

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

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

No

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

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

Yes, providing guidance and an indication of when CAR authorisation should be sought would help.

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

**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?**

Incorporating the CAR requirements into the Flood Bill to identify issues early in the process.

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

Yes reports should be consistent across all Local Authorities providing the same data sets for comparative assessment.

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

Proposals will improve FRM in Scotland from the current situation though not sure whether Scotland is yet equipped to implement principles of Sustainable Flood Management. The set up of the framework in which FRM will be delivered in Scotland is key in achieving SFM. Especially in terms of the communication and integrated working practice that is required between competent and responsible authorities.

Due to the 1961 Act allowing only 'schemes' to be put forward, SFM measures have not been fully explored. There needs to be a complete attitude shift from 'flood defence' to 'Flood Risk Management'. SFM involves the integration of a variety of techniques to reduce flood risk

including, spatial planning, land use management, flood alleviation techniques involving a combination of traditional hard engineering e.g. (concrete flood walls) and soft engineering (e.g. restoring meanders). The skill set in LA will be focused on traditional engineering as opposed to sustainable catchment management. Therefore there may not be confidence in sustainable methods to alleviate flood risk, perhaps experimental catchments need to be set up to prove and increase confidence that a combination of methods can achieve a reduction in flood risk, this would aid the change in attitudes to be achieved.

The production of Flood Risk Management plans will also help to implement SFM, however to be wholly sustainable these will need to go further than just River Basin Planning i.e. be more than the CFMPs in England and Wales which just cover issues and options, they need to contain realistic workable, practicable and economically sound flood risk solutions. These solutions will be to cover all aspects of FRM, e.g. awareness, avoidance, alleviation etc.

To ensure FRM plans are sound at a national and local level they need to be based on good data. Given that at present a number of authorities have different responsibilities in relation to flood risk there is the issue that 'data islands' may exist. There needs to be a practice of data sharing between the 'competent' and 'responsible' authorities and perhaps a centralised dataset which includes flood hazard mapping (from all sources of flooding) but also accurate information on flood defence assets.

SFM is not only about the alleviation of flood risk, the management aspect in terms of maintenance of watercourses and assets is also extremely important. Therefore FRM plans should include approximated costs for managing and maintaining these.

**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?**

Given the argument highlighted above concerning the likelihood that the skill set within Local Authorities is likely to be focussed around delivering traditionally engineered flood risk schemes, if SFM is to be wholly implemented then a 'duty' should be placed on Local Authorities to undertake this approach.

Local Authorities should have a new duty to promote flood alleviation measures as they should be aware of the needs of their district and the requirements of the community. However, SEPA should be involved in the process to ensure catchment-wide strategies are implemented correctly.

## **RESERVOIR SAFETY**

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

Yes, having worked extensively on the enforcement process in flood risk management in England & Wales, the best way to undertake efficient and managed enforcement is by having one single responsible body. This ensures national consistency in approach, and a better reporting mechanism.

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

As SEPA is the current regulatory body it makes sense that they take on this responsibility.

**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?**

Yes, reservoir plans should be dealt with under the provisions of the Floods Directive. However reservoir undertakers should have a duty to provide all relevant and necessary data they may hold in preparation of these plans. This is because some private reservoir owners do not have the capability or skills to produce these plans.

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

Yes, powers of enforcement should be extended for the event of non-compliance with the 1975 Act. Post incident reporting should be included, this is important data and could prevent future incidents.

**Q34. Views on crown application and any other comments?**

If it represents a flood then Crown Bodies should comply with the provisions of the 1975 Act

**RESPONDENT INFORMATION FORM Annex A**  
**The Future of Flood Risk Management in Scotland**

Please complete the details below and return it with your response. This will help ensure we

handle your response appropriately. Thank you for your help.

Name: Stephen Dickie, MWH Ltd

Postal Address:

Craigevar

House.....

.....  
Craigievar House

77 Craigmount Brae

East Craigs

Edinburgh

UNITED KINGDOM

EH12 8XF

Tel. [REDACTED].....

1. Are you responding: (please tick one box)

(a) as an individual \_ ( go to Q2a/b and then Q4 )

(b) on behalf of a group/organisation ✓ ( go to Q3 and then Q4 )

**Individuals**

2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Government website)?

Yes \_ ( go to 2b below )

No \_ ( We will treat your response as confidential )

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis: ( please tick one of the following boxes )

Yes, make my response, name and address all available \_

Yes, make my response available, but not my name or address \_

Yes, make my response and name available, but not my address \_

Victoria Quay, Edinburgh EH6 6QQ

www.scotland.gov.uk abcdefghij abcde abc a

**On behalf of Groups or Organisations**

3. The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government website).

Are you also content for your response to be made available?

Yes ✓

No \_ ( We will treat your response as confidential )

**Sharing Responses / Future Engagement**

4. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so.

Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes ✓

No \_

Please indicate which questions or parts of the consultation paper you are responding to as

this will aid our analysis of the responses received:

134

**From:** McKissock, Kim [REDACTED]  
**Sent:** 25 April 2008 16:42  
**To:** Flooding, Erosion and Reservoir Safety  
**Subject:** Future of Flood Risk Management in Scotland - FAO Francis Conlan

\*\*\*\*\*  
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has been swept for the presence of computer viruses.  
\*\*\*\*\*

Francis,

I have just completed the online response form for the Consultation on the Future of Flood Risk Management in Scotland however I wanted to make sure my main comments were sent to you directly to ensure they were received. I understand the submission date was Wednesday but was extended to today.

Please find below the response to Questions 14 and 25.

14 If this can be enforced within a reasonable timescale. Local Authorities are required under PPS 25 in England to carry out sequential tests to provide developers with planning information with regards to areas of flooding. Although the guidance was introduced in December 2006, many authorities do not have this information. It seems stricter timescales should be enforced.

In addition, Local Authorities in Scotland are required to keep a record of flooding incidences within their area, however this is often not updated.

Therefore, how will the requirements on SEPA and responsible authorities be enforced within a reasonable timescale.

25 Yes. At present there is very little communication and coordination between local authorities, Scottish Water and SEPA. The newly introduced Sewers for Scotland 2 only allows for surface water discharges into a pond for up to a 30 year RP storm, however, storage is required for a 100 year RP storm and therefore separate storage is therefore required to attenuate flow. Scottish Water will not accept filter drains or swales, yet the local authority encourages the use of these in SuDS strategies. New guidance should be introduced to allow an interaction between Scottish Water and Local Authorities. Section 7 agreements are currently too vague and with the process being too complicated it often puts authorities off working together with Scottish Water. Therefore Section 7 Agreements should be formalised to encourage a partnership.

In addition, private land owners are responsible for watercourses within their properties yet they often do not take responsibility or provide maintenance. A pro-active approach should be taken to avoid flooding, not acting after flooding occurs. Regulation should be introduced to ensure that watercourses are maintained and are regularly checked.

Regards  
Kim

**Kim McKissock**  
**Senior Engineer**

**Waterman Civils**  
Civil and Transportation Engineers

28/04/2008

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**From:** [REDACTED]  
**Sent:** 25 April 2008 16:34  
**To:** Flooding, Erosion and Reservoir Safety  
**Subject:** Consultation Response

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 .....

## The Future of Flood Risk Management in Scotland

### RESPONDENT INFORMATION DETAILS

**Name:** [REDACTED]  
**Organisation:** Waterman Civils  
**Address:** 2-4 Canning Street Lane Edinburgh  
**Postcode:** EH3 8ER  
**Email:** [REDACTED]  
**Telephone Number:** [REDACTED]  
**Responding as:** On behalf of a group or organisation  
**Individual Permission:** Not Supplied  
**Confidentiality:** Not Supplied  
**Group or Organisation:** No  
**Share Response Permission:** Yes

### Consultation Questions

#### The Future of Flood Risk Management in Scotland

<b>Question 1: Do you believe the definition of SFM is helpful and of practical benefit to flood risk management?</b>	Yes but clear guidance is required.
<b>Question 2: Do you think the definition is clear and simple to understand?</b>	Yes.
<b>Question 3: Do you agree with the conclusion as set out in paragraph 3.17?</b>	Yes
<b>Question 4: Do you agree that there should be</b>	

<b><i>a single competent authority with a national remit for implementing the Floods Directive, and that it should be SEPA?</i></b>	Yes
<b><i>Question 5: 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?</i></b>	If this can be enforced within a reasonable timescale.
<b><i>Question 6: Should Ministers or SEPA have the power to designate a lead authority within a local area, or should it be left to the partners?</i></b>	
<b><i>Question 7: Do you agree that Local Authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?</i></b>	If the requirements on them can be enforced within a reasonable timescale.
<b><i>Question 8: Which other bodies should be identified as responsible authorities?</i></b>	
<b><i>Question 9: Do you agree that responsible authorities should have a duty to work together within Flood Advisory Groups to produce plans?</i></b>	
<b><i>Question 10: Do you agree the proposals are sufficient to support wider stakeholder and community engagement in the flood risk management planning process?</i></b>	
<b><i>Question 11: 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?</i></b>	
<b><i>Question 12: Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?</i></b>	
<b><i>Question 13: Do you think that integrated urban drainage plans should be included as part of a Local Flood Risk Management Plan?</i></b>	Definitely
<b><i>Question 14: 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</i></b>	If this can be enforced within a reasonable timescale. Local Authorities are required under PPS 25 in England to carry out sequential tests to provide developers with planning information with regards to areas of flooding. Although the guidance was introduced in December 2006, many authorities do not have this information. It seems stricter timescales should be enforced. In addition, Local



<p><i>the FRMPs?</i></p>	<p>Authorities in Scotland are required to keep a record of flooding incidences within there area, however this is often not updated. Therefore, how will the requirements on SEPA and responsible authorities be enforced within a reasonable timescale.</p>
<p><b><i>Question 15: 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?</i></b></p>	
<p><b><i>Question 16: Should Ministerial confirmation be made necessary even where features of a scheme do not require planning permission?</i></b></p>	
<p><b><i>Question 17: Is the present procedure for Ministerial confirmation satisfactory for this new purpose or are there revisions e.g. to timescales which should be considered?</i></b></p>	
<p><b><i>Question 18: 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?</i></b></p>	
<p><b><i>Question 19: What would be the appropriate timescales for notification and response?</i></b></p>	
<p><b><i>Question 20: Would it be appropriate for such a process to carry deemed planning consent?</i></b></p>	
<p><b><i>Question 21: How should the issue of technical expertise and capacity be addressed?</i></b></p>	
<p><b><i>Question 22: How could such a process ensure the necessary technical standards are observed?</i></b></p>	
<p><b><i>Question 23: Are there any additional alternatives to the options outlined above which would simplify procedures?</i></b></p>	
<p><b><i>Question 24: Do you agree that streamlining the CAR and flooding/planning processes, can be managed through better guidance?</i></b></p>	
	<p>Yes. At present there is very little communication and coordination between local authorities, Scottish Water and SEPA. The newly introduced Sewers for Scotland 2 only allows for surface water discharges into a pond for up to a 30 year RP storm, however, storage is required for a 100 year RP storm and</p>

**Question 25: Do you think there is anything further SEPA, the Scottish Government or others should be doing to promote joined-up regulation?**

therefore separate storage is therefore required to attenuate flow. Scottish Water will not accept filter drains or swales, yet the local authority encourages the use of these in SuDS strategies. New guidance should be introduced to allow an interaction between Scottish Water and Local Authorities. Section 7 agreements are currently too vague and with the process being too complicated it often puts authorities off working together with Scottish Water. Therefore Section 7 Agreements should be a formalised to encourage a partnership. In addition, private land owners are responsibility for watercourses within their properties yet they often do not take responsibility or provide maintenance. A pro-active approach should be taken to avoid flooding, not acting after flooding occurs. Regulation should be introduced to ensure that watercourse are maintained and are regularly checked.

