

The Flood Risk Management (Scotland) Act 2009

Guidance on duties of a local authority to:

- assess bodies of water
- carry out clearance and repair works



First Edition
August 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Flood Risk Management (Scotland) Act 2009 (“the Act”) - Duties of local authorities under sections 18 and 59 of the Act

This guidance has been prepared by Local Authority Implementation Group of the Scottish Advisory and Implementation Forum for Flooding (SAIFF). SAIFF is a partnership between the Scottish Government, Scottish public bodies and stakeholders that aims to support the implementation of the Flood Risk Management (Scotland) Act 2009.

This guidance is not legally binding.

Executive Summary

Flood Risk Management (Scotland) Act 2009 (“the Act”) - Duties of local authorities under sections 18 and 59 of the Act

This guidance focuses on the duties of each local authority:

- to assess bodies of water for the purpose of ascertaining whether any such body gives rise to a risk of flooding (under section 18 of the Act), and
- to carry out a schedule of clearance and repair works to substantially reduce any such risk (under section 59 of the Act).

In this guidance, a reference to a local authority is a reference to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

Chapter 1 presents the legislative framework for sections 18 and 59 of the Act.

Chapter 2 explains the what, why, when and where of assessments of bodies of water.

Chapter 3 provides advice on undertaking visual inspections; a key part of the assessment of bodies of water.

Chapter 4 describes the nature of risk-based assessments of bodies of water.

Chapter 5 focuses on the requirements of a schedule of clearance and repair including activities and prioritisation of works.

Chapter 6 considers the types of works of clearance and repair.

Chapter 7 highlights the powers available to undertake assessments, inspections and works of clearance and repair, including entry, claiming expenses and payment of compensation.

Case studies are presented in **Chapter 8**, which will be expanded in future revisions to this guidance.

Further guidance and reference material is provided in the appendices to the guidance, presented as **Chapter 9**.

This document is a *live* document and all users will benefit from updates to case studies. All local authorities are encouraged to engage and provide appropriate information to the Flood Risk Management Team at the Scottish Government (Flooding_mailbox@gov.scot) on clearance and repair for inclusion in future updates of the document.

Contents

Executive Summary	ii
Glossary	vi
1. Legislative framework - sections 18 and 59 of the Act	1
1.1 Purpose	1
1.2 Introduction	1
1.3 Section 18 – Local authorities to assess bodies of water	1
1.4 Section 59 – Duty to carry out clearance and repair works	2
1.5 Section 66 - Acquisition of land	3
1.6 Section 67 – Recovery of expenses	3
1.7 Section 68 – Information about ownership of land	3
1.8 Section 79(2) – Powers of entry	3
1.9 Section 80 – Warrants authorising entry	4
1.10 Section 81 – Powers of entry: Supplementary	5
1.11 Sections 82(2) and 83 - Compensation	6
2. Duty to assess each relevant body of water	8
2.1 What needs to be assessed?	8
2.2 Why should assessments be undertaken?	9
2.3 Where should assessments be undertaken?	9
2.4 When should assessments be undertaken?	10
2.5 Initial assessments	11
2.6 Further assessments of bodies of water (or parts thereof)	12
3. Visual Inspections	14
3.1 The nature of inspections	14
3.1.1 Trash screens	14
3.1.2 Watercourses and culverted watercourses	15
3.2 Recording inspections	16
4. Risk-based Assessments	17
4.1 The nature of assessments	17
5. Schedules of Clearance and Repair	19
5.1 Section 18 Schedule activities	19
5.2 Prioritisation	20
5.3 Clearance and repair works	20
5.4 Planned and routine works	20
5.5 Emergency works	21

5.5.1	Urgent works	21
5.5.2	'Non-urgent' emergency works	22
5.5.3	Requirements of a Schedule of Clearance and Repair	22
5.6	Stakeholder engagement	22
5.7	Other relevant legislation & guidance	22
5.7.1	Roads (Scotland) Act 1984	23
5.7.2	Land Drainage (Scotland) Act 1958	24
5.7.3	Water Environment (Controlled Activities) (Scotland) Regulations 2011	25
6.	Works of Clearance and Repair	26
6.1	Definition	26
6.2	Obstructions	26
6.3	Artificial structures	27
6.3.1	Considerations of agricultural embankments	29
6.4	Other works of clearance and repair	29
6.4.1	Erosion	29
6.4.2	Sediment management	30
6.5	Scale of works required and a proportional response	30
6.6	Justification for not adding works to the section 18 schedule	34
7.	Entry, Expenses & Compensation	35
7.1	Powers of entry for assessment, inspection and works of clearance and repair	35
7.2	Notice of entry	35
7.3	Seeking a Warrant	36
7.4	Compensation	36
7.5	Acquisition of land	37
7.6	Recovery of expenses	37
7.7	Information about ownership and occupation of land	37
8.	Case Studies	39
8.1	Erosion not flood risk	39
8.2	Low capacity culvert	39
8.3	Watercourse assessment and desk top studies	39
9.	Appendices	41
9.1	'Interest in Land' and 'Land affected' in relation to section 18 and section 59	41
9.1.1	Preamble	41
9.1.2	Introduction	41
9.1.3	Scots Law	41
9.1.4	Human rights	42

9.1.5	Information about ownership etc. of land	42
9.1.6	Land affected	43
9.1.7	Compensation	43
9.1.8	Description of the clearance and repair works	44
9.1.9	Objections	44
9.2	Example procedure for section 99 of Roads (Scotland) Act 1984	45
9.3	Guidance Flow Chart	54

Glossary

The Act

Flood Risk Management (Scotland) Act 2009.

Artificial structure

An artificial structure] the removal of which SEPA considers would significantly increase the risk of flooding from a body of surface water.

Assessment

Recordable decision on the need for clearance and repair works.

CAR

A reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011. All engineering works in or in the vicinity of rivers, lochs and wetlands now require authorisation under CAR.

Culvert

A closed conduit used for the conveyance of surface drainage water under a roadway, railroad, canal, or other impediment.

Drain

A pipe (other than a sewer) for effectually draining an area.

Embankment

Artificial structure which increases the height of any part of the banks of a watercourse.

Emergency plan

Plan established to manage responses at both a local and a national level to emergency incidents under the Civil Contingencies Act 2004.

Emergency works

Clearance and repair works which a local authority considers need to be carried out immediately to protect people from harm or the environment from serious harm.

Environment

The term 'environment' includes landscape and visual, flora, fauna, geological or geomorphological features and buildings, air, water, sites and objects of archaeological, architectural or historical interest.

Flood

The temporary covering by water from any source of land not normally covered by water, but does not include a flood solely from sewerage system.

Flood risk

The combination of the probability of a flood and of the potential adverse consequences (associated with a flood) for human health, the environment, cultural heritage and economic activity.

Floods Directive

Directive 2007/60/EC on the assessment and management of flood risks.

Hazard

A situation with the potential to result in harm. A hazard does not necessarily lead to harm.

Inspection

An on-site recording of the condition of a body of water (unless context otherwise requires).

Local Flood Management Plan

A plan prepared by a local authority that provides a local expression of the strategic plan prepared by SEPA. Include a summary of how actions will be implemented in each local plan area.

Relevant body of water

A body of surface water (other than a stretch of coastal water or a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but excluding sewers and drains which drain into sewers).

Risk

A combination of the likelihood and consequences of an event.

Scottish Advisory and Implementation Forum for Flooding (or “SAIFF”)

A partnership between the Scottish Government, Scottish public bodies and stakeholders that aims to support the implementation of the Act.

Scottish Environment Protection Agency (or “SEPA”)

A body established by section 20 of the Environment Act 1995 with responsibility for enforcing certain legislation to protect and enhance Scotland’s environment.

Scottish Natural Heritage (or “SNH”)

An organisation responsible for promoting the care and improvement of Scotland’s natural heritage.

Scottish Water

A body established by section 20 of the Water Industry (Scotland) Act 2002 with responsibility for the provision of certain water and sewerage services in Scotland.

Section

Unless the context otherwise requires, a reference to a numbered ‘section’ is to be read as a reference to the corresponding section of the Act.

Section 18 schedule

A schedule of clearance and repair works prepared under section 18(1)(b) of the Act.

Sewer

A pipe vested in Scottish Water which is necessary for effectually draining area in accordance with the Sewerage (Scotland) Act 1968.

1. Legislative framework - sections 18 and 59 of the Act

1.1 Purpose

The purpose of this guidance is to help local authorities better understand their responsibilities and powers under sections 18 and 59 of the Act.

It is also intended to signpost other statutory requirements that have to be taken into consideration when carrying out clearance and repair works and highlight some of the issues and challenges which may need to be addressed.

This guidance contains a number of case studies to highlight real issues that have been experienced by local authorities when carrying out maintenance and repair work in relation to watercourses and how they dealt with these issues. These case studies are not offered as examples of best practice, but to illustrate some of the challenges local authorities may experience when carrying out their assessment, clearance and repair responsibilities.

Although local authorities are not required to have regard to this guidance (as it is not being given by the Scottish Ministers under section 2), it should help local authorities to better understand their responsibilities and powers under sections 18 and 59.

1.2 Introduction

Section 1 of the Act imposes a general duty on each local authority (and other responsible authorities) to exercise their “flood risk related functions” with a view to reducing overall flood risk and, in particular, to exercise their functions under Part 3 of the Act so as

to secure compliance with the Floods Directive.

“Flood risk related functions” in relation to a local authority is defined in section 1(4). These include a local authority’s functions under Parts 3 and 4 of the Act and any other functions relevant to flood risk management which the Scottish Ministers specify by order.

The Act is intended to provide local authorities with broad powers to allow them to take forward a full range of flood risk management measures.

1.3 Section 18 – Local authorities to assess bodies of water

Section 18 sets out two principle responsibilities of local authorities.

Firstly there is a need to assess relevant bodies of water:

Section 18 (local authorities to assess bodies of water)

(1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—

(a) assess the relevant bodies of water (other than canals) in its area for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land within or outwith its area, and

...

Definition: ‘relevant body of water’ (as defined in section 17(5))

A relevant body of water means a body of surface water (other than a stretch of coastal water) or a body of underground water forming part of a watercourse (but not including a watercourse which is wholly underground), but does not include sewers and drains which drain into sewers.

Secondly, where any such body of water is assessed as giving rise to a

risk of flooding of land and the authority considers that clearance and repair works would substantially reduce that risk, a schedule of clearance and repair works must be prepared.

Section 18 (local authorities to assess bodies of water)

(1) Every local authority must, from time to time (or when directed to do so by the Scottish Ministers)—

...

(b) where—

- (i) a body of water gives rise to such a risk, and
- (ii) the authority considers that clearance and repair works would substantially reduce that risk,

prepare a schedule of those clearance and repair works.

(2) In subsection (1)(b), clearance and repair works are works that consist of any or all of the following—

- (a) removing obstructions from a body of water,
- (b) removing things that are at significant risk of becoming such obstructions,
- (c) repairing artificial structures which form part of the bed or banks of a body of water.

The production of a schedule must meet certain criteria:

Section 18 (local authorities to assess bodies of water)

(3) A schedule prepared under subsection (1)(b) must—

- (a) indicate when the local authority next intends to carry out an assessment under subsection (1)(a) of the body of water in question,
- (b) contain such other information and be in such form as the Scottish Ministers may specify in regulations.

(4) A local authority must make available for public inspection the schedule of clearance and repair works prepared under subsection (1)(b) for the time being applicable to its area.

Section 18(5) and (6) makes further provision where any relevant body of water appears to the local authority to be in a condition which is likely to cause flooding of land outwith its area:

Section 18 (local authorities to assess bodies of water)

(5) Where it appears to a local authority, whether or not as a result of an assessment carried out under subsection (1)(a), that any relevant body of water in its area is in a condition which is likely to cause flooding of land outwith its area, it must notify the local authority for the area in which that land is situated.

(6) Subsection (5) does not apply where it appears to the first mentioned authority that the second mentioned authority is aware of the likelihood of the flooding.

1.4 Section 59 – Duty to carry out clearance and repair works

If a local authority considers that the carrying out of works described in a section 18 schedule (prepared by it) will contribute to the implementation of current measures described in any relevant local flood risk management plan or, alternatively, that the carrying out of those works will not affect the implementation of any such current measure, then the local authority is required to carry out those works.

Section 59 (duty to carry out clearance and repair works)

A local authority must carry out the works described in a schedule prepared by it under section 18 if it considers carrying out the works—

- (a) will contribute to the implementation of current measures described in any relevant local flood risk management plan, or
- (b) will not affect the implementation of the measures mentioned in paragraph (a).

1.5 Section 66 - Acquisition of land

Section 66 confers a power on each local authority to, by agreement, acquire land which it requires for the exercise of its functions under Part 4 of the Act, including any land required for the exercise of its duty to carry out works under section 59.

Section 66 (acquisition of land)

(1) A local authority may—
(a) by agreement, acquire land which it requires for the exercise of its functions under this Part,

1.6 Section 67 – Recovery of expenses

Where works are carried out by a local authority in accordance with section 59, the local authority may recover any expense it incurs in carrying out such work from the owner (or, as the case may be, the occupier) of the land in question but only if the expense is as a result of the actions of that person.

Section 67 (recovery of expenses)

A local authority may recover any expense it incurs in carrying out—

...

(b) any work required under section 59, from the owner or, as the case may be, occupier of the land on which work was carried out if such expense is as a result of the actions of that person.

1.7 Section 68 – Information about ownership of land

For the purposes of enabling a local authority to exercise its functions under Part 4 of the Act (including its duty under section 59), a local authority may, under section 68, require owners and occupiers of land

to state their interest in that land. Owners and occupiers of land may also be required to provide contact details for any other person known to have an interest in that land. Any person who fails to comply with a requirement of a local authority under section 68, or intentionally or recklessly makes a statement which is false or misleading in a material particular, commits an offence.

