

“Sustainable flood management provides the maximum possible social and economic resilience against flooding**, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.”*

** ‘Resilience’ means: ‘ability to recover quickly and easily’. The Scottish Government uses it to deliver the ‘four As’: Awareness + Avoidance + Alleviation + Assistance.*

*** Flooding means all types of flooding: surface water run-off (pluvial), sewer, river, groundwater, estuarine and coastal.*

Q1. Do you believe the definition of Sustainable Flood Management is helpful and of practical benefit to flood risk management?

Answer: The definition is helpful and wide-ranging enough to include new techniques as they are developed.

Q2. Do you think the definition is clear and simple to understand?

Answer: As a high level definition, it is clear and simple; there will need to be further guidance on its application to actual flood risk management projects.

The Scottish Government ... believes that a single competent authority with a national remit for implementing the Floods Directive should be identified, and that the important role of local authorities in implementing flood defence works and engaging at a local level should be maintained. This approach will ensure that the national and catchment focused approach to flood risk management planning is underpinned by local co-ordination and delivery of measures by those bodies with direct experience of implementing flood risk management measures in Scotland.

Q3. Do you agree with the conclusion as set out above?

Answer: Yes.

The Government considers that SEPA is best placed to take the lead role in the implementation of the Floods Directive and should be identified as the competent authority.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

Answer: SEPA appears best placed to undertake that role. This does not dilute the critical role that Local Authorities have in planning and delivering flood alleviation schemes.

The Scottish Government also proposes that a hierarchical approach to flood management planning would be the most effective way to deliver flood risk management in Scotland. The Area Flood Management Plans developed under the Floods Directive would set the strategic framework for flood risk management in

Scotland. The competent authority would have a duty to produce these plans. In summary, these plans would:

- *Summarise significant flood risks (preliminary flood risk assessments);*
- *Map flood hazards (likelihood of flooding) and flood risks (impacts of flooding);*
- *Set out objectives to manage flood risk; and*
- *Set out broad-scale measures and policies to address flood risk.*
- *The identification of areas at significant flood risk would be a collaborative process between the competent and responsible authorities. The assessment would use information from a variety of sources, and information held or produced by local authorities through biennial reporting and other studies would be of vital importance.*

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

Answer: A hierarchical approach to flood management planning is sensible. However the benefits of a high level, strategic approach must be combined with local knowledge. The flood alleviation proposals prepared by Moray Council have benefited considerably from the contributions made by members of the public.

Agreement has to be reached in defining “large river basins”. There are resource implications since a Local Authority could be involved in several basins or, alternatively, the solution for one basin could involve many Local Authorities.

Where a Local Flood Risk Management Plan is being produced for a catchment covering two or more local authority boundaries, all responsible authorities within the catchment, including local authorities, would have a duty to collaborate in the production of the plan. It should be for those authorities to determine the best approach to that cooperation – the Scottish Government believe it is unnecessary for an external body – SEPA or Scottish Ministers – to identify a lead authority.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

Answer: Scottish Ministers should have the power to designate a lead authority within a local area in exceptional circumstances – for example when partners can not agree.

Improving flood management in Scotland requires clarification of the roles and responsibilities of all the bodies involved in flood risk management, and appointing a competent authority is only one step in this process. The Scottish Government recognises that a number of important elements come together to manage risks from flooding, including flood risk assessments, flood warning, flood protection and flood response. Bodies are already in place in Scotland with responsibilities for these different elements of flood risk management and the role of local authorities is of central importance. A general duty has already been placed on relevant public bodies by the Water Environment and Water Services (Scotland) Act 2003 to contribute to the delivery of sustainable flood management. The Scottish Government therefore propose that the Bill should provide for responsible authorities

to be listed by statutory instrument. Responsible authorities should include Scottish Water, Local Authorities, SNH and Forestry Commission among others – as responsible authorities they will have a duty to co-operate in the development of the Area Flood Risk Management Plans.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Answer: Yes

Q8. Which other bodies should be identified as responsible authorities?

