

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

FLOODING AND FLOOD MANAGEMENT INQUIRY

MINISTER FOR ENVIRONMENT'S RESPONSE TO RECOMMENDATIONS

- 1 The Committee strongly recommends that the Scottish Government fully consider the recommendations contained within this report before introducing its bill on flooding and flood management.**

We appreciate the studied deliberations of the RAE Committee, and welcome their recommendations. These recommendations will be fully considered in conjunction with responses from the Consultation “The Future of Flood Risk Management in Scotland”, and the responses from the associated Workshops and Town Hall Meetings.

This will ensure that a broad based consensus informs the creation of a sustainable, risk-based approach to flood management. Our intent is to create a framework in which all persons and organisations involved in flood risk management can coordinate their efforts to reduce the adverse consequences of flooding to health, the environment, cultural heritage and economic activity.

- 2 The Committee recommends that the Scottish Government set out the steps and funding that it considers necessary for mapping and addressing pluvial flooding.**

The Scottish Government has funded SEPA to establish second generation Flood Risk Mapping. In addition to this, Scottish Water holds a register and location plans of properties where sewer flooding has occurred. These sources will form the first step in evolving an integrated map of flood risk for Scotland. The second step will seek to map and integrate pluvial flooding. Work undertaken to date in Scotland regarding the integration of pluvial flows (Renfrewshire) has illustrated the complexities in doing so.

All mapping and assessment elements of the work necessary to implement the Flooding Bill are being coordinated by a Bill Advisory Group. It has to date met on three occasions and its remit and membership will provide the necessary information and expertise on which to take forward an investigation of the likely costs of mapping.

It is likely that when mapping and understanding the pathways and interactions of fluvial, coastal and sewer flooding, the nature of pluvial flows will become apparent. This suggests that, especially in urban areas where pluvial flooding is more problematic, solutions to address this type of flooding may be contained in those used to address other sources of flooding.

- 3 The Committee recommends that the Scottish Government conduct an assessment of the resilience of national infrastructure to potential storm surge events, especially given that storm surges and related coastal flooding are likely to increase in the future.**

As a result of the flooding in England and Wales last year, the Minister for Environment wrote to all the Strategic Coordinating Groups to confirm that arrangements similar those in England & Wales are in place.

We will continue to assess the risk posed to National Infrastructure in relation to all types of flood risk, and to how this risk can be managed through flood risk management planning.

The duties under the Civil Contingencies Act require responders to assess the risk of emergencies in their areas. That risk assessment is informed by consideration of the likelihood of risks and their impacts (consequences). Scottish Government provides information on likelihood and impacts are determined by local conditions. Risk assessment will inform Scotland's Resilience Framework Cycle which will encompass a regular assessment of Scotland's resilience and programmes for its improvement.

- 4 The Committee recommends that the Scottish Government explore methods to ensure that the social and human costs, as well as the economic costs, of flooding can be included in future assessments of the value of proposed flood management measures.**

The Scottish Government has already progressed with the inclusion of social and human costs of flooding by funding the research project "Exploring the Social Impacts of Flood Risk and Flooding in Scotland". This was undertaken by Dundee University and was published in April 2007.

It presents the findings of a social research project, the aim of which was to assess the range of impacts that experience of recent flooding in Scotland has had on people, their attitudes and behaviours; and to establish "what works" with particular population groups and locations in relation to flood prevention campaigns and flood warning/dissemination systems.

Its findings were integrated within work undertaken in preparation of the Flooding Bill and will provide the basis upon which to commence work to explore how such costs can be quantified and integrated within Flood Risk Management Plans.

- 5 The Committee recommends that the Scottish Government establish how it can best contribute to building capacity in hydrological expertise.**

There is a broad consensus that there is a pressing need for universities and colleges to develop and promote graduate and post-graduate courses on hydrology and flood risk management.

We will consider with the Scottish Funding Council and other agencies how capacity building in this area can best be addressed.

- 6 The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management.**

The Flooding Bill will establish catchments as the primary unit for flood risk management, and will give SEPA responsibility for identifying appropriate catchments for managing flood risks.

These catchments will form the basis of all flood risk management plans. SEPA will also identify suitable coastal units (linked to catchments) for managing coastal

flooding. This work will be undertaken in close collaboration with local authorities and other bodies involved in flood risk management.

- 7 The Committee recommends that SEPA should be given the role of competent authority and take the lead at a national level in flood risk management, with suitable further safeguards to its independence.**

The Flooding Bill will identify SEPA as the lead authority for producing a national flood risk management plan that will fulfil the requirements of the Floods Directive and provide the strategic direction required to co-ordinate short and long-term efforts to management flood risks.

