

SPICe Briefing

Flood Risk Management (Scotland) Bill : Stage 3

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This briefing summarises the parliamentary scrutiny of the Flood Risk Management (Scotland) Bill prior to Stage 3 proceedings. In particular the briefing covers:

- the Rural Affairs and Environment Committee's Stage 1 Report recommendations and the Scottish Government's response (Table 2)
- the main amendments agreed at Stage 2 (Table 3)
- the main issues raised at Stage 2 but which did not result in amendment of the Bill (Table 4)
- commitments made by the Minister on Stage 3 amendments (Table 5)



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(SB 09/22)

EXECUTIVE SUMMARY

Flood Risk Management (Scotland) Bill: Stage 3

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This briefing summarises parliamentary scrutiny of the Flood Risk Management (Scotland) Bill up to Stage 3. It covers the Rural Affairs and Environment Committee's Stage 1 Report recommendations and the Scottish Government's response; main amendments agreed at Stage 2; and main issues that were raised at Stage 2 but which did not result in amendment of the Bill; It also highlights main amendments which the Government has committed to bring forward at Stage 3.

INTRODUCTION

The Flood Risk Management (Scotland) Bill was introduced by Richard Lochhead MSP to the Scottish Parliament on 29 September 2008. The Rural Affairs and Environment Committee (the Committee) was designated lead committee for consideration of the Bill at Stage 1. The Bill seeks to reduce the adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, by establishing a framework for 1) assessing flood risk, 2) mapping flood hazard and flood risk, and 3) developing flood risk management plans. The Bill will transpose the EU Floods Directive into Scots law and replaces the Flood Prevention (Scotland) Act 1961 (c.41). It will also amend the Reservoirs Act 1975 (c.23).

Further information on the Bill as introduced is contained in SPICe briefing [Flood Risk Management \(Scotland\) Bill](#) (Kenyon and Reid, 2008).

This briefing summarises parliamentary scrutiny of the Bill up to Stage 3. It covers the Rural Affairs and Environment Committee's Stage 1 Report recommendations and the Scottish Government's response; main amendments agreed at Stage 2; and main issues that were raised at Stage 2 but which did not result in amendment of the Bill; and main amendments which the Government has committed to bring forward at Stage 3.

PARLIAMENTARY CONSIDERATION

Parliamentary consideration of the issues related to flood risk management began in 2008 when the Rural Affairs and Environment Committee carried out an Inquiry into Flooding and Flood Management. The Inquiry consisted of a call for written evidence and six oral evidence sessions. The Inquiry report entitled Flooding and Flood Management, made 26 recommendations, many relevant to the (then) forthcoming Flood Risk Management (Scotland) Bill. A number of recommendations made in the Inquiry report were reflected in the Bill as introduced.

Formal parliamentary consideration of the Flood Risk Management (Scotland) Bill at Stage 1 started on 19 November 2008 with the Rural Affairs and Environment Committee designated as lead committee. The Committee published its Stage 1 Report (Scottish Parliament Rural Affairs and Environment Committee, 2009) on 15 January 2009, with the Stage 1 debate held on 22 January 2009 (Scottish Parliament, 2009). Stage 2 was carried out over the three weeks of 4, 11 and 18 March 2009. Key documents produced during parliamentary consideration of the Bill are set out in table 1.

STAGE 1 CONSIDERATION

During Stage 1, the Committee expressed support for the general principles of the Bill, but debate surrounded a number of issues including the lack of a clear requirement to implement flood risk management plans required under the Bill; funding of local authorities to implement flood risk management measures; surface water management; the role of different organisations and their structure; the priority given to natural flood risk management techniques and the lack of skilled staff in relevant areas to implement flood risk management on the ground.

This rest of the briefing is largely in table format. Table 2 sets out the Rural Affairs and Environment Committee's Stage 1 Report recommendations and the Scottish Government's written response and oral response from statements made by the Cabinet Secretary or the Minister during the stage 1 debate. The final column of Table 2 shows what amendments were brought forward to address the recommendation or what action has been taken.

Details of main amendments agreed to are set out in Table 3, main amendments disagreed to are in Table 4 and those withdrawn or not moved are in Table 5.

Motion S3M-3163, in the name of Richard Lochhead, that the parliament agrees to the general principles of the Flood Risk Management (Scotland) Bill, was unanimously agreed on the 22 January 2009.

Table 1. Key dates and documents produced during parliamentary consideration of the Bill

Publication	Date
Flooding and Flood Management Inquiry Report	16 May 2008
Bill (as introduced)	29 September 2008
Stage 1	
Stage 1 consideration by the Rural Affairs and Environment Committee	19, 26 November, 10,17 December 2008
Rural Affairs and Environment Committee Stage 1 Report	15 January 2009
Finance Committee Stage 1 Report	11 December 2008
Subordinate Legislation Committee Stage 1 Report	15 December 2008
Stage 1 debate in parliament	22 January 2009
Government response to Stage 1 Report	12 February 2009
Stage 2	
Stage 2 consideration by the Rural Affairs and Environment Committee	4,11,18 March 2008
Bill (as amended at Stage 2)	19 March 2009
Stage 3 debate in parliament	To be confirmed

Table 2. Rural Affairs and Environment Committee’s Stage 1 Report recommendations and the Scottish Government’s response

