

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 4 – Flood Risk Management: Local Authority Functions

Section 56 – General power to manage flood risk

175. Subsection (1) enables a local authority to do anything which it considers will contribute to the implementation of current measures described in any relevant local flood risk management plan. It may also do anything it considers necessary to reduce an imminent risk of flooding which would be likely to have serious adverse consequences, or which it considers will otherwise manage flood risk in its area without affecting the implementation of the area’s local flood risk management plan (for instance, because it will be possible to carry it out in addition to the measures identified in the plan).
176. Subsection (2) provides various illustrations of what a local authority may do under subsection (1), without restricting the generality of the power contained in that subsection.
177. Subsection (3) provides that work which meets the criteria in subsection (1) may be carried out within or outwith the local authority’s area.

Section 57 – Limits of general power

178. Subsection (1) prevents a local authority from doing anything under section 56 which it would otherwise be unable to do because of a “limiting provision”. Subsection (2) defines a limiting provision, which must be contained in an Act or other form of legislation.
179. Subsection (3) provides that a limiting provision must contain a positive restriction on the powers of the local authority, rather than merely failing to confer a power on it to do a thing.

Section 58 – Limits of general power: statutory undertakings

180. **Section 58** prohibits a local authority from exercising its general power to manage flood risk in a way which damages any works or property belonging to a statutory undertaker, or interferes with the carrying on of its statutory undertaking, unless the undertaker consents. However, consent is not required if it is withheld unreasonably and it is for the Scottish Ministers to determine whether consent has been withheld unreasonably in the event of a dispute, their decision being final. “Statutory undertaker” and “statutory undertaking” are defined in section 71.

Section 59 - Duty to carry out clearance and repair works

181. **Section 59** imposes a duty on local authorities to undertake the clearance and repair works described in the schedule prepared under section 18, as long as the works contribute to the implementation of measures described in the relevant local flood risk

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

management plan (as defined in section 71) or do not affect the implementation of those measures.

Section 60 – Flood protection schemes

182. This section defines a flood protection scheme as being a scheme by a local authority for the management of flood risk within the authority's area. Subsection (2) sets out what a proposed flood protection scheme must contain. The Scottish Ministers are empowered to lay down requirements to include maps, plans and other specifications in regulations. In addition, a scheme must state how the measures included in it will contribute to the implementation of any relevant local flood risk management plan and, if they will not contribute, demonstrate how this will not affect delivery of such a plan (for example, because there is no such plan or because it will be possible to carry out the scheme as well as the measures contained in the plan). Further provision about the making of a flood protection scheme is made within schedule 2, which may also be amended by the Scottish Ministers by order. The Scottish Ministers may only make such an order after consultation with those persons and bodies listed in subsection (5).

Section 61 – Orders under the Land Drainage (Scotland) Act 1958

183. This section makes provision for flood protection schemes to vary improvement orders made under the Land Drainage (Scotland) Act 1958.
184. The 1958 Act allowed owners of agricultural land to apply to the Scottish Ministers for improvement orders authorising drainage works in order to improve drainage or prevent or mitigate flooding or erosion of agricultural land. The Flood Prevention (Scotland) Act 1961 gave local authorities power to protect non-agricultural land from flooding. That Act is repealed by section 70 of the Act and the general power for local authorities to manage flood risk under section 56 covers both agricultural and non-agricultural land. Paragraph 1 of schedule 3 amends the 1958 Act so that new improvement orders cannot be made for the purposes of preventing or mitigating flooding. That amendment does not prevent new orders being made under the 1958 Act for the purposes of improving drainage or preventing or mitigating erosion. Existing improvement orders under the 1958 Act will remain in place but this section allows them to be varied where they affect any land on which operations are proposed to be carried out under a flood protection scheme.
185. Subsection (2) sets out the changes which can be made to improvement orders. Flood protection schemes can revoke improvement orders completely, they can reduce the size of improvement areas or they can remove all or any part of the drainage or protective works covered by an improvement order. Schemes can also amend, reappportion or remove the obligations on authorised persons to maintain drainage or protective works covered by the improvement order. This should be read with subsections (3) and (4) which restrict the changes which can be made to maintenance obligations. "Authorised persons" are defined in section 2(2) of the 1958 Act as the owners of agricultural land situated in the improvement area covered by the improvement order.
186. Subsections (3) and (4) restrict the changes which can be made to maintenance obligations under improvement orders. Subsection (3) prevents flood protection schemes from altering maintenance obligations under improvement orders so as to oblige the authorised persons to maintain things done by local authorities under schemes. Where proposed scheme operations will alter drainage or protective works under an improvement order, subsection (4) requires the scheme to remove the obligations on authorised persons to maintain the parts of the drainage or protective works which are altered.
187. The commencement of a flood protection scheme triggers the variation or revocation of the improvement order. Subsection (6) requires a notice of the variation or revocation of an improvement order to be registered in the Land Register of Scotland or the Register

of Sasines, whichever is appropriate. Subsection (7) enables the Scottish Ministers to prescribe the form and content of such notices by regulation.

