

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE

13 OCTOBER 2009

FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

RAMIFICATIONS FOR THE COUNCIL

REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES

ABSTRACT

This report advises of the enactment of the Flood Risk Management (Scotland) Act and outlines some of the emerging implications for local authorities arising out of duties imposed on them by that legislation.

1 RECOMMENDATION

1.1 It is recommended that the committee:

- (i) notes that the Flood Risk Management (Scotland) Act came into force on the 16 June 2009;
- (ii) notes the recent information received from the Scottish Government in this context and the emerging implications for the council of the new legislation;
- (iii) notes the likely consequential resource implications for the council and note that these will be considered as part of the 2010/11 budget setting process;
- (iv) instructs the Head of Roads in liaison with the Head of Finance to bring forward further reports to this committee as the detailed requirements of the Act become clearer through the promotion of the associated secondary legislation.

2 INTRODUCTION

2.1 Ongoing concerns regarding the adequacy and clarity of legislation in Scotland which deals with river flooding and arising out of the specific needs of European legislation, the Water Framework Directive in particular have led to the preparation of new legislation. This has resulted in the drafting of the Flood Risk Management (Scotland) Act (the Act). The council has previously responded to consultation documents both on the emergence of the Act itself and on the financial implications through the associated Financial Memorandum. (Report Nos 410/08 & 1153/08 refers).

2.2 The Act is enabling legislation and relies heavily on sub-ordinate legislation and regulations yet to be drafted by the Scottish Ministers. Nevertheless the Act has now received royal assent and came into effect on 16 June 2009.

3 DETAILS

3.1 The Act will in due course lead to the repeal of the Flood Prevention (Scotland) Act 1961 and the Flood Prevention and Land Drainage (Scotland) Act 1997. These cannot be repealed until the new regulations are in place so there will be an overlap between the tenure of the two sets of legislation. The committee will be aware that the Roads division are currently engaged in capital projects addressing river flooding both on the South Esk (Brechin) and the Brothock burn (Arbroath). The new legislation will have a direct bearing on the statutory processes associated with the promotion of flood alleviation schemes in both cases.

- 3.2 In the shorter term the Act imposes new duties on local authorities
- (a) to work in liaison with Scottish Environment Protection Agency (SEPA) and others in the production of national (district) flood risk management plans, and
 - (b) to take the lead in the preparation of local flood risk management plans. There are other associated duties which are yet to be detailed in the secondary legislation but which are new burdens on the council and will certainly have significant resource implications for the council.
- 3.3 The council has now received correspondence from Scottish Government civil servants which encloses three papers outlining some of the new duties arising from the legislation and setting out broad timescales. The covering letter and the three papers have been attached to this report as [Appendices 1 – 4](#).
- 3.4 It is proposed that the Head of Roads considers the detailed requirements of this in liaison as may be required with other council officers, including the Head of Planning and Transport and the Head of Finance, and brings further reports forward to this committee and in particular as the sub-ordinate legislation is rolled out.

4 **FINANCIAL IMPLICATIONS**

- 4.1 While the associated Financial Memorandum which was prepared during the bill stage of the Act addresses the financial implications of the new legislation it is not yet clear how this will be addressed within local authority settlements. There are essentially two dimensions to this vis-a-vis the on-going revenue implications and secondly the capital financing implications of any interventions (including flood alleviation works) as may be promoted into the future.
- 4.2 The government's briefing note 1 (Appendix 2 to this report) addresses this in part but does not provide detail in respect of the anticipated position for Angus Council (nor other individual authorities). Nevertheless it does indicate that the previously ring-fenced Flood Prevention and Coast Protection Capital Grant was rolled-up into the Local Government Finance Settlements for 2008-11 and that all flood prevention schemes that were either underway or had commenced the statutory process were honoured. The note further indicates that the Scottish Government, together with local government partners is reviewing the distribution of local government funding, and this review will include consideration of those former ring-fenced grants which have been rolled-up. This is scheduled to be done to inform the next three year local government finance settlement for 2011/12 onwards.
- 4.3 The ongoing revenue implications associated with the additional duties that will fall to local authorities will not be known until such time as the secondary legislation becomes available. It is however anticipated that these are likely to be significant and it is not yet known whether any additional resources will be made available to local authorities through the 2010/11 updated finance settlement and this issue will require further consideration as part of the 2010/11 revenue budget setting exercise.
- 4.4 Further reports detailing the full impact on the council of implementing the Act, including any financial implications, will be brought forward to a future meeting of this committee.

5 **HUMAN RIGHTS IMPLICATIONS**

- 5.1 There are no human rights implications arising from the proposals in this report.

6 **EQUALITIES IMPLICATIONS**

- 6.1 The issues contained in this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

7 SINGLE OUTCOME AGREEMENT

7.1 This report contributes to the following local outcome contained within the Single Outcome Agreement for Angus.

- Communities in Angus are safe, secure and vibrant.

8 CONSULTATION

8.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law and Administration were consulted in the preparation of this report.

9 CONCLUSION

9.1 The Flood Risk Management (Scotland) Act came into force in June 2009. While it relies on secondary legislation yet to be produced it will have major implications for the council. Some information has now been issued by the Scottish Government in this regard which makes it clear that this will have an impact on the council's approach to flood risk management. The committee are asked to note the emerging detail and instruct the Head of Roads in conjunction with the Head of Finance to bring forward further detail to the committee as it becomes available.

**ERIC S LOWSON
DIRECTOR OF INFRASTRUCTURE SERVICES**

NOTE:

No background 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 the above Report.