government, based on genuine priority need rather than political party allegiance.

Q29- Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

Placing a duty on local authorities to promote specific measures seems a bit heavy handed. Having a duty to promote sustainable flood management through a pro-active collaborative approach is considered to be both sufficient and strike an acceptable balance.

**Reservoir safety**

Q30- Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Yes, for consistency of approach and standards and to overcome a disproportionate burden on some local authorities. A single national body would have more strength whenever enforcement powers had to be implemented.

Q31- If so, should it be SEPA or another as yet unidentified body?

SEPA is considered to be the most appropriate body and it is not felt that there is a need to create yet another organisation. The proposal would be consistent with practice in England and Wales where the Environment Agency is the enforcement authority.

Q32- Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

The proposal that SEPA should produce inundation maps showing the consequences should a dam fail seem sensible, as many small undertakers/owners would have neither the financial resources nor technical expertise to carry out the work themselves.
Q33- Do you agree that enforcement powers should be extended and post incident reporting included as an additional requirement?

Yes, the enforcement powers of the current Act are somewhat limited and the proposal to extend the powers of enforcement are welcome.

Feedback from incidents is always useful and can provide pointers which may help develop solutions to avoid repetitions in the future.

Q34- Views on Crown application and any other comments?

Yes, it is believed that the Act should be extended to cover Crown property. It is every bit as essential, in terms of the safety of those living downstream, that reservoirs belonging to the Crown are subject to the same rigorous inspection, maintenance and enforcement regime, as those in non-Crown control.

Other issues

(i) No indication is provided of how Flood Prevention Schemes, currently under development or arising in the intervening period between now and the completion of the flood risk management plans following implementation of the new Bill, will be handled. Some guidance on this matter is required.

(ii) For catchment wide sustainable solutions to work effectively there will be occasions when it will be necessary to use agricultural land for storage of water or as escape routes for excessive flows. One solution would be to acquire such areas, by CPO if necessary, but this would leave local authorities with the burden of having to maintain these areas in perpetuity for very infrequent, though important, benefit. It would be preferable if legal agreements could be established to allow areas to be used for flooding but with landowners retaining ownership so that the ground can be used for normal agricultural purposes at other times. Guidance is therefore required on a mechanism for obtaining grants of servitude or the equivalent for specific designated areas of ground which may be used infrequently for flood storage/overspill, and for compensating landowners both for accepting the initial burden and for subsequent crop/grazing losses resulting in disturbance and loss of income.

EXTRACT

ABERDEENSHIRE COUNCIL - INFRASTRUCTURE SERVICES COMMITTEE

WOODHILL HOUSE, ABERDEEN, 13 MARCH, 2008

Present: Councillors P J Argyle (Chair), W A Agnew, G J Clark, M A Ford, I Gray (as substitute for Councillor J B Cox), A G Howie, J M M Humphrey, F McRae, I J Mollison, S Pratt (as SNP member), A Ross, D M Storr and J Webster.

Apologies: Councillors J B Cox and I S Tait.

Officers: Director of Planning and Environmental Services, Director of Transportation and Infrastructure, Head of Development Management and Building Standards, Head of Planning Policy and Environment, Head of Environmental Health and Waste Management, Head of Consumer Protection and Support Services, Head of Transportation, Head of Roads, Head of Operations, Head of Property, Area Planning Officer (Kincardine and Mearns), Support Services Manager (P&ES), Support Services Manager (T&I), Landscape Services Manager (T&I) Chief Internal Auditor, Principal Accountant (Transportation and Infrastructure), Head of Law and Administration (Mr G Davidson) and Committee Officer.

THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND – ABERDEENSHIRE COUNCIL’S RESPONSE TO CONSULTATION

There had been circulated a report dated 28 February, 2008 by the Director of Transportation and Infrastructure which asked members to consider and endorse the proposed response to the Scottish government consultation on the future of flood risk management in Scotland. Members
were advised that there had been an amended response to question 14 of the consultation and this was tabled to the Committee.

The Committee agreed to endorse the response to the Scottish Government's consultation document on the Future of Flood Risk Management in Scotland as contained in the report, subject to the amended response to question 14.

Aberdeenshire Council
3 November 2008

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND (ACPOS)

I refer to your correspondence dated 1 October 2008 in connection with the above subject, which has been considered by members of the Operational Policing Business Area, and can now offer the following by way of comment.

Members are content with the measures proposed in the Flood Risk Management (Scotland) Bill, but would like to offer the following observations and recommendations:

**Section 59**

It is noted that a new Criminal offence of intentionally or recklessly damaging any flood defence is created. We are of the view that the legislation should make clear that SEPA and the appropriate Local Authority can report offences direct to the Procurator Fiscal.

**Section 64**

It is recommended that this section is strengthened to place a specific duty on SEPA to notify appropriate Category 1 responders when flooding is predicted, imminent or likely to occur. We would also recommend that in this event, SEPA are identified as the 'lead responder,' in terms of the Civil Contingencies Act 2004 as enacted by the 2005 Regulations. The appropriateness of a transfer of responsibility from one lead responder to another would as the incident/situation develops follow agreed Strategic Coordinating Group arrangements.

**Section 66 (1)**

It is recommended that the word 'may' at line 35 is replaced by 'must' to reflect their responsibility as 'lead responder,' as identified in the recommended amendment to Section 64, above.

**Section 67**

ACPOS recommends that this section is re-drafted to reflect the statutory responsibilities of the Fire and Rescue Services, by virtue of the Fire (Additional Functions)(Scotland) Order 2005 and the Maritime Coastguard Agency, to respond to fast water rescue and the saving of life.

The Police will of course continue to assist other Category 1 responders in any flooding incident and will usually coordinate the activities of such a response. However, we would wish to highlight the potential ambiguity of sub-section (3), which may give the impression that it is a Police function to protect life and property in the event of a flooding incident, when the Police have neither the equipment nor training to carry out this role.

I trust that the foregoing is of assistance to you.

ACPOS
4 November 2008
SUBMISSION FROM ASSOCIATION OF COMMUNITY COUNCILS FOR THE LOCH LOMOND AND TROSSACHS NATIONAL PARK

With reference to the above Bill, we have the following two comments.

Firstly, it is stated on page 32 of the Bill that a National Park Authority is not a planning authority. In the Loch Lomond and Trossachs National Park the planning authority is the National Park. Should National Parks be designated as a responsible authority, especially as the Loch Lomond and Trossachs NP is a planning authority?

Secondly the Bill takes little note of communities involvement in the planning and implementation of flood risk management. If sustainable flood risk management is to be considered then land owners and communities should be given a major role in the preparation of flood risk management plans and local authorities should work in partnership with communities. This partnership approach should be carried out through appropriate community groups e.g. Community Councils or in the case of the Loch Lomond and the Trossachs National Park, the Association of Community Councils.

ACC Executive Committee
10 November 2008

SUBMISSION FROM CALLANDER COMMUNITY COUNCIL

With reference to the above Bill, we have the following comments.

The overall approach of the Bill to take a more sustainable approach to flood management is very welcome, Callander Community Council has been promoting this approach for many years. We however feel that there could have been a better explanation of what sustainable flood risk management involves.

We would like to see much more formal involvement of communities in the whole process. The Bill mentions a partnership approach, this needs to include communities, they own the land. We also would like to see some mention of how landowners and communities will be compensated if there are compulsory changes to land management.

We would also like clarity in who has the main responsibility for flood protection, is it the local authority (mentioned in the Bill) of is it the householder (mentioned in SPP7)?

Callander Community Council
10 November 2008

SUBMISSION FROM CITY OF EDINBURGH COUNCIL

The Council welcomes this Bill and it is considered that this will go along way in achieving the aims of ensuring that all organisations involved in flood risk management effectively co-ordinate their activities. However the attempts to streamline the approval process in relation to Flood prevention Schemes is disappointing and the process in relation to deemed planning consent is too vague. However there are a number of issues that should be looked at in further detail before your consultation is concluded.

- Part 2 - It is noted that the Bill addresses the flooding of all land and not only non-agricultural land as detailed in the 1961 Act. The Bill should not lead to demands being made on local authorities to protect agricultural land, but that it has to be included in flood maps and plans.

- Part 3 – This proactive approach is welcomed. But the Scottish Government should give consideration to providing guidelines on the level of Consultation required. The Council did provide an indication of increased costs anticipated based on that described in the
consultation paper 'The Future of Flood risk Management', however given that the level of
detail required is more apparent it is considered that the figures given should very much be
treated as a lower bound.

• Part 4 – Section 54 – The Bill, explanatory note and policy memorandum continue to refer
  only to deemed planning permission. As the May report to the Planning Committee states
  (para 3.20 – response to questions 15 & 16), other ‘planning’ consents may be required in
  order to implement a flood prevention (protection) scheme e.g. listed building and/or
  conservation area consent (required for the demolition of unlisted buildings located within a
  conservation area). If such consents are required the benefit of streamlining the process by
  directing that planning permission for development is deemed to have been granted is lost.
  Such applications can attract objections; require consultation with Historic Scotland and, in
  certain circumstances, referral to Ministers before consent(s) can be issued. The Planning
  (Listed Buildings & Conservation Areas) (Scotland) Act 1997 contains no provision for
deemed listed building consent or conservation area consent. The provisions of the Act
however do not fetter a Council's (or Ministers) ability to grant planning permission, but
neither does it remove the need to secure such consents. Given that flood protection
schemes are essentially promoted to protect urban land and buildings, listed building consent
and/or conservation area consent is likely to be a feature of most schemes. For this reason
the suite of documents should make reference to the need to secure other ‘planning consents’
consents – reference could be made in para 164 of the Explanatory Note and in the section
headed Statutory process . at para 133 onwards

• Part 4- Section 59 - The Bill should make it clear that it is an offence to damage any flood
  protection work, including Schemes constructed under the 1961 Act

• Part 6 – Sections 71 &72 Sections 71 and 72 do not give any direction on how
  compensation is to be assessed as the corresponding wording within the 1961 Act (" shall
  pay compensation equal to the amount of depreciation or damage") is not included in the
  Bill. A direction on how compensation is to be assessed must be included in the Bill. The
  opportunity should be taken to consider if the previous 1961 Act compensation basis (as
  mention above) should be replaced with compensation based more in line with that relating
to statutory compensation used for other public authority schemes including roads.
  Compensation for depreciation or damage for most other schemes is assessed with reference
to the Land Compensation (Scotland) Act 1963 and later Acts and all associated case law.

• Schedule 2 – It is considered that the opportunity to further streamline the process has not
  been fully realised. It is noted that any person can object to the proposals and that no attempt
  has been made to exclude trivial matters. It is noted that Scottish Ministers will consider
  the nature of objections but that there is no provision to compel objectors to provide details of
  their objection. For example on the Braid Burn Flood Prevention Scheme a number of
  objectors did not provide details, which made negotiations very difficult. It became apparent
  that their objective was merely to delay the work commencing on site for as long as possible.
  Indeed there are no rules to establish when it might be necessary for Ministers to call an
  Inquiry. It is also noted that it would be necessary to hold an Inquiry even were there
  only one objector. It is recommended that SEPA in paragraph 6(1) to ensure that any
  proposals are compatible with the FRMP under development.

• Schedule 2 Paragraph 1 (d) (ii) needs to be clarified, as it would appear that everyone on the
  flood plain downstream of the operations should be notified.

• The bill does not include any measures relating to streamlining the CAR Process as was
  suggested in your consultation paper "The Future of Flood Risk Management".
Comhairle nan Eilean Siar has submitted a response to the Scottish Government’s consultation document – ‘The Future of Flood Risk Management in Scotland’, and a copy of this is attached. The Comhairle has nothing further to add to our response in respect of the Rural Affairs and Environment Committee’s call for evidence. Although the Western Isles are affected by coastal flooding to some degree, we have nothing further to add to submissions made by other local authorities with responsibilities for areas where flooding is of a more prominent issue.

