

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – General Duty, Directions and Guidance

Section 1 – General duty

12. Section 1(1) places a general duty on the Scottish Ministers, SEPA, local authorities, Scottish Water and other responsible authorities to exercise their flood risk related functions with a view to reducing overall flood risk and, in particular, to do so to secure compliance with the Directive. “Flood risk” is defined in section 3.
13. “Responsible authorities” are defined in section 5 and include local authorities, Scottish Water and any other public bodies and office holders designated by the Scottish Ministers. “Flood risk related functions” are defined in subsection (4) and include functions under the Act and any other functions relevant to flood risk management which the Scottish Ministers may specify by order.
14. Because the definition of “flood risk related functions” includes functions under the Act, the general duty to act with a view to reducing overall flood risk applies to the Scottish Ministers when designating responsible authorities and specifying new flood risk related functions and to SEPA, the Scottish Ministers and responsible authorities when they are involved in the preparation of flood risk assessments, flood maps and flood risk management plans under Part 3 of the Act. It also applies to local authorities and to the Scottish Ministers when considering flood protection schemes and to SEPA and the Scottish Ministers when dealing with flood risk assessment and flood warning functions under Part 5 of the Act.
15. Where the exercise of their flood risk related functions affects a flood risk management district, subsection (2)(a) requires the Scottish Ministers, SEPA and responsible authorities to act with a view to achieving the objectives set out in the flood risk management plan for that district. Flood risk management districts are established under section 8 and sections 27 to 33 make provision for flood risk management plans to be prepared, approved and reviewed for those districts.
16. Subsection (2)(b) requires the Scottish Ministers, SEPA and the responsible authorities to take into account social, environmental and economic considerations when exercising their flood risk related functions. This would appear to be consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective.
17. Subsection (2)(c) requires the Scottish Ministers, SEPA and the responsible authorities to act in the way best calculated to manage flood risk in a sustainable way, to promote sustainable flood risk management, to act in the way best calculated to contribute to sustainable development, and to take steps to raise public awareness of flood risk. These duties apply in so far as is consistent with the purposes of the function in question.

18. Subsection (2)(d) requires the Scottish Ministers, SEPA and the responsible authorities to adopt an integrated approach by co-operating with each other so as to coordinate the exercise of their respective functions for flood risk management, so far as is practicable. This provides flexibility for these bodies to take action in isolation where it is sensible to do so, e.g. in emergency situations. Subsection (3) clarifies that they may enter into agreements with each other for the purposes of co-operation.

Section 2 – Directions and guidance

19. Subsection (1) enables the Scottish Ministers to direct or issue guidance to SEPA and responsible authorities on how they must exercise their flood risk related functions. Subsection (2) then requires SEPA and responsible authorities to comply with such directions and take account of any such guidance. The Scottish Ministers must comply with their general duties under section 1 when giving directions or issuing guidance. Before giving a direction they must also consult the person to whom the direction is to be given, as well as SEPA or any responsible authorities as Scottish Ministers consider appropriate.
20. Subsection (3) enables the Scottish Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.
21. Subsection (5) requires Scottish Ministers to give guidance to SEPA and responsible authorities on acting in the way best calculated to manage flood risk in a sustainable way and on having regard to the social, environmental and economic impact of exercising flood risk functions.
22. Subsection (6) requires this guidance to be given no later than 18 months after commencement of the relevant provision. Subsection (7) requires Scottish Ministers to review and where necessary update the guidance no later than every 6 years. Before issuing or updating guidance given under subsection (5), they must consult SEPA and the responsible authorities, and such other persons as they consider appropriate.