Section 68 (information about ownership etc. of land)

(1) For the purposes of enabling it to exercise any of its functions under this Part, a local authority may require any person it believes to be the owner or occupier of any land to state in writing—

(a) the nature of the person's interest in that land, and
(b) the name and address of any other person known to the person as having an interest in that land.

(2) Any person who—

(a) fails to comply with a requirement of a local authority under this section, or
(b) in answer to any such requirement, intentionally or recklessly makes any statement which is false or misleading in a material particular, commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

1.8 Section 79(2) – Powers of entry

Section 79(2) entitles any person authorised by a local authority to enter land for the purposes of assessing a body of water under section 18 or carrying out works under section 59.

Section 79 (powers of entry)

(2) Any person authorised by a local authority is entitled to enter—

(a) any land for the purposes of assessing a body of water under section 18
(h) any land for the purposes of carrying out works under section 59

It also entitles any such person to enter a building because “land” in the Act includes (by virtue of other general interpretative provisions¹) building and other structures, land covered with water, and any right or interest in or over land to include buildings and other structures.

Any such authorised person may also enter land for the purposes of determining whether, and if so in what manner, any function conferred by or under Part 4 (including the duty in section 59) is to be exercised.

The right to enter land conferred by section 79 also includes (by virtue of section 81(1)) a right to enter (for the same purposes) any land adjacent to the land in question, and a right to survey and examine the land.

The right to enter any land conferred by section 79 may be exercised only at a reasonable time (see section 81(4)).

Further guidance on powers of entry is given in Chapter 7.

1.9 Section 80 – Warrants authorising entry

Section 79 entitles a person authorised by a local authority to enter land for relevant purposes but it does not expressly entitle that person to enter the land by force.

However, a sheriff or justice of the peace may (by warrant under section 80) authorise the person to exercise any such right of entry, if necessary

using reasonable force (except force against an individual).

A sheriff or justice of the peace may only grant such a warrant if the sheriff or justice is satisfied that there are reasonable grounds for the exercise of the right in relation to the land concerned and that certain other conditions are satisfied.

If access is repeatedly refused by landowners or occupiers and all attempts to reach agreement fail, a warrant may be required.

Section 80 (warrants authorising entry)

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right conferred by section 79 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath—
(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned, and
(b) that
(i) the conditions in subsection (3) are satisfied,
(ii) the land is unoccupied, or
(iii) the case is one of urgency.

(3) The conditions mentioned in subsection (2)(b)(i) are
(a) the person applying for the warrant has given notice under section 81(3) of the person’s intention to exercise the right,
(b) the notice period has expired,
(c) either:
(i) permission to exercise the right in relation to the land has been refused, or
(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section:
(a) does not entitle a person to use force against an individual, and
(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

¹ The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379).

(5) Any person who, without reasonable excuse, prevents or obstructs any other person from doing anything which is authorised by a warrant granted under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

1.10 Section 81 – Powers of entry: Supplementary

Section 81 makes further provision in relation to powers of entry. In particular, before a person exercises any right to enter land under section 79 or 80 for the purposes of assessing a body of water under section 18 or carrying out works under section 59, the occupant of the land must be given at least 24 hours' notice. However, if entry without warrant is sought to a house or heavy equipment is to be taken onto the land without warrant, at least 7 days' notice must be given.

Section 81 (powers of entry: supplementary)

- (1) A right to enter any land conferred by section 79 includes a right to—
- (a) enter for the same purpose any land adjacent to it, and
 - (b) survey and examine the land.
- (2) Any person who enters any land in exercise of a right conferred by section 79 is entitled, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
- (a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person, and
 - (b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(3) Before any such person exercises any such right, the occupant of the land concerned must be given—

- (a) where—
- (i) the person exercising any such right intends to take heavy equipment onto the land concerned or entry is sought to a house, and
 - (ii) the right being exercised is not being exercised in accordance with a warrant, at least 7 days' notice,
- (b) in any other case, at least 24 hours' notice.

(4) A right to enter any land conferred by section 79 may be exercised only at a reasonable time.

(5) Subsections (3) and (4) do not apply to the exercise of—

- (a) a right under section 79(2)(f), or
- (b) if the situation is urgent, a right under section 79(1)(l).

(6) A person authorised to exercise any right conferred by section 79 must, if required to do so, produce written evidence of that authorisation.

(7) In subsection (3)(a)(i)—
“heavy equipment” does not include vehicles designed solely or mainly for the carriage of passengers, “house” has the meaning given in section 194(1) of the Housing (Scotland) Act 2006 (asp 1).

(8) In this section and section 82, references to a right to enter land conferred by section 79 include references to that right exercised in accordance with a warrant granted under section 80.

Any person who enters land under section 79 is entitled (subject to the terms of any associated warrant) to take other persons, materials and equipment (including vehicles) as may be reasonably required onto the land.

The person may also do anything else that is reasonably required to fulfil the purpose for which entry is taken, including, for example, the purposes of assessing a body of water under section 18 or carrying out clearance and repair works under section 59.

In all cases, the person authorised to exercise any right conferred by section 79 must, if required to do so, produce written evidence of that authorisation.

Further guidance in relation to powers of entry is given in Chapter 7.

1.11 Sections 82(2) and 83 - Compensation

A local authority must compensate any person who has sustained damage as a result of the carrying out of clearance and repair works under section 59, or the exercise of a right of entry conferred by section 79 for those purposes or for the purposes of assessing a body of water under section 18.

Section 82 (compensation)

(2) A local authority must compensate any person who has sustained damage in consequence of—
...
(d) the carrying out of works under section 59,
...
(f) the exercise of a right of entry conferred by section 79(2) (including the ancillary rights mentioned in section 81(1) and (2)).

By virtue of section 83(1), a person sustains damage if the value of the person's interest in land has been depreciated or the person's enjoyment of land has been disturbed.

See also 'Interest in Land' and 'Land affected' (Chapter 9) for the extent to which a person's interest in land may be considered.

Section 83 (compensation: supplementary)

(1) In section 82, a person sustains damage if—
(a) the value of the person's interest in land has been depreciated, or
(b) the person has been disturbed in the person's enjoyment of land.

Compensation might therefore be payable to any individual or business that sustains any such damage in consequence of the carrying out of clearance and repair works by a local authority (see also [Part 4 Guidance](#)).

Section 83 (compensation: supplementary)

(2) SEPA or, as the case may be, a local authority must pay compensation under section 82 to a person only if—
(a) the damage is not attributable to an act or omission of the person,
(b) the act or omission causing the damage would have been actionable at the person's instance if it had been done or omitted otherwise than in exercise of statutory powers,
(c) the person gives notice to SEPA or, as the case may be, the local authority of the person's claim stating the grounds of the claim and the amount claimed, and
(d) the notice is given no later than the earlier of—
(i) 2 years after the depreciation first becomes apparent or, as the case may be, the first occurrence of the disturbance, and
(ii) 10 years from the completion of the scheme operations, maintenance, exercise of a right of entry or, as the case may be, exercise of another function mentioned in section 82.

However, a local authority is required to pay compensation only if the conditions in section 83(2) are met, including a requirement for notice of the claim to be given to the local authority within a specified period.

Section 83 (compensation: supplementary)

(3) Subsection (2)(b) does not apply where the damage has been sustained in consequence of circumstances falling within section 82(2)(e).

Any disputes over compensation under section 82 are to be determined by the Lands Tribunal for Scotland.

Section 83 (compensation: supplementary)

(4) Any question of disputed compensation under section 82 is to be determined by the Lands Tribunal for Scotland.

2. Duty to assess each relevant body of water

2.1 What are assessments of bodies of water?

Assessments of bodies of water determine whether the condition of a body of water is likely to give rise to a risk of flooding that is likely to have adverse consequences on receptors (i.e. will increase flood risk to people, homes, properties or land).

Definitions: 'relevant body of water' (section 17(5))

A 'relevant body of water' means—
- a *body of surface water* (other than a stretch of coastal water), or
- a body of underground water forming part of a *watercourse* (but not including a watercourse which is wholly underground);
but does not include sewers and drains which drain into sewers.

A 'body of surface water' has (by virtue of section 55) the same meaning as in section 28(1) of the Water Environment and Water Services (Scotland) Act 2003 ("2003 Act")—
- a discrete and significant element of 'surface water' (such as a loch, a stream, river, canal or other watercourse),
- part of a loch, stream, river, canal or other watercourse,
- a body of 'transitional water', or
- a stretch of 'coastal water'.
(see also sub-definitions for 'surface water', 'transitional water' and 'coastal water' in the 2003 Act, which further define what is meant by a 'body of surface water' in the 2003 Act).

A "watercourse" has (by virtue of section 55) the same meaning as in section 28(1) of the 2003 Act. This expression therefore 'includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices and passages through which water flows and includes artificial watercourses and underground watercourses'.

The local authority's assessment of each relevant body of water must be

sufficient to ascertain whether or not the condition of that particular body gives rise to a risk of "flooding" of land (whether within or outwith its area).

The term 'flooding' (in section 18(1)) refers to the temporary covering by water from any source of land not normally covered by water, but does not include a flood solely from a sewerage system (see section 3).

Definition: 'flooding' (section 3)

'flooding' means the temporary covering by water from any source of land not normally covered by water, but does not include a flood solely from sewerage system.

"**flood risk**" - means the combination of the probability of a flood and of the potential adverse consequences associated with a flood, for human health, the environment, cultural heritage and economic activity.

In the absence of a definition in the Act for 'risk' (as opposed to 'flood risk'), 'risk' in section 18(1) takes its ordinary meaning within the context of the Act.

A local authority must however exercise its functions under Parts 3 and 4 of the Act with a view to reducing 'flood risk' (as defined in section 3). A local authority should therefore carry out assessments under section 18 with a view to reducing overall 'flood risk'.

In ascertaining whether a risk of flooding arises, the local authority should take account of both:

- the probability of a flood, and
- the potential adverse consequences, associated with a flood, for human health, the environment, cultural heritage and economic activity.

Where a relevant body of water in an area gives rise to a 'risk of flooding' and the local authority considers that 'clearance and repair works' would **substantially reduce** that risk, the local authority must prepare a schedule of those works in accordance with section 18(1)(b).

Definition: 'clearance and repair works' . (section 18(2))

'clearance and repair works' are works that consist of any or all of the following—

- removing obstructions from a body of water,
- removing things that are at significant risk of becoming such obstructions,
- repairing artificial structures which form part of the bed or banks of a body of water.

Where a local authority considers that clearance and repair works would **not** substantially reduce the risk of flooding (having regard to the combination of the probability of such flooding and the potential adverse consequences), then the local authority is not required to prepare a section 18 schedule.

Chapter 5 (Schedules of Clearance and Repair) provides further guidance.

2.2 Why should assessments be undertaken?

Assessments are required to fulfil the duty on local authorities under section 18 (see Chapter 1) and, along with the schedule of clearance and repair, provide evidence that the general duty of a local authority under section 1 (to exercise its flood risk related functions with a view to reducing overall flood risk) is being discharged.

2.3 Where should assessments be undertaken?

A local authority is required to assess each 'relevant body of water' in its

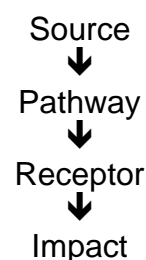
area in accordance with section 18 (see definitions in paragraph 2.1).

It is essential that the nature of flood risk relative to bodies of water is understood before any assessment (or inspection) of 'the relevant bodies of water...for the purpose of ascertaining whether the condition of any such body of water gives rise to a risk of flooding of land' (reference s18(1)(a)).

In some local authority areas the number of relevant bodies of water may be significant. The number and scale of assessments will need to be managed in light of the resources available.

To help ensure that resources for carrying out clearance and repair works are applied in an effective and proportionate way, a risk based approach may be adopted using good practice as encouraged in the [Scottish Government's guidance on delivering sustainable flood risk management](#).

When adopting a risk based approach it is essential to understand the interaction of different actions across catchments. Local authorities may wish to adopt the following approach:



This is a well-established framework in flood risk management. It provides a basis for understanding the causal links between the source of flooding, the route by which it is transmitted and the receptor which suffers some impact.

This approach is set out in more detail in the [Scottish Government's guidance on delivering sustainable flood risk management](#).

In essence, a 'risk of flooding' is a combination of two factors:

1. the probability of a flood occurring (in this case, whether the condition of a body of water is likely to give rise to flooding); and
2. the potential adverse consequences of that flooding on receptors.

Although every relevant body of water must be assessed to ascertain whether the condition of the body gives rise to a risk of flooding, each body only requires to be assessed to the extent necessary to ascertain this.

A local authority may wish to carry out an initial screening exercise to assess for each body of water whether, if it were in a poor condition, it would have the potential to give rise to high, moderate, low or a very low risk of flooding (using a risk based approach which takes account of the above factors).

Where any such screening exercise indicates that the body has the potential to give rise to a high or a moderate risk of flooding, then the local authority may wish to prioritise the further assessment of the condition of those particular bodies of water (including by on-site inspection) to ascertain whether the body does in fact give rise to a risk of flooding and, if so, whether it is high, moderate or low.

Any such assessment should be reviewed on a regular basis (with the frequency of any such review being set having regard to the relative flood risk)

and updated as appropriate, e.g. as knowledge and experience of the assessment process develops.

Coastal waters

In sections 17 and 18, a 'relevant body of water' means a body of surface water other than a stretch of coastal water.

There is therefore no duty to prepare a section 18 schedule or to carry out works of clearance and repair associated with coastal waters.

However, there may be situations where defences (such as embankments on river estuaries) provide protection from both fluvial and coastal flooding. In such cases, the transitional water will still need to be assessed in accordance with section 18 and, if required, clearance and repair works carried out.

In relation to coastal zones, separate consideration should be given to the Coast Protection Act 1949, under which local authorities (with a coastal zone) have statutory duties and powers to manage coastal erosion.