**Sustainable Flood Management (SFM)**

**Q1. Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?**

Note: The Flood Issues Advisory Committee (FIAC) defined sustainable flood management as:

“Sustainable flood management provides the maximum possible social and economic resilience (ability to recover quickly and easily) against flooding, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”

The definition of sustainable flood management taken together with the overall objectives and principles of SFM is helpful in that it describes the wider consideration and inclusiveness that will be required to address flood management.

SFM should aim to reduce the risks of flood damage by better integration between an improved flood warning system, the use of planning policy to avoid further unsuitable development, increased investment in flood alleviation and improved guidance on climate change adaptation.

**Q2. Do you think the definition is clear and simple to understand?**

The definition itself is clear, but in order to simplify understanding it should be used together with illustrations of SFM principles and an indication of those bodies involved in its implementation.

**The Competent Authority**

**Q3. Do you agree with the conclusion as set out in paragraph 3.17?**

The Scottish Government should retain overall responsibility for flood risk management but a competent body could act on its behalf and have a national remit for implementing the Floods Directive. However, the local implementation and engagement role that can be played by statutory local authorities and other ‘voluntary’ bodies such as in the case of coastal flooding, multi-stakeholder local coastal partnerships, should not be understated. Due account should be taken by the planning process and that the local implementation of the principles of Awareness, Avoidance, Alleviation and Assistance should be adequately funded by the Scottish Government.

Consideration should be given to Catchment Strategy Planning for SFM, but that catchments should be within realistic boundaries, e.g. the Western Isles is included in the RBMP West Highland AAG, but Comhairle nan Eilean Siar has no interest in SFM designed for the Scottish mainland. It does however, have considerable experience and knowledge of mainly coastal SFM issues within the Western Isles.

**Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?**

Yes, SEPA has already gained considerable experience of this type of approach through River Basin Management Planning, however, the principles of stakeholder engagement, transparency and the democratic process should be adhered to.
Flood Risk Management Planning

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

Yes, a hierarchical approach will be an effective way of delivering flood management planning in Scotland. This approach will ensure standardization and knowledge transfer between designated single large catchments. The Western Isles area has its own distinct boundary and is covered by a single local authority. Also, the local authority leads the multi-stakeholder ICZM partnership; the Outer Hebrides Coastal Marine Partnership.

For the preparation of Local Flood Management Plans, more and better quality data is required than available at present. The SEPA Indicative Flood Maps provide a basis against which any potential risk from flooding can be identified, but takes no account of built structures such as coast protection or culverts; it does not allow for storm surge or tidal run; and we are led to believe that a probability range of +/- 1m is assumed. It would be useful for both planning authorities and developers if more accurate information was available as is possible through LIDAR studies.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

If the Western Isles is designated as the single large catchment area, the situation of having two local authorities within the area will not arise. If however, the catchment is based on the RMBP West Highland area, this could be more problematic in terms of equitable funding across local authority boundaries given the transfer of flood risk management funding to the local government settlement.

Responsible Authorities

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, their involvement as responsible bodies would be seen as essential for the effective delivery of area and local flood risk management plans.

Q8. Which other bodies should be identified as responsible authorities?

Other bodies that should be involved in flood risk management, but it may not be necessary for them to be listed by statute, are, for example, landowners including community and SGRPID, crofting and farming organisations, community councils, flood action groups, port authorities, etc.

Participative Planning Process

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

A Flood Advisory Group has not been established for the Western Isles. However, the Outer Hebrides Coastal Marine Partnership (CoastHebrides) was set up by Comhairle nan Eilean Siar in the summer of 2006. The partnership has a Forum consisting of members representing statutory, business, environmental, and community groups (including flood action groups), and has a coordinator employed by the Comhairle. The Forum meets quarterly and is involved in climate change impacts and adaptation, and coastal erosion and flooding issues among other coastal zone management topics.

As coastal flooding has more impact than fluvial in the Western Isles, CoastHebrides, or a sub group, would be the preferred organisation for responsible bodies to work with to produce plans.
Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

Yes, however the experience of the RMBP Area Advisory Groups, similar in many respects to the flood risk management proposals, shows that it is difficult to retain active participation of business and community members and this issue requires to be addressed.

Approving the Plans

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Yes, the general approach of stakeholder participation in planning should be adopted. However, lessons can be drawn from the RMBP process which is in comparatively early stages and still has to produce plans. Ways should be found to retain true stakeholder participation and interest in the process. Although, flooding is a far more emotive issue and has more impact on people’s lives than RMBP, and encouraging community involvement will be important.

Novel methods of retaining interest should be trialed and evaluated such as use of visualizations generated by GIS, use of video to show experience of other areas (and/or countries), and ‘Planning for Real’ methods to name a few.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Yes, as Ministers are accountable to the Scottish Government and the democratic process, this will be essential.

Managing Surface Water & Urban Drainage

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

Yes. Although the problems associated with the rapid increase in hard drained surfaces quickly channeling surface water into water courses is not so problematic within the Western Isles there remains the need to co-ordinate all drainage planning to ensure flood risk is managed and so potential reduced.

The Planning System

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

FRMPs should certainly inform the preparation of development plans. At present the identification of sites for inclusion in development plans is guided by the SEPA Indicative Flood Maps, however these have limitations and the responsibility falls on the developer to provide Flood Risk Assessments to show how any flood risk might be ameliorated. As the information to be provided by FRMPs will be more detailed and set out specific measures to address flood risk it would seem to make sense that planning authorities should have regard to them in preparing development plans.

Simplifying Procedures – Option 1 Ministerial

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Yes, but it is suggested that the application to Ministers for consent would require to be reviewed and follow more closely the process and steps in a S36 application under the Electricity Acts) i.e.
1) enhanced requirements on the detail to be submitted at application stage to include as mandatory, plans, elevations, cross sections, details of materials (It is expected that this level of detail would in any event be required for Environmental Impact Assessment screening.) (Currently an FPS application only requires to include a description of: all permanent elements of the scheme, e.g. embankments, floodwall, storage areas etc; all land affected by the above operations; land where entry or temporary works will be required.);

2) Scottish Ministers undertake consultation with statutory bodies (SEPA, SNH, Planning Authority; Scottish Ministers (At present SGRIPID only encourages authorities to consult the planning authority, SEPA, SNH and Historic Scotland)

3) Carry out an assessment

4) Local Authority (developer) seeks to resolve objections; Public Local Inquiry for outstanding objections and then Deemed Consent.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?
Yes; Process should address totality of a scheme under one application.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?
Refer to response to Q15 above. Timescales would require to be adjusted to take account of enhancements to the consenting process

Simplifying Procedures – Option 2 Local Authority

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?
In light of the local authority being the Developer (for what are likely to be larger schemes with local pressure groups for and against), and the party best placed to negotiate solutions to address objections, it is considered that there is strong merit in the consenting process being placed within the remit of the Scottish Government. Apart from allaying public concerns re the authority being both developer and consentor, it addresses the fact that a local authority process will, where there is a substantial body of objection or statutory consultee objection, lead in any event to the application being called in by Scottish Ministers;

Furthermore, flood prevention schemes, while falling within the definition of development, serve a different objective to most land use planning applications in that they are schemes generally seeking to protect developed land (as opposed to dealing with land use related to new development).

Q19. What would be the appropriate timescales for notification and response?
As Q18 above.

Q20. Would it be appropriate for such a process to carry deemed planning consent?
Yes provided the scope of the application is sufficient to assess the planning issues.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed be addressed?
Assuming an increased number of projects being undertaken given the increased scope of scheme types and implementation bodies; technical expertise in terms of engineers, hydrologists and experienced planners may be difficult to resource. This may be the case whether reliance is placed on consultants or in employing additional local authority staff. There is already considerable pressure on both consultants’ and councils’ technical staff.
Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

Examples could be made available to demonstrate good practice which would assist in reducing the need for all schemes to be designed from first principles.

Q23. Do you consider local authorities’ powers are sufficient to take necessary action to avert danger to life and property?

During an emergency situation there is the need for a clear chain of command. It is usually the Police who decide what action is required to safeguard against danger to life and property and then get others to undertake the work and to carry the costs. However, difficulties can arise in determining who is actually responsible for costs being allocated by the local authority at a later date. Clear rules on costs would help, especially if the decision maker is initially responsible for costs which are to be recovered at a later date.

**CAR (Controlled Activities Regulations) Authorisation**

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Yes.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Nothing further to add. The proposals are designed to simplify, streamline and co-ordinate sustainable flood risk management in Scotland. If SEPA is to be appointed as the single competent authority with a national remit to implement the Floods Directive and local authorities having primary responsibility for flood alleviation and the planning process, the proposals should better integrate planning and CAR processes.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

None.

**Duties Under the Flood Prevention (Scotland) Act 1961**

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

The 1997 amendment to the Flood Prevention Act places duties on local authorities to publish biennial reports on flooding of non-agricultural land in their area. These reports detail occurrences of flooding over the previous two year period together with detail of the measures taken to prevent or mitigate such flooding. The Act only covers flooding from watercourses and does not cover flooding which is tidal in nature.

The biennial reports be used to inform the Preliminary Flood Risk Assessment and their format should be designed for that purpose. Consideration of the recording of instances of coastal flooding in the reports should be given.

**Delivering Sustainable Flood Management**

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The sea and coast is the predominant landscape feature of the Western Isles and much of the coasts are very low-lying and infrastructure such as roads and buildings are vulnerable to winter storms, erosion and flooding.
The great storm of January 2005 had a devastating effect on the community living in the islands. Five people from one family died while trying to escape from rising flood water during winds in excess of 120 m/hour. The term ‘storm surge’ was almost unheard of before, but is now in everyday usage. The storm caused damage to houses, roads, ports and other infrastructure, to a value of over £20m, and much of this damage has or still is being repaired. Further, this has had a detrimental effect on community resilience and confidence, and there is a need among the general public to know about the risk of reoccurrence of such storms especially in view of projected climate change and to develop adaptation strategies to protect their communities against the effects of rising sea levels, flooding and erosion.

We are encouraged by the proposed flexibility for local authorities to develop a range of flood management measures which, in the case of the Western Isles, will be mainly coastal in nature and not just based on traditional flood prevention schemes. An example of this type of approach is the proposed CoastAdapt project. The Comhairle is lead partner in an application to the Northern Periphery Programme for a 3-year project entitled “The Sea as Our Neighbour: Sustainable Adaptation to Climate Change in Coastal Communities and Habitats on Europe’s Northern Periphery” (CoastAdapt). An excerpt from the application states:

“Coastal communities are particularly vulnerable to climate change because, in addition to changes in the climate, they are also exposed to sea level rising and storm surges. With extreme events predicted to occur more frequently, the importance of preparing for climate change is being recognised by coastal municipalities/local authorities across the northern periphery. Most national governments have prepared a climate change programme, but because of the magnitude of the problem and the site-specific consequences, local authorities have an important role to play in climate change adaptation. Some of the concerns mentioned by communities willing to adapt are the lack of resources, not only in terms of trained staff and awareness raising (i.e., to gain political support), but also the need for more detailed local data and information on the likely impacts of climate change as well as tools, techniques (e.g. frameworks), and examples of best practices. For example, practical methods supporting decision-makers in making complex choices are not readily available. CoastAdapt will address these existing gaps by providing decision makers with the best evidence base and tools that are needed for making decisions about climate change adaptation at the local scale.”

The Comhairle supports the principles of Sustainable Flood Management which address problems faced by communities, whether physical such as the efficacy of building hard sea defences or long-term viability of protecting low-lying ground from flooding; or social such as people having the capacity to make informed judgement and decisions, or officials in local government having the knowledge to enable effective policies to be enacted.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

The proposals will involve a new approach to flood risk management in Scotland and although the local authorities will have a statutory duty to prepare Local Flood Risk Management Plans that coordinate the delivery of measures to address flood risk, the success of this process will be dependant on the cooperation and collaboration of all responsible authorities. The new legislation proposes a more inclusive and flexible approach to flood risk management planning and will permit the opportunity for the development of local solutions to suit local conditions.

