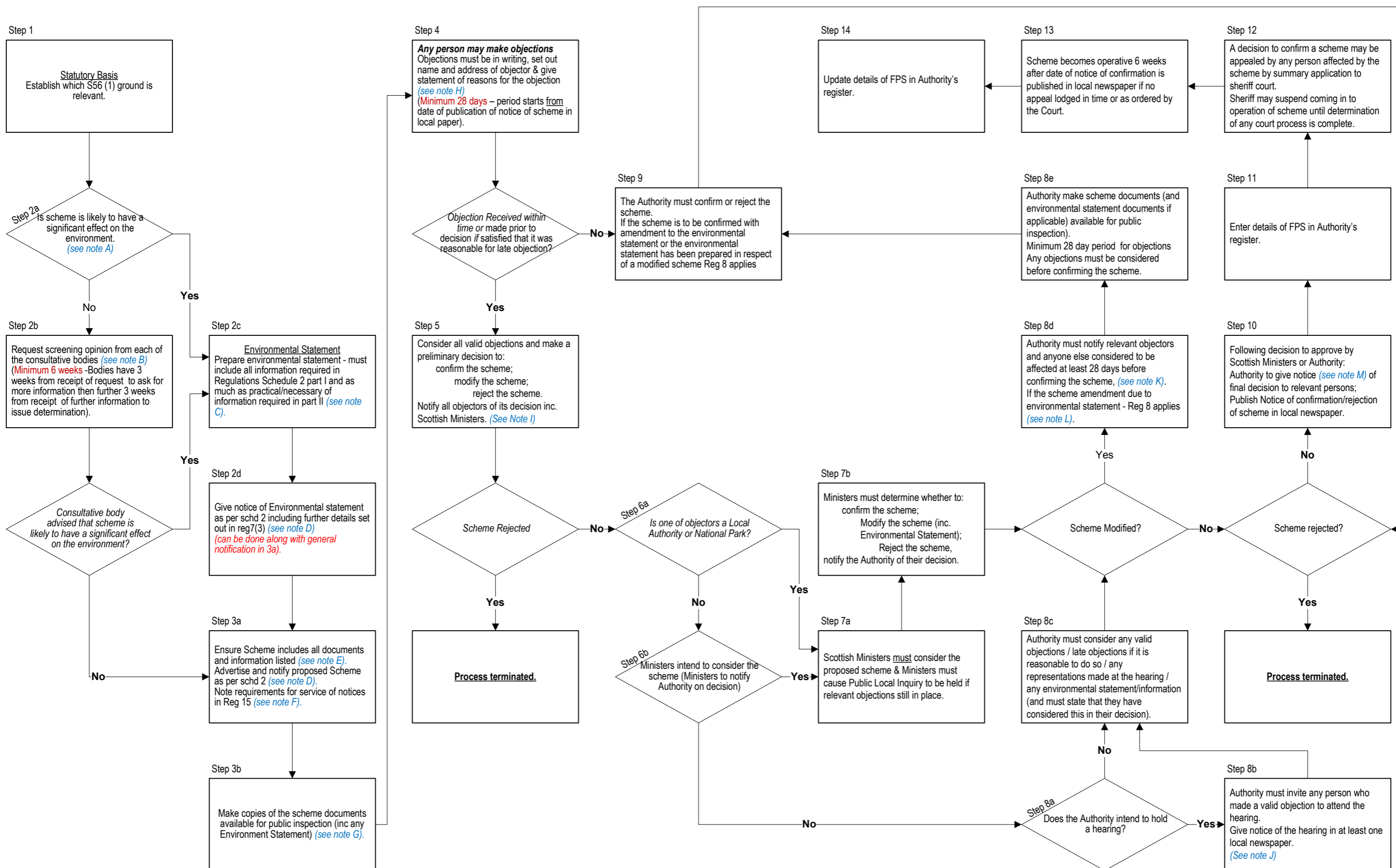


Legal Process

It has been assumed that technical appraisals, design, costing and initial informal public consultation has all been done



Note A – factors which must be considered in determining whether a scheme is likely to have a significant effect on the environment.

