

*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*

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The Scottish Parliament  
Edinburgh  
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## Flood Risk Management (Scotland) Bill

### Stage 1 written evidence from Scottish Environment LINK on the general principles of the Bill

#### Summary

- The Freshwater Taskforce of Scottish Environment LINK welcomes the general principles for the Bill, and the new flood risk related duties for Scottish Ministers, SEPA and Responsible Authorities. However, whilst these provisions make the new flood risk related functions clear, they do not ensure the *sustainable delivery* of flood risk management. There is much scope to improve the provisions and safeguard the adoption of sustainable approaches to flood management in this legislation.
- The Bill creates a new framework for the future management of flood risk. Whilst we are generally supportive of the new framework, a number of key elements could be strengthened. This includes strengthening the role of natural flood management, clarifying the role of catchment based planning and better co-operation with land uses and other relevant policies.
- The Bill should introduce clearer provisions for natural flood management and a presumption for the use of natural flood management measures in flood risk management planning, as recommended by the Committee in its Flooding inquiry.
- A stronger trigger to policy join up should be introduced for all Ministerial departments and responsible authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the flood risk management plans.
- Local Authority should be given stronger duties to work with, and co-operate with, farmers, foresters and land managers in flood risk management planning, and flexible powers to deliver changes to land management.
- A new duty on local and responsible authorities to implement/contribute to the implementation of measures in flood risk management plans is needed.
- Adequate funding must be made available to establish the framework for SFM. Funding for flood management measures should be allocated on a catchment basis for each local flood risk management plan.

**Overall, we believe that the Committee should support the general principles of the Bill whilst recommending that several improvements are considered as part of stage 2.**

## Scottish Environment LINK-

- is the liaison body for Scotland's environmental organisations, the members of which are supported by around 500,000 people. LINK member organisations have been actively involved in work on water issues and have worked in partnership with the Scottish Government in the lead up to this Bill, they;

- Were actively involved in the transposition of the Water Framework Directive into Scots law, and instrumental to introducing a duty on Scottish Ministers and Responsible Authorities to 'promote sustainable flood management'.
- Have been active members of the National Technical Advisory Group on flooding (NTAG) and the Flooding Issues Advisory Committee (FIAC) and instrumental in producing the definition of sustainable flood management
- Are active members of the Flooding Bill Advisory Group, and the Natural Flood Management sub-group
- Have been instrumental in improving the understanding and the benefits of natural flood management
- Have provided written and oral evidence to the Environment and Rural Affairs Committee on its Flooding Inquiry
- Held a number of events for MSPs and other stakeholders on the issue of flooding.

All the previous submissions, briefings, reports and consultation responses can be on the LINK website

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

The following organisations are members of the Freshwater Taskforce and support this submission:

RSPB Scotland, WWF Scotland, Buglife, Scottish Wildlife Trust

We would welcome the opportunity to develop any of the points here either through oral evidence or through further written submissions.



*for a living planet*



## Introduction

The Freshwater Taskforce of the Scottish Environment LINK welcomes the opportunity to provide written evidence to the Rural Affairs and Environment Committee on the Flood Risk Management (Scotland) Bill. The Bill aims to introduce a modern approach to the management of flood risk in Scotland, making it suitable for the communities and pressures of the 21st century.

Whilst we greatly welcome and support the general policy objectives of the Bill, as stated in the Policy Memorandum, we have some concerns as to the delivery of these aims through the legislation. This submission highlights these concerns, particularly in relation to:

- **Weak duties/provisions for the sustainable management of flood risk**
- **Lack of clarity on the use of natural flood management as key component of flood risk management planning**
- **No provisions to ensure that measures contained in flood risk management plans are implemented on the ground.**

We further discuss the role of farmers and land managers and the need for better integration with land use management planning, agricultural regulation and River Basin Management Planning. In addition, the financial implications of the Bill and the economic benefits of sustainable approach are discussed towards the end of this submission.

Some of these issues are fundamental to the recommendations of the RAE inquiry into Flooding and Flood Management. We are concerned that some of these recommendations have not been fully met in the new Bill. Specific recommendations from the RAE report are listed in *italics* at the start of each relevant section and suggestions are made on how these recommendations could be better incorporated into the Bill.

## 1. Provisions for the sustainable management of flood risk

### **Flood Risk Management Bill, Policy Memorandum:**

The provisions in the Bill will create a framework that will ensure that all persons and organisations involved in flood risk management can coordinate their efforts to deliver sustainable approaches to managing all forms and consequences of flooding'.