This plan will be supplemented by locally targeted plans that will be led by local authorities. To ensure consistency, and implementation of a fully integrated flood risk management planning process, these plans will be developed in tandem with the national plan. This will ensure that the national plans can take account of local priorities and circumstances, and that local plans are in line with agreed national priorities.

SEPA is an independent body, accountable to Ministers and through them to Parliament.

We do not envisage a conflict of interests between SEPA's regulatory functions for protecting the environment and those of contributing to managing flood risks for those threatened by flooding. Protection of people and communities will remain one of SEPA's primary concerns, and statutory instruments are already in place to ensure that SEPA has due regard to this role in all aspects of its work. In all aspects of its work, SEPA must have full regard to the social and economic implications of its decisions, whether they are regulatory or otherwise.

At this stage, we do not believe it is necessary to put in place further safeguards to ensure SEPA's independence.

- 8 The Committee recommends that the bodies who will contribute to the delivery of catchment flood management plans should be identified in statute and given a duty to collaborate in order to deliver those plans.**

Co-operation and collaboration between the bodies involved in flood risk management is seen as essential, and we propose that this should be one of the core elements of the Flooding Bill. The Bill will identify local authorities and Scottish Water as responsible authorities for flood risk management.

The Bill will also include provision for Scottish Ministers to identify additional responsible authorities. It will place a statutory duty on SEPA and all responsible authorities to co-operate to deliver flood risk management.

The Bill will also set out a series of steps to ensure close collaboration, including coordinated consultation exercises and advisory groups which will support the flood risk management planning process.

- 9 The Committee recommends that the Scottish Government place significantly greater emphasis on pluvial flood management in setting future objectives for Scottish Water.**

Ministerial Objectives for Scottish Water for the period 2006-14 were set in

February 2005. These include a specific objective for Scottish Water to reduce the number of properties at risk of internal flooding.

In addition, Scottish Water is an active member of the Metropolitan Glasgow Strategic Drainage Partnership working with its key partners at the Scottish Environment Protection Agency, Scottish Enterprise and Glasgow City Council to tackle the issues of drainage and sewerage in the metropolitan Glasgow area since 2002.

Moving forward, the government is about to start the process to identify objectives for Scottish Water for the regulatory period commencing April 2014 and beyond. Those objectives will be set in full consultation with all stakeholders, and will take into account the new flood risk management duties placed on Scottish Water by the Flooding Bill.

While the detail needs to be determined it is likely that the objectives will need to include provision for complying with all relevant legislation, necessary capital maintenance, enabling development, tackling malodour and improving environmental and drinking water quality as well as flood risk management.

The objectives will need to be accommodated within the overall financial package available to Scottish Water which is dependent upon the outcome of future spending reviews, Ministers' policy on customer charges, customers' willingness to pay and the advice of the Water Industry Commission on the affordability and efficiency of the investment programme necessary to achieve the objectives in their entirety.

- 10 The Committee recommends that the Scottish Government set out a national, strategic “road-map” for investment in flood management that looks forward over a period of at least 25 years, with provision for updating every parliamentary session.**

The National Flood Risk Management plan produced by SEPA will set out long term (25+ years) objectives and measures for managing flood risks. These objectives and measures will also be prioritised across each 6 year planning cycle in accordance with the EU Floods Directive timetable.

The plan will also include cost benefit analysis of identified measures. This work will be undertaken in close collaboration (through advisory groups) with local authorities and other responsible authorities.

This plan will be submitted to Ministers for approval every 6 years. The Bill will also place a duty on Ministers to produce annual reports for Parliament on progress toward developing and implementing flood risk management plans. We believe this will provide the information (road map) required to inform future spending priorities.

The plans that will supplement the national plan, and which would be led by local authorities, will also include a long-term set of objectives for managing flood risk. This information will be consistent with the information set out in the national plan, but will include a greater level of detail on proposed measures.

- 11 The Committee recommends that the Scottish Government publishes clear criteria for prioritising the funding for future flood management.**

The Scottish Government's criteria for prioritisation of funding for flood risk

management will be considered in close discussion with COSLA as part of any future local government settlement, and will be made publicly available at that time.

- 12 The Committee recommends that needs-based funding should be provided to local authorities in order that they can contribute to catchment flood management plans and believes the funding method adopted should embrace the three distinct levels of funding set out at paragraph 145.**

The Scottish Government agrees with the Committee that it should retain a national budget to fund research and other over-arching flood management initiatives. However, we firmly believe that local authorities' expenditure on flood risk management should be supported through the local government settlement. It will then be the responsibility of each local authority to allocate the total financial resources available to it on the basis of local needs and priorities having first fulfilled its statutory obligations and the agreed priorities in its single outcome agreement. We see no need for a central resource to fund local developments.