**Question 26: 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?**

**Question 27: Do you agree that the form and content of the biennial reports should be more systematic, and subject to direction from Ministers?**

**Question 28: Do consultees agree that the proposals as outlined will improve flood risk management and ensure Scotland is equipped to implement sustainable flood management?**

**Question 29: 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?**

**Question 30: Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?**

**Question 31: If so, should it be SEPA or another as yet unidentified body?**

**Question 32: 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**

<i>prepare reservoir inundation maps and plans, similar to the duty in the 2003 Water Act for England and Wales?</i>	
<i>Question 33: Do agree that enforcement powers be extended and post incident reporting included as an additional requirement?</i>	
<i>Question 34: Views on crown application and any other comments?</i>	

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## **The Future of Flood Risk Management in Scotland**

Scottish Water welcomes the opportunity to comment on this consultation and to contribute to the modernisation of Flood Risk management in Scotland.

### General Comments

#### *Background*

Scottish Water's responsibility with respect to flooding is set out in the Sewerage Scotland Act 1968 as amended which states "...it shall be the duty of Scottish Water to provide such public sewers as may be necessary for effectually draining its area of domestic sewage, surface water and trade effluent, ...". The definition of surface water in the Act is "the run-off of rainwater from roofs and any paved ground surface within the curtilage of premises;". The Act allows Scottish Water to enter into agreements with Roads Authorities for shared drainage.

The currently accepted definition of "effectually draining" is protecting properties from the risk of being flooded internally due to the hydraulic overloading of sewers more than once in ten years and designing new sewers to deal with the flows expected to be generated by rainfall events expected to occur once in thirty years.

It is Scottish Water's duty to protect properties from flooding from sewers caused by inadequate hydraulic capacity, based on the standards set out above, and flooding caused by blockages or collapsed sewers. Scottish Water holds a register of all properties that are connected to sewers of inadequate capacity and we are investing to remove at least 456 properties from the risk of internal flooding between 2006 and 2010. Scottish Water is also working to improve our response to blockages and collapses to reduce the number of associated flooding incidents and we report our performance annually.

Sewerage systems in large towns and cities in Scotland are generally combined sewer systems. Domestic sewage is mixed with the rainwater from roofs and paved surfaces (including in most cases roads) and transported in pipes to a waste water treatment works. These combined systems are designed with release points, known as combined sewer overflows (csos), which operate during heavy rainfall to discharge a mixture of dilute sewage and rainfall to burns and rivers to protect households from sewer flooding. This has been accepted practice for over 100 years but now these overflows have to meet modern environmental standards. Scottish Water is currently investing £160 million to upgrade unsatisfactory csos in our current 2006-2010 regulatory period. We are proposing to further invest during the 2010 – 2014 regulatory period and we foresee an ongoing investment requirement over the next 20 to 25 years. In general this investment is used to put barrier screens on the overflows to catch debris and to increase the storage in the sewerage system to reduce the number of times the system discharges to the environment.

It has long been recognised that combined systems are not an ideal way to collect and treat sewage and that wherever possible rainwater should not be mixed with

domestic sewage. Since the 1960s all new developments have been built with separate sewerage systems where the domestic sewage is transported in a foul sewer and rainfall is transported in a separate surface water sewer. This avoids the environmental problem of sewer overflows and greatly reduces the risk of hydraulic overloading causing sewer flooding. However surface water sewers also have an adverse impact on the environment due to dangerous substances such as metals and hydrocarbons being washed off impervious surfaces like roads and driveways. New Sustainable Urban Drainage systems (SUDs) are now being promoted on new developments. SUDs use natural systems like ponds and filter strips that treat the surface water before it discharges to burns and rivers. SUDs can be used to ensure that there is no increase in downstream flood risk but their primary purpose is for providing surface water treatment.

It is important to note that Scottish Water has no duty or responsibility with respect to Land Drainage (with the exception of land owned by Scottish Water). Land Drainage is one of the least well defined areas that contribute to flooding. Scottish Water's combined sewers and surface water sewers do provide a route for land drainage, by default, where groundwater infiltrates into the sewers through joints and manholes. In many older Scottish towns and cities land drainage has been diverted into the sewerage system and watercourses overflow into the sewerage system to protect land from flooding. These land drainage flows, by taking up capacity in the sewerage system, increase the risk of sewer flooding and the environmental impact of sewer overflows through premature operation.

*Key Recommendation*

In our response to the Rural Affairs and Environment Committee enquiry into Flooding on the 23<sup>rd</sup> of January 2008 we stated the following.

"The Scottish Government believed that Water and Sewerage provision was so vital to the proper functioning of Scotland as a nation that it created Scottish Water, with national priorities set by Ministers and a secure funding route. This approach was necessary to address decades of under investment in nationally important infrastructure and to ensure a standardised delivery of service across Scotland. Scottish Water believes that Drainage and Flood Management is equally as vital to the proper functioning of Scotland and will need a new single national authority with national priorities if the required improvements are to be successfully delivered."

**It is still Scottish Water's position that a single national authority with a secure funding route is the best solution to ensure that the required improvements are delivered.**

The proposed arrangement of Competent and Responsible authorities can work but its success will be totally reliant on the proper allocation of funding. The challenge for the Scottish Government would be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body.

Specific Comments

Scottish Water's responses to the questions included in the consultation are set out below.

1	<p><i>Do you believe the definition of SEPAs, their role and of practical benefit to flood risk management?</i></p>
<p>Yes. We believe that the definition will allow a flexible and innovative approach.</p>	
2	<p><i>Do you think the definition is clear and simple to understand?</i></p>
<p>Yes</p>	
3	<p><i>Do you agree with the conclusion as set out in paragraph 3.17?</i></p>
<p>Yes. Scottish Water agrees that the proposed framework included in the consultation is a practical approach if Scotland is not going to have a new flooding authority. However, we are concerned that one of the reasons given for not having a single authority is that transferring key functions to a new body would be resource intensive. This implies that the proposals set out in the consultation will not be as resource intensive and we do not believe that this will be the case. SEPA, Local Authorities and Scottish Water will be required to allocate more resource to flooding issues to deliver the outcomes envisaged by the proposed framework as many of the requirements are new.</p> <p>A new flooding authority would have a secure funding route and would have clear responsibility for procuring, delivering and maintaining flood defences. The challenge for the Scottish Government will be to ensure that the proposed framework of Competent and Responsible authorities can deliver as efficiently and effectively as a single body. We believe that it is particularly important that the issue of long term capital maintenance funding for Local Authorities is addressed.</p>	
4	<p><i>Do you agree that there should be a single competent authority with a national remit for implementing the proposed framework, and that it should be SEPA?</i></p>
<p>Yes, Scottish Water agrees that there should be a single competent authority and agrees that it is logical that SEPA fulfils this role. However, Scottish Water does not believe that SEPA currently has all of the expertise and resources to deliver this role. We believe that to deliver this role effectively SEPA would require additional engineering and economic capability. This would be required to allow them to fully contribute to large civil engineering projects and reservoir safety issues and to undertake the relevant benefit –cost comparisons. There would also be a requirement for increased hydrology and modelling capability.</p>	

**Question: How do you think the Government's proposed approach to the development of Local Flood Risk Management Plans, in terms of funding, should be developed?**

Scottish Water agrees that Local Flood Risk Management Plans should indeed be developed in this way, through cooperation among local authorities and for areas of significant flood risk.

It is proposed that funding and implementation planning should be included in the Local Flood Risk Management Plan. We believe that this is the key point to the success of the Government's proposed approach and to ensure that a plan is capable of being fully implemented we believe that Local Authority funding should cover all aspects of flood management schemes including sewerage and drainage infrastructure. This would avoid the need for aligning separate funding and budgetary cycles.

If Scottish Water is required to secure funding this would have to be incorporated into the Quality and Standards process used by the Scottish Government. As such Scottish Water's funding would have to be done on the basis of a national prioritised list of flooding schemes. Scottish Water's funding for improvements to the sewerage system is managed, with Government and Regulators, through the Quality and Standards process and Scottish Water is funded by customers' charges to deliver specific Ministerial Objectives. For sewerage infrastructure improvements the Ministerial Objectives have been translated by Scottish Water, through the Quality and Standards process, into specific costed capital investment schemes. The costs of these schemes are audited by the Water Industry Commission, who then, through the Strategic Review of Charges process, set customer charges to ensure that adequate funding is available to deliver the schemes in four year regulatory periods.

We have been working closely with Scottish Government and SEPA on improving the Quality and Standards process to ensure that the modelling and studies required to develop financially sound investment proposals are carried out in the regulatory period prior to that in which construction is programmed. If Scottish Water is to be funded to contribute to specific flooding schemes then the flood management plans and costed solutions would have to be sufficiently developed to be included in Scottish Water's Business plan two years prior to the start of the regulatory period. This would not be possible without a nationally prioritised list of flooding schemes. Producing this list and ensuring that it is included in the Quality and Standards process would have to be the responsibility of the Competent Authority.

Scottish Water supports the inclusion of a Sustainable Urban Drainage plan in the Local Flood Risk Management plan. We see this as a very positive step but it would require Local Authorities to adopt a consistent approach to Sustainable Urban Drainage and achieving this would require further guidance from Scottish Government.

	<p>Should Ministers or SEPA have the power to designate a local area, or should it be left to the partners?</p>
	<p>We believe that the designation of the lead authority should be left to the partners with the option of referral to Ministers if agreement cannot be reached. We believe that the lead authority would always be a local authority but there may be situations where local authorities cannot agree and in these cases a Ministerial decision would be appropriate.</p>
7	<p>Do you agree that local authorities, Scottish Water, the Forestry Commission, and SNH should be identified as responsible authorities?</p>
	<p>Yes</p>
8	<p>Which other bodies should be identified as responsible authorities?</p>
	<p>We suggest that Transport Scotland and British Waterways should also be identified as responsible authorities. Consideration should be given to the roles and responsibilities of the owners and operators of critical energy infrastructure such as Scottish and Southern Energy, Scottish Power and National Grid</p>
9	<p>Do you agree that responsible authorities should have a duty to work together within Flood Risk Management?</p>
	<p>Scottish Water agrees that the responsible authorities should have a duty to work together. It is important to note that we would require more resources to undertake this work as it is not currently a requirement of Scottish Water.</p>
10	<p>Do you agree the proposals for stakeholder engagement and community engagement in the development of flood risk management planning process?</p>
	<p>Scottish Water agrees that these proposals requiring stakeholder engagement are sufficient.</p>
11	<p>Do you agree that the RBMP process is appropriate for the preparation of area flood risk management plans?</p>
	<p>Scottish Water agrees that the RBMP process is appropriate for the preparation of area flood risk management plans and that these should mirror the boundaries of the RBMP Area Advisory Groups.</p>
12	<p>Do you agree that Ministers have the power to approve, reject or modify Area Flood Risk Management Plans?</p>
	<p>Scottish Water agrees that it is sensible that the Ministers retain the power to approve, reject or modify Area Flood Risk Management Plans, similar to their power over RBMP.</p>



<p>Yes. We support the Scottish Government's approach to integrating urban drainage and the proposal that standard agreements between Local Authorities and Scottish Water be included as part of the Local Flood Risk Management Plan.</p>
<p>Scottish Water believes that the FRMPs should dictate potential land use within the development plans; therefore, there should be a requirement on planning authorities to show that they have used knowledge from the FRMPs.</p>

**Simplifying the Statutory Process**

Scottish Water fully agrees with Scottish Government's assertion that the present process must be simplified. The consultation document proposes two alternative approaches. As a national organisation that is funded through the Quality and Standards process to achieve Ministerial Objectives we believe that option 1, Ministerial approval to grant deemed planning permission, is the best option.