Section 62 - Registers of flood protection schemes

188. **Section 62** places a duty on each local authority to create and update a register of flood protection schemes relevant to the local authority area. A relevant scheme is one proposed by a local authority or one for which it has received notification from another local authority under paragraph 1(1)(f)(iii) of schedule 2.
189. **Subsection 2(a)** sets out the details pertaining to each scheme that must initially be included in the register. **Subsection 2(b)(i)** specifies that the register must include a note of whether any preliminary decision to confirm, confirm with modifications or reject the scheme has been taken by the local authority, and whether any final decision to confirm, confirm with modifications or reject has been taken by the local authority or the Scottish Ministers. **Subsection 2(b)(ii)** requires the register to show whether the scheme has been referred to the Scottish Ministers because of an objection from a relevant objector, and whether that objector is a local authority or a National Park Authority. **Subsection 2(b)(iii)** requires the register to show whether the Scottish Ministers or local authority have notified relevant objectors and anyone else affected by the scheme of any proposed modifications.
190. **Subsection (4)** enables a local authority to remove details of proposed schemes that were rejected by the local authority or by the Scottish Ministers. **Subsection (5)** requires a local authority to amend the register to reflect any decision by a sheriff to quash any part of a scheme on appeal.
191. **Subsection (6)** requires a local authority to inform any other local authority that it has notified about a proposed scheme about any information entered in its register relating to the proposed scheme.
192. **Subsection (7)** requires the local authority to make the register available for public inspection, and allows it to make a reasonable charge for doing so.

Section 63 - Registers of flood protection schemes: information about schemes under 1961 Act

193. **Section 63** requires each local authority to place details of flood prevention schemes made by it under the Flood Prevention (Scotland) Act 1961 on its register of flood protection schemes.

Section 64 - Registers of flood protection schemes: regulations etc

194. **Section 64** enables the Scottish Ministers to make further regulations on the content of a register, the time by which information must be entered into a register, the circumstances under which information should be removed from a register and the date by which one local authority must notify another of information about a flood protection scheme that should be entered in its register.
195. **Subsection (2)** also provides for regulations to make further provision about the availability of registers, including the form and manner in which they should be made available and the sharing of registers with specified third parties, who may themselves be required by regulations to make information from a register available to the public.

Section 65 – Deemed planning permission for scheme work

196. **Section 65** inserts a new section 57(2B) into the Town and Country Planning (Scotland) Act 1997. This provides that once a flood protection scheme is confirmed (whether by the local authority or the Scottish Ministers), the Scottish Ministers are to direct that any necessary planning permission is deemed to be granted, subject to any planning conditions which Ministers may specify.

Section 66 – Acquisition of land

197. This section enables local authorities to acquire land which they require to exercise functions under this Part by agreement. It also empowers local authorities, with the authorisation of the Scottish Ministers, to acquire land by compulsory purchase in connection with operations under a flood protection scheme. In subsection (1)(b), Crown land as defined in section 91(7)(a) is excluded from the power of compulsory acquisition.
198. Subsection (2) applies the procedure contained in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to any compulsory purchase by a local authority in connection with a scheme.

Section 67 – Recovery of expenses

199. **Section 67(a)** enables a local authority to recover any expense incurred by it in repairing or reinstating flood protection work it has put in place from the owner or occupier of the land, where that person's actions have caused the damage. This includes flood prevention scheme works carried out under the Flood Prevention (Scotland) Act 1961. **Section 67(b)** enables a local authority to recover any expense incurred by it in carrying out clearance and repair works required under section 59 from the owner or occupier of the land, where the works are necessary as a result of that person's actions.

Section 68 – Information about ownership etc. of land

200. In order to enable it to exercise any of its functions under this Part, a local authority may require land owners or occupiers to state their interest in that land in writing. Land owners or occupiers may also be required to provide contact details for any other person known to have an interest in that land. Any person failing to comply with the requirements of a local authority under this section, or knowingly or recklessly providing false or misleading information, is guilty of an offence.

Section 69 – Damage to certain flood protection work

201. Subsection (1) creates a criminal offence which is committed by any person who intentionally or recklessly damages any flood defence work created by a local authority under this Part, or any ancillary apparatus. This includes owners and lawful occupiers of the land on which the work is located. Flood prevention scheme works carried out under the Flood Prevention (Scotland) Act 1961 are also covered by this subsection.
202. Subsection (3) provides that, where a person did not know and had no reasonable means of knowing that the works or apparatus were for defence against flooding, this is a defence to a charge in any proceedings under subsection (1).