

**NATIONAL TECHNICAL ADVISORY GROUP ON FLOODING ISSUES**  
**CONVENTION OF SCOTTISH LOCAL AUTHORITIES (COSLA) FLOODING**  
**TASK GROUP FINAL REPORT**

**Purpose**

1. This paper introduces the COSLA Flooding Task Group Final Report which considers the issues of flood prevention, flood incidents and coast protection as they pertain to Scottish councils and recommends appropriate actions. A copy of the report is attached at Annex A.

**Background**

2. The National Technical Advisory Group on Flooding Issues (NTAG) was set up to advise the Scottish Executive on the preparation of technical guidance for flood prevention schemes in Scotland. Members of NTAG recognise the importance of taking account of the findings of the COSLA Flooding Task Group Final Report. CoSLA has two representatives on NTAG.

**Introduction to the Final Report**

3. The COSLA Flooding Task Group was established to look at the issues of flood prevention, flood incidents and coast protection, with respect to the roles of Scottish local authorities, and to recommend appropriate actions. More specifically, 3 subgroups were tasked to examine legislation and funding, research and current practice, and to provide a co-ordinating role. In addition, during the working of the sub-groups, views were taken from other bodies with an interest in this area, including SEPA, Scottish Water, the Association of British Insurers and the Executive. The report makes 10 recommendations.

4. The report was published in March 2003.

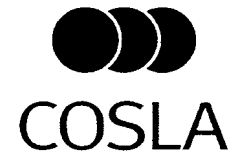
**Discussion**

5. The Scottish Executive welcomes the COSLA Flooding Task Group's report, and acknowledges its importance as a valuable resource. The role of local authorities, and their relationships with central government and other pertinent bodies, is of crucial importance to the implementation of an effective approach to flood management. The recommendations made are therefore of particular relevance to NTAG, and should be considered accordingly.

**Conclusions**

**6. Members are asked to reflect on and discuss the relevance of the COSLA Flooding Task Group Report recommendations and how these findings might inform national technical guidance.**

**NTAG Secretariat**  
**January 2004**



**COSLA FLOODING TASK GROUP  
Final Report**

**SUMMARY OF RECOMMENDATIONS**

**Recommendation 1** - National guidance is needed on the predicted effect of climate change and the design standards to be adopted, while accepting that this may require to be amended from time to time as knowledge and experience of this effect in Scotland is gained.

**Recommendation 2** – Councils should continue to deliver flood prevention and coast protection duties, but strategic support should be improved and revenue funding for councils should be significantly increased to allow them to adequately carry out their duties.

**Recommendation 3** - The Scottish Executive should take a proactive strategic leadership role in flooding issues to support and work in partnership with local authorities and other bodies.

**Recommendation 4** - SEPA's role should be reviewed and expanded in respect of flood data and advice to councils.

**Recommendation 5** - Scottish Water and councils need to work closely together through Flood Appraisal Groups and local consultation, and to implement a joint approach to flooding in individual locations.

**Recommendation 6** - All councils with a coastline should prepare Shoreline Management Plans to help plan and manage the coast, and to help prevent unforeseen coastal flooding. Additional resources to do this will be required.

**Recommendation 7** - The Scottish Parliament must confirm that responsibility for existing Sustainable Urban Drainage Systems lies with Scottish Water.

**Recommendation 8** - A high-level standing Flooding Forum should be established to consider the effects of climate and flooding in Scotland and to offer advice to councils and other parties on flooding and flood related issues.

**Recommendation 9** – Councils should be more proactive in dealing with flood events and in communicating their role and in providing information to the public. This will require additional funding.

**Recommendation 10** – That the other recommendations contained in Section B of the Task Group’s report are taken into account in the development of future national management strategies.



COSLA

**COSLA FLOODING TASK GROUP  
Final Report**

**SECTION A : MAIN FINDINGS AND RECOMMENDATIONS**

**1. Introduction**

- 1.1 In the light of recent flood events the COSLA Flooding Task Group was established to consider the issues of flood prevention, flood incidents and coast protection as they pertain to Scottish councils and to recommend appropriate actions.
- 1.2 The Task Group first met on 24 September 2002, following which three sub-groups were established to examine legislation and funding, research and current practice, and to provide a co-ordinating role. During the working of the sub-groups soundings have been taken with other bodies with an interest in this area, including SEPA, Scottish Water, the Association of British Insurers and the Scottish Executive.
- 1.3 This section of the report contains a brief description of the present situation with flooding in Scotland and summarises the recommendations of the COSLA Flooding Task Group.

**2. Flooding in Scotland**

- 2.1 Riverine and coastal flooding has occurred in Scottish communities since settlements were first formed. In previous centuries the effects of flooding were more readily accepted than today. Houses were of a robust and simple construction, and residents had fewer and less complicated possessions. Today with modern building techniques and materials, décor, soft furnishings and electronic equipment the effects of flooding are deeply felt and take longer to remedy. Attitudes have also changed and people no longer feel compelled to suffer the consequences of natural events.
- 2.2 In recent years there have been more frequent flood events, not statistically unusual in themselves but perhaps heralding the onset of the globally predicted climate change. There has also been a number of significant flood events, among them Perth, Paisley, Elgin, Edinburgh, Dumfries, Kilmarnock and Kirkintilloch. These have raised public awareness of the economic and personal effects of flooding, which in turn have focused attention on the need to review and clarify roles and duties of responsible bodies. Insurance companies are also reviewing flood cover for properties in flood prone areas, which will raise expectations for preventative measures to be taken. Local planning authorities are now also expected to take flood probability into account in considering planning applications for new developments.

- 2.3 Within the last ten years there have been significant changes to the way government and local services are delivered in Scotland. This has seen the creation of a Scottish Parliament, Scottish Executive, unitary councils, a single water authority, and the Scottish Environment Protection Agency. All these bodies have a role in flooding and drainage issues, but the existing legislation is old and was largely framed for previous arrangements, and new roles have not properly settled down.
- 2.4 During periods of wet or stormy weather it is not just watercourse areas where flooding problems can become prevalent. It is apparent that many existing drainage systems, where they exist at all, are unable to cope with raised water tables and increased surface water runoff. This leads to properties and roads being flooded from runoff from surrounding land, and disruption from earth slips and silting.
- 2.5 Modern agricultural practices, with increased field sizes and removal of boundary strips, aid this process. Increasingly local authorities are being called upon to help deal with these situations over which they have little jurisdiction. Recent research has shown that careful land use management can effectively reduce the rate and amount of run-off from agricultural and forestry land. Although this has a positive effect in small catchments, further research is needed on what effect, if any, they would have on larger catchments.
- 2.6 New legislation and new ways of working are currently under development, so it is right that COSLA considers the experience gained since 1996 by councils, and draws some conclusions on where improvements can be made.

