1. **Petitions:** The Committee will consider the following petitions—
   
   PE517 and PE645 on control of odours from waste water treatment works; and
   
   PE604 on the regulation of greyhound sport.

2. **European issues:** The Committee will consider an update from the Convener on European issues.

3. **Inquiry into the implementation of CAP Reform:** The Committee will take evidence from Allan Wilson MSP (Deputy Minister for Environment and Rural Development).

4. **Budget process 2005-06:** The Committee will take evidence from Allan Wilson MSP (Deputy Minister for Environment and Rural Development).

5. **Subordinate legislation:** The Committee will consider the following negative instruments—
   
   the Special Waste Amendment (Scotland) Regulations 2004, (SSI 2004/112); and
   

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Tracey Hawe  
Clerk to the Committee  
Direct Tel: 0131-348-5221
The following papers are attached:

<table>
<thead>
<tr>
<th>Agenda Item 1</th>
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<tr>
<td>Copy of petitions <strong>PE517</strong>, <strong>PE645</strong> and <strong>PE604</strong></td>
<td>ERD/S2/04/11/1a</td>
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<td>PE517 and PE645 – Note from the Clerk together with relevant background briefing and correspondence</td>
<td>ERD/S2/04/11/1b</td>
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<td>PE604 – Note from the Clerk together with background briefing and correspondence.</td>
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<td>Finance Committee guidance on the budget process</td>
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<td>Paper from the Committee adviser <em>(for members only).</em></td>
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<td><strong>The Special Waste Amendment (Scotland) Regulations 2004</strong>, <em>(SSI 2004/112)</em></td>
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<td><strong>The Dairy Produce Quotas (Scotland) Amendment Regulations 2004</strong>, <em>(SSI 2004/118)</em>.</td>
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<td>Extract from the Subordinate Legislation Committee’s 13th Report.</td>
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PETITIONS PE517 AND PE645 ON THE CONTROL OF NOXIOUS ODOURS FROM WASTE WATER TREATMENT PLANTS

PE517  By Mr Rob Kirkwood on waste water treatment plants.

1. The petition expresses concern that local authorities appear to be able to allow waste water treatment plants to operate outwith the terms of existing environmental protection and planning legislation. The petitioner calls for the Scottish Parliament to investigate this situation.

2. The petitioner also calls for the Parliament to investigate possible solutions to the problem of noxious odours and airborne bacteria released from such plants. The petitioner suggests covered conical shaped tanks positioned far away from residential communities as a possible solution.

3. The petitioner is specifically concerned with sewage processing at the Seafield Waste Water Treatment Plant in the Leith Links area of Edinburgh. The petitioner is concerned that the odours and gases from this plant are having a detrimental impact on the health and quality of life of nearby communities.

PE645  By Mrs Norma Rutherford, calling for the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste treatment works.

4. The petitioner is specifically concerned with the Kirkcaldy Waste Water Treatment Works which began operating in September 2001. The petitioner claims that despite the statement in the original plans for the Treatment Works that there would be no odour emissions, noxious odours are emanating from the plant.

5. The petitioner argues that the noxious odours have a detrimental effect on the health and quality of life of the local community. The petitioner states that the Treatment Works is ‘within a stone’s throw’ of residential housing.

Progress of the petitions

Meeting on 10 September 2003

6. The Committee first considered petition PE517 at its meeting on 10 September 2003. The Committee agreed to write to the Minister for Environment and Rural Development requesting an update on how the Executive plans to take forward issues relating to odour control, and, in particular, issues relating to waste water treatment plants. A copy of the letter to the Minister is attached at Annex A, and a copy of the Minister’s response is attached at Annex B.

7. The response notes that in England and Wales, a court decision which had ruled that local authorities could be prevented from taking
enforcement action against Water Companies that did not comply with removing offensive odour has been overturned in the High Court. The response notes that leave to appeal to the House of Lords has been granted, and that the ruling is expected during the course of next year. The response adds that, in the interim, the English High Court ruling of 15 May 2003 may be persuasive in Scotland.

8. The response also notes that, whatever the outcome of the appeal, the Executive proposes to produce a voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works.

Meeting on 19 November 2003
9. The Committee considered the Executive response at its meeting on 19 November 2003. The relevant extract of the Official Report of the meeting is attached at Annex C.

10. At the meeting, the Committee also considered petition PE 645 by Mrs Norma Rutherford on the control of noxious odours from a waste water treatment works in Kirkcaldy. The Committee agreed to consider this petition alongside PE517, on the basis that the issues raised by the petitions were broadly similar.

11. The Committee also agreed to take forward issues initially raised by petitions PE541 and PE543 relating to the regulation of noxious odours from landfill sites as part of its consideration of petition PE517.

12. The Committee agreed to write to the Minister for Environment and Rural Development to raise issues relating to the regulation of odour and noting the Committee’s intention to consider these issues in its consideration of the proposed Water Services Bill.

13. The Committee also agreed to write to the Minister for Communities regarding the planning issues raised by the petitions noting the Committee’s desire to see these issues taken forward as part of the proposed Planning Bill.

Executive Response

14. The letters issued to the Ministers requested that the Minister for Environment and Rural Development liaise with the Minister for Communities in order to provide the Committee with a co-ordinated response in January. These letters are attached at Annex D.

15. The Convener wrote to the Deputy Minister for Environment and Rural Development on 18 March noting that the response was outstanding and urging the Deputy Minister to issue the response as soon as practicable. The letter is attached at Annex E.
16. The Executive response was received from the Deputy Minister for Environment and Rural Development on 26 March and is attached at Annex F.