2.4 When should assessments be undertaken?

Assessments should be undertaken 'from time to time' (section 18(1)).

As indicated in paragraph 2.3, an initial screening assessment of the bodies of water may be undertaken. This should consider all bodies of water even if these are discounted immediately (see paragraph 2.5 for further details).

Once this initial assessment has been done, more specific assessments of individual bodies of water will follow (see paragraph 2.6 for further details).

'Time to time' is not defined in the Act. A local authority may also find it helpful to adopt a risk based approach when deciding the frequency of any re-assessment of a body of water.

2.5 Initial catchment or local authority-wide assessments

Local authorities will be required to use their own local knowledge and judgement to identify the potential flood risk and determine the frequency of assessment of bodies of water. This should consider national guidance for consistency and application of best practice. This consideration should be recorded to allow for review and updating as appropriate, e.g. as knowledge and experience of the assessment process develops.

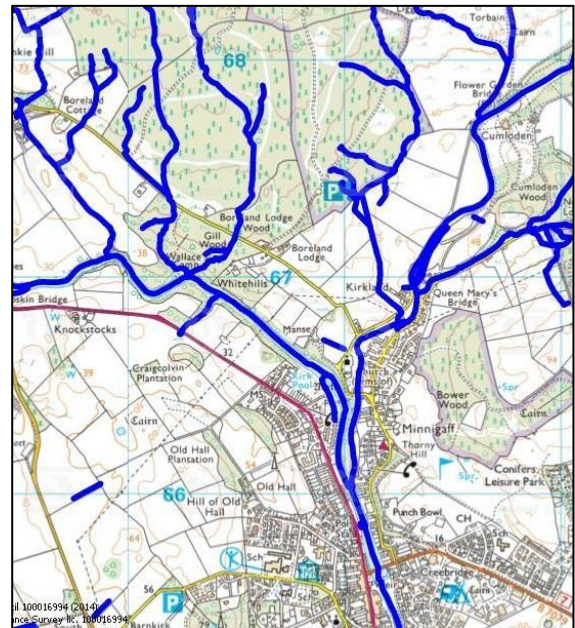
The initial assessment will be a desk-based exercise. This will utilise a range of existing information, including:

- section 17 Maps of Bodies of Water
- Historical Flood Events/Near Miss Registers
- Previously published Flood Reports under the 1961 Act
- Trash screen Inspection Registers
- National Flood Risk Assessment
- Flood Studies/Post Flood Studies
- SEPA Flood Hazard Maps
- Flood Risk Assessments from all sources e.g. commissioned by the Authority, provided as part of a planning application, etc.

Through the use of geographical information systems and mapping, local authorities are able to identify

- the locations of bodies of water, e.g. watercourses;
- pathways, e.g. topography, roads; and

- receptors; e.g. developments and assets.



©Crown Copyright and Database right 2017. All rights reserved. Ordnance Survey lic. 100016994

By overlaying knowledge of areas of known risk, based on historical and recorded flood events and also those predicted through modelling and the flood risk management planning process, an initial assessment of prioritisation for more detailed assessment can be made.

The initial assessment of all bodies of water should record what further assessment is required.

The purpose of the further assessments is to determine if any works of clearance and repair would substantially reduce the flood risk.

A simple approach to follow in the first instance is to identify the bodies of water that are considered to present a medium or high risk. Low or no risk bodies of water would be recorded as such and no further assessment planned at this time.

Where bodies of water are classed as at no or low risk, this does not mean that they are no longer to be considered further at all. There should be opportunities to reassess the risk classification based on any future flood events or increasing knowledge.

The medium and higher risk bodies of water (or parts thereof) would then be subject to more detailed desk-based further assessment, and visual inspection may be undertaken.

It is possible that a programme of visual inspections of bodies of water may be used to assist the initial assessment of bodies of water. However, it is more likely that a programme of visual inspections of bodies of water would be required in undertaking further assessments, and in order to inform subsequent reviews of catchment or local authority wide assessments, as deemed appropriate.

The initial catchment or local authority wide assessments should be reviewed on a declared frequency. It is considered that a review every six years to coincide with the Local Flood Risk Management Plan cycle is most appropriate. It may be that for resource issues this is undertaken in year 2 of a cycle.

Other reviews may be appropriate:

- after significant flood events;
- after emergency planning exercises;
- on request; or
- based on new knowledge.

2.6 Further assessments of bodies of water (or parts thereof)

Further assessment of medium or high risk bodies of water (or parts thereof) would involve a more in depth and

detailed assessment, so as to establish the priority of the assessment and future frequency for review. The need for a visual inspection should be determined at this time. It should be remembered that the purpose of the further assessments is to determine if any works of clearance and repair would substantially reduce the flood risk. This might be an immediate outcome.

An additional outcome from the assessment would be to determine the requirements for and the frequency of visual inspections and future reassessments.

The assessment may also identify the need for a study into the risks from the body of water, which may include monitoring or modelling. The results of such a study would be used to inform the assessment and future reviews. It is imperative that the outcomes from the assessments, either the initial assessment or further assessments, are managed and recorded. Such records of the assessment process form an invaluable companion to the schedule of clearance and repair.

Assessments can be informed by the evidence collected by inspections. The frequency and extent of inspections are based on the identified needs of the assessments, which are required, planned and managed, and the resources available to undertake them. The risk-based approach allows a targeting of limited resources to locations where visual inspection will offer the greatest benefit, e.g. urban watercourses, trash screens and culverts. In adopting this approach Councils should be aware that at any point there is flexibility in the assessment process to add a stretch of watercourse to the visual inspection

programme if additional information becomes available.

Assessments are not inspections

Depending on the skills, knowledge and experience of the inspector (who is the person undertaking the inspection, not necessarily called an inspector), an initial onsite assessment can be made. This initial onsite assessment may lead directly to emergency, urgent or planned works of clearance and repair. However, it is considered that some form of review of such an onsite assessment be undertaken. This should be in the same way that the evidence collected from inspections is subject to assessment.

The frequency of visual inspections of bodies of water to inform the assessments and management of flood risk should also be risk-based, planned and recorded. In this way, inspections form part of the assessment.

For example, categorising the frequency of the inspection programme by risk categories and subsequent reassessments may look like this:

- High Risk – weekly/monthly inspection and reassessment.
- Medium Risk – 6 monthly / yearly inspection and reassessment.
- Low Risk – 2-6 yearly inspection and reassessments.
- Very Low Risk – where no planned inspection frequency may be required, but re-assessments should still be planned.

Based on the assessment of a body of water, there may be particular weather conditions, alerts and warnings that would result in inspections and

assessments outside the planned programme at certain locations.

When setting appropriate frequencies of inspections, authorities should take account of technical guidance on inspection of screens/culverts and other flood defence apparatus published by CIRIA or the Environment Agency, as well as maintenance manuals produced for any flood protection schemes or asset management regimes for other assets maintained by the authority. However, it is recognised that many authorities have established their own frequency of assessment based on local knowledge and experience.

Further detailed guidance on visual inspections is included in Chapter 3 of this document.

3. Visual Inspections

3.1 The nature of inspections

The need for and frequency of inspections of bodies of water are to be planned and programmed, but can also be contingent on certain weather conditions, as per the assessments of bodies of water described in Chapter 2.

Under the previous legislation thirty-two local authorities will have as many as 64 different methods by which watercourses in the past have been inspected and maintained. The regime to be followed by local authorities under the Flood Risk Management (Scotland) Act 2009 is to be risk-based and plan led.

Inspections should now be targeted at the areas of risk identified in the assessment of bodies of water. They can also form part of inspections for asset management planning purposes.

Historically, planned inspections and maintenance will principally fall into two categories: Trash Screens (see paragraph 3.1.1) or watercourses and culverts (see paragraph 3.1.2).

The assessment of bodies of water required under section 18 of the Act should clearly identify the locations of trash screens and the inspection frequency, with the works of clearance dependent on the screen condition at time of inspection. It is unlikely that clearance of a screen will be specifically scheduled, but structural defects found during inspection should be recorded for subsequent assessment. Any remedial works would be scheduled for clearance and repair.

3.1.1 Trash screens

In general, certain locations on the watercourse network will be inspected on a scheduled basis with works undertaken either by those inspecting or by a squad instructed to do so. The obvious example of this is trash screens on culverts.

Most local authorities will undertake a programme of screen inspection and clearance to manage flood risk at high risk locations. Through local knowledge and experience an inspection and clearance regime will have been developed. This may see, for example, weekly inspections in the winter with monthly inspections in the summer. As the inspection and clearance will often be undertaken by manual operatives it is important for Council flood officers to obtain feedback on issues. For example regular attendance at a screen that has accumulated no trash may allow a reduction in frequency of visits. Conversely a regularly blinded screen may require increased visits or possibly a new screen to current standards.



Councils should also be mindful of the opportunities to engage with local

communities and flood groups for inspection, and if safe, clearance of screens. This approach has been adopted by Scottish Borders Council and Angus Council.

For particularly high risk locations, Councils may wish to consider the installation of automatic river level monitors that will trigger alarms (text message or email) when a set level is reached. This can ensure that a blocked screen is attended before rising water leads to flooding. CCTV cameras offer further resilience, at a price. Such planned works themselves may be considered for inclusion in the schedule of clearance and repair under section 18.

3.1.2 Watercourses and culverted watercourses

In terms of substantially reducing flood risk, it is much more probable that smaller watercourses, in urban areas will be the focus for local authorities. However, inspections of open watercourses, generally in urban areas, are likely to be undertaken on a less frequent basis than trash screen inspections. Depending on the issues identified at the assessment stage, this may be a once or twice a year inspection, or less frequently as detailed in paragraph 2.6.

These works of inspection should be recorded in a manner to allow scheduling of such clearance or repair works. Again the frequency of these inspections should be determined from assessment but flexibility should always remain, especially to undertake additional inspections prior / during / after high flow events.

Identifying “things” that are of “significant risk” of becoming an

“obstruction” e.g. fallen trees or garden waste end-tipped on a river bank is as important as identifying obstructions in the watercourse itself. This potentially has the opportunity to undertake targeted campaigns promoting more appropriate disposal of garden waste thus reducing flood risk and local authority maintenance costs.

Much risk is posed by culverted watercourses where the need to install high screens to prevent debris passing into the culvert is the first risk location. Even with a trash screen in place issues with the culvert still remain. The build-up of smaller debris can lead to blockage, which may give rise to the structural failure of elements, e.g. loss of brickwork, partial collapse. Assessment in these situations is likely to direct a local authority to undertake CCTV inspections of culverts. The frequency will be dependent on the common risks, e.g. age, material construction, available resources, etc. There may also be a need to consider whether the culvert is a structure in terms of [The Management of Highway Structures – A Code of Practice](#) which may then require inspections on 2 yearly/6 yearly General and Principal Inspections basis or a move to a risk-based frequency.



A reasonable inspection frequency by CCTV or man entry would be every 6 years to coincide with a plan cycle but this could be increased if issues are identified as problems arise.



The initial pre- and post-condition of the watercourse should be noted and photographed on the inspection record.

Inspection records should include all relevant data required for an assessment of the body of water or the need for a specific clearance and repair works to be reviewed. This might include photographs, videos and other evidence to support written records.

3.2 Recording inspections

Inspections inform assessments of bodies of water. This is either as part of the development of the assessment and identification of flood risk or the results of the inspection will allow for a risk-based assessment of actions required.

These actions may be:

- immediate, e.g. inspector clears trash screen debris;
- emergency, urgent or planned ordered works of clearance and repair based on onsite risk-based assessment;
- planned ordered works of clearance and repair based on office risk-based assessment;
- results of inspection, e.g. dimensions, condition, feeds into office risk-based assessment (or study if applicable).

In any event, the inspection and its findings need to be recorded and made available for assessment and future inspections. Any works of clearance and repair shall also be recorded in the section 18 schedule.

4. Risk-based Assessments

4.1 The nature of assessments

Assessments of bodies of water are initially likely to be at a catchment or local authority wide scale (see Chapter 2). As a result of these assessments, further or more detailed assessments of a body of water or part thereof may be required. This should be done in a risk-based way.

Whilst the assessments can and do inform the wider flood risk management planning activities, section 18 of the Act is clear in that the requirement to assess bodies of water is to establish if works of clearance and repair would substantially reduce the risk of flooding. If they will, the works are scheduled (see Chapter 5 - section 18 schedule). The schedule must also indicate when the next assessment of the body of water is to be undertaken.

In undertaking these assessments, as described in this guidance, a risk-based, plan led approach should therefore be applied. In doing so, the following should be noted:

- **Not all bodies of water will require a detailed assessment – but all should have been considered in the initial assessment.**
- **Not all assessments will result in a need for visual inspections – they may only be required at pinch points or under certain weather conditions.**
- **Not all assessments will result in works of clearance and repair – only those considered to substantially**

reduce the flood risk shall be scheduled.

- **All works of clearance and repair from the assessment of bodies of water shall be entered on the section 18 schedule.**
- **Each works of clearance and repair entered on the section 18 schedule should indicate a planned implementation date (except immediate works – see box below).**
- **Reassessment dates shall be indicated in the section 18 schedule.**

The process to be followed in undertaking assessment of bodies of water, which may lead to clearance and repair works or other actions is shown in the flowchart (Guidance Flow Chart fold-out – see appendix 9.6)

4.2 Assessing the need for works of clearance and repair

The need for works of clearance and repair is assessed by the local authority. The level of detail of the assessment should be based on the level of risk and the scale of the works.

For straightforward works that will clearly substantially reduce the risk of flooding, then such works should be prioritised as such on the section 18 schedule.

Immediate works

For example the clearance of a trash screen, may not be recorded on the section 18 schedule, but a record of such works should be recorded in each assessment. In this example, the nature of the debris or the frequency of the need to clear may be material considerations in the assessment of flood risk and possible identification of other works of clearance and repair.