### 3. Climate Change

- 3.1 Much has been written during the last decade on the effects of climate change, and two papers in particular focused on the likely effects of climate change in Scotland. The research predicts that Scotland will become warmer, sea levels may rise, that rainfall will increase, particularly in the west, that it will become windier and that storm events will become more frequent. While these trends are generally accepted by the scientific community, there has as yet been no information forthcoming that is specific enough to help engineers and planners plan for the future.
- 3.2 Given these predictions it would be prudent to plan civil engineering works and the location of new developments with the effects of climate change in mind. At present it lies with engineers and planners at local level to decide on the allowance to be made for climate change. Clearly it is inappropriate and unsafe to expect each of Scotland's 32 councils to draw their own conclusions, based on little experience, on the effects of climate change.
- 3.3 The effects of climate change will influence the size of surface water drainage pipes and culverts, the capacity and height of flood defences, the height of coast protection, the size of attenuation ponds and the locations, limits and levels of new developments.
- 3.4 **Recommendation 1 - National guidance is needed on the predicted effect of climate change and the design standards to be adopted while accepting that this**

**may require to be amended from time to time as knowledge and experience of this effect in Scotland is gained.**

#### **4. Responsibilities of Councils**

- 4.1 Until local government reorganisation in 1996 the flood prevention and coast protection duties of the Scottish councils were undertaken through the Water and Drainage capital programme of the former Regional Councils. On reorganisation these budgets along with many expert staff were transferred to the three water authorities (now merged into Scottish Water). The flood prevention and coast protection duties remained with the new unitary authorities, and are now managed for the most part by engineering staff involved in roads and transportation issues.
- 4.2 Since then the workload for councils has increased through the introduction of new legislation. In 1995 National Planning Policy Guideline (NPPG) 7 was published which required councils as planning authority to fully consider flood risk in determining planning applications and to set up flood appraisal groups. In 1997 further legislation was introduced which increased councils' duties in flood prevention, requiring a more proactive role in watercourse maintenance and watercourse flood risk appraisal. Around the same time the concept of sustainable urban drainage systems was introduced for new developments to assist attenuation and improvements in the quality of water entering watercourses.
- 4.3 All this, in addition to dealing with flood events, has sorely tested the ability of councils to cope with these statutory roles, for which they have been given only a slight increase in funding (£3M across Scotland in 1997). The Scottish Executive has refused pleas for increased funding on the basis that councils at present do not overspend their budgets; this is a mistaken impression since all council managers are under strict instructions to control expenditure within budgets, leading to important flood prevention work not being undertaken or being funded from roads budgets. Analysis of need carried out by some councils indicate that expenditure requires to be increased by a factor of three.
- 4.4 The Task Group were firmly of the view that councils were best placed to deliver flood prevention and coast protection duties at local level, but needed much improved strategic guidance and support to allow them to carry out these duties effectively.
- 4.5 Recommendation 2 – Councils should continue to deliver flood prevention and coast protection duties, but strategic support should be improved and full funding for councils should be provided to allow them to adequately carry out their duties.**

#### **5. Responsibilities of Other Bodies**

- 5.1 The Scottish Executive has national responsibility for flood prevention and coast protection. It administers the legislation as appropriate, granting approval for schemes, which it grant aids, and at present granting additional capital borrowing consent from a limited national budget. The Scottish Executive offers very little in the

way of strategic leadership to local authorities and others, although it offers guidance on the development of individual schemes.

**5.2 Recommendation 3 - The Scottish Executive should take a proactive strategic leadership role in flooding issues to support and work in partnership with local authorities and other bodies.**

5.3 The Scottish Environment Protection Agency's principal role relating to flooding is in monitoring rainfall and ensuring water quality. SEPA is a statutory consultee for planning authorities on developments where flood risk may be present. SEPA uses discretionary powers for flood warning to monitor a number of river flow gauges throughout Scotland and is the main source of information relating to such flows. SEPA also provides a number of flood warning schemes in monitored areas and operates the more general Flood Watch and Floodline services to the public. SEPA, COSLA and the Scottish Executive have agreed a protocol relating to flood risk, and SEPA gives advice to planning authorities on such risk. In reality SEPA's statutory duties in relation to flooding are restricted to larger watercourses and their expert knowledge, while valuable, is constrained by their limited monitoring. SEPA has produced coarse flood maps, as initially developed by the Institute of Hydrology, for local authorities which will be refined.

**5.4 Recommendation 4 - SEPA's role should be reviewed and expanded in respect of flood data and advice to councils.**

5.5 Scottish Water is the drainage authority throughout Scotland and therefore shares responsibility with local authorities for the quantity and quality of surface water discharge to watercourses. Many of the existing urban drainage systems involve combined sewers with storm water overflows, and surcharge from these systems often contribute to flooding during flood events. Modelling of these using recognised good practice is beginning to emerge, which in turn will help local authorities with understanding the often complex causes of flooding in specific locations. Scottish Water also have an opportunity to assist in flood control through reservoir management within constraints imposed by water supply requirements.

**5.6 Recommendation 5 - Scottish Water and councils need to work closely together through Flood Appraisal Groups and local consultation, and to implement a joint approach to flooding in individual locations.**

## **6. Shoreline Management Planning**

6.1 In recent years there has been growing awareness of the interaction of coastal processes along the shoreline and the need to fully consider these processes when planning coast protection works. Bad planning of these works can cause migration of flooding or erosion problems to adjacent sections of coast.

6.2 Through studying predominant tidal currents and examining the coastal conditions it is possible to identify areas that are eroding, accreting and standing still. A study of the effectiveness of existing coastal defences can be added to this study to create a general picture of conditions that exist along any given length of coast. This then

allows management decisions to be taken on areas where protection and managed realignment are required, and where erosion should be allowed to continue. This also informs the planning process and allows coast protection needs and priorities to be identified and programmed.

- 6.3 The development of Shoreline Management Plans, as recommended in NPPG13, is seen as the best way of planning and managing the coast. With the encouragement of Scottish Natural Heritage several Scottish local authorities have developed or are developing SMPs for their areas. However there is a need for modest additional financial resources to allow comprehensive development of these plans throughout Scotland.
- 6.4 Recommendation 6 - All councils with a coastline should prepare Shoreline Management Plans to help plan and manage the coast, and to help prevent unforeseen coastal flooding. Additional resources to do this will be required.**

## **7. Sustainable Urban Drainage Systems**

- 7.1 The concept of Sustainable Urban Drainage (SUD) systems have been introduced into Scotland to help improve water quality from surface water run-off from roads, buildings and curtiliges entering watercourses. This in essence uses the assistance of natural processes to replace positive piped drainage systems. The techniques involve swales, filter trenches, ponds etc and are used, often in combination with positive systems, in new developments.
- 7.2 Much work has been done by SEPA, councils, water authorities, consultants and others to ensure the development of SUD techniques which would be suitable for use in Scotland. These had to suit Scottish soil types, weather and nature of developments. During this early stage there has been teething problems with the installation of SUD systems and there is some growing concern about the true effectiveness of these systems. However a major problem with these systems relates to responsibility for their maintenance. Although this has been addressed in the Water Environment and Water Services Bill, clarification is still required, especially in relation to schemes installed prior to the legislation.
- 7.3 As things stand no agreement has been reached between the developers, councils and the water authority about who is responsible for future maintenance of existing SUD systems.
- 7.4 Recommendation 7 - The Scottish Parliament must confirm that responsibility for existing Sustainable Urban Drainage Systems lies with Scottish Water.**

## **8. A National Solution**

- 8.1 There is no lack of willingness on the part of all interested parties to tackle flooding issues to the best of their abilities and within their staff and financial resources allocated to the task.