<p>Yes.</p>
<p>Yes.</p>
<p>Yes, the present procedure is satisfactory.</p>
<p>No.</p>
<p>No comment.</p>

20	Would it be appropriate for Scottish Water to carry deemed planning consent?
No comment.	
21	How should the issue of technical expertise and capacity to ensure the necessary technical standards are observed be addressed?
No comment.	
22	Are there any additional alternatives to the options outlined above which would simplify procedures?
No comment.	
23	Do you consider local authorities powers are sufficient to take necessary action to avert danger to life and property?
Scottish Water agrees that Local Authorities should be fully empowered to act where a clear and present danger exists but cannot comment on whether or not their existing powers are sufficient for this purpose.	
24	Do you agree that streamlining the assessment and planning processes can be managed through better guidance?
Yes	
25	Do you think there is a role for the Scottish Government or others should be doing to promote local regulation?
Scottish Water supports the approach of Ministerial Confirmation and believes that such confirmation should carry deemed CAR authorisation in line with the proposal for deemed Planning Permission	
26	Do you think that there is a role for the Scottish Government in promoting flood insurance schemes above which the Government should consider?
No	
27	Do you agree that the current system of flood warnings should be more systematic and subject to regular checks?
Yes	

*management and that Scotland is equipped to implement sustainable flood management.*

Scottish Water agrees that the proposals outlined will improve flood risk management in Scotland. However, we believe that the successful implementation of sustainable flood management will require Local Authorities to be fully funded to cover all aspects of flood management schemes including sewerage and drainage infrastructure. This would avoid the need for aligning separate funding and budgetary cycles.

The consultation document states that Responsible Authorities would be responsible for ensuring that their own funding is aligned and this means that successful implementation will be dependant on how well the process of national prioritisation and linked funding works. As stated in our answer to Question 5, Scottish Water's funding for improvements to the sewerage system is managed, with Government and Regulators, through the Quality and Standards process. This means that the Competent Authority must be responsible for producing a national list of prioritised schemes and ensuring that this list is, through the Quality and Standards process, included in Scottish Water's business plan.

We have been working closely with Scottish Government on improving the Quality and Standards process to ensure that the modelling and studies required to develop financially sound investment proposals are carried out in the regulatory period prior to that in which construction is programmed. If Scottish Water is to be funded to contribute to specific flooding schemes then the flood management plans and costed solutions would have to be sufficiently developed to be included in Scottish Water's business plan two years prior to the start of the regulatory period.

We are concerned about what will happen to current flooding schemes which are progressing without full funding. There is currently no Ministerial Objective for Scottish Water to contribute to the delivery of flooding schemes in Quality and Standards 3 and as such no allowance has been made in our SR10 Business Plan (2010-2014). Where we are funded to make improvements to the sewerage system for environmental quality reasons we try to work in with Local Authority flooding schemes, as in Glasgow for example. We are aware however that there are other Local Authorities that wish to progress flooding schemes in areas where Scottish Water has no plans to make improvements. In such cases the Local Authority would have to fund the improvements to Scottish Water assets although we are aware that the funding allocation is based on schemes drawn up under the 1961 Act and therefore does not include for these improvements. We request clarification from the Government about how such interim issues will be addressed.

29	Do you believe that this strategy would ensure that flood risk is addressed or should local authorities have a duty to promote measures to alleviate flooding?
<p>Scottish Water believes that the proposals would ensure that flood risk is addressed; however it could only be of benefit for local authorities to have a duty to promote measures to alleviate flooding.</p> <p>In England &amp; Wales DEFRA is currently considering a strategy to change planning rules so that planning permission will be required for paving front gardens unless porous materials, such as permeable paving or gravel are used. We believe that this sort of approach in conjunction with a Sustainable Building Code and a "SUDS for Roads" manual could contribute to the long term objective of reducing flood risk and the Water Framework Directive aims of "contributing to mitigating the effects of floods and droughts".</p>	

**Reservoir Safety**

30	Do you believe enforcement responsibilities under the Reservoirs Act 1975 should be transferred to a single national body?
Yes	
31	If so, should it be SEPA or another yet unidentified body?
<p>The proposal to make SEPA the Enforcement Authority would be appropriate. Transferring the enforcement role to SEPA would mirror the change that was made in England and Wales with the Environment Agency.</p>	
32	Are you content with the proposals relating to reservoir flood maps under the provisions of the Floods (Scotland) Act 2004 or do you think that there should be a statutory duty on reservoir owners to prepare reservoir inundation maps and plans, similar to the duty in the 2005 Water Act for England and Wales?
Yes, we are content with the proposals.	
33	Do you agree that enforcement powers should be extended and post incident reporting included as an additional requirement?
<p>Scottish Water believes that extending the enforcement remit to ensure measures recommended in the interests of safety are carried into effect, within a specified timescale, is appropriate.</p> <p>Scottish Water supports the development of post incident reporting as an additional requirement. However, Scottish Government and SEPA will have to develop guidance on what constitutes an incident and the levels of reporting required. We would expect to be consulted on the development of this guidance.</p>	

As the changes being considered relate to matters which have a direct influence on public safety, then Crown bodies should be considered to be no different to other bodies in terms of compliance with the Reservoirs Act and the enforcement of the same.



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**RIVERS & FISHERIES TRUSTS OF SCOTLAND**  
Safeguarding Scotland's Rivers & Lochs

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[www.rafts.org.uk](http://www.rafts.org.uk)

Scottish Charity: SC 031021

Water, Air, Soils and Flooding Division  
The Scottish Government  
1H North  
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Edinburgh  
EH6 6QQ

22 April 2008

Dear Sir / Madam

**The Future of Flood Risk Management in Scotland  
Consultation Response  
Rivers and Fisheries Trusts of Scotland**

Thank you for the opportunity to respond to the above consultation. The following short response is provided on behalf of the Rivers and Fisheries Trusts of Scotland (RAFTS) whose 20 members work across over 90% of Scotland's freshwaters to protect and develop our native fish stocks and populations.

Although neither RAFTS nor our members are routinely involved in the management of flood risk, or in the provision of flood defences, we are interested in the future management of these activities in Scotland. This interest is, principally, but not exclusively, in respect of the impacts upon rivers and lochs, their naturalness, biodiversity, habitats and fish populations which can arise from poorly designed or constructed flood defences or during their construction. We are keen, therefore, to support proposals which move towards a more consistent and coordinated approach to flood risk management and to the development of flood defences.

We have responded below to individual consultation questions of most relevance and interest to us:

**Q 1 and 2: Sustainable Flood Management definition; and its helpfulness and clarity**

We think the definition of Sustainable Flood Management (SFM) provided is helpful and provides some clarity of purpose. However, given the tiered objectives beneath the definition, and the principles applying, we have concerns as to the consistent application of the definition by different parties. It is essential that better and consistent application of the definition is ensured by, in particular, SEPA and Local Authorities as the main advisors in relation to flood risk and the provision of flood defences.

**RAFTS**



**RIVERS & FISHERIES TRUSTS OF SCOTLAND**  
Safeguarding Scotland's Rivers & Lochs

In particular the application and development of measures to protect against, mitigate and manage flood risk must be appropriately and consistently supported by the SFM definition. We hope that flood defence and protection measures will, increasingly, move away from the construction of hard engineering solutions as a default position and consider more wide ranging and sustainable approaches to flood risk management. This should include the consideration of catchment based solutions across Local Authority boundaries as opposed to the application of schemes within authority boundaries which may have negative consequences up or downstream.

**Q 3 and 4: SEPA as single competent authority supported by local authorities**

RAFTS agrees that a single authority should be responsible for implementation of the Floods Directive and that Local Authorities must have an important role in delivering required flood defence measures and in local engagement and consultation exercises. RAFTS also agrees that SEPA is best placed to fulfil this single competent authority role.

However, while acknowledging the significant technical capability and direct accountability to Ministers that exists within, and can be applied to, SEPA we would require confirmation that operational capacity fully exists to fulfil this important role. The coordination of the Floods Directive will be both technically and politically challenging and will be dependant on SEPA, and all individual Local Authorities, being clear as to the levels of joint and supportive working needed from each other and that they are appropriately resourced to meet these roles.

**Q 5 and 6: Flood risk management plans and identification of lead authorities by Ministers in local areas**

RAFTS supports the development and application of a tiered approach to the production of flood risk management plans so that local flood risk management plans are required only in areas where significant flood risk has been identified. All areas would be subject to area flood risk management plans.

As introduced before we have concerns as to how the interaction between these plan levels will develop; especially as there are different bodies (SEPA and Local Authorities) responsible for the area and local plans. It is crucial that the joint working necessary for the area plans takes place effectively and transparently in order to ensure joint and agreed assessments of flood risk are in place, that this stimulates local plans in agreed priority areas and that other interested parties and the public have confidence in this process.

Given our concerns as to the level and the, perhaps, contentious nature of issues to be considered during joint working between SEPA and Local Authorities we would support the retention of powers for Ministers to identify lead authorities in local areas if this cannot be agreed locally.

**Q 7 and 8: Identification of responsible authorities**

We agree with the responsible authorities proposed for designation and that these are the most important bodies in respect of flood risk and its management.

Others that may be considered for this designation could include the Port Authorities given their, sometimes, significant activities in estuaries and harbours including the



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removal of sediments and deposits to ensure shipping passage and the development of infrastructure to support a range of activities.

In addition, the role of Ministers and its departments may be worthy of clarification and confirmation in order to ensure that Government and its departments are also bound by Floods Directive requirements and considerations.

**Q 9 and 10: Flood Advisory Groups and stakeholder involvement**

RAFTS supports the proposal to form Flood Advisory Groups to support joint working between responsible authorities during production of area and local flood risk management plans and that these should be linked to the Area Advisory Groups (AAG) in place to support River Basin Management Plan production.

However, we are concerned that there is no commitment for other interested parties or organisations to be part of these flood advisory groups. The AAGs supporting river basin planning have both relevant responsible authorities and the most significant other local organisations in their membership. We would anticipate that others would be able to bring knowledge and expertise and add value to the proposed flood advisory groups through a membership wider than responsible authorities.

Given our comments above in relation to the absence of bodies other than responsible authorities we do not feel that stakeholder forums formed under Ministerial direction are sufficient to support wider stakeholder and community engagement in flood risk planning. We anticipate that such fora may be helpful in supporting information provision and consultation activities but consider that this proposal does not provide a sufficiently accessible process for bodies other than the responsible authorities. We are aware that many of the existing Flood Liaison Advisory Groups already include members from other than the public bodies on a voluntary basis and we are concerned that this approach is in danger of being lost under the current proposals.

**Q 11 and 12: Plan preparation and approval processes**

RAFTS agrees that the Bill should set out a plan preparation process for area flood risk management plans. We feel this will be crucially important in helping to promote consistent and transparent flood risk planning. Given the links proposed between flood risk planning and the AAGs in place for river basin planning this process should seek to harmonise the plan preparation processes and/or make clear how different timings and activities will be reconciled and accommodated.

We also agree that Ministers should be responsible for the approval, rejection or direction to modify area plans submitted by SEPA following the required joint working process. The Bill should make clear how this exercise will relate to other flood plan approval processes likely to be undertaken by individual Local Authorities and how, or if, appeal provisions other than to Ministers are necessary.

**Q 24: Streamlining CAR and flooding/planning processes through guidance**

As the application of CAR by SEPA is still at an early stage, and a large number of licence reviews remain to be undertaken following the transfer of existing activities into

**RAFTS**





## **RIVERS & FISHERIES TRUSTS OF SCOTLAND**

Safeguarding Scotland's Rivers & Lochs

CAR at the start of the regime, we feel that the proposals to streamline the regulatory and planning processes by Ministerial guidance are appropriate for the time being.

However, this position should be reviewed when both processes have had a further period to establish and operate. If the required alignment is not present through the use of guidance then further instruction may be required.

### Q27: Biennial reporting by Local Authorities to Ministers

We support the maintenance of biennial reporting by Local Authorities to Ministers and that this should form part of the duties of them as responsible authorities. To help make this exercise more consistent than it is at present Ministers may wish to consider, with Local Authorities, the development of a common standard of reporting allowing more transparent inspection and comparison of these reports by the public.

RAFTS looks forward to seeing future proposals and legislation brought forward which improves the coordination and management of flood risk and which takes forward appropriate flood management schemes to protect the people and infrastructure of Scotland while balancing environmental and other concerns.

It is our view that future protection schemes must better consider environmental factors throughout the design and construction phases and that the need, current and future, for such schemes must be considered before infrastructure, housing and other developments are approved for construction in identified flood plains or areas of high flood risk.

We are happy to confirm our willingness for this response to be made public.

