

*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*

## Flood Risk Management (Scotland) Bill

### Stage 3 debate

#### 1. Summary

- This Bill already represents a significant improvement to flood management in Scotland.
- It introduces a new framework for managing flood risk, moving away from the current reactive approach that relies on hard engineering, towards catchment based, sustainable solutions.
- The Bill has improved considerably at stage 2, but a number of issues remain to be addressed through stage 3 amendments.
- The key amendments for stage 3 include i) strengthening provisions for the consideration of natural flood management, ii) ensuring that Ministers provide adequate funds to responsible authorities and SEPA to implement the new Act, and iii) addressing the issue of sustainability of the Water Industry Commission and Scottish Water.
- LINK believes that the proposed amendments will greatly strengthen the Bill.
- **Overall, LINK recommends that the Parliament should pass this Bill.**

#### 2. Introduction

Climate change predictions suggest that Scotland is set to get wetter and stormier, increasing the risk of all forms of flooding. Floods that are currently considered 'extreme' will become more common in future. Increased storminess and sea level rise will result in mounting pressures on existing sea defences, putting homes and lives at risk. The current flooding legislation is no longer fit for purpose. The Flood Risk Management Bill represents a significant improvement to the way we manage floods, moving away from the current reactive approach and towards 'sustainable flood management'.

#### **Changes made at stage 2 of the Bill**

Significant improvements were made to the Bill at stage 2. For example, the long title of the Bill was changed to include the phrase 'sustainable' – making it clear beyond doubt that the legislation is about sustainable flood management. A new duty was introduced on Scottish Ministers, SEPA and responsible authorities to *act with a view to achieving the objectives set out in flood risk management plans*. This duty will go some way to ensuring the implementation of flood plans. However, a number of outstanding issues remain to be addressed at stage 3, and these are discussed in detail below.

#### 3. Key amendments proposed at stage 3

##### *i) Strengthening the provisions for natural flood management*

Natural flood management is a key part of sustainable flood management. It restores the natural river and coastal features and processes with the aim of slowing down the flow of water and storing water along catchments. By restoring natural land and water processes, natural flood management techniques can directly contribute to reducing flood risk to people and property, and provide additional benefits such as conservation of

biodiversity, habitat protection, adaptation to climate change and improved water quality and amenity. Furthermore, it offers a long-term solution to the management of flood risk. Natural flood management will often be used in combination with hard engineering, but hard engineering should be considered **after** natural flood management. This is because natural solutions can be more sustainable in the long term, are cheaper to maintain and can provide additional benefits to local communities. **We would welcome a commitment from the Minister that natural flood management will be considered first when deciding about structural measures to address flood risk.** This commitment, together with a number of stage 3 amendments listed below, could provide the much needed shift in the design of structural measures towards more natural solutions. The most important amendment with this regard is amendment 65 that requires SEPA to consider natural flood management when considering structural measures for flood management.

- The proposed amendment 65 to section 24 requires that SEPA must consider natural flood management when considering structural measures. This amendment, in combination with government amendment 60 to schedule 1 on reporting and the amendment 36 on guidance to SEPA on the setting of objectives and identification of measures, meets the recommendation of the Rural Affairs and Environment Committee for a 'presumption for natural flood management'. LINK greatly welcomes and supports these amendments.
- The proposed amendment 30 to section 16 deals with the issue of scale for the assessment of natural flood management. During stage 2 it has become clear that the assessment of natural flood management will only be meaningful if it is carried out at the appropriate scale to allow for the consideration of measures at national and local scales. Amendment 30 is a much welcome amendment, which LINK strongly supports.
- The proposed amendment 17 to section 84 deals with the issue of flood protection works and natural flood management. The amendment seeks to widen the scope of flood protection works to include natural flood management. This amendment is important to ensure that natural flood management is considered together with more engineered approaches. LINK welcomes and supports amendment 17.