- 8.2 However, and especially in the case of councils, staff resources to deal with flooding issues come as part of a wider remit, and part of some larger service with its main focus elsewhere (such as transportation or planning).
- 8.3 Where efforts have been made on a national basis to form a focus on flooding issues, again the resulting working groups often consist of practitioners or those unable to take strategic decisions on policy or funding that would make a real difference.
- 8.4 It is also clear that the way land within catchment areas is used and managed has a significant effect on surface water run-off, drainage and flooding. Although this is outwith the remit of this Task Group, these issues need to be addressed as part of a package of measures to reduce flooding.
- 8.5 Local flood appraisal groups, as recommended in NPPG7, serve as a useful informal forum for discussing local issues, but have an advisory role which focusses more on practice than overall strategy. A determined effort needs to be made, in a Scottish national context, to create strategic management for flooding.
- 8.6 The Scottish Executive is in the best position to set up a national forum of key managers from key bodies to achieve a partnership approach to flooding. Some suggestions on how this might be achieved are outlined in Appendix 1.
- 8.7 **Recommendation 8 - A high-level standing Flooding Forum should be established to consider the effects of climate and flooding in Scotland and to offer advice to councils and other parties on flooding and flood related issues.**
- 8.8 Councils have a lead role in dealing with flooding, and this should continue. However, as various bodies are involved in flooding issues there is considerable confusion among the general public on which body to contact and who should play a lead role when flooding occurs. Better organisation and public information is required, which will need additional funding.
- 8.9 **Recommendation 9 – Councils should be more proactive in dealing with flood events, and in communicating their role and in providing information to the public. This will require additional funding.**
- 8.10 In addition to the foregoing main findings and recommendations the Flooding Task Group considered a range of other issues which the group recommends are taken into account in the development of future national management strategies. The remainder of this report describes these strategies and expands on some of the issues already covered.
- 8.11 **Recommendation 10 – That the other recommendations contained in Section B of this report are taken into account in the development of future national management strategies.**

## SECTION B : OTHER ISSUES AND COMMENTS

### 9. Flood Avoidance

- 9.1 It is considered that measures to reduce or avoid the likelihood of flooding are of vital importance. Since by far the greatest land mass is used for agriculture and forestry, these activities have a very significant influence on surface water run-off within most catchments and therefore on flooding. This will require fundamental changes to current agricultural and forestry practice to reduce flooding, and also produce secondary benefits in terms of environmental and bio-diversity improvements.
- 9.2 The agricultural industry has for many years been encouraged to increase the amount of land under productive cultivation. Natural flood water storage has been lost as shallow lochs and wetlands have been drained, and ditches and burns have been canalised to improve land drainage. This process must be reversed since the attenuation of flood discharge higher up the catchment by means of flood storage can significantly reduce the peak flood discharge downstream. Opportunities must be taken to re-establish natural lochs and riverside wetlands and to create new flood storage areas, designed to release flood water at a controlled rate. Public open space, football pitches, recreation grounds etc. sited close to watercourses can be used for flood water storage in urban areas. This policy will give rise to occasional loss of use of such areas for their primary purpose. It is necessary therefore to educate the general public and those who maintain public facilities as to the importance of their use as flood storage areas. It is also necessary under a lump sum payment to compensate farmers and landowners for commercial loss.
- 9.3 Peak flood discharge can be significantly reduced by attenuating the waste water and surface water run-off from property within the catchment. Sustainable Urban Drainage (SUD) Systems were introduced primarily as a means of reducing watercourse pollution but they also attenuate discharge into the receiving watercourse and thereby reduce the peak flood discharge. Although primarily perceived as being applicable to urban areas, SUD installations are equally beneficial in rural areas.
- 9.4 Engineering works to eliminate local flooding problems may inadvertently cause flooding upstream or downstream where none occurred previously unless the requirements of the whole catchment are taken into account. Where necessary drainage impact assessments or flood risk assessments should be carried out.
- 9.5 The following measures, for example, would assist with flood alleviation -
- Creation of flood storage areas within river catchments by taking agricultural land out of use to allow deliberate controlled flooding so as to attenuate the downstream peak flood discharge;
  - Managed realignment of watercourses to control flow;
  - Use of public open space, football pitches and the like, adjacent to watercourses as flood storage areas by allowing deliberate controlled flooding so as to attenuate the downstream peak flood discharge;
  - Raise public awareness of the usefulness of ponding and controlled flooding in reducing the likelihood of flooding;

- Reverse the practice of improving land drainage for agriculture which results in more rapid run-off into the receiving watercourse;
- Create filter strips by leaving untouched buffer strips and contour-ploughed uncultivated strips adjacent to watercourses and on the downhill boundaries of fields so as to attenuate surface water run-off into watercourses and prevent soil erosion;
- Mitigate the effects of clear felling during forest harvesting which results in more rapid run-off into the receiving watercourse;
- Create retention/attenuation strips by contour planting of tree belts at the base of hillsides so as to attenuate surface water run-off from hillsides and prevent soil erosion;
- Use Sustainable Urban Drainage (SUD) systems wherever possible for flood attenuation of run-off from new development at source so as to ensure that developments do not increase the peak flood discharge in the receiving watercourse;
- Increase capacity or remove culverts and other structures to improve flow;
- Use Flood Appraisal Groups as a means of achieving collaboration between councils within a catchment so as to achieve comprehensive catchment wide solutions.

9.6 Additional funding as a lump sum payment may be required for grants to farmers, forestry operators and landowners for commercial loss in order to facilitate the provision of filter strips adjacent to watercourses and retention/attenuation strips at the base of hillsides, similar to that provided for set-aside. The existing Rural Stewardship Scheme is significantly underfunded.