Yours sincerely

Callum Sinclair  
Director: Rivers and Fisheries Trusts of Scotland  
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Pamela Taylor  
Chief Executive

23 April 2008

Water, Air, Soils and Flooding Division  
The Scottish Government  
1H North  
Victoria Quay  
Edinburgh  
EH6 6Q

Dear Sir,

**Future of Flood Risk Management in Scotland; A Consultation**

Water UK represents all the regulated UK water and wastewater service suppliers, including Scottish Water, at national and European level. On behalf of our members we provide a positive framework for engagement with the government, regulators, stakeholder organisations and the public. Water UK therefore welcomes this opportunity to respond to your consultation on the Future of Flood Risk Management in Scotland.

Firstly we would like to commend you on providing a well set out document which explains the issues in a clear and comprehensive way.

The UK Water Industry has considerable interest in the issue of flooding. Our members own and operates thousands of kilometres of sewerage and drainage systems which are vital in protecting urban areas from flooding. Historically these assets have been used in the form of combined sewers both for transport of waste water to treatment works and also for surface run off. Water companies have a 'duty to drain' their areas but have little control of what enters their system. There are also other 'players' such as roads authorities, local authorities and environment regulators and the public are often confused as to their responsibilities in respect of flood management.

During last summers floods in England and Wales a large proportion of affected properties were a result of the overwhelming of urban drainage systems rather than direct fluvial flooding. Also the floods had a serious impact on water company assets

resulting in interruptions of water supplies and reduced functionality of waste water treatment works.

Water UK contributed to the Pitt Review and also produced its own review of the water industry's response, Part 1 of which was published in February 2008. The review group was chaired by Sir John Baker and included Ronnie Mercer, Chair of Scottish Water.

The report can be found at

<http://www.water.org.uk/home/news/press-releases/flooding-review-phase-1-4-feb-08/wateruk-review-group-on-flooding-phase-1.pdf>

### **Answers to Consultation Questions**

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

Yes

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

Yes

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

Yes.

**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?**

Yes. It is important that the competent authority is properly resourced in respect of funding and expertise.

SEPA does not have the same expertise in respect of floods protection as the Environment Agency or Northern Ireland Rivers Agency and this would need to be addressed.

**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?**

Yes. The funding of such plans is important in particular the apportionment of funds to deal with trans boundary issues..

**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?**

Water UK Response to Scottish Government Consultation on the Future of Flood Risk Management in Scotland  
April 2008

We have no comment to make

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

Yes

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

We believe that highway authorities play an important role. Even though Transport Scotland is effectively part of government we believe that being a separate agency it should be designated a responsible authority.

Also British Waterways, Scottish Power and Scottish and Southern Energy should be considered as their assets may be useful for flood protection.

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

Yes

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

Yes

**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 believe that it is important that a mechanism is available to ensure that the two plans are properly aligned and integrated where appropriate.

Serious consideration should be given to any statutory requirement (in respect of directive reporting) on Scottish Water in terms of mapping flood risk from sewer systems.

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

Yes

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

Yes.

**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?**

Local authority development plans should demonstrate how they have taken into account the requirements of the FRMPs.

**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?**

Yes

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

No comment.

**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?**

No comment.

**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?**

No comment

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

No comment

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

No comment

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

There are world leading consultants in this field who are based in Scotland. It would make sense to utilise this resource.

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

No comment

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

Local authorities should be fully empowered to carry out this role or if not actively seek those powers.

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

Yes

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

No

**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?**

No

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

Yes

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

Yes however the key is provision of adequate funding.

**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?**

We believe that local authorities, as the planning authority, should have a duty to promote measures to alleviate flooding. It would be useful to audit local authorities in respect of how they follow SPP7

We also suggest that consideration be given to altering the Scottish Building Regulations to include provisions for surface water management and flood resilience similar to those set out in 'The Code for Sustainable Homes: Setting the standard in sustainability for new homes' published by DCLG. In particular it is important that the increases in impermeable surfaces in urban areas is reversed and that developers and householders understand the need to slow down surface water flow rates.. It would also be useful to examine the recommendations of the Association of British Insurers in respect of building in flood resilience.

<http://www.abi.org.uk/BookShop/ResearchReports/Flooding%20in%20the%20UK%20Full.pdf>

**RESERVOIR SAFETY**

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

Yes

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

Yes so long as the required expertise was available.

**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?**

Yes

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

Yes

**Q34. Views on crown application and any other comments?**

No comment

Yours faithfully

**Bryan Wallis**

**Policy Development Consultant**



## The Scottish Government

### Consultation on 'The Future of Flood Risk Management in Scotland'

CIWEM Response, April 2008

#### General Comments

This response is submitted by the Chartered Institution of Water and Environmental Management (CIWEM), whose membership comprises over 10,000 professionals in water and environmental disciplines, many of which are relevant to flood management. The questions raised by the Consultation have been carefully considered by CIWEM's Scottish Branch, and Rivers and Coastal Group, and they have prepared this joint response for consideration.

Transposition of Directive 2007/60/EC on the Assessment and Management of Flood Risks provides an ideal opportunity to update and streamline Scottish flood legislation and to build on the work which has already been initiated by the Scottish Government (through the Flood Issues Advisory Committee and predecessor bodies) to develop the objectives and principles of sustainable flood management which are held in high regard in the UK and Europe.

CIWEM therefore welcomes this opportunity to respond to this consultation. CIWEM will be pleased to provide any further information should this be requested.

#### Responses to Specific Questions

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

Yes.

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

Yes. It would be informative to compare this definition with that adopted by Defra and the Environment Agency in England and Wales and Rivers Agency in Northern Ireland to ensure consistency across the UK.

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

Yes, although CIWEM would propose that the work of the single competent authority is overseen by a Scottish Flooding Advisory Committee (SFAC) to provide national guidance and direction.

**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?**

Yes but see also response to Q3. SEPA must however be adequately funded to undertake strategic flood management duties effectively.

**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?**



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CIWEM Response – April 2008**

In principle, yes. However CIWEM has some significant reservations as set out below. Some suggestions have been made for consideration.

We agree that allocation of funding (paragraph 3.30) should be based on the level of significant flood risk within each local authority area. However we propose that this should be aggregated for all the local authority areas within a 'river basin flood management group' (RBFMG) of local authorities. It may therefore be more appropriate to allocate funding according to the level of significant flood risk within the RBFMG area which could be the same as the area covered by a Local Flood Risk Management Plan (LFRMP). It would be up to the RBFMG to allocate funding for flood management activities as appropriate.

CIWEM are of the strong view that that such funding **must be ring fenced for flood management purposes only**. CIWEM is seriously concerned that the recent removal of ring fencing of funding for flood prevention schemes and the change to a block grant system could be a major obstacle to timely implementation of flood management measures and may even result in some much-needed flood management schemes not proceeding. Serious concern has been expressed to members, by local authority officers responsible for implementing flood management projects, that the recent changes undermine confidence in being able to proceed with such projects given that there can now be no certainty of funding with the removal of ring fencing. CIWEM firmly believes that funding should be directed to the RBFMG responsible for an LFRMP area rather than to individual local authorities.

The Area Flood Risk Management Plans (AFRMP) should also determine the most appropriate flood management policies for each sub-basin within the LFRMP area. Measures should be set in broad terms and should not necessarily be prescriptive. The AFRMP should also determine prioritisation of funding to be directed to RBFMGs. The LFRMP would be the responsibility of the relevant RBFMG and would translate such policies into specific flood management measures at 'local' level and set out how these measures will be implemented. The list of contents of an LFRMP given in paragraph 3.27 should include this.

With regard to paragraph 3.29 and responsibility for preparation of LFRMPs, CIWEM supports the proposal to place a duty on all local authorities within an LFRMP area to collaborate as a single RBFMG. This duty should however also extend to SEPA, Scottish water and other relevant stakeholders (i.e. all the 'responsible bodies' identified).

Where a local authority boundary covers more than one LFRMP area there should be a mechanism to ensure 'cross boundary' collaboration as policies and measures may differ in different LFRMP areas.

CIWEM believes that that RBFMGs should have more than just an 'advisory' function. In order to implement their responsibilities effectively they must have an 'executive' function to:

- prepare the Local FRMP including appropriate consultation;

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- direct implementation of the FRMP by each 'member' local authority, appropriate other responsible body or by the group itself; and
- direct flood management funding which has been allocated to it to achieve the objectives set out in the agreed Local FRMP.

Each RBFMG could be named after the river basin it serves, for example, the Clyde Flood Management Group.

Both District AFRMPs and Local LFRMPs should cover all sources of flooding that are assessed as 'potentially significant'. There should also be scope for revision as sources of flooding and their 'significance' can change.

**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?**

This should normally be left up to the partners within an RBFMG to decide. However there should be a mechanism for Scottish Ministers to intervene if agreement cannot be reached. Furthermore, at the discretion of Scottish Ministers on the advice of SEPA or the proposed SFAC (see Q3), there should be a mechanism for intervention in the event that an RBFMG is seen to be failing to effectively undertake its duties.

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

Yes.

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

In view of the importance of land use management in sustainable flood management, major landowners should be represented possibly through Scottish Rural Property and Business Association; also the agricultural community possibly through NFU Scotland. The National Flood Forum also provides practical advice which greatly assists in raising resilience to flooding – designation of the Scottish off-shoot of National Flood Forum should be considered.

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

Yes – see also response to Q5.

With regard to paragraph 3.34, CIWEM strongly believes that the RBFMGs should **not be subgroups of the Advisory Groups** established the WEWS Act. Both Groups should of course liaise closely but flood management activities should not be determined by Water Framework Directive objectives. The two sets of activities have to work hand in hand and aim to achieve outcomes that are mutually beneficial and recognise the objectives of both FRMPs and RBMPs.

CIWEM is of the view that RBFMGs do not necessarily have to be based around existing Flood Liaison Advisory Groups although in areas where these are successful this may form a possible grouping from which to build. We support the concept of Stakeholder Forums on Flooding Issues as a means of consultation.

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

Yes – see response to Q9.

**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.

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

Yes.

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

Yes – these could be broadly based on Strategic Flood Risk Assessments prepared under PPS25 in England and Wales and should incorporate consideration of surface water management (pluvial flooding) issues. Every opportunity should be taken to promote the use of sustainable drainage systems (SuDS) with multiple benefits for water quality, biodiversity and amenity as well as flood management. Urban Drainage Plans could be undertaken by the RBFMG or by a local authority or other responsible authority member of the RBFMG. CIWEM suggests that a preliminary high level screening exercise be undertaken at national level to identify locations where the preparation of integrated urban drainage plans is justified.

CIWEM agrees that responses to flooding incidents should continue to be coordinated through the framework established under the Civil Contingencies Act but Flood Emergency Plans should be informed by and closely link with AFRMPs and LFRMPs.

**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?**

CIWEM believes that there should be a formal requirement on planning authorities to show that they have taken into account FRMPs.

The spatial planning system is also fundamental to sustainable flood management in exercising control over development in floodplain areas. Further strengthening of the existing system should be encouraged and CIWEM would urge a review of the present SPP7 to bring it in line with PPS25 in England particularly with regard to 'exception testing'. SPP7 presently offers the opportunity for land raising. The scope for making best use of sustainable land raising opportunities, particularly where there may be wider benefits for flood mitigation, should receive due consideration in the 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?**

Yes.

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Scottish Government Consultation on the  
Future of Flood Management in Scotland  
CIWEM Response – April 2008**

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

Yes – if individuals can be directly affected by flood management measures (if the Ministerial Confirmation approach is adopted).

**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?**

The present system is not considered satisfactory. There should be streamlining and improvements to deal specifically with:

- small changes to a flood management scheme as submitted;
- means to avoid the need for a Public Local Inquiry if only one objection remains;
- means to deal with objections that may not have a sound basis or that might be considered frivolous;
- means to reduce the amount of administrative effort (and paper) associated with advertising requirements;
- the need for greater flexibility in the specification of flood management measures such as the ability to include catchment wide land management measures which may be of wider benefit in addition to benefiting the area targeted by a specific flood management scheme;
- the need for a simple fast-track process for small flood management measures; and
- the need for rationalisation of the consultation process to avoid any duplication.