Committee Recommendation	Government Response	Outcome at Stage 2
<p>Recommendation 3: The Committee agrees that the Bill should be amended to strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans, thereby ensuring that all local authorities will use their best endeavours to deliver the objectives of flood risk management plans [Paragraph 39].</p>	<p>The Government response to the Stage 1 Report states that it “supports this recommendation and is considering an amendment to address this point” (Scottish Government, 2009, p2).</p> <p>During the Stage 1 debate Richard Lochhead said “The Rural Affairs and Environment Committee recommended that we strengthen the link between the duty to reduce flood risk and the implementation of flood risk management plans; we will lodge an amendment that does just that” (Scottish Parliament, 22 January 2009, col 14338).</p>	<p>Amendment 1 agreed.</p> <p>Amendments 79, 66 disagreed to on casting vote.</p>
<p>Recommendation 4: The Committee supports the view of the Subordinate Legislation Committee and recommends that the Bill be amended to clarify that the Scottish Ministers’ powers to create additional responsible authorities, to assign further functions to SEPA and responsible authorities, and to give these organisations directions or guidance, must be undertaken in accordance with the general duty to reduce overall flood risk. [Paragraph 44]</p>	<p>The Government supported this recommendation in its response to the Committee’s Stage 1 Report, and stated that it would consider an amendment to address the point (Scottish Government, 2009).</p>	<p>Amendment 5 agreed.</p>
<p>Recommendation 5: In order to allow this Committee (or its successor) to influence the selection of responsible authorities named in subordinate legislation, the Committee recommends that it be consulted on Scottish Government proposals to lay any order designating responsible authorities under section 1 before the instrument is laid. [Paragraph 50]</p>	<p>In its response to the Committee’s Stage 1 Report, the Government stated it “is committed to undertaking a thorough consultation exercise before making a designation order identifying additional responsible authorities, which could include informing the Committee of the Government’s proposals and intentions” (Scottish Government, 2009, p2).</p>	<p>Amendment 7 agreed.</p>

<p>Recommendation 6: The Committee recommends that the Scottish Government produces a timetable demonstrating what work it intends to undertake in order to produce guidance on its preferred approach to the assessment of human and social costs, recognising that any such guidance should be consistent with the advice set out in the HM Treasury Green Book. Such guidance should be available sufficiently far in advance of the deadline for SEPA's production of initial flood risk assessments (December 2011) to allow SEPA to take it fully into account. The guidance will then also inform the work of SEPA and responsible authorities in the production of flood risk management plans. [Paragraph 59]</p>	<p>In its response to the Committee's Stage 1 Report, the Government stated that an implementation plan for all work to support the Bill had been prepared, and work will meet deadlines in the Bill. Advisory groups have been set up to support this work (Scottish Government, 2009, p3).</p>	<p>Amendment 82 was not moved.</p>
<p>Recommendation 7: The Committee re-iterates its inquiry report recommendation that, at the earliest possible opportunity, there is a need for Scottish Government guidance to SEPA on resolving conflicts between its existing responsibilities and its new role under the Bill. The Committee expresses its disappointment at the lack of Government action to address this issue since the report was published in May 2008. The Committee considers that the Government should set a deadline by which such guidance should be issued, and that it should be sufficiently far in advance of the December 2011 deadline for production of initial flood risk assessments by SEPA. [Paragraph 69]</p>	<p>In its response to the Committee's Stage 1 Report, the Government stated that it "has discussed this issue extensively with SEPA and local authorities, and we have not identified any examples of where SEPA have hindered important flood risk management work in pursuit of environmental issues. Similarly, we have not identified any situations where SEPA has promoted environmental protection over the needs of protecting the public from flooding." The Government argued that the Management Statement between SEPA and the Government forms the framework within which SEPA operates and that the framework will be reviewed to take into account SEPA's new responsibilities. The Government provided an annex of case studies (Scottish Government, 2009, p 20) which illustrated their response.</p>	<p>No action</p>

<p>Recommendation 8: The Committee strongly recommends that the Scottish Government takes steps to align the timing of funding streams for the lead and responsible authorities as early as possible in the Bill's implementation. [Paragraph 76]</p>	<p>The Government stated that an implementation plan for all work to support the Bill had been prepared, and work will meet deadlines in the Bill. Advisory groups have been set up to support this work.</p>	<p>Amendment 132 was not moved.</p>
<p>Recommendation 9: The Committee urges the Scottish Government to bring forward an amendment to provide for a more specific reference to sustainability on the face of the Bill, linked to the issuing of guidance on the question of sustainability.</p>	<p>In both the Governments response to the Stage 1 Report and in the Stage 1 debate (Scottish Parliament, 22 January 2009, col 14337), the Government agreed to amend the long-title of the Bill to include reference to sustainability. The SG response to the Stage 1 Report states "The Bill expressly allows Scottish Ministers to issue guidance on any matter pertaining to the Bill, and the Scottish Government fully intend to issue guidance on sustainable flood risk management" (Scottish Government, 2009, p4).</p>	<p>Amendments 3, 9, 65 were agreed. Amendment 83 was disagreed to on casting vote.</p>
<p>Recommendation 10: The Committee considers that at present Scottish Water appears to prioritise the more immediate or short term financial cost of options when assessing what form of work to undertake. This is likely to be incompatible with Scottish Water's duty to have regard to social impacts in exercising its functions under the Bill and also its duty to promote sustainable flood management, the latter of which may be more cost effective in the long term. The Committee recommends that the Scottish Government changes existing arrangements for financial regulation of Scottish Water in order to remove any doubt that Scottish Water will be able to meet its full responsibilities under the Bill. The Committee requests that the Government responds to this recommendation prior to Stage 2 considerations commencing. [Paragraph 92]</p>	<p>The Government argued in its response to the Stage 1 Report that it sees no need to change current arrangements related to regulation of Scottish Water in the light of the Bill. It stated that " the Government is clear that the new duties imposed on Scottish Water by the Bill, which include acting with a view to reduce flood risk, and acting to do so in the way best calculated to contribute to sustainable development, will ensure that Scottish Water can fulfil its obligations under the Bill." (Scottish Government, 2009, p5)</p>	<p>Amendment 78 was withdrawn Amendment 132 was not moved.</p>

