
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 426

The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010

PART I
GENERAL

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010; and
 - (b) come into force on 24th December 2010.

Interpretation

2. In these Regulations—

“the Act” means the Flood Risk Management (Scotland) Act 2009;

“the consultative bodies” means—

 - (a) SEPA;
 - (b) Scottish Natural Heritage;
 - (c) Scottish Water;
 - (d) any planning authority whose district is likely to be affected by the proposed flood protection scheme (other than the local authority proposing the scheme); and
 - (e) any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme;

“environmental statement” means a statement prepared in respect of a flood protection scheme pursuant to regulation 6; and

“screening opinion” means a written statement of opinion as to whether the proposed flood protection scheme in question is likely to have a significant effect on the environment.

PART II

ENVIRONMENTAL IMPACT ASSESSMENT

Restriction on confirmation of flood protection schemes

3. A proposed flood protection scheme may not be confirmed under paragraph 4, 7 or 9 of schedule 2 to the Act unless the local authority proposing the scheme and, where relevant, the Scottish Ministers, have complied with the relevant requirements of these Regulations in relation to that scheme.

Duty to consider environmental impact of a proposed flood protection scheme

4.—(1) Prior to—

- (a) giving notice of a proposed flood protection scheme under paragraph 1 of schedule 2 to the Act;
- (b) confirming a proposed flood protection scheme with modifications under paragraph 9(1) (b) of schedule 2 to the Act; and
- (c) submitting further details of scheme operations for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997(1),

a local authority must, at each stage, consider whether the scheme as proposed at that stage is likely to have a significant effect on the environment.

(2) In considering whether a scheme is likely to have a significant effect on the environment, it shall take account of the criteria in Schedule 1.

Screening opinions

5.—(1) Where, at any of the stages referred to in regulation 4(1), a local authority considers that a proposed flood protection scheme is not likely to have a significant effect on the environment, it shall request a screening opinion from each of the consultative bodies.

(2) A request for a screening opinion must be accompanied by—

- (a) a plan sufficient to identify the site which is the subject of the proposed scheme and any land that may be affected by it or over which access may be required;
- (b) a brief description of the nature and purpose of the proposed scheme and of its possible effects on the environment;
- (c) where it is proposed that the scheme be confirmed with modifications, a summary of the modifications; and
- (d) where further details of scheme operations are to be submitted for approval in compliance with a condition of deemed planning permission, a summary of the further details.

(3) A request for a screening opinion may be accompanied by such further information or representations as the local authority may wish to provide or make.

(4) Within three weeks of receiving a request for a screening opinion, a consultative body must, if it considers that it has not been provided with sufficient information to give an opinion, give notice to the local authority of the particular points on which it requires further information, and the local authority must provide such further information as it is reasonably able to provide.

(1) 1997 c.8.

(5) When a consultative body considers that it has sufficient information it must give a screening opinion within three weeks of whichever is the later of—

- (a) the date of receipt of the request for a screening opinion; and
- (b) the date by which it has received the further information referred to in paragraph (4).

(6) Where a consultative body concludes that the proposed scheme is likely to have a significant effect on the environment, it must provide with its screening opinion a written statement giving full reasons for its conclusion.

Environmental statements

6.—(1) Where—

- (a) a local authority considers under regulation 4 that a proposed flood protection scheme is likely to have a significant effect on the environment; or
 - (b) a consultative body has concluded in a screening opinion under regulation 5 that a proposed flood protection scheme is likely to have a significant effect on the environment,
- the local authority must prepare an environmental statement in accordance with paragraph (2).

(2) An environmental statement must identify, describe and assess the direct and indirect effects of the proposed scheme on the following factors—

- (a) human beings, flora and fauna;
- (b) soil, water, air, climate and the landscape;
- (c) material assets, including architectural and archaeological heritage; and
- (d) the interaction between the factors mentioned in sub-paragraphs (a) to (c).

(3) An environmental statement must include—

- (a) the information referred to in Part I of Schedule 2; and
- (b) such of the information referred to in Part II of Schedule 2 as is reasonably required to assess the environmental effects of the proposed scheme and which, having regard in particular to current knowledge and methods of assessment, the local authority can reasonably be required to compile.

