

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Principal Expressions

Section 3 – “Flood” and “flood risk”

23. In section 3, the definition of “flood” and “flood solely from a sewerage system” determine what types of floods are covered by the Act. The cumulative effect of these definitions is that all forms of flooding are covered by the Act except where the source of the flood is solely from a sewerage system. A flood solely from a sewerage system is a flood containing sewage which is caused solely by a blockage or a failure in a sewerage system and which is not connected with external hydraulics. Floods that are caused by a sewer being overloaded by higher than usual rainfall are covered by the Act. An example of a flood that is not covered by the Act would be where flooding is caused by a sewer collapsing or becoming blocked, and where that collapse or blockage is not a result of external hydraulics, e.g. higher than usual rainfall or river levels.
24. “Flood” means the temporary covering by water from any source of land not normally covered by water. This reference to land includes buildings because “land” is defined for the purposes of references in Acts of the Scottish Parliament in the Interpretation Order¹ and this definition includes buildings and other structures.
25. This section also defines the term “flood risk”. The definition mirrors the definition in Article 2 of the Directive and states that flood risk is the combination of the probability of flooding and the potential adverse consequences of flooding to human health, the environment, cultural heritage and economic activity.

Section 5 – Responsible authorities

26. **Section 5** identifies local authorities and Scottish Water as “responsible authorities” and allows the Scottish Ministers to designate other public bodies and office holders as responsible authorities by order. Responsible authorities have to comply with the general duty in Part 1 of the Act. They also have duties under Part 3 to assist SEPA in preparing the flood risk assessments, maps and plans required by the Directive and to assist local authorities in the preparation and completion of local flood risk management plans. Before designating new responsible authorities under this section, the Scottish Ministers must consult SEPA, existing responsible authorities, the proposed new responsible authorities and such other persons as are deemed appropriate. When designating responsible authorities the Scottish Ministers must also comply with their general duty under Part 1 of the Act.

¹ The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/ 1379)