- 13 The Committee recommends that the Scottish Government consider where there is scope for different approval processes to be established for different scales of flood management measure; that Scottish Ministers remain involved in the process of approving proposals for strategic flood prevention schemes; that a system of deemed planning consent associated with ministerial decisions is developed; and that the process of seeking approval for flood prevention schemes is streamlined to ensure speedier decision-making, including constraints on the time available for ministerial decisions.**

The Government has considered this area carefully in the light of the Committee's recommendations and the responses to its own consultation. It does not consider that the Committee's recommendation is a viable way forward or would accelerate or simplify the present procedures.

One of the main areas of concern with the current process for flood alleviation schemes, is the length of time taken for such schemes to complete the required statutory process. The responses to the consultation paper on the Future of Flood Risk Management in Scotland, showed that a clear majority (56%) considered it appropriate to take forward a local authority led approach to the approval of flood risk management measures, rather than retaining the existing process of Ministerial confirmation; in contrast only 14% felt that such an approach was inappropriate (the remainder gave an unclear or nil response).

The Flooding Bill will, therefore, grant broad powers to local authorities to help protect their areas from flooding without having to go through a formal approval process. However, if local authorities feel the need for additional powers, for example a right of entry on to land, then the Bill will establish a new local authority led approval process for flood risk management measures. This new process will enable but not oblige Scottish Ministers to call in any proposals for which there are outstanding objections from affected parties, including those from other responsible authorities.

The Government's proposals therefore ensure that Scottish Ministers will be involved, where appropriate, in the process of approving proposals for flood risk

management measures.

The new procedures will also streamline the process by carrying deemed planning consent, and by considerably shortening the time taken to get approval for non-contentious measures, where no objections have been received. There will also be new time limitations on different stages of the statutory process to ensure that it cannot continue indefinitely. However, there is an important balance to be struck between allowing individuals and organisations, which may be directly affected, to object to proposals without allowing the approval process to be unreasonably extended. It is equally important that the outcome is the right decision and that the merits of proposals, and any counter proposals, are properly considered in all the circumstances.

14 The Committee recommends that the Scottish Government establishes further pilot studies to assess the contribution that natural flood management measures can make at a catchment scale.

We recognise that natural flood risk management is an important component of sustainable flood risk management.

However, we agree that detailed studies across a range of catchment scales are required to establish a credible body of evidence as to how natural flood risk management could sit with other proven sustainable catchment flood risk management measures.

Empirical evidence of the effectiveness, hydraulic impact, operation in different flood scenarios, scale, robustness and potential longevity of different natural flood risk management techniques is required. However, attention should first be paid to reviewing studies elsewhere in the UK and Europe (particularly Denmark and Germany), where such measures have been trialled. The time scales involved in producing any credible scientific and technical evidence at the scales required should not be underestimated. Neither should the need for real measurement and hypotheses testing.

To assist us in developing this research programme we intend to set up a natural flood risk management working group. This group will advise on developing future pilot studies to improve our understanding of the contribution natural flood risk management measures can make to reducing flood risk.

15 The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as a part of each catchment plan – so that specific justification will be needed for any decision not to include such techniques. Guidance on the use of such techniques should be provided and revised in the light of increased knowledge about the effectiveness of natural flood management techniques at the catchment scale.

The Flooding Bill will enable the most sustainable approach to Flood Risk Management to be taken in each case. However, following on from our response to Recommendation (14), we would take the view that it would be misguided to make an absolute presumption in favour of Natural Flood Risk Management in all circumstances before research programmes and studies have proven it to be fully

effective.

- 16 The Committee recommends that local authorities ensure that, when planning permission is granted for new developments incorporating sustainable urban drainage systems, and where Scottish Water is not adopting the system, an appropriate maintenance regime is a requirement of the planning permission.**

SUDS will be vested in Scottish Water provided they comply with the appropriate construction standards. If other cases arise, then as the recommendation indicates, this is a matter for the local authorities.

It is for them to decide whether to use their planning powers to impose conditions when approving planning applications. Conditions have to satisfy a number of tests and particularly in the case of maintenance they would have to be sufficiently precise to be readily enforceable.

Where they are owned by a single responsible person (such as a system serving an industrial site), then it may be possible to ensure that the maintenance is provided. However, where a system is "owned" by a number of domestic householders, enforcement of maintenance obligations is often impractical.

Under these circumstances a requirement to identify a single responsible person/body for assets maintenance would be very useful and should be a requirement of the planning permission.

