

# **FLOOD RISK MANAGEMENT (SCOTLAND) ACT**

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## **EXPLANATORY NOTES**

### **THE ACT – SCHEDULES**

#### ***Schedule 2 – Flood Protection Schemes: Procedure Etc.***

##### ***Paragraph 1 – Notification***

280. Paragraphs 1(1)(a) to (c) set out the requirements for newspaper advertisement of a proposed flood protection scheme by a local authority.
281. Sub-paragraphs (1)(d) to (f) require a local authority to send direct notification of a proposed scheme to those with an interest in affected land, the authorised persons in respect of any land covered by an improvement order under the Land Drainage (Scotland) Act 1958 and a number of specified consultees. Sub-paragraph (1)(f) (vii) enables the Scottish Ministers to specify additional consultees by order. Sub-paragraph (2) requires the local authority to display notice of the proposed scheme in a prominent position in the locality.
282. Sub-paragraph (3) sets out the required contents of each notice of the proposed scheme, whether published in a newspaper, sent directly to a person entitled to individual notification or displayed in the locality.
283. Sub-paragraph (4) requires notice to be given to those with an interest in land and the specified consultees, and to be displayed in the locality, no later than the date that notice is first published in local newspapers.

##### ***Paragraph 2 – Public inspection of scheme proposal***

284. Paragraph 2 makes provision about the availability for public inspection of documents relating to the proposed scheme in both the area of the local authority taking forward the scheme and that of any other local authority where work would be carried out.

##### ***Paragraph 3 – Objections***

285. Paragraph 3 entitles any person to object to a proposed flood protection scheme. Valid objections must be made in writing (including by electronic means so long as legible and useable) and include the name and address of the objector. These objections must be made to the local authority within 28 days from the date notice of the proposed scheme is published in local newspapers. Sub-paragraph (4) defines a “late objection” for the purposes of schedule 2.

##### ***Paragraph 4 – Decision where no valid objections received***

286. Paragraph 4 places a requirement on the local authority, where no valid objections are received within the 28 day period, to either confirm or reject the proposed scheme. However, a late objection may be treated as being valid so long as the local authority is satisfied that it was reasonable for the objector to make the objection after the specified deadline.

***Paragraph 5 – Preliminary decision following objections***

287. Where a local authority receives a valid objection, it must make a preliminary decision under paragraph 5 to either confirm the proposed scheme, with or without modifications, or to reject the scheme. In arriving at its decision, sub-paragraph (2) sets out that the local authority must consider any valid objections (unless withdrawn) and may consider any late objections if the authority is satisfied that it was reasonable for the respondent to make the objection after the deadline. These matters are not exclusive and the local authority may consider any other factors it considers appropriate.
288. The local authority must, under sub-paragraph (3), give notice of its preliminary decision to either confirm the proposed scheme, with or without modifications, or to reject the scheme, to every person who made an objection which it considered. Any person who made such an objection is a relevant objector. Where a relevant objector falls within sub-paragraph (6), then sub-paragraph (5) requires the local authority to give the Scottish Ministers notice of its decision along with other material including the scheme documents and copies of all objections received. The relevant objectors falling within sub-paragraph (6) are: those with an affected interest in land; authorised persons under an improvement order made under the Land Drainage (Scotland) Act 1958 where land affected by the order would have work carried out on it under the scheme; and the specified consultees.

***Paragraph 6 – Ministerial call-in***

289. Where the Scottish Ministers receive notification of a proposed scheme under paragraph 5(5), paragraph 6 requires them to call in the proposed scheme where any relevant objector is a local authority or National Park Authority. Otherwise, the Scottish Ministers must advise the local authority within 28 days of receipt, whether or not they will call in the proposed scheme for decision by them. In reaching this decision whether to call in, the Scottish Ministers must have regard to the factors listed in paragraph 6(3).
290. Sub-paragraphs (4) and (5) allow the Scottish Ministers to extend the time in which they must decide whether or not to call in a scheme by up to 28 days, but they must make any decision to extend within the original 28 day period and must notify the local authority of the extension as soon as practicable.