Guidance for local authorities
17. The Committee requested that the Minister should write to local authorities reinforcing the existing powers available to them. The response notes that Executive officials are of the view that local authorities are aware of the present position, but that officials plan to write to local authorities in the near future on this issue.

House of Lords appeal
18. The response states that, if the House of Lords allows the appeal, the Executive does not expect a final ruling until November 2004 at the earliest.

Consultation
19. The response further states that, in the event of the appeal being allowed, the Executive would propose to publish a consultation on future legislative options.

Voluntary Code of Practice
20. The response re-iterates that the Executive is producing a Voluntary Code of Practice, adding that the intention is to publish a draft Code for public consultation in the Summer.

Abatement notices
21. The response provides details of the 8 abatement notices served by local authorities under the statutory nuisance provisions of the Environmental Protection Act in Scotland since 1999. In relation to PE517, the response notes that 6 of these notices have been served by Edinburgh City Council on Seafield waste water treatment works and that Scottish Water have appealed against the timescales imposed in the last notice.

Monitoring odour nuisance
22. The Committee requested information on the measurement of odour nuisance and on the Executive’s definition of what constitutes such a nuisance. The response states that Environmental Health Officers use their nose to establish whether a statutory odour nuisance has occurred and measurement is based on the officer’s experience. The response also quotes the definition in the Environmental Protection Act 1990 as “any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance”.

Scottish Water funding
23. The Committee’s letter to the Minister for Environment and Rural Development Committee expressed concern that odour nuisance does not seem to be ranked as an investment priority at present, perhaps due to a number of other significant pressures on Scottish Water’s
finances. The response states that funding has or will be provided for the period 2003/03 to 2005/06 for the Delivery of Quality and Standards II and that the Executive accepts the Committee’s request for the need for higher standards of odour control to be considered in consultations on Q&S III.

Forthcoming legislation
24. The Committee requested that planning issues be addressed within the forthcoming Planning Bill and that issues relating to odour nuisance be addressed in the Water Services Bill. The response states that Scottish Ministers do not consider these bills to be appropriate legislative vehicles for dealing with these issues.

Interaction between planning and environmental regulation
25. The response outlines the impact of the phased implementation of the Pollution Prevention and Control (Scotland) Regulations 2000 which requires plants regulated under PPC to use best available techniques to prevent or minimize pollution, including offensive odour. The response notes that only plants which meet certain criteria are regulated by SEPA under PPC.

26. The response explains the roles of planning authorities and SEPA in granting permissions and licences for the operation of waste water treatment works. It also details their roles in relation to monitoring the operations of water treatment works to ensure accordance with planning and licensing conditions. The response acknowledges that the dividing line between planning and environmental controls is not always clear, and adds that the Executive is currently carrying out research into the interaction between planning and environmental regulation.

Scottish Water planning permissions
27. The Committee requested information on ‘permitted development rights’. The response notes that the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, grants a general planning permission for a broad range of developments which, because of the nature of the proposals, would almost without exception be granted. Annex A to the response lists the permissions which apply to sewerage undertakings.

Landfill
28. The Committee reiterated its recommendation from its National Waste Plan that the Executive designate a minimum distance for new landfill site developments from residential areas. The Committee added that it also considered such a designation appropriate in relation to new waste water treatment works.

29. The Executive response notes that the Landfill (Scotland) Regulations 2003 require “the distances from the boundary of the site to residential and recreational areas” to be taken into account during the planning application process. The response then notes that factors such as
prevailing winds can be taken into account within this requirement and that the same factors can apply in considering new waste water treatment developments.

**Options for Action**

30. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate in relation to PE645 and PE517 respectively.

**Option A**

31. Should Members feel that the Executive response is satisfactory, the Committee could agree to defer further consideration of the petition until the House of Lords appeal is resolved.

**Option B**

32. The Committee may wish to write to the Minister for Environment and Rural Development outlining any further views on the issue.

**Option C**

33. The Committee may wish to invite the Minister for Environment and Rural Development to give oral evidence to allow members to explore further issues relating to the regulation of odour nuisance.

**Option D**

34. Alternatively, Members may wish to appoint a reporter to consider the issues and monitor developments in relation to noxious odours from waste water treatment plants and landfill sites and report back to the Committee.
Dear Ross

At its meeting on 10 September 2003 the Committee considered a number of public petitions, some of which have been re-referred following consideration by predecessor committees in the first session. The Committee agreed to write to you on a number of points.

**Petition 365**
This petition (by Mr Iain MacSween on behalf of the Scottish Fishermen's Organisation Ltd) calls on the Parliament to review the status of fixed quota allocations and to take appropriate action to ensure that access to fish stocks is not sold to owners whose main place of business is outwith the UK.

The Committee is aware that no trade in these quota shares was originally intended but that concerns have arisen that a grey market appears to have developed with fishermen who can afford to do so buying or leasing additional quota. The Committee is also aware that the former Rural Development Committee touched on the subject in its report on Current Issues Facing the Scottish Fishing Industry in February 2003. That Committee noted concerns about the compatibility with EU state aid rules of a quota purchase scheme operated by Shetland Islands Council, and also noted that the current and previous decommissioning programmes have not required quota allocations to be surrendered.
I would be grateful if you could provide the Committee with a detailed briefing outlining your current position on the operation of the quota system and the tradeability of quota entitlement. I would also be grateful if you would address your thinking in the way the quota system is treated in the decommissioning scheme, and any current or future developments you are considering in quota management (including the response to the European Commission’s decision on the Shetland Islands Council scheme).