Answer: No response

It is important that Flood Risk Management Planning is undertaken in full cooperation between the competent authority and the relevant authorities with responsibilities or interests in the area affected by a plan. It is also important that the preparation and implementation of these plans is undertaken in full and continuing consultation and discussion with the local population directly affected.

*To support collaborative working, the Scottish Government propose that responsible authorities within a designated area would have a duty to work together with the competent authority to produce the Area Flood Risk Management Plans. The Scottish Government propose that the best way to do this would be to form **flood risk management advisory groups** comprising all the relevant responsible authorities. To support integration with the Water Framework Directive, these groups would be subgroups of the Advisory Groups established under the Water Environment and Water Services (Scotland) Act 2003.*

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Answer: Yes, though membership of flood risk management advisory groups should not be restricted solely to responsible authorities.

To ensure wider stakeholder and community engagement, the Scottish Government also propose to establish stakeholder forums. These forums would help harness the ideas and enthusiasm of individuals and groups and help the organisations involved in flood management communicate how and why specific objectives and measures are being considered.

Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

Answer: The level (and coverage) at which such forums would be established is not clear. Stakeholders will vary. The establishment could be part of the project management arrangements with membership decided on a project by project basis.

The Water Environment and Water Services (Scotland) Act 2003 sets out a detailed procedure for the preparation and approval by Scottish Ministers of River Basin

Management Plans. Ministers can require the modification of the plan before approval. The Act also provides for the regular review of the plan. The system adopted for River Basin Management Plans is broadly similar to the existing approval of structure plans for planning purposes. The Scottish Government considers that the Bill should set out a similar procedure for the development of the plan involving consultation. There should also be a similar role for the Scottish Ministers to whom the Plans should be presented ultimately for approval. We envisage a system whereby the competent authority, having developed the Area Flood Risk Management Plans with the relevant responsible authorities, and in consultation with all relevant parties, would submit the Plans to the Scottish Ministers for approval. As with the River Basin Management Plan, Scottish Ministers would consider the Plan and could approve, reject or instruct modifications. The Scottish Ministers would be accountable to the Scottish Parliament for their decisions.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Answer: Yes.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?

Answer: Yes.

The Scottish Government wishes to ensure that urban drainage plans sit within a Local Flood Risk Management Plan, and wishes to identify the most effective means to facilitate co-ordination of efforts to reduce flooding from surface water run-off and sewers. One particular area of concern is the lack of integration of water industry infrastructure with other drainage and flooding infrastructure. This is one of the current “grey areas” where responsibilities are unclear, and the Scottish Government feel it is important that the Flood Risk Management Plans address the need for integrated urban drainage.

It is important that new development does not add to the risk of flooding in an area, and that integrated drainage and flood resilience are considered from the start, where appropriate. Scottish Water has just published the 2nd Edition of Sewers for Scotland which includes a section on the design of Sustainable Urban Drainage systems, and is currently looking to form standard agreements with all Scottish Local Authorities for the provision of integrated drainage arrangements. We propose that such agreements would form part of a local flood risk management plan.

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

Answer: Yes, integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan. However, neither the consultation proposals nor the 2nd Edition of Sewers for Scotland properly address the “grey areas” where responsibilities are unclear’.

SPP7 sets out the Scottish Government's policy for identifying flood risk and taking it into account in the planning process. It is clear that new development should be free from significant flood risk, and Local Flood Risk Management Plans that can inform local authorities' development plans should help planning authorities to make more informed judgements on flood risk. This information would add to the current provision whereby SEPA give advice to planning authorities.

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the Flood Risk Management Plans?

Answer: There should be a requirement on planning authorities to show that they have regard to the Flood Risk Management Plans.

