

SCHEDULES

SECOND SCHEDULE

Section 4.

PROVISIONS AS TO CONFIRMATION, COMING INTO OPERATION AND VALIDITY OF FLOOD PREVENTION SCHEMES

- 1 A flood prevention scheme may be submitted to the Secretary of State by the local authority by whom the flood prevention operations to which the scheme relates (hereinafter in this Schedule referred to as “the operations”) are to be carried out.
- 2 Before submitting a flood prevention scheme to the Secretary of State the local authority shall in two successive weeks publish in at least one local newspaper circulating in their area and in the locality where the operations are to be carried out, and in the Edinburgh Gazette, a notice—
 - (a) stating the general effect of the scheme;
 - (b) specifying a place in the said area, and (if different) in the locality where the operations are to be carried out, where a copy of the scheme to be submitted and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of three months from the date of the first publication of the notice; and
 - (c) stating that, within the said period, any person may by notice to the Secretary of State object to the confirmation of the scheme.
- 3 (1) Not later than the date on which the said notice is first published as aforesaid, the local authority shall serve a copy thereof (together with a copy of the proposed scheme and of any relevant map or plan) on the following:—
 - (a) every person known to the local authority to have any interest in any land on which it is proposed that any of the operations shall be carried out, or in any land which may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations;
 - (b) any other local authority in whose area it is proposed that any of the operations shall be carried out;
 - (c) any statutory body the exercise of whose functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations;
 - (d) any body or association appearing to the local authority to represent persons who in their opinion may be affected by any of the operations; and
 - [^{F1}(e) the operator of [^{F2}an electronic communications code network the provision] of which may be affected by any of the operations or by any alteration in the flow of water caused by the operations].
- (2) In this paragraph the expression “statutory body” means any body exercising functions conferred on it by or under any enactment.

Status: Point in time view as at 17/09/2003.

Changes to legislation: There are currently no known outstanding effects for the Flood Prevention (Scotland) Act 1961 (repealed), SECOND SCHEDULE. (See end of Document for details)

Textual Amendments

- F1** Sch. 2 para. 3(1)(e) substituted by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), ss. 2, 109, 110(2), **Sch. 4 para. 39(4)**
- F2** Words in Sch. 2 para. 3(1)(e) substituted (17.9.2003) by [Communications Act 2003 \(Consequential Amendments\) Order 2003 \(S.I. 2003/2155\)](#), art. 1(1), **Sch. 1 para. 4(4)**

- 4 Not later than the date on which the said notice is first published as aforesaid, the local authority shall cause a copy thereof to be displayed in a prominent position in the locality in which the operations are to be carried out.
- 5 If before the expiration of the said period of three months an objection is received by the Secretary of State from any party on whom a copy of the said notice is required by paragraph 3 of this Schedule to be served, or from any other party appearing to the Secretary of State to be likely to be affected by any of the proposed operations or, as the case may be, to represent persons likely to be so affected, and the objection is not withdrawn, the Secretary of State shall cause a public local inquiry to be held.
- 6 The provisions of subsections (2) to (9) of section [^{F3}two hundred and ten of the ^{M1}Local Government (Scotland) Act 1973] (which relate to the holding of local inquiries) shall apply in relation to a public local inquiry held under the foregoing paragraph as they apply in relation to local inquiries held under the said section [^{F3}two hundred and ten.]

Textual Amendments

- F3** Words substituted by virtue of [Interpretation Act 1889 \(c. 63\)](#), s. 38(1)

Marginal Citations

- M1** 1973 c. 65.

- 7 (1) After considering any objections to the proposed scheme, which are not withdrawn and, where a public local inquiry is held, the report of the person who held the inquiry, the Secretary of State may confirm the scheme either without modification or with such modification as (subject to the next following sub-paragraph) he thinks fit, or may refuse to confirm the scheme:
- Provided that the Secretary of State shall not confirm a scheme with any modification unless he has first—
- (a) intimated the terms of the modification to the parties on whom a copy of the notice mentioned in paragraph 3 of this Schedule is required by that paragraph to be served and on any other person who in the Secretary of State's opinion may be affected by the modification;
 - (b) given them an opportunity to make representations thereanent; and
 - (c) considered any representations so made.
- (2) A modification made under this paragraph—
- (a) if it relates to a provision of the First Schedule to this Act which has been incorporated (with or without modification) in the scheme as submitted to the Secretary of State, shall not alter that provision in such a way as to make any penalty greater than is specified in the said Schedule or place any person

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- other than the local authority making the scheme in a worse position than he would be in if the provision were incorporated as set out in the said Schedule;
- (b) if it consists of the incorporation of a provision of the said Schedule which has not been incorporated in the scheme as submitted to the Secretary of State, shall provide for the provision to be incorporated either as set out in the said Schedule or with such modification only as might have been made under the foregoing sub-paragraph if the provision had been incorporated in the scheme as so submitted.
- 8 If the Secretary of State confirms the scheme (with or without modification) the local authority shall publish in the manner prescribed by paragraph 2 of this Schedule a notice stating that the scheme has been confirmed, and naming a place where a copy of the scheme may be seen at all reasonable hours, and paragraphs 3 and 4 of this Schedule shall apply to any such notice as they apply to a notice required to be published by the said paragraph 2.
- 9 If any person aggrieved by a flood prevention scheme desires to question the validity thereof, or of any provision contained therein, on the grounds that it is not within the powers of this Act, or on the grounds that any requirement of this Act has not been complied with in relation to the making or confirmation of the scheme, he may, within six weeks from the date on which the notice required by the last foregoing paragraph is first published, make an application to the Court of Session, and on any such application the Court—
- (a) may by interim order suspend the operation of the scheme, or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the scheme, or any provision contained therein, is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as aforesaid, may quash the scheme, or any provision contained therein, either generally or in so far as it affects any property of the applicant.
- 10 Subject to the provisions of the last foregoing paragraph, a flood prevention scheme shall not, either before or after it has been made or confirmed, be questioned in any legal proceedings whatsoever, and shall become operative on the date on which the notice required by paragraph 8 of this Schedule is first published.

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Changes to legislation:

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