## 10. Regular Maintenance

10.1 Regular maintenance of watercourses and SUD systems will reduce the likelihood of flooding. The 1997 Act requires councils to assess all watercourses in such a manner and within such a time-scale as seems appropriate to their circumstances, and to publish biennial reports. There is no common standard for the frequency of inspection and assessment of watercourses, resulting in inconsistent action across councils and land owners in Scotland. Added to this is neglect of riparian duties, difficulty in establishing riparian ownership, unsatisfactory maintenance agreements and uncontrolled alterations. Nowadays the general public are less willing to help themselves and expect councils to deal with all flooding problems.

10.2 The following measures would assist with flood alleviation -

- Develop national standards for the frequency and scope of maintenance of watercourses and SUD installations;
- Establish a public register of riparian ownership;
- Introduce legislation to allow councils to serve notice on riparian owners who fail to adequately maintain their watercourses, with provision to recover costs;
- Establish an appropriate allocation to councils for regular maintenance of watercourses;
- Raise public awareness of the need for tidiness and regular maintenance of watercourses.

## 11. Flooding and Sewerage

- 11.1 From time to time, flood events are severe enough to cause flood water to become contaminated with raw sewage. Apart from being extremely unpleasant for all concerned, such events give rise to a significant health risk. Combined surface water/foul sewer systems are more likely to surcharge than separate systems, causing contamination of flood water during flood events.
- 11.2 The laying of new storm water only systems to replace existing combined systems, though expensive, may alleviate this problem, subject to the available capacity of the receiving system. The current policy and investment by Scottish Water does not in general target the resolution of flooding problems.
- 11.3 New development offers the opportunity to design out problems of land drainage, flooding, contamination and pollution. Some developers are more forward thinking than others in this respect. To optimise the benefits of SUD systems for first level treatment at source and for flood attenuation and to ensure co-operation between developers for the general good, it is important to ensure clarity and understanding of planning policy and technical requirements. Regular dialogue between developers, their agents, Scottish Water, SEPA and councils from the very first stages of a development must be encouraged and facilitated.
- 11.4 Two practices which can be recommended are -
- (1) regular meetings held jointly by council planning and engineering staff at which developers can attend by appointment.
  - (2) drainage impact assessments carried out by developers, in accordance with a published guide, prior to submitting an outline planning application.
- 11.5 The following measures would assist with flood alleviation -
- Establish local working groups between Scottish Water and councils to identify trouble spots prone to flood water contamination by sewage so as to allow rapid response action during flood events;
  - Develop inventories of surface water and foul sewer systems to allow mathematical modelling of the total system which will identify problems and enable solutions to be tested;
  - Reduce the amount of surface water in foul sewers;
  - Require the consideration of site drainage and flood risk at the earliest stages in all developments;
  - Use of SUD systems in all new developments, and promote retrofitting in existing positive drainage systems;
  - Prepare a national standard for drainage impact assessments.
- 11.6 Additional funding and resources must be made available to Scottish Water and to councils to facilitate the measures proposed above in respect of comprehensive sewer inventories and mathematical modelling of solutions.

## 12. Flood Forecasting

- 12.1 The Meteorological Office and others can provide early warning of weather conditions that can lead to flooding. Weather radar can help this process. SEPA operates the Floodline service which on a national basis provides general early warnings of flooding risk.
- 12.2 Telemetry using river and rain gauging can be used, where it exists, to provide more specific information. This is particularly beneficial in small catchments where rivers tend to be prone to flash floods.
- 12.3 To assist property owners to prepare for flood emergencies and to assist councils in flood emergency response, it is considered that local flood watching should be encouraged. Once established, technical guidance and insurance protection could be provided for those involved. Such arrangements would probably work better in smaller, rural communities.
- 12.4 Councils with exposed coastlines would benefit from improved knowledge of surge data and actual and predicted wave heights. Such information can be purchased from the Meteorological Office.
- 12.5 The following measures would assist with flood alleviation -
  - Improved use of weather forecasting services;
  - Augmentation of existing river level monitoring with rainfall monitoring;
  - Establish local flood watching schemes;
  - Improve the presentation of rainfall forecasting by the media;
  - Improve post flood surveys to assess impacts.

## 13. Flood Emergency Response

- 13.1 Councils have powers to deal with all types of emergencies, including flooding, where life, property and services are put at risk. However, there are various bodies with some responsibility in flood events and differing roles and responsibilities are not clear, particularly to the general public. For example, responsibility for flood warning lies with SEPA, flood prevention lies with councils, responsibility for waste water treatment lies with Scottish Water and water pollution lies with SEPA. There is no responsibility laid on any agency to provide a specific flood emergency response service in Scotland, although if all agencies, including military forces, agree to work closely together in times of flood emergency formal arrangements may not be necessary.
- 13.2 It is considered that councils are best placed to take the lead response when a flood event occurs, but other agencies should be required to assist to the benefit of affected parties. Equally, co-operation between councils is essential where flooding affects large catchments. The emergency response service which councils provide would, however, require improvement as it is unregulated and underfunded.

- 13.3 A more proactive approach is necessary in flood prone areas to encourage property owners to prepare for flood emergencies and to advise them of emergency contacts. To reduce the number of requests for advice and assistance during a flood emergency, councils should publish their policies on the extent of the emergency response which they are able to provide. Information such as priorities for councils' response, sandbags or other flood barrier provision would be of help to the general public.
- 13.4 Councils should consider setting up flood emergency advisory teams that can be called in whenever flood warnings are issued. Teams would liaise with SEPA hydrologists and the weather forecasting organisations to monitor weather and rainfall predictions so as to anticipate when and where flooding will occur. Thereby, councils' response efforts can anticipate flooding rather than only responding to it.
- 13.5 The period immediately following a flood event is a time of great anxiety and trauma for those affected. Uncertainty on who to call for help, what to do for the best, and what the future may hold all add to the trauma. Timely advice is extremely helpful and re-assuring, and should be made available by councils as part of their response.
- 13.6 The following measures would assist with flood events -
- Introduce a statutory duty on all appropriate agencies to co-operate
  - Publicise council's policy on flood emergency response;
  - Set up a flood emergency response service including a flood emergency advisory team.

#### **14. Ownership and Liabilities for Flooding from Watercourses**

- 14.1 There are major problems with the proper maintenance of watercourses and culverts where these pass through or under private property. It is important to clarify the riparian owner's responsibilities.
- 14.2 Owners of property have the ultimate responsibility for their area of ground including watercourses that pass through it. The law with regard to property and water is generally dealt with by servitude agreements or under common law, and this is an extremely complicated area. Each case has to be dealt with on its merits and legal documentation such as case law and other legal authorities rulings considered. This causes difficulties for councils who have related duties under the Flood Prevention and Land Drainage (Scotland) Act 1997.
- 14.3 The duty of councils does not include the repairing of watercourses, such as damaged or collapsed culverts. There is an urgent need to review this, and for councils to be given either the authority to require property owners to carry out repair work to their watercourses or the power to enter land to carry out such works, and where appropriate to recover costs.
- 14.4 The assessment and maintenance of culverted watercourses may require access via manholes which may have been covered or built over by landowners. Legislation is required to prevent this occurring and to address current difficulties in this respect.