Where the benefits are less clear, the works may be complex or the costs are significant, it is considered reasonable that further assessment would be required. Such an assessment might involve hydraulic modelling or benefit-cost analysis. Such assessment in itself would also merit inclusion on the section 18 schedule – see below paragraph 4.3 ‘Next assessment of bodies of water’.

In extremis an assessment that is moving towards a more formal study may also be considered as part of actions in subsequent Flood Risk Management Planning cycles, as well as or instead of the section 18 schedule.

There is a commitment from local authorities to works that are included in the section 18 schedule. Whilst there is no express requirement in the Act to indicate when the works are to be implemented, it is considered that appropriate details on when the works will be carried out should be included. Local authorities should consider the availability of resources as well as the degree of flood risk. In addition, the local authority shall consider if the works will contribute to the implementation of current measures described in the applicable Flood Risk Management Strategy and Local Flood Risk Management Plan, or will not affect the implementation of the measures (reference section 59).

Given the direct link to the Strategies and Plans, it is considered that the works of clearance and repair are a key addition to the armoury of the local authority in carrying out its duties under the Act.

The proactive application of sections 18 and 59 provides opportunities for

local authorities to manage and be seen to be managing flood risk at a very practical level.

See Chapter 5 for further guidance on assessing works of clearance and repair.

4.3 Next assessment of bodies of water

Where an assessment identifies that there is a risk of flooding and that works of clearance and repair are required, there will be a need for a further assessment of flood risk following the works. Where these works are not to be undertaken for a period of time, the local authority should consider when another assessment of the flood risk from this body of water or part thereof is to be undertaken. Likewise, where works of clearance and repair are not defined, the local authority should consider when another assessment of the flood risk from this body of water or part thereof is to be undertaken. The outcomes of such considerations shall be recorded on the section 18 schedule.

5. Schedules of Clearance and Repair

Works of clearance and repair are fairly narrowly defined – see Chapter 6 Works of Clearance and Repair.

5.1 Section 18 Schedule activities

As detailed in Chapter 2, different authorities will have different approaches to undertaking clearance and repair works. However, it is essential that there is a shared and common understanding of the need for a level of consistency in the use of Schedules of Clearance and Repair.

As detailed in Chapter 4, such a section 18 schedule, which is to be published, is required to indicate both the planned works of clearance and repair (reference section 18(1) and (2)) and also planned future assessments (reference section 18(3)). In preparing a section 18 schedule, the local authority needs to decide on whether, and to what level, routine inspections, which should inform assessments, are to be included and detailed.

For example, a frequency for inspection and clearance e.g. monthly in the summer, weekly in the winter and daily at times of higher risk perhaps when a flood alert has been issued. This could be classed as future assessment as well as planned works, and is therefore likely to be included in a section 18 schedule. The most important thing is that this is recorded and managed so as to seek to reduce flood risk – clearance and repair works should be focussed on substantially reducing flood risk. However, there is an opportunity to better meet the requirements of the Act and communicate what is being

done to manage flood risk from bodies of water assessed as likely to give rise to flooding by including all relevant activities.

Often such activities will be deemed to be of a more routine nature. For example many of the high risk locations will be at culvert entrances, particularly where a trash screen is located. These kind of works are likely to be carried out by manual operatives based on a schedule determined though historical experience.

These activities should be included in the section 18 schedule if it is assessed that these are required to reduce flood risk.

Feedback should be obtained from operatives as there may be opportunities for a reduction in frequency if visits are regularly not leading to clearance works. Alternatively if a screen is heavily blinded on every visit this may indicate that frequency needs to be increased or perhaps more significant works are required to improve or replace the screen.

Other visual assessment work, involving perhaps walking sections of watercourses to determine whether scour damage, debris build-up, siltation, garden waste disposed adjacent to a small watercourse may lead to flood risk is likely to undertaken on a less frequent basis. It is also likely to be undertaken by a technician or perhaps a summer student and is, unlike operatives undertaking screen inspection and clearance, not likely to involve actual immediate clearance works being undertaken.

CCTV of culverted watercourses is another form of visual inspection from

which an assessment can be made. Its frequency will be based on historical experience and likely to be reasonably infrequent (every six years perhaps) unless specific issues regularly occur.

5.2 Prioritisation

Firstly, a decision needs to be made on the range of activities that a local authority considers constitute works and assessment, which are to be included in a section 18 schedule.

Secondly, the list of activities needs to be prioritised. As stated elsewhere in this guidance, the use of prioritisation is consistent with the national approach to flood risk management planning. Such an approach is also wholly consistent with priority based budgeting principles that have been widely adopted across local government.

It is such prioritisation where the local authority can manage their ability to undertake activities and expectations in this regard. It is here where affordability of activities can be factored in to the frequency of assessments and nature of works of clearance and repair. It is essential that a risk-based approach is applied to section 18 schedule activities.

Prioritisation should include the following factors:

- risk to receptor – extent and frequency
- costs of activities
- affordability
- frequency or Delivery dates for activities

The section 18 schedule is a commitment from the local authority on

what and when activities will be undertaken. It is legitimate that activities that have a low priority are not given a frequency or delivery date. However, it is considered such activities are still included in the section 18 schedule.

5.3 Clearance and repair works

Works of clearance and repair may be undertaken immediately, i.e. at the same time as the inspection where an onsite assessment is made. Such immediate works and any further works required are assessed following an inspection. Where works are assessed as being required these shall be recorded on the section 18 schedule.

Alternatively, where works are identified that are of a capital nature, e.g. involve an additional asset or improvement in existing asset beyond simple maintenance and repair, these may be considered for inclusion in future capital works, which may be included in the Local Flood Risk Management Plan.

The process to be followed in undertaking assessment of bodies of water, which may lead to clearance and repair works or other actions to be recorded on the section 18 schedule is shown in the flowchart in (in Guidance Flow Chart fold-out – see appendix 9.6)

5.4 Planned and routine works

Any works of clearance and repair must minimise the impact on the water environment and its users.

Significant engineering works in rivers require authorisation under CAR. However repair works and smaller

scale activities do not require contact with SEPA before proceeding. In addition, the Regulations allow emergency works to be carried out under certain conditions.

For works that are planned there is ample opportunity to liaise with SEPA and other regulators, and landowners to properly plan and seek necessary approvals. This guidance highlights the need to ensure all relevant legislation is complied with (see paragraph 5.7) however those undertaking section 18 schedule activities should seek appropriate advice.

5.5 Emergency works

With any works that a local authority considers an “emergency” it is highly recommended that contact is made with local SEPA office.

Works of clearance and repair may be required in emergency situations, where the undertaking of controlled activities promptly may be necessary. This often coincides with flood events where a local authority is a Category 1 Responder under wider Civil Contingencies responsibilities.

It is crucial that SEPA, also a Category 1 responder, are contacted as soon as works impacting upon a body of water are identified.

Emergency works are where an immediate response to an incident is required to protect people from harm or the environment from serious harm.

Any emergency works of clearance and repair undertaken must still minimise the impact on the water environment and its users (reference CAR). In an emergency such works

may be undertaken at the behest of not only the local authority but also other responders and in particular the Scottish Fire & Rescue Service. It is therefore essential that the need for such emergency works are discussed with SEPA at the very least, as a CAR license will likely be required.

Generally, SEPA are accommodating of such necessary emergency works, and will be able to provide verbal approvals that can be followed up with the necessary CAR applications and approvals.

It is considered that the potential for such emergency works and processes to deal with these should be discussed within local resilience groups. Flood risk staff should therefore ensure that this issue is raised with their Civil Contingency and resilience colleagues.

SEPA has published a specific advice note on '[Repair work in rivers after recent floods](#)'. This advice note should be referred to in relation to emergency works.

5.5.1 Urgent works

Urgent works are urgent remedial actions in the aftermath of an incident, flood, or other emergency to make a site safe or prevent significant disruption.

The required approach to dealing with urgent works is essentially the same as emergency works but there is a greater opportunity to discuss the planned activities and seek approvals before they are undertaken.

An example of this kind of works would be the clearance of a trash screen at the time of a SEPA flood alert.

5.5.2 'Non-urgent' emergency works

These are similar to planned works but are a result of an emergency situation. With such works, there is usually sufficient time to consider the risks over a period of time. There is usually time to prepare contingency plans in advance of an emergency situation arising to deal with specific issues. From this point, the approach to planned and routine works should be followed.

5.5.3 Requirements of a Schedule of Clearance and Repair

A standard template has not been provided in this guidance as local authorities will have developed their own formats for schedules of clearance and repair, sharing experience and best practice along the way. This guidance therefore describes the essential requirements that must be included in the schedule and other information considered to be implicit as a requirement of the Act.

- **Essentials from section 18**

Details of clearance and repair works that would substantially reduce that risk based on assessment of the relevant bodies of water. This might include:

- Details of assessment
- Details of risk to be reduced
- Details of works to reduce that risk

Date next intended to carry out an assessment, i.e. 'time to time'.

- **Other considerations:**

Frequency of assessments (details and dates are included above); and

Frequency of inspections; details of inspections; and links to subsequent assessment (this may be maintained as a separate document to the section 18 schedule, perhaps for internal use only).

5.6 Stakeholder engagement

Local authorities should identify all relevant parties affected by clearance and repair works, as well as inspections, and engage with them in arranging access, sharing of actions or seeking approvals. This might include landowners, community councils, community flood groups and local fisheries' boards. Depending on the scale of works, for example where CAR applies, engagement with SEPA, Historic Scotland and SNH may also be appropriate.

5.7 Other relevant legislation & guidance

There is substantial guidance available to local authorities on their duties and responsibilities under the Act, particularly in terms of Sustainable Flood Risk Management and general Part 4 Guidance.

When preparing section 18 schedules and carrying out any assessments and clearance and repair works authorities should also have regard to their responsibilities and obligations under:

- Water Environment and Water Services (Scotland) Act 2003
- The Water Environment (Controlled Activities) (Scotland) Regulations 2011
- Roads (Scotland) Act 1984

- The Environmental Protection Act 1990
- Civil Contingencies Act 2004
- The Land Drainage (Scotland) Act 1958
- Sewerage (Scotland) Act 1968
- The Water (Scotland) Act 1980
- Scots law in relation to nuisance and water incidental to property & land

In particular, authorities should also be aware and take account of the need to control non-native invasive species which may cause obstruction to the flow of water.

5.7.1 Roads (Scotland) Act 1984

All local authorities with responsibilities under the Flood Risk Management (Scotland) Act 2009 are also defined as roads authorities under the Roads (Scotland) Act 1984.

There are particular powers under the Roads (Scotland) Act 1984 that are often directly relevant to the assessment of bodies of water and clearance and repair works. These are:

Extracts from the Roads (Scotland) Act 1984

31 Drainage of roads

(1) The roads authority may, for the purpose of draining a public road or proposed public road or of otherwise preventing surface water from flowing onto it –

- construct or lay, in it or in land adjoining or lying near to it, such drains as they consider necessary;
- erect and maintain barriers in it or in such land as aforesaid to divert surface water into or through any existing drain;
- scour, cleanse and keep open all drains in it or in such land as aforesaid;
- drain surface water from it into any inland waters (whether natural or artificial) or tidal waters.

78 Power to divert waters when constructing or improving public road etc.

(1) The roads authority may divert, or carry out works in relation to, inland waters (whether natural or artificial) or tidal waters where, in the opinion of the authority, such diversion is, or as the case may be works are, necessary for the construction, improvement or protection of a public road (or proposed public road)

99 Prevention of flow of water etc. onto roads

(1) The owner and the occupier of any land, whether or not that land is such as constitutes a structure over or across a road, shall prevent any flow of water or of filth, dirt or other offensive matter from, or any percolation of water through, the land onto the road.

(2) A person may, with the consent of the roads authority and subject to such reasonable conditions as may be imposed by that authority, at his own expense carry out such works in, or make such excavations under, the road as appear to him to be necessary for the purposes of his complying with subsection (1) above.

(3) Without prejudice to subsections (1) and (2) of this section, where there is onto a road such flow or percolation as is mentioned in subsection (1) above, the roads authority may by notice served on the owner or occupier of the land require him, within 28 days from the date of service of, or within such longer period from that date as may be specified in, the notice, to carry out such works or make such excavations as may be so specified, being works or excavations in their opinion necessary for compliance by him with subsection (1) above.

The roads authority therefore has broad powers that may be appropriate to use to address shared flooding actions, where these coincide with roads. The Roads (Scotland) Act 1984 confers rights of entry and requirements to serve notices.

Importantly, in terms of the prevention of flow of water onto roads, under the Roads (Scotland) Act 1984 there is no requirement for this to have been as a result of an 'action' as is the case for section 59 of the Flood Risk Management (Scotland) Act 2009.

Therefore, if through, for example a lack of maintenance water is flowing onto a road, then a notice can be served on the owner or occupier to prevent this. It should be noted that a proper assessment of what can be done to prevent the flow should have been undertaken by the roads authority – it is not merely the case of the owner or occupier preventing the flow of water onto a road if this is not possible and in some cases practicable.

If considering using these powers then advice should be sought from roads and legal services colleagues as appropriate.

Duties under the Act and Roads (Scotland) Act 1984 are often undertaken by the same service area within each local authority. Whatever service delivery approach is being used, it is imperative that the works relating to drainage of roads is coordinated with those under the Act. A section 18 schedule may make clear under which Act or both certain activities are being undertaken.

Dumfries & Galloway Council - Roads (Scotland) Act 1984 - section 99 issues

Dumfries & Galloway Council agreed the implementation of a more formal process that reflects the requirements of the Roads (Scotland) Act 1984 where it relates to landowner-related road drainage matters.