1. **Characteristics of scheme**

The characteristics of the scheme must be considered, having regard, in particular, to—

- (a) the size of the scheme;
- (b) the cumulation with other schemes;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances; and
- (f) the risk of accidents, having regard in particular to substances or technologies used.

2. **Location of scheme**

The environmental sensitivity of geographical areas likely to be affected by the scheme must be considered, having regard, in particular, to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under legislation;
 - (vi) special protection areas designated pursuant to Council Directive 2009/147/EC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;
 - (vii) areas in which the environmental quality standards laid down in [EU] ¹ legislation have already been exceeded;
 - (viii) densely populated areas; and
 - (ix) landscapes of historical, cultural and archaeological significance.

3. **Characteristics of the potential impact**

The potential significant effects of development must be considered in relation to criteria set out under [paragraphs 1 and 2](#) above, and having regard, in particular, to—

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

Note B –list of consultative bodies

- (a) SEPA;
- (b) Scottish Natural Heritage;
- (c) Scottish Water;
- (d) any planning authority whose district is likely to be affected by the proposed flood protection scheme (other than the Authority proposing the scheme); and
- (e) any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the Authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme;

Note C – contents of the environmental statement

Regulation 6 requires the Authority to prepare an Environmental Statement assessing the scheme's environmental effects.

Schedule 2 Part I lists the **required** content of an Environmental Statement prepared by a Authority under Regulation 6:

1. An environmental statement must identify, describe and assess the direct and indirect effects of the proposed scheme on the following factors—
 - (a) human beings, flora and fauna;
 - (b) soil, water, air, climate and the landscape;
 - (c) material assets, including architectural and archaeological heritage; and
 - (d) the interaction between the factors mentioned in sub-paragraphs (a) to (c).
2. An environmental statement must include—
 - (a) A description of the scheme comprising information on the site, design and size of the scheme.
 - (b) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
 - (c) The data required to identify and assess the main effects which the scheme is likely to have on the environment.
 - (d) The main alternatives studied by the Authority and the main reasons for its choice, taking into account the environmental effects.
 - (e) A non-technical summary of the information provided under a to d above.
3. **And** such of the information **below** as is reasonably required to assess the environmental effects of the proposed scheme and which, having regard in particular to current knowledge and methods of assessment, the Authority can reasonably be required to compile.
 - (a) A description of the scheme, including in particular—
 - (i) a description of the physical characteristics of the whole scheme and the land-use requirements during the construction and operational phases;
 - (ii) a description of the main characteristics of the production processes, for instance, the nature and quality of the materials used;
 - (iii) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, etc.) resulting from the operation of the proposed scheme.
 - (b) A description of the aspects of the environment likely to be significantly affected by the scheme, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
 - (c) A description of the likely significant effects of the scheme on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the scheme, resulting from—
 - (i) the existence of the scheme;
 - (ii) the use of natural resources;
 - (iii) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the Authority of the forecasting methods used to assess the effects on the environment.
 - (d) A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
 - (e) A non-technical summary of the information provided above
 - (f) An indication of any difficulties (such as technical deficiencies or lack of know-how) encountered by the Authority in compiling the required information.

Note D – Schd 2 notification requirements

1. The Authority must give notice of a proposed flood protection scheme:
 - (a) in at least one newspaper circulating in the Authority's area (which must, if practicable, be a local newspaper),
 - (b) where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
 - (c) in the Edinburgh Gazette,
 - (d) to every person known to the Authority—
 - a. to have an interest in any land on which the proposed operations are to be carried out, or
 - b. whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations,
 - (e) where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons,
 - (f) to the following persons—
 - (i) SEPA,
 - (ii) Scottish Natural Heritage,
 - (iii) any local authority in whose area any of the proposed operations are to be carried out,
 - (iv) where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
 - (v) any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
 - (vi) any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
 - (vii) any other person specified by order by the Scottish Ministers, and
 - (g) in such other manner as the authority considers appropriate.
2. The Authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out.