The new system will take time to become established and will be dependant on sufficient resources being made available to local authorities and other responsible authorities. Review and evaluation of the process should be undertaken to ensure successful implementation is realised through better flood preparedness and prevention. In order to assist with this, the development of key success indicators should be undertaken at an early stage in the process.
Reservoir Safety

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Yes, the reasons for change set out in the consultation document are appropriate to the experience and circumstances prevailing within the Western Isles. A single enforcement body would exercise duties and powers in a more uniform and efficient way than at present.

Q31. If so, should it be SEPA or another as yet unidentified body?

Yes, as SEPA is already an established regulatory body, they would be most appropriate to assume full responsibility for enforcement of the Reservoirs Act.

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

We agree with the proposal that reservoirs should be assessed as part of a preliminary flood risk assessment under the Floods Directive and where there is risk of significant hazards, SEPA would be required to map that risk. Where appropriate, there should be cross referencing with bodies undertaking local emergency planning measures.

Q33. Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Yes, in the event of non-compliance by a reservoir undertaker with recommendations made by the supervising engineer, enforcement powers should be available to the new enforcement authority, but only in so far as is reasonable in the interests of safety based on potential risk.

Post incident review and reporting as an evaluation of incident response is important to identify and correct weaknesses in order to learn from and avoid repetition of mistakes, and should be included as an additional requirement.

Q34. Views on crown application and any other comments?

Where the situation exists that the Crown controls or plans to control reservoirs, the same prescriptions should be in force as for those controlled by others.

Other Issues

Consideration should be given to interim arrangements for the implementation of flood risk management schemes that may be necessary during the establishment of the new legislation and subsequent process.

Comhairle nan Eilean Siar
6 November 2008

SUBMISSION FROM DUMFRIES AND GALLOWAY FIRE AND RESCUE SERVICE

I am writing on behalf of the Scottish Chief Fire Officers and Chief Fire Officers Association Scotland (CFOAS) in response to the Rural Affairs and Environment Committee call for evidence in respect of the Flood Risk Management (Scotland) Bill.

In March 2008 CFOAS presented written and oral evidence to the Flood Management Inquiry. This evidence focused upon two gaps in Scotland’s flood response arrangements. Both gaps were particularly evident in the multi agency responses to the major floods that affected many parts of
the UK in 2007. Both have featured strongly in the findings of Sir Michael Pitt’s report of the events, currently being considered by the English Parliament.

It is 16 months since the floods of 2007 highlighted, among other things, the fundamental shortfalls, in response gaps relating to the Fire and Rescue Service. We would suggest that the Flood Risk Management (Scotland) Bill provides a timely opportunity for Scottish Ministers to define arrangements to be put in place to address these gaps.

It was particularly gratifying to note the Flood Management Inquiry Committee’s recommendations included a reference to one of the gaps, namely the coordination of flood related rescue activities (recommendation 26). It is particularly disappointing to note that this recommendation does not feature in the Bill.

Scottish Chief Fire Officers recognise that the Bill is primarily focused upon flood planning, prevention and protection activities albeit part 5 relates to warning schemes that could be described as relating to response arrangements. We also recognise that it could be argued that the Fire and Rescue response arrangement gaps fall within the Resilience (Civil Contingencies) remit.

Scottish Chief Fire Officers firmly believe that the Flood Risk Management (Scotland) Bill should include reference to the Flood Management Inquiry recommendation relating to the Fire and Rescue Service flood rescue coordination role and in addition should clarify the services’ role in responding to some categories of inland water rescue.

The timing of the Bill will also enable Scottish Ministers to address two important enhancements to Scotland’s multi agency flood response arrangements at an early opportunity.

We would welcome the opportunity to present more detailed evidence on our position on these issues as required to the Committee in due course. Please let me know if I can be of further assistance in these matters.

Dumfries and Galloway Fire and Rescue Service
7 November 2008

SUBMISSION FROM GLASGOW CITY COUNCIL

General

The content of the Bill is generally welcomed as a way forward for the development and delivery of a catchment wide comprehensive integrated surface water management strategy.

1(2) c

While the co-operation with responsible authorities is welcomed, the co-ordination of funding will be necessary for the development and implementation of projects. Current timescales for Q&S IV do not sit well with those for the development and implementation of the local flood risk management plans.

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

Glasgow City Council is concerned, therefore, that the above timing and rigid nature of Scottish Water’s funding, does not allow the inclusion of key integrated flood management works within the Scottish Water programmes.
9(6)

Reference is made to lakes within the definition of a sub-basin. In the Scottish context lochs would be more appropriate with one exception.

13

The potential impact on properties and communities should be recognised when the locations of vulnerable areas is published.

18(8)(a)

The valuation of the probability is not clear but it should be compatible with SPP7 to avoid any confusion. However there is conflict between these two documents that should be addressed.

23(3)

The flood risk management plans are to be approved by Ministers by 22 December 2015 and this commences a six year cycle. The Bill recognises the importance of the development process in delivering key aspects of future flood risk management. It is essential, therefore that the Scottish Government considers the alignment of associated development plans and programmes to ensure as far as practical that they all focus and compliment similar issues.

As noted in comments to Section 1(2)c Scottish Water’s Q&S programme is currently out of line in relation to both funding and development of their programmes.

38(1)(b)

Both SEPA and any responsible authority are required to provide "assistance" to the lead authority. This will require adequate staff and funding resources to be available to meet this request. This is particularly relevant for SEPA and Scottish Water who will require to address and support the parallel development of local FRM plans by several lead authorities. Similarly, dependent on the configuration of catchments, a local authority may require to meet the simultaneous demands of more than one lead authority.

61

The definition of a watercourse continues to be very wide. Under the current legislation Glasgow City Council has experienced some difficulties in establishing the extent of their responsibilities from the existing watercourse definition. The proposed legislation will to do little to alleviate this position. Given the requirement for co-operative working and the development of integrated solutions it is essential that a clear understanding of areas of responsibility is established at the outset. Consequently, the definition needs to be revisited to prevent similar confusion in the future.

Funding

A significant burden is being placed on the various authorities with associated costs in producing and collating the information, maps and documents in the first instance then maintaining and updating the information for the scheduled reviews as well as the general administration of new procedures. The document states that it is expected that Local Authorities make a contribution to the development of the strategy and its associated maps and documentation. The costs the Scottish Government considers are required for doing so are set out in the Financial Memorandum. These appear to address only the provision of staff resources and do not address the very significant capital cost that will be involved in developing the information, tools and initial projects proposals that will be required for the Flood Risk Management Planning process.

In the on-going development of the Metropolitan Glasgow Strategic Drainage Plan, Glasgow City Council has required to expend significant capital funding to provide computer modelling,
undertake feasibility studies and action-based research projects to establish the initial understanding of its catchment area. Delivery of the required Local Flood Risk Management Plan will necessitate the provision of further capital funding.

Glasgow City Council
7 November 2008

SUBMISSION FROM HIGHLAND COUNCIL

The Highland Council wish to comment and the details are given below.

- Overall the Highland Council welcomes the Scottish Government’s proposals to modernise the approach to flood risk management for Scotland. In particular the Council welcomes the proposal to simplify the procedure for flood prevention schemes and the associated planning process.

- The Highland Council are concerned that flood prevention schemes and measures may be delayed during the period before the new Bill and the Flood Risk Management Plans (FRMPs) are implemented. The Council recommend that flood protection schemes which are in progress, or developed before the FRMPs are in place, will feed into the FRMPs and go through the new approval process without having to wait. The Council recommend that SEPA are involved in the confirmation process in the interim period.

- Local Authorities will have to publish information, accept representations over a 3 month period, consult SNH/SEPA/ etc 1 year prior to FRMP, and then finalise the Local Flood Risk Management Plans (LFRMPs) along with the FRMPs in 2015. These are then reviewed every 2 to 3 years The Highland Council have concerns about the short timescale, workload, resource, and cost implications of these requirements.

- The Highland Council are content that the current Local Authority duties and responsibilities for the Reservoirs Act will transfer from Local Authorities to SEPA.

- The guidance document to the Bill, produced by the Government, contains averaged costs for the 32 Local Authorities. The Highland Council are concerned that there is no detailed guidance for the likely cost to the Highland Council, and are seeking clarification of the costs, including a breakdown and itemisation of the quoted averaged global costs.

- There are some apparent omissions from the Financial Memorandum which are of concern to the Highland Council:–

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

- The measures in the proposed Bill can be varied by future regulation, ministerial direction and guidance. It is unlikely that these unknown future changes are included in the costs.

- If the proposed Bill is successful - as intended - in simplifying and accelerating the procedures for flood protection then it is likely there will be increasing pressures to deliver such schemes. This will increase the financial pressures on the Council’s budget.

The Highland Council will be seeking clarification on the significant additional funding implications associated with implementing the Flood Risk Management (Scotland) Bill.

Highland Council
11 November 2008
SUBMISSION FROM THE MACAULAY INSTITUTE

We have focussed our response on issues where we feel our ongoing research under RERAD’s Programme 3 on Environment, Land Use and Rural Stewardship provide some indications about whether, and under what circumstances, the principles in the Bill could be implemented. Please note that as this is ongoing research it is not always possible to be definitive in our responses.

We have tried to keep our response very brief but we would be delighted to supply a fuller written submission, or provide spoken evidence if that would be useful.

General comments on flood risk and flood risk management:

Research on public and stakeholder perceptions of flood risk highlights a number of conceptual issues that could influence the ‘policy logic’ of this Bill.

Put simply, risk management needs to be seen as a negotiated relationship between the responsible authorities and those who need to protect themselves against future risk and take action when faced with imminent flood hazard. It is important that the responsible agencies do not assume an ‘information deficit’ approach whereby the public make ‘poor’ or ‘irrational’ decisions on the basis of ignorance or lack of information. Rather, our research suggests that members of the public often have quite sophisticated and complex ways of making decisions and deciding whether to alter their behavior. Therefore, whilst communicating information about flood risk management is vital, it has to be put in the context of how different people might interpret and act on this information; which sources of information are seen to be believable and relevant to them; and how different people ‘read’ maps. None of this is ‘self-evident’ and there could be serious consequences if the emergency services and responsible authorities make assumptions about how the public might respond to flood risk management strategies without basing this on how people actually behave.

Another piece of ongoing research has highlighted how the public’s perception of risk and risk management is strongly influenced by their attitudes to how water is managed and the reputation of the agencies doing the management. The follow up survey of willingness to pay for flood management options has shown that soft engineering to protect downstream settlements was seen as much more useful than public insurance; although half the sample was willing to pay for either of these options. The analysis has shown that individuals’ beliefs about how the policy options meet the governance values (efficiency, solidarity, sustainability, safety and naturalness) explain perceived usefulness of flood risk management options.

Consistency & Coordination with RBMP

Our findings from research on river basin management planning as developing across Scotland suggests that there will considerable difficulties in ensuring consistency and coordination. Consistency and coordination will be helped by having common responsible authorities and we have already recommended that SEPA adapt their information system developed for WFD to include flood risk management issues as well. However, our research has shown that even within RBMP there are difficulties in consistency and coordination.

