



Scottish Environment LINK is the forum for Scotland's voluntary environment organisations representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

The future of flood risk management in Scotland

A response by the Freshwater Taskforce¹ of the Scottish Environment LINK

23 April 2008

Summary

The Freshwater Taskforce of the Scottish Environment LINK welcomes the consultation on the future of flood risk management in Scotland. We see this as an opportunity to make progress from the current fragmented approach to flooding towards a more sustainable, modern approach that works with, rather than against the natural processes. Benefits will not be restricted to people and economy, but will also benefit biodiversity and the wider environment.

We believe that the new Bill should address the following key areas:

- **Review, streamline and where necessary amend the existing legislation that contradicts the aims of sustainable flood management**
- **Establish strong decision making structures to address flooding, nationally and regionally, that run in parallel with structures established by the Water Framework Directive**
- **Clarify and strengthen the responsibilities for flood management and ensure better co-ordination between 'responsible' authorities**
- **Transpose the requirements of the EU Directive on the Management of Flood Risk, ensuring that Flood Hazard Maps and Flood Risk Maps are completed by 2010, flood risk assessment is done by 2011 and flood risk Management Plans are established by 2015 with the active involvement of public**
- **Ensures fairness and transparency in decision-making**
- **Introduce duty on responsible authorities to integrate decision making processes and funding streams that have relevance to flooding**

¹ The Freshwater Taskforce has the following members: RSPB Scotland, WWF Scotland, Scottish Wildlife Trust (SWT), Buglife and National Trust for Scotland (NTS)



Introduction

Scottish Government is committed to sustainable flood management and to introduce in Parliament a Bill on flooding in June 2008. LINK Freshwater Taskforce welcomes this commitment and sees this as an opportunity to make progress towards a more sustainable, modern approach to flood risk management. **However, we feel that such important legislation should have been presented for consultation as a draft Bill.** The Bill provisions presented here will obviously not cover the full wording of the Bill, which we feel should have been open for consultation.

The EU Directive on the Management of Flood Risk (the Floods Directive) is part of the same family of European Directives as the Water Framework Directive (WFD) that Scotland transposed in 2003, through the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act). The Floods Directive is ready to transpose. It provides a good framework for the Scottish legislation. In particular, we recommend that the Scottish legislation aims to:

- Promotes the concept of integrated catchment flood management
- Requires a long-term planning approach to reducing flood risks
- Makes flood management a key part of river basin management
- Places emphasis on non-structural measures such as using natural floodplains to store or slow water during floods.

Scotland led the way in the transposition of the WFD, legislating for the structures to enable meaningful participation and deliver Good Ecological Status, to safeguard the quality and health of Scotland's precious water environment. The transposing legislation – the WEWS Act set out a good framework to build upon to deliver sustainable flood management. By enhancing and clarifying the current roles in flood management, and by using the structures that already exist under the WEWS Act, Scotland is well placed to put in place smart, effective and efficient arrangements to plan for and manage flood risk.

The WEWS Act duty on sustainable flood management and the designation of responsible authorities

Sustainable flood management is not a new concept in Scotland. A duty on sustainable flood management (SFM) has been in place for some time. The Water Environment and Water Services (Scotland) Act 2003 (the 'WEWS Act) introduced this duty on Scottish Ministers, SEPA and responsible authorities:

'The Scottish Ministers, SEPA and the responsible authorities must – so far as is consistent with the purposes of the relevant enactment or designated function in question –

(i) promote sustainable flood management

and,

c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions. '

(Water Environment and Water Services Act section 2 (4) (b) (i))

However, to this date, no further changes to flood policies have been made as a result of this new policy. However, the designation of 'responsible authorities' under



the WEWS Act should be used to inform the designation of 'responsible' authorities for the purpose of flood management.

Integration

The challenge and strength of SFM lies in the recognition that many human activities within a catchment, and historic and current land use affect flooding. This means, that integration between the different land uses is essential to the success of SFM implementation. Integration should be achieved at three levels:

- **The need to address all forms of flooding**

All forms of flooding contribute to the overall flood risk – surface water, river flooding, coastal and groundwater. All forms of flooding must be addressed in an integrated way.

