

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in relation to flood protection schemes, potentially vulnerable areas, and local plan districts under the Flood Risk Management (Scotland) Act 2009 (“the Act”). A flood protection scheme is a scheme prepared by a local authority in accordance with section 60 of the Act for the management of flood risk within the authority's area.

Potentially vulnerable areas are areas identified by the Scottish Environment Protection Agency (“SEPA”) in accordance with section 13 of the Act where SEPA considers that significant flood risk exists or is likely to occur.

Local Plan Districts are areas around potentially vulnerable areas that SEPA must identify in accordance with section 13 of the Act for the purpose of preparing local flood risk management plans.

The Regulations comprise five parts and two schedules.

### **Part I – General**

This part defines various terms used in the Regulations.

### **Part II – Environmental Impact Assessment**

Part II makes provision about the assessment of the environmental effects of flood protection schemes.

Regulation 4 requires local authorities, at key stages of the confirmation process, to consider whether a scheme is likely to have a significant effect on the environment. In the event that a local authority considers that a scheme is not likely to have a significant effect on the environment, the local authority is required by Regulation 5 to obtain a second or “screening” opinion from certain specified bodies.

If the local authority or one of the bodies that has given a screening opinion thinks that the scheme is likely to have a significant effect on the environment, regulation 6 requires the local authority to prepare an environmental statement assessing the scheme's environmental effects.

Regulations 7 and 8 impose certain additional notification requirements where an environmental statement has been prepared that are intended to bring the environmental sensitivity of the scheme to the attention of interested parties and specified public bodies. Where the Scottish Ministers direct that planning permission is deemed to be granted for a flood protection scheme that is likely to have a significant effect on the environment, but require a local authority to submit further details of the scheme for approval, regulation 9 also imposes notification requirements at that stage.

Regulation 10 requires local authorities and, where applicable, the Scottish Ministers to take the environmental statement (and any representations or objections made in response to it) into account when deciding whether or not to confirm a flood protection scheme or a modification of it. Similar requirements apply to the Scottish Ministers and planning authorities when they are approving further details of a scheme that have been submitted in compliance with a condition of deemed planning permission.

### **Part III – Scheme Documents**

This part of the Regulations specifies the information that flood protection schemes must, as a minimum, include by way of maps, plans and specifications.

### **Part IV – Further Procedural Provisions**

Part IV of the Regulations makes further procedural provision regarding flood protection schemes.

Regulation 12 requires that objections to a proposed flood protection scheme, in addition to meeting the requirements of paragraph 3 of schedule 2 to the Act, must be accompanied by a statement of reasons. It also requires objectors to disclose the nature of their interest (if any) in land affected by operations to be carried out under the scheme.

**Changes to legislation:** *There are currently no known outstanding effects for the The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010. (See end of Document for details)*

Regulation 13 provides for objectors to be given the opportunity to withdraw their objections following modification of a scheme.

By virtue of section 65 of the Act (which amends the Town and Country Planning (Scotland) Act 1997), where a local authority confirms a flood protection scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, the Scottish Ministers must direct that planning permission be granted for scheme operations that would constitute development under the 1997 Act. Regulation 14 requires local authorities to request such a direction from the Scottish Ministers and makes provision about the form of such a request.

Regulation 15 makes provision about methods of service of notices or other documents under these Regulations or schedule 2 to the Act.

#### **Part V – Potentially Vulnerable Areas and Local Plan Districts**

Section 13 of the Act requires SEPA to prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area for which it considers that significant flood risk exists or is likely to occur (a “potentially vulnerable area”). The document must also identify areas around those areas for the purpose of preparing local flood risk management plans “(local plan districts)”. Part V of the Regulations sets out consultation and publicity requirements for this document and requires that a copy be made available to the public.

Regulation 16 obliges SEPA to take account of consultee views and any representations before submitting the document to the Scottish Ministers.

Regulation 17 sets deadlines for submission by SEPA of the document and updates of it, and requires that SEPA provide information about the consultation and publication process. It requires SEPA to publish details of the document that it submits to the Scottish Ministers, so as to bring it to the attention of those persons likely to be affected by it.

#### **Schedule 1**

Schedule 1 lists the matters to be taken into account by local authorities when considering under regulation 4 whether a flood protection scheme is likely to have a significant effect on the environment.

#### **Schedule 2**

Schedule 2 lists the required content of an environmental statement prepared by a local authority under regulation 6.

**Changes to legislation:**

There are currently no known outstanding effects for the The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010.