**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?**

Regarding paragraph 3.65 CIWEM does **not** agree that the transfer of funding for flood risk management to block grant is necessarily a positive step in simplifying the process. Indeed for the reasons set out under Q5 CIWEM is of the view that this is a backward step, which could seriously undermine the potential benefits to be derived from new flooding legislation.

Notwithstanding this view, CIWEM believes that there is potential for a local authority based procedure to streamline the statutory process for approval of specific flood management measures, and that it should be taken forward, so long as:

- the procedure is coordinated by and funding is directed by the relevant RBFMG;
- there is ultimate recourse to refer to Scottish Ministers;
- the Competent Authority is a key consultee (the provisions of paragraph 3.69 are strongly supported);
- the procedure enables cross boundary flood management measures to be dealt with; and
- the questions raised in paragraph 3.74 can be satisfactorily resolved.

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

Modern means of communication are now much faster, for example through use of web-based facilities. CIWEM believes that by such means it may be possible to reduce the overall period for notification and response by around 50%.

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**Q20. Would it be appropriate for such a process to carry deemed planning consent?**  
Yes – with the provisions set out above in place.

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

As at present there would be no reason why RBFMGs or local authorities could not engage consultancy assistance. However CIWEM also perceives an urgent need to strengthen technical resources and capacity within local authorities, and provide funding for them to do so, such that they can effectively fulfill additional duties that are likely to be placed on them by the new Flooding Bill.

CIWEM believes that one of the roles of the Scottish Flooding Advisory Committee (see response to Q3) could be to provide necessary technical direction and set such standards as may be appropriate in consultation with the Competent Authority. The SFAC could also have a role to review both AFRMPs and LFRMPs to ensure consistency and quality. The SFAC would report directly to Scottish Ministers.

CIWEM is concerned about the skills shortage in disciplines relevant to flood management in Scotland. We would support initiatives by academic bodies in Scotland to promote courses specifically directed to skills relevant to sustainable flood management.

CIWEM Scottish Branch also organises meetings and conferences on various aspects of flood risk management and would be happy to liaise with the Scottish Government and the Competent and Responsible Authorities in planning the content of its forward programme of meetings, seminars and conferences.

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

Whatever arrangements are adopted they should address those matters listed under Q17.

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

CIWEM believes that the limitations identified under paragraph 3.76 should not be a major issue if funding received by the RBFMG is directed by the RBFMG and especially if their 'area' is at the scale of large river basins.

CIWEM agree that local authority powers should be examined to ensure that they are empowered (possibly with other Competent and Responsible authorities) to take appropriate action where a clear and present danger to life exists or is perceived to exist from any source of flooding. Such threats should be identified in Flood Emergency Plans.

CIWEM believes that the planning system is important but the need for effective incident management together with engagement by all affected professional partners is essential for risk reduction at times of flooding events. Unfortunately the

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"short term memory" syndrome seems to affect flood incident management planning and whilst there is initial enthusiasm following an event many of the lessons learned are not followed through, usually because other topics have risen up the political agenda. A requirement for local government to get engaged and to stay engaged is essential for effective flood incident management.

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

Yes.

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

CIWEM believes that the strengthening of readily accessible facilities for information and knowledge management, as well as the provision of appropriate guidance and direction, could assist in promoting joined-up regulation. This could include targeted seminars and conferences. As an example, CIWEM Scottish Branch organised a Flood Risk Management Workshop on 13<sup>th</sup> March, which was fully subscribed.

**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?**

No.

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

Yes. Consistency in reporting is essential.

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

Yes. Regarding paragraph 3.86, CIWEM believes that the proposed Scottish Flooding Advisory Committee (see responses to Q3 and Q21) could issue relevant guidance. In addition Scottish Ministers will have ultimate sanction in approving the AFRMPs prepared in consultation with the proposed RBFMGs and based on LRFMPs.

Raising resilience to flooding is a key aspect of sustainable flood management. With regard to building regulations, CIWEM would support the introduction of measures to encourage increased resilience and resistance of buildings to flooding. This could involve the provision of financial support to property owners to do so. Such measures could also be introduced as a part of building restoration following flooding and insurers could have a role to play in this regard. Such measures should be considered for inclusion in future legislation under the Flooding Bill.

**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?**

So long as there is a duty on Scottish Ministers, Competent Authorities and Responsible Authorities to promote and implement sustainable flood management, and that this is defined, and appropriate guidance provided, CIWEM considers this to be adequate.

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**RESERVOIR SAFETY**

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

Yes.

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

CIWEM believes that SEPA is the appropriate body to undertake this role.

**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?**

CIWEM is content with the proposals as set out under paragraph 4.13 for dealing with reservoir flood maps under the provisions of the Floods Directive.

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

Yes.

**Q34. Views on crown application and any other comments?**

CIWEM is of the view that Crown bodies should not be exempt from provisions under the proposed legislation.

The Chartered Institution of Water and Environmental Management  
23 April 2008

## Draft Submission

by  
Director of Technical Services  
to  
Scottish Government Consultation  
The Future of Flood Risk Management in Scotland  
February 2008

### Response to Questions

#### **Q1. Do you believe the definition of Sustainable Flood Management (SFM) is helpful and of practical benefit to flood risk management?**

The definition of Sustainable Flood Management Box 4 of Consultation Document reads:-

*Sustainable flood management provides the maximum possible social and economic resilience\* against flooding\*\*, by protecting and working with the environment, in a way which is fair and affordable both now and in the future.\**

\* Resilience means: ability to recover quickly and easily. The Scottish Government uses it to deliver the four As: Awareness + Avoidance + Alleviation + Assistance.

\*\* Flooding means all types of flooding: surface water run-off (pluvial), sewer, river, groundwater, estuarine and coastal.

Yes, provided the aim of the word 'resilience' is to allow a variety of alleviation measures to be adopted from hard engineering to natural flood alleviation measures or a combination of both.

Balance between social and economic factors, and the environment will be a key feature.

A fifth 'A' could be added, that of Abandonment.

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

Yes but with some reservations. Wording has been used which could be construed differently by various parties. Provided no single approach of alleviation is allowed to dominate then the definition will function well.

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

Paragraph 3.17 reads

*3.17 The Scottish Government therefore believes that a single competent authority with a national remit for implementing the Flood Directive should be identified, and that the important role of local authorities in implementing flood defence works and engaging at a local level should be maintained. This approach will ensure that the national and catchment focused approach to flood risk management planning is underpinned by local*



*co-ordination and delivery of measures by those bodies with direct experience of implementing flood risk management measures in Scotland.*

Yes, but it needs to be made clear that in addition to implementing the Floods Directive the competent authority should not be divorced from the actual problem of flooding and its potential solutions. Local Authorities (LA) must play major role in this aspect and their voice needs to be heard.

**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?**

The Council recognises the benefit of having a single competent authority and acknowledges that SEPA are well placed, in many regards, to fulfil that role. However, serious reservations revolve around their current portfolio which is more regulatory, environmental and planning based. Knowledge of other aspects of flooding for example, urban drainage, overland flow and surface water management will also be needed, as will an ability to determine and progress with physical measures to alleviate flooding.

The possibility of having 2 competent authorities, that is SEPA and LAs should be considered. If this is judged impractical the relationship between these two important bodies needs to be carefully crafted within the Bill to ensure that not only is the requirements of the Flood Directive met but real progress is made in tackling actual flooding.

**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?**

The recent alteration to set up a two tier framework for flood risk management planning, that is District Flood Risk Management Plan (DFRMP) and Local Flood Risk Management Plans (LFRMP) in Scotland seems a sensible amendment. However it brings back into focus the relationship between SEPA (competent authority elect) and LA's who are to prepare local plans focused on sets of measures to address flooding.

This relationship needs to be balanced so that local concerns and flooding problems are dealt with. Central to this process is striking a balance between a top down driven approach and a bottom up approach to developing the management plans.

**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?**

This issue would be resolved if LAs were made competent authorities at this level but if this proves impractical then this should be left to the partners although it would be sensible for Ministers to retain powers to designate a lead authority where agreement between the partners cannot be achieved.

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

Yes.

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

All Road Authorities, Network Rail and River Commissioners.

Landowners do not appear in the proposals and although they may not be classed as responsible authorities their responsibility to prevent water egress from their property affecting others should be dealt with.

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

Yes.

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

Yes, but many of these forums and stakeholder groups already exist in each local authority and these should be utilised or adapted to suit. In the Scottish Borders area, Tweed Forum brings together many stakeholder groups and local communities views are already engaged by the Council.

**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.

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

Yes.

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

Yes, but in many rural areas where drainage problems do not play a significant role in flooding it should be recognised that this element is not essential and valuable time and resources should not be spent for little gain.

**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?**

There is an important integral relationship between FRMPs and Development Plans that should be recognised in both. FRMPs should inform the production of development plans *and vice versa*. Whilst the potential for flooding will in many instances properly preclude the identification of an area for development, there may be instances where the development of a particular site is critical to the social or economic development of an area. In such instances the overriding need for the development, as set out in the development plan, should inform the production of the FRMP.

**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?**

This Council has not been closely involved in the current statutory processes but they do appear overcomplicated with too many closely related planning aspects working on separate and lengthy timetables. Using the proposed new Flooding Bill to streamline and create more transparency through the processes would be welcomed.

Clarity is also required with regard to the point at which a smaller scale flood prevention proposal requires to go through the full statutory process.

Both alternatives suggested in the consultation document have merit.

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

No response, see answer to Question 15.

**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?**

No response, see answer to Question 15.

**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?**

No response, see answer to Question 15.

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

Appropriate timescales should be equivalent to the current planning procedures.

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

No response, see answer to Question 15.

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

The suggestion made in the consultation document that local authorities in each Flood Risk Management Area might contribute to a pool of experienced flood engineers is a good idea. Certainly this would be of assistance to the smaller authorities. Framework arrangements with the private sector would also be advantageous

Technical Standards should be set by the Ministers but it will be important to allow departures from standards where the economical and environmental benefits of a scheme offering protection against say only 1 in 50 year flooding event are significant. The scope of such departures should be clear and unambiguous.

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

A fast track option for minor schemes in similar fashion to permitted development schemes.

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

Yes.

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

Yes, guidance which looks to integrate the processes would offer benefits for example seizing opportunities to streamline matters when a full Environmental Assessment has been undertaken. SEPA and SNH are statutory consultees thus the needs of CAR could be brought in by SEPA thus simplifying the CAR authorisations.

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

No response.

**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?**

See response to Question 22.

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

Yes.

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

Yes, subject to comments above and provided focus is shared between complying with the Flood Directive in terms of Flood Mapping etc and implementing physical measures to tackle actual flooding.

**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?**

No, current permissive powers are sufficient. If the current permissive powers were changed to a duty it would put LA in difficult position as it does not control the whole process and proposed FPS can be stopped for a number of reasons.

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

Yes, as this would save resources and provide consistency.

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

Yes, there is little engineering input required; it is more a management role. It is also linked to the FRMP but it will need resources and enforcement powers.

**Q.32 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?**

Yes, if duty placed with the competent authority then it will definitely be done and a level of consistency will be achieved.

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

Yes.

**Q34. Views on Crown application and any other comments?**

They should comply so we have uniformity of reservoir monitoring and safety inspection.

## **The Future of Flood Risk Management in Scotland**

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**Planning Committee**  
**15 May 2008**

### **1 Purpose of the Report**

- 1.1 To provide a response to the Scottish Government consultation paper 'The Future of Flood Risk Management in Scotland'.

### **2 Summary**

- 2.1 The Scottish Government proposes to introduce a Flooding Bill later this year. The purpose of the Bill will be to modernise the flood risk management system in Scotland. The Government's proposals are set out in a consultation paper entitled 'The Future of Flood Risk Management in Scotland'. The consultation paper poses a series of questions and a proposed response to these questions is set out in Appendix 1 to this report.
- 2.2 The proposal to simplify the present statutory process for approving flood risk management measures and removing the risk of two public inquiries is an important improvement, but other issues need further thought, including community engagement in the process.