- **Need for integration of policy and funding**

If SFM is to be achieved, there will need to be policy integration, particularly between water and land use policy.

- **Need for integrated working between relevant authorities**

Many different authorities will be involved in implementing the SFM. Important aspect of achieving integration will be through placing duties on relevant authorities to work together to secure compliance. We welcome inclusion of some of these duties in the Bill Provisions. In some cases, we have suggested additional powers or duties that we feel would strengthen the legislation.

Answers to specific questions

Q1. Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?

Yes, it is helpful as a legal definition but a simpler, interpreted version would be of practical benefit to flood risk managers and lay people.

Scottish Environment LINK has been instrumental to the production of the Flooding Issues Advisory Committee's (FIAC) definition on Sustainable Flood Management. As such, we strongly support the work of the Committee, and the principles behind the definition. In particular, we stress the importance of the wording of "*by protecting and working with the environment*", which highlights the importance of the environment to deliver resilience against flooding.

Q2. Do you think the definition is clear and simple to understand?

It is clear but not simple to understand. The definition sets our clear principles of sustainability – but it does not inform practitioners of the steps needed to achieve SFM in practice. The guidance needs to recognise that SFM can only be achieved by:

- taking a strategic approach,
- by using a wide range of options to reduce the risk of flooding



- taking a long-term view
- openness and transparency
- taking the view of multiple benefits

We agree that these are the principles of SFM and should form the baseline of the new statutory guidance. We stress that any guidance should aim to provide practical advice on how to best achieve SFM. It should be subjected to full public consultation and testing for clarity and interpretation and usefulness prior to its release.

Q3. Do you agree with the conclusion as set out in paragraph 3.17?

We believe that a competent authority needs to be identified for the purpose of the implementation of the Floods Risk Directive, and that the authority should be SEPA. Appropriate funding from the Government will be needed to support SEPA in this new role. The Scottish Government should also aim to address the current issue of capacity and expertise, and support the role of universities and educational establishment in producing the flood managers of the future.

Q4. Do you agree that there should be a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?

As stated above, we support the designation of SEPA as the competent authority for the implementation of the Floods Directive. However, we recognise that SEPA does not currently have the resources or expertise to lead on all aspects of the Directive's implementation. This must be addressed through adequate resourcing and placing of duties on other relevant authorities.

Q5. Do you agree that this is a sound basis for the development of Local Flood Risk Management Plans? If not what alternative do you propose?

We understand that under the revised proposals, local authorities will be responsible for the production of local plans. We agree and support the revised proposals to have one district plan which would be influenced by guidance and national priorities identified through the national planning process. We also support the top-down and bottom-up approach to the development of district and local plans, and the creation of advisory groups to support the production of local plans. Advisory groups should consist of appropriate senior representatives from responsible authorities, as well representatives from organisations with relevant expertise.

We strongly recommend that the Scottish Government considers an intermediate type of plan between District and Local. These **Area plans** could be applied where required in large, urban areas with complex flood risk scenarios, administered by multiple local authorities and other Responsible Authorities. We have agreed that local authorities should retain their role in local flood management and lead on the production of local plans. However, in order to ensure a truly integrated approach, the Bill should introduce a requirement on Local Authorities to form '**flood committees**' where catchments cross one or more local authority boundaries. Local authorities will be required to work together and share funds within these committees.

A submission by the Freshwater Taskforce of the Scottish Environment LINK

4

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The production of local or Area plans should be supported with appropriate guidance and practical advice. Local authorities should have a statutory duty to ensure that local and Area plans are consistent with the District plan, and that the plans contribute towards meeting the District plan's objectives. These intentions should be made clear in the biennial reports produced by local authorities.

In addition to the above, we propose the introduction of a **call-in procedure for local plans**, by which SEPA (as the competent authority) and the Responsible Authorities have a statutory role in confirming that local plans are consistent with the aims of the District Plan. Ministers should be notified where local plans fail to adhere to the requirements of the District Plan.

Q6. Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?

The revised proposals indicate that Local Authorities will be in charge of producing local flood risk management plans. Whilst we support this development, we believe that the local process must ensure:

- local accountability
- integration with key policies
- local authorities working together within catchments
- integration of funds

A detailed process for the production of local and Area plans, as well as a call-in procedure is set out in the answer to question 5.

