

**PERTH AND KINROSS COUNCIL****Environment Committee – 27 January 2010****FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009****Report by the Depute Director (The Environment Service)**

This report seeks to advise Members of the new responsibilities placed on the Council by the Flood Risk Management (Scotland) Act 2009.

**RECOMMENDATIONS**

The Committee is asked to:-

- i) Note the new duties placed on the Council by the legislation and specifically in relation to resource implications.
- ii) Request further reports once the detail emerges

**BACKGROUND**

1. The EC Floods Directive 2007/60EC created a framework in which member states assess and manage flood risk. The directive also encourages the use of a catchment focused approach to managing flooding from all sources.
2. The Scottish Government has transposed the Directive into law to modernise the way flood risk management was undertaken in Scotland. The Act repeals the Flood Prevention (Scotland) Act 1961 (as amended) in stages over the next year.
3. Copies of The Flood Risk Management (Scotland) Act 2009 are available in the Members Lounge and may be viewed <http://www.scotland.gov.uk/topics/environment/water/flooding/FRMACT>

**Competent and Responsible Authorities**

4. The Act recognises a Competent Authority, SEPA and Responsible Authorities who are Local Authorities and Scottish Water. The bulk of the work will be undertaken by SEPA and Local Authorities.
5. SEPA – fulfils a strategic, co-ordinating role producing
  - Preliminary flood risk assessments (PFRA) – December 2011
  - Flood Hazard and Flood Risk maps – December 2013

- Flood Risk Management Plans (FRMP) - high level strategic framework for flood Risk Management in Scotland which will identify national priorities and establish a framework for delivering or planning measures at a local level – December 2012 – December 2015
- All assessments and plans will be developed through a collaborative approach with responsible authorities.

#### Scottish Water

- Assess flood risk from Sewerage Systems

#### Local Authorities

- Local flood risk management plans (LFRMP) – translate the strategic objectives and measures in SEPA’s FRMP, into locally focused sets of measures to address flood risk. These will be developed through a collaborative partnership with SEPA and Scottish Water. They are unlikely to vary much from SEPA’s Flood Risk Management Plan.

### **Changes to Duties**

6. Under the 1961 Act, as amended, the Council’s duties are as follows:
  - Assess watercourses within their areas from time to time (non-agricultural land)
  - Maintain watercourses (non-agricultural land)
  - Publish reports every two years specifying:
    - Measures they require to take to prevent or mitigate flooding of non-agricultural land in their area
    - Measures they have taken since the previous publication
    - All occurrences of flooding since the previous report (non-agricultural land)
7. Under the new Act, the Council's duties are:
  - Assess waterbodies within their area from time to time including surface water and sustainable urban drainage systems (SUDs)
  - “Carry out clearance and repair work on water bodies” extends to all land.
  - Prepare and publicise schedules of maintenance, clearance and repair work (all land now covered), these should contain:

- Details of when assessments are to be carried out
  - What maintenance works are to be undertaken over the next 6 years
  - Identify and map all water bodies within their area including surface water and sustainable urban drainage systems (SUDs).
  - Assist SEPA in preparing flood risk assessments, maps and plans required under the Directive
  - Prepare Local Flood Risk Management Plan and consult on it
  - Publish an interim report 2 -3 years after plan published and a final report 5-6 years after publication
  - Have regard to both the Flood Risk and Local Flood Risk Management Plans
  - Exercise its flood risk related functions with a view to reducing overall flood risk and including:
    - act in the best way calculated to manage flood risk in a sustainable way
    - promote sustainable flood risk management
    - act with a view to raising public awareness of flood risk
    - act in the best way calculated to contribute to the achievement of sustainable development
    - so far as practicable, adopt an integrated approach by co-operating with SEPA and other Responsible Authorities
  - Create a register of flood protection schemes since the 1961 Act
8. Local Flood Risk Management Plans will be more extensive than the simple biennial report which is to be phased out and are intended as a mechanism through collaborative working, to produce a plan detailing the measures necessary to reduce flood risk in a sustainable manner at local level. There is an expectation that the works within the plan will be carried out and there is a general duty on the local authority to exercise its flood risk related functions and to have regard to both this plan and the Flood Risk Management Plan. These plans are required to give timescales for implementation, indicate who will implement, who will be responsible for co-ordinating and reviewing the plan and how plans will be funded. The final plans will be the end result of collaboration between all stakeholders and consultation with the public.