- 14.5 Surface water sewers maintained by Scottish Water may cause flooding of property, but councils can only bring this to the attention of Scottish Water and have no way of ensuring that investigation / repair is carried out.
- 14.6 Detailed comment on the Flood Prevention Acts are contained in Appendix 2.
- 14.7 The following measures would assist with flood alleviation -
- Further legislation regarding the repair of watercourses in private ownership;
  - Scottish Water to become more active through Flood Appraisal Groups in helping to solve flooding problems caused by surface water sewers.

## **15. The Coast Protection Act**

- 15.1 The Act permits councils, as coast protection authority, to undertake coast protection works (permissive powers only) and regulate activity on the coast.
- 15.2 There are elements within the Act which have been dropped in England and Wales, in particular the ability to recharge private owners for coast protection works which has always been a difficult area.
- 15.3 It would be useful to clarify the Act in respect of the identity of the Minister referred to in the act, the statutory organisations and the specific procedure for obtaining grant and how it is determined. The Act includes the power for council's to set up groups with responsibility for the coast which may assist the introduction of broad based management of the coast.
- 15.4 Coastal boundaries set in the Act give some cause for concern as they are only described for some rivers and do not define the practical limits of the coast. There is an opportunity with the establishment of River Basin Catchments to establish proper responsibilities for estuaries.
- 15.5 The Act may not need significant revision but clarification needs to be provided. For example there is no duty on a landowner to arrest coastal erosion unless an adjoining landowner may be affected, which may conflict with council policy. The deficiencies in the Act may be addressed by mirroring the flooding legislation. That would impose a duty on councils to assess coastal defences within their areas, and for councils to take action which they deem appropriate. This would require additional funding.
- 15.6 The following measures would assist in alleviating coastal flooding -
- Modernise the terms of the Act
  - Redefine the boundaries of the coast set down in the Act.

## 16. Planning Policy & Guidance

- 16.1 Planning guidance to councils on flooding is given in NPPG7, currently under review by the Scottish Executive. Structure Plans and Local Plans should state a presumption against development in areas identified as at risk from flooding. Council policy on flooding, surface water drainage and land drainage should be comprehensive and clearly stated, incorporating the precautionary principle. It is essential that planning policy and guidance is reviewed regularly and revised when necessary in response to changing requirements. In particular, the need for long term planning to adopt managed retreat in flood prone areas should be included.
- 16.2 It is recognised that councils must find a balance between acceptable flood risk and the need to facilitate development and regeneration in their area. Councils need to explain risk effectively, since technical definitions based on return periods is a difficult concept to grasp and is not well understood by the general public.
- 16.3 Local Plans should embrace the principle of SUD systems and require their use for both pollution control and discharge quantity control. It is noted that there is a lack of consistency between councils in the application of standards for quantity control which must be addressed.
- 16.4 It is apparent that flood prevention advice given to Planning Authorities is not always followed by planning officers or elected members. SEPA and the councils' in-house engineering staff offer flooding advice on planning applications. Where the council is minded to grant consent against the advice of SEPA the Scottish Executive must be notified. This may result in the application being called in for review.
- 16.5 Design standards for roads within new developments need to be amended to ensure that the roads can operate as emergency flood channels without flooding adjacent property.
- 16.6 The following measures would assist with flood alleviation -
- Provide robust and comprehensive planning policy and guidance with respect to flooding, surface water drainage and land drainage;
  - Regularly review planning policy and guidance in response to changing climatic conditions;
  - Encourage consistency between councils in the application of SUD systems;
  - Amend development road design standards to allow them to operate as emergency flood channels.

## 17. Role and Effectiveness of Flood Appraisal Groups

- 17.1 Flood Appraisal Groups ( FAG ) are consultative and advisory forums of stakeholders which inform the planning process and share knowledge. They are set up under NPPG7. There are currently 22 FAG's in Scotland involving 29 councils. There has so far been one national meeting for representatives of all the individual FAG's in Scotland which took the form of workshops and plenary sessions to discuss topical issues.

- 17.2 The informal nature of most FAG's is seen as a strength where it encourages information sharing. However they are largely composed of practitioners, so there is no link to key decision makers. Such linkage would improve the role of FAGs.
- 17.3 FAGs cover input to Structure Plans and Local Plans, comment on significant development proposals, cross boundary issues, insurance issues, flood emergency planning, flood plain mapping, SUDS, comment on Biennial Reports and best practice.
- 17.4 FAGs have improved understanding of flooding issues which has resulted in improved planning decisions and management of flood risk. It is considered that FAGs should continue to be non-statutory with an advisory role. Where councils have an active FAG, insurers appear more willing to provide flood risk insurance cover.
- 17.5 The following measures would assist with flooding management -
- Support Flood Appraisal Groups;
  - Councils to support initiatives proposed by their Flood Appraisal Groups.

## **18. Shoreline Management Plans for Scotland**

- 18.1 Shoreline Management Plans were introduced to England and Wales some fifteen years ago to broaden coastal planning and encourage co-operation between adjacent councils and the Environment Agency. This latter part is less of a problem in Scotland.
- 18.2 The focus of the SMP is coast protection. The SMP collates information about the coast such as land use, historical background, fisheries and the natural environment and uses this to ensure that defence management does not impact on other interests.
- 18.3 The SMP process is perhaps better suited to long littoral lengths of coast which cross administrative boundaries, but it allows clear policy to be developed in a systematic way and has been very successful in drawing people together, increasing the awareness of the extent of possible impacts and providing a baseline understanding of the behaviour of the shoreline. The introduction of International Coastal Zone Management will encompass the principals of SMPs.
- 18.4 The following measures would assist coastal management –
- Councils to develop Shoreline Management Plans which suit and define their area of coast;
  - Funding should be made available for this purpose.

## **19. Flood Sensitivity**

- 19.1 Existing development within flood plains is at some degree of risk of being flooded. The risk should be quantified for each area, taking climate change into account.

- 19.2 The Building Regulations should be modified to ensure that flood damaged properties are repaired using flood resistant construction methods and materials.
- 19.3 Property owners in flood prone areas should be encouraged to make preparations for flood events. There are a range of proprietary fittings available which are easy to install, such as de-mountable barriers across doorways and vents. Property owners must learn to cope with flood events as it is not sustainable in the long term to protect all property from all flooding. Long term policy must move in the direction of managed retreat requiring the identification of areas of flood plain or coastline which can be defended and those which should not, even although it must be accepted that some property may have to be abandoned. Improvement grants for property owners scaled to the level of risk should be made available to facilitate improvement in flood resistance.
- 19.4 The following measures would assist in minimising the affects of flooding -
- Establish a Flood Register which will identify areas at varying levels of flood risk;
  - Encourage the development of flood resistant best practice;
  - Modify the Building Regulations to include flood resistant requirements;
  - Encourage property owners to help themselves by obtaining equipment to provide temporary protection for flood events;
  - Encourage the Association of British Insurers to consider improvement options when considering flood damage claims;
  - Introduce property improvement grants scaled to the level of flood risk to facilitate improved flood resistance.