Q7. Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?

Yes, we support the identification of the above authorities as responsible authorities.

Q8. Which other bodies should be identified as responsible authorities?

The Scottish Executive's Flooding Issues Advisory Committee (FIAC) has begun the work to consider the roles of public bodies other than Local Authorities, and of Scottish Ministers, in promoting sustainable flood management. Rural land use issues (e.g. forestry, agriculture, deer management, conservation) were identified as being particularly relevant, as well as housing, economic development, water and sewerage, rail transport, etc. We understand the difficulty in engaging land users, particularly farmers and sporting estates, at a district and local level but suggest that it must be explored.

The Freshwater Taskforce representatives believe that in addition to the proposed and suggested bodies, the following should be considered for designation: Scottish Ministers, the Water Industry Commission, Network Rail and Energy and Rail industry regulators, Fisheries Research Services (as part of Ministerial functions).



Scottish Ministers have a range of strategic, appeal, approval and funding roles, and as such, Scottish Ministers should be made the responsible authority for the delivery of SFM. Key functions include:

- town and country planning (e.g. appeals, inquiries, guidance, strategic development plans);
- agriculture (e.g. making regulations which are the basis of payments to farmers, setting priorities for the Scottish rural Development Plan);
- policies for/decisions on water and sewerage investment;
- transport (e.g. trunk roads; railway infrastructure; ports & harbours; coastal navigation);
- regulating inshore and inland fisheries;
- energy;
- licensing activities affecting protected species which depend on the water environment;
- building standards, housing & community regeneration;
- Historic Scotland (built heritage in/near water)

Designation of the Water Industry Commission as responsible authority

Under the Water Services (Scotland) Act 2005, the Water Industry Commission (WIC) has duties to determine the maximum charge limits within a framework of standards and objectives set by Scottish Ministers. The work of the WIC in assessing Scottish Water (SW) expenditure and SW customer charges influences the degree to which issues of sustainability can be addressed in SW's investment programme. The restricted focus of the WIC on reducing SW's costs risks creating a short term, cost-cutting culture in the water industry encouraging bad practice in construction, inhibiting consideration of long-term sustainable solutions and reducing the water industry's sustainable development performance. Scottish Water will only be able to deliver SFM, if it is given adequate funds to fulfil its new role. We would therefore strongly recommend the designation of the WIC as a responsible authority.

Fisheries Research Services are currently responsible for consenting engineering activities under the Fisheries and Foods Act. As part of this function, FRS should have duties towards sustainable flood management. In addition, we suggest that it could make a significant scientific contribution to linking the aims of the Floods Directive with the related Water Framework Directive, particularly in the context of restoration and remediation works linked to flood management projects at a river basin level. FRS is a Scottish Government agency, and therefore its functions need to be designated as part of the functions of Scottish Ministers.

Q9. Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?

Yes, there will be many different authorities involved in implementing SFM. An important aspect of achieving integration will be through placing duties on relevant authorities to work together to secure compliance. However, we believe that additional requirements should be placed on responsible authorities (RAs), and these include:



- RAs should be required to contribute to the implementation of the District and local plans
- RAs should be required to share appropriate funds with the aim of contributing to the achievement of the aims of objectives of District and local plans

In addition, local authorities should be required to:

- Form '**Flood Committees**', where a particular catchment area crosses one or more local authority's boundaries, to share expertise, knowledge and funds with the aim of developing and implementing a flood plan within that area.
- The need for the establishment of '**Flood Committees**' should be identified in the district, local or Area flood risk management plan. Please refer to the answer to question 5.

Q10. Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?

A real issue concerning public participation is securing ownership of the Plan. There are substantial benefits to be gained by promoting genuine participation, not least of which is the cost effectiveness of identifying and solving conflicts at an early stage.

We believe that stakeholder engagement will be essential to the success of both District and Local Plans. We would therefore strongly recommend that the Bill introduces a requirement to engage, listen to and work with the local community and appropriate stakeholders in the plan preparation, as is the case with the RBMP.