### **3 Main Report**

#### **Background**

- 3.1 On 5 September 2007, the First Minister announced that the Scottish Government would introduce a Flooding Bill in 2008 to modernise the flood risk management system in Scotland. On 13 February the Government's proposals in this regard were published in a paper entitled 'The Future of Flood Risk Management in Scotland' for consultation

purposes. The Government states that the broad objective in promoting new legislation is to provide the framework to ensure that a fully sustainable approach to flood risk management is in place across Scotland.

#### **Problems with the current system**

- 3.2 The Scottish Government notes that there are a large number of players dealing with flooding from all its sources. It believes that there is a lack of co-ordination between the different powers and duties under different legislation, including flood prevention, roads, urban drainage, sewerage and land drainage. The Government also believes that this lack of co-ordination is because there is no national framework within which local authorities, Scottish Water, SEPA and others can take decisions relating to the management of flood risk. As a result, flood risk management has been largely reactive.
- 3.3 The principal legislation for managing flood risk from rivers and the sea is the Flood Prevention (Scotland) Act 1961. It is considered that this legislation no longer fits with present day local government structures nor integrates well with new duties, such as the duty to promote sustainable flood management under the Water Environment and Water Services Act 2003. In particular the 1961 Act:
- places an emphasis on large scale engineered solutions to flooding problems that make it difficult to relate to a catchment wide approach;
  - contains permitted measures that are only suitable for river and coastal flooding, and would not address all types of flooding as required by a sustainable approach;
  - is seen by many as the cause of delays in developing and building flood prevention schemes as it is not integrated with other statutory processes – consequently local authorities are required to pursue three separate statutory processes in order to get a scheme built.
- 3.4 The lack of integration between water industry infrastructure with other drainage and flooding infrastructure is seen as a further problem with the current system.
- 3.5 Finally, the consultation paper notes that there is no legal restriction to building on a flood plain, although Scottish Planning Policy: Planning and Flooding (SPP7), published in 2004, strengthened planning guidance on striking a balance between how land is used and the need to avoid inappropriate development on flood plains.

### **Responsibilities**

- 3.6 At present, it is the responsibility of owners to provide a level of protection from flooding appropriate to their property, including overland flooding caused by the build up of water on land following heavy rainfall or by a high water table causing ponding of standing water in low lying areas. The new Flooding Bill will not address the emergency response to a flooding event as this comes under the auspices of the Civil Contingencies legislation.
- 3.7 Local authorities, Scottish Water, the Scottish Environmental Protection Agency (SEPA) and the Scottish Government all have responsibilities in the management of flood risk. Responsibilities currently resting with the Council are:
- Planning Control
  - Developing and promoting Flood Prevention Schemes
  - Assessment and maintenance of watercourses
  - Co-ordination of authorities when there is a flooding event
  - To publish a Biennial Report
  - Reservoir Enforcement Authority

Legislation and guidance that currently underpins flood risk management in Scotland is set out in Appendix 3 to this report.

### **The consultation paper**

- 3.8 The Scottish Government is seeking views on the following proposals:
- identification of a competent authority with overall responsibility for the implementation of the EC Floods Directive and responsible authorities (including local authorities, Scottish Water, SNH and the Forestry Commission) for the purposes of flood risk management planning;
  - areas of flood risk management planning to be defined by Ministerial direction following consultation with SEPA and the responsible authorities. These areas will cover single large catchment or combination of multiple catchments including coastal management unit areas.
- 3.9 In addition, the Scottish Government is seeking views on the appointment of a competent authority to fulfil a co-ordinating role in flood risk management, including to:
- undertake preliminary flood risk assessments to create a national picture of risk;



- undertake flood risk and hazard mapping for those areas identified as being at significant flood risk;
- produce strategic Area Flood Risk Management Plans that will co-ordinate flood risk management objectives and measures across catchments, or groups of catchments, and set the framework in which measures are delivered or planned for at a local level by responsible authorities i.e. local authorities and others.

3.10 In preparing these plans, the competent authority will:

- secure the participation of responsible authorities via advisory groups and consult stakeholders;
- submit plans to the Scottish Ministers and monitor and review in accordance of the Flood Directive;
- require local authorities to develop Local Flood Risk Management Plans, prepared in co-operation with other responsible authorities, which will set out in more detail the measures required to manage the local flood risk.

3.11 The consultation paper at Box 7 (page 44) summarises the hierarchical planning process that the Scottish Government believes will ensure that national objectives for flood management are underpinned locally by targeted measures that are organised within and across catchments. Box 7 is attached as Appendix 2 to this report for ease of reference.

3.12 Local authorities will also have the power to carry out such flood risk management measures as may appear to them to be necessary or expedient for the protection of any land or property in their area. This would enable local authorities to implement the measures agreed in a Local Flood Risk Management Plan.

3.13 Finally, the present statutory process will be simplified by either:

- retaining a statutory process for approval of flood risk management measures, but for Ministerial confirmation to carry deemed planning permission, or
- removing entirely the Ministerial confirmation process.

#### **Water Environmental (Controlled Activities) (Scotland) Regulations 2005**

3.14 All engineering works in the vicinity of rivers require authorisation under the Water Environmental (Controlled Activities) (Scotland) Regulations 2005. This primarily relates to the effects of construction on water quality. Some of the activities authorised under these regulations also require

planning permission and the Scottish Government are asking if there is the opportunity to streamline this process. This issue is addressed in question 24 in Appendix 1.

#### **Reservoir Safety**

- 3.15 The Scottish Government is also seeking views on proposals to introduce a transfer of responsibility for enforcement of the Reservoirs Act 1975 in Scotland from local authorities to a single enforcement authority, and wishes to obtain feedback on which organisation is best placed to fulfil this role.
- 3.16 The detailed proposals of the document can be viewed online via the Scottish Governments website at: [www.scotland.gov.uk/Consultations](http://www.scotland.gov.uk/Consultations). Alternatively, the document is available as a background paper to this report.

#### **Summary of responses**

- 3.17 The consultation paper contains a series of questions set out in Appendix 1 to this report and include after each question a proposed response, including a number relating to reservoir safety. The period for comment on the proposals of the consultation paper closed on 23 April. In order to meet this deadline, a draft copy of this report and responses set out in Appendix 1 has been forwarded to the Scottish Government , subject to the views of this Committee.
- 3.18 The proposal to establish a competent authority to strategically manage flood risk in Scotland, and that SEPA is best placed to undertake this role, is one that this Council should support. The Council should, however, encourage the Scottish Government to consider putting in place interim arrangements that will allow local authorities to undertake flood alleviation functions while Flood Risk Management Plans are being prepared.
- 3.19 With regard to the current statutory processes for approval of flood risk management measures, this Council has experienced considerable frustration and delay in progressing its proposals for the Braid Burn and Water of Leith Flood Prevention Schemes, and in doing so has incurred considerable costs in preparing planning applications and confirmation order submissions and, in the case of the Water of Leith, taking its proposals through a lengthy public local inquiry. The intention to remove the risk of two public inquiries being held; one for planning and one on flood risk management measures is welcome, although there are advantages and disadvantages associated with the options presented – these are addressed in the responses to questions 15 through to 18.

- 3.20 Of the two options, the first would carry deemed planning permission on Ministerial confirmation. The concern with this option is that it presumes that only planning permission is required for works associated with a flood prevention scheme. This is not necessarily the case as listed building consent and conservation area consent may also be required. The second option, where the need for Ministerial confirmation for a flood prevention scheme is removed entirely, is preferred, particularly now that funding for flood risk management has been transferred to the local government settlement. It is envisaged that future allocation of that money will be based on the level of significant flood risk in each local authority. However, the Government should be encouraged to give further consideration to the pursuance of Compulsory Purchase Orders, ownership of measures constructed on land owned by others and rights of entry to and over land owned by others. It may therefore be necessary to clarify the inquiry process.
- 3.21 The proposals to support wider stakeholder and community engagement in the flood risk management planning process are unclear and require further consideration, particularly where flood risk management measures are located in urban areas where there are many interests, and especially if Ministerial confirmation of flood risk management measures is to carry deemed planning permission.
- 3.22 It is agreed that the authorisation under the Water Environmental (Controlled Activities) (Scotland) Regulations 2005 (CAR) should be streamlined and that the notices should be combined. However, it is considered important that the CAR license remains a separate process if it is decided to retain the Ministerial Confirmation.
- 3.23 In relation to reservoirs, the Scottish Government proposes removing the duty of enforcement authority from local authorities and to establish a single enforcement authority for the whole of Scotland. It is proposed that SEPA be this single enforcement authority. It is also proposed that the single enforcement authority prepare plans showing the consequences of a dam break where it is considered that such a breach would give rise to significant hazards.
- 3.24 The creation of a single enforcement authority is welcomed as this will ensure a uniform approach to reservoir safety. This will also avoid the present dual responsibility of the Council as enforcement authority and undertaker (owner) of a number of reservoirs in the Pentland Hills. There are also two new reservoirs being constructed as part of the Braid Burn Flood Prevention Scheme. However, it is considered that the Scottish Government should be the enforcement authority rather than SEPA, as the Scottish Government already does and will continue to play a major role in Reservoir Safety.

- 3.25 As flooding from a reservoir as a result of a dam breach would be an emergency it is considered that flood plans relating to such an incident should be prepared by the undertaker (the owner of the reservoir).

#### **4 Financial Implications**

- 4.1 Additional funding and resources will be required as the Council will be collaborating with the Competent Authority to produce the Flood Risk Management Plan. The additional costs cannot be gauged until the following is known:

- the detail and programme for the development of Flood Risk Management Plans; and the
- extent of powers to construct flood risk management measures on land owned by others.

- 4.2 A further report on the financial implications of measures contained in the Flood Bill will be presented to the relevant Committees following its publication later in the year.

#### **5 Conclusion**

- 5.1 The consultation paper 'The Future of Flood Risk Management in Scotland' contains many proposals that this Council should support, not least the intention to simplify the present statutory process for approving flood risk management measures and removing the risk of two public inquiries. However, the proposals to support wider stakeholder and community engagement in the flood risk management planning process are unclear and require further consideration, particularly where flood risk management measures are located in urban areas where there are many interests, and especially if Ministerial confirmation of flood risk management measures is to carry demed planning permission. The option to remove entirely Ministerial confirmation of flood risk management measures would simplify the statutory process considerably.

- 5.2 The consultation paper recognises that there is an opportunity to streamline the process leading to the implementation of flood defence measures and introduce better co-ordinating between the key players in the management of flood risk. The authorisation under the Water Environmental (Controlled Activities) (Scotland) Regulations 2005 identification of a competent authority with overall responsibility for the implementation of flood risk management planning in Scotland should address this situation and is a welcome proposal.

- 5.3 Local authorities will retain a number of existing duties under the proposals of the consultation paper. The expectation is that local

authorities will also take on new responsibilities, including the preparation of detailed Local Flood Risk Management Plans and develop new working arrangements with other responsible authorities. The implications for the Council in terms of resources and costs are unclear and cannot be gauged until the Government's proposals are developed in more detail and the Flooding Bill itself published later in the year.

- 5.4 The Council's current position on Flood Risk Management is set out in a report to the Transport, Infrastructure and Environment Committee, dated 27 November 2007. Council Officers have been reinforcing these views at various workshops arranged by the Scottish Government in the intervening period. The draft response sent the Scottish Government reaffirms the position of the Council set out in that report.

## **6 Recommendations**

- 6.1 It is recommended that the Committee:
- a) approves the proposed responses as set out in Appendix 1 to this report;
  - b) notes that a further report will be presented to the Committee once the Scottish Government has published its final proposals and the financial implications can be assessed.

**Dave Anderson**  
Director of City Development

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<b>Appendices</b>	Appendix 1: Questions and Responses Appendix 2: Hierarchical Approach to Flood Management Planning Appendix 3: Summary of Current Flooding Legislation
<b>Contact /tel</b>	Tom Dougall, Interim Bridges & Flood Prevention Manager 469 3753 Andrew Sikes, Principal Planner 469 3412
<b>Wards affected</b>	All
<b>Background Papers</b>	The Future of Flood Risk Management in Scotland A Consultation Document February 2008 available at: <a href="http://www.scotland.gov.uk/Consultations">www.scotland.gov.uk/Consultations</a>

## **APPENDIX 1**

### **QUESTIONS AND RESPONSES**

- Q1. Do you believe the definition of Sustainable Flood Management is helpful and of practical benefit to flood risk management?**

Yes, however the definition of sustainable development does not adequately include for environmental impacts, the evaluation of the consumption of resources and CO<sup>2</sup> emissions in the construction of measures.