<p>Recommendation 11: The Committee believes that cost-benefit analysis procedures should take into account the environmental and social benefits that sustainable flood risk management can generate. To encourage a cultural shift, and to ensure a consistent approach to assessment, the Committee recommends that the Scottish Government stipulates in guidance which cost-benefit tools they consider place sufficient emphasis on these benefits and should therefore be adopted by local authorities. [Paragraph 97]</p>	<p>The Government stated that an implementation plan for all work to support the Bill had been prepared, and developing guidance on cost benefits analysis is part of this work (Scottish Government, 2009).</p>	<p>Amendment 86 was agreed.</p>
<p>Recommendation 12: The Committee considers that SEPA should produce a strategic assessment, endorsed by the Scottish Government, setting out a hierarchy of flood risk management projects to take priority over the succeeding six years, and their potential funding requirements. This statement of priorities at a national level could inform Scottish Water’s planning processes and future Scottish Government spending review decisions including decisions on funding allocations to local authorities. Further, the Bill should place Scottish Ministers under a duty to have regard to the strategic assessments in considering funding allocations to responsible authorities.</p>	<p>In its response to the Committees Stage 1 Report the Government argued that “the Bill does not specify how far ahead SEPA should look when preparing a district flood risk management plan. The intention is for the plan to look as far ahead as necessary to accommodate a long-term strategy, which could be 25 to 50+ years. Once long-term priorities are identified, SEPA, in collaboration with local authorities and Scottish Water, must identify which actions can be taken forward in a 6 year cycle, or a combination of 6 year cycles. The Scottish Government therefore do not consider that an amendment is required to address this recommendation.” (Scottish Government, 2009, p 6)</p>	<p>Amendment 70 withdrawn Amendment 71 disagreed to on casting vote Amendment 72 disagreed to on casting vote Amendment 73 not moved Amendment 74 disagreed to on casting vote</p>

<p>Recommendation 13: The Committee seeks reassurance that the information produced under section 16 will be sufficiently detailed to oblige local authorities to consider the incorporation of natural features into its flood risk management. The Scottish Government may wish to consider amending the Bill to outline the level of detail required in assessments made under section 16 or to require SEPA to involve local authorities in the assessment process. [Paragraph 115]</p>	<p>In its response to the Committee's Stage 1 Report, the Government sought to reassure the Committee that when preparing assessments under section 16, SEPA must have regard to the views of those represented on district and sub-district advisory groups. It also sought to reassure the committee that the assessments carried out under section 16 will provide a guide to local authorities as to where more detailed assessments of the natural flood risk management options might be needed.</p>	<p>Amendment 32 agreed</p>
<p>Recommendation 14: In addition, the Committee recommends that the Scottish Government should consider amending section 16 to include reference to "natural processes" as well as "natural features". [Paragraph 116]</p>	<p>In its response to the Committees Stage 1 Report, the Government stated that it "will aim to address concerns that it should be clearer that what seem regarded as "processes" are included." (Scottish Government, 2009, p7)</p>	<p>Amendments 18, 23 and 24 agreed</p>
<p>Recommendation 15: The Committee is not convinced that the current wording of the Bill will result in a cultural shift in favour of considering natural flood management techniques wherever practicable and appropriate at local authority level. The Committee urges the Scottish Government to bring forward an appropriate amendment to require responsible authorities to consider what contribution natural flood management approaches could make. Such an amendment should stipulate that, where natural flood management approaches are assessed as being able to make such a contribution but are not proceeded with, authorities must set out the reasons for that decision. [Paragraph 117]</p>	<p>The Government expressed agreement with the broad principle of the recommendation both in the response to the Stage 1 Report, and in the Stage 1 debate (col 14338) but argued that the Bill already addresses this. However, the Government does state that "to deal with situations where different measures could provide the same flooding benefits, consideration is being given to an amendment that would ensure that the most sustainable option is adopted. The purpose of this amendment would be to clarify that where there is a choice between, for instance, a natural flood management option and a more traditional engineering option, the most cost effective option that provides for the greatest long term benefits, including environmental benefits, should be adopted." (Scottish Government, 2009, p 8).</p>	<p>Amendments 27 and 85 agreed. Amendment 123 disagreed to on casting vote</p>

<p>Recommendation 16: The Committee recommends that the Scottish Government use this Bill to make the necessary changes to planning legislation, unless it can give a clear and specific commitment to use another piece of planned legislation to make those changes. Any such amendments should require local development plans to take account of flood risk management plans. Amendments should also reflect the Committee inquiry recommendation “that a full flood risk assessment [should be] a prerequisite for the granting of planning permission for individual development areas at risk of flooding”. [Paragraph 128]</p>	<p>The Government stated that “Planning legislation (The Town and Country Planning (Development Planning) (Scotland) Regulations 2008) requires planning authorities to have regard to a list of plans and strategies, for example river basin management plans and regional transport strategies, during the preparation of their local development plans and strategic development plans. It is the intention of the Scottish Government to bring forward a proposal to add flood risk management plans to this list once the Bill is enacted. This approach will keep the requirement to consider other plans and strategies together in the appropriate set of Regulations where planning authorities will expect to find them” (Scottish Government, 2009, p 8). Further, legislation is already in place that places a duty on planning authorities to engage with SEPA at key points in the process.</p>	<p>Amendment 75 withdrawn</p>
<p>Recommendation 17: The Committee recommends that the Bill should be amended to require the production of surface water management plans. [Paragraph 136]</p>	<p>The Government’s response to the Stage 1 Report stated that it is “considering an amendment to clarify that flood risk management plans will include actions to deal with surface water flooding.” (Scottish Government, 2009, p 9)</p>	<p>Amendments 14, 15, 29 agreed</p>

