

ANGUS COUNCIL

ROADS COMMITTEE 28 AUGUST 1997
FLOOD PREVENTION AND LAND DRAINAGE (SCOTLAND) ACT 1997

JOINT REPORT BY DIRECTOR OF LAW AND ADMINISTRATION AND DIRECTOR OF ROADS

ABSTRACT

The purpose of this report is to advise Members of the new duties imposed upon the Council by virtue of the Flood Prevention and Land Drainage (Scotland) Act 1997. This report also outlines the implications of these provisions for the Council.

1. RECOMMENDATIONS

It is recommended that the Roads Committee:-

- (i) notes the contents of this report and the implications of the new provisions for the Council;
- (ii) notes the probable impact upon the budget provisions; and
- (iii) agrees that the discharge of the Council's duties under the new Act should be referred to the Roads Committee.

2. BACKGROUND

The Flood Prevention and Land Drainage (Scotland) Act 1997 amends the Flood Prevention (Scotland) Act 1961 and repeals certain parts of the Land Drainage (Scotland) Acts 1930 and 1941. In summary, local authorities now have an obligation to assess and maintain water courses and publish reports in respect of the measures that they require to take to prevent or mitigate the flooding of non-agricultural land in their area.

**3. THE FLOOD PREVENTION AND LAND DRAINAGE (SCOTLAND) ACT 1997
DUTIES OF LOCAL AUTHORITIES**

The Council now has a duty to carry out flood prevention operations in terms of Sections 1 to 3 of the Act. These operations fall into 3 distinct categories, as follows:

Section 1 - Assessment of Water Courses

With effect from 26 May 1997, local authorities must now assess water courses in their area to establish if they are in a condition which is likely to cause flooding of non-agricultural land within or outwith their area. All local authorities must carry out these assessments to enable them to comply with their new statutory obligation of maintenance of water courses as set out in Section 2 of the Act (see below).

No specific timescale has been applied to this new duty of assessment, but assessments of all water courses are expected "from time to time". Guidance from the Scottish Office (SOEFD Circular No 1/1997) states that "it is not intended that all water courses need to be visited in any one year but it is for local authorities to determine their own priorities in the light of local concerns about flooding risk and the likely impact of flooding".

Section 2 - Maintenance of Water Courses

Section 2(1)(a) of the Flood Prevention (Scotland) Act 1961 provides local authorities with **powers** to cleanse, repair or otherwise maintain in a due state of efficiency any water course, barrier or ancillary apparatus.

However, with effect from 28 July 1997, the powers of maintenance as set out in the Flood Prevention (Scotland) Act 1961 are now converted into **duties** by virtue of Section 2 of the 1997 Act. The thinking behind the new provisions was that if local authorities have a duty as opposed to a power to undertake regular maintenance work, then this would greatly contribute to the prevention or mitigation of flooding.

Accordingly, Section 2 of the 1997 Act provides that a local authority shall exercise their maintenance powers where it appears to them that:-

- (a) any water course in their area is in a condition which is likely to cause flooding of non-agricultural land within or outwith their area; and
- (b) by exercising their powers of maintenance in terms of the Flood Prevention (Scotland) Act 1961 the likelihood of such flooding would be substantially reduced.

Although the new Section 2 refers specifically to water courses, the maintenance duty now extends to the full range of operations which are covered by the Flood Prevention Act 1961, ie barriers, embankments or other work for defence against flooding and any apparatus ancillary to such work or to any water course.

The Act goes on to provide that local authorities are exempt from the new duty to maintain where to do so would benefit only a sole proprietor, not being themselves.

Finally, where it appears to a local authority that a water course in their area is in a condition which is likely to cause flooding of non-agricultural land in another authority's area, then they have a duty to notify that other authority accordingly. However, if the other authority is already aware of the likelihood of such flooding, then the first local authority does not require to act.

Section 3 - Duty of Local Authorities to Publish Reports

Section 3 of the Act came into force on 26 May 1997. Local authorities now must prepare and publish reports in relation to their discharge of their new duties and in the exercise of their other flood prevention powers.

By 26 November 1997, local authorities must prepare and publish reports specifying the measures that they consider they require to take to "prevent or mitigate" the flooding of non-agricultural land in their area. Not more than 2 years after publication of their first report, and at intervals of not more than 2 years thereafter, local authorities must prepare and publish reports specifying:-

1. the measures that they consider they require to take to prevent or mitigate the flooding of non-agricultural land in their area;
2. the measures that they have taken since the date of publication of their previous report to prevent or mitigate such flooding; and
3. all occurrences of flooding since that date.

The purpose of this provision was to ensure that local people have access to information about the discharge by local authorities of their new duties and other flood prevention powers. Authorities will therefore have to justify what is in such reports, including what they propose to do to prevent flooding.

It was pointed out by COSLA during consultation on the Flood Prevention and Land Drainage (Scotland) Bill that the period of 6 months for publication of the initial report was unreasonably short and would cause great difficulty for Councils, particularly those Councils which have complex non-agricultural water course systems. COSLA suggested that 12 months would be a more realistic timescale given the work involved. However, following debate the 12 months proposal was rejected by the Government.

4. FINANCIAL IMPLICATIONS

The Explanatory and Financial Memorandum which was attached to the Flood Prevention and Land Drainage (Scotland) Bill stated that "The effects of the flood prevention changes on Councils' revenue accounts are difficult to quantify but it is possible that increased expenditure may be required, although this depends on a number of factors, including how local authorities discharge their new duties. In the longer terms, the additional costs will be offset by savings resulting from the reduction of flooding and of some of the widespread costs associated with flooding and dealing with emergencies of this nature".

The Government has allocated £90,000 to Angus Council in the 1997/98 revenue support grant settlement in an attempt to alleviate the additional financial burden imposed by the Act. This sum was allocated directly to the Roads Department in the 1997/98 Revenue Budget. The duty to assess water courses within the Council from time to time will have a direct impact on staff time and hence an impact on the Revenue budget as will the need to undertake maintenance works and to publish reports. At present the Director of Roads is compiling an inventory of water courses in non-agricultural land within the Council area and a list of known flood risk locations. Until that work is complete, it will not be possible to quantify the probable Revenue budget implications for the Council, although, clearly there will probably be significant implications. It is known for instance that there are significant costs involved in the maintenance of existing formal flood prevention schemes inherited from the former Regional Council (previously administered by the Department of Water Services).

Similarly, the ongoing assessment work may identify the need for capital works. Indeed, the Act clearly anticipates this, in which case there are likely to be additional demands on the capital financial plan.

It is proposed that once sufficient data has been collected the Director of Roads will report further on the quantified financial implications of these new duties.

Generally, there are likely to be major implications arising as a result of claims against the Council in respect of the apparent absolute liability of maintenance being imposed on the Council by this new legislation.

5. CONSULTATION

The Chief Executive and the Director of Finance have been consulted in the preparation of this Report.

6. CONCLUSION

Members are asked to note the nature of the obligations imposed on the Council and the financial implications which arise as a result. In terms of the Council's Standing Orders and Order of Reference, responsibility for the exercise of the Council's duties under the Flood Prevention Scotland Act 1961 already lies with the Roads Committee. It is recommended that the new duties imposed under the 1997 Act should be discharged through the Roads Committee in a similar manner.

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Director of Roads

NOTE: The following papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this Report.

1. The Scottish Office Agriculture, Environment and Fisheries Department Circular No 1/1997 - Flood Prevention and Land Drainage (Scotland) Act 1997
2. Explanatory and financial memorandum appended to Flood Prevention and Land Drainage (Scotland) Bill dated 20 November 1996