Q11. Do you agree that the Bill should set out a process similar to that for River Basin Management Planning for the preparation by SEPA of area flood risk management plans?

Yes, we reiterate our support for Flood Risk Management Plans being statutory documents, with the District Plan being endorsed by Ministers. We also regard stakeholder involvement as one of the ways of ensuring the accountability of the plans. We firmly believe that full participation will save time and resources in the long term, by reducing conflicts and the number of "unresolved" issues submitted to Ministers.

We recommend a slightly different approach to developing local plans by local authorities to ensure better accountability – as set out in the answer to question 5. We propose to introduce a **call-in procedure for local plans**, by which SEPA (as the competent authority) has a statutory role in confirming that any local plan is consistent with the aims of the district plan. We also recommend that Responsible Authorities have access to a similar call-in procedure where they have identified issues requiring resolution by Ministers.

Q12. Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?



Yes, Ministerial approval will be essential part of this process. As emphasised above, we believe that Ministers should be required to approve district plans, and where necessary, call-in local plans on advice from SEPA or Responsible Authorities, and in cases of unresolved objections.

Q13. Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?

We recommend that a requirement for a national assessment of surface water drainage is introduced as part of the implementation of Floods Risk Directive.

The development of local flood risk management should include integrated appraisal of sewerage, watercourse and sustainable drainage options. Such appraisal should also include opportunities for the enhancement of urban watercourses, city landscapes and also aim to improve water and habitat quality for biodiversity. We recommend that each major city/town at risk of flooding in Scotland should aim to produce an integrated drainage plan by 2015, as part of catchment flood management planning.

In addition, the flood standard for surface water drainage in Scotland is currently designed for 1:30 flood events. We recommend that a consideration is given to introducing a new standard for dealing with surface water run-off which includes the use of sustainable urban drainage schemes and porous surfaces to deal with excess water run-off before it enters the drainage system. This will reduce the pressure on drainage system and help with the management of 1:100 or even 1:200 year flood events in line with flood scheme standards, and particularly within the context of climate change adaptation.

Q14. Should Flood Risk Management Plans inform the way that development plans are prepared, or should there be a stronger linkage such as a requirement on planning authorities to show that they have regard to the FRMPs?

Yes, the National Planning Framework should aim to inform strategic development on SFM. This should include full integration with the District FRMP in terms of avoiding development in areas of significant flood risk and in identifying suitable areas for floodwater retention. Local Authorities should therefore be required to have regard to, and integrate with FRMP in development planning or any other appropriate planning process.

Q15. Do you think that the granting of deemed planning permission at the end of the statutory process for flood risk management will deliver a more streamlined approach to the delivery of flood risk management?

We recommend that the requirement under the Planning (Scotland) Act for approval of planning applications is retained, and local authorities are required to advertise, seek objections and resolve objections as necessary.



Ministerial call-in procedure will be required in cases of unresolved objections and where SEPA advises Ministers that the proposal is not consistent with the requirements of the District Plan.

Q16. Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?

In such cases, CARs authorisation may be adequate. However, the Bill must ensure that the principles of SFM have been adhered to in any plan even if Ministerial confirmation is not required.

Q17. Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?

We are unable to answer this question specifically, for capacity reasons. However, in principle, time taken from the identification of a flood issue to the implementation of solutions should be minimised by the encouragement of an inclusive, integrated and transparent process in flood plan and project delivery.

Q18. Do you think that the option to rely on a local authority based process in a similar way as other local authority development activity should be taken forward?

Much debate has already taken place over the issue of local transparency in the planning system during the passage of the Planning Act through the Scottish Parliament. We believe that the process set out in the answer to question 5 ensures better accountability, whilst retaining local authority lead in proposing local flood management measures. However, the issue of knowledge and experience within Responsible Authorities, and in particular Local Authorities, must be dealt with in this transition phase created by the modernisation of Scotland's flood legislation and policy. We strongly recommend that professional courses in SFM are created for today's flood practitioners.

Q19. What would be the appropriate timescales for notification and response?

These should be set in line with the requirements under the Statutory Planning system.

Q20. Would it be appropriate for such a process to carry deemed planning consent?

No – planning application process should be obtained as required under the Planning (Scotland) Act.

Q21. How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed, be addressed?