<p>Recommendation 18: The Committee is concerned that there appears to have been no movement on maintenance of SUDS despite having highlighted the problem to the Scottish Government in its inquiry report. The Bill potentially provides an opportunity to clarify where responsibilities should lie, allowing Scottish Water and local authorities to plan accordingly. The Committee recommends that the Scottish Government should give further consideration to this issue with a view to introducing amendments at Stage 2. [Paragraph 140]</p>	<p>The Government argued that flood risk management planning will provide a complementary framework to the current SUDS planning and management framework. The Government stated that “any legislative action to alter the current arrangements must be considered within the wider context of development planning and protection of the water environment. As these issues are outside the scope of the Bill, the Scottish Government does not intend to take forward any amendments in this area” (Scottish Government, 2009, p 10-11). It did however, commit to preparing a guidance document on the role of SUDS in flood risk management.</p>	<p>No action in the Bill</p>
<p>Recommendation 19: The Committee notes the somewhat contradictory evidence from the Scottish Government as to which authority will assume responsibility for the assessment of infrastructure drainage. The Committee seeks clarification on this matter in the Scottish Government’s Stage 1 response before Stage 2 commences. [Paragraph 143]</p>	<p>The Government committed to take forward amendments in response to this recommendation both in the Stage 1 debate (Richard Lochhead, col 14338) and the response to the Stage 1 Report.</p>	<p>Amendment 14 agreed</p>
<p>Recommendation 20: The Committee recommends that the Scottish Government should publish a clear statement on interim arrangements as soon as is practicable and should confirm when the finalised arrangements will be issued to local authorities in its written Stage 1 response. [Paragraph 148]</p>	<p>In its response to the Committee’s Stage 1 Report the Government stated that it “is committed to delivering a smooth transition to the new flood risk management regime by using powers under section 82 of the Bill to make transitional or savings provisions by Order.” (Scottish Government, 2009, p 12)</p>	<p>No action in the Bill</p>
<p>No Recommendation 21</p>		

<p>Recommendation 22: The Committee recommends that, wherever possible, the processes set out in the Water Environment and Water Services (Scotland) Act 2003 and the Bill should be integrated. Details of work underway to aid integration should then be provided as a supplement to the annual report required to be laid before Parliament under the 2003 Act. [Paragraph 158]</p>	<p>The Government's response to the Stage 1 Report indicates that the Bill already provides for coordination and integration between the Bill and the Water Environmental and Water Services Act (2003) via sections 41 and 45 of the Bill.</p>	<p>No action in the Bill</p>
<p>Recommendation 23: Given the overlap between river basin management planning and flood risk management planning, and in the interests of avoiding consultation fatigue or unnecessary expense to stakeholders, the Committee endorses the intention to integrate advisory groups under the Bill with those stemming from the Water Environment and Water Services (Scotland) Act. [Paragraph 162]</p>	<p>No substantive response required or given.</p>	<p>No action in the Bill</p>
<p>Recommendation 24: The Committee recommends that the annual report to Parliament on transposition of the EC Floods Directive proposed under section 45 of the Bill includes details of work undertaken to ensure co-ordinated cross-border implementation, including an outline of any policy statement produced by DEFRA and the Scottish Government. [Paragraph 168]</p>	<p>The Government confirmed that this would be the case, in its response to the stage 1 report (Scottish Government, 2009).</p>	<p>No action in the Bill</p>
<p>Recommendation 25: The Committee requests that the Scottish Government issues guidance to ensure that the consultation process followed for proposed flood protection schemes is in line with best practice used in existing planning consultation guidance. [Paragraph 177]</p>	<p>The Government stated that an implementation plan for all work to support the Bill had been prepared, and work will meet deadlines in the Bill. Advisory groups have been set up to support this work.</p>	<p>No action in the Bill</p>

<p>Recommendation 26: The Committee recommends that the Scottish Government amends the Bill to provide greater clarity, perhaps by way of subordinate legislation, regarding the mechanism open to responsible authorities for (1) recovery of expenses, (2) the grounds on which authorities may fine landowners, and (3) what those fine levels should be. [Paragraph 185]. <i>Sub-sections identified by SG.</i></p>	<p>In its response to the Committee Stage 1 Report the Government argued that:</p> <p>1) recovery of expenses would be through the civil courts</p> <p>2) landowner negligence is not required, but the need to repair must stem from the actions of the landowner rather than (for example) natural processes</p> <p>(3) section 57 provides for recovery of expenses and not a fine (Scottish Government, 2009).</p>	<p>Amendments 101, 102 and 106 agreed</p> <p>Amendment 130 withdrawn.</p>
<p>Recommendation 27: The Committee recommends that the existing requirement for local authorities to cleanse, repair and maintain watercourses be retained, provided it is subject to the overriding duty to reduce flood risk and is in line with flood risk management plans. [Paragraph 190]</p>	<p>In its response to the Committee Stage 1 Report the Government stated that it intends “to lodge an amendment that will clarify local authorities’ duties in this area. Instead of a simple duty to assess watercourses, local authorities will have a duty to identify where maintenance of watercourses would assist in reducing flood risk and to prepare a schedule of maintenance 15 works that would form part of the flood risk management planning process” (Scottish Government, 2009, p14).</p>	<p>Amendments 43, 45, 47 agreed</p>
<p>Recommendation 28: The Committee is encouraged by SEPA’s work to develop its new flood warning dissemination system but believes that further collaborative work with organisations with relevant expertise, including the Met Office and the Association of British Insurers should be undertaken. [Paragraph 195]</p>	<p>In its response to the Committee Stage 1 Report the Government stated that it “supports this recommendation and will continue to provide the necessary assistance to facilitate these collaborations.” (Scottish Government, 2009, p15)</p>	<p>No action in the Bill</p>

