



Flood Risk Management (Scotland) Act 2009

2009 asp 6

PART 8

GENERAL

91 Crown application

- (1) This Act binds the Crown.
- (2) The modifications made by schedule 3 bind the Crown to the extent that the enactments modified bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (6) The powers conferred by section 79 (whether those specified in that section or the ancillary powers mentioned in section 81(1) and (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (7) In subsection (6)—
 - (a) “Crown land” means land, an interest in which—
 - (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
 - (ii) belongs to an office-holder in the Scottish Administration or to a government department, or
 - (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
 - (b) “appropriate authority”, in relation to any land—

Status: This is the original version (as it was originally enacted).

- (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
 - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
 - (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
 - (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
- (8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).
- (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

92 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Act has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual, that individual (as well as the body corporate, partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a Scottish partnership, a partner, and
 - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

93 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary

or expedient for the purposes, or in consequence, of, or for giving full effect to, this Act or any provision of it.

- (2) An order under this section may modify any enactment, instrument or document.

94 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act—
- (a) must be exercised by statutory instrument,
 - (b) may be exercised so as to make different provision for different purposes (including different areas), and
 - (c) includes power to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (2) A statutory instrument containing an order or regulations made under this Act (except an order made under section 97(1)) is, subject to subsection (3), subject to annulment in pursuance of a resolution of the Parliament.
- (3) A statutory instrument containing—
- (a) regulations under section 51(1),
 - (b) an order under section 60(4),
 - (c) an order under section 93(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

95 Interpretation: general

- (1) In this Act—
- “the 1961 Act” means the Flood Prevention (Scotland) Act 1961 (c. 41),
 - “the 2003 Act” means the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#),
 - “category 1 responder” means a person or body listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004 (c. 36),
 - “flood protection work” means any operation on land for the purpose of protecting any land from flooding including—
 - (a) any work of construction, alteration, restoration, enhancement, improvement, repair, maintenance, demolition or removal,
 - (b) any work that involves the alteration (including enhancement) or restoration of natural features and characteristics of any river basin or coastal area,
 - (c) the sowing or planting of vegetation or forestry,
 - (d) any work ancillary to an operation specified in paragraphs (a) to (c),
 - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and “area” in relation to such an authority is to be construed accordingly,
 - “scheme operation” means, in relation to a flood protection scheme, an operation described in that scheme in pursuance of section 60(2)(a).

Status: This is the original version (as it was originally enacted).

- (2) In this Act, any reference to a Directive of the European Parliament and of the Council or, as the case may be, a Council Directive includes a reference to the Directive as amended from time to time.
- (3) The words and other expressions listed in schedule 4 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

96 Minor and consequential modifications

Schedule 3 makes—

- (a) minor modifications, and
- (b) modifications consequential on the provisions of this Act.

97 Commencement and short title

- (1) The provisions of this Act, except this section and sections 3 to 6, 55, 71, 94 and 95, come into force on such day as the Scottish Ministers may by order appoint.
- (2) This Act may be cited as the Flood Risk Management (Scotland) Act 2009.