(Reference Planning, Housing and Environment Services Committee of Dumfries & Galloway Council, 12 November 2013: <http://egenda.dumgal.gov.uk/aksdumgal/users/public/admin/kab12.pl?cmte=PHE&meet=70&arc=71>)

The process details the responsibilities of landowners and the approach to be taken by the council in the enforcement of section 99 notices under the Roads (Scotland) Act 1984.

A copy of Appendix 2 to the committee report, which details the procedure and includes standard letters and notices, is included in Appendix 9.3 of this guidance.

5.7.2 Land Drainage (Scotland) Act 1958

Orders made under the [Land Drainage \(Scotland\) Act 1958](#) ('LD(S)A58') required the authorised persons to be responsible for maintenance of the authorised works in perpetuity and the cost of such maintenance was recorded as a burden on the land in the titles of the agricultural land concerned.

The Flood Risk Management (Scotland) Act 2009 addresses some issues with respect to the presence of Orders made under the LD(S)A58, specifically with respect to the impacts of constructing a new flood protection scheme and full details can be found in in Local Authority Functions under [Part 4 Guidance](#).

However the Act does not deal specifically with the potential conflict in

that authorised persons have responsibility for maintenance of authorised works, but local authorities have duties to undertake works of clearance and repair to artificial bed or banks of a body of water where such works would substantially reduce flood risk. The matter is further complicated by the fact that information on the details of works undertaken in accordance with the LD(S)A58 are poor. Some information is held by Registers of Scotland, but it is extremely limited. Even having identified an agricultural embankment adjacent to a watercourse it may not be clear from paper records that they are one and the same embankment.

Furthermore, since there are no recorded improvements since the early 1980s the likelihood is that many of the landowners, occupiers, farmers, etc. will no longer be involved in the direct management of the land and associated embankments, etc.

There is no simple solution to this situation. In general, reasonable attempts should be made to determine whether the responsibility for repair lies with a landowner in accordance with the Order promoted under the LD(S)A58. If this cannot be achieved, or if the landowner does not undertake necessary works, it will fall upon the local authority to undertake assessment and potentially works of clearance and repair if it can be shown that there would be a substantial reduction in flood risk.

5.7.3 The Water Environment (Controlled Activities) (Scotland) Regulations 2011

If an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 ("CAR"),

is required to carry out clearance and repair works, then the local authority must obtain that authorisation before carrying out the works.

Most clearance and repair works will require some form of authorisation under CAR, although some activities may be allowed without having to apply for a permit, provided they comply with certain rules. This may even relate to the removal of some sediment but does not include dredging. However, the level of authorisation required under CAR depends not only on the extent of the planned works but also on the sensitivity of the water body to environmental deterioration.

For example, certain activities, such as maintenance of a watercourse in the vicinity of a road bridge, might be authorised in accordance with general binding rules or registration rather than having to apply for a licence.

Reference to the CAR guidance and discussion with local SEPA office is recommended.

6. Works of Clearance and Repair

6.1 Definition

Clearance and repair works

Works that consist of any or all of the following:

- (a) removing obstructions from a body of water,
- (b) removing things that are at significant risk of becoming such obstructions,
- (c) repairing artificial structures which form part of the bed or banks of a body of water.

The focus of clearance and repair works are therefore clearly dealing with 'clearance' of obstructions and 'repair' of artificial structures. These areas are considered further in this chapter along with consideration of erosion and sediment management, which may be a cause of obstruction.

6.2 Obstructions

Removing obstructions or the risk of obstructions are works of clearance and repair under the Act.

Obstructions could include:

- Rubbish or natural debris blocking or partially blocking a structure such as a culvert so giving rise to flooding with substantial adverse consequence. However, care should be taken not to destabilise the systems with any works undertaken.
- Rubbish or natural debris in the channel significantly reducing its hydraulic capacity so giving rise to flooding with substantial adverse consequences
- Vegetation (noting issues with Invasive Non-native Species) within the channel significantly reducing its existing hydraulic capacity so

giving rise to flooding with substantial adverse consequences

- Sediment is accumulating within a channel significantly reducing its existing hydraulic capacity so giving rise to flooding with substantial adverse consequences.

Things at significant risk of becoming obstructions could include:

- Where rubbish, natural debris or riparian vegetation is close to a structure such as a culvert or bridge and is likely to block or partially block the structure which could result in flooding with substantial adverse consequences, or in the extreme damage the structure itself.
- Where rubbish, natural debris or riparian vegetation is likely to restrict the channel significantly reducing the hydraulic capacity which could result in flooding with substantial adverse consequences.

Example – removing an obstruction or potential obstruction by modification

A large culvert passing under the West Coast Mainline was subject to significant blockage due in the main to large woody debris getting trapped. This backing up of flow did not impact upon the railway but did cause significant damage to a public road and led to property flooding. One of the mitigation measures, undertaken by the upstream landowner was to put in a programme of inspection of the watercourse including the banks. Any fallen trees either in the watercourse or adjacent to the watercourse were removed or if this was not possible, were cut into small pieces that upon entering the watercourse would not cause a blockage issue. Local Authorities should consider that option of on-site cutting rather than physical removal of debris.

6.3 Artificial structures

Repairing artificial structures which form part of the bed or banks of a body of water to substantially reduce the flood risk are works of clearance and repair under the Act.

Artificial structures forming part of the bed and banks of a water body could include:

- Weirs, culverts, bridges, floodwalls and floodbanks, whether or not these are set back from the natural banks, and/or constructed as part of a statutory Flood Protection Scheme and any ancillary apparatus such as flood gates.

Where an artificial structure has not been constructed as part of a Flood Protection Scheme, the local authority may choose to carry out works where substantial flood risk will be prevented; any such works should be proportionate to the risk as well as the benefit. Where an artificial structure forms part of a Flood Protection Scheme then [guidance on Part 4](#) duties should be referred to.

Where these works to artificial structures would exceed the definition of clearance and repair they should be carried out under the relevant section of the Act. For instance, extensive investigatory works required to establish the stability of an artificial structure may require a substantial flood study which could take it beyond the scope of clearance and repair and into a separate measure within a Local Flood Risk Management Plan.

The test in all cases is whether the execution of clearance and repair works would substantially reduce the

risk of flooding and is a proportionate response to the risk.

The process to be followed in undertaking assessment of bodies of water, which may lead to clearance and repair works or other actions to be recorded on the section 18 schedule is shown in the flowchart in (in Guidance Flow Chart fold-out – see appendix 9.6).

Example – Replacement not repair

A culvert on a steep hillside above residential property was found to be in a poor condition with an inlet screen both inaccessible and of below-standard design. Repair works had in the past been carried out to both the screen and the culvert, with short sections excavated and replaced.

The condition of the culvert and the screen was a cause for concern in terms of substantially increasing flood risk. The small nature of the screen meant that it was forever blinding leading to over-topping.

Rather than continue to undertake repair works to the culvert the decision was taken to replace as a works of “clearance and repair”. This also offered the opportunity to replace the screen with one that met current standards and was situated in an accessible location.

There are many artificial structures which form part of the bed or banks of a water body but which do not serve a flood risk management purpose, for example walls marking a property boundary or a retaining wall protecting land from erosion or land slip.

The Act does not affect the primary responsibility of riparian owners for their own property so the repair of, for example, damage to a garden wall

through scour is a matter for the relevant owner. However, these may also become matters for the local authority under the Act if there is an immediate or on-going flood risk.

Riparian ownership and responsibilities

Riparian owners are those whose property adjoins a watercourse. Ownership may stop at the bank or extend to the centreline of the watercourse. Assuming there is no other legal undertaking by another, riparian owners will generally have the authority to undertake works of clearance and repair to the watercourse banks, subject to appropriate permissions (e.g. CAR licence, Planning Permission, etc.).

Local authorities in the past have considered that riparian owners have responsibility for maintenance. Good relationships with landowners, farmers, estates, etc. will be beneficial in terms of encouraging the maintenance of watercourses and riparian areas to reduce flood risk. However the riparian owner has no duty to undertake works of clearance and repair, merely the authority to do so, and this clearly has the potential to lead to the local authority having to gain access to undertake works of clearance and repair if assessment determines such work should be scheduled.

Local authorities have held primary responsibility for the repair of many artificial structures which serve a flood risk management purpose and which have been promoted by them under the Flood Prevention (Scotland) Act 1961 or Roads (Scotland) Act 1984, etc. or have otherwise been acquired in the course of their wider functions for example, leisure and recreation. Authorities should review their internal asset management procedures to ensure compliance with the Act, and that opportunities for better coordinated services are explored.

Repair of artificial structures could generally be considered as any repairs

which would be expected in the ordinary course of good maintenance, such as the repair of a flood bank affected by erosion whether by river flows or by the passage of livestock or other traffic or the effects of burrowing animals or maintaining ancillary apparatus such as flood gates, flap valves and trash screens to ensure operational efficacy of the apparatus in flood conditions. Again, the test would be that carrying out the repair would substantially reduce the risk of flooding.

Example – Artificial bed of banks of a body of water

A mill lade was constructed from stone. At points along the watercourse there were boundary walls separating the garden from the lade.



The wall of the mill lade, below adjacent ground level was subject to scour with

the potential for not only the lade wall to collapse, but also for the boundary wall above to collapse. Given the relative size of the lade and the boundary wall, it was clear from assessment that the boundary wall was a significant risk of becoming an obstruction, should it be completely undermined.

Repair works were undertaken to the wall of the lade, including the removal of the boundary wall. The reinstatement of the boundary wall was not part of the local authority funded works.

6.3.1 Considerations of agricultural embankments

The integrity of an artificial structure against flooding depends on its weakest part. So, when contemplating a repair of a flood bank for example, an authority should consider the integrity of the overall flood bank and not simply any section of it in need of local repair. Where the condition of a defence is so poor that local repair, say of a breach, might not substantially reduce the risk, an authority should investigate and consider all relevant options, such as new build on an alternative alignment and removal of the embankment allowing land to flood and only include repair works in its clearance and repair schedule after it is satisfied itself that this is the most sustainable option.

With respect to the assessment of agricultural flood embankments and the need to undertake repairs to reduce flood risk, local authorities should be mindful of the following. Agricultural embankments were constructed principally to improve agricultural land and while they may now offer some, often limited protection to small numbers of residential property, their presence is often restricting the river from its natural floodplain. In doing so, the presence of an agricultural embankment may in fact make flood risk at a downstream settlement greater. In considering undertaking, or being requested to undertake repairs to agricultural embankments, local authorities should consider whether actually leaving breaches reduces flood risk in downstream settlements by bring back into use the floodplain, even though there may be a local

increase in flooding to agricultural land.

6.4 Other works of clearance and repair

‘Removing things that are at significant risk of becoming such obstructions’ and ‘repairing artificial structures which form part of the bed or banks of a body of water’ are works of clearance and repair that can be precautionary. It is therefore considered that there are some key elements of works of clearance and repair that should be considered in assessments, for example erosion and sediment management.

In addition, objectives to reduce flood risk through Natural Flood Management (‘NFM’) are included in Local Flood Risk Management Plans. Erosion control and sediment management are underlying principles of NFM. As is explicitly required under the Act, section 18 and section 59 activities must contribute to the implementation of current measures described in any relevant local flood risk management plan or otherwise not affect such current measures.

6.4.1 Erosion

Erosion of watercourse banks or embankments is a natural process and over time a watercourse will inevitably choose a different route. Management of the route of a watercourse should be undertaken with care as constraining in one location could have implications for another location, potentially increasing scour. A precautionary principle should be applied unless there is evidence that intervention would substantially reduce flood risk.

In many urban situations watercourses will be constrained or controlled by artificial banks. In situations where there is evidence of scour damage to artificial bed or banks of a body of water consideration should be given to the impacts this will have on flood risk. For example, the natural scour of a garden, even one protected by rock armour, may not increase flood risk. It may result in the loss of a section of the garden, but this does not necessarily equate to increased flood risk.

There may be an issue with erosion if said erosion is impacting on a structure adjacent to a watercourse that offers a level of flood protection, which have the potential to block and cause flooding. For example, scour of the base of a river bank or riverside embankment may lead to failure . If that failure then leads to increased flood risk during high flows or afterwards, repair works may be required to be scheduled in accordance with s18.

6.4.2 Sediment management

The management of sediment through removal of gravel berms above natural bed level or dredging below bed level is often viewed as a flood risk management option. In smaller watercourses, accumulations of sediment may significantly contribute to flood risk, generally, where watercourses have been historically modified. However interventions of this nature should be undertaken with extreme caution as in addition to the potential environmental impacts, it is likely that having undertaken gravel removal / dredging, there will be an expectation to continue to undertake such works regularly.

Dredging and gravel removal can be modelled when undertaking flood risk assessments and this can be useful for engagement with the public. However, to undertake such modelling work for every request for gravel removal or dredging is clearly not practical.

When it is not practical to undertake direct study, it is worth directing public to the very-readable 2014 publication from CIWEM entitled [Floods and Dredging – A Reality Check](#) states:

“Dredging of the river channels does NOT prevent flooding during extreme river flows” and

“It is simply not practical to contemplate dredging of the channel (let alone the floodplain) to the extent that would be required to confine such large and rare flood flows from the wider floodplain, since the storage and conveyance capacity of the channel is a small fraction of that of the wider floodplain. In this respect, dredging cannot prevent flooding.”

Further information on sediment management, dredging and its effectiveness are available in the SEPA leaflet on Floods, found at https://www.sepa.org.uk/media/147022/floods_dredging_and_river_changes.pdf .

6.5 Scale of works required and a proportional response

The application of a pragmatic approach to the assessment will see that in the main large watercourses are unlikely to benefit substantially from works of clearance and repair. While gravel build-up may reduce waterway capacity, at flood flows its volume will be so insignificant as to offer no measurable benefit in removal.

Likewise, the collapse of a small retaining wall into a large river is

unlikely to lead to significant increase in flood risk, so repair works to the bed of banks of a body of water is unlikely to be undertaken in accordance with requirements under section 18. It may however be necessary to undertake this kind of repair to prevent failure of public road.