(4) Where a local authority is obliged by paragraph (1) to prepare an environmental statement in respect of—

- (a) a flood protection scheme that it proposes to confirm with modifications under paragraph 9(1)(b) of schedule 2 to the Act; or
- (b) a flood protection scheme for which it has been requested to submit further details as a condition of deemed planning permission under section 57(2B) of the Town and Country Planning (Scotland) Act 1997,

and an environmental statement has already been prepared in respect of the scheme, it may comply with paragraph (1) by updating the existing environmental statement to take account of the modifications to, or further details of, the scheme.

Notification of a scheme with an environmental statement

7.—(1) This regulation applies where—

- (a) a local authority has prepared an environmental statement relating to a proposed flood protection scheme, and
- (b) it has not previously given notice of the proposed scheme.

(2) The local authority must—

- (a) give notice of the proposed scheme in accordance with paragraphs 1(1), (2) and (4) of schedule 2 to the Act; and
 - (b) make a copy of the environmental statement available for public inspection alongside the scheme documents that are made available in accordance with paragraph 2 of schedule 2 to the Act.
- (3) A notice under paragraph (2)(a) must, in addition to the information required by paragraph 1(3) of schedule 2 to the Act, include a statement—
- (a) that the scheme is likely to have a significant effect on the environment;
 - (b) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (c) describing the circumstances under the Act in which the Scottish Ministers may cause a public inquiry into the application; and
 - (d) setting out the nature of possible decisions that may be taken in relation to the scheme.
- (4) The local authority must supply a copy of the scheme documents and the environmental statement to the consultative bodies no later than the date that the notice referred to in paragraph (2) (a) is given.

Confirmation of modifications to a scheme with an environmental statement

- 8.—(1) This regulation applies where—
- (a) a local authority or the Scottish Ministers intend to confirm a proposed flood protection scheme with modifications under paragraph 7(4)(b) or 9(1)(b) of schedule 2 to the Act; and
 - (b) an environmental statement has been prepared in respect of the modified scheme.
- (2) The local authority must—
- (a) give notice of the modified scheme in accordance with paragraphs 1(1), (2) and (4) of schedule 2 to the Act; and
 - (b) make a copy of the scheme documents and the environmental statement available for public inspection in accordance with paragraph 2 of schedule 2 to the Act.
- (3) A notice under paragraph (2)(a) must—
- (a) comply with paragraph 1(3) of schedule 2 to the Act; and
 - (b) contain a statement—
 - (i) that the proposed scheme has been modified;
 - (ii) describing the modifications;
 - (iii) explaining the reasons for the modifications;
 - (iv) that the modified scheme is likely to have a significant effect on the environment;
 - (v) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (vi) describing the circumstances under the Act in which the Scottish Ministers may cause a public inquiry into the application; and
 - (vii) setting out the nature of possible decisions that may be taken in relation to the modified scheme.
- (4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to a modified scheme as it applies to objections to a proposed flood protection scheme.
- (5) An objection to a modified scheme 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 modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

(6) Neither the local authority nor the Scottish Ministers may confirm a modified scheme in respect of which an environmental statement has been prepared unless at least 28 days have elapsed since the date notice of the modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

Submission of further details of a scheme with an environmental statement

9.—(1) This regulation applies where—

- (a) in accordance with section 57(2B) of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers direct that planning permission shall be deemed to be granted in respect of operations to be carried out under a flood protection scheme;
- (b) the Scottish Ministers impose a condition in their direction requiring the local authority to submit further details of the scheme for approval (whether by the Scottish Ministers or a planning authority); and
- (c) an environmental statement has been prepared in respect of the further details of the scheme.

(2) Where this regulation applies, the local authority must—

- (a) give notice of the further details of the scheme in the manner and to the persons referred to in paragraph 1(1), (2) and (4) of schedule 2 to the Act; and
- (b) make a copy of the scheme documents and the environmental statement available for public inspection in accordance with paragraph 2 of schedule 2 to the Act.

(3) A notice under paragraph (2)(a) must—

- (a) comply with paragraph 1(3) of schedule 2 to the Act; and
- (b) contain a statement—
 - (i) that the scheme is likely to have a significant effect on the environment;
 - (ii) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (iii) setting out the nature of possible decisions that may be taken in relation to the scheme;
 - (iv) that further details of the scheme operations have been submitted for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997; and
 - (v) describing the further details so submitted.