Firstly, the current approach has tended to report on individual pressures on the environment and appropriate measures for each pressure. However, this approach makes it difficult to see how multiple pressures may interact and/or how a measure to improve one issue might actually have an unintended consequence on another aspect of the water environment. The need to move from a single issue to a systems approach is recognized, but it appears that the way the plans are being developed and the information systems underpinning them, actually makes it difficult to do this ‘joined up’ approach. Therefore, trying to expand the system to take account of flood management as well as the WFD criteria is going to be an additional challenge (although it is also an additional motivation to do this joining up process).
Secondly, water management takes place in a complex, congested and often confusing policy arena, with a plethora of global, European, UK, Scottish, regional and local policies, regulations and guidance documents. The aim to coordinate these policies, particularly to join up RBMP with flood management, is positive. However, research on RBMP and development planning shows that there are many impediments to achieving this coordination. These range from different organizational remits and cultures through to simply not having enough time to think beyond the immediate and pressing operational tasks to be done. Coordination will not just happen – it will have to be resourced and actively promoted, preferably through the use of ‘champions’ who see this coordination role as important to delivering the potential of joined up environmental management. Again, such coordination will require both resources and high profile support, as too often coordination becomes a ‘luxury’ to be pursued over and above the demands of the ‘day job’. It is telling that the language in this draft Bill talks of coordination but not of integration, as coordination is the first rung of the partnership ladder, and does not require shared objectives or shared authority or governance structures. This may suggest the Bill recognizes the difficulties in going beyond coordination – however we caution that even coordination can be difficult to achieve. Another unanswered question is how FRM plans will link up with catchment management and coastal management plans, as these are not always well integrated within RBMP at the moment.

Thirdly, it is not entirely clear to us from this Bill how cross-border flooding incidents might be handled. Under RBMP, additional guidance and a policy statement from DEFRA and Scottish Government had to be developed during 2007, but there are still ongoing challenges in reconciling the different ways in which data is collected and recorded by the agencies; the different regulatory frameworks and different advisory networks. Again, the FRM implementation can learn from the progress being made, but this is likely to remain a difficult issue to resolve. As the Borders are one area at flood risk, this is of some concern.

Fourthly, our research suggests that members of the advisory groups, let alone members of wider interested stakeholder groups and the public, have struggled to make sense of the characterization reports and associated data. Despite having a consultation on the characterization report and its methodology and the significant water management issues, many are still unsure of how judgments (on the state of the environment, the potential measures and the appropriate objective to be achieved) were made. This is partly the challenge of how to communicate complex technical data to a range of busy people. However, it is also to do with the consequences of the decisions made on the basis of this information – as such these characterizations are interpreted in a ‘political’ manner and resisted where they seem to suggest a perceived bias against a sector or geographical area. Flood risk management is also likely to be a contentious and contested issue, with perceived winners and losers, and as such it is vital that: (1) the characterization stages are well understood and (2) the planning cycle includes a process of building shared understandings of the problem and a shared vision of how to resolve these. This will have to be done within a context of living with uncertainty, as there will always be limitations to our ability to predict how our natural and human systems will behave.

Two final practical lessons that have arisen from RBMP so far are issues of phasing and issues of developing and maintaining capacity. The Bill suggests, sensibly, that the FRM planning cycle mirrors the RBMP cycle to allow coordination. The experience of RBMP is that the cycle is actually quite tight, particularly the phasing of the draft plan, consultation and finalization of the plan for ministerial sign off. As it is advisable to mirror the statutory RBMP cycle, it is important that flood risk management planners learn from the RBMP experience and set earlier informal milestones to ensure there is sufficient time to ‘have regard’ to public input as the Bill states. Equally, much of this learning is done by a few key individuals within the responsible authorities and it is important to put in place contingency plans for the inevitable changes in personnel that will occur. Having a funded, explicit process of monitoring progress and lessons learnt throughout the planning process can help retain this institutional memory; as can ensuring that experienced individuals in the flood risk management community mentor new staff in the responsible agencies.

Advisory Groups

We are pleased to see public consultation being enshrined in the Bill but we would encourage the Bill to make clear that active involvement requires an ongoing dialogue not formulaic written consultation processes. The interpretation of ‘active involvement’ under the Water Framework
Directive is starting to be discussed as there is little guidance on what active involvement means in practice. The ‘costs’ of active involvement (time, opportunity costs, travel expenses), as borne by the stakeholder groups, must be seen to be outweighed by benefits of this involvement—generally seen as having an influence on the decisions made. However, our work on the River Basin Management Planning process illustrates a fundamental clash of expectations whereby the Scottish Government are very clear that the national and advisory groups are there to advise, but the representatives of public, membership and private organizations are seeking to influence, not only advise on, the outcome of the process. This finding suggests that the planning coordinators’ attempts to develop a culture of partnership delivery could be undermined if stakeholders decide that their costs are not being adequately rewarded and disengage.

Other relevant findings from RBMP research suggest that whilst all stakeholders have access to the planning process, some have more influence than others. This is partly to do with the amount of resource an organization is able or willing to put into the planning process—so making provision for payment of travel expenses is welcomed to help ‘level the playing field’ for stakeholders from more remote parts of Scotland. Influence is also related to how well the organizations are able to use multiple processes to advance their interests—those agencies and organizations with national and wide ranging remits have more opportunity to discuss relevant issues than those with a very limited issue or geographically based remit. In a related way, the more an individual or organization is engaged with the science and policy communities, the more quickly they can digest and engage with the data (see 2.4 above).

We support the use of sub-district advisory groups to bring the planning and management process closer to the spatial scale that better matches that used by land managers and households to think about their environment. It is not clear from the draft Bill whether these sub districts will match the 10 existing area advisory groups used under RBMP process. On the one hand, it could be advisable to do this, to help with coordination, and in which case we would suggest changing the name to area advisory group to make this connection explicit. However, a counter argument could be that our research has suggested that some of the area advisory groups do not share a common sense of place or common goal. This may be because the area is too large or heterogeneous to be a sensible management unit. Therefore, the sub-district advisory groups could be set up independently of the existing area advisory groups, at a more appropriate scale, so long as there was ongoing exchange of information between the two processes.

Regardless of the decision regarding the relationship between RBMP and FRM sub groups, our research suggests that ensuring the information flow between the geographic sub groups is essential. The role of the national group with regard to providing strategic direction to the area advisory groups should be well designed from the start as part of the communication planning process. Coordination between subgroups and from sub group to national group has not been as transparent to the other stakeholders involved in the process as some would have liked.

To generate public interest in flood risk management and planning, there will need to be an effort to make the information relevant, salient and comprehensible to the intended users and this will require investment in proper science communication processes as well as ongoing dialogue (see 1.2 above). Utilizing existing local governance networks (e.g. community councils, rural partnerships, community development trusts), where they are working well, can assist with getting involvement beyond the usual suspects. Using a locally trusted source of advice and information is often the most effective way of passing on information. However, many local bodies will need to be resourced to take on any additional dissemination and/or community animation role. This finding is particularly important with regard to residents in potentially vulnerable areas who may not have much experience of working with SEPA.

Macaulay Institute
On behalf of colleagues from Catchment, Integrated Land Use Systems and Socio-economics within the Macaulay Institute.
11 November 2008
SUBMISSION FROM THE MET OFFICE

The Met Office provided written and oral evidence to the RAE Committee’s inquiry into flood risk management in Scotland. We welcomed the report to the Scottish Government and are pleased to update our evidence to the Committee in its role to lead scrutiny of the Scottish Flood Risk Management Bill.

Our earlier evidence advised the Committee of planned changes to the National Severe Weather Warning Service (NSWWS). These changes were successfully introduced and we are confident that the updated service will continue to better inform the end user of potentially severe or extreme weather events. In addition to these changes, the Met Office has driven through advances in science and technology to deliver an Extreme Rainfall Alert Service (ERAS), specifically tailored to the needs of the emergency response community. Although still being trialled, the ERAS has already had a positive impact in planning mitigation activities for urban (surface water) flooding. The trial is due to finish in January 2009. To exploit this enhanced capability on a UK-wide basis we are hopeful that funding will be forthcoming to fully support an operational service, together with research activity to further develop that capability. Although urban flooding is not specifically defined in the Bill, we believe the ERAS would, if implemented, provide improved lead times and more accurate warnings of the likelihood of flooding to the responder community (R.2&R.9). Met Office plans to increase the resolution of our operational forecast model will continue to improve our weather forecasting capabilities. We expect the 1.5km model described in our earlier evidence to be fully implemented by the middle of 2009.

The Met Office placed great emphasis in our previous evidence on the need to work closely with SEPA to ensure science developments and respective skill sets in both meteorology and hydrology were combined to provide better flood warnings at extended lead times. The Met Office welcomed the RAE Committee’s recommendation to the Scottish Government that the Bill should reflect the importance of effective collaboration (R.21). The Pitt Review of the flooding in England and Wales in 2007 also recognised the benefits that closer working between the Met Office and the Environment Agency (EA) would bring to flood risk management in England and Wales. The Met Office and the EA have taken this key recommendation forward in its consideration to form a joint flood forecasting centre. The Met Office would welcome the opportunity to work with SEPA in a similar arrangement to ensure Scotland also takes best advantage of advances in developing sciences and technology, and their integration.

Investment in flood management looking forward over 25 years or more (R.10) requires a profound understanding of the impact of climate change. The Met Office is ideally placed to provide advice and information to planners and developers of Flood Management Plans. However it should be noted that our understanding of climate change continues to develop. Review and updating of plans in the light of the new information as recommended (R.10) should therefore include the best science available at the time of the review.

The Met Office
11 November 2008

SUBMISSION FROM MOUNTAIN ENVIRONMENTS CONSULTANCY

With reference to the above Bill, we have the following comments:

- General (page 1) - The overall approach of the Bill to take a more sustainable approach to flood management is very welcome however the lack of an explanation of what sustainable flood risk management is could result in a different approach by the responsible organisations. The Bill needs to better define the details of sustainable flood risk management.
- Responsible authorities (Page 3) – should National Parks be included as a responsible authority, especially the Loch Lomond and Trossachs NP which is the Planning Authority for that area?
- Flood risk assessments (Page 4) – the description of a flood which has occurred should always include the estimated return period for that flood.
Natural features (Page 7) – a method should be outlined for assessing the contribution of natural features.

Flood risk management plans (Page 15) – communities should be involved in the preparation of flood risk management plans.

District flood risk advisory groups (Page 23) do these replace flood liaison and advisory groups?

Power to give effect to Community obligations (Page 44) – more clarity is needed in this section.

General power to manage flood risk (Page 26) – a local authority should firstly try and work in partnership with other organisations including the community.

Limits of general powers (Page 27) – will communities be compensated if work is carried out on their land?

Assessment of watercourses (Page 29) – this assessment should fit in with the assessment and reporting as carried out under the WEWS Act.

Advice to planning authorities (Page 32) – the Loch Lomond and Trossachs National Park is a planning authority.

SUBMISSION FROM NETWORK RAIL

Summary

Network Rail welcomes this bill and, in particular, the co-ordinating role of Scottish Environment Protection Agency;
We believe this co-ordinating role of SEPA should be extended to co-ordinating input from interested parties into local flood management plans;
SEPA and local authorities should seek Network Rail’s consent before they exercise their powers of entry and to manage flood risk, under this bill, where the operational railway is affected.

Network Rail comments on particular clauses

Clause 23- Flood Risk Management Plans, Clause 28- local flood risk management plans, Clause 42- District flood risk advisory groups

Network Rail welcomes this bill and, in particular, the co-ordinating role of Scottish Environment Protection Agency as set out in this bill. Network Rail looks forward to inputting into SEPA’s flooding risk assessment and management plan.

However, Network Rail does not have sufficient resources to input individually into all local flood risk management plans. Network Rail therefore would like the information contained in its national management plan to be cascaded down to a local level by SEPA and via district flood advisory groups.

Network Rail considers that transport infrastructure providers and operators, including Network Rail, should be represented on district flood advisory groups.