Clearance and repair works can range from minor works such as raking out woody debris/ leaves from the face of a culvert or screen to the reconstruction of a major culvert or screen. A watercourse inspector is able, following a risk assessment, to carry out such minor works during their inspections. 'Little and often' good watercourse husbandry/ stewardship can in itself, *substantially* reduce the probability of flooding from watercourses.

If there is a high likelihood that the removed material may be washed back into the watercourse or dumped back into the watercourse, then an item would be raised in the section 18 Schedule for the waste material to be removed from site (this may not be undertaken by the inspector due to not having the appropriate vehicle for such tasks).

For such minor works, it would be disproportionate response to sit down, with a risk matrix or hydraulic model to assess the effect of the proposed works in order to determine whether it would substantially reduce the risk of flooding. Common sense and engineering judgement are all factors that should be employed to make decisions whilst on site. The initial (pre) and post condition of the watercourse should be noted and photographed on their inspection records, but adding this item (which is already completed) to a section 18

schedule is considered to be of little benefit and overly administrative.

Medium scale works may be classified as works which the inspector would not be able to carry out as it requires plant and more resource (usually provided through the Direct Labour Organisation). These works cannot be completed at the time of the inspection, and a Works Item/Order may need to be processed between departments and planned. In order to justify whether or not an item should be placed on the section 18 schedule, the local authority may choose to develop a simple risk matrix to assess the pre and post flood risk.

Alternatively, a discussion with Engineering staff and Area Managers may be sufficient to draw out the relevant factors to be considered, and benefits of carrying out the proposed works. Either way, a logical reasoned process should be employed and recorded. If the works are necessary and of benefit, then these works should be added to the section 18 schedule. This records that the local authority has identified clearance and repair works that will substantially reduce flood risk, and will carry them out (in due course, when resources and funds allow). A decision not to add an item to the schedule should be recorded on the Inspection Records for review during the next inspection.

Medium scale works may still be authorised under General Binding Rules, but if there was any doubt SEPA should be consulted.

If the works considered to be necessary were of significant scale, the item would be placed on the section 18 schedule as above, but it may be that more detailed assessment (using modelling) would be required in

order to justify the expenditure and gain permissions through CAR.

What constitutes 'substantial' cannot be given a definitive description and to try and do so is likely to 'water down' the value of the section of the Act. The important issue is to document the decision taken for each scenario, evaluating risk and the associated reduction to justify undertaking works, or perhaps more contentiously not to undertake works.

For the majority of 'minor' clearance and repair items, a 'common sense approach' should be employed and this will draw on the experience of the inspector and flood risk staff.

Generally where an inspection and initial assessment identifies clearance and repair items that would require greater expenditure or resource, a more technical approach using hydraulic modelling may be required in order to determine the existing condition and post clearance works condition to quantify the reduction and benefits.

Assessing the impact (what would be affected, what would be the damage caused and to what extent) can help put the problem into some perspective. Whilst the Act requires Local Authorities to assess adverse consequences to 'human health, the environment, cultural heritage and economic activity' it is pragmatic for a local authority to prioritise the relative significance of these. This approach is consistent with the broader plan-led, risk-based and prioritised approach being applied to flood risk management planning.

For example, a fallen tree in a watercourse that would clearly result in

out of bank flooding affecting a medical centre should be scheduled section 18 works as to not carry out the work would have significant consequences for human health. If the same scenario would result in flooding to a lower risk receptor, the impact would be viewed as being of lesser significance (and therefore of lower priority). Both scenarios may need to be identified on the schedule 18 schedule, but the time for the next assessment (and likely visual inspection to inform the assessment) may be significantly different.

Having placed the item on the schedule, the local authority is duty bound to carry out the works. However, it would be reasonable for an Authority (with limited resources) to prioritise the works required at the medical centre over that of the low risk receptor, e.g. a field, the local authority may set a longer period for re-inspection to allow them time to liaise with the landowner affected, or those with riparian responsibilities under common law, to get the works carried out.

Other relevant matters

Section 17 refers to mapping of 'relevant bodies of water and sustainable urban drainage systems'. Section 18 takes forward the assessment of these 'relevant bodies of water'. 'Relevant body of water' is defined clearly in section 17(5). Whether a local authority chooses to assess a body of water this does not determine whether it is 'relevant' under the Act.

The risk of flooding refers to a risk from the body of water assessed and not the risk of flooding from an isolated section of a body of water. From this it

is implied that should clearance and repair of a section of watercourse result in a significant reduction in flood risk to a section of land at the expense of another section of land associated with this watercourse, then the works may not be appropriate to be included in the section 18 schedule. For example, repair of an embankment may lead to a substantial reduction in flood risk to an area of agricultural land whilst also resulting in an increase in flood risk to a residential area downstream due to loss of flood plain. In this situation taking the body of water as a whole, there may not be an overall substantial reduction in flood risk and the item should not then be added to the section 18 schedule.

Not all 'blockages' or items at risk of blockages should be seen as a negative. A build of woody debris can help slow the flow of water, create natural meanders and habitats for ecology and make use of natural flood plain. These NFM factors should be taken into consideration when weighing up the consequences of flooding from the identified risk.

The Act does not make any reference to available budget for the authority to undertake clearance and repair works and budget is not a consideration in whether or not the item of works is added to the s18 Schedule. Therefore, whether the authority has a lesser or greater budget for watercourse maintenance, and whether there has been proportionately greater or lesser weather impacts affecting the volume of items of clearance and repair, these factors should not influence the inclusion of works on the section 18 schedule.

A lack of budget or a high quantity of section 18 schedule items requiring

attention may be justification for an authority not carrying out all items contained within the section 18 schedule, but should not form justification for not having added the item to the Schedule in the first place.

As detailed elsewhere in this guidance, section 59 places a duty to undertake the works described in the schedule, subject to conditions. Although it is of note that there is no indication of timescale to undertake the works. There is however, through section 18(3)(a) a duty to identify when the authority will re-assess items which are on the section 18 schedule. In an ideal scenario, the timeframe provided for re-assessment would provide sufficient time for the authority to undertake the required works such that when re-assessed, the risk of flooding has been substantially reduced and the item can then be marked as complete. However, there are a number of reasons why the works may not have been undertaken within the time period for re-assessment. In such circumstances, the flood risk is re-assessed and a new timeframe is added to the schedule identifying when the item is to be further re-assessed. The following scenarios are possible:

- since the original assessment, the item has cleared, either due to landowners undertaking riparian responsibilities, or due to having been cleared by flow in the watercourse and can now be removed as there is no longer a need to substantially reduce flood risk;
- the item remains as it had been previously and the risk of flooding has not changed, in which case the time for re-assessment would be

re-established as it had been originally;

- there is a further increase in risk of flooding and the timeframe for re-assessment is reduced.

6.6 Justification for not adding works to the section 18 schedule

Based on each of the decision points in the flow chart (in Guidance Flow Chart fold-out – see appendix 9.6), the following are examples of reasons why items may be considered as not requiring to be added to the section 18 schedule:

- Item not classified as ‘clearance & repair’ – guidance already provided earlier in the document.
- Item presents low risk of out of bank flow – An item of ‘clearance & repair’ may be evident yet the consequence is such that predicted flows would still remain within the watercourse channel.
- Item does not represent adverse consequence on receptors – Out of bank flooding occurs but does not impact on human health, the environment, cultural heritage or economic activity. It is considered acceptable for flooding to occur to areas of scrub land and areas of land where flooding is not considered to represent an adverse consequence (note that the duration of flood water on such land may have a bearing on whether or not adverse consequence is significant – it may be acceptable for a park to be under water during a flood for a day but not for it to be flooded for a week). Note should also be taken that where the previous Act did not apply to agricultural land, this is no longer the case.
- Works would not substantially reduce flood risk – Natural transportation of sediment/gravel within a watercourse may lead to deposition with the consequence that flow capacity is significantly reduced at a particular location. Removal of such deposition may increase flow capacity, however if it is considered that flood flows would immediately replace the deposited material, then there is no ‘substantial’ reduction in flood risk. In this scenario it may be prudent to address the source of transported material. It may be that a particular area of erosion represents ‘things that are at significant risk of becoming such obstructions’
- The costs disproportionately outweigh the benefits.

7. Entry, Expenses & Compensation

7.1 Powers of entry for assessment, inspection and works of clearance and repair

Section 79(2) creates powers for local authorities to enter land for the purposes of carrying out some of their functions under Part 4 of the Act.

The powers of entry available to local authorities are wide, permissive and focused on the intended use under the Act. Land may be entered for the purposes of determining whether any function conferred by or under that Part is to be exercised. Any land adjacent to it, and rights to survey and examine land are also conferred under section 81(1).

These powers of entry include undertaking assessments in accordance with section 18 and works in accordance with section 59, and to survey and examine land. Works of assessment are therefore considered to include inspections.

79 Powers of entry

(2) Any person authorised by a local authority is entitled to enter—
(b) any land for the purposes of assessing a body of water under section 18,
(h) any land for the purposes of carrying out works under section 59

81 Powers of entry: supplementary

(1) A right to enter any land conferred by section 79 includes a right to—
(a) enter for the same purpose any land adjacent to it, and
(b) survey and examine the land.

The power to enter land includes a power to enter buildings because

“land” is defined in the Interpretation Order² to include buildings and other structures. It is worth noting that section 79(1) gives similar powers to SEPA to enable them to carry out their responsibilities under the Act.

7.2 Notice of entry

If possible, the local authority should discuss access with landowners, occupiers and other people affected prior to entry. This includes assessments and inspections as well as any repair and clearance work that will be undertaken.

24 hours’ notice must be given to the occupant of the land concerned prior to taking access. This extends to 7 days if entry is being taken with a warrant (see below), to a house or with heavy equipment. A right to enter any land may be exercised only at a reasonable time.

The above notices of entry do not apply to emergency works or assessment necessary to reduce the risk of a flood likely to occur imminently, and have serious adverse consequences for human health, the environment, cultural heritage or economic activity. However, the same process should be followed as soon after the event as practicable.

The local authority should specify what the land is going to be used for. When taking access, the local authority should set out how damage will be minimised and what actions will be taken to repair any damage.

² The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/ 1379)

This approach may appear to be more formal than other powers of entry, however, they must be followed to comply with the Act.

It is therefore important that a plan for such actions is prepared in advance and that a record of any such discussions is kept, including the decision making process and any actions taken, in order to deal with any future claims for compensation. As with all projects requiring land access on a temporary basis, good pre-entry, construction and post-construction photographs and survey records should be taken and held with copies issued to all affected parties.

If access is repeatedly refused by landowners or occupiers and all attempts to reach agreement fail, a warrant may be required – see Chapter 1 for full extracts from Act.

7.3 Seeking a Warrant

A sheriff or justice of the peace may grant a warrant to any person entitled to exercise a power of entry where there are reasonable grounds in relation to the land concerned. Local authorities should ensure the warrant is served on the right person and that all the actions and decisions made are recorded.

Whilst a warrant may allow the person authorised to use reasonable force it does not allow the use of force against individuals (section 80 (1) and (4)(a)). Local authorities should take care when exercising reasonable force and be clear about who is going to be on site when exercising powers of entry.

To grant a warrant, the sheriff or justice of the peace must be satisfied by evidence on oath that there are

reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent (section 80(2) and (3)). Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant must first have given notice that they intend to enter the land and the notice period must have expired.

It is an offence to prevent or obstruct a person from exercising a power of entry under a warrant, unless the person obstructing or preventing access has a reasonable excuse for doing so (section 80(5)).

In all cases, those entering land are required to be able to produce written evidence that they have been authorised to enter (see [Part 4 Guidance](#) for examples).

7.4 Compensation

As stated in Chapter 1, a local authority may be required to compensate a person who has sustained damage as a result of clearance and repair works or the exercise of a right of entry under section 79.

Damage is defined as the depreciation of the value of a person's interest in land or the disturbance of a person's enjoyment of land (section 83(1)). See 'Interest in Land' and 'Land affected' for the extent to which a person's interest in land may be considered.

Compensation may be payable to businesses that are affected by the clearance and repair works (Reference to the [Part 4 Guidance](#)).

There are limits on the right to compensation and the Act requires notice of any claim to be given to the local authority within the specified periods.

Any disputes over compensation under section 82 are to be determined by the Lands Tribunal for Scotland.

7.5 Acquisition of land

There may be times when it is appropriate to purchase a particular section of land or property. Section 66 enables local authorities to acquire land which they require to exercise functions under Part 4 by agreement. Local authorities may therefore need to consider where ownership is best placed to be. This may require a whole life examination and consideration of factors such as future maintenance, access needs, asset management strategies and costs.

7.6 Recovery of expenses

As stated in Chapter 1, where works undertaken under section 59 are required to be carried out by a local authority, the Act makes allowance for expenses incurred to be recovered from the owner, or occupier, of the land, only where such works are as a result of the actions of that person.

In assessing whether works of clearance and repair would substantially reduce the risk of flooding, consideration should be given as to whether the need for such work is as a consequence of an 'action' or an 'inaction', as this will potentially have implications for cost recovery.

Critically, it must be recognised that 'in action' is not an 'action'. See example below.

Example - In-action is not an 'action'

An owner who no longer clears vegetation from the banks of a watercourse, which leads to a reduction in flow capacity, and increase in flood risk has not done anything that could be construed as an 'action'. Should the local authority be required to carry out works to clear such vegetation as a result of the landowners 'inaction' then it would be at the authority's expense. Section 67 does not allow recovery of such expenses.

However, if the same owner did cut the vegetation and deposited the cuttings in the watercourse, which was assessed as likely to cause a substantial flood risk and therefore added to the schedule of clearance and repair works, then the local authority if required to carry out the clearance of the cuttings would be allowed to recover expenses from the owner for their 'action'.