9. Aside from the new duties, there are a number of important changes to existing duties:
- Flooding of all land must be considered there is no longer a distinction between agricultural and non-agricultural land.
  - Local authorities can now do anything they consider will assist in the implementation of any local flood risk management plan. It also allows them to do anything they consider necessary to reduce the imminent threat of flooding which is likely to have serious adverse consequences, or may assist in managing flood risk in their area without impacting on either the Flood Risk Management Plan or the Local Flood Risk Management Plan.
  - Local Authorities may now enter into agreement or arrangements with any other person to enable works to be carried out including the management of that person's land.

### **Flood Protection Schemes**

10. The process for flood protection schemes has been simplified. Where agreement is reached with a landowner to carry out works planning permission is deemed to have been granted.
11. The period for objections has been reduced from 3 months to 28 days. If no objections are received, the Local Authority may confirm or reject the scheme.

### **Reservoirs**

12. After 2011, local authorities will no longer be the enforcing agencies for reservoirs. This function will pass to SEPA. However, local authorities will be responsible for ensuring any reservoirs which they own, are maintained in compliance with the regulations. The size of reservoir is to change and this may have implications in relation to the SUDS ponds that local authorities adopt. Any reservoir which is the responsibility of the local authority, is responsible for will require on-site plans to be provided, which will include, modelling, dam breach scenarios and production of maps.

### **CONSULTATION**

13. The Head of Legal Services, the Head of Democratic Services and the Executive Director Corporate Services have been consulted in the preparation of this report.

### **RESOURCE IMPLICATIONS**

#### **Capital**

14. There are no Capital resource implications arising directly from the recommendations in this report at the present time. When plans have been prepared, this may generate capital expenditure pressures that will be reported at that time.

## Revenue

15. The requirement to:

- Map all Water bodies;
- Assess all waterbodies, prepare a schedule, make the schedule available to the public, organise and carry out the works, supervise the works;
- Produce Local Flood Risk Management Plans under the Act:

provides significant new duties for flooding staff, which are likely to be challenging to achieve. The Scottish Government has intimated that a sum was included in the current year's settlement, to allow the Council to implement the new legislation. This cannot be easily confirmed from the settlement figures. The Scottish Government estimated that over a period, there will be start-up costs of £1.14m for each local authority and on-going running costs of £0.24m. Given the forthcoming financial challenges for the Council over the next 5 years, it is recognised that increasing staff resources to implement these new duties is not sustainable. There will be a need for existing duties to be re-prioritised, which will impact on the Council's ability to deliver Services in other areas.

## **EQUALITIES ASSESSMENT**

16. The Council's corporate Equalities Assessment Framework requires an assessment of functions, policies, procedures or strategies in relation to race, gender and disability and other relevant equality categories.
17. The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Assessment Framework and the determination was made that the items summarised in this report do not require further assessment as this policy has the same impact for all equalities by attempting to reduce the flood risk to the Perth and Kinross Council area through flood schemes and/or watercourse maintenance.

## **STRATEGIC ENVIRONMENTAL ASSESSMENT**

18. Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all plans, programmes and strategies, including policies (PPS).
19. The Local Flood Risk Management Plan (LFRMP), identified within the Flood Risk Management Act 2009, will be considered under the Environmental Assessment (Scotland) Act 2005. If SEA is required, then subsequent committee reports will contain an update on progress through the SEA process.

## **COUNCIL CORPORATE PLAN OBJECTIVES 2006 -2010**

20. The Council's Corporate Plan 2006 – 2010 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resource allocation.
21. This reports impacts on the following:-
- i) A safe, secure and Welcoming Environment
  - ii) Healthy, Caring Communities
  - iii) A prosperous, sustainable and inclusive economy
  - iv) Confident, Active and Inclusive Communities.

## **CONCLUSION**

22. The Act obviously places additional duties and functions on Local Authorities which will impact on the existing staff and the way duties will be carried out. This additional burden will have to be borne with existing resources, which will impact on the Council's ability to deliver services in other areas.

JIM VALENTINE  
DEPUTE DIRECTOR (ENVIRONMENT)

**Contact Officer:** Susan Veitch (Flooding Officer) Ext:7231  
**Address of Service:** Pullar House, 35 Kinnoull Street, Perth, PH1 5GD  
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## **NOTE**

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above Report; Flood Risk Management (Scotland) Act 2009.

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Alma Murray, Equalities Assistant  
on  
01738 476558 or TESEqualities@pkc.gov.uk



Council Text Phone Number 01738 442573