

*Status: Point in time view as at 24/12/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Flood Risk Management (Scotland) Act 2009, SCHEDULE 2. (See end of Document for details)*

## SCHEDULE 2 **S**

(introduced by section 60)

### FLOOD PROTECTION SCHEMES: PROCEDURE ETC.

#### *Notification*

- 1 (1) The local authority must give notice of a proposed flood protection scheme—
  - (a) in at least one newspaper circulating in the local authority's area (which must, if practicable, be a local newspaper),
  - (b) where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
  - (c) in the Edinburgh Gazette,
  - (d) to every person known to the local authority—
    - (i) to have an interest in any land on which the proposed operations are to be carried out, or
    - (ii) whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations,
  - (e) where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons,
  - (f) to the following persons—
    - (i) SEPA,
    - (ii) Scottish Natural Heritage,
    - (iii) any local authority in whose area any of the proposed operations are to be carried out,
    - (iv) where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
    - (v) any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
    - (vi) any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
    - (vii) any other person specified by order by the Scottish Ministers, and
  - (g) in such other manner as the authority considers appropriate.
- (2) The local authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out.
- (3) A notice given under sub-paragraph (1) or (2) must—
  - (a) contain a general description of the effect of the proposed scheme including—
    - (i) a summary of the operations to be carried out, and
    - (ii) a summary of the benefits which the local authority considers are likely to be derived from carrying out the operations,
  - (b) state where and at what times the scheme documents can be inspected in pursuance of paragraph 2, and

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- (c) state that objections can be made about the proposed scheme to the local authority before the expiry of the period of 28 days beginning with the date notice is first published under sub-paragraph (1)(a).
- (4) Notices under sub-paragraph (1)(d) and (f) and sub-paragraph (2) must be given or, as the case may be, displayed no later than the date that notice is first published under sub-paragraph (1)(a).
- (5) In sub-paragraph 1(1)(e), “improvement order” and “authorised persons” have the meanings given in the Land Drainage (Scotland) Act 1958.

**Commencement Information**

**I1** Sch. 2 para. 1 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Public inspection of scheme proposal*

- 2 (1) The local authority must make a copy of the scheme documents available for public inspection in a place in the authority's area.
- (2) Where the proposed operations are to be carried out in another local authority's area, the authority must also make the scheme documents available for public inspection in a place in the other authority's area.
- (3) The scheme documents must be available for inspection at all reasonable times during the period from the date notice is given under paragraph 1(1)(a) until the date a decision is made under paragraph 4(1), 7(4) or, as the case may be, 9(1).

**Commencement Information**

**I2** Sch. 2 para. 2 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Objections*

- 3 (1) Any person may object to a proposed flood protection scheme.
- (2) An objection is valid if it—
  - (a) is made in writing,
  - (b) sets out the name and address of the objector, and
  - (c) is made before the expiry of the period of 28 days beginning with the date notice of the scheme is first published under paragraph 1(1)(a).
- (3) An objection which is made by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) In this schedule, a “late objection” is an objection that would be a valid objection but for the fact that it was made after the end of the period specified in sub-paragraph (2) (c).

*Status: Point in time view as at 24/12/2010.*

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**Modifications etc. (not altering text)**

- C1** Sch. 2 para. 3 applied (with modifications) (24.12.2010) by [The Flood Risk Management \(Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts\) \(Scotland\) Regulations 2010](#) (S.S.I. 2010/426), regs. 1(b), **9(4)**, 9(5)

**Commencement Information**

- I3** Sch. 2 para. 3 in force at 24.12.2010 by [S.S.I. 2010/401](#), **art. 3(g)**

*Decision where no valid objections received*

- 4 (1) Where, in relation to a proposed flood protection scheme, the local authority receives no valid objections the local authority must, after the expiry of the period referred to in paragraph 3(2)(c), either—
- (a) confirm the proposed scheme, or
  - (b) reject the proposed scheme.
- (2) But if, before the local authority makes its decision under sub-paragraph (1), it receives a late objection it must treat that objection as a valid objection for the purposes of sub-paragraph (1) and paragraph 5 if satisfied that it was reasonable for the objector to make the objection after the deadline for doing so.

