

PE1441/D

Our EXT05-A-
Ref: F0183261
Your Petition
Ref: PE1441

Ms Alison Wilson
Assistant Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

27 November 2012

Dear Ms Wilson

Requested written response from Scottish Environment Protection Agency (SEPA) to Petition PE1441

Calling on the Scottish Parliament to urge the Scottish Government to represent Scottish interests in the current discussions between Defra and the UK insurance industry.

Thank you for providing the Scottish Environment Protection Agency (SEPA) the opportunity to comment on the above petition document.

SEPA's response is attached as an Annex to this letter, with our views and comments presented as specified.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please do not hesitate to contact Richard C Brown (Head of Hydrology) richard.brown@sepa.org.uk in our Dingwall office.

Yours sincerely

David Pirie
Director Science & Strategy

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PUBLIC PETITIONS COMMITTEE

Requested written response from Scottish Environment Protection Agency to Petition PE1441

1. Background: SEPA's role in Flood Risk Management

1.1 The Flood Risk Management (Scotland) Act 2009 created a framework for the management of flood risk and included new responsibilities for the Scottish Environment Protection Agency (SEPA) and other public bodies. In addition to its pre-existing statutory roles in delivering planning advice and flood forecasting and warning, SEPA now has a new strategic oversight role in flood risk management.

Flood warning, forecasting and raising public awareness

1.2 Under the 2009 legislation SEPA's flood warning responsibilities were formalised, giving it a strengthened statutory basis for all flood warning activities.

1.3 SEPA also has a responsibility for raising awareness of flood risk, flood preparation and the services available to help people take personal action. SEPA works closely with many organisations with flood-related duties, such as the police, fire and rescue services, local authorities and Scottish Government, as well as the Met Office in relation to flood forecasts.

Flood risk and the Land Use Planning System

1.4 SEPA is responsible for providing advice and guidance on flood risk to planning authorities. Planning authorities must, before determining an application for planning permission for development, consult with SEPA where the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding. Planning authorities must take SEPA's advice into account alongside other material considerations in the determination of planning applications involving flood risk. It is for planning authorities to approve or refuse planning applications. SEPA has no invested power to decide any such applications.

1.5 SEPA has a duty to co-operate with planning authorities in the preparation of development plans. SEPA remains committed to early engagement with planning authorities and developers to ensure that flood risk issues are fully understood and taken into account in development plans and planning applications. By engaging early in the modernised plan-led system, SEPA aims to secure agreement on all sides as to where development should and should not take place in relation to flood risk.

Strategic oversight

1.6 With regard to the new approach to Flood Risk Management, SEPA is specifically responsible for:

- Carrying out a National Flood Risk Assessment;

- Producing: flood hazard and flood risk maps; an assessment of the contribution that natural flood management can make to manage flood risk, and 14 Flood Risk Management Strategies;
- Contributing to, and agreeing, Local Flood Risk Management Plans.
- Participating in all 14 Local Plan District partnerships;
- Establishing national and local advisory groups; and
- Ensuring co-ordination between Flood Risk Management planning and River Basin Management Planning and other land-use planning processes.

2. Comment on specific issues raised in the Petition

- 2.1 The main thrust of the petition is a call for risk-reflective pricing insurance arrangements to replace the Statement of Principles agreement between Government and insurers in 2013, and that these are implemented in a manner that ring-fences cross-subsidisation between those at high and low risk within Scotland (thereby avoiding possible cross-subsidisation across the Scottish-English border). SEPA is of the view that such financial service issues are a matter for Scottish and UK Governments, and the provision of insurance is a matter for the commercial market.
- 2.2 SEPA's function in regard to the debate on the provision of insurance is primarily one in terms of the production and access to flood risk data and information. The National Flood Risk Assessment published by SEPA in December 2011 and the Flood Hazard maps and Flood Risk maps due for publication by SEPA in December 2013 will significantly improve access to flood risk information available in Scotland.
- 2.3 SEPA's National Flood Risk Assessment identified that approximately 112,000 residential properties and nearly 14,000 businesses are at risk from either coastal, river or surface water flooding in Scotland; this represents one in 22 homes and one in 13 businesses. Clarity and consistency is required in references made in the Petition to households and non residential properties.
- 2.4 Climate change is expected to increase flood risk in Scotland. Consequently, new arrangements for the provision of flood insurance in 2013 and any possible requirement for (Scottish or UK) Government intervention as the 'insurer of last resort' should not be at the expense of existing funding streams to responsible authorities under the 2009 legislation or at the expense of continued funding of large-scale flood protection schemes.
- 2.5 The Petition states that in Scotland there has been no new build development within the 1 in 200 year floodplain since 1995. There are a number of concerns with this claim:
- SEPA is not aware of any records maintained by the Scottish Government or by local authorities to substantiate this proposition;
 - There are a number of examples of new build developments in the flood plain, some of which have recently been subjected to flooding;