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

Yes, however a means of taking cognisance of the consumption of resources and CO<sup>2</sup> emissions and outlining the assessment of environmental impacts should also be included.

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

Yes. It is desirable that a single competent authority be established. However the relative responsibilities (Box 6) between the competent authority (preparing the FRMPs) and local authorities (preparing local FRMPs) are biased towards the area plan. It is considered that there should be less detail in the area plan and more in the local plan.

- 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?**

Yes. It is agreed that SEPA should be the single competent authority provided adequate funding and resources are made available to SEPA, Scottish Water and local 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?**

Yes. There are concerns as detailed in the response to question 3. Appropriate funding must be made available to local authorities to enable them to fulfil these new duties. There is also the concern that there may be duplication of effort as many Local FMPs are already being progressed by local authorities. It is considered that appropriate organisations should also include landowners and it must be clarified if landowners also attract funding.

- 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?**

It should be left to the partners to appoint a lead authority.

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

Yes.

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

The Trunk Road Authority, Network Rail, British Waterways, Port Authorities and Landowners may be appropriate in local circumstances.

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

Yes.

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

Yes. In addition this should not be left solely to ministerial direction. Local authorities should be permitted discretion to invite other stakeholders to participate. For example CEC established the Edinburgh Flood Appraisal Group (FAG) in early 2000, in line with the recommendations set out in NPPG7 – the government guidance extant at that time. Membership of the FAG included a number of the responsible authorities referred to in question 7. The Council used the group as a vehicle to prepare its supplementary planning guidance on planning and flooding. The guidance was published in draft for consultation purposes before being finalised as supplementary planning guidance by the Planning Committee and cited as a material consideration in the determination of planning applications.

CEC agrees that responsible authorities have a duty to work together to produce plans at all levels, including development plans. In discharging its duties CEC has developed both formal and informal working arrangements with relevant responsible authorities and with other stakeholders in the City: both at a community planning partnership level at a local level. However, in a City context the list of stakeholders will go beyond the 'standard' list and may include many others e.g. the Water of Leith Flood Prevention Scheme attracted interest from a range of natural and built heritage conservation bodies. It is not clear how the 'stakeholder forums' would be constituted, who would be represented on them and how information might be disseminated to them. In addition there may be established arrangements in place that could be used to capture ideas, disseminate information and support the preparation of flood management proposals. In the absence of such information it is not possible to say whether or not the proposed arrangements are sufficient to support wider stakeholder and community engagement in the flood risk management process.

**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. However there is a concern that there could be duplication of effort in relation to these two processes. It is recommended that these processes be combined.



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

Yes. Provided that the competent authority is provided with justification for the decision

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

Yes. However, urban drainage, SUDS, sewers and watercourses need to be more clearly defined. This will help clarify the duties and funding of Scottish Water and the Local Authorities.

**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. Flood Risk Management Plans can help inform the preparation of development plans. It is not unreasonable for local authorities to demonstrate that they have had regard to relevant FRMPs in the preparation of development plans. This is common practice for local authorities which are required to have regard to a wide range of guidance/policy prepared by Government.

**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?**

Yes. However, the assumption behind this question and the preceding paragraphs is that it is only planning permission that may be required for works associated with a flood prevention scheme. This is not necessarily the case as listed building consent and conservation area consent may also be required. In addition, in conservation areas, Article 4 Directions may be in force that requires planning applications to be submitted for specific types of development that would not otherwise require it. In Edinburgh, this level of control is exercised, with Scottish Government approval, through the introduction of Article 4 Directions in all conservation areas. As a consequence it may not be a straightforward exercise, as the question suggests, to put in place a more streamlined approach to the delivery of flood risk management in historic environments such as those that exist in Edinburgh. There is also concern regarding the level of detail that will be required in the preparation of such plans and this must be clarified.

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

Ministerial Confirmation should not be required. However, it should be noted that although features of a scheme may not require planning permission, others consents may be required, as indicated in the response to question 15, which may require referral to Scottish Ministers before consents may be issued, for example, listed building consent.

**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?**

No. The present procedure is not satisfactory. Timescales should be fixed and consideration should be given to removing the need for Ministerial Confirmation. The period for negotiating with objectors should be fixed. More importantly timescales should be set in relation to all parts of the Public Local Inquiry process, including the time taken for a decision.

**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?**

Yes. Option 2 is preferred. There is no need for Ministerial Confirmation now that funding arrangements have changed. However further consideration needs to be given to Compulsory Purchase Orders, ownership of measures constructed on land owned by others and rights of entry to and over land owned by others. It may be necessary to clarify the inquiry process.

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

It is considered that the current objection period of 3 months is excessive, but that the 21 days allowed for in the planning process to make representations is too short, particularly for those directly affected. A two month objection period is suggested.

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

Yes. However the concerns outlined in the responses to questions 15 and 16 must be addressed

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

By ensuring that sufficient funds are made available in order to permit SEPA, Scottish Water and local authorities to employ adequate resources and / or employ suitably qualified consultants. Guidance on the use of approved codes of practice etc. would be welcome.

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

To leave matters wholly to the local authorities to satisfy themselves that any scheme is valid and to manage it through the planning process.

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

No. Local authorities should have the power to recover funds from riparian owners who have failed to maintain any watercourse. There is a concern that all engineering work will be interpreted as Measures (i.e. a new flood scheme) and

this will frustrate local authorities attempting to undertake routine maintenance, for example, CEC has in the past improved inlet conditions of culverts, provided overflow pipes and heavily refurbished culverted watercourses. These works have been undertaken as routine maintenance. It is important that this flexibility is not lost and it should be noted that control will be exercised by SEPA through the Water Environmental (Controlled Activities) (Scotland) Regulations 2005.

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

Yes. It is important that CAR remains a separate process but that the notice should be included in the same advert (i.e. one notification)

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

No comment.

**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?**

See response to question 22.

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

No. It is important not to lose the local flavour as key issues may vary between local authorities.

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

Yes. However it is important that the flexibility described in the response to question 23 is not lost.

**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?**

No. This burden should not be placed on local authorities. The primary duty should remain with the homeowner/ landowner/ asset owner. Local authorities should also have their powers extended to allow costs to be covered from homeowner/ landowner/ asset owners.

## **RESERVOIR SAFETY**

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

Yes.

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

No. As SEPA's primary remit is the environment and this is a safety issue, it is recommended that the Scottish Government be this single national 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?**

Yes. There should be a duty on undertakers to prepare these maps and plans as this is a safety issue.

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

Yes.

**Q34. Views on crown application and any other comments?**

As this is a safety issue the Crown should not be exempt.

## **APPENDIX 2**

### **HIERACHIAL APPROACH TO FLOOD MANAGEMENT PLANNING**

#### **BOX 7 Flood Risk Management Planning**

The Scottish Government believes that the hierarchical planning process summarised below would ensure that national objectives for flood management are underpinned locally by targeted measures that are organised within and across catchments.

	<b>Area Flood Risk Management Plan</b>	<b>Local Flood Risk Management Plan</b>	<b>Projects</b>
<b>Operating scale</b>	These are large-scale plans intended to cover a single large catchment, including coastal areas (e.g. River Tay) or a combination of multiple catchments (e.g. West Highlands).	These plans would operate at the scale of a single small catchment (e.g. sub-catchment of the River Tay). They would cover the natural drainage area of a river. They would not be restricted to Local Authority boundaries.	Operate at the scale of a single scheme or a combination of measures/schemes (e.g. flood defences) across a catchment.
<b>Overall purpose</b>	A high level plan that sets the strategic framework for flood risk management in Scotland. These plans would set the framework in which measures are delivered or planned for at a local level.	These plans translate the strategic objectives and measures set out in Area Flood Management Plans into locally focused sets of measures to address flood risk.	Projects are used to deliver the preferred flood risk management measures for a specific location within a catchment.
<b>Example Tasks</b>	<ul style="list-style-type: none"> <li>• Identify areas at significant flood risk.</li> <li>• Map of flood hazards</li> </ul>	<ul style="list-style-type: none"> <li>• Assessment of local catchment characteristics.</li> <li>• Detailed appraisal of flood risks to</li> </ul>	<ul style="list-style-type: none"> <li>• Pre-project monitoring and assessment</li> <li>• Design</li> </ul>

	<p>(likelihood of flooding) and flood risks (impacts of flooding).</p> <ul style="list-style-type: none"> <li>• Set objectives to manage flood risks.</li> <li>• Prioritise flood risk at a national level.</li> <li>• Outline broad-scale measures to address flood risks, e.g. improved flood warning and/or flood alleviation.</li> <li>• Establish links and integration with other aspects of land and water management (e.g.).</li> </ul>	<p>inform selection of measures.</p> <ul style="list-style-type: none"> <li>• Appraisal of management options and selection of preferred measures. - could include traditional flood defences, natural flood management techniques and urban drainage plans.</li> <li>• Prioritise flood risk management measures locally</li> <li>• Funding and implementation planning.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete statutory process</li> <li>• Implementation of the preferred approach.</li> <li>• Post project appraisal and monitoring</li> </ul>
Lead	Competent Authority ( SEPA)	Local Authorities	Appropriate organisation or individual depending on type of works being undertaken

### **APPENDIX 3**

#### **Summary of Current Flooding Legislation extant in Scotland**

The Land Drainage (Scotland) Act 1958

The Flood Prevention(Scotland) Act 1961

Sewerage (Scotland) Act 1968

The Roads (Scotland) Act 1984

The Environment Act 1995

The Town and Country Planning (Scotland) Act 1997

(together with a number of Scottish Planning policy / national planning Policy Guidelines and Planning Advice Notes)

The EC Water Framework Directive (Directive 2000/60/EC)

The Water Industry (Scotland) act 2002

The Water Environmental and Water Services (Scotland) Act 2003.

The Civil Contingencies Act 2004

The Water Environmental (Controlled Activities) (Scotland) Regulations 2005.

The EC Directive on the Assessment and Management of Flood Risk (Directive 2007/60/EC)

(Came into force November 2007)



ANTORC

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25/04/08

Ecology & Land-use Advice

Dear Madam, My flus is late — I was away  
 I have no objection to this response being posted  
 on the net with my name — but not my address

Chunhyun

With Compliments

*[Handwritten signature]*



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## THE FUTURE OF FLOOD RISK MANAGEMENT IN SCOTLAND.

Consultation Response from C.O. Badenoch, [REDACTED] (Individual Response).

### General Observations:

1. The consultation document does not emphasize enough (Para 1.3) the emerging statistical pattern of major changes in rainfall, snow, wind-events and currently continuously rising sea-levels (and hence the effects of these on tidal surges).

Recent (2007) high and localised rainfall in South Scotland demonstrated the lack of capacity (volume) of – especially - urban drainage (Newton Stewart, Dalbeattie, Dumfries, Langholm, Hawick) to be able to cope, even where there is adequate “fall” in the overall storm-drainage system. Thus even where flooding *per se* is not evident, the dislodging and displacement of manhole covers to the drainage system poses serious consequences for pedestrians and road traffic.

**All future planning and management of potential flooding *must* take into account the best estimates of projected proposals for increased local precipitation and seasonally-skewed precipitation events, and the provision of adequate removal of such potential flood waters.**

2. The consultation document does not appear to appreciate that the burdens being ascribed to Local Authorities cannot be sensibly or reasonably met. The issues being dealt with are complicated, and often beyond the capacity of Local Authorities to deal with, but are factual.