7.7 Information about ownership and occupation of land

Information on ownership can be a key consideration in seeking to recover expenses and also for notifying occupiers and those with an interest in land.

As detailed in Chapter 1, a local authority may require land owners or occupiers to state their interest in that land in writing (section 68). Land owners or occupiers may also be required to provide contact details for any other person known to have an interest in that land. Any person failing to comply with the requirements of a local authority under this section, or knowingly or recklessly providing false or misleading information, is guilty of an offence.

It is essential that correct information is available for decision making and this should be recorded. However, the application of the powers conferred by

the Act should not preclude the use of local knowledge and good communication with landowners and members of the community.

In all cases that may lead to recovery of expenses, acquisition of land or seeking a warrant of entry, flood officers should seek appropriate legal and financial advice.

8. Case Studies

8.1 Erosion not flood risk



Following a burn in spate in the Highlands severe erosion occurred adjacent to houses where the burn edge and training walls had been eroded, see Photo 1.

Members of the Council suggested to the landowner that the Council would take measures of repair/reinstatement, but following assessment it was clear that the erosion and the associated downstream movement of sediment did not cause a substantial flood risk, and as such the Council had no duty and no works were undertaken by the Council. It is of note that further downstream the erosion impacted on the local road and measures to remove sediment and stabilise the road were undertaken under the Road Scotland Act duties.

8.2 Low capacity culvert

In the Highlands a number of houses abutting a watercourse had been developed and over the years the watercourse had been culverted by the developers in a piecemeal fashion. Following nearby tree felling operations water flow down the watercourse increased significantly causing flooding. An assessment and

investigations including trial pitting to establish the as constructed details were undertaken and sediment removed and pipes repaired under the Council's duties of clearance and repair. Following discussions with forestry owner, measures were taken by the landowner to redirect and attenuate the flow from the upstream land. The local residents were unhappy to realise that the culvert had such little capacity. The Council, whilst having no duty to increase the capacity offered to upsize the culvert as long as agreement with all affected parties could be reached. Such agreement was not granted and the improvement offer was subsequently withdrawn. This issue was referred to the Ombudsman and the Council position was upheld.

8.3 Watercourse assessment and desk top studies

The Highland Council was alerted to a flood, in part, resulting from a blocked culvert under the road, the flood resulted in damage to a property drive causing washout. The Council had undertaken a desktop assessment of the watercourse and deemed it low risk and no site inspection was required. Following the flood the council undertook site inspections and the culvert was cleaned out, but the flood damage was not repaired. It was apparent that the culvert was of insufficient size to carry flood flows. Following several complaints and referral to the Ombudsman the issues being that the Council failed to investigate the drainage problems and failed to alleviate or remove as reasonably practical the risk of flooding, the Ombudsman found the actions of the Council to be reasonable, and that the additional

flood assessment following the flood was an appropriate response. He said *'I cannot comment on the classification of the burn in 2013 as low risk. This decision appears to have been reached on the basis of a baseline inspection, which is the process we would expect the council to follow. I note the burn is now being inspected on a more frequent basis now that it has actually flooded...In terms of whether the council failed to alleviate or remove, as far as is reasonably practical the risk of flooding, I am satisfied that the council's main duty here was in formulating Flood Strategies and Plans. You have not provided evidence that the council failed to act in accordance with that duty.'*

CASE STUDY

Level of flood risk

Angus Council has a principle that where an assessment has identified locations where less than 2 properties are affected by flooding that no works of clearance and repair will be scheduled.

9. Appendices

9.1 'Interest in Land' and 'Land affected' in relation to section 18 and section 59

9.1.1 Preamble

The following are considered to represent persons with an interest in land:

- Land owners
- Occupiers
- Those with leases
- Those with servitudes
- Those with securities

Persons affected by the clearance and repair works may also include those on adjacent land. However, the scale of those with an interest in land is likely would be less than those affected by a flood protection scheme, and should be proportionate to the scale of the works.

In applying fair and reasonable endeavours to identify these persons so that they can be considered for the serving of notices, payment of compensation or identified as possible objectors. The term relevant objectors applies only to flood protection schemes, however, a similar but proportionate principle and approach should be applied to dealing with any objections related to section 18 and section 59 activities. This is certainly the case where a warrant is requested from a Sherriff and the landowner is granted a right of audience, becoming in effect an 'objector' (see section 9.1.19). The local authority should therefore have a clear record of the considerations given and parameters applied to land affected and persons

affected by the clearance and repair works.

In this context clearance and repair works should also be considered to include inspection and assessment activities that require entry to land that may lead to damage or the payment of compensation, or recovery of expenses.

9.1.2 Introduction

There are a number of references within the Act to persons with an 'interest in land' and where land is 'affected'. This appendix should be considered in conjunction with the body of the guidance and also the separate [Part 4 Guidance](#).

These are most notably applied to flood protection schemes and often in relation to raising objections. However, it is considered that these may also be applied to flood protection works and also clearance and repair works.

The Act gives some indication on what is meant by 'interest in land' or 'interest in land affected' but these are not defined. There is also the broader Scots Law context as described below.

9.1.3 Scots Law

Scots Law can be considered to be fairly clear on who has an "interest in land" or "real right". These are: (i) ownership and (ii) subordinate real rights, including servitude and lease. The latter are treated as real rights burdening the land directly. Real burdens are conditions upon lands which are effective due to their registration in the Register of Sasines or the Land Register of Scotland.

It is considered that each local authority should establish that it is content with the methods applied to determine those with a real right to land under Scots Law and also in terms of the interpretation to be applied to 'interest in land' as used in the Act and regulations. A record of this consideration should be made with clear reference to the parameters applied.

9.1.4 Human rights

People depend on the environment around them for their physical and mental health, and general wellbeing. When that environment is threatened, certain human rights may be undermined. In particular, the progression of flood protection works or a scheme may have implications for property owners and for occupiers where these interfere with the right to respect for private and family life (Article 8) of the European Convention on Human Rights and peaceful enjoyment of their possessions (Article 1 of the First Protocol to that Convention). However, it is generally considered that any actual or apprehended infringement of such Convention Rights is justified in the public interest and in accordance with the council's duty to carry out works to reduce the likelihood of flooding of land. However, the local authority should take legal advice to ensure that any such scheme or works is compatible with Convention Rights, including those Rights as read with Article 14 (prohibition of discrimination) of the Convention. In progressing a flood protection scheme or works, care should be taken to ensure that the poorest and most vulnerable people are not discriminated against, e.g. low

value property is sacrificed at the expense of higher value land.

9.1.5 Information about ownership etc. of land

In order to enable it to exercise any of its functions under Part 4 of the Act, a local authority may require land owners or occupiers to state their interest in that land in writing (section 68). Land owners or occupiers may also be required to provide contact details for any other person known to have an interest in that land. Any person failing to comply with the requirements of a local authority under this section, or knowingly or recklessly providing false or misleading information, is guilty of an offence.

Given land owners have an 'interest in land' and occupiers have an 'interest in land' it may reasonably be interpreted that the provision of 'contact details for any other person known to have an interest in that land' could be limited to those who also own (e.g. shared ownership) or occupy the land (e.g. shared, sub-letting). This is relatively clear as to who definitely has an 'interest in land' under this section of the Act. However, other parts of the Act and broader legal interpretation (e.g. those with a servitude) may indicate that there are other persons who have an 'interest in land'.

Common examples of servitudes include: right of access to property; right of drainage and/or sewage, and right to draw water from a private water supply.

Other burdens on land that the local authority should consider establishing are those relating to securities on land. These might be standard securities or heritable securities. Examples are

those secured creditors over land where a debt is tied to the land with deeds, which may be registered securities over land. For example, banks and building societies may be 'heritable creditors' (equivalent to a mortgagee). Local authorities should consider the risks to the delivery of flood protection schemes resulting from those with securities on land, either standard or heritable, from their legal and estates services.

Therefore, in order for a local authority to be able to provide land owners or occupiers who have been required to state their interest and provide contact details for other persons known to have an interest in land, the local authority should have established the parameters of those with an interest as described earlier. This will allow the local authority to provide clear direction in seeking Information about ownership etc. of land.

9.1.6 Land affected

A fair and reasonable assessment of how clearance and repair works may affect land and those with an interest in land should be straightforward. However, such an assessment should be recorded and the parameters applied should be clearly stated. This is particularly important in considering the compensation that must be paid (see below) and also in identifying those who should be served notices under the Act.

The effects on land affected or persons with an interest in land can be indirect or remote from the clearance and repair works. For example, such works may impact on land drainage to agricultural land in the catchment, or increase or decrease downstream flood levels. Even if these may be

considered to be reinstating the historic flows, this should be considered.

'Remote' effects can also have a particular relevance in considering environmental impacts, however given the likely scale of clearance and repair works these are not likely to be considered significant. They should though still be considered.

9.1.7 Compensation

Compensation must be paid to any person who has sustained damage as a consequence of exercising certain powers under the Act (see section 82). Section 83(1) defines damage as the depreciation of the value of a person's interest in land or the disturbance of a person's enjoyment of land.

'Enjoyment of land' therefore needs to be considered. As with 'interest in land' or 'interest in land affected', there is no definition within the Act of 'enjoyment of land'.

The 'legal' rights to enjoyment (of land) might cover the right to light, to clean air, to clean water, to lack of loud noise and so on. These might cover the right to rainwater from a neighbour's land, the right of passage to access landlocked land over that of a neighbour, or the right to pasture your animals on another's land. It might also extend to the right to enjoy the use and benefit of another's property by a beneficiary, i.e. life rent or fiar.

Land owners and occupiers should be aware of servitudes affecting their interests, and that this would provide insight for the local authority in considering the interest in land, which would apply to compensation, and

other considerations under the Act, e.g. issuing of notices.

There is wider consideration of the interest in land of, for example, anglers or a 'dog walker', or those using an affected right of way such as footpath or bridleway, and their enjoyment in the land that may be affected by scheme operations or other powers exercised. However, given the likely scale of clearance and repair works these are not likely to be considered significant. They should though still be considered.

Advice on the amount of compensation in all these cases needs to be taken by the local authority, e.g. Valuation Office Agency and chartered surveyors.

9.1.8 Description of the clearance and repair works

Where there is a need to explain the nature of clearance and repair works on land, the description of the clearance and repair works should contain sufficient information to allow a person to understand the scale and nature of the proposed works and determine the impacts these would have on his interests. Such a description should consider the wider aspects of those affected and the local authority should record this consideration.

In addition, maps and plans where used should be at an appropriate scale to enable interested persons to readily identify their own land and identify whether their land will be affected by the clearance and repair works. Again in developing and publishing such maps and plans the local authority should consider the wider aspects of

those affected and record this consideration.

9.1.9 Objections

The Act does not identify the process to be followed if persons object to clearance and repair works, other than it an offence to prevent or obstruct a person from exercising a power of entry under a warrant, unless the person obstructing or preventing access has a reasonable excuse for doing so (section 80(5)).

It is considered that there will be ample opportunity to seek to remove such an 'objection' through proper communication with the affected parties. The right to refuse entry remains, which would then allow the court to make a judgement on such an objection in deciding on the issuing of a warrant for entry to undertake the clearance and repair works. It is therefore essential that a local authority plans and records their actions in exercising their powers of entry to land.

In addition, the right to compensation allows objectors to seek redress for damage, i.e. the depreciation of the value of a person's interest in land or the disturbance of a person's enjoyment of land. Again, good and proper planning and record keeping will assist in the determination of any compensation claims.

9.2 Example procedure for section 99 of Roads (Scotland) Act 1984

ENFORCEMENT OF SECTION 99 – PROCEDURE, STANDARD LETTERS AND NOTICES

- 1) Procedure for Dealing with Water Flow onto the Public Road – Guidance Note
- 2) Letter A – initial letter to landowner / occupier
- 3) Letter B – follow-up letter to landowner / occupier
- 4) Letter C – letter to Police Scotland advising of offence and seeking matter is investigated
- 5) Letter D – Notice to landowner / occupier requesting situation is rectified and advising further action will be taken if not
- 6) Letter E – Notice to landowner / occupier seeking costs for Dumfries and Galloway Council undertaking remedial work

Roads (Scotland) Act 1984 – Section 99

DRAFT

Procedure for Dealing with Water Flow onto the Public Road

Guidance Note

Logging Process

1. Incidents of water flowing or seeping on the public road will be logged on recorded in either an electronic or paper based format but whichever method is adopted full details of all occurrences identified must be described, dated and photographed. Corroboration of evidence gathered, including meetings with land owner or occupier should also be included.
2. The monitoring of the situation will be the responsibility of the Team Leader in the appropriate Local Office. Further incidents should be logged to ensure a full picture of the problems are understood.
3. Once logged this defect will be automatically assigned to the Team Leader for the appropriate area and the Senior Manager Roads Service advised.
4. It will be the responsibility of the Senior Manager Roads Service to ensure that the remaining steps are undertaken, and that the information contained within the electronic or paper file is maintained.

Monitoring and Inspection Process

5. An inspection of the site is to be carried out, with necessary photographs taken to determine the scale of the problem. A number of visits during different weather conditions may be required to determine the full extent.
6. It is critical that all incidents are recorded to ensure a good evidence base. This must include time-dated photographic evidence.
7. Should the flow of water present a clear and immediate danger to the travelling public necessary steps should be taken to warn of the hazard as quickly as possible. Further alleviation works should be carried out as required to reduce the immediate risk.
8. If possible the owner should be contacted, advised of the seriousness of the situation and that they are required to take immediate action.

Engineering solutions

9. In undertaking investigations, the Team Leader should give consideration to the availability of achievable solutions to the problems.
10. If there no obvious / simple solutions further guidance should be sought from manager and/or Team Leader Flood Risk Management

Land ownership

11. Investigations may require to be undertaken to determine the ownership of the ground from which the flow is passing onto the Public Road. This may involve

discussions with colleagues in Strategic Property Services who may seek further input from Legal Services and the Assessor and Electoral Registration Officer.