**Petition 449**

This petition by the Scottish Gamekeepers’ Association calls for an independent investigation into the impact of predatory birds on waders and songbirds, and private stocks of fish and gamebirds.

Following evidence from the petitioners and Scottish Natural Heritage, the Convener of the then Rural Development Committee wrote on 26 February 2003 to the Deputy Minister for Environment and Rural Development drawing attention to perceived gaps in the science base and the lack of substantial research into the interaction of various species and habitats.

In noting the Deputy Minister’s response of 13 March, the Committee is anxious to learn whether the Executive has yet identified specific research projects, and the timescale for commissioning such projects. In view of the anecdotal nature of much of the evidence which indicates a significant increase in predatory birds over a relatively short number of years, the Committee believes it is important to have clear factual knowledge about their impact on other species. I would therefore be grateful if you could provide the Committee with an update on the current position, detailing:

- the stage scientific investigations have reached
- the progress which is being made in the moorland forum, and
- your intentions in respect of obtaining any further information.

**Petition 517**

This petition concerns odour nuisance from waste water treatment plants and is specifically related to the plant at Seafield in the Leith Links area of Edinburgh. The Committee noted information on the ongoing situation at Seafield and anecdotal evidence of problems elsewhere in Scotland. It concluded that the regulation of odour nuisance in general, and specifically in relation to water treatment plants, is an issue that requires further examination.

A letter from your department’s Air Climate and Engineering Unit dated 21 August 2003 provided the Committee with an update on the court ruling in England and Wales relating to the regulation of odour nuisance, and the outstanding appeal against the ruling which has been lodged with the House of Lords. The Committee particularly noted your commitment to at least introducing a voluntary code of practice and the possibility of conducting a consultation on legislative change after the House of Lords ruling. I would be grateful if you would advise the Committee of the progress of the appeal, and any other developments relating to the regulation of odour nuisance.
However, the Committee noted that the outstanding appeal does not preclude the Executive from initiating proposals for legislative change to address problems relating to odour regulation. I would therefore also be grateful if you could outline your thinking on whether you would consider a legislative approach regardless of the outcome of the appeal.

I have undertaken to provide the Committee with a regular update on the progress of all petitions referred to the Committee. I next intend to do so in early November 2003. I would therefore be grateful if you could let me have your comments on the above points by the end of October.

I look forward to hearing from you.

Yours sincerely

Sarah Boyack MSP
Convener
You wrote to me on 16 September asking for an update on a number of petitions. You have already received briefing on Petition 449, which you required prior to your meeting with the Scottish Gamekeepers’ Association on 28 October, and I attach a briefing note as requested on Petition 365 and the operation of the fish quota system and the tradeability of quota entitlement.

The position regarding Petition 517 and the progress of the appeal that has been lodged with the House of Lords on the court ruling in England and Wales relating to the applicability of the statutory nuisance regime to odour from sewage treatment works is as follows.

I can confirm that leave to appeal has now been granted, and the ruling is expected during the course of next year. In the interim, the English High Court ruling of 15 May 2003, (that the statutory nuisance provisions of section 79(1) (g) in Part III of the Environmental Protection Act 1990 do apply to odour from sewage treatment works), may have persuasive authority in Scotland.

I understand that several Scottish local authorities have considered or are considering issuing abatement notices under Part III of the Environmental Protection Act 1990, for example the present action being taken by the City of Edinburgh Council in connection with Edinburgh’s Seafield Sewage Treatment Works.

I can confirm again that while the House of Lords ruling is awaited, progress is being made on a proposed voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works. The Scottish Executive intends to consult on a draft of the Code in early 2004. My officials are working with Defra and other relevant stakeholders on the preparation of this Code. In the light of this I think it would be inappropriate at this stage to consider a legislative approach. However, I would reiterate that if the House of Lords rules that the statutory nuisance provisions of the Environmental Protection Act 1990 do not apply to odour from sewage treatment works we would wish to consult on legislative change after that.

I trust this information will be helpful.

ROSS FINNIE
Waste Water Treatment (PE517 and PE645)

The Convener: PE645 is a new petition that calls on the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste treatment plants. The committee is required to consider the petition and to agree a course of action. Everyone will have read their papers, so I imagine that they have noted that the issues that are raised in the petition are broadly similar to those that were raised in PE517, although this is the first time that we have considered the new petition. Are members content to accept the referral from the Public Petitions Committee and to consider PE645 alongside PE517? The local member is here this morning.

Marilyn Livingstone (Kirkcaldy) (Lab): Petition PE645 relates to the Pathhead waste water treatment works in Kirkcaldy, which is affectionately known as the "Pathhead pong". Matters have moved on since the petition was submitted, but issues remain. The residents group, the council and I met Scottish Water, but we have reached an impasse. As members are aware, we are awaiting judgments and we are considering closely what the City of Edinburgh Council is doing. Fife Council will monitor the situation over six weeks and we have issued recording sheets as we did in the past. With the residents in Kirkcaldy who still suffer from the odours, although there are fewer of them now, we are looking at the measures we can take because of that impasse.

Roseanna Cunningham: I am concerned that we have two petitions from two widely different areas, but which seem to relate to the same problem. That might be evidence that the problem is much more widespread. Although we see that problem in the context of individual petitions, perhaps we need to take the bigger issue more seriously. I know that the committee's work load is horrendous for the foreseeable future, but I am wondering about option C in the paper on PE517, which proposes monitoring the situation. That option could also apply to PE645 and it would allow us to monitor developments that are wider than those in the two petitions. My guess is that they might only be the tip of the iceberg.

