

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 5 – Sepa: Other Flood Risk Management Functions

Section 72 – Advice to planning authorities and others as to flood risk

203. This section requires SEPA to provide advice to planning authorities and National Park authorities as to flood risk. Flood risk is defined in section 3 as the combination of the probability of a flood and of the potential adverse consequences. This duty replaces SEPA's duty to advise planning authorities under section 25(2) of the Environment Act 1995, which is repealed by paragraph 7 of schedule 3.
204. Subsection (1), like section 25(2) of the 1995 Act, requires SEPA to provide advice on flood risk in a planning authority's district when requested by the authority. Section 1 of the Town and Country Planning (Scotland) Act 1997 provides that local authorities are planning authorities and that a planning authority's district is the local authority area. Where any part of the district/local authority area is a National Park, it is possible for a National Park authority¹ to be made the planning authority for the Park for the purposes of the planning acts² – in that case SEPA must, when requested by the National Park authority, give it advice as to flood risk in the National Park.
205. Subsection (2) requires SEPA to provide advice to a National Park authority about their park where they are not made planning authorities but are to be treated as planning authorities for the National Park for certain purposes³. This is a new requirement.
206. Subsection (3), like section 25(2) of the 1995 Act, requires the advice SEPA provides to be based on information SEPA holds. The advice must take into account, but is not limited to, information produced under Part 3 of the Act (flood risk assessments, flood hazard and flood risk maps, flood risk management plans and local flood risk management plans), and any information provided to SEPA by the planning authority or National Park authority.

Section 73 – Other assessment and maps of flood risk

207. This section allows SEPA to undertake other assessments of flood risk and to prepare other maps in addition to the flood risk assessments and maps it is obliged to prepare under Part 3 of the Act.

¹ National Parks and National Park authorities are established under the National Parks (Scotland) Act 2000 - an order under section 10(1)(a) of that Act may provide for a National Park authority to be the planning authority for the National Park.

² The Town and Country Planning (Scotland) Act 1997; the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Planning (Hazardous Substances) (Scotland) Act 1997; the Planning (Consequential Provisions) (Scotland) Act 1997.

³ A designation order under section 10(1)(b) of the 2000 Act can provide that a National Park authority is to be treated as the planning authority for the National Park for such purposes of Part II (development plans) of the Town and Country Planning (Scotland) Act 1997, as are specified in the order.

208. When carrying out assessments or preparing maps under this section, subsection (2) requires SEPA to consider any relevant flood risk assessments, flood hazard and flood risk maps and flood risk management plans prepared under Part 3.

Section 74 – Flood warning

209. This section requires SEPA to make flood warnings available where it considers that a flood is occurring or is likely to occur in the near future.
210. Subsection (2) sets requirements as to the timing of flood warnings, the information on which they are to be based and the means by which they are to be made available. Warnings must be based on information available to SEPA (paragraph (c)). Where SEPA considers a flood is already occurring, a warning must be made available as soon as is practicable (paragraph (a)) and where a flood is considered likely to occur SEPA may choose when to issue the warning (paragraph (b)). This discretion under paragraph (b) allows SEPA to decide when it is appropriate to issue a very early warning and when it is appropriate to wait until more reliable information is available. SEPA can decide how to make warnings publicly available (paragraph (d)). This discretion allows SEPA to issue general warnings, for example online or through a phonenumber, and it also allows it to establish systems for issuing warnings to individuals or other organisations if that is considered appropriate.

Section 75 – Assessment of whether flood warning systems should be provided or altered

211. This section makes provision for SEPA to assess where provision of or improvements to any form of flood warning system could assist in providing earlier or more accurate flood warning information and where that earlier warning or improved accuracy could help reduce the adverse consequences of flooding. SEPA may choose to carry out such an assessment at any time and must do so when directed by the Scottish Ministers
212. “Flood warning system” is defined in subsection (4). The definition is similar to the one used in section 92(2)(a) of the Agriculture Act 1970, which is repealed for Scotland by paragraph 2 of schedule 3. The definition covers flood warning systems which rely on information from gauges and other monitoring equipment in rivers, coastal waters and other bodies of water and flood warning systems which rely on meteorological data and modelling software.
213. Subsection (2) requires SEPA to use information it has in making this assessment and subsection (3) and section 77(1) require SEPA to consult the relevant local authorities and chief constables in making its assessments.

Section 76 – Provision, alteration etc. of flood warning system

214. This section allows SEPA to provide, operate, alter and maintain flood warning systems and to carry out any building or engineering work required to provide and install apparatus for that purpose. “Flood warning system” is defined in section 75(4).
215. This section replaces sections 92 and 94 of the Agriculture Act 1970, which are repealed by paragraph 2 of schedule 3. SEPA’s general powers under section 37 of the Environment Act 1995 apply in relation to its functions under this section, including powers to acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate.
216. Subsection (2) and section 77(2) require SEPA to consult the relevant local authorities and chief constables before it exercises its powers to provide a new flood warning system or to make material alterations to an existing system.

Section 77 – Consultation required by sections 75 and 76

217. This section sets out consultation requirements for the purposes of sections 75 (assessment in relation to flood warning systems) and section 76 (provision or alteration of flood warning systems).

Section 78 – SEPA’s power to obtain information about land

218. This section applies section 27 of the Environment Act 1995 to this part of the Act. This allows SEPA to obtain information about land where it requires the information for the purposes of carrying out its functions in relation to flood risk assessment and flood warning. In order to obtain such information SEPA must serve a notice on the occupier of the land or any person with an interest in the land. That notice must specify the land concerned, and that it is served under the Act. Failure to comply with a notice is an offence under section 27(3) of the 1995 Act.