(4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to the further details as it applies to objections to a proposed flood protection scheme.

(5) An objection to further details of a proposed flood protection scheme 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 further details of the scheme are first published under paragraph 1(1)(a) of schedule 2 to the Act.

Decisions in relation to flood protection schemes with environmental statements

10.—(1) Neither a local authority nor the Scottish Ministers may confirm—

- (a) a flood protection scheme in respect of which an environmental statement has been prepared; or
- (b) a modified flood protection scheme in respect of which an environmental statement has been prepared,

unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(2) Where—

- (a) it is a condition of a direction granting deemed planning permission for a proposed flood protection scheme that further details must be submitted for approval (whether to the Scottish Ministers or to a planning authority); and
- (b) an environmental statement has been prepared in respect of that scheme,

neither the Scottish Ministers nor a planning authority may approve such further details unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(3) The environmental information is—

- (a) any environmental statement or revised or updated environmental statement prepared in connection with the scheme;
- (b) any representation made by any of the persons referred to in paragraph 1(1)(f) of schedule 2 to the Act;
- (c) any representation made by any of the consultative bodies; and
- (d) any valid objection to the scheme (unless withdrawn).

PART III

SCHEME DOCUMENTS

Maps, plans and specifications

11.—(1) A proposed flood protection scheme must include a description, by reference to maps, plans and specifications, of—

- (a) the extent and scale of the scheme operations;
- (b) the land which the local authority considers may be affected by those operations; and
- (c) any land on which the local authority would require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations.

(2) The maps and plans referred to in paragraph (1) must be at an appropriate scale to enable interested persons to identify whether their land will be affected by the scheme operations.

(3) A proposed flood protection scheme must include an estimate of the cost of the scheme operations proposed to be carried out.

PART IV

FURTHER PROCEDURAL PROVISIONS

Objections

12.—(1) Any objection to a proposed flood protection scheme under paragraph 3 of schedule 2 to the Act must be accompanied by a statement of the reasons for the objection.

(2) Where an objector under paragraph 3 of schedule 2 to the Act has an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the proposed operations, or by any alteration in the flow of water caused by any of the operations, that person's objection must include—

- (a) details of the land in which the objector has an interest;
- (b) disclosure of the nature of the objector's interest in the land; and
- (c) details of which aspects of the proposed operations affect the objector.

Withdrawal of objections

13.—(1) Where a local authority confirms a proposed scheme with modifications under paragraph 5(1)(b) of schedule 2 to the Act it must, when giving notice of that decision in accordance with paragraph 5(3) of that schedule, offer any person who made an objection the opportunity to withdraw that objection in writing.

(2) Where all relevant objectors (within the meaning of paragraph 5(4) of Schedule 2 to the Act) withdraw their objections following notification, in accordance with paragraph (1), of a local authority's decision, the duty of the local authority to give the Scottish Ministers notice of its decision under paragraph 5(5) of schedule 2 to the Act does not apply.

(3) A withdrawal of 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.

Deemed planning permission

14.—(1) Where a local authority confirms a proposed scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, it must request that the Scottish Ministers direct that planning permission for any development described in the scheme is to be deemed to be granted.

(2) A request under paragraph (1) must be made to the Scottish Ministers in writing and must be accompanied by—

- (a) a brief description of the nature and purpose of the confirmed scheme;
- (b) a copy of the confirmed scheme;
- (c) a summary of the scheme documents; and
- (d) a summary of the environmental statement (if any).

(3) A request under paragraph (1) may be accompanied by any other material which the local authority considers relevant to the grant of deemed planning permission.