The Convener: The suggested action on PE645 addresses the broader issues with which we have been dealing under PE517. The two petitions relate to issues which, although they are experienced locally, are not local issues because they raise broader issues throughout Scotland. I am keen that we agree to consider PE645, but that we consider it alongside PE517, which picks up the point that the issues are not isolated and that they are public policy issues.

Marilyn Livingstone: My constituents would have no problem with that. They know that, although their petition concerns the Pathhead works, broader issues are involved, as the convener said.

The Convener: So we would agree to pursue option A, which is that we accept the referral of PE645 and undertake further consideration of the issue in conjunction with PE517. I want to ensure that we deal with the petition properly, instead of simply closing it down.
Des McNulty (Clydebank and Milngavie) (Lab): I think that I am in the same position as other members, in that an existing sewage works in my area has been producing odours for a long time. The works have recently been renewed and the smell periodically worsens. Moreover, there is a proposal for a significant extension to an existing sewage works 500yd from the centre of Clydebank, which means that we will get the smells from the north side of Glasgow and from Renfrewshire in quite a narrow space.

I want to identify three action points in connection with this issue. First, I would like the committee to highlight that the matter should be taken into consideration in the proposed Water Services (Scotland) Bill. Legislation that relates to this matter is coming down the track and, given colleagues’ comments about what is happening around Scotland, it is entirely unacceptable that only one abatement notice has been served since 1999. As the Executive will have an opportunity to examine legislation in this area when the proposed bill is introduced, an early indication from the committee that it would expect such an examination would send an important signal.

Secondly, the petition raises the significant planning issue of permitted development rights. There is no legislative obligation on water authorities to carry out normal planning scrutiny or to provide notification of proposals to develop an existing facility, however small it might be. As a result, planning authorities have no opportunity that is backed by legislation to enforce conditions as far as planning consent is concerned. Although such conditions were enforced with the proposed Erskine works, which are on the opposite side of the Clyde from my constituency, that was done largely on a grace-and-favour basis. We need to address the way in which permitted development powers are used in that respect and how they allow public authorities to by-pass legislative planning mechanisms as opposed to mechanisms that address odour problems.

Thirdly, Scottish Water recognises that it could maintain higher odour-control standards. However, with the funding regime that it operates under the water industry commissioner and the Scottish Executive's policy direction, it is not funded to achieve such standards. Indeed, it could be criticised for imposing higher standards, which is a completely topsy-turvy arrangement. I suggest that the committee could flag up the issue to the Finance Committee, which is investigating the funding regime of the water authority.

I suppose that I am making three suggestions. First, I suggest that the committee writes to Ross Finnie in relation to his legislative powers; secondly, that it writes to Margaret Curran to ask about permitted development rights in the context of the on-going consultation on planning matters; and thirdly, that it writes to the Finance Committee in the context of its investigation into Scottish Water's funding regime.

The Convener: We know that you are the convener of the Finance Committee, so I take it that you are actively seeking that advice from us.

Alasdair Morrison was about to ask a question.

Mr Morrison: I have nothing to add.

The Convener: I seek members' agreement that we accept the referral of PE645 and that we wrap it up with PE517.

Members indicated agreement.

The Convener: It was important that Marilyn Livingstone was able to speak about how the matter has impacted on her constituents.

I want to pick up some of the other issues that were raised by Des McNulty in relation to the previous petition and which are also relevant to PE645. I will bring everyone up
to date on the progress of PE517 and then bring in Susan Deacon, who is keen to speak on it.

This is the second time that we have considered PE517. At our meeting of 10 September, we agreed to write to the Minister for Environment and Rural Development to seek his view on all the issues that arise from it, including the effectiveness of the current system for regulating odour nuisance from water treatment plants, on which Des McNulty has just commented. The minister's response is attached to the petition cover note. We will try to sweep up some of the broader issues that Des McNulty and Marilyn Livingstone have raised and consider how to proceed with PE517.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I attended the previous meeting at which this issue was raised, so members will be aware of my interest in petition PE517. Seafield sewage works, which prompted the petition, is in my constituency.

The specific point that I would like to make is in direct response to the minister's reply. It is approximately 18 months since PE517 was submitted to the Parliament. I recognise that the petition has been progressed actively by the Public Petitions Committee and by the Transport and the Environment Committee before the election and by the Environment and Rural Development Committee since. Nonetheless, 18 months have elapsed since the issues were first raised.

It is more than six months since the Minister for Environment and Rural Development, Ross Finnie, acknowledged to the Transport and the Environment Committee that there were inadequacies in the statutory and regulatory regime and gave certain commitments in that regard. I am deeply concerned that we are not moving forward further and faster.

Other members are absolutely right when they say that this is not an isolated case—I have acknowledged that from the outset. We are hearing about more and more such cases across the country. Recently one Sunday newspaper investigated the issue and established from the Scottish Environment Protection Agency that in excess of 30 plants are subject to various forms of investigation. The four members present who have experience of the issue in their constituencies know that we are dealing with a major environmental nuisance to the community. The existing arrangements have proven somewhat inadequate in addressing that.