***Paragraph 7 – Ministerial consideration of proposed scheme***

291. **Paragraph 7** applies where the proposed scheme has been called in by the Scottish Ministers and requires them to hold a public local inquiry, unless all objections made by relevant objectors are withdrawn. Paragraph 7(3) applies provisions of the Local Government (Scotland) Act 1973 concerning local inquiries to inquiries held under paragraph 7. The Scottish Ministers must consider the material received by them under paragraph 5(5) as well as the report of the person who held the public local inquiry before either confirming the proposed scheme either with or without modifications, or rejecting the scheme.
292. The Scottish Ministers may not confirm a scheme with modifications unless they have notified relevant objectors and anyone else they consider to be affected of the proposed modifications at least 28 days before confirming the scheme, given them an opportunity to make objections about the proposed modifications, and considered any objections made as a result. Sub-paragraph (6) requires the Scottish Ministers to notify the local authority of their decision as soon as reasonably possible.

***Paragraph 8 – Local authority hearing to consider proposed scheme***

293. **Paragraph 8** applies where the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5 and the proposed scheme has not been called in by the Scottish Ministers (either because it did not have to be notified

to them under paragraph 5(5) or because they decided not to call it in following such notification).

294. Before making a final decision (see notes on paragraph 9), the local authority must hold a hearing to consider the proposed scheme if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the scheme, or may hold a hearing in any other case.
295. Sub-paragraph (3) requires the local authority to invite each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, to the hearing. Any invitation under sub-paragraph (3) must be given not less than 28 days before the proposed hearing. Notice of the hearing must be published in a local newspaper within the relevant local authority area(s) at least 21 days before the proposed hearing.

### ***Paragraph 9 – Final decision following preliminary decision***

296. **Paragraph 9** requires the local authority to make a final decision in relation to the proposed scheme by either confirming it with or without modifications, or rejecting it, unless the scheme has been called in by the Scottish Ministers.
297. Sub-paragraph (2) lists matters which the local authority is to take into account.
298. Sub-paragraph (3) prohibits a local authority from confirming a scheme with modifications unless it has notified the relevant objectors and anyone else considered to be affected of the proposed modifications at least 28 days before confirming the scheme, given them an opportunity to make objections about the proposed modifications, and considered any objections made.

### ***Paragraph 10 – Notice of final decision***

299. **Paragraph 10** requires that, where a final decision of a local authority or the Scottish Ministers is made on a proposed scheme, the local authority must give notice of the decision to every person given direct notification of the scheme at the outset, every relevant objector (see paragraph 5(3) and 5(4)) and anyone else who received notification of a proposed modification to the scheme. Should it be decided to confirm the proposed scheme (with or without modifications) then notice must be given in local newspapers in the relevant local authority areas, as well as in the Edinburgh Gazette.

### ***Paragraph 11 – Commencement of scheme***

300. **Paragraph 11** sets out that a scheme becomes operative 6 weeks after notice of its confirmation is published under paragraph 10(2)(d).

### ***Paragraph 12 – Appeals***

301. Any person affected by a final decision of the local authority or a decision of the Scottish Ministers to confirm a scheme may appeal that decision. Paragraph 12 states that an appeal must be made within 6 weeks of the notice of confirmation of the scheme being published in a newspaper circulating in the area of the local authority taking forward the scheme.
302. An appeal under this paragraph is to be made by summary application to the sheriff of a sheriffdom in which all or some of the proposed operations are to be carried out.
303. Sub-paragraph (5) provides that the grounds on which a decision can be appealed are that the local authority or the Scottish Ministers failed to comply with the requirements relating to improvement orders under the Land Drainage (Scotland) Act 1958 (see section 61(3) and (4)), erred in law or failed to follow a procedural requirement.

*These notes relate to the Flood Risk Management (Scotland)  
Act (asp 6) which received Royal Assent on 16 June 2009*

304. Sub-paragraph (6) enables the sheriff to suspend the operation of the scheme in whole or in part pending consideration of the appeal. Sub-paragraph (7) enables the sheriff to uphold the appeal only where the interests of the appellant have been substantially prejudiced and to quash the scheme in whole or in part.

***Paragraph 13 – Assessment of environmental effects***

305. [Paragraph 13](#) enables the Scottish Ministers to make regulations requiring environmental assessment of proposed schemes.

***Paragraph 14 – Further provision***

306. [Paragraph 14](#) enables the Scottish Ministers to make regulations containing further procedural provisions relating to schemes.