Notification Process

12. Landowners are to be reminded of their legal responsibility to prevent the flow of water onto the public road. **Letter A** should be sent to the appropriate landowner(s) as soon as practicable after the determination of ownership. This letter will be issued by the Team Leader and copied to their manager and Legal Services
13. A follow up letter should be sent after 28 days if no action has been noted on site. **Letter B** should be used and again issued by the Team Leader and copied to their manager and Legal Services.
14. Should **Letter B** fail to achieve an immediate response steps should be taken to report the issue to the Police Scotland without further delay, at an appropriate Police Station near to where the alleged offence has been committed. **Letter C** should be used for that purpose and this is to be issued by the Senior Manager Roads Service

Formal Notice

15. Separately, Section 99(3) provides the opportunity for formal Notice to be served on the landowner. This step should be treated with caution and generally should only be considered should the notification process within this procedure fail to address the problem satisfactorily. Further guidance should be sought from the Director DGFirst / Director Planning and Environment Services and Legal Services before proceeding to issue a formal Notice. Any such Notice should, as far as practicable, include details of the works required to address the problem. Advice may be required from the Flood Risk Management Team to determine the nature of the works.
16. A standard Notice template is included as **Letter D**. This letter can only be signed by specific persons and further advice on issue should be sought from the Senior Manager Roads Service.
17. Should a formal Notice fail to be complied with Section 141(1) gives the Roads Authority the power to undertake the works, while 141(2) provides for the power to seek to recover costs.
18. **Letter E** should be used to inform the landowner of his failure to comply with the Notice, and of our intention to carry out the works and recoup the costs.

Exceptions

19. Should the discharge of water be minor in nature, such as seeping from a cutting/embankment onto the verge then onto the road, it may well be

appropriate for DGFirst to undertake remedial measures. The final decision on this course of action is to be taken by the Senior Manager Roads Service.

Further considerations

20. The Team Leader should seek further guidance from the Senior Manager Roads Service in instances where the adjacent landowner, potentially a private residence is, as downstream neighbour, receiving the water from agricultural land upstream with limited options to manage within property boundary.

LETTER A

Dear

FLOW OF WATER ONTO (ROAD NUMBER)

Dumfries and Galloway Council has recently become aware of water flowing onto 'Road Number' at 'Location'. This flow of water is endangering the passage of vehicles (and pedestrians) using the road. Please find enclosed a location plan and several photographs of the site affected by the flow of water.

Dumfries and Galloway Council understand that you are the owner(s) of the property from which water is flowing.

I am therefore, writing to make you aware that under the terms of the Road (Scotland) Act 1984, Section 99(1) the owner of any land '*shall prevent any flow of filth, dirt or other offensive matter from, or any percolation of water through, the land onto the road.*' The flow of water from your land onto 'Road Number' is currently in contravention of the Act referred to above.

I am sure you will be aware of the serious safety implications that the water flow mentioned above can have for those travelling on the public road. I would therefore be grateful if you would please make the necessary arrangements, within 28 days of the date of this letter, to carry out such works as necessary to comply with section 99(1) of the Act. Please note that any works that you propose to carry out to rectify the situation which involves work in the public road will require the written consent of the Dumfries and Galloway Council.

Dumfries and Galloway Council take this matter very seriously as the maintenance of public safety on the road network is one of our primary concerns. Should you fail to rectify the matter within 28 days of the date of this letter then the Council will have to consider further action to remedy the situation.

At this time I should also make you aware that failure to prevent the flow of water onto a public road is a criminal offence, which is punishable by a fine of up to £2,500.

Should you require any further information, or require any advice regarding your remedial proposals then please do not hesitate to contact me on the above number.

Your

Team Leader

Cc Legal Services

Senior Manager Roads Service

(OWNERSHIP CHECK MUST BE DONE BEFORE SENDING ANY LETTER)

LETTER B

Dear

FLOW OF WATER ONTO (ROAD NUMBER)

I refer to the above and to my previous letter dated (insert date) regarding the flow of water from your property onto 'Road Number' at 'Location'. (copy enclosed for ease of reference).

I am aware that it has now been more than 28 days from the date of my initial letter sent to you, and ongoing inspections of the area indicate that you have taken no steps to prevent the flow of water from your land.

I am very keen for this matter to be resolved amicably and therefore ask that you contact me to discuss your proposals to resolve this issue as a matter of urgency. As stated in my previous letter this is a matter which Dumfries and Galloway Council take extremely seriously as the current situation has the potential to endanger the passage of vehicles and pedestrians.

Dumfries and Galloway Council has powers under the Road (Scotland) Act 1984 to intervene and carry out such works (including excavations) as in its opinion are necessary for compliance. A separate statutory notice will be served on you should it be considered necessary to exercise these powers.

At this time I must also remind you that failure to prevent flow of water onto the public road is a criminal offence and currently attracts a fine, upon summary conviction of up to £2,500. Dumfries and Galloway Council will have little choice but to refer the matter to the Police for further action should you fail to make immediate contact with me at the above number or address in response to this letter.

I look forward to hearing from you as a matter of urgency.

Yours

Team Leader

Cc Legal Services

Senior Manager Roads Service

LETTER C

Officer in Charge

Police Scotland

Dear Sirs,

**PROPOSED PROSECUTION UNDER SECTION 99 OF THE ROADS (SCOTLAND)
ACT 1984**

Dumfries and Galloway Council has recently become aware of water flowing onto 'Road Number' at 'Location' which is endangering the passage of vehicles (and pedestrians).

I enclose the following documents:-

1. Location Plan
2. Photograph of the site
3. Dumfries and Galloway Council's record of inspection
4. Council Tax Record
5. Initial letter from Dumfries and Galloway Council to landowner(s) dated (*insert date*).
6. Follow up letter from Dumfries and Galloway Council to landowner(s) dated (*insert date*).

It appears to the Council that the facts and circumstances constitute a contravention of Section 99 of the Roads (Scotland) Act 1984.

I am therefore writing to you to refer this matter for investigation. If you require any further materials then please do not hesitate to contact me on the above telephone number.

Yours

Senior Manager Roads Service

Cc Legal Services

LETTER D

NOTICE - ROADS (SCOTLAND) ACT 1984 SECTION 99

PREVENTION OF FLOW OF WATER ETC ONTO ROADS

There is a flow of water or of filth, dirt or other offensive matter from, or any percolation of water through, land owned or occupied by yourself on the (Road Number) at(Location).

In accordance with Section 99(3) of the Act, the Council hereby requires you within 28days/ (or longer date if specified) from the date of service of this notice, to carry out such works or excavations* as are specified below which are necessary to ensure compliance with Section 99(1).

Specified works or excavations: _

.....
.....
.....

An appeal against this Notice may be made by referring the matter by summary application to the Sheriff within 28 days of service of the Notice.

After expiry of the said 28 days or, in the event of such an appeal to the Sheriff, after failure of that appeal, in the event of non-compliance with the requirements of this Notice the Council may exercise its power under the Roads (Scotland) Act 1984 to carry out the required works (Section 141(1) of the Act) and recover from the recipient of this Notice the expenses reasonably incurred in carrying out such works (Section 141(2) of the Act).

Failure to prevent such flow or percolation is an offence under Section 99 of the Act.

Should you require any further information please contact on(telephone number).

Yours

Council Solicitor or Head of Infrastructure and Commissioning

Cc Legal Services/ Head of Infrastructure and Commissioning

Senior Manager Roads Service

*No works in or excavation under the public road may be commenced without the written consent of the Roads Authority. An application form for such consent is attached and should be returned to the above address as soon as possible.

LETTER E

NOTICE OF INTENTION ROADS (SCOTLAND) ACT 1984 SECTION 99

PREVENTION OF FLOW OF WATER ETC ONTO ROADS

I refer to the Notice served on(insert date) regarding the flow of water or of filth, dirt or other offensive matter from, or percolation of water through land owned or occupied by yourself, on the(Road Number) at(Location).

As the Notice has now expired with no satisfactory resolution the Council hereby advises that it intends to exercise its power under the Roads (Scotland) Act 1984 to carry out the required works (Section 141(1) of the Act), and recover from the recipient of this Notice the expenses reasonably incurred in carrying out such works (Section 141(2) of the Act).

Should you require any further information or wish to discuss an extension to the original Notice please contact 'Name' on the above telephone number.

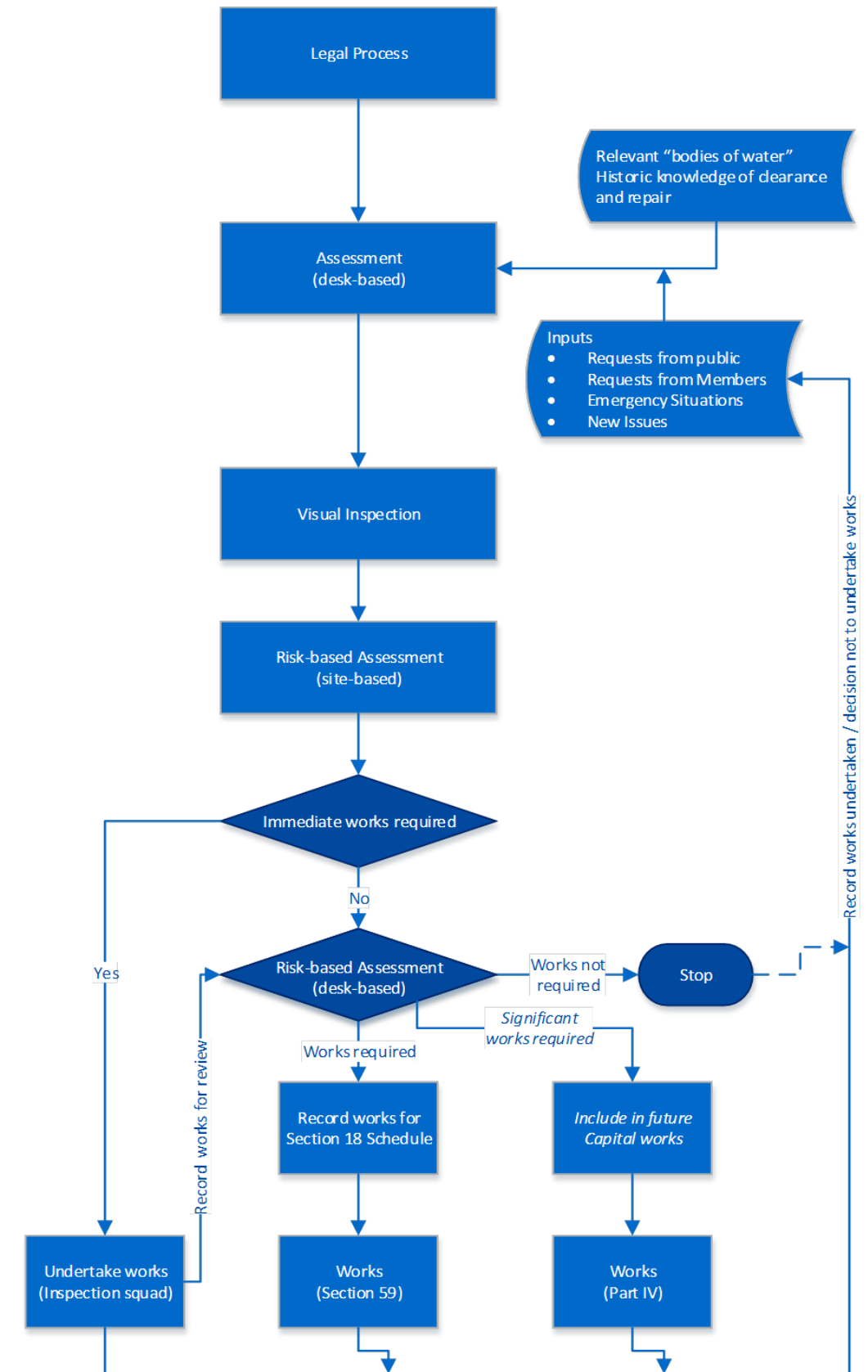
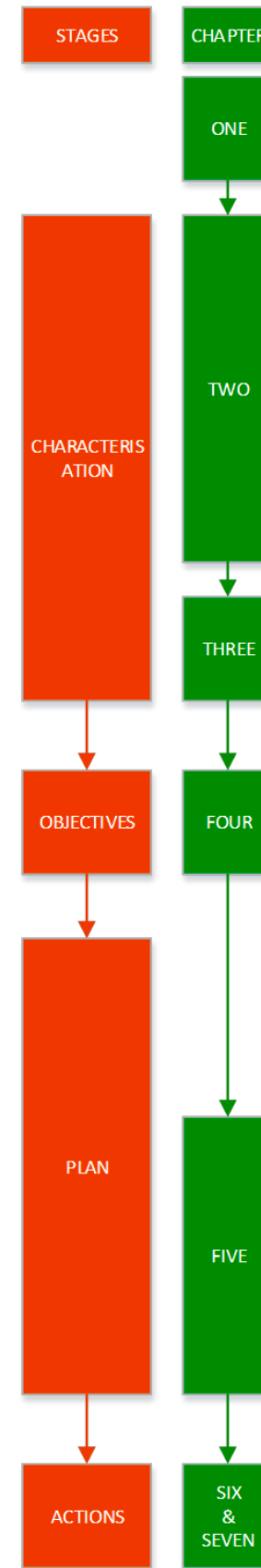
Yours

Council Solicitor or Head of Infrastructure and Commissioning

Cc Legal Services/ Head of Infrastructure and Commissioning

Senior Manager Roads Service

Fold Page out to view
Process Chart along
with Document





Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2017

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78851-192-6 (web only)

Published by The Scottish Government, September 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS291546 (09/17)

W W W . G O V . S C O T