My fundamental point is that I have read the minister's response and do not believe it to be satisfactory. It is a reiteration of the situation that prevailed a considerable time ago. I understand that a House of Lords ruling is awaited, but I am not convinced that consultation on legislative change must await that. There is a wide range of issues on which discussion and debate could usefully be initiated. I echo Des McNulty's suggestion that we seek other vehicles for addressing the problem.

Even if the House of Lords rules that the statutory nuisance provisions of the Environmental Protection Act 1990 apply to odour from sewage treatment works, that does not deal with the wider legislative and regulatory issues that are involved—for example, the planning issues to which Des McNulty referred.

I can do no more than request that the committee, in its response to PE517 and PE645 and, indeed, to the minister, goes beyond simply noting the current position. Every further month or six-month period that elapses during which work is not actively commenced to tighten up the regulatory and statutory regime in this area is time during which communities are suffering.

I realise that this is the third time that I have echoed Des McNulty—it is becoming worrying—but he was right to touch on the complex issue that is the nature of Scottish Water and to say that it must have a basis on which to invest time, energy
and, crucially, money in the development of its infrastructure. Odour is not treated seriously enough at the moment. It has been seen as the Cinderella in the major investment projects that have been carried out at a range of pre-existing and new waste water treatment plants.

Last week, several of us attended a briefing with Scottish Water and the chair, Professor Alan Alexander, essentially or loosely acknowledged that point, although I do not want to put words into his mouth. The Scottish Parliament has an opportunity to make a difference, but if the minister's response is accepted as it stands, people will start to lose faith in the Parliament's processes and powers to address an issue that affects thousands of people throughout Scotland.

Christine May (Central Fife) (Lab): Although my area has not submitted a petition, the Levenmouth sewage treatment works is experiencing similar problems. Scottish Water has been very good at coming to meetings, but one of my criticisms is about what I and the community perceive as its lack of urgency in taking steps. I echo what Susan Deacon said: unless Scottish Water comes under pressure from those who have the power to legislate—us—I suspect that it will feel no sense of urgency, particularly because of all the other pressures that it is under. If that happens, the situation will continue in which my constituency has been told that it might be up to a year before any remedial work can be planned and put in place. That is not acceptable to the community, but we cannot put any more pressure on Scottish Water and we hope that the committee can use its powers to do so.

The Convener: No member of the committee has spoken thus far. The options that we have available to us require a varying amount of work. Option A says that we are happy with the Executive's response and that we will defer further consideration of the petition until the House of Lords appeal is resolved. We have had representations from colleagues who have odour problems in their patch saying that that is unsatisfactory. The second option is for us to write to the minister outlining further views and asking how the Executive plans to address the issues relating to odour control on landfill sites. The committee has been picking up on that issue and announced that in the report that was published yesterday. Thirdly, we could appoint a reporter to monitor developments in relation to noxious odours from waste water treatment plants and landfill sites, and then report back to the committee.

Noting what has been said today, it seems to me that there are two issues. One is a short-term enforcement issue on local authority powers. I wonder whether it would be helpful for the ministers to write to local authorities and tell them what the Executive's powers are at the moment. Guidance might come along later this year in the form of a voluntary code, but it would be no bad thing if ministers were to tell councils what they think the current provision is, to reinforce the fact that the House of Lords ruling will be binding under Scots law. Local authorities are allowed to take enforcement action and it might be useful if that fact was reinforced.

Des McNulty has highlighted what we can do with the proposed Water Services (Scotland) Bill and the planning bill, which concerns permitted development rights. When we come to scrutinise those two bills—the water bill will be our responsibility and the planning bill will be the responsibility of the Communities Committee—we could gear up to make points at stage 1. Would it be worth it if we said now that that work had to be done? We could write to the ministers with our views and ask them to start considering those views in the context of both bills. Alternatively, we could appoint a reporter to do that for the committee and then we could tell Ross Finnie and Margaret Curran what we are looking for.

I seek members' views. Do we do it ourselves now or do we write to the ministers and tell them that we expect those issues to be considered in the bills that are being
prepared? We could write the letter tomorrow, or we could do the scoping work for the discussion of the principles of both the bills.

**Mr Morrison:** The first option—writing to the minister—is the obvious first course of action.

**The Convener:** We have written to the Minister for Environment and Rural Development and have received feedback, so we would be writing to make a concrete proposal that the issue be addressed in the Water Services (Scotland) Bill. That would pick up Des McNulty's point that the current legislative framework under which Scottish Water works does not require it to address the issue to the extent that we think it needs to be addressed. We will flag that up now and, in effect, get the minister to do the work. Is that agreed?

**Members indicated agreement.**

**The Convener:** The second point is—this is an efficient use of time—permitted development powers under the proposed consolidated planning bill. Following the same principle, we will write to Margaret Curran and say that the issue has been highlighted and that it should be picked up in the planning bill. We do not want the issue to be dealt with at stage 3 of the two bills; we want the work to be done now so that it sends the message to a series of agencies that the issue is one that the Parliament feels is important and on which it wants legislative action. We should ask for a response from the minister and, if we think that the response is lukewarm, we can appoint a reporter and do the work ourselves. We are firing a shot across the Executive's bows and saying that the committee expects the issue to be included in the bills.

Do members feel that that would be a good way to proceed? It picks up Susan Deacon's point about time scale and raising the issue up the agenda so that people outside the Parliament can see that we think it important and want it to be dealt with through legislation.

**Members indicated agreement.**

**Des McNulty:** I suggest a third letter, which would be to Ross Finnie in the context of the quality and standards consultation that he will be opening in February 2004 and would say that we seek higher standards of odour control, which would have to be factored into the way in which arrangements between the water industry commissioner and Scottish Water would be addressed as part of that consultation. Again, we would be asking the civil servants to do early work on how that could best be achieved.