## **20. Insurance Provision**

- 20.1 The recent decision of the Association of British Insurers to tighten up procedures for the provision of insurance against flood risk for all domestic property in the UK will have serious implications. Insurance cover for flood-prone property will in future carry large premiums or excesses.
- 20.2 It is essential that, where property is repaired following flood damage, current best practice is adopted to make the rebuilding as flood resistant as possible and at least to the current standard required by the Building Regulations. A simple like for like rebuild should never be contemplated. Rebuilding to flood resistant best practice should as a matter of course qualify for insurance cover to be maintained.
- 20.3 The following measures would assist with mitigating the effects of flooding -
- Adoption of property repairs to flood resistant best practice;
  - Reach agreement with the Association of British Insurers that flood damaged property where repaired to flood resistant best practice will receive more sympathetic insurance cover or premiums.

## 21. Funding

- 21.1 Major schemes are currently supported by additional capital consent from the Scottish Executive, granted on a first come, first served basis, and are grant assisted. There are no set financial limits although schemes of less than £200,000 may not justify the extensive development process involved. Thus, there is a trend to carry out small-scale improvement works as Works of Maintenance.
- 21.2 It is recommended that the government fully funds flood prevention schemes instead of providing additional borrowing consent. This funding should include all work including the promotion and design of the scheme prior to confirmation, as councils currently find difficulty in funding the early stages of scheme development, which can include a long and expensive statutory process.
- 21.3 Although confirmation of a scheme currently attracts a grant from the Scottish Executive and an increase in council's borrowing consent, not all expenditure is grant eligible. If a council promoting the scheme uses any of its own resources these costs may not be eligible.
- 21.4 Councils must also take all the risk of construction costs. If tenders or unforeseen site conditions increase costs beyond normal contingencies councils have to fund these additional costs from their own resources, which on large schemes can put the council in some difficulty.
- 21.5 Flooding responsibilities placed on councils relate to non-agricultural land, so flooding problems faced by rural councils tend to be widely dispersed. Rural councils are therefore often faced with demands to fund small value works for which promotion under the Act seems inappropriate, and for which a positive outcome to cost benefit analysis may be difficult to achieve. Where such schemes relate to one river, they can be grouped together into a composite scheme. It is considered that the scope of flood prevention and coast protection schemes should be broadened to include smaller works or multiple works to assist rural councils.
- 21.6 Funding to assist councils' Flood Emergency Response is provided under the Bellwin Scheme. Experience shows that a flood event has to be catastrophic to trigger funding under this scheme. For the most part councils must fund Flood Emergency Response from their existing budgets. Since flood events are becoming more frequent, it is considered that the Bellwin Scheme should be revised to more appropriate intervention levels.
- 21.7 The following measures would assist with flood alleviation -
- Scottish Executive to flexibly and fully fund schemes;
  - Review the scope of Flood Prevention and Coast Protection Schemes to include works at multiple locations;
  - Revise the Bellwin Scheme to trigger at more appropriate levels.

## 22. Statutory Procedures

- 22.1 Experience shows that unless objections can be eliminated by negotiation, the process of obtaining approval for a Flood Prevention or Coast Protection Scheme can be protracted. There are currently no limitations to the grounds for objection to schemes. All objections are therefore treated with the same degree of importance which often result in public enquiries. Frivolous objections from parties not directly affected by the works should be discounted to speed up the statutory process.
- 22.2 Statutory consultation is carried out with consultees identified under the Town and Country Planning Act and the Notice of Intention to Develop guidelines. At present for many schemes the NID and Submission to the Scottish Executive procedures require two separate but similar consultation processes, which should be combined to streamline statutory consent.
- 22.3 The following measures would assist in the promotion of flooding schemes –
- Review the statutory process to remove frivolous objections from further consideration.
  - Simplify the statutory process so that only one consultation is required
  - Introduce a simple statutory process for small schemes.

## 23. Design Standards

- 23.1 Currently the Scottish Executive recommends a scheme design standard of a 1 in 100 years return period plus provision for climate change and freeboard. This leads to confusion among councils and their consultants on the standard to adopt in each area. Research into climate change and flood risk carried out by the Association of British Insurers suggests adoption of a return period of 1 in 200 years, with up to 1 in 1000 years for critical buildings such as hospitals.
- 23.2 Design standards influence the cost of schemes and higher design standards may result in some schemes failing their economic assessment and making them ineligible for funding. It is considered that this can be overcome by extending the economic parameters to include intangibles such as stress and loss of personal possessions.
- 23.3 It has also been suggested that schemes be designed to 1 in 100 years return period with provision for later expansion to 1 in 200 years plus freeboard. This is not considered to be practicable in most cases and will be difficult to promote in urban areas, being doubly disruptive.
- 23.4 The following measures would clarify the design standards to be used in Scotland –
- Adopt a national design standard to allow for climate change. A standard return period of 1 in 200 years plus freeboard is recommended;
  - Extend the economic analysis to make allowance for distress and loss of personal possessions.

## 24. Contracts

- 24.1 Promotion of a scheme involves detailed descriptions of the intended works which makes it difficult to make design changes without repeating the whole confirmation process. Some schemes have been implemented on a design and build basis using the New Engineering Contract where the description of the confirmed works can cause contract problems, for example an alternative construction suggested by the contractor may not be able to be implemented. A solution may be to limit statutory requirements at confirmation stage to soils investigation and preliminary design and not to be too specific on the methods of construction.
- 24.2 The following measure would improve the implementation of flooding schemes -
- More flexible definition of schemes at promotion stage.