**Commencement Information**

- I4** Sch. 2 para. 4 in force at 24.12.2010 by [S.S.I. 2010/401](#), **art. 3(g)**

*Preliminary decision following objections*

- 5 (1) Where, in relation to a proposed flood protection scheme, the local authority receives a valid objection, it must make a preliminary decision to—
- (a) confirm the proposed scheme without modification,
  - (b) confirm the proposed scheme with modifications, or
  - (c) reject the proposed scheme.
- (2) Before making the decision under sub-paragraph (1), the local authority—
- (a) must consider—
    - (i) any valid objections (unless withdrawn), and
    - (ii) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
  - (b) may also consider any other matters it considers appropriate.
- (3) The local authority must give notice of its decision under sub-paragraph (1) to every person who made an objection which it considered.
- (4) A person who made such an objection is referred to in this schedule as a “relevant objector”.
- (5) Where any relevant objector is a person to whom sub-paragraph (6) applies, the local authority must also give to the Scottish Ministers notice of its decision together with—

*Status: Point in time view as at 24/12/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Flood Risk Management (Scotland) Act 2009, SCHEDULE 2. (See end of Document for details)*

- (a) the scheme documents,
  - (b) a summary of the objections received by the local authority,
  - (c) copies of those objections, and
  - (d) copies of any other material considered by the local authority.
- (6) This sub-paragraph applies to any person—
- (a) having any interest in any land on which the proposed operations are to be carried out,
  - (b) whose interest in any other land may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations, or
  - (c) referred to in paragraph 1(1)(e) or (f).

**Commencement Information**

**I5** Sch. 2 para. 5 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Ministerial call-in*

- 6
- (1) Where the Scottish Ministers receive a notice under paragraph 5(5) and any relevant objector is a local authority or a National Park authority, the Scottish Ministers must consider the proposed flood protection scheme.
  - (2) Otherwise, the Scottish Ministers must, within 28 days of receipt, advise the local authority proposing the scheme either—
    - (a) that they will not consider the proposed scheme, or
    - (b) that they will consider the proposed scheme.
  - (3) In making their decision under sub-paragraph (2), the Scottish Ministers must have regard to—
    - (a) the extent of the proposed operations,
    - (b) the likely reduction in flood risk that will result from the completion of those operations,
    - (c) the nature of the objections made,
    - (d) the likely effect on the objectors of the scheme being confirmed, and
    - (e) the extent to which the objections appear to raise issues of disputed fact.
  - (4) The Scottish Ministers may extend the period mentioned in sub-paragraph (2) by up to 28 days if—
    - (a) they require more time to consider their decision under that sub-paragraph, and
    - (b) the period has not expired.
  - (5) The Scottish Ministers must notify the local authority proposing the scheme of any decision under sub-paragraph (4) to extend the period as soon as reasonably practicable after making that decision.
  - (6) The local authority proposing the scheme must provide such further information as the Scottish Ministers request for the purpose of making their decision under sub-paragraph (2).

*Status: Point in time view as at 24/12/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Flood Risk Management (Scotland) Act 2009, SCHEDULE 2. (See end of Document for details)*

#### Commencement Information

**I6** Sch. 2 para. 6 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

#### *Ministerial consideration of proposed scheme*

- 7
- (1) This paragraph applies where the Scottish Ministers are required under paragraph 6(1), or decide under paragraph 6(2), to consider the proposed scheme.
  - (2) The Scottish Ministers must cause a public local inquiry to be held unless all objections made by relevant objectors have been withdrawn.
  - (3) Subsections (2) to (9) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (which relate to the holding of local inquiries) apply in relation to a public local inquiry held under sub-paragraph (2) as they apply in relation to local inquiries held under that section.
  - (4) After considering the material received under paragraph 5(5) and the report of the person who held the public local inquiry (if one was held), the Scottish Ministers must—
    - (a) confirm the scheme without modification,
    - (b) confirm the scheme with modifications, or
    - (c) reject the scheme.
  - (5) The Scottish Ministers may not confirm a scheme with modifications unless they have—
    - (a) given notice of the proposed modification to the relevant objectors and anyone else the Scottish Ministers consider is affected by them at least 28 days before confirming the scheme,
    - (b) given those persons an opportunity to make objections about the proposed modifications, and
    - (c) considered any objections so made.
  - (6) The Scottish Ministers must notify the local authority of their decision as soon as reasonably practicable after making it.

#### Commencement Information

**I7** Sch. 2 para. 7 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

#### *Local authority hearing to consider proposed scheme*

- 8
- (1) This paragraph applies where—
    - (a) the local authority has made a preliminary decision in relation to a proposed scheme under paragraph 5, and
    - (b) paragraph 7 does not apply.
  - (2) Before making a final decision under paragraph 9, the local authority—
    - (a) must, if it has notified the Scottish Ministers under paragraph 5(5) but they have decided not to consider the proposed scheme,
    - (b) may, in any other case,

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*Changes to legislation: There are currently no known outstanding effects for the Flood Risk Management (Scotland) Act 2009, SCHEDULE 2. (See end of Document for details)*

hold a hearing to consider the proposed scheme.

- (3) The local authority must—
- (a) invite to the hearing each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, and
  - (b) give notice of the hearing in the manner set out in paragraphs 1(1)(a) and (b).
- (4) An invitation under sub-paragraph (3)(a) must be given not less than 28 days before the proposed hearing.
- (5) Notices given under sub-paragraph (3)(b) must be published at least 21 days before the proposed hearing.