**The Convener:** It might be worth copying our correspondence to—I have forgotten the technical term—the environmental regulator for the water industry, as opposed to the water industry commissioner. They are different: one deals with environmental standards and the other is about the water industry as a whole.

**Des McNulty:** You mean SEPA and the water industry commissioner: the WIC deals with economic aspects, which have been a barrier, and SEPA deals with environmental considerations and enforcement.

**The Convener:** We should flag up that we are taking an early interest in the matter and that it will be coming to those to whom we are writing. Is there anything else that we should do at this stage to ensure that we have swept up all the issues properly?

**Marilyn Livingstone:** You talked about a letter to local authorities outlining to them what measures can be taken at the moment. In my area, we have found that the most difficult thing is measuring the odour. That difficulty needs to be pointed out. Scottish Water is putting monitors around the site in my area at the moment.
Secondly, the definition of nuisance seems to be quite loose. We need to tighten up how we measure and define nuisance. My constituents who are living with the odour would say that it is a nuisance, but the issue is how the local authority determines nuisance.

I would appreciate it if those points could be clarified.

**The Convener:** Those are important issues to put in front of the ministers. I clarify that my suggestion is that Ross Finnie should write to local authorities to clarify the current legal position, but it is important to put your points about measurement and definition into a letter. The other ministerial letter that we need to write is to the Minister for Communities, and, out of courtesy, we should copy that letter to the convener of the Communities Committee. Des McNulty, as a local member, also requested that we write to the convener of the Finance Committee to recommend that the issue be addressed.

That is a lot of letter writing, but it is quite a concrete way in which we can flag up the issues. We will make a judgment on the responses that we get from the ministers and decide whether we are happy with them or whether we feel that we need to take ownership of the issue and appoint a reporter.

**Des McNulty:** I want to pick up on a point that Marilyn Livingstone made. There is an issue about the method of measuring odours and the standard that is set for that. There is also a related issue about having a cordon sanitaire around such plants, which is to do with how close they should be to residential and other areas. Planning is the other way in which the problem can be dealt with. It is probably worth flagging up that we want both those issues to be considered.

**The Convener:** We certainly picked up that issue during our waste inquiry. As members will be aware, we identified the need for minimum distances between new landfill sites and such areas, and suggested that the minister should adopt that.

I think that we have swept up all the issues that are raised by the petition for today. I hope that members of the Communities Committee will be able to read the *Official Report* of today’s meeting and will realise that we were persuaded by the arguments that people have made, which need to be acted on. That picks up on Susan Deacon’s point.

*Are we agreed on the way forward for the petition?*

**Members** indicated agreement.

**The Convener:** I thank members—especially visiting members—for their comments.
Dear Ross

ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

Thank you for your response to my letter dated 16 September which related, in part, to petition PE517 on noxious odours from Seafield waste water treatment works. The Committee considered your response at its meeting on 19 November. I enclose a copy of the relevant extract of the Official Report of the meeting for your information.

The Committee also considered petition PE645 for the first time at this meeting. This petition raises similar concerns to those in petition PE517, but in relation to waste water treatment works in Kirkcaldy. The Committee agreed to consider these petitions together due to the broad similarities in subject matter. In addition, the Committee noted its previous decision to incorporate consideration of issues relating to noxious odours from landfill sites (raised in PE541 and PE543) as part of its consideration of PE517.

The Committee acknowledged your commitment to consider further legislation once the appeal currently before the House of Lords is decided. However, the Committee believes that the House of Lords judgement will not resolve all of the issues, regardless of its outcome.

Having considered the concerns raised by the petitions and by other examples cited by a number of Members, it has become clear that the problem initially flagged up to the Committee by petition PE517 is not an isolated issue. Indeed, the amount of evidence before the Committee on this subject appears to indicate general inadequacies within the current system for the regulation of odour nuisance in Scotland. The Committee considers that a
number of issues exist, both with regard to the immediate management and regulation of existing facilities and with regard to the longer term legislative framework and the approach to the development of new facilities.

**Local Authority Enforcement**

The Committee discussed the regulation of waste water treatment works by local authorities, noting that only one abatement notice has been served in response to odour nuisance since 1999. Again, the Committee acknowledges the importance of the House of Lords judgement in determining the enforcement powers available to local authorities. However, in the short term, the Committee agreed that it may be worthwhile reinforcing to local authorities the existing statutory powers available to them in relation to the control of noxious odours. The Committee therefore requests that you write to local authorities conveying this information.

The Committee noted that local authorities may encounter difficulties measuring odour nuisance, and that this may hinder their capacity to monitor odour from waste water treatment works effectively. The Committee also noted that a local authority’s definition of the level at which an odour constitutes a ‘nuisance’ may differ from the views of local residents living in close proximity to landfill sites and waste water treatment works.

The committee would be grateful if you would provide it with information on the current methods for measuring odour utilised by local authorities and any problems encountered with these methods. In addition, the Committee would be grateful for clarification as to the exact definition of ‘nuisance’ upon which local authorities base their regulation of odour levels.

**Scottish Water**

Members suggested that the investment and funding regime for Scottish Water may not be allocating an appropriate level of funding to tackling the problem of odour nuisance. Members suggested that odour nuisance does not seem to be ranked as an investment priority at present, perhaps due to a number of other significant pressures on Scottish Water’s finances.