## **ii) Funding**

Funding for flood management is an important issue that was subject to much debate during the previous stages of the Bill. The benefit of the new approach will only be realised if adequate funds are provided to SEPA and responsible authorities to allow for the implementation of the Bill. Amendment 4 to section 36 requires that Scottish Ministers, in considering funds for flood management, have regard to flood risk management plans. We believe that this amendment is needed to ensure that adequate funds are made available. We therefore fully support amendment 4.

## **iii) Sustainability of Scottish Water**

Scottish Water's functions are driven through the provisions of the Water Industry (Scotland) Act 2002. The Act requires that improvements to Scottish Water's functions are delivered at the '*lowest reasonable overall cost*'. There is currently no definition of this provision, and the interpretation is left to Scottish Water and the Water Industry Commission (the WIC). Concerns were raised at stage 1 of the Bill that Scottish Water does not consider sustainability issues when deciding on its investment programmes. The current governance of Scottish Water, which includes Scottish Ministers and the WIC does not encourage sustainable approaches. Amendments 15 and 16 seek to address some of these issues by amending the relevant sections of the Water Industry (Scotland) Act 2002. Amendment 15 requires that Scottish Ministers consider Scottish Water's duty on sustainable flood management when issuing directions to Scottish Water on

objectives. Amendment 16 requires the WIC to consider Scottish Water's duty on sustainable flood management when exercising its functions regarding charges.

Whilst the issue of Scottish Water and sustainability is wider than the scope of this Bill, we believe that these amendments go some way towards ensuring that Scottish Water can deliver sustainable solutions to flood management. However, following concerns raised by the RAE Committee, we would **welcome a commitment from the Minister that the issue of Scottish Water and sustainable development will be dealt with at the earliest opportunity**. In the short-term, this could be achieved by Scottish Ministers issuing guidance to the WIC on the issue of sustainability and the exercise of functions regarding charges. In that regard, we fully support these amendments and would welcome a Ministerial commitment to issuing guidance to the WIC. We hope that these amendments generate good debate.

#### ***iv) Other important amendments***

- Amendment 26 (and 8, which achieves the same outcome) to section 2 proposes that guidance is issued on sustainable flood management. This amendment is particularly welcome as it will provide for a common understanding of what it means to '*act in the best way calculated to manage flood risk in a sustainable way*'. The guidance also provides for the interpretation of social, environmental and economic impacts in flood risk management. Such guidance will be important in assisting the implementation of sustainable flood management. LINK therefore welcomes and fully supports this amendment.
- Amendment 31 to section 19 expands the scope of the flood risk mapping to include Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Sites of Special Scientific Interest (SSSIs). This amendment will ensure protection is offered to important wildlife areas. LINK fully supports this amendment.
- Amendments 11 and 12 (21 and 22 also achieve the same outcome) to section 49 deal with the issue of local authority functions and land management. Amendment 11 (and 21) expands the general powers of local authorities to manage flood risk through land management. Amendment 12 (and 22) provides for adequate compensation for lost income that result from changes in land management. LINK welcomes and fully supports these amendments.

#### **4. Recommendations**

- Scottish Environment LINK asks MSPs that support be given to all proposed stage 3 amendments, as these aim to further strengthen the Bill.
- In particular, we ask MSPs to support amendments that deal with the consideration of natural flood management. This includes, in particular, amendment 65 to section 24.
- The importance of the issue of funding can not be underestimated and we ask that support is given to amendment 4 that provides for Ministerial consideration of flood risk management plans when allocating funds for flood management.
- Scottish Water has a key role to play when dealing with surface water flooding. As such, Scottish Water must be encouraged by its regulators to consider sustainable options. Amendments 15 and 16 deal with this issue and we ask that MSPs support these amendments.



For further information please contact:

Andrea Johnstonova, Convenor of LINK's Freshwater Taskforce

[Andrea.Johnstonova@rspb.org.uk](mailto:Andrea.Johnstonova@rspb.org.uk) or Julia Harrison, Parliamentary Officer for RSPB Scotland [Julia.Harrison@rspb.org.uk](mailto:Julia.Harrison@rspb.org.uk) or on 0131-311-6500.

For further information about the Flooding Bill and background briefings go to

[www.scotlink.org](http://www.scotlink.org)