Clause 49- General power to manage flood risk, Clause 54 Deemed planning permission

Local authorities should seek Network Rail’s consent before they exercise specific powers to manage flood risk or proceed with a flood protection scheme in areas that will affect the operational railway.
Clause 62- Advice to planning authorities and others as to flood risk

Network Rail would welcome advice from SEPA in relation to flood risk on the operational railway that is not already covered by its flood risk assessments and management plans.

Clause 67- Consultation on Clause 66 and 67

Network Rail would like to be consulted on decisions by SEPA and Scottish Ministers on whether flood warning systems should be provided or altered in areas where the operational railway could be affected by flooding.

Clause 68- powers of entry

To ensure the safe running of the railway and to protect the health and safety of authorised persons, the consent of Network Rail should be sought by SEPA before powers of entry are granted onto operational railway property.

Network Rail
11 November 2008

SUBMISSION FROM NORTH LANARKSHIRE COUNCIL

The council welcomes the Scottish Government's commitment to support SEPA and the responsible authorities by working to ensure that adequate resources are provided for the new challenging roles set out in the Bill. While estimates of costs are provided in the Financial Memorandum to the Bill there is recognition that it is difficult to estimate the total cost of the new duties. If the costs exceed the estimates the council would seek reassurance that the new duties will be fully funded.

The new streamlining of procedures for taking forward flood protection schemes is welcomed.

In many existing urban areas the functioning of the road drainage system is integrated with the combined sewers and the sewer system cannot be considered in isolation. Although modern developments are built with separate drainage systems, in urban areas these often feed back into a combined system at the development boundary. The proposal to place new statutory duties for flood risk management on Scottish Water is welcome as is the inclusion of flooding from sewers due to excess hydraulic loading.

The report on flooding in the East of Glasgow in 2002 highlighted that there is no primary legislation covering the run-off from non-paved areas in an urban setting. While the Government has indicated that ultimate responsibility for avoiding or managing flood risk still lies with land and property owners, these owners may have limited options to improve drainage within their property to deal with flooding. Since Scottish Water for understandable reasons will not accept land drainage into the sewer system existing property owners may have no means to deal with the surface water. Where pluvial flooding is minor in nature this means that the cost of protecting such property may considerably exceed the value of the property/land.

Recognition that there needs to be a balance between flood risk management and environmental protection is important. While there may be scope for coincidental environmental and flood management benefits through co-ordination with the 2003 Water Environment & Water Services (Scotland) Act the potential for conflict between these two objectives should not be discounted. The 2003 Water Environment & Water Services (Scotland) Act should not have superiority over the proposed legislation and where conflict arises there should be a mechanism to reconcile such conflict.
The council acknowledges the important role of development planning in managing flood risk. In respect of Sustainable Urban Drainage Systems that are not to be adopted by Scottish Water there are concerns from a planning perspective over the practicality of enforcing the maintenance of non-adopted Sustainable Urban Drainage Systems in the long term.

The 2003 COSLA Flood Report highlighted that management of flood risk associated with culverted watercourses may require access via manholes which may have been covered or built over by landowners. Legislation is required to prevent this occurring and to address current difficulties this respect.

North Lanarkshire Council
11 November 2008

SUBMISSION FROM PERTH AND KINROSS COUNCIL

Introduction
Perth & Kinross Council would like to welcome the move to improve flood risk management within Scotland, as well as the opportunities and flexibility offered in the draft Bill.

Perth & Kinross Council makes the following comments regarding the call for evidence relating to the Flood Risk Management (Scotland) Bill:

General Comment on Responsibilities with Regard to Flooding
The Bill does not highlight what the responsibilities of the householder/landowner are in relation to flooding. Consideration should be given to the addition of a statement noting that the prime responsibility for flooding rests with the householder/landowner. Whilst we understand that this may not have been explicitly laid down within current legislation, the new Bill should at least acknowledge that it does not remove the existing primary responsibilities of the householder/landowner.

Comments on Guidance Notes

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<th>Comment by Perth &amp; Kinross Council</th>
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<tr>
<td>3</td>
<td>-</td>
<td>11</td>
<td>This section notes that the Bill covers five main areas but further down (at section 12) the bill is noted as being in 8 parts.</td>
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<td>7</td>
<td>-</td>
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<td>Refers to Article 3(2)b but when you refer to the Bill itself this seems to have been omitted.</td>
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Comments on the Flood Risk Management (Scotland) Bill

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<tr>
<td>1</td>
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<td>This places a general duty on SEPA, Scottish Ministers and responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk. This cannot be achieved without adequate funding mechanisms being in place.</td>
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<td>1</td>
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<td>1(1)</td>
<td>The definition of a flood does not include a flood solely from a sewerage system. It is strongly recommend that Scottish Water’s duties are enhanced under this legislation. In particular we would recommend the revision of Sewers for Scotland to bring about improvements in the storm water capacity within new sewage and drainage systems.</td>
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<td>4-5</td>
<td>3</td>
<td>9-12</td>
<td>It is important that local authorities be given the right to agree the preliminary flood risk assessments.</td>
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| 9    | 2    | 18(8)(a)| Under this section a medium probability flood is defined as having a 1:100 year return period. This does not tie up with the current 1:200
### Rural Affairs and Environment Committee, 1st Report, 2009 (Session 3) — Annexe E

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<tr>
<th>Question</th>
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<tr>
<td>It is important that local authorities be given the right to input directly to flood risk management plans.</td>
<td>13 3 25</td>
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<td>Will there be any public right of objection to flood risk management plans or local flood risk management plans?</td>
<td>12-15 3 25, 26 &amp; 27</td>
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<td>It is noted that the local flood risk management plan is to include a description of the arrangements for funding and implementation. There needs to be some clarity from the Scottish Government over funding.</td>
<td>16 3 29(4)(b)(ii)</td>
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<td>Provides SEPA with a power to obtain information. This should perhaps be strengthened to a duty as it is important that SEPA use these powers.</td>
<td>20 3 37</td>
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<td>Will the powers to obtain information, documents and assistance help Local Authorities and SEPA obtain information from Scottish Water which they often say is protected under data protection legislation?</td>
<td>20/21 3 37/38</td>
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<td>Provision of information from Responsible Authorities needs to be clarified. Does it include information provided by developers as there may be copyright issues associated with this?</td>
<td>21 3 37(4)</td>
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<td>Will the District Flood Advisory Groups sit above the existing FLAG groups and who will determine the group make up and role?</td>
<td>23 3 42</td>
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<td>What purpose will these reports from the Scottish Ministers serve, e.g. are they just a monitoring tool, and what will be incorporated within them? It is assumed that part of the reason for the reports will be used as evidence to show our compliance with the EC Directive.</td>
<td>25 3 45</td>
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<td>This section notes that “a local authority may do anything” - this requires to be clarified.</td>
<td>26 4 49(1)(a)</td>
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<td>There needs to be more clarity in the definitions of what constitutes a ‘flood protection scheme’ and ‘any other flood protection works’. See also the definition of ‘flood protection work’ in section 84. In short, what determines a scheme under Schedule 2 and what doesn’t?</td>
<td>27 4 49(2)(a) &amp; (b)</td>
<td></td>
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<td>There is concern that the previous reference to non-agricultural land has now been removed. As a result, the Council may inherit a responsibility to maintain agricultural flood banks. This raises concerns that an unfair financial burden will be placed on the Council and other Councils with a high proportion of agricultural land.</td>
<td>26-30 4 49,52,53 &amp; 56</td>
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<td>Additional Note – The use of the word ‘protection’ is cause for concern as it gives the impression that full protection against flooding will be afforded by schemes or works. This should be changed to ‘mitigation’ or ‘reduction’.</td>
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<td>These agreements or arrangements that may be entered into should have to reflect the overall aims of the local flood risk management plans.</td>
<td>27 4 49(2)(d)</td>
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<td>The definition of ‘from time to time’ should be clarified. Does this</td>
<td>29 4 56(1)</td>
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section mean there is no longer a duty to maintain watercourses?

What is the definition of ‘flooding of land’? Surely flooding of certain areas of land, e.g. empty fields, will not present a problem?

| 30 | 4 | 57 | Recovery of expenses for repairs/reinstatements to flood protection work done under Section 49. What does this extend to? Does this include:

- Where works have been carried out to remove fallen trees from a burn due to flood risk and the landowner has subsequently neglected remaining trees and allowed them to fall into the burn. Does this allow local authorities to recover expenses for having to re-clear the burn?
- Where the capacity of a culvert system has been maintained by regular cleansing and a utility then puts a pipe through the system, reducing capacity – can the local authority then claim costs for having to remove the pipe and restoring the system?

What is the mechanism for recovering expenses?

| 30 | 4 | 59 | Does this offence extend to those who deliberately obstruct existing flood mitigation schemes, e.g. depositing material to prevent gate closures or to those persons who cut padlocks from flood gates and re-open them during a high flood risk period?

| 31 | 4 | 60 | This section repeals the Flood Prevention (Scotland) Act 1961 but there appears to be no transitional arrangements in place for the interim period before the flood risk management plans are confirmed. For example, what happens if a local authority wishes to promote a flood scheme before the completion of the flood risk assessments (in 2011), the flood maps (in 2013) and the flood risk management plans (by 2015)?

| 31 | 4 | 61 | The definition of ‘watercourse’ should be clarified.

| 31 | 5 | 62(3) | Advice provided by SEPA is only given if they hold relevant information. This should be extended to a duty to ensure SEPA gathers the necessary information to allow them to comment.

| 35 | 6 | 68(2) | Powers of entry - local authorities will require the same powers of entry as SEPA to allow them to collect information to inform their local flood risk management plans.

| 38 | 7 | - | Has there been a date set for transfer of reservoirs responsibilities to SEPA?

| 41 | 8 | 79 | SEPA has been given powers to obtain information about Land. These powers should be extended to local authorities.

| 44 | 8 | 84(1)(a) | Does ‘maintenance’ include watercourse maintenance?

| 50 | 8 | Schedule 2 | What initiates the hearing mechanism and is there not a risk of a 3rd Party right of appeal through the Human Rights Act in relation to whether such a hearing could be considered fair if the Local Authority raise a scheme and then give it permission through a hearing?

| - | 8 | Schedule 2 | Note It is noted that the previous reference to limits of deviation for a flood protection scheme appear to have been removed. What then
happens if a flood scheme proposal requires to be altered after approval? Does the process begin again?

General Comments

- Strategic Environmental Assessment – Will every individual flood risk management plan require an SEA? Environmental Impact Assessment - there needs to be more guidance on when an EIA is required and how they will link to SEA's.
- Finance remains a major concern for Local Authorities. Without it they will be unable to implement the local flood risk management plans. There needs to be more clarity on funding for flood measures and how it will be distributed among local authorities.
- The definition of flooding in the Bill implies that overland flow must be considered. However at present very few landowners take cognisance that their land is causing major flood risk. The Bill should therefore include powers for local authorities to require landowners to mitigate the effects of runoff in relation to flood risk.
- There is concern that failure to implement a local flood risk management plan for any reason, e.g. lack of funding, landowner agreement, etc, may lead to litigation in the event of flooding. Is this the intention of the Scottish Government?

Perth and Kinross Council
11 November 2008

SUBMISSION FROM DR JOHN RIDDELL

Introduction

The writer is a Chartered Civil Engineer with nearly forty years of experience of all aspects of flooding. He is an independent consultant providing advice on a wide range of flooding issues including flood risk assessments and investigations into flooding incidents. He has had involvement with many flood alleviation schemes, including the Perth, White Cart, Water of Leith, Forres and Elgin schemes, assisting both promoters and objectors. He is a former member of groups established to provide advice on flooding to Scottish Ministers and is a current member of the Flooding Bill Advisory Group. Based on that quite extensive experience the writer would wish that the Rural Affairs and Environment Committee give consideration to the following comments. These are made on a personal basis and primarily reflect the writer’s experience of meeting persons affected by flooding.