Under the Flood Prevention (Scotland) Act 1961 local authorities wishing to secure new or improved flood defence within the definitions of the Act, must promote a flood prevention scheme which is widely advertised before being submitted to the Scottish Government for confirmation. As well as advertisement the Act requires notification of certain interests affected by the scheme (this includes those with an interest in land affected by the scheme as well as other local authorities and statutory bodies whose functions may be affected). Only objections from those to whom the scheme was notified and those who are likely to be affected by the carrying out of a scheme or the change in the flow of water must be considered at a public local inquiry. Scottish Ministers may confirm with or without modification, or refuse to confirm a scheme.

However, in addition to the confirmation process described above, there are separate legislative procedures for granting flood prevention schemes planning permission. In most cases the Scottish Ministers are involved in both processes, but in different roles and at different times. It is possible that an inquiry can be required as part of each process. In addition, since 2006 engineering works in watercourses require authorisation from SEPA under the Controlled Activities Regulations. This can add to the procedural burden and timetable.

Local authorities, and many others, have expressed concerns about these overlapping processes. As well as the bureaucratic overload, they consider that the procedures can add unnecessarily to the time taken to undertake a scheme. The Scottish Government recognise this is a significant issue which requires to be addressed.

The Scottish Government believes that the present processes must be radically simplified. The possibility of two public inquiries being held; one on planning and one on flood risk management measures must be removed. Local authorities should have to prepare only one set of drawings and carry out one consultation exercise. The Government considers that there are 2 basic possible approaches to this simplification. The first is that Ministerial confirmation should carry deemed planning permission. The second is for a local authority based process which would similarly lead to deemed planning consent.

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

Answer: Yes. It will help but will not by itself resolve the problems facing Authorities. Under existing legislation there have been no cases in Moray where two Inquiries have been held. There needs to be a holistic approach to the process with alleviation schemes being “owned” by all responsible bodies rather than just Local Authorities.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

Answer: Yes.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

Answer: Were procedures to involve all responsible organisations approval would become simpler and shorter time scales could be considered.

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Answer: Yes.

Q19. What would be the appropriate timescales for notification and response?

Answer: See the answer to 17 above. As it stands there are many variables that could affect timescales.

Q20. Would it be appropriate for such a process to carry deemed planning consent?

Answer: Yes.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed be addressed?

Answer: This is a serious issue. The shortage of expertise has been mentioned elsewhere in this response. The process should avoid duplication of effort and multiple checking at different consent levels.

Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

Answer: These have been expanded elsewhere in this response

The definition of operations for the purposes of the Flood Prevention (Scotland) Act 1961 is not fully consistent with sustainable flood management. This has hitherto been a constraint on local authorities' approaches to flood risk management since schemes that did not fit the definition could not be eligible for central funding. With

the transfer of funding to local authorities this is no longer a constraint – local authorities are empowered under other legislation to undertake other activities. The Scottish Government consider that procedures for measures outwith the definition of the Flood Prevention (Scotland) Act 1961 are satisfactory and do not require to be amended.

Nevertheless, rainfall events can have a number of damaging effects on property and cause risk to life. Local authorities have extensive powers to act to protect life and property. However given the increasing incidence of severe rainfall events, it may be advisable to ensure that local authorities are fully empowered, where a clear and present danger exists, to take urgent remedial action, including on private land, to avoid damage to life and property, and to recover costs after it has taken such action.

Q23. Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

Answer: Not in the case of addressing severe rainfall events where the impacts of overland flows from agricultural land can be significant and current legislation is unclear.

The Scottish Government wishes to consider how best to align the Controlled Activities Regulations process with the proposals to simplify statutory procedures. In order to achieve this it considers that:

- *Local authorities should seek CAR authorisation at the same time. Application and advertisement should cover all relevant factors.*
- *It is unlikely that any statutory provisions are required to achieve this alignment. The Scottish Government will therefore work with SEPA, local authorities and other interested parties to ensure that guidance ensures the necessary alignment.*
- *if it is decided to retain a process of Ministerial confirmation, then such confirmation could carry deemed CAR authorisation.*

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

Answer: Yes. This can be achieved through a single process, guidance and legislation.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Answer: legislation, focus and budgets need to be aligned.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?