The Committee agreed that the investment and funding regime for Scottish Water ought to take account of the need for better odour control. I would be grateful for your views on this issue. You may wish to note that, I have written to the Convener of the Finance Committee inviting the Finance Committee to consider this issue within its current investigation into the funding regime for Scottish Water.

The Committee also agreed to request that you consider the need for higher odour control standards in any forthcoming consultation with Scottish Water, the Water Industry Commissioner and SEPA on quality and standards. I am also copying this letter to the Water Industry Commissioner and SEPA for information.
Water Services (Scotland) Bill

In considering your previous response to the Committee on PE517, the Committee noted that the outstanding appeal currently awaiting consideration in the House of Lords does not preclude the Executive from consulting on or initiating legislative change to address problems relating to odour regulation.

The Committee considers that the forthcoming proposed Water Services Bill provides a suitable opportunity for the Executive to legislate to address the issues raised above. The Committee intends to consider issues raised by petitions PE517 and PE645 within its scrutiny of the Bill. I would therefore urge you to address these issues and the concerns of the Committee comprehensively during the early development of the Bill.

Planning

Issues were also raised during the meeting in relation to permitted development rights. It was suggested that Scottish Water, as a public body, is subject to less stringent constraints within the planning application process in comparison with other developers. It was also suggested that there is currently no legislative obligation on Scottish Water to provide notification of proposals to develop existing waste water treatment works.

As outlined above, the Committee is aware that local authorities may experience difficulties enforcing planning conditions relating to odour nuisance. However, apparent weaknesses in the planning system would seem to compound this problem.

Another concern raised at the meeting in connection with planning related to the approval of planning applications for waste water treatment works in close proximity to residential areas. For example, petition PE645 states that Kirkcaldy waste water treatment works was built ‘a stone’s throw’ from housing.

As you are aware, the Committee recommended in its report on the National Waste Plan that you give consideration to amending the Landfill (Scotland) Regulations 2003 to specify a minimum distance which must be maintained between new landfill developments and residential areas. The Committee requests that you consider adopting a similar approach in relation to new waste water treatment works, revising existing legislation to specify a minimum distance.

The Committee believes that these issues should be addressed within the forthcoming Planning Bill. I have therefore written to the Minister for Communities (copied to Johann Lamont MSP, Convener of Communities Committee) highlighting the above points on planning applications and developments. I would be grateful if you would liaise with the Minister for Communities in order to provide a co-ordinated response to the Committee on these issues.

I have undertaken to provide the Committee with a regular update on the progress of all petitions referred to the Committee. I next intend to do so in
late January 2004. I should therefore be grateful if you could let me have your comments on all of the above points by 8 January.

I look forward to hearing from you.

Yours sincerely

Sarah Boyack MSP
Convener

Cc Chief Executive, SEPA
Water Industry Commissioner

Enc Extract of *Official Report* 19 November 2003
ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

The Committee considered petitions PE517 and PE645 on noxious odours from waste water treatment plants at its meeting on 19 November. I enclose a copy of the relevant extract of the *Official Report* of the meeting for your information.

Having considered the concerns raised by the petitions and by other examples cited by a number of Members, it has become clear that the problems flagged up by petitions PE517 and PE645 are not isolated issues. Indeed, the amount of evidence before the Committee on this subject appears to indicate general inadequacies within the current system for the regulation of odour nuisance in Scotland.

The Committee considers that a number of issues exist, both with regard to the immediate management and regulation of existing facilities and with regard to the longer term legislative framework and the approach to the development of new facilities.

Issues were raised during the meeting in relation to permitted development rights. It was suggested that Scottish Water, as a public body, is subject to less stringent constraints within the planning application process in comparison with other developers. It was also suggested that there is currently no legislative obligation on Scottish Water to provide notification of proposals to develop existing waste water treatment works.

The Committee is aware that local authorities may experience difficulties enforcing planning conditions relating to odour nuisance due to practical problems such as difficulties measuring odour. However, apparent weaknesses in the planning system would seem to compound this problem.
Another concern raised at the meeting in connection with planning related to the approval of planning applications for waste water treatment works in close proximity to residential areas. For example, petition PE645 states that Kirkcaldy waste water treatment works was built ‘a stone’s throw’ from housing.

The Committee recommended in its recent report on the National Waste Plan that the Minister for Environment and Rural Development give consideration to amending the Landfill (Scotland) Regulations 2003 to specify a minimum distance which must be maintained between new landfill developments and residential areas. The Committee requests that the Executive considers adopting a similar approach in relation to new waste water treatment works, revising existing legislation to specify a minimum distance.

The Committee considers that the proposed Planning Bill provides a suitable opportunity for the Executive to legislate to address the issues raised above. I would urge you to address these issues and the concerns of the Committee comprehensively during the development of the Bill.

I have also written to the Minister for Environment and Rural Development on this matter. The Minister is due to respond to these issues by 8 January. I would be grateful if you would liaise with the Minister in order to provide a co-ordinated response to the Committee on these issues.

You may wish to note that I have copied this letter to Johann Lamont MSP, the Convener to the Communities Committee.

Yours sincerely

Sarah Boyack MSP
Convener
Dear Allan

ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

You will recall that I wrote to the Minister for Environment and Rural Development and the Minister for Communities on 27 November 2003, detailing a number of concerns regarding the regulation of odour nuisance.