Repeal of Flood Prevention and Land Drainage (Scotland) Act 1997

Following the major flooding that affected many parts of Scotland in the early 1990s successive Scottish administrations have introduced measures to reduce flood risk to persons and property. The writer considers that those which have had the greatest impact are (i) the introduction of planning guidance requiring the assessment of flood risk for new development and (ii) the duty placed on local authorities to maintain watercourses in certain situations. The duty to maintain came from the Flood Prevention and Land Drainage (Scotland) Act 1997, which amended the Flood Prevention (Scotland) Act 1961, and arose from concern about the difficulty of ensuring watercourses, and in particular culvert inlets, were kept clear of debris. Since the passage of the 1997 Act the writer considers that many potentially damaging flooding incidents have been avoided by the very pro-active approach taken by all of Scotland’s local authorities through the introduction of effective programmes of watercourse inspection and maintenance.

The new Bill proposes to remove this quite specific duty. The writer understands that the duty, and it is a duty not a power, is considered to be unnecessary given the general power to be placed on responsible authorities to manage flood risk. The writer does not agree with this view. The writer considers it unlikely that local management plans will go down to the detail required to achieve the objectives of the maintenance section of the 1997 Act, nor can the writer accept that the proposed duty to implement plans will be as robust in ensuring that maintenance work such as removing dumped mattresses from burns will actually take place. Section 4B of the 1997 Act is quite specific in its requirements and over a decade has served its purpose well. The writer would invite the
Committee to give serious consideration to the retention of a duty to maintain watercourses in relation to responsible authorities.

SEPA

The Bill proposes that SEPA be the competent authority in relation to flooding in Scotland. If the Committee is fully satisfied with the Government’s view that SEPA rather than a new independent flood management authority is the best approach to co-ordinating flood management in Scotland the writer would suggest that the Committee also be fully satisfied that an environment protection agency will be able to give the required priority in terms of resources, management direction, and staff experience to the protection of people, homes and property from flooding. Within SEPA flooding must be accepted as a first priority for the Agency as it has a direct impact on people, businesses and infrastructure much greater than all of the other areas for which SEPA has a responsibility. The situation must not be allowed where for example resources initially allocated to flooding are later diverted by SEPA to some other area of interest.

The writer would thus urge the Committee to examine closely the internal funding arrangements for SEPA’s flooding powers and duties, particularly those new responsibilities resulting from the Bill, and whether the agreed allocated funds should be ‘ring fenced’, and to consider whether flooding should be a direct main board responsibility, ie a senior member of the management team responsible only for flooding rather than through the multi-interest head of science post as at present. The writer would also suggest that there is a need for SEPA to have at least one member on both its main board and each regional board with good knowledge and experience of flooding, and would hope that the Committee would concur. The Scottish people now expect flooding to be taken very seriously, they expect flood risk management to be given a high priority by government, and it is therefore essential that the designated competent authority has the capacity, corporate capability and corporate will to meet these aspirations.

Responsibility

The writer attended the flooding issues consultation meeting chaired by the Minister in Galston, East Ayrshire, in April 2008. On the platform were representatives of the Scottish Government, the local authority, SEPA, Scottish Water, SNH and the Meteorological Office. As local residents raised concerns about local flooding incidents none of these representatives were prepared to say ‘that is my overall responsibility, I will get it sorted’.

In the writer’s experience of investigating many flooding incidents the strongest view that has come through from those affected is the demand for a single agency to take responsibility for flooding, for a ‘one stop shop’ for all flooding issues, and for an end to the present confusion caused by multiple agencies. When your home is flooded you really are not interested whether it was caused by, for example, a sewer (Scottish Water), a blocked culvert (the local authority) or an inadequate warning (SEPA, Met Office). You want one authority to say, yes it was my failure and I will ensure it does not happen again. Better still, you want one authority, easily contactable and accountable, to say you will not be flooded!

The writer asks the Committee to envisage a situation after the Bill is enacted and a flood occurs that results in homes and possessions being destroyed, as will happen at some point. Affected and angry residents call a meeting. It is attended by the Minister for Rural Affairs and the Environment and the chief executives of the local authority, SEPA and Scottish Water. Which of these four will take responsibility for the flooding? If the answer is going to start with ‘well, it all depends’ has the Bill really taken us any further forward?

John Riddell
6 November 2008
SUBMISSION FROM ROYAL SOCIETY FOR PROTECTION OF BIRDS
SCOTLAND

Summary

- This submission aims to provide information on the economic benefits of sustainable flood management, and highlight some key issues in relation to coastal flooding and sea level rise.
- As such it aims to supplement the submission provided by Scottish Environment LINK. As active members of the LINK group, we fully support LINK’s recommendations.
- Part 1 general duties are welcome, but we remain concerned over the lack of clarity to ensure that sustainable approaches to flood management are on the face of the Bill.
- Part 3 on Flood risk assessments, maps and plans provides for the meeting of the requirements of the EU Floods Directive, and proposes a new framework for the management of floods through a system of flood risk management plans. It also provides for consultative arrangements, which are welcome. There is some scope to strengthen the flood risk management planning to reflect the aspiration to achieve catchment flood management.
- Provisions for natural flood management should be reviewed and strengthened, ensuring recognition that natural approaches to flood management are a cost-effective means of providing flood protection and multiple benefits to society and the environment.
- There is currently no duty on local and responsible authorities to implement measures on the ground. We see this as a major weakness of the Bill.
- The Committee should support the general principles of the Bill as well as commending the engagement of stakeholders in the development of this legislation.

In addition, RSPB Scotland recommends:

- The legislation should aim to ensure that sea level rise is addressed in appropriate manner and that vulnerable communities, as well as Natura and other important biodiversity sites are offered adequate protection.
- The issue of landowner compensation should be adequately addressed in the Bill and land managers be appropriately rewarded for the management of land for flooding.
- Managed realignment should be realised as a feasible option for the management of coastal flood risk and sea level rise, and that provisions are made for the assessment of the potential for managed realignment around the coastal areas and estuaries in Scotland.

We also recommend that the Committee considers the economic information provided in the Annex of this submission in support of the new framework for sustainable flood management, and particular in relation to the multiple benefits of natural flood management. This submission was prepared by RSPB Scotland and sent to the Finance Committee on behalf of Scottish Environment LINK.

Introduction

RSPB Scotland welcomes the opportunity to submit written evidence to the Rural Affairs and Environment Committee on Stage 1 consideration of the Flood Risk Management (Scotland) Bill 2008. This Bill is a complex piece of legislation, which is set to overhaul flooding policy in Scotland. The legislation prepared in open and transparent manner. The Committee should commend the Scottish Government for its approach to stakeholder engagement in the development of this legislation. The new framework is a big improvement to the reactive approach that is still taken by local authorities in Scotland. The Bill should allow for better planning and design of more cost-effective solutions to flooding. This is particularly important as the problem of flooding is predicted to get worse in future due to climate change. However, as stated and discussed in the submission by Scottish Environment LINK, the legislation could be improved in a number of key areas as part of the Stage 2 process.
Coastal flooding and sea level rise

The legislation aims to address all forms of flooding – including coastal and estuarine flooding. However, it is unclear how changes in sea level due to climate change will fall within the new framework. Whilst sea level rise has not been seen as a major problem in Scotland due to isostatic rise, a new report on coastal flooding suggests that sea level rise and coastal flooding is becoming a serious issue which is likely to get worse in future.

The Scottish Executive’s Review of levels of protection offered by flood prevention schemes showed that for Southeast Scotland sea level rise could be as much as 60cm by 2080, taking into account the natural uplift of the Scottish coast.

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

Managed realignment as an option for flood defence

Managed realignment is one of the methods of achieving a sustainable and cost-effective approach to sea level rise and flood defence. Inter-tidal habitats play an important role in absorbing wave energy and reducing wave height. Hence, they reduce the capital and maintenance costs of fixed flood defences. Indicative estimates suggest that with an 80-metre wide strip of saltmarsh in a combination with a 3-metre high seawall will provide the same defence standard as a 12-m high wall at a much-reduced cost. Whilst the technique of managed realignment and tidal exchange are widely used in England, no such techniques have yet been carried out for the purpose of coastal flood management in Scotland.

Managed realignment is seen as having at least 3 widely recognised benefits. These include more efficient allocation of flood defence resources, reduction in flood risk and restoration of intertidal habitat. Additionally, other benefits include contribution to WFD objectives, achievement of conservation and biodiversity targets, adaptation to climate change and increased tourism potential for the area.

Realignment in estuaries can also provide significant water storage, reducing the height of flood peaks and surge tides thus reducing pressure on existing flood defence structures. The scale of this effect is dependent on the size of the habitat created and its position within the estuary. For example a scheme at Alkborough will create 140ha of inter-tidal habitat in the upper Humber Estuary but at very high tides much larger areas will be flooded, providing enough storage to significantly reduce flood risk in Hull and the surrounding area.

Offsetting the loss of intertidal habitats

Managed re-alignment provides the only tool for offsetting losses of intertidal habitat to ‘coastal squeeze’, where rising sea levels force the intertidal zone up the shore, bringing it, in many cases, hard up against sea defences such as embankments and walls. RSPB Scotland is concerned over the slow progress in investigating and addressing the impacts of coastal squeeze. We would recommend that SNH is given a role under the Bill to ensure adequate protection is afforded to Natura and other important biodiversity site against sea level rise and coastal squeeze.

The costs and benefits of natural approaches to flood management

The natural approach to flood management can be applied in inland and coastal areas. In inland areas it involves a range of techniques, such as floodplain restoration, upland gullies forestation, and river meander restoration; all of which aim to either reduce the rainfall run-off from the river catchment, or to store water. In coastal areas, natural approaches are largely confined to managed realignment, or regulated tidal exchange. In both cases there are costs associated with
such dramatic changes in land use, in particular associated with the loss of existing activities on the land which is to be used as part of a flood management project. These issues need to be carefully considered, trading off the value of that activity against the value that can be gained through natural flood management. It is also important to remember that whilst the costs are likely to impact on one or only a few individual farmers/landowners, the benefits are likely to be felt by whole communities. The benefits are wide-ranging and go beyond the reduction in flood risk (see table 1). Crucial to the implementation of natural flood management policy is therefore the issue of compensation to landowners, as well as open communication with stakeholders and land managers. Further discussion of these crucial economic issues is provided in the Annex of this submission, which was also used for a Scottish Environment LINK submission to the Finance Committee.

Summary of recommendations

We therefore recommend that in relation to future flood management, the Committee seeks to ensure:

- The natural approach to flood management is recognised as cost-effective solution in flood risk management
- The issue of landowner compensation is adequately addressed in the Bill and land managers are appropriately rewarded for the management of their land for flooding
- Important Natura 2000 sites are adequately protected against sea level rise and coastal flooding and habitat compensation is put into operation where there is evidence of intertidal habitat loss
- Managed realignment is realised as a feasible option for the management of coastal flood risk and sea level rise
- The economic benefits of the new approach to flood management are fully recognised.

Annex - Financial implications of the Flood Management (Scotland) Bill 2008

Submission by the Freshwater Taskforce of the Scottish Environment LINK to the Finance Committee 11 November 2008

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Finance Committee on the Flood Risk Management (Scotland) Bill 2008. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

A critical part of introducing the new Bill is estimating and evaluating the costs and the benefits of the new approach to be introduced under the Bill. The new approach aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aim to deliver environmental and other benefits.

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because, traditionally, only the cost-benefit of hard engineering option was considered, and not the cost-benefit analysis of a range of different options. In addition, the cost-benefit analysis was also only carried out for easy-to-quantify monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analyses.