<p>Recommendation 29: The Committee is concerned that emergency services may not be as proactive as possible when alerted to a flood risk, particularly in the dissemination of flood warnings and the arrangement of preventative steps to be taken to protect individuals and properties at risk of flooding. The Committee invites the Scottish Government to explore ways of ensuring that the appropriate emergency service acts proactively to manage flood risk, including introducing amendments as far as the Bill's scope allows. [Paragraph 203]</p>	<p>In its response to the Committee Stage 1 Report the Government argued that relevant duties are already contained within the Civil Contingencies Act. Therefore the Scottish Government does not believe that it is appropriate or necessary to introduce duplicate duties in the Flood Bill.</p>	<p>Amendment 30 agreed. Amendment 133 withdrawn</p>
<p>Recommendation 30: The Committee requests a summary of the impact of the provisions of the UK Flood and Water Bill on the implementation of the Flood Risk Management (Scotland) Bill as soon as is practicable following the UK Bill's introduction. [Paragraph 212]</p>	<p>In its response to the Committee Stage 1 Report the Government agreed that it would provide information on the implications of the legislation on flood risk management in Scotland.</p>	<p>No action in the Bill</p>
<p>Recommendation 31: Given the sensitivities surrounding the availability of reservoir inundation maps, the Committee endorses SEPA's request that the Scottish Government should prepare guidance for SEPA and other affected authorities on the relevant national security issues. [Paragraph 217]</p>	<p>The Government argued that national security is a reserved matter, but that it would work with the UK Government on this issue (Scottish Government, 2009).</p>	<p>Amendment 116 agreed which relates to regulations for reservoir flood plan, but not national security.</p>
<p>Recommendation 32: The Committee recommends that subordinate legislation introduced under section 22 specifies the predicted climate change conditions upon which the flooding probability outlined in flood risk maps and assessments should be based, and seeks an indication of the Government's response prior to Stage 2. [Paragraph 225]</p>	<p>The Government argued that "inherent uncertainties surrounding climate change mean that it would be impossible to specify predicted climate change conditions and their influence on flooding probabilities. The Scottish Government will, however, continue to work with SEPA and local authorities to ensure that appropriate approaches to assessing and accommodating climate change are adopted as the Bill is implemented." (Scottish Government, 2009, p 17)</p>	

<p>Recommendation 33: Given the extent of the existing staffing shortage, the additional numbers of skilled staff required and the likely high demand for specialists across Europe, the Committee is not at all convinced by the Minister’s reassurance that the steps being taken to recruit and retrain will “ensure future supply”.</p>	<p>In the Stage 1 debate the Cabinet Secretary discussed the concern over shortage of relevant staff and stated that they would “work with their opposite numbers in the education portfolio and consider how we can fill the potential skills gaps” (col 14338). The Scottish Government responded to the Stage 1 Report by saying that “the Minister for the Environment will actively engage with colleagues in Education on this matter. The Scottish Government is committed to taking any steps it can to build capacity across the range of specialism required to deliver sustainable flood risk management, which includes engineering, hydrology, environmental scientists, flood risk managers and experts in landscape and river sciences.” (Scottish Government, 2009, p17).</p>	<p>No action in the Bill</p>
<p>Recommendation 34: The Committee reminds the Scottish Government that a Financial Memorandum is not a work in progress but a best estimate of the costs of the Bill at the point of introduction. The Committee is concerned that the Finance Committee may have been hindered in its scrutiny of the financial implications of the Bill as a result of the quality of the information provided in the Financial Memorandum, notes that this appears not to be the first time that the Finance Committee has had this problem, and asks the Government to ensure that future financial memorandums to Bills are the best possible final estimate at the point of introduction. [Paragraph 237]</p>	<p>No substantive response</p>	<p>No action in the Bill</p>

<p>Recommendation 35: The Committee recommends that the Scottish Government annually appraises the actual costs incurred by the lead authority and responsible authorities in the run-up to implementation and reports these costs to this Committee and its successor. [Paragraph 240]</p>	<p>The Scottish Government stated that it is “already committed to providing the Parliament with an annual report on the implementation of the EC Directive, and the scope of this document would not preclude inclusion of information on implementation costs.” (Scottish Government, 2009, p19)</p>	<p>No action in the Bill</p>
<p>Recommendation 36: The absence of a binding duty on responsible authorities to actually implement flood risk management plans, combined with the lack of a targeted funding stream for flood risk management, leaves the Committee extremely concerned that a lack of funding could seriously stifle the effective implementation of the Bill. The Committee urges the Scottish Government to reconsider the Committee’s inquiry recommendation that it should provide targeted funding to local authorities for specific flood protection schemes. Such funding allocations should be consistent with the strategic assessments by SEPA recommended above. [Paragraph 249]</p>	<p>In its response to this recommendation the Government set out the current situation related to the Local Government Finance Settlements for 2008-2011, and stated that future local government spending is being reviewed for the period 2011-2012. No commitment to provide targeted funding for flood protection schemes was given (Scottish Government, 2009, p19).</p> <p>In the Stage 1 debate the Cabinet Secretary argued that “ ...I am afraid we do not agree that the current arrangements for local government funding could compromise the bill's implementation” (col 14338).</p>	<p>No action in the Bill.</p>
<p>Recommendation 37: The Committee seeks agreement from the Scottish Government to provide information on what funding will be allocated to local authorities specifically to manage flood risk. In particular, where such expenditure has been transferred to fund known projects, or has been assigned to all local authorities on any formula basis, information on the allocation of funds to each local authority should be made available in the national strategic assessment requested above or in annual reports laid before Parliament. [Paragraph 255]</p>	<p>The Government referred to the response to recommendation 36 and added that “it would be impossible, therefore, to identify separately the flood risk management money within the local government settlement as this would run counter to the removal of ring fencing of individual budgets.” (Scottish Government, 2009, p19)</p>	<p>No action in the Bill.</p>