Firstly, the overall assessment of flood risk must be developed, continuously monitored and overseen by a competent, body using a scientific and objective base. Local Authorities by their nature do not have access to such, nor do their final decisions depend upon it – since, however well-meaning, Local Authority Councillors are not likely to be hydro-geomorphologists, and, sadly, many are prone to subjective assessments based on their own/their constituent random and biased observations, or, worse to selective pressure by vested local interests. This applies to existing properties, structures and land-uses, as well as to ongoing and future Planning under the Town and Country Planning Acts and their Amendments. Further, the political timescale and hence vision of Local Authorities is generally far too short to enable them to adequately deal with such long terms assessment, planning and development.

Secondly, the recent experiences of flooding, as for example in Moray (Elgin), Hawick (Roxburgh), Muirton (Perth) and White Cart (Renfrew) have shown a fundamental lack of anticipation and planning for such events, and also a diversity of response by the relevant Local Authorities. Some of these have been undoubtedly a knee-jerk reaction when faced with the considerable costs of “clean-up” pressure from their constituents and subsequent flood

control. Yet many of the consequences of recent flooding may be traced directly back to manifestly faulty appraisal and planning approvals by those same Local Authorities.

While accepting and endorsing the need for a holistic approach (para 1.4) it is apparent that the responsibilities of Local Authorities – as summarised in para 1.7 - are rarely being met. **Local Authorities must start to accept their own responsibility in these regards. It should be clear that Central Government should not be responsible for their past, inadequate actions.**

3. The mere provision of flood-protection structures, together with local canalisation of water-courses has generally shown itself in global terms to be expensive, inadequate (*vide* the works of last century on the Rhine) and temporary. Such flood-protection works also actually impede the runoff *after* flooding – as will inevitably occur - retaining flood-waters for longer and causing greater property damage than if there had been no flood-protection in the first place. Emphasis should, instead, be placed on the characterisation of catchment flooding characteristics for each river system, and programmes for total flood-prevention – as opposed to “protection” – set in motion.

**While it is accepted that natural flood management may her be regarded as distinct from what is stated here as sustainable flood management, nevertheless the former should always precede the latter. The latter is unlikely to be truly sustainable in the longer term, and the water quality, social and ecological consequences of ignoring this precept are profound**

4. Flooding in Scotland has been greatly exacerbated by inadequate rural land-drainage schemes, e.g. those undertaken for purely agricultural purposes under the **Land Drainage (Scotland) Act 1958**. Such schemes have straightened, deepened and canalised water-courses as well as re-profiling their downstream slopes. This has effectively removed the appropriate flood-plains, caused more rapid run-off and caused serious morphological changes both up-stream (seldom considered) and down-stream, with increased erosion and sedimentation affecting water-quality, ecology, fisheries, and downstream abstraction for irrigation and supply, as well as down-stream urban flooding. Proper assessment of the hydro-morphological, geomorphological, ecological and engineering effects consequent upon such schemes, generally have not been given due weight, quite apart from the immense (national) expense of maintaining them.

**It is strongly suggested that the implementation of the *EC Water Framework Directive*, and *EC Floods Directive* through the relevant Scottish legislation, is actually considered to be *impossible* without the address, revision and possible repeal of such ill-considered past legislation.**

**It is further suggested that all (sub) catchments which have been subject to the severe morphological modification of the Land Drainage Scotland Act 1958 and its amendments, or of similar legislation, require to have urgent review of their flows, flood characteristics, and programmes of re-modelling/restoration set in motion as a matter of some urgency.**

5. In any consideration of flood controls, the development of Sustainable Urban Drainage Systems (SUDS) and their rural counterparts is *essential*, especially with regard to the development and mandatory use of porous “hard” surfaces in **all new and restored or re-generated developments**, with greater soil absorption and attendant use of soils retention. (Para.1.20 *et seq.*)
6. The holistic approach advocated in the consultation draft, with clarification of responsibilities and executives is to be welcomed. This will enable sounder long-term planning and prioritised investment on a more sustainable basis.
7. The emphasis on the river catchment approach to forward flood management, ( para 1.13) rather than one of piecemeal, *ad hoc* works, often carried out hastily in response to a flood event, is also welcomed. This also ties in with Integrated River Catchment Planning, which has been proposed, *inter alia* by Forestry Commission and Scottish Natural Heritage, and is being carried out, usually allied to the work of individual River Trusts and the Area Advisory Groups which are responsible for the implementation of the *EC Water Framework Directive*.
8. There are quite distinctive flooding issues relating to the interaction of the legislation and its implementation where part of a river-catchment is managed across two or more local authority boundaries, or, more importantly, as in the case of Solway/Eden and Tweed/Bowmont and Till, across the Scotland England Border. Such trans-boundary realities and their solutions must be adequately addressed within the *Flooding Bill*.
9. There is considerable scope for the re-instatement of areas of loch and wetland (marsh/mire/fen) within especially lowland catchments which have been lost since agricultural developments of the 19<sup>th</sup> and 20<sup>th</sup> centuries. This is particularly so where such wetlands actually lay at the level of, or below the level of, the surrounding water-table. Such areas would add to the capacity for the retention of precipitation, would slow runoff, - and hence flood risk - and would materially assist water-availability during drought - if the scenarios currently being predicted for Eastern Scotland over the next fifty to one-hundred years are even partially correct (See for example D. Ray. the *Impacts of Climate Change on Forestry in Scotland – a synopsis of a spatial modelling approach*. Forestry Commission Research Note No FCRN101, January, 2008), and the findings of the International Panel on Climate Change and UK Climate Change Impacts Programme.

Therefore, *inter alia* the C.A.R. regulations require to be re-visited to facilitate this, especially for promoting and facilitating the restoration/creation of water-bodies and wetlands on private land that:

- (i) are not of sufficient size/volume to require licensing under the *Reservoirs Acts/Reservoir Safety Act*, or
- (ii) are at or below the level of adjacent ground-water, or
- (iii) where the predictive modelling of climate change, indicates that forecasts of precipitation are likely to be below requirements

**for that sub-catchment, or**  
**(iv) where their presence and capacity would materially help to alleviate sudden surge runoffs and hence downstream flooding**

10. Para 1.25 *et seq.* while useful, do seem to ignore the fundamental difference in nature between Scottish (“spatey”) river systems and English lowland (“floody”) rivers. There is an urgent need to categorise all Scottish river catchments according to their appropriate and likely flood characteristics and behaviour, and hence their degrees of risk, and to prioritise any flood prevention action accordingly. (See also Comment 4 above.) The overall strategy – in terms of cost if not overall sustainability - must be towards flood *Avoidance* rather than *Alleviation*. (See FIAC para 2.7 Box, and para 2.8 in Consultation Paper.)
11. The wording of Para 2.8 in the Consultation document contains a “council of perfection” which may not be able to be upheld. In the third Objective the present wording of “*an environmental objective to protect and work with the environment*” may quite simply be impossible “*with respect for all species, habitats, landscapes and built heritage.*” This is a hostage to fortune as for example wetland, flood plain or water-channel restoration, considered necessary for the development of sustainable flood control, and its management might materially change the current habitats and species of any site.  
  
Equally, certain landscapes and – especially - artefacts of the built environment may be entirely incompatible with sustainable flood management. Indeed quite substantial areas of the built environment, developed under a completely different climatic regimen, and without any thought or understanding of long-term hydro-geomorphological processes, may have to be (gradually or suddenly) abandoned and changed during the development of a catchment-wide flood-management programme even where “*affordable costs*” are applied.  
  
**This sub-paragraph must be re-worded carefully for clarity and future workability.**
12. Box 5 makes mention of **Responsibility** under Item 2. Given the widespread ignorance and lack of understanding of hydrology and the consequences of short-term and local “flood protection” there is a huge need for adequate training of Councillors, Local Authority and agency staffs to bring them up to a standard which can appreciate their need for **Responsibility**. This will also apply inevitably to **Democracy** for Community engagement. (Item 7).
13. Para 2.10 this is of utmost importance.
14. Figure One includes reference to “*flood defence structures*”. These are very suspect – especially if “hard engineering” and do not fit within the tenor of the rest of the Flooding Bill. At best these can only be seen as a temporary solution. They are wholly unsustainable and have been shown to be so both in U.K. and elsewhere in the world. They often pose adverse erosional and

depositional consequences both upstream and downstream. Strongly suggest that reference to these is deleted, or that appropriate caveats are attached thereto.

15. Para 2.14 is understandable but may require careful wording for absolute clarity. It should not be used as a possible "opt-out" for sustainable methods.
16. The relevant legislation referred to in para 3.3 *et seq.* and also that given in **Annex A**. These make no mention of significant demands made by the *Nature Conservation (Scotland) Act 2002* with regard to the need for consideration of ecological effects – both positive and negative - to habitats and biodiversity in Scotland. This includes wetland and riparian systems. There is similarly no mention of the *Scottish Biodiversity Strategy*, *The Scottish Forestry Strategy* or *UK Forestry Standard* (with their *Water Guidelines*), nor of the delivery of social and environmental justice by public agencies to meet Community Planning under the Local *Authority (Scotland) Act, 2001*.

**This Annex should be carefully scrutinised to ensure that at relevant legislation is adequately covered. Only then can Figure 1. Box 5 *Principles of Sustainable Flood Management* be rendered complete.**

17. Para 3.10 second part, seems to exclude sewerage from the Floods Directive. However, care should be made to distinguish to capability of storm-water drainage, for the reasons already stated in the second part of Comment 1 (above). This may be especially difficult where the storm drainage and sewerage are interconnected as they still are in some older village and rural systems.
18. Para 3.25 if the Area FRMPs are to meet local requirements then they must :
  - (i) have overarching approval and responsibility for integration of any Local FRMPs;
  - (ii) also be cognisant of, be dependent upon the data from, and be built-into, the **Integrated Catchment Management Plans** for all the major Scottish rivers – including those portions of the cross-Border Cumbrian Solway and Northumbrian Tweed - and administered through the mechanisms of the Area Advisory Groups set up for the implementation of the EC Water Framework Directive.
19. **Box 7. It is not clear from this diagram that the Local FRMPs must be an integral and consequent part of Area FRMPs. Amend.**

Much of the background data dealing with assessment of local catchment characteristics should be already available through work done for Integrated Catchment Management Plans, Flood Control Plans etc.

There needs to be addition to the first column of this box – under *Area FRMP Example Tasks*, which is quite explicit in the need for Area FRMPs (and so, by implication, Local FRMPs) to take adequate account of the latest statistics

from predictive modelling on precipitation events, potential water deficits (droughts) etc. from the government Committee on Climate Change, Forestry Commission Research Branch etc.

20. Para 3.26. Amend to read – “...The Scottish Government propose that Local Authorities are given new responsibilities in relation to the production of Local Flood Risk Management Plans. We propose that Local Authorities **must prepare a Local Flood Risk Management Plan for all areas within their boundaries where flooding is deemed by the Responsible Authority (within the Area FRMP) to be a significant risk.** – and on.
21. Para 3.28 Of fundamental importance.
22. Para 3.29, top of page 7: Delete last sentence. Add: “**Such collaboration between Local Authorities with impingent catchments at significant risk of flooding, shall be co-ordinated through the local Area Advisory Groups constituting the Responsible Authority.**” – or similar. (The proposal for identification of a “lead” authority within relevant Local Authorities has been seen to be ineffective and potentially divisive when this has been used in the past.)
23. The significant risk of flooding varies markedly between catchments. It may be that, once the characterisation process is completed and the predictive modelling for future significant flooding applied, existing transferred budgets are likely to be inadequate for some rivers/sub-catchments/localities. There must be some mechanism for appeal so that proper characterisation and future modelling data can be taken into account in budget allocation.
24. Para 3.31. This is broadly accepted but see para 2 above. It has to be understood that Local Authority representatives or their staffs are rarely competent geo-hydromorphologists, and do not have access to the means of proper data collection without recourse to expensive, and themselves variably competent consultants. Nor do they have the ability to be able to interpret and apply such data into coherent policy, planning and action.
25. 3.34 The erection of yet another tier in the proposed establishment of **Flood Risk Management Groups** will tend towards separation and failure of adequate integration. They will also be an additional expense in administration and executry. As set out, any Flood Risk Management Groups should be subsets of the Responsible Authorities, ideally through the Area Advisory Groups, with appropriate power of *ad hoc* specialist secondment where this is required.