As clearly stated in the policy memorandum, the Bill's intention is to deliver sustainable approaches to flood management. We fully agree and support this statement, but we are not convinced that the Bill's language is clear enough to deliver this aim. The only provision made in the Bill for sustainable flood management (SFM) is in a duty on SEPA, and others 'to promote SFM'. This duty has already been in place for 5 years through the Water Environment and Water Services (Scotland) Act 2003, but has not been implemented on the ground in any way or form. 'Promoting' SFM is fundamentally different to 'implementing'. It would be a missed opportunity if the new Bill failed to deliver its main purpose due to such weak duties. We therefore recommend that the Committee considers how best to ensure delivery of SFM, and we make the following suggestions:

- Including 'sustainable management of flood risk' in the long title of the Bill, and
- As part of general duties on Ministers, SEPA and responsible authorities:
  - Introducing a stronger duty on Scottish Ministers, SEPA and Responsible Authorities on SFM, such as to 'further the implementation of SFM'

- Ensuring that social, economic and environmental impacts are considered when addressing flood risk
- Ensuring that those responsible for flood risk management adopt an integrated approach

## 2. Provisions for catchment based approach to flood risk management

**Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 6:** *The Committee recommends that the Scottish Government adopt the catchment as the fundamental unit for flood management.*

LINK has discussed the benefits of a catchment approach to flood management in its previous submission to the Flooding and Flood Management Inquiry and we do not intend to discuss this issue here in further detail. After all, this was one of the key recommendations from the RAE Flooding Inquiry. Despite this, we do not feel that the intention for a catchment approach is clear, in particular in relation to requirements on local authorities to consider a catchment approach in local flood risk management planning.

Therefore, we seek clarification as to the intention of the Bill in this regard.

## 3. Provisions for natural flood management

**Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 15:** *The Committee recommends that the legislation creates a presumption in favour of natural flood management techniques being used as part of each catchment plan...*

We warmly welcome the proposal for the *Assessment of contribution of natural features* to flood management in Part 3, section 16 of the Bill. However, we remain concerned that this provision does not place natural approaches to flood management at the heart of the new Bill. We do not feel that this provision meets the recommendation of the RAE Committee in its Flooding Inquiry report to introduce a presumption for the use of NFM techniques. Furthermore, we are concerned over the wording of this proposal. Currently, it only provides for the assessment of natural features and not for the assessment of the natural processes related to flooding. Both components - natural features and flooding processes are important part of natural flood management. Again, there is much scope to improve the provisions for NFM, and we would recommend:

- Section 16 to include *the assessment of natural approaches to flood management*, which would include within its scope natural features and flooding processes;
- Introduce a *presumption in favour of natural flood management in flood risk management plans* in section 24 of the Bill as recommended by the Committee;
- Introduce timescales by which such assessment must be produced;
- Introduce requirements on SEPA to consult local authorities, Responsible Authorities and other relevant stakeholders in making such an assessment;
- The assessment should produce a 24 year vision, with a more detail assessment covering a period of/being reviewed every 6 years, and
- The assessment must consider environmental objectives in River Basin Management Plans.

We believe that if the above recommendations are taken forward the provisions for natural flood management will be greatly improved. Whilst natural flood management is a new concept, it has proven to be effective in lowering flood risk and is integral to the sustainable outcome of the new Bill.

#### **4. Ensuring the funding and implementation of plans and measures on the ground**

**Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendation 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.*

Scotland's communities will only benefit from the new, sustainable approach if the measures contained in flood risk management plans are funded appropriately and implemented on the ground. Whilst we welcome the provisions in the Bill for identifying responsible authorities in statute and a general duty to reduce flood risk, we remain concerned over the implementation of measures identified in flood risk management plans and the processes by which they could be funded.

#### **A new duty to implement/contribute to the implementation**

We believe that in order to see full benefits of the new approach, a duty to implement or contribute to the implementation must be written in the law. Without such duty, there is no guarantee that measures identified in flood risk management plans will be implemented. This is particularly important in light of the competing pressures on local authorities to deliver many other objectives. The new duty could sit in a new section 37 in a section on *Local Flood Risk Management Plans*.

#### **Funding flood management measures**

Funding which is made available for flood risk management should be spent on lowering flood risk to communities. If the funding is not linked to the flood risk management plan and there is no direct duty on local authorities to deliver the measures, then funding is likely to be re-prioritised to help meet other pressing obligations, leaving communities at risk. Funding should be allocated on a catchment basis for each local flood risk management planning area and linked to the flood risk management plan. Where necessary this means that funding could be allocated to one or more local authorities in any one area and may be best held centrally rather than allocated to local authorities through single outcome agreements. Considering the importance of this issue and the current uncertainties we would welcome further clarification as to the future of funding arrangements.