<p>Recommendation 38: The Committee recommends that the Scottish Government explores the potential for funding streams, including those within the Scotland Rural Development Programme, to be used to encourage the adoption of sustainable flood risk management techniques by land managers. The Committee also suggests that such funding could contribute towards compensation for land managers and land owners in situations where the viability of their businesses may be affected by a flood protection scheme. [Paragraph 261]</p>	<p>The Scottish Government (2009, p19) responded that it “intend[s] to investigate a range of funding related issues through its implementation programme for the Bill, including the role of the Scotland Rural Development Programme.”</p>	<p>Amendment 135 withdrawn</p>
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STAGE 2: MAIN AMENDMENTS AGREED TO

Stage 2 was completed on 18 March 2009 and an amended Bill has been produced. Table 3 sets out the main amendments agreed at Stage 2, focussing on amendments in response to concerns raised at Stage 1. Amendments are Government amendments unless otherwise stated. Amendments can be found in the [first](#), [second](#) and [third](#) Marshalled lists of amendments.

Table 3. Summary of main amendments agreed to at Stage 2

<p>Implementing flood risk management plans</p>
<p>Amendment 1: This amendment will require Scottish Ministers, SEPA and responsible authorities to exercise their flood risk related functions with a view to achieving the objectives set out in the flood risk management plan for the district in which they are exercising their functions. This duty applies as part of the general duty to act with a view to reducing overall flood risk and to exercise functions so as to secure compliance with the Directive. The Minister argued that this amendment was preferable to others in this grouping (79 and 66, see Table 4) due to the flexibility it gave to local authorities in determining their priorities. This addresses recommendation 3 above. (col 1479¹)</p>
<p>Economic, social and environmental impacts</p>
<p>Amendment 2: The bill places a duty on the Scottish Ministers, SEPA and responsible authorities to consider the economic and social impacts of exercising their flood risk-related functions. Alongside socioeconomic considerations, the environment is one of the three pillars of sustainability. Amendment 2 seeks to ensure that environmental impacts are considered alongside social and economic impacts. (col 1483)</p>
<p>Amendment 86 (Bill Wilson) relates to recommendation 11 (above) and aims to produce a more sustainable form of flood management that takes account of social, environmental and economic costs.</p>
<p>Sustainability in the Bill</p>
<p>Amendment 3 addresses recommendation 9 and supplements the existing duty to promote</p>

¹ The column references refer to the official report from the Rural Affairs and Environment Committee Stage 2 meetings. Cols 1477-1516 refer to 4 March 2009, cols 1517-1552 refer to 11 March 2009, and cols 1553-1584 refer to 18 March 2009. See sources for full references.

sustainable flood management by requiring Scottish Ministers, SEPA and responsible authorities to act in the way best calculated to manage flood risk in a sustainable way (col [1485](#)).

Amendment 65 amends the long title of the Bill to include "...the assessment and *sustainable* management of flood risks..." (emphasis added, col [1485](#)).

Amendment 27 will require SEPA to identify measures that it considers will achieve the objectives in the most sustainable way. The same objectives and measures form the basis for local flood risk management plans. Amendment 27 means that local flood risk management will be targeted at the most sustainable measures. The government argued that this amendment would address the Committee's concern that the bill should place greater emphasis on sustainability (col [1508](#)). This addresses recommendation 9.

Subordinate legislation

Amendment 5: This addresses recommendation 4 (from the Subordinate Legislation Committee), and will ensure that the general duty to act with a view to reducing flood risk applies to Scottish Ministers when they designate flood risk functions and issue guidance (col [1488](#)).

Natural features and characteristics

Amendment 18, 23 and 24: These mean that assessments prepared under section 16 of the Bill will have to consider not only natural features but also how alterations or restoration of natural characteristics could contribute to managing flood risk (col [1491](#)). This relates to recommendation 14.

Amendment 85 (Peter Peacock) requires SEPA to consider the potential contribution of natural features and characteristics in preparing flood risk management plans.

Amendment 32: The Government argued that Amendment 32 directly addresses recommendation 13 on the level of detail expected from the assessment prepared under section 16, and on the requirement on local authorities to prepare their own assessment of how restoring natural features and characteristics could contribute to lowering flood risk. Amendment 32 clarifies that local authorities will be expected to set out further information on all measures, including measures that relate to restoring or enhancing natural features (col [1525](#)).

Amendment 138 (Rhoda Grant) would amend the interpretation of flood protection work by adding the terms "restoration" and "enhancement". Rhoda Grant argued that the amendment would go some way towards shifting the mindset and ensuring that natural flood risk management options are given the same weight and consideration as other options. The Government accepted the amendment and it was agreed. (col [1575](#))

Surface water and sewer flooding

Amendment 14 addresses surface water and sewer flooding. It will require Scottish Water to prepare information about the risk of sewer flooding in all areas that have been identified as potentially vulnerable to flooding. Scottish Water will also be required to prepare information for other areas that have been identified by SEPA (col [1500](#)).

Amendment 15 requires local authorities to prepare maps of bodies of water and sustainable urban drainage systems in their area so that local authorities can co-ordinate action on flood risk management across urban centres and catchments (col [1502](#)). This addresses recommendation 17.

Amendment 29 will make it clear that the Scottish Environment Protection Agency must consider the management of surface run-off water and urban drainage when setting objectives and implementing measures (col [1519](#)). This addresses recommendation 17.

Management of watercourses

Amendment 45 removes the duty to assess watercourses to determine whether they could give rise to flood risk, and replaces it with a duty to assess "bodies of water", excluding canals. Where local authorities determine that a flood risk exists, they must consider whether clearance or repair works could reduce that risk. That ensures that the assessments are focused on those matters that can be addressed by clearance and repair works (col [1502](#)). This addresses recommendation 27.

Amendment 47 requires local authorities to prepare schedules for clearance and repair works, where those are defined to mean removing obstructions, and amendment 43 requires local authorities to carry out the works that are described in such schedules.