The real benefit in introducing the new framework for flood risk management is in the assessment of a variety of options, delivery of multiple benefits and the provision of long-term solutions. In this submission we would like to highlight the multiple benefits that would result from the new framework for flood management, in particularly looking at the benefits of natural approaches to flood management and long-term planning. Where Scottish data are not available, figures from England or other countries are used as indicated.
Benefits of long term planning

Strategic planning for flood defence allows for the most cost effective solutions for each catchment to be found. It also helps identify areas where flood mitigation is difficult and where development should be avoided. Planning is particularly important given that flooding is likely to increase in frequency due to climate change. By linking flood risk management with land use planning, it will be possible to avoid new development in areas at high risk of flooding, and so reducing the need for expensive flood protection measures. Avoiding building on floodplains and high flood risk areas remains the cheapest, long-term option for flood management.

Climate change

The UK Climate Impacts Programme (CIP) predicts how climate might change over time, and concludes that winters will become wetter, and summers drier, but the intensity and frequency of summer storms may increase. For example, a medium-emission climate change scenario predicts that a 1 in 100 chance flood in any year is expected to become a 1 in 70 chance flood in any year by the 2020s, and to a 1 in 40-60 chance flood in any year by the 2080s. Therefore floods, which are currently considered ‘extreme’, will become more frequent in future. The sustainable approach to flood risk management provides effective means of planning for these changes and a framework for sustainable adaptation.

The costs of setting up the new framework for flood management

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Although we cannot calculate the potential cost saving from sound planning for the future, there are many examples of the costs of the lack of integrated flood management planning, especially in areas where development was allowed to take place on floodplains and now they must be defended at very high cost.

Costs and benefits of traditional hard defences

Costs of hard defences

Traditional flood defence measures are very expensive. The present value of Scotland’s current flood defences is £1.3 million/kilometre.

Maintenance and replacement costs are also high for hard defences. Roughly 38% of the annual capital cost is required to maintain the defences, which is a very large additional expense. This is reflected by the Environment Agency (EA), in England, spending more of its flood risk management budget on maintenance in 2006-07 (38% of the budget) than on flood defence construction and replacement (36% of the budget). Additionally, hard defences generally need to be replaced after fifty - sixty years.

With the anticipated changes in climate and the frequency and severity of flooding events, these costs are likely to increase in future.

Benefits of traditional hard defences

The benefits of traditional hard defences are likely to be limited to the single purpose, which is flood defence. The evaluation is usually based on the analysis of the number of homes/businesses protected from flooding.
Multiple benefits of natural flood management

There are multiple benefits that result from the habitat creation that accompanies many forms of sustainable flood management, and in particular through natural flood management. These can be categorised as ecosystem services – aspects of ecosystems that can be consumed and/or utilised to produce human well-being. The four main categories of ecosystem services, and examples of the types of services that would arise from an increase in habitats and biodiversity are:

- Provisioning (fresh water, food)
- Regulating (water purification)
- Supporting (nutrient cycling)
- Cultural (tourism/recreation, aesthetic, sense of place)

These benefits are summarised in Table 2 at the end of this document. The value of these services is usually very site specific, and dependent on variables such as the availability of other sites providing similar services and the population that enjoys the services. Because they are difficult to value they are often neglected in traditional cost-benefit analyses. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis. We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options.

Costs and benefits of natural flood management

It is difficult to generalise about the cost of sustainable and in particular natural flood management measures as the measures vary widely. It is also worth noting that this is a new area of economic research, with a number of European research projects due to report shortly. Some of these research projects are particularly relevant, and include the economic assessment of the benefits of flood warning, and the evaluation of multiple benefits/ecosystem services in cost-benefit analysis.

Despite this, it is clear that sustainable flood management measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure. Some examples of the lower cost of sustainable defences are given here.

Managed realignment

Managed realignment is widely practiced as a coastal flood management measure in England by the Environment Agency (EA) and elsewhere in Europe, and is still a new concept in Scotland. The costs provided in this submission are therefore largely based on research carried out in England.

Managed realignment schemes are often less costly over time than hard defences as they require less maintenance. The height needed for embankments is generally lower due to the retreat inland, and erosive pressure is lessened due to the buffering action of the intertidal habitat created in front of the embankment. No defences might be required at all if the retreat is to a contour. In 1998 the EA estimated that the difference in costs, for building new seawalls, with 30 metres of saltmarsh in front of the seawall cost £800 per metre as opposed to £5,000 per metre without saltmarsh.

Freiston Shore is an example of the potential benefits to be gained from managed realignment. The realignment of the flood defence walls saved almost half a million pounds in costs – the cost was £2 million compared to the £2.47 million estimated for maintenance/replacement of the walls. This greater cost effectiveness was achieved without even taking into account the significant environmental benefits gained from creating 65 hectares of intertidal habitat. Another additional benefit was the improved recreation value of the site. By 2008 almost 60,000 people were visiting Freiston Shore each year compared with approximately 11,000 people before the realignment.
The nature reserve on the site supports an estimated 6 full time equivalent jobs in the local community and also provides a valuable place for local people to exercise and relax.

The use of wetlands

Often sustainable flood management includes restoration of wetland to store or slow water flow. The Scottish Rural Development Plan indicates the likely costs of wetland creation and management. Table 1 displays the rates landholders are paid for creating and/or managing wetlands.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Annual payment</th>
<th>Present value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of open grazed or wet grassland for wildlife</td>
<td>£111.00/ha</td>
<td>£2,043/ha</td>
</tr>
<tr>
<td>Management of Wetland</td>
<td>£90.00/ha</td>
<td>£1,656/ha</td>
</tr>
<tr>
<td>Creation, restoration and management of wetland</td>
<td>£227.00/ha</td>
<td>£4,178/ha</td>
</tr>
<tr>
<td>Management/restoration of lowland raised bogs</td>
<td>General Mgt. £40.00/ha</td>
<td>£736/ha</td>
</tr>
<tr>
<td></td>
<td>Grazing Mgt. £83.00/ha</td>
<td>£1,528/ha</td>
</tr>
<tr>
<td>Creation and management of water margins and enhanced riparian buffer areas)</td>
<td>£294.00/ha</td>
<td>£5,491/ha</td>
</tr>
<tr>
<td>Management of flood plain</td>
<td>£39.00/ha</td>
<td>£718/ha</td>
</tr>
</tbody>
</table>

These wetlands are being created or managed for wildlife benefits, and as such are likely to cost more than wetlands that are created simply for flood management. This means they wetlands created and managed for biodiversity are likely to be more expensive than a less managed wetland. However, these costs are still lower than the cost of hard flood defences.

Estimating the value of natural flood management

Whilst this area of economics is relatively new, some research exists that helps to clarify some of the benefits offered by natural solutions to flooding. As a general guideline, Defra flood appraisal guidance recommends the use of £175 or £300/ha per year for the environmental benefits of managing water levels. This gives a present value of £3,221 to £5,521 per hectare. Other figures, derived from “meta-analyses” of the economics valuation literature, suggest that benefits from grazing marsh is likely to be even higher, around £290-360/ha per year, or a present value of £4,785 - £7,177/ha.

To minimise the risk of double counting, generally ecosystem services are estimated together in one benefit valuation. One exception might be carbon storage, which is a service with a global impact. The UK government’s shadow price of carbon is currently £26.52/t, and increases each year. The value of carbon sequestration over time is potentially high. A recent analysis of the proposed Wallasea Island realignment assumed that one tonne of carbon was sequestered per hectare of intertidal habitat created.

In light of the multiple benefits it will probably be appropriate to seek funding from more than the traditional flood defence sources. Scottish Ministers have a role to play in ensuring that adequate funding is made available to deliver SFM on the ground, and to reward farmers and foresters for managing their land for the benefit of flood management and climate change adaptation. This may require integrated funding streams.
5. Conclusions

The benefits of sustainable flood management, and in particular the natural component of flood management are many fold. We believe that sustainable flood management provides cost-effective means of protecting communities from flooding, whilst also providing additional benefits for the environment and the society. It therefore makes an economic sense to invest now on implementing a framework for the management of flood risk that will provide long-term solutions and ultimately reduce the future costs of flood protection. This is particularly important in the light of changes in weather and the predicted increases in flooding associated with climate change.

Table 2: Natural Floodplain Functions and Societcal values, (Department of Water Recourses California, May 2005)

<table>
<thead>
<tr>
<th>Natural Floodplain Functions</th>
<th>Human Services and Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain Natural Channel Processes</td>
<td></td>
</tr>
<tr>
<td>Maintain natural dynamic channel processes and equilibrium</td>
<td>All of below</td>
</tr>
<tr>
<td>Manage Flows</td>
<td>Protection of life and property</td>
</tr>
<tr>
<td>Conduit for water, nutrients and organisms</td>
<td>• Avoided structure and content losses</td>
</tr>
<tr>
<td>Spread and retain surface and subsurface water</td>
<td>• Avoided crop losses</td>
</tr>
<tr>
<td>Moderate speed, force, depth and timing of flows</td>
<td>• Avoided income losses</td>
</tr>
<tr>
<td>Maintain base flows</td>
<td>• Avoided damage to public infrastructure and services</td>
</tr>
<tr>
<td>Reduce frequency and duration of low surface flows</td>
<td>• Avoided emergency response and recovery costs</td>
</tr>
<tr>
<td>Maintain sediment balance</td>
<td>• Avoided flood insurance administration costs</td>
</tr>
<tr>
<td>Maintain connectivity between channel and floodplain</td>
<td>• Avoided hospitalization and related health care costs</td>
</tr>
<tr>
<td>Maintain Water Supply</td>
<td>• Avoided physical, financial and emotional disruption of lives</td>
</tr>
<tr>
<td>Increase surface water storage</td>
<td>• Avoided loss of life</td>
</tr>
<tr>
<td></td>
<td>Avoided flood/sediment control infrastructure costs</td>
</tr>
<tr>
<td></td>
<td>Value of flow-related goods and services</td>
</tr>
<tr>
<td></td>
<td>• Recreational boating</td>
</tr>
<tr>
<td></td>
<td>• Commercial navigation</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>
### Promote groundwater recharge and storage

Additional water supplies
- Agricultural
- Municipal and industrial
- Environmental

Avoided water supply infrastructure costs
Avoided habitat enhancement/replacement costs

### Natural Floodplain Functions

#### Maintain Water Quality

Filter nutrients and impurities from runoff

Value of goods and services produced with improved water quality
- Agricultural
- Municipal and industrial
- Environmental

Avoided water treatment infrastructure costs
Avoided damage to plumbing, fixtures and appliances
Avoided habitat enhancement/replacement costs

Process organic wastes

Moderate water temperature fluctuations

Avoided water treatment infrastructure costs

### Human Services and Values

#### Maintain Soil Quality

Detention of particulates, compounds and elements

Value of goods and services produced with improved soil quality

Avoided soil treatment costs
Avoided habitat enhancement/replacement costs

### Maintain Air Quality

Carbon sequestration (removal of atmospheric carbon by vegetation)

Value of goods and services produced with improved air quality
<table>
<thead>
<tr>
<th>Vegetation humidifies atmosphere and moderates air temperatures</th>
<th>Improved property values</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Value of improved health and comfort</td>
</tr>
<tr>
<td></td>
<td>Avoided damage caused by poor air quality</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>

**Maintain Plant and Animal Habitats**

<table>
<thead>
<tr>
<th>Maintain characteristic and diverse plant and animal communities</th>
<th>Value of goods and services associated with habitats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide habitat interspersion and connectivity</td>
<td>• Natural products</td>
</tr>
<tr>
<td></td>
<td>• Aquaculture</td>
</tr>
<tr>
<td></td>
<td>• Recreation</td>
</tr>
<tr>
<td>Provide breeding and feeding grounds</td>
<td>• Hunting and fishing (sport and commercial)</td>
</tr>
<tr>
<td>Protect habitat for species of special concern</td>
<td>• Open space/aesthetics</td>
</tr>
<tr>
<td></td>
<td>• Environmental studies</td>
</tr>
<tr>
<td></td>
<td>• Cultural resources</td>
</tr>
<tr>
<td>Maintain ecological succession</td>
<td>Improved property values</td>
</tr>
<tr>
<td></td>
<td>Enhanced economic development</td>
</tr>
<tr>
<td></td>
<td>Preservation values (existence, option and bequest)</td>
</tr>
<tr>
<td></td>
<td>Avoided habitat enhancement/replacement costs</td>
</tr>
</tbody>
</table>

RSPB
11 November 2008

**SUBMISSION FROM THE SOCIETY OF CHIEF OFFICERS OF TRANSPORTATION IN SCOTLAND (SCOTS)**

SCOTS is a society made up of Chief Officers from the 32 Scottish Local Authorities with the aim of giving policy advice on a national basis for issues relating to land use, development and physical environment.