Local authorities also have powers to enter into planning agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 for the purpose of regulating the development or use of the land.

- 17 The Committee recommends that, given the importance of land-use management, the Scottish Government should ensure it has the power to require changes to land use for flood management purposes. Such a power would have to be accompanied by a provision for landowners to be compensated.**

Such powers are already available to local authorities through the Compulsory Purchase Order (CPO) provisions.

- 18 The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development and structure plans and ensures that a full flood risk assessment is a prerequisite for the granting of planning permission for individual developments in areas at risk of flooding.**

Scottish Planning Policy (SPP)⁷ already includes provisions which are intended to ensure that local authority development plans (structure plans and local plans) are based on a proper consideration of flood risk.

At the strategic planning level the settlement strategy must take account of the potential risks from flooding, with the proposals and policies being based on the SPPs Risk Framework and SEPA's flood maps.

To that effect it specifically says: "The potential of land to flood should be

considered during the preparation of every development plan in accordance with this SPP.”

“Medium to high risk areas (i.e. where the risk of flooding is greater than 0.5% (1:200)) for watercourse and coastal flooding, and areas where flooding from other causes is an issue which must be identified early in the plan preparation process.” (paragraph 38)

There is a statutory requirement for planning authorities to consult SEPA on planning applications where flood risk is an issue. If the developer has not provided a flood risk assessment or if it is not of an appropriate standard the planning authority, advised by SEPA, have powers to ask the applicant for further information.

These provisions are designed to ensure that planning authorities have the information they need to determine applications for development in areas at risk of flooding.

- 19 The Committee recommends that the Scottish Government ensure that the suggestion of enhanced reinstatement following flooding is communicated to representatives of the insurance industry and should seek to persuade the insurance industry that it is the best way to minimise the cost implications of further flooding incidents.**

The Scottish Government agrees that this would be a benefit in increasing resilience to the impact of flooding. Officials are in discussion with the ABI about its Statement of Principles, and have raised this issue as part of these negotiations. ABI is also represented on the Flooding Bill Advisory Group.

- 20 The Committee recommends that the Scottish Government develops a flood warning strategy and, in doing so, addresses SEPA’s other eight recommendations regarding flood warning.**

Flood warning will continue to play an important role in managing flood risks. The Bill places a duty on SEPA to identify national flood warning priorities, which will form the basis of a national flood warning strategy.

The strategy will form an important component of all flood risk management plans. The following steps are being taken to advance the other recommendations:

- The Scottish Government has recently provided SEPA with funding to allow it to develop a system to disseminate flood warnings directly to end users.
- Upgrading existing flood warning systems and expansion into currently uncovered areas is an ongoing process, and the Scottish Government continues to work in close liaison with SEPA and local Authorities to identify priorities. The proposed development of a flood warning strategy will provide a valuable tool to ensure that funding is focused on those areas in most need or at greatest risk.
- Understanding and assessing pluvial flooding will require a rolling programme of investment. With regard to flood warning, there are a series of technical difficulties in this area, one of which is the suddenness of these types of events. We would expect these issues to be examined by SEPA in detail as part of developing a national flood warning strategy.

The Bill will place a duty on all responsible authorities to take appropriate steps to raise awareness of flooding and flood risk. The raising of awareness would also be a measure that must be considered in flood risk management plans.

- 21 The Committee recommends that the Scottish Government take steps, including by making representations to the UK Government, to ensure that high-resolution radar coverage is established throughout Scotland to ensure that flood warning is as effective as possible.**

Flood warning schemes throughout Scotland are provided by SEPA which was recently granted an additional £1.04 million for flood warning in the North East. Although SEPA does use information purchased directly from the MET office, their flood warning schemes utilise a network of rainfall and river monitors situated at key points along a river, which provides SEPA with detailed information on rivers and early warning of flood risk.

For areas of Scotland not covered by a formal flood warning scheme, SEPA monitors weather conditions around the clock and issues flood watches through Floodline if flooding is likely in a general area.

The Met Office has responsibility to provide a public weather service for the whole of the UK. The Met Office is an agency of the Ministry of Defence and although The Scottish Government subscribes to the Met Office to receive weather forecasts and advance notice of adverse weather conditions as part of its approach to civil contingencies, we do not have a direct funding role. We will discuss with the UK Government how best additional radar coverage can be established in Scotland.

- 22 The Committee recommends that the Scottish Government ensures that SEPA has the necessary funding to enable it to collaborate with the Meteorological Office to provide an effective flood warning system for all types of flooding.**

The Government will ensure that SEPA is funded on a continuing basis to undertake the full range of its statutory functions.