Requirements of the Notice

3. A notice must —
 - (a) contain a general description of the effect of the proposed scheme including—
 - (i) a summary of the operations to be carried out, and
 - (ii) a summary of the benefits which the Authority considers are likely to be derived from carrying out the operations,
 - (b) state where and at what times the scheme documents can be inspected in pursuance of paragraph 2, and
 - (c) state that objections can be made about the proposed scheme to the Authority before the expiry of the period of 28 days beginning with the date notice is first published under sub-paragraph (1)(a).
4. Notices must be given or, as the case may be, displayed no later than the date that notice is first published in the local newspaper.

Plus - for 2d only:

5. Notices must, in addition to the information above, include a statement—
 - (a) that the scheme is likely to have a significant effect on the environment;
 - (b) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
 - (c) describing the circumstances under the Act in which the Scottish Ministers may cause a public inquiry into the application; and
 - (d) setting out the nature of possible decisions that may be taken in relation to the scheme.

Note E – contents of scheme documents

1. A proposed flood protection scheme must include a description, by reference to maps, plans and specifications, of—
 - (a) the extent and scale of the scheme operations;
 - (b) the land which the Authority considers may be affected by those operations; and
 - (c) any land on which the Authority would require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations.
2. The maps and plans referred to in paragraph (1) must be at an appropriate scale to enable interested persons to identify whether their land will be affected by the scheme operations.
3. A proposed flood protection scheme must include an estimate of the cost of the scheme operations proposed to be carried out.

Note F – requirements for service of Notices

Regulation 15 makes provision about methods of service of notices or other documents.

- Any notice or other document to be sent, served or given under these Regulations or under schedule 2 to the Act may be sent, served or given either—
 - by delivering it to the person on whom it is to be served or to whom it is to be given;
 - by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address;
 - by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at their usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address;
 - in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office; or
 - in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address.
- The condition mentioned in paragraph (1)(e) is that the notice or other document must be—
 - capable of being accessed by the person mentioned in that provision;
 - legible in all material respects; and
 - in a form sufficiently permanent to be used for subsequent reference, and for this purpose "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

Note G – making documents available for public inspection

Paragraph 2 of the Act makes provision about the availability for public inspections of documents relating to the proposed scheme in both the area of the Authority taking forward the scheme and that of any other local authority where work would be carried out.

- The Authority **must** make a copy of the scheme documents available for public inspection in a place in the authority's area **AND**
- Where the proposed operations are to be carried out in another local authority's area, the authority **must** also make the scheme documents available for public inspection in a place in the other authority's area **AND**
- The scheme documents must be available for inspection at all reasonable times during the period from the date notice is given in at least one newspaper circulating in the Authority's area which must, if practicable, be a local newspaper, until the date a decision is made

Note H – objection period

- Any valid objection to a proposed flood protection scheme must be accompanied by a statement of the reasons for the objection.
- Where an objector, where the objection is valid, has an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the proposed operations, or by any alteration in the flow of water caused by any of the operations, that person's objection must include—
 - details of the land** in which the objector has an interest;
 - disclosure** of the nature of the objector's interest in the land; and
 - details** of which aspects of the proposed operations affect the objector.

Note I – listed persons

- A person who made an objection is referred to as a "relevant objector".
- Where** any relevant objector is a person,
 - having any interest in any land on which the proposed operations are to be carried **OR**
 - whose interest in any other land may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations **OR**
 - where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons **OR**
 - the following persons—
 - SEPA,
 - Scottish Natural Heritage,
 - any local authority in whose area any of the proposed operations are to be carried out,
 - where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
 - any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
 - any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
 - any other person specified by order by the Scottish Ministers.
 - then** the Authority **must** also give to the Scottish Ministers notice of its decision together with—
 - the scheme documents,
 - a summary of the objections received by the Authority,
 - copies of those objections, and
 - copies of any other material considered by the local authority.