**Commencement Information**

**I8** Sch. 2 para. 8 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Final decision following preliminary decision*

- 9 (1) Unless paragraph 7 applies, the local authority must make a final decision in relation to the proposed scheme by—
- (a) confirming the proposed scheme without modifications,
  - (b) confirming the proposed scheme with modifications, or
  - (c) rejecting the proposed scheme.
- (2) Before making a final decision, a local authority must consider—
- (a) any valid objections (unless withdrawn),
  - (b) any late objection if the authority is satisfied that it was reasonable for the objector to make the objection after the deadline for doing so, and
  - (c) any representations made at a hearing held under paragraph 8.
- (3) A local authority may not confirm a scheme with modifications unless it has—
- (a) given notice of the proposed modifications to the relevant objectors and anyone else who the local authority considers is affected by them at least 28 days before confirming the scheme,
  - (b) given those persons an opportunity to make objections about the proposed modifications, and
  - (c) considered any objections so made.

**Commencement Information**

**I9** Sch. 2 para. 9 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Notice of final decision*

- 10 (1) Where—
- (a) a local authority makes a decision under paragraph 4(1) or 9(1), or
  - (b) the Scottish Ministers make a decision under paragraph 7(4),
- the local authority must give notice of the decision in accordance with sub-paragraph (2).

*Status: Point in time view as at 24/12/2010.*

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- (2) Notice must be given—
- (a) to every person given notice in relation to the proposed scheme under paragraph 1(1)(d) to (f),
  - (b) to every relevant objector,
  - (c) to anyone else who was notified under paragraph 7(5)(a) or 9(3)(a), and
  - (d) where the decision is to confirm the proposed scheme (with or without modifications), in the manner set out in paragraph 1(1)(a) to (c).

**Commencement Information**

**I10** Sch. 2 para. 10 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Commencement of scheme*

- 11 A scheme becomes operative 6 weeks after notice of its confirmation is published in a newspaper circulating in the local authority's area under paragraph 10(2)(d).

**Commencement Information**

**I11** Sch. 2 para. 11 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Appeals*

- 12 (1) A decision to confirm a proposed scheme made by a local authority or the Scottish Ministers (other than a decision under paragraph 5(1)) may be appealed by any person affected by the confirmed scheme.
- (2) An appeal must be made before the expiry of the period of 6 weeks beginning with the day notice is published under paragraph 10(2)(d) in a newspaper circulating in the local authority's area.
- (3) An appeal under this paragraph is to be made by way of summary application to the sheriff of an appropriate sheriffdom.
- (4) An “appropriate sheriffdom” is a sheriffdom in which some or all of the proposed operations are to be carried out.
- (5) The grounds on which a decision can be appealed are—
- (a) that the confirmed scheme breaches the restriction in subsection (3) of section 61 or does not comply with the requirement in subsection (4) of that section,
  - (b) that, in reaching the decision, the local authority or, as the case may be, the Scottish Ministers erred in law, or
  - (c) that there was a failure to comply with a procedural requirement contained in this schedule or regulations made under it.
- (6) The sheriff may, on the application of the appellant, suspend the operation of the scheme, or of any part of it, either generally or insofar as it affects any interest in land which the appellant has, pending determination of the appeal.

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- (7) If the sheriff is satisfied that the interests of the applicant have been substantially prejudiced by—
- (a) the confirmed scheme breaching the restriction in subsection (3) of section 61 or not complying with the requirement in subsection (4) of that section,
  - (b) an error of law, or
  - (c) a failure to comply with a procedural requirement contained in this schedule or regulations made under it,
- then the sheriff may uphold the appeal and quash the scheme, or any part of it, either generally or insofar as it affects any interest in land which the appellant has.

**Commencement Information**

**I12** Sch. 2 para. 12 in force at 24.12.2010 by S.S.I. 2010/401, art. 3(g)

*Assessment of environmental effects*

- 13 The Scottish Ministers may by regulations make provision about the consideration to be given, before a flood protection scheme is confirmed under paragraph 4, 7 or 9, to the likely environmental effects of the operations proposed in the scheme.

**Commencement Information**

**I13** Sch. 2 para. 13 in force at 29.11.2010 by S.S.I. 2010/401, art. 2(b)

*Further provision*

- 14 (1) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with flood protection schemes.
- (2) Regulations may, in particular, make provision about—
- (a) the form and manner in which objections are to be made, including specifying circumstances in which objections are to be considered withdrawn,
  - (b) the procedure to be followed at a hearing held under paragraph 8,
  - (c) the form of any notice given under this schedule and the manner in which it is to be given.

**Commencement Information**

**I14** Sch. 2 para. 14 in force at 29.11.2010 by S.S.I. 2010/401, art. 2(b)



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