## 25. Research & Development

- 25.1 Steps need to be taken to ensure that the results of research work and findings of research projects are widely known. There is a need for a national database for flood related research and development projects.
- 25.2 Advantage should be taken, whenever practicable and where possible with assistance of special funding, to develop innovative proprietary products or new materials by facilitating demonstration projects with extended maintenance periods.
- 25.3 It is considered that research in the following areas is required:
- (1) to improve the accuracy and reliability of software for the determination of the critical rainfall intensities or durations,
  - (2) to develop software to simulate run-off,
  - (3) to improve the understanding of the causes of extreme weather events.
  - (4) to obtain more reliable forecasts for increased storm activity, sea level rise and other climate change effects and for coastal land level reduction;
  - (5) to develop national guidelines for the consistent application of climate change predictions;
  - (6) to develop criteria for the long term future, say 2050 and beyond, so that appropriate statutes can be progressively developed.
- 25.4 It is considered that development projects to adapt “soft engineering” techniques from other countries for conditions in Scottish rivers and highland rivers in particular is essential to satisfy the ecological and environmental requirements of the Water Framework Directive and subsequent legislation.
- 25.5 The following measures would assist with flood alleviation -
- Establish a national database for flood related research and development projects
  - Identify and publicise best practice in flood prevention, both within the UK and abroad;
  - Establish a body to co-ordinate research activity and research organisations;

- Encourage and support councils to facilitate demonstration projects using innovative products or new materials.

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## **APPENDIX 1**

### **FLOODING FORUM - OPTIONS**

#### **OPTION 1 - FLOODING ADVISORY COUNCIL FOR SCOTLAND**

Chair and 12 Members

The Advisory Council's role will be to provide Scottish Ministers, Local Authorities and other bodies with advice on issues affecting flooding.

The Chair and Board Members will be experienced in engineering, planning, hydrology and the environment and will be appointed on a part time basis, spending up to 10 days per year on their duties. A small annual salary (say £2,500) will be payable. Secondments from associated bodies, consultants and practitioners will be especially welcome.

#### **OPTION 2 - SCOTTISH FLOODING MANAGEMENT GROUP**

Chair – Scottish Executive

2 Members – Scottish Executive

3 Members – Councils (2 engineers + 1 planner)

1 Member – Scottish Water

1 Member – SEPA

1 Member – Scottish Natural Heritage

1 Member – Association of British Insurers

1 Member – Homes for Scotland

1 Member – World Wildlife Fund for Nature

1 Member – Landowners

1 Member – Research

The Group will advise the Scottish Executive, Local Authorities and other bodies, such as those involved in forestry, on issues affecting flooding. One member will be responsible for media communications. Meetings will be arranged 6 times per year. A budget will be available for commissioning studies and research.

## APPENDIX 2

### Comments on the clauses of: -

### The Flood Prevention (Scotland) Act 1961 as amended by the The Flood Prevention & Land Drainage (Scotland) Act 1997

#### General

- The public seems to be of the opinion that the local authority is responsible for dealing with all matters relating to flooding. This should be clarified. Add a note that the primary responsibility for flood mitigation lies with the property/landowner. Similarly with respect to watercourses the primary responsibility for maintenance lies with the riparian landowners.
- The Acts talk about flood “prevention” but “prevention” is not possible. The best that can be achieved is reduction in the risk of flooding or “mitigation”. Change references to “*Prevention*”, to “*Mitigation*”.
- References to “Secretary of State” should be changed to “Scottish Ministers”.

#### Clause 1(1)

- “*not being agricultural land*” should be clarified and not include areas such as playing fields, gardens, car parks etc which may be allowed to flood in some circumstances

#### Clause 2(1)(a)

- The terms “*cleansing*”, “*repairing*” and “*due state of efficiency*” require to be defined and clarified with respect to local authority’s duties.
- To reduce rapid runoff, existing areas that currently store floodwater should be protected from development add a power to designate areas of land as flood storage areas.
- Also consideration of related legislation relative to wildlife, amenity and other statutory protection.
- There also needs to be clarity that authorities only have a duty to maintain works carried out under a confirmed scheme.

**Clauses 2(1)(b) to 2(1)(f)** - no comment.

#### Clause 2(2)

In the light of experience of watercourse maintenance, the definition of a “*watercourse*” needs further clarification. Small diameter land drainage pipes, filter drains, ditches and road drains should be excluded. Also surface water sewers may require to be at least partially under the control of the flood authority since these carry storm waters and, if in a poor condition, can lead to flooding of property. Local authorities and Scottish Water need to work more closely together on this issue.

**Clause 2 (3)** - no comment.

#### Clause 3(2)(a)

- Consideration of bird nesting seasons and protected or endangered species, legislation relative to wildlife and amenity.

- Consideration of statutory protection of the amenity such as tree preservation orders etc.

**Clause 3(3)**

- Consideration of the addition of new legislation currently in force, update any legislation detailed.

**Clause 4 (1)**

- Allow local authorities to carry out flood mitigation works on their own land without promotion of a scheme under the Act.
- Allow the construction of minor works without the promotion of a flood mitigation scheme.

This section currently prohibits an authority from carrying out any operations (even on their own land) other than maintenance and management operations otherwise than in accordance with a flood mitigation scheme made by the authority and confirmed by the Scottish Ministers.

The Scottish Executive was looking to amend this clause to allow authorities to carry out minor flood mitigation operations on land within the Council's ownership and this should be supported. However, there may be no grant funding in this situation and this should be challenged in certain circumstances where other property is afforded protection.

Additionally the construction of minor works would be allowed without the promotion of a flood mitigation scheme but with local advertisement of notices. The value of this work may extend up to say £100,000 and would require negotiation and written acceptance from those directly affected. Thus these schemes are likely to involve relative small numbers of owners/occupiers. Similarly there may be no grant funding in this situation but this should be challenged in certain circumstances.

**Clause 4(2)**

- A habitat survey should be specified as a requirement of this clause along with Environmental Assessment where appropriate. Clarity is required regarding environmental issues and associated legislation should be reconciled.

**Clause 4A – (1997 amendment)**

- Clarification or guidance on the term “*assessed*” and a more definitive timescale. I.e. visual inspection, survey, measure, photographs, calculations, etc. and how often?
- Legislation to prevent landowners covering or building over any part of culverted watercourses and maintaining reasonable access to these locations.
- Empowered to remove structures, hard landscaping etc. to facilitate access to culverted watercourse without payment of compensation to owner or occupier. (refer to bullet clause 11)
- Where a defect is discovered in a watercourse that may cause the flooding of non-agricultural land, the local authority may serve a notice on the landowner to carry out repairs within a specified period. If the works are not carried out within this period the local authority will carry out the repair and may recover their costs from the landowner.

- Where flooding occurs on land in sole ownership and the cause of the flooding is on the same land further clarification is required regarding responsibility.

**Clause 4(B)** – (1997 amendment) – as for clause 4(A).

- Costs may be recovered from landowners where they fail to respond to a notice necessitating action on their part. Owners may be recharged the cost of works on their land where negligence is apparent with respect to maintenance.
- Clarify responsibilities with respect to flooding and sole ownership of land.

**Clause 5** - no comment.

**Clause 6**

- Clarification if Bylaws are allowed under current Scottish Executive policy.

**Clause 6A(1)** (1997 amendment)

- Publish a report how and where.

It was agreed that this should be kept as brief as possible. Reporting to Committee complied with the requirement to publish a report. It was considered helpful to have a leaflet in libraries etc. Guidance is required on method of publication and format of report.