- 23 The Committee recommends that the Scottish Government investigates the possibility of individual property vendors providing information on previous flooding incidents associated with a particular property to potential purchasers and requiring developers to provide flood risk assessments for new developments to potential purchasers.**

The Home Report will be introduced in Scotland on 1 December 2008. The main reason for the introduction of the Home Report is to provide buyers and sellers with information on the condition and value of properties before an offer to buy is submitted. The Home Report will include a Single Survey which will provide information on the condition of a property together with a valuation and an Energy Report. The Energy Report will contain an assessment of energy efficiency and practical advice on reducing carbon emissions and saving energy costs. The Home Report will also include a Property Questionnaire containing further information about the property that will be completed by sellers.

The duty to provide a Home Report applies to houses when they are 'marketed for sale'. This means that the duty will not apply to new build houses or conversions as these types of properties are normally marketed for sale before they are built which would mean the survey would contain little if any information.

The Property Questionnaire, which will be made available to all prospective buyers, contains a question asking sellers to confirm whether the property has previously flooded. A positive answer may alert potential buyers to be cautious. A web link to the SEPA flooding map has also been published on the Home Report website to inform buyers and sellers about where they can obtain further information on flooding patterns.

- 24 The Committee recommends that the Scottish Government takes steps, together with SEPA, local authorities, the emergency services and the insurance industry, to consider how it can educate members of the public at risk of flooding of how they can best protect themselves and their property.**

The Government recognise that this is particularly important in ensuring that a modern approach to flood risk management is achieved. We want to move away from a one dimensional approach and will introduce new measures to provide a portfolio of responses, including flood warning and flood awareness. To truly manage flood risk we need to make better information available to the public and to the responsible authorities on the risk and consequences of flooding from rivers, the sea and groundwater. We are aiming, therefore to establish a framework of responsibility, with duties and powers clearly defined.

SEPA already manages a regular Flood Awareness Campaign. This seeks to engage the public and the business community in areas of potential flood risk, informing them of how to manage flood risk, and of how to protect themselves, their community and their property.

SEPA's 2007/2008 Campaign targeted communities across Scotland which were at risk of flooding, and this involved extensive community engagement, media coverage and the distribution of information.

Category 1 responders under the Civil Contingencies Act (Police, Fire, Ambulance Service, HM Coastguard, local authorities, Health Boards and SEPA) have a duty to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred.

Two aspects of the duty relate to making the public aware of the risks of emergencies in order that they may know what to do before they occur and to warn people at the time of an emergency and provide information and advice as the emergency progresses.

Local responders are required to choose a lead responder to take forward this duty for particular emergencies and must support that lead responder in their activities. Scottish Government has also issued guidance on Warning and Informing the Public.

- 25 The Committee recommends that the fire and rescue service be tasked with coordinating all flood-related rescue activities.**

The Civil Contingencies Act currently does not state that the Fire Service be tasked with co-ordinating all flood related rescue activities.

The Fire (Additional Functions)(Scotland) Order 2005 requires Fire and Rescue Authorities to make provision for serious flooding incidents where fire-fighters would be needed to assist in the rescue of people trapped by serious floods and their transfer to safety.

The Scottish Government will fully consider the matter before any recommendations are made as to whether or not the Fire and Rescue Authorities should be tasked with the co-ordination of all flood related response.

26 The Committee recommends that the Scottish Government explore ways of ensuring that the police service is able to act proactively rather than waiting for the situation to become an emergency.

The Police role, in co-ordinating the emergency phase of any flood emergency is well established and clearly defined within the Scottish Coordinating Group arrangements.

Category 1 responders under the Civil Contingencies Act (Police, Fire, Ambulance Service, HM Coastguard, local authorities, Health Boards and SEPA) have a duty to:

- *“Maintain plans for the purpose of ensuring that if an emergency occurs or is likely to occur the person or body is able to perform his or its functions so far as necessary or desirable for the purpose of preventing the emergency, reducing, controlling or mitigating its effects, or taking other action in connection with it”.*

Preparing Scotland Guidance makes it clear that although the Civil Contingencies Act and Contingency Planning (Scotland) Regulations apply only to preparation for emergencies as defined in the Act, they do establish a framework by which any emergency regardless of its scale or impact may be managed.

It is important to be clear that, although police may not take the lead role in a potential flooding situation before it becomes an emergency, they still perform a key role at earlier stages, working with other agencies in taking preventative action.

There is no impediment to the Police and its Strategic Co-ordinating Group partners taking action to protect the public in the face of a potential emergency.

MICHAEL RUSSELL MSP
Minister for Environment
13 June 2008