Service of notices

15.—(1) Any notice or other document to be sent, served or given under these Regulations or under schedule 2 to the Act may be sent, served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given;

- (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address;
 - (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at their usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address;
 - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office; or
 - (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address.
- (2) The condition mentioned in paragraph (1)(e) is that the notice or other document must be—
- (a) capable of being accessed by the person mentioned in that provision;
 - (b) legible in all material respects; and
 - (c) in a form sufficiently permanent to be used for subsequent reference,
- and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

PART V

POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS

Publicity and consultation for documents identifying potentially vulnerable areas and local plan districts

- 16.—(1)** SEPA must comply with paragraphs (2) to (6) before submitting to the Scottish Ministers—
- (a) a document identifying, in accordance with section 13 of the Act—
 - (i) areas in a flood risk management district for which it considers that significant flood risk exists or is likely to occur; and
 - (ii) areas around such an area for the purpose of preparing local flood risk management plans; or
 - (b) an updated document in accordance with section 14 of the Act.
- (2) When preparing a document referred to in paragraph (1), SEPA must consult—
- (a) every responsible authority which has functions exercisable in or in relation to the areas identified by the draft document;
 - (b) every category 1 responder (other than a responder which is a responsible authority) which has functions in relation to the areas identified by the draft document;
 - (c) Scottish Natural Heritage;
 - (d) where any part of the areas identified by the draft document has been designated as a National Park, the National Park authority for the National Park; and
 - (e) such other persons as SEPA considers appropriate.
- (3) SEPA must prepare a draft of the document referred to in paragraph (1) and publish details of the draft document—

- (a) in at least one newspaper circulating within the areas identified by the draft document; and
 - (b) in such other media as SEPA considers appropriate for the purpose of bringing the draft document to the attention of individuals or bodies likely to be affected or to have an interest.
- (4) The details published under paragraph (3) must include—
- (a) a summary of the nature and purpose of the draft document;
 - (b) the areas identified by the draft document;
 - (c) the location where a copy of the draft document may be inspected by the public;
 - (d) the period, being a period of not less than 2 months from the date on which the details are first published in accordance with paragraph (3)(a), within which representations about the draft document can be made to SEPA; and
 - (e) information about how representations may be made to SEPA.
- (5) SEPA must make a copy of the draft document referred to in paragraph (3) available to the public at all reasonable times during the period specified by SEPA in accordance with paragraph (4)(d).
- (6) In finalising the document referred to in paragraph (1) for submission to the Scottish Ministers, SEPA must take into account—
- (a) any views on the draft of the document expressed by those consulted under paragraph (2); and
 - (b) any representations made about the draft document which are received by SEPA before the expiry of the period specified under paragraph (4)(d).
- (7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation has effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

Submission of documents identifying potentially vulnerable areas and local plan districts

17.—(1) SEPA must prepare and submit the documents referred to in section 13 of the Act to the Scottish Ministers by 22nd September 2011.

(2) SEPA must review, update where appropriate, and submit to the Scottish Ministers any documents approved under section 13 of the Act by 22nd September 2018 and by the end of every period of six years thereafter.

(3) When submitting any document to the Scottish Ministers in accordance with section 13 or 14 of the Act, SEPA must also submit—

- (a) a summary of the actions taken by SEPA to publicise and consult on a draft of the document in accordance with regulation 16;
- (b) a summary of the views expressed by those consulted and the representations received (if any); and
- (c) a statement of any modifications made to the document in response to such views or representations.

(4) SEPA must make a copy of any document that it submits to the Scottish Ministers in accordance with section 13 or 14 of the Act, and the supporting documents referred to at paragraph (3) above, available to the public at all reasonable times.

(5) SEPA must—

- (a) publish details of the documents that it has submitted to the Scottish Ministers—

- (i) in at least one newspaper circulating within the areas identified by the draft document; and
 - (ii) in such other media as SEPA considers appropriate for the purpose of bringing the document to the attention of individuals or bodies likely to be affected or to have an interest; and
- (b) give notice of the document that it has submitted to the Scottish Ministers to every local authority whose area falls wholly or partly within the areas identified by the document.
- (6) The details published under paragraph (5)(a) must include—
- (a) a summary of the nature and purpose of the document submitted to the Scottish Ministers;
 - (b) the areas identified by the document;
 - (c) details of any supporting documents submitted with the document; and
 - (d) the location where a copy of the document and any supporting documents may be inspected by the public.
- (7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation shall have effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

St Andrew's House,
Edinburgh
30th November 2010

R CUNNINGHAM
Authorised to sign by the Scottish Ministers