Even in Scotland, which is credited with leading on the SFM approach, the concept of SFM working in practice is new and many parts of it are still developing. It is natural



that knowledge on how to achieve the SFM approach should be relatively limited within Responsible Authorities and others. Therefore, the Scottish Government should provide support to Scottish Universities to produce flood managers of the future. Capacity already exists within SEPA (hydrologists and engineers), consultancies and educational establishment. It is therefore particularly important that SEPA and other experienced organisations are involved in the development of all local projects and plans, and to provide guidance and advice at all stages of the development of local flood risk management plans. SEPA's role (and that of a FIAC type group) will be crucial until local authorities are able to recruit flood managers with the relevant expertise.

Q22. Are there any additional alternatives to the options outlined above which would simplify procedures?

We have outlined our preferred option in our answer to question 5, but would emphasise early engagement with stakeholders.

Q23 Do you consider local authorities' powers are sufficient to take necessary action to avert danger to life and property?

We do not consider ourselves as having enough capacity to answer this in depth but would support the establishment of a stronger duty to take action to avoid danger to life and property, and to recover the costs of such action. We suggest that this could be a role for insurance companies or their professional bodies. They are extremely knowledgeable on flood risk and associated issues.

Q24. Do you agree that streamlining the CAR and flooding/planning processes can be managed through better guidance?

We agree that there is scope to streamline the CAR and the planning process through better guidance and that the CAR procedure should be retained as a stand-alone procedure.

Q25. Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?

Scottish Government is responsible for a number of policies that have direct relevance to the success of SFM. These include, for example, the Water Environment Water and Services (Scotland) Act, town and country planning, agricultural policies and regulation, policies and decisions on water and sewerage investment, transport, energy; licensing of activities affecting protected species which depend on the water environment; as well as building standards, housing & community regeneration. Integration of relevant policies and decision making processes on flood management will be required across many Government departments and its agencies, administrative structures and processes should reflect this approach.

Q26. Do you think that there is an alternative approach to simplifying the process of promoting flood measures to those discussed above which the Government should consider?



Yes - as discussed in the answer to question 5.

Q27. Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?

Yes, we agree. We recommend that biennial reports include the following:

- Description of how the proposed measure contributes towards meeting the aims of a District or area flood risk management plan
- Description of measures undertaken to consult with responsible authorities, wider stakeholders and the public
- Measures undertaken to ensure integration of objectives and funding with other plans and policies

Q28. Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?

The outlined proposals will go some way towards achieving SFM. However, the proposals only create a framework; the delivery will be strongly influenced by the processes put in place at district and local level. Two of the major challenges for implementing SFM will be:

- Convincing local communities and landowners that breaching coastal and river embankments on their land is a sustainable solution to the flood management and sea level rise, in addition to providing a range of environmental and socio-economic benefits.
- Replacing the reactive and structural-based flood scheme mindset with the integrated, catchment approach, process-based methods fundamental to SFM.

The members of the Freshwater Taskforce have some experience in dealing with such difficulties, and much effort will be required by local (and responsible) authorities to convince landowners of the benefits of using their land as flood storage. Appropriate financial incentives for long-term management and compensation for the loss of land/production must be put in place in time for the development of first local flood management plans. We further advocate the setting up of local demonstration projects and pilot projects to test the effectiveness and the benefits of the new approach.

Q29. Do consultees feel that this is enough to ensure that flood risk is addressed or should local authorities have a new duty to promote measures to alleviate flooding?

Managing the risk of flooding is a shared responsibility, and the achievement of SFM will require a truly integrated approach. Scottish Government has a key role to play – in ensuring that all current policies (agriculture, planning, forestry, climate change) reflect the need for an integrated approach and encourage cooperation between those responsible for flooding.



RESERVOIR SAFETY

We do not have the capacity to answer the questions on Reservoir Safety in a useful way.

Q30. Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?

Q31. If so, should it be SEPA or another as yet unidentified body?

Q32. Are you content with the proposals for dealing with reservoir flood maps under the provisions of the Floods Directive, or do you think that there should be a statutory duty on reservoir undertakers to prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?

Q33. Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?

Q34. Views on crown application and any other comments?