District Flood risk management maps and plans

Amendment 16 will place a duty on SEPA to prepare maps "showing artificial structures and natural features in the flood risk management district the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water" (col [1504](#)).

Amendments 12 and 13 require SEPA to use river basins, sub-basins and coastal areas in identifying the areas for which local flood risk management plans have to be prepared.

Amendment 95 means that SEPA, in setting up sub-district advisory groups, will need to ensure representation of the following interests: responsible authorities, Scottish Natural Heritage, national park authorities and other persons with an interest in flood risk management. That replicates the interests that must be represented on the district flood risk advisory group under section 42 and will ensure that all key parties are involved (col [1536](#)).

A register of flood protection schemes

Amendments 97-99 insert a new provision into the Bill which is designed to protect individuals and ensure that they do not buy land without notification of proposed flood protection schemes (col [1543](#)).

Amendment 97 will place a duty on each local authority to create a register of flood protection schemes that it is taking forward and schemes that are being taken forward by another local authority but involve operations in its area.

Amendment 98 will require local authorities to include on their registers details of schemes that they made under the 1961 act. The approach will help to ensure that purchasers are aware that the land that they intend to buy includes part of a flood prevention scheme, which they cannot knowingly damage or alter without committing an offence.

Amendment 99 allows Scottish Ministers to make regulations that set out, among other things, the content and availability of a register.

Reservoirs

Amendments 110 and 111 will allow incident reports to be required for any reservoirs that meet criteria that are set in regulations, and not just large raised reservoirs which are the focus of the Reservoirs Act 1975. Criteria will be based on risk.

Amendment 115 will allow different criteria to be set to identify high-risk and low-risk reservoirs and different incident reporting requirements to be applied in different cases (col [1571](#)).

Amendment 116 will introduce an enabling power in the 1975 act to allow the Scottish Ministers to make regulations that require undertakers of some reservoirs to produce flood plans for their reservoirs. The intention is to create a risk-based regime with the scope and content of reservoir flood plans tailored to the risk that particular dams represent (col [1572](#)).

Other amendments

Amendment 100 excludes all Crown land from the power of local authorities compulsorily to acquire land under section 55. The amendment will not prevent local authorities from acquiring such land; they will have to do so by agreement.

Amendments 101,102 and 106 relate to local authority recovery of expenses for flood protection works, damage to flood protection work and powers of entry for local authorities onto private land.

Amendment 30 creates a direct link between emergency planning and flood risk management planning.

STAGE 2: MAIN AMENDMENTS NOT AGREED TO

During Stage 2 a number of issues were debated but did not result in amendment of the Bill. These are set out in Table 4 below.

Table 4. Main amendments not agreed to

Implementing flood risk management plans
<p>Amendments 79 and 66 (Rhoda Grant and Peter Peacock respectively) were debated with government amendment 1 which relates to implementation of flood risk management plans. Amendment 79 sought to impose a duty to implement district flood risk management plans. It focussed on implementation of local flood risk management plans rather than district flood risk management plans. The Minister argued that amendment 1 covered the issues in amendment 79, and that the general duty would apply equally to district and local flood risk management plans. The Minister also argued that placing a specific duty on local authorities related to local flood risk management may elevate flooding above other areas in which the local authority must provide a service. Other members of the Committee argued against both of these amendments on the basis of lack of flexibility for local authorities in determining their own priorities. The amendments were disagreed to on casting vote (col 1478-1482).</p>
Sustainability in the Bill
<p>Amendment 83 (Peter Peacock) was disagreed to on casting vote. It aimed to give Scottish Ministers the power to issue guidance on the specific issue of sustainable flood risk management. However, others argued that provision for this was already included in the Bill, and the amendment was unnecessary. The amendment sought to address recommendation 9 of the Committee's Stage 1 Report (col 1486).</p>

Natural features and characteristics

Amendments 125 (Peter Peacock) was disagreed to on casting vote. It sought to make similar provisions for local authorities and local flood risk management plans as Amendment 85 (which was agreed) for SEPA and district flood risk management plans. Assessment under amendment 125 would have been based on SEPA's national assessment but would have meant that local authorities would be able to identify further scope for potential natural flood management within their local areas. It would have required the consideration of natural flood management at a more local level. However, the government argued that amendment 125 would impose an "unnecessary administrative burden" on local authorities, and that this amendment was not therefore needed (col [1525](#)). The government stated that amendment 32 was an alternative, although Peter Peacock argued that amendment 32 did not go far enough.

Amendment 123 (Elaine Murray) was disagreed to on casting vote. The amendment linked to what SEPA is already required to do at a national level, seeks to require the authority to include in the plan a more detailed assessment of the contribution that natural features and characteristics could make to flood risk management. It was argued that amendment 123 would address the need to increase our understanding of the contribution that natural processes can make and of how such processes can be used (col [1528](#)). However, it was argued that amendment 123 would over complicate matters and that amendment 32 was sufficient on these issues.

Strategic planning and funding of flood risk management

Amendments 70-74 (Peter Peacock): These amendments were designed to give effect to the Committee's Stage 1 Report recommendations on strategic planning for flood risk management and funding (recommendations 12 and 36). (col [1509](#)).

Amendment 70 sought to set out Recommendation 12 in statute, but was withdrawn.

Amendment 71 sought to have Ministers formally consider the national picture and whether the plans that are being developed for their approval across the country constitute an appropriate national implementation programme. Amendment 71 was disagreed to on casting vote.

Amendment 72 sought to give effect to the Committee's recommendation 12 that SEPA produce a long-term, strategic view of flood risk management and funding requirements. The amendment sought to ensure that there was an assessment of the schemes under consideration nationally, and that priority is given to implementing them and estimating the costs and timescales involved. The amendment also sought to provide for a review of progress on an existing plan and for Parliament to be informed and for there to be better-informed scrutiny of the Government's attention to those issues over time. Amendment 72 was disagreed to on casting vote.