Note J – Authority Hearing

The Authority **must**—

- invite to the hearing each objector who has made a valid objection (unless withdrawn) or a late objection which the authority intends to consider, and
- give notice of the hearing in the manner –
 - in at least one newspaper circulating in the Authority's area (which must, if practicable, be a local newspaper) **AND**
 - where any of the proposed operations are to take place in another Authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
- An invitation must be given not less than 28 days before the proposed hearing.
- Notices must be published at least 21 days before the proposed hearing.

Note K – Notice of modification

- The Authority must give notice:
 - in at least one newspaper circulating in the Authority's area (which must, if practicable, be a local newspaper),
 - where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper),
 - in the Edinburgh Gazette,
 - to every person known to the Authority –
 - to have an interest in any land on which the proposed operations are to be carried out, or
 - whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations,
 - where any of the proposed operations are to be carried out on land affected by an improvement order, to each of the authorised persons,
 - to the following persons –
 - SEPA,
 - Scottish Natural Heritage,
 - any local authority in whose area any of the proposed operations are to be carried out,
 - where any of the proposed operations are to be carried out in a National Park, the National Park authority for that National Park,
 - any responsible authority whose flood risk related functions may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations (insofar as the authority has not been notified under another provision of this sub-paragraph),
 - any statutory undertaker whose statutory undertaking may be affected by any of the operations or by any alteration in the flow of water caused by any of the operations,
 - any other person specified by order by the Scottish Ministers, and
 - in such other manner as the authority considers appropriate.

- The Authority must also display a notice of the proposed flood protection scheme in a prominent position in the locality in which the operations are to be carried out.
- Notices must be given or, as the case may be, displayed no later than the date that notice is first published in the local newspaper.

Requirements of the Notice

- A notice must—
 - contain a general description of the effect of the proposed scheme including—
 - a summary of the operations to be carried out, and
 - a summary of the benefits which the Authority considers are likely to be derived from carrying out the operations,
 - state where and at what times the scheme documents can be inspected in pursuance of paragraph 2, and
 - state that objections can be made about the proposed scheme to the Authority before the expiry of the period of 28 days beginning with the date notice is first published under sub-paragraph (1)(a).

Note L – Notice of modification – additional requirements where the environmental statement has been updated/amended/modified

As per Note K plus further requirements in Reg8(3)

- Requirements of the Notice will **also**:
 - Contain a statement
 - That the proposed scheme has been modified
 - Describing the modifications
 - Explaining the reasons for the modifications
 - That the modified scheme is likely to have a significant impact on the environment
 - That the scheme documents are accompanied by an environmental statement which is available for public inspection
 - Describing the circumstances under the Act in which the Scottish Minister may casue a public inquiry into the application
 - Setting out the nature fo the possible decisions that may be taken in relation to the modified scheme

Note M – Notice of Final Decision

- Notice must be given—
 - to every person given notice in relation to the proposed scheme (to every person known to the Authority
 - to have an interest in any land on which the proposed operations are to be carried out,
 - whose interest in any other land may be affected by any of the proposed operations or by any alteration in the flow of water caused by any of the proposed operations OR anyone mentioned in Note G above)
 - to every objector
 - to anyone else who was notified by a Scottish Ministers given notice of the proposed modification to the relevant objectors and anyone else the Scottish Ministers consider is affected by them at least 28 days before confirming the scheme, OR
 - a Local Authority given notice of the proposed modifications to the relevant objectors and anyone else who the Authority considers is affected by them at least 28 days before confirming the scheme and
 - where the decision is to confirm the proposed scheme (with or without modifications),
 - in at least one newspaper circulating in the Authority's area (which must, if practicable, be a local newspaper),
 - where any of the proposed operations are to take place in another local authority's area, in at least one newspaper circulating in that area (which must, if practicable, be a local newspaper) **AND**
 - in the Edinburgh Gazette,