#### **Scottish Water and the role of the Water Industry Commission**

The above applies to other responsible authorities which need to plan for the flooding requirements as part of their spending review processes, including the Quality and Standards investment programme for Scottish Water (SW). There is a clear role for the Water Industry Commission, which is not a Responsible Authority, but which is Scottish Water's economic regulator. SW's investment programme is largely constrained by the level of investment agreed by Scottish Ministers and price caps set by the Water Industry Commission (WIC) for a given period. The current regulatory system involving SW, Scottish Ministers and the WIC does not appear to be 'in tune' with the sustainability requirement of the Water Environment and Water Services (Scotland) Act 2003 or the Water Industry (Scotland) Act 2002. The role of the WIC appears to clash with the duties of SW to contribute to sustainable development. Sustainable solutions may not always be the cheapest solutions for a specific problem in the short term, but may

require a larger initial investment, with longer-term gains. Decisions based purely on economic advantage in the short term, without recognising the social and environmental implications of that decision, are likely to be detrimental in the long term. Sustainable, innovative solutions should be promoted and Scottish Water encouraged by Scottish Ministers and the WIC to contribute actively to sustainable development in Scotland.

### **The role of Scottish Ministers**

Scottish Ministers should also have duties to deliver sustainable flood management through their powers to set the funding for, and approve measures contained in, Scottish Rural Development Programmes and other aspects of the budget. It is therefore essential that a duty on Scottish Ministers and Responsible Authorities to deliver flood measures on the ground achieved through an appropriate funding process is introduced as part of the Bill. The duty could sit in a new section 37.

## **5. Integration with the statutory land use planning system and other land use policies**

**Rural Affairs and Environment Committee report on Flooding and Flood Management, Recommendations 17:** *The Committee recommends that the Scottish Government require all local authorities to assess whether their strategic flood risk assessments are compatible with their development plans and structure plans.*

**Recommendations 18:** *The Committee recommends, given the importance of land use management, the Scottish Government should ensure it has the powers to require changes to land use for flood management purpose.*

All land uses in Scotland impact either directly or indirectly on flooding and therefore have a role of flood management. Policy join-up needs to be effective throughout land management and in the way in which it is planned. Full integration is needed with the statutory land use system, as well as with other land use policies and regulations. Stronger emphasis on policy integration is therefore essential if the Bill is to be effective and in meeting the sustainability objectives of the new legislation. We therefore recommend that a stronger trigger to policy join up is introduced in the Bill. This should include a strong duty on all Ministerial departments and all Responsible Authorities to explicitly ensure that their land and water use policies are integrated with the requirements of the FRMPs.

### **Land use planning**

It is *essential* that the potential contribution of land uses to flood risk management is fully recognised and that land managers are awarded and compensated for their contribution to flood management. The Bill should also aim to strengthen the general duties of Scottish Ministers to integrate all relevant departmental functions in order to provide adequate support to farmers and landowners and to achieve SFM. There should also be a stronger duty on local authorities and Responsible Authorities to cooperate with farmers, foresters and landowners in the production and implementation of flood risk management plans. This could be achieved by strengthening the provisions under section 30.

### **Development planning**

The Bill proposes a general duty on Scottish Ministers, and every public body and office holder, to have regards to the local and district flood risk management plans. This is encouraging but does not necessarily mean that local authorities will be required to



assess whether FRMPs are compatible with their structure and development plans. This could be achieved by strengthening the provisions under section 36. We also recommend that this issue is considered further through a revision of the Scottish Planning Policy on flooding (SPP7) and other appropriate policies.

## **6. Financial implication of the new Bill**

The key policy objective of the new legislation is to shift from our current reactive approach towards sustainable management of flood risk. This means that we need to develop new tools, improve our assessments and mapping of flood risk and put in place new structures that would allow us to make the right decisions for now and in future. Implementing the new framework will take time and resources. Initially, this may require a substantial investment in the development of new frameworks and research agendas. For example, SEPA alone has identified the need for an investment of £8million up to 2015 to fund the development of new modelling tools and data sets. The current allocation of £1.7million on flooding is by no means sufficient to take this agenda forward. Costs will also fall on local authorities as they will require additional funding to support their role in local flood risk management planning. Scottish Government has been developing a research agenda to take forward work on natural flood management and demonstration projects. Despite its importance and political support, the work on NFM is currently hugely under-resourced. In future, some funding could be available through agri-environment and forestry schemes to encourage the beneficial management of land for flooding. However, this funding is likely to be limited.

### **The economic benefits of sustainable flood risk management**

The new framework aims to implement a system by which multiple objectives can be achieved from flood risk management whilst offering reliable and effective protection to communities at risk. This means moving away from reactive, single-purpose flood control solutions, towards catchment based, multi-purpose proposals that also aim to deliver environmental and other benefits. The real benefit in introducing the new framework for flood risk management is therefore in the delivery of multiple benefits and the provision of long-term solutions. These benefits are difficult to estimate in monetary terms, and do not fit well with the traditional framework of cost – benefit analysis.