Amendment 74 sought to create a duty on Ministers to "have regard to flood risk management plans and local flood risk management plans" in allocating funding to SEPA or any responsible authority. Amendment 74 was disagreed to on casting vote.

Debate on these amendments surrounded the range of matters that Ministers must consider along side flood risk and problems with flexibility over the long-term. The Minister agreed to bring forward an amendment at Stage 3 to address these issues.

Scottish Water and flood risk management plans

Amendments 78 (Peter Peacock) was withdrawn and amendments 132 and 134 were not moved. The amendments concerned the relationship between the provisions of the Bill, Scottish Water, the Water Industry Commission (the economic regulator), and SEPA. The amendments reflected concerns of the Committee from Stage 1 about (amongst other things) the alignment of funding streams. The Minister undertook “to continue discussions with members before Stage 3 if they think that that is appropriate” (col [1559](#)).

Amendment 132 (John Scott) was not moved. This related to recommendation 8 of the Committee’s Stage 1 Report about aligning funding streams of Scottish Water with the assessment, mapping and planning requirements in the Bill. However, the Minister argued that the amendment was not necessary and that they are already “working with Scottish Water and others to ensure that flood risk management plans are aligned with other spending cycles, including Scottish Water’s investment cycle“ (col [1559](#)).

Planning and flood risk management

Amendment 75 (Rhoda Grant) related to Stage 1 Report recommendation 16 related to planning legislation. The amendment was withdrawn in response to the Government’s argument that “Rather than taking forward separate amendments to the new planning legislation, such as amendment 75, we suggest that it would be preferable to make those changes in a single amending statutory instrument so as to limit the volume of planning legislation and avoid potential confusion for planning authorities” (col [1534](#)). It was further agreed by the Government that when drawing up the statutory instrument to amend planning legislation that the aims of amendment 75 would be included.

AMENDMENTS THE GOVERNMENT COMMITTED TO BRINGING FORWARD AT STAGE 3

Some of the amendments brought forward at stage 2 were considered and withdrawn in response to a commitment from the Scottish Government to consider the issue and bring forward an amendment at Stage 3. Table 5 sets out the withdrawn amendments and the commitment made regarding a Stage 3 amendment.

Table 5. Main amendments the government committed to bringing forward at stage 3

Protected areas and flood risk maps
Amendment 84 (Liam McArthur) was withdrawn on the basis that the Government would bring forward an amendment at Stage 3 to ensure more extensive coverage of protected areas in the flood risk maps produced under section 19 (col 1506).
Implementation of flood risk management plans
Amendment 70 (Peter Peacock) was withdrawn on the basis that the government would “lodge an amendment to schedule 1 at Stage 3 that will make it clearer that SEPA must indicate whether a measure in a flood risk management plan will be implemented before the plan is reviewed, in the following six years or at some other period that must be identified in the plan” (col 1513).

Management of land for flood risk management

Amendments 128 (Elaine Murray) dealt with provisions for the management of land for flood risk management carried out by individual land managers. Local authorities would be permitted to enter into agreements with farmers, land managers and foresters, and compensation could be provided where land is used for flood risk management purposes. She argued that the bill currently allows responsible authorities to enter into voluntary agreements with landowners but, if such agreements cannot be reached, time-consuming and costly alternatives, such as compulsory purchase, might need to be undertaken. The amendments would enable local authorities to apply to the Scottish Ministers for land management orders for the purpose of flood risk management, and offers one way to address the complications that might arise if voluntary agreement is not achieved (col [1537](#)).

There was support for this amendment from other members of the Committee. However, the Minister argued that this would create two parallel procedures to enable local authorities to undertake flood risk management works in the absence of agreement by the landowner, but that there would be no indication of which processes were meant to be used under which circumstances.

Amendment 128 was withdrawn on the basis that the Government would lodge an amendment at Stage 3 that will put beyond doubt the fact that the operations that local authorities can carry out under section 49 extend beyond hard engineering measures to include other land management techniques and work that falls under the banner of natural flood management (col [1539](#)).

Management of watercourses

Amendment 130 (Elaine Murray) was withdrawn on the basis that the Government would bring forward an amendment at Stage 3 that would give local authorities' powers to recover expenses that ties in with the new requirements for local authorities to produce and implement schedules of clearance and repair works. (col [1546](#))

Economic, social and environmental impacts

Amendment 82 (John Scott) was not moved on the basis that the Government would lodge a Stage 3 amendment that makes it clear that guidance on the social, economic and environmental impacts of exercising functions must be issued within two years of the relevant provision's commencement (col [1483](#)).

Emergency services and flood rescue

Amendment 133 (John Scott) tried to establish a co-ordinated approach to flood rescue in Scotland including the fire and rescue services. The amendment was also based on a recommendation in the Pitt inquiry in England. It was withdrawn following a statement from the Minister "I have asked my officials to speak directly to officials on the civil contingencies team to find out whether something stronger that addresses the interface issue in a way that works for both the bill and the 2004 act can be put together timeously for stage 3." (col [1564](#))

Responsible authorities working together

Amendment 81 (Elaine Murray) was withdrawn on the basis that the Government would "lodge an amendment which would consider the issue further for stage 3. Amendment 81 inserted the words, "and integrate" into line 21 of the first page. The amendment sought to encourage authorities not just to work together, but as far as is practical to integrate the authorities' respective functions (col [1487](#)).

Directions to SEPA

Amendment 87 (John Scott) was withdrawn on the basis that the Government would bring forward an amendment at Stage 3 to more clearly set out how Ministers can direct SEPA to take action on consultation and publication once a flood risk management plan is submitted.

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