SCOTS wish to comment and, the following provides their advice on those areas within the Bill that require to be considered further:

Overall SCOTS welcomes the Scottish Government’s proposals to modernise the approach to flood risk management for Scotland. SCOTS welcome many of the proposals but have responded here with the intention of being constructive and with an overall aim to achieve the much needed changes to the current legislation.
Responsibilities have been clearly defined within the legislation except for land and property owners who have the ultimate responsibility for avoiding or managing flood risk. Setting it within the Bill or providing firm clear guidance would play an important role in educating the general public on their responsibility.

Co-ordination

- The Bill may facilitate the co-ordinated working approach but SCOTS note that it does not enforce but relies on co-operation and co-ordinated working.
- Page 31 Section 60 Repeals the Flood Prevention (Scotland) Act 1961 but there appear to be no transitional arrangements for flood protection schemes. SCOTS recommend that flood protection schemes that are in progress or developed before the Flood Risk Management Plans (FRMPs) are in place will feed into the FRMPs and go through the new approval process without having to wait. Also that SEPA may need to be involved in the procedures for these schemes during the interim period.
- Page 23 Section 42 Within the District Flood Risk Advisory Groups (DFRAGs) SCOTS recommend that there be a terms of reference signed up to by all parties to facilitate co-ordinated response and working arrangements.

Flood Risk Assessment

- If the flood risk assessment maps are to be as accurate as possible then the collection of the data required must begin as soon as possible. This data collection will also place an additional burden on Local Authorities resources and SCOTS are concerned that these may not be accurately represented within initial the calculations of costs in the accompanying Financial Memorandum.
- Any re-assessment of these maps in 2010 should have input from Local Authorities as these have the people who have experienced the impacts of flooding on the ground
- SEPA must start to initiate their responsibilities and duties with Local Authorities now to ensure a co-ordinated effort in establishing not only what data will be required to inform the Preliminary flood Risk assessments and subsequent maps but essentially to ensure a pro-active and effective working relationship.

Hazard Maps

- Page 8/9 Sections 17 and 18. The definition and requirements for the hazard maps are extensive and SCOTS consider it is possible that the timescales for producing an accurate and detailed map are insufficient and the timescale may only allow a very broad overview. This will reduce the purpose and effectiveness of these initial maps.
- SCOTS consider it is essential that these maps look at the impact and effect of all constrictions to the flow of water such as bridges, banks and culverts. These constrictions have a backwater effect in relation to a potential hazard which will affect the flows and water levels in watercourses and rivers.
- SCOTS recommend that the impact of overland flow/run-off be included in the mapping and for example includes the flow from farmer’s fields particularly where there is potential to affect property.
- SCOTS consider that in identifying vulnerable areas on these maps that there may be a potential of blighting the land or property. This may have the consequence of affecting Flood Insurance in Scotland.
- Past experience shows that if there is not a definition of what constitutes low/medium or high probability it could be interpreted differently by different bodies. It may be possible to define these more closely by reference to return periods, climate change, rainfall etc.

Flood Risk Management Plans (FRMPs)

- Page 1 section1 (2)(c) SCOTS consider the FRMP process needs to emphasise the co-operative approach rather than coercive to ensure success.
- Page 11 section 23 To be successful there needs to be close partnership working in the framing of the FRMPs. The objectives and measures needs the co-operation of Local
Authorities who have to implement the plans within the Local LFRMPs. Consideration should be given to a memorandum of understanding.

- Page 11 Section 23 4 (a) and (b) The competent authority will have to agree timescales, funding and implementation with the responsible bodies. Co-operation will be important to ensure the plans can be delivered.

Local Flood Risk Management Plans (LRMPs)

- The cost and workload involved in pulling together and implementing these LRMP plans are not clear to Local Authorities but it is anticipated they are likely to place significant burden on resources and workload for most Local Authorities.
- There are significant extra cost implications for Local Authorities in the collection of the information required not only to inform the LFRMPs but also to help SEPA inform the FRMPs which are apparent in the financial memorandum.
- Page 15 sections 29 to 33 The timetable for implementing the LFRMP and solutions on the ground is short. The Local Authority duties for LFRMPs will be constrained by the short timescales and there may be difficulties for some authorities to complete the necessary work.
- In view of the short timescales it is recommended by SCOTS that work on the FRMPs and LFRMPs and assessments start as soon as possible. In that case there appears to be a funding/resource gap between now and 2010 in regard to how these plans will be completed and implemented.

District Flood Risk Advisory Groups and Sub-District Flood Risk Advisory Groups

- There needs to be clarification of the Roles of SEPA and Local Authorities within these groups
- It is not clear if the cost to Local Authorities or other responsible bodies for the Advisory Groups is contained within the financial memorandum.
- Careful organisation will be required as the organisation of SEPA into regions does not mirror the Local Authority areas.

Local Authority Functions

- The duty for Local authorities to assess watercourses will be extended to ‘rural’ as well as the current ‘urban’ watercourses. Local Authorities will have an increased financial and resource responsibilities. It is not clear if the cost of this increased responsibility is contained within the estimates given in the financial memorandum.
- The definition of a watercourse as defined on page 31 Item 61 – SCOTS recommend that the definition be clarified to say whether it specifically extends to Sustainable Urban Drainage Schemes (SUDS), forest drains, agricultural land drains etc. There are potential problems for example SUDS schemes which adopted and maintained by a Third Party or Scottish Water. It is possible that these are intended to be dealt with by Sec49 and Sec57 and this should be clarified either in the Bill or the guidance.
- Page 30 section 57 Recovery of expenses – whilst this is welcomed by SCOTS there is need for guidance and an explanation of the mechanism in which such a process would be undertaken. SCOTS recommend that it would extend to not only things developed within the LFRMPs but also to existing works carried out prior to this Bill
- Page 30 section 59 (4) (a) SCOTS recommend that the information on fines for damage to Flood Protection Works needs to be expanded to include all existing flood protection work.

Flood Warning

- SCOTS consider it is essential that flood warning be extended to sub-districts and smaller river systems where there is significant flood risk and adequate warning can be given.
Reservoirs

- Page 38  part 7Local Authority owned reservoirs will have to identify area of catastrophic failures and this should be made clearer within the bill

Flood Protection Schemes – Procedures Schedule 2

- The FRMPs and LFRMPs will be agreed to in co-operation with SEPA. The consideration of the Controlled Activities Regulations should be incorporated into the process so that the implementation and maintenance of works can be dealt with more efficiently at a reduced overall cost for administration and licensing.
- There is an opportunity for simplification of the CAR process within this Bill. For instance the CAR licensing timescales are much longer and not in step with either the Planning or the Bill’s procedures.
- CAR needs to be applied uniformly across all regions and SCOTs recommend this Bill helps to ensure consistent co-ordination.

Regulations & Policy

- Policy documents and regulations for example SPP7 and the building regulations will have to be amended to make it comparable with the aims of the Bill and both the FRMPs and LFRMPs

NOTES

Flood prevention studies presently undertaken have varied climate change strategies and figures therefore it would be prudent to produce guidance to ensure a co-ordinated approach to adjustments for climate change, this may need to be reviewed as and when UKCIP is reviewed.

SCOTS
11 November 2008

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

South Lanarkshire Council welcomes the introduction of the Flood Risk Management (Scotland) Bill and the principle of creating a ‘framework’ as a means of developing solutions to reduce and manage flood risk.

We note that the Rural Affairs and Environment Committee are concerned with the General Principles of the Bill and South Lanarkshire Council’s response is intended to reflect our concerns, where appropriate.

Bill as Introduced

Part 1  General Duty, Direction and Guidance

The general duty placed upon SEPA, Scottish Ministers and responsible authorities to reduce overall flood risk cannot be achieved without sufficient funding being made available.

Part 2  Principal Expressions

Paragraph 88 of the Policy Memorandum makes reference to land and property owners’ responsibility. However, our view is that it would have been helpful in this section to state to the general public that they have principal responsibility for protecting their property/land and/or maintaining their watercourses to assist in reducing the risk of flooding.
Part 3 Flood Risk Assessments, Maps and Plans

Flood Risk Assessments

We agree that flood risk assessments are required and SEPA is best placed to proceed with these, however, there is some concern that sufficient detail will be available for public inspection by 22 December 2011.

Flood Risk Maps and Plans

We support the development of these useful aids to assessing and managing future flood risk. It is noted, however, that SEPA can request responsible authorities to gather and provide information with regards to flood risk and other unspecified data. A Local Authority as a responsible authority can only supply this information should sufficient funding be available.

S18 Flood Hazard Maps – high, medium, low probability should these be linked to return periods to ensure national standards?

Local Flood Risk Management Plans

Again we support the development of Local Flood Risk Management Plans, as there is already evidence of this type of working in the Greater Glasgow area and the proposals appear to provide the necessary ‘framework’.

However, there are significant costs associated in preparing the supporting modelling studies to assist in its development.

There needs to be clarity on what is available financially and how it will be distributed.

Part 4 Flood Risk Management : Local Authority Functions

We welcome the wide ranging options available to a Local Authority to manage flood risk in its area.

S49 to S57 However, it is disappointing to note that the powers to recover costs with regards to lack of maintenance by riparian owners / land owners does not exist in Sections 49 through 57

Could the proposed Bill be amended to accommodate this requirement?

S56 Now that the definition of non-agricultural land has been removed and Flood Risk defined as per Part 2 S3, will there be a standard table / model available to assess the financial consequences? And ensure a standard continuity of response throughout the country.

S61 Definition of a watercourse

Could this definition clarify if this includes SUDS Ponds/Basins and ancillary apparatus maintained by Third Parties.

Could the definition clarify if this includes farm tile drains affecting property?

Part 5 SEPA : Other Flood Risk Management Functions

Flood Warning

Flood Warning is an exceptionally useful aid in the Flood Risk Management process and it should be a strategic aim to extend and refine Flood Warning systems particularly in those major urban conurbations with watercourses.
Part 6  Powers of Entry and Compensation

Noted that these Powers appear adequate to assist in implementing the Bill

Part 7  Reservoirs

Noted and welcomed as the present Enforcement Authority

Part 8  General

Noted

Schedule 1  Parts 1 and 2

No comments

Schedule 2 Flood Protection Schemes : Procedure

SEPA is a statutory consultee, however, there is no mention of attempting to reduce the timescale from a maximum of 4 months for a Complex CAR licence to say 2 months or less. This matter should be seriously considered as the proposed Bill progresses through Parliament.

Schedule 3 Minor and Consequential Modifications

No Comments

Schedule 4 Index

As per Part 2 it would be helpful if Riparian Owner / Land Owner was defined and referenced to this Schedule

Additional Comments

1. Transitional arrangements should be specified when repealing the Flood Prevention (Scotland) Act 1961 (as amended) to the Flood Risk Management (Scotland) Bill
2. SPP7 Requires to be amended to take account of the new Bill
3. It would be useful to have National Guidelines for Climate Change uplift. Although this is mentioned, it does not state any figures, will the Regulations state such Guidelines?

South Lanarkshire Council
11 November 2008
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