The current estimate of setting up a framework for the sustainable management of flood risk has been estimated at £76 million. It is worth bearing in mind that the cost of sustainable flood management planning is dwarfed by the cost of some individual flood defence schemes. For example, the Elgin flood defence scheme is estimated to cost in the region of £98 million to protect one small town.

Traditional flood defence measures are very expensive. The present value of Scotland's current flood defences is £1.3 million/kilometre.<sup>1</sup>

It is difficult to generalise about the cost of sustainable flood defence measures as the measures vary widely. However, sustainable flood defence measures are likely to be cheaper as they are far less expensive to maintain in the long term. Even when used in combination with hard defences, sustainable measures are likely to help reduce the overall flood management cost by reducing flood peaks and erosive pressure.

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<sup>1</sup> JBA Consulting, 2007, *Scottish flood defence asset database*. This figure is based on £82 million in costs for 61km of defence. Costs and benefits are best assessed over a long time frame, so that the relevant maintenance and replacement costs can be taken into account. The best way to do this is to use present value, which is the total value of the future benefit stream in present day terms - this allows costs and benefits to be compared more easily. This report used Treasury's Green Book's declining discount rate over 100 years.

We therefore seek reassurance from the Ministers that funding adequate funding will be made available to support Scottish Government, SEPA and responsible authorities in their new roles.

### **Cost-benefit analysis of flood management measures**

For some objectives, such as flood damage reduction, the economic evaluation should be relatively straightforward, requiring the analysis of hydrological, hydraulic and economic data. Despite this, it is difficult to find examples of cost-benefit analyses on a range of different flood options at one site. This is because traditionally, the cost-benefit analysis only assesses monetary values as this provides for a direct comparison of costs and quantifiable benefits. As environmental and social benefits cannot be easily converted into monetary terms, these aspects are often underrepresented in such analysis.

We are therefore concerned that the current cost benefit analysis is insufficient to provide the relative economic costs and benefits of different flood management options. The Committee should seek re-assurance that the cost-benefit analysis of flood management measures will consider non-monetary costs and benefits. Whilst this subject is still new, much research has emerged recently from the UK and elsewhere how such benefits can be incorporated into cost-benefit analysis.

## **7. Conclusions**

This Bill offers a unique opportunity to deliver much improved management of flooding in Scotland. Whilst we welcome the general policy aims and structures for the management of flood risk, we remain concerned over the delivery of sustainable approaches to flood management on the ground. This is particularly relevant as the Bill lacks provisions to ensure implementation of measures on the ground. A number of provisions could be strengthened, including the provisions for natural flood management, integration with other relevant plans and policies, including the statutory land use planning system, and the duties of local authorities to implement measures on the ground. We believe that we will only benefit fully from the new approach to flood management if SEPA, the Scottish Government, local authorities and Responsible Authorities are adequately resourced to fulfil their new duties.

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*Scottish Environment LINK is an umbrella organisation for Scotland's voluntary sector organisations.  
Scottish charity number SC000296*



## **Annex 1: Summary of strengths and weaknesses in the Flood Risk Management (Scotland) Bill**

### **PART 1 and 2: General duty, directions and guidance; and principle expressions**

*We strongly support the following in the Bill:*

- SEPA to be designated as a lead authority
- The designation of 'responsible authorities', including Scottish Water, local authorities and others with roles in flood management
- Strong duty on Ministers, SEPA and responsible authorities to reduce overall flood risk

*The following issues must be addressed:*

- Overall policy must aim to deliver sustainable flood management
- Ensure regard is given to three aspects of sustainability when assessing impact - social, economic and environmental

### **PART 3: Flood risk assessments, maps and plans**

*We strongly support the following provisions in the Bill:*

- Designation of district areas as per the WEWS Act
- The principle behind the provisions for natural flood management in section 16
- Provisions for advisory groups and public participation
- Provisions for reporting and public accountability

*The following issues must be addressed:*

- Catchment based approach to flood risk management planning
- Stronger provisions for natural approaches to flood management
- Stronger provisions for local authorities to consult individual landowners when preparing local plans
- A new duty on local authorities and responsible authorities to implement/contribute to the implementation of measures in local flood risk management plans

### **PART 4: Flood Risk Management: local authority functions**

*We strongly support the following provisions in the Bill:*

- Flexible powers for local authorities to manage flood risk
- Provisions for compensation

*The following issues must be addressed:*

- Duty to implement/contribute to the implementation of measures in local flood risk management plans
- More flexible measures for Local Authorities to manage land for flooding (such as land management orders)