It was necessary to approach the Scottish Executive to elicit their reviews/findings of the published report. It was not clear whether or not the reports prompted any action on the part of the SE on reviewing funding for example. It was considered that listing what the Council had spent in maintaining watercourses and promoting/implementing flood mitigation schemes would be useful.

Care would have to be taken to ensure that work of this nature is identified and coded correctly to allow extraction from Council's accounts.

The legislation is weak in the areas of watercourse assessment, identified maintenance measures. Although the SCOTS flood group has attempted to introduce consistency through their guidance note, there was still evidence of disparate measures across Authorities.

**Clause 6A(2)**

- Keep reports as simple as possible. (Further guidance on format/content of report.)
- Feedback to local authorities on reports from Scottish Executive.

**Clause 7**

- Are compulsory purchase powers still required?

**Clause 7** - no comment.

**Clause 8**

- The timescale of fourteen days for power of entry into land should be removed and entry should be automatic and substantial fines imposed if obstructed by landowner. E.g. clearance of a blocked watercourse with a potential for damage cannot wait.
- Also notices to landowners re entry for flood mitigation scheme. Clarification required for a situation when a large number of owners jointly own an area of land.

**Clause 9**

- Remove reference to a maximum monetary value but specify a level scale from the Criminal Justice Bill.

**Clause 10**

- Remove reference to a maximum monetary value but specify a level scale from the Criminal Justice Bill.

**Clause 11**

- No compensation for damage to be paid to landowners who have covered or built over access points to culverted watercourses or not maintained reasonable access to these locations. Clarification or guidance is required. Empower local authorities to remove structures such as huts or greenhouses, hard landscaping etc. to facilitate access to culverted watercourse without payment of compensation to owner.

**Clause 11(3)**

- Compensation claims must be made within three years of completion of flood mitigation operations.

**Clause 12** - no comment.

**Clause 13** - no comment.

**Clause 15**

- Requires to be updated to comply with current legislation.

**Clause 16** - no comment.

**First Schedule**

**General Notes**

An opportunity should be taken to detail the provisions that should be incorporated in a Flood Mitigation Scheme.

The Act is now 42 years old and is it a necessary requirement to go into detail such as contained in Clauses 4, 5 & 6 for example?

In any event the following comments are made on the existing clauses:

**Clause 1**

- Local authorities should purchase all land along which utilities plant has to be laid to service flood mitigation apparatus installed as part of a scheme.
- Provision to incorporate minor amendments to the limits of deviation as detailed in the confirmed scheme.

The Scottish Executive are considering whether it would be helpful to provide for some amendment, before construction was completed, to limits of lateral deviation and extent of land required subject to no objection from landowners/ occupiers concerned. This could be done on the basis of procedures for the proposed minor works. However, given notice period required and possibility of need for further objections to be heard this may not be of advantage. Utility supplies to pumping stations constructed as part of a flood mitigation scheme can cause the contractor some difficulties. For example Scottish Power will only supply power to a specific location if all the necessary consents have been obtained. There is no problem where they can lay their cables in a public road but when they have to enter private land a wayleave is required. The solution of laying cables within the limits of deviation of the confirmed Scheme is not valid. Even then Scottish Power will require a wayleave. For utilities to force a wayleave this can take up to two years. It is the opinion of the Executive that even if the utility supply is within the limits of deviation entry to repair faults or carry out maintenance works require the statutory 14 days notice before entry can be taken as of right. This could have implications with respect to other maintenance operations of a flood scheme where land has remained in private ownership.

Clarification on how long it is reasonable to assume entry as of right is available once the fourteen-day notice has been served on a landowner - could this be assumed as indefinite?

**Clause 2** – no comment

**Clause 3 (1)**

- Clarification that entry in accordance with clause 8 of the Act is available to any land not shown on the plans for the scheme to obtain access to land shown on the plans as within the Limits of Deviation or required temporarily for the construction of the scheme.

**Clause 3 (2) & (3)** – no comment

**Clause 4**

- Consideration with respect to legislation relative to wildlife, amenity or other statutory protection.

**Clause 5** – no comment

**Clause 6** – no comment

**Clause 7**

- Remove reference to a maximum monetary value but specify a level scale from the Criminal Justice Bill.

**Clause 8** – no comment

## **Second Schedule**

### **Examine methods of fast tracking flood mitigation orders.**

#### **General Note**

There is conflict between Flood Prevention Act and Town and Country Planning Act resulting in duplication in the processes. The legislation currently requires to be rationalised.

**Clause 1** – no comment

**Clause 2 (a)** – no comment

**Clause 2 (b)**

- Reduce the period of three months stated in this clause to 28 days (one month).

The Scottish Executive were looking to amend the period of three months stated in this clause to 28 days (one month) and this amendment is supported.

**Clause 2 (c)** – no comment

**Clause 3**

- Reduce the administrative burden with respect to issuing plans and notices.

The Scottish Executive is looking to reduce the administrative burden with respect to issuing plans and notices.

**Clause 4** – no comment

**Clause 5**

- Reduce the period of three months stated in this clause to 28 days (one month).
- There needs to be a process to filter out and remove spurious objections without recourse to a public inquiry.

As for clause 2 (b) the Scottish Executive were looking to amend the period of three months stated in this clause to 28 days (one month) and this amendment is supported. In addition the Scottish Executive propose to seek to restrict the right to be heard to those on whose land operations are to be carried out and those whose property might be affected by the alteration to the flow of water caused by the operations. However their advice is now that this is currently the case. I.e. those people whose land will be affected by the scheme may object and have the right of an inquiry. Those people who are affected in other ways may object but do not have the right of an inquiry. This requires to be substantiated.

**Clause 6** – no comment

**Clause 7** – no comment

**Clause 8** – no comment

**Clauses 9**

- Reduce the period of 6 weeks stated in this clause to 2 weeks.

**Clauses 9 & 10** – A reduction in time scale is required to fast track a flood mitigation scheme.

**Other Issues**

**Design Standards**

**We are seeking design parameters for the production of a flood mitigation scheme of: -**

- A return period of at least 1 in 200 years.
- A freeboard to the flood design level of at least 300 mm.
- The scheme should be almost completely designed prior to applying for confirmation.
- A methodology for the cost benefit analysis should be specified by the Executive and include for intangibles and climate change.

**Funding**

- Flood mitigation schemes should be a two-stage process. First stage to confirmation, second stage being construction.
- Confirmation and full funding of both stages by the Scottish Executive. Local authorities should provide evidence of problem and commission flood or catchment studies identifying the causes and bringing forward conceptual solutions.
- Clarification of the Scottish Executive's financial commitment to schemes if over budget.
- Clarify method of reimbursement of compensation payments made after scheme finances are "finalised".