- Other flood plain developments have been built, but are protected from flooding by uplifting (landraising) sites above the '200 year' flood level. This can displace floodwater and increase risk elsewhere if the flood storage and hydraulic capacity is not fully 'compensated';
- It is unclear whether the Petition is classifying development based on land raising as being outwith the functional flood plain (for example, the significant riverside regeneration along the Clyde since 1995).

- 2.6 The Environment Agency provides an [annual report on development and flood risk](#). The report monitors decisions made on planning applications and indicates the extent to which Environment Agency advice was complied with and where development was permitted contrary to this advice. There is no comparable information in Scotland. Without detailed analysis of this sort, it would be difficult to accurately determine the extent of any inappropriate development within the flood plain.
- 2.7 The Petition suggests the establishment or existence of Flood Liaison and Advice Groups with insurance industry representation should deter insurers from otherwise restricting the provision of flood insurance to Scottish council areas.
- 2.8 SEPA has supported Flood Liaison and Advice Groups since the Scottish Government encouraged them to be set up under guidance issued in 1997. FLAGS are advisory with no formal decision-taking mechanism. FLAGS have never been compulsory, and their remit and membership varies across the country.
- 2.9 As a vehicle for preventing development on the flood plain the role of FLAGS is perhaps overstated in the Petition given their purely advisory role. The role of Scottish Planning Policy in setting out the risk framework with appropriate planning responses for development in the flood plain and the adoption of these principles in development plan policies are of more significance.
- 2.10 It is noted that many FLAGS across Scotland have lapsed and that much of their original intent has been superseded through provisions in the 2009 legislation. Under the FRM Act, local advisory groups have been set up on a statutory basis for Flood Risk Management Planning purposes. SEPA anticipates that the local advisory groups will replace many of the functions of FLAGS in the longer term. While SEPA will continue to support FLAGS where they remain in operation, it will encourage participation of the planning system in the local advisory groups. This would assist a more integrated and co-ordinated approach to flood risk reduction.
- 2.11 In the above circumstances, it is questionable whether it is the most practical proposition for the existence of FLAGS to be the means to deter insurers from otherwise restricting the provision of flood insurance to Scottish council areas.

3. Comment on specific issues raised during discussion on the petition

3.1 The petitioner made reference to a statutory duty imposed by the Flood Risk Management (Scotland) Act 2009 on local authorities to prevent flooding. Flooding is a natural event that cannot be prevented entirely. SEPA, local authorities and others work to increase Scotland's preparedness, awareness and management of flooding to limit its devastating impacts. The 2009 legislation imposed a general duty on local authorities to exercise their flood risk related functions with a view to reducing overall flood risk, rather than preventing it altogether.

3.2 SEPA is aware of the wider contributions of the petitioner to the flood insurance debate in Scotland, notably the Crichton Risk Triangle, the Crichton Insurance Template, the Crichton Solution, the Crichton Three Point Plan and the Crichton Five Point Plan.

4. Comment on use and associated deterrent of the Land Reform (Miscellaneous Provisions) (Scotland) Act 1985 in regard to insurers suing developers

4.1 SEPA is aware of this legislation, but we have no knowledge of this instrument being used in regard to insurers suing developers to reclaim damages arising from flooding.

SEPA

27 November 2012