Answer: Relevant comments have been made elsewhere in this response.

At present local authorities have a duty to publish a biennial report of instances of flooding and measures taken since their last report, and any further measures they

consider they require to take to mitigate flooding of non-agricultural land. The biennial reports should form an important component of the Preliminary Flood Risk Assessment required under the Floods Directive. The Scottish Government propose that duties on local authorities to produce these reports should be retained and that they form part of their duties as responsible authorities. In order to ensure consistency the Government propose that the form and content of the biennial reports should be prescribed by Ministerial direction made under the Bill.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

Answer: Our experience is that such reports are of little interest to the public. It is suggested that the need for such reports should be abandoned. At the very least their format could be simplified with a requirement to publish them electronically rather than in print form.

The Scottish Government do not propose that the Bill should set out in detail what a flood management measure might be. Rather, the Bill would establish the framework to ensure that all flood risk management measures are implemented as part of a strategic approach to flood risk management in Scotland.

The Scottish Government do not believe that it is necessary to specify a detailed range of flood management measures in the Bill. If the need for Ministerial confirmation of flood risk management measures is retained, then the Scottish Government will expect local authorities to have taken the guidance into consideration in the development of the most appropriate measures in order to achieve confirmation.

The aim of the Flood Risk Management Plans will be to manage the consequences of flooding on people, economic activity and the environment where these are significant. This may include taking steps to slow the flow, or to store flood waters where the consequences will be less, in order to reduce the consequences elsewhere. The Scottish Government do not wish to prescribe the nature of the land where these measures may be taken and the simple distinction between agricultural and non-agricultural land in the Flood Prevention (Scotland) Act 1961 is no longer appropriate.

The proposals outlined provide a new framework of duties and responsibilities on a number of bodies across Scotland with a role to play in flood risk management. The powers remain largely permissive, with duties only being placed on the competent authority and responsible authorities to collaborate in flood risk management planning.

However, this is combined with the existing duty under the Water Environment and Water Services Act 2003 to promote sustainable flood management, and with the fact that all responsible authorities should have signed up to a national flood risk management plan that has been approved by Ministers. The Scottish Government believe that this approach will support delivery of the Floods Directive and ensure that Scotland is equipped to take forward sustainable flood management.

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

Answer: The proposals outlined will improve flood risk management, but the gaps and 'grey areas' which are not addressed in the proposals mean that the improvement will not be as great as might have been possible.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

Answer: The proposals are enough to ensure that flood risk is addressed. A new duty to promote measures to alleviate flooding would require significant additional resources and funding.

RESERVOIR SAFETY

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Answer: Transferring the enforcement responsibilities under the Reservoirs Act 1975 to a single body is the only way to achieve a consistent approach throughout Scotland.

Q31. If so, should it be SEPA or another as yet unidentified body?

Answer: SEPA

The Scottish Government propose that reservoirs be assessed as part of a preliminary flood risk assessment under the Floods Directive, and where it is considered that a dam breach would give rise to significant hazards, then the competent authority under the Floods Directive (SEPA) would be required to map that risk.

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

Answer: The proposals for dealing with reservoir flood maps under the provisions of the Floods Directive are acceptable.

The Scottish Government propose to amend the Reservoirs Act to extend the enforcement remit to ensure measures recommended in the interests of safety are carried into effect, within a specified timescale.

Q33. Do you agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Answer: Yes

The Reservoirs Act in Scotland is currently silent on binding Crown bodies to comply; this legislative review presents the opportunity to consider this.

Q34. Views on crown application and any other comments?

Answer: There should be no Crown immunity. The important factor is the water retaining capability of structures and this does not depend on ownership.