In the letters I requested that the Minister for Environment and Rural Development liaise with the Minister for Communities to provide the Committee with a co-ordinated response outlining the Executive’s position in relation to these issues. This response was requested by 8 January in order to allow the Committee to consider the petitions at a meeting at the end of January. Following a request from Executive officials, the Clerk to the Committee then agreed a two week extension to this deadline.

As you know, I undertake to provide Committee Members with a regular update on the progress of all petitions referred to the Committee. As the Executive response has been outstanding for the past two months, the Committee has not had the opportunity to consider these petitions for a considerable period.

The Committee is very conscious that the petitioners have all been subject to odour nuisance for long periods of time. In addition, the Committee is concerned that the amount of evidence on this issue suggests general inadequacies within the current system for the regulation of odour nuisance. For these reasons, the Committee is keen to return to its consideration of these petitions, as soon as is practicable.
I would be grateful if you could ensure that the Committee receives this response as soon as possible together with an explanation of the reasons for the delay in providing this response.

I look forward to your prompt response.

Yours sincerely

Sarah Boyack MSP
Convener

cc Susan Deacon MSP
PETITION PE604

PE604 By Mr Andrew S Wood calling for the Scottish Parliament to establish a Scottish Independent Greyhound Racing Regulatory Body.

Introduction

1. The petitioner is concerned for the welfare of dogs involved in greyhound racing in Scotland. The petitioner suggests that there is a lack of:
   - provision for veterinary checks at most greyhound race courses in Scotland;
   - a method for tracing the movements of greyhounds between either race tracks or owners;
   - provisions for the welfare of retired greyhounds; and
   - any requirements for owners to declare how they disposed of or retired dogs.

2. The petition calls for the Scottish Parliament to establish an independent regulatory body, accountable in its actions to the Parliament and democratically elected from all groups with an interest in greyhound racing. The petitioner believes that the role of this body should be to oversee greyhound sport and the welfare of the dogs involved during and following their racing careers.

Progress of Petition PE604

3. The Environment and Rural Development Committee considered this petition at its meeting on 19 November 2003.

4. Members noted that the Executive's Partnership agreement includes a commitment to introduce a Protection of Animals Bill. Members also noted that the Minister for Environment and Rural Development had stated in previous correspondence with Public Petitions Committee that the Executive did not intend to make specific reference to greyhounds in the proposed legislation.

5. The Committee agreed to consider the issues relating to the welfare of greyhounds raised by the petition during its consideration of the proposed Protection of Animals Bill. The Committee also agreed to write to the Minister for Environment and Rural Development requesting information on the timescale for the introduction of the Bill and asking for his views on whether the issues raised in the petition could be addressed in the Bill.

6. The Committee agreed to conclude consideration of the petition on this basis and write to inform the petitioner of its decision.

Executive Response

7. The Minister's response states that the Scottish Executive plans to introduce an Animal Health and Welfare Bill during the next session of Parliament. Members may wish to note that, following this response, Executive officials
have confirmed with the clerks that the Executive now intends to introduce the Bill during this parliamentary session.

8. The response notes that concern has been expressed from a number of sources about the welfare of racing greyhounds, particularly at unlicensed race tracks. The response also notes that this is an area currently under investigation and, working with Defra, the Scottish Executive is obtaining information about the facilities and conditions at all race tracks in Scotland.

9. The response indicates that the Executive will be consulting on its plans for welfare legislation in the Spring of 2004 and will give serious consideration to including provisions to ensure that the welfare needs of all racing greyhounds are met, both at tracks licensed by the National Greyhound Racing Company and the unlicensed tracks in Scotland.

10. That consultation has now been published and views are invited on:
   - whether greyhound racing courses should be licensed in animal welfare terms;
   - whether a veterinary surgeon needs to be present at all greyhound races, and whether all dogs should be inspected by a vet before and after each race;
   - whether a limit should be placed on the frequency that dogs can race; and
   - what responsibility should be placed on the dog owner to ensure that the welfare of the dog is covered when its racing career is over.

   The consultation closes on 2 July 2004.

11. The response from the Minister is reproduced at Annex A.

Further Action

12. As noted above, the Committee has now concluded consideration of this petition. Members may wish to note the positive response from the Minister, and agree to monitor the progress of the Scottish Executive’s consultation on the Bill in due course.
Thank you for your letter of 4 December about Petitions PE 449, 604 and 653.

PE 449

Allan Wilson wrote to you on 27 October to bring you up-to-date on the work being taken forward by a research group led by SNH, with representation from the Scottish Gamekeepers’ Association and other countryside interests. The detailed specifications have now been agreed by the Group and the contract will be let early in the New Year. I expect its findings to be conveyed to your Committee by the end of 2004 and I understand that you are content with that approach.

PE 604

The Scottish Executive plans to introduce an Animal Health and Welfare Bill during the next session of Parliament. Concern has been expressed from a number of sources about the welfare of racing greyhounds, particularly at unlicensed race tracks. This is an area currently under investigation and, working with Defra, the Scottish Executive is obtaining information about the facilities and conditions at all race tracks in Scotland. We shall be consulting on our plans for welfare legislation in the Spring of 2004 and will give serious consideration to including provisions to ensure that the welfare needs of all racing greyhounds are met, both at tracks licensed by the National Greyhound Racing Company and the unlicensed tracks in Scotland.

PE 653

I note the Committee’s position on this petition. I can confirm that the Scottish Agricultural College have the preparation of a business plan in hand.

ROSS FINNIE
Environment and Rural Development Committee

European Union Issues - Update

Background

1. The Committee has previously agreed an approach to gathering information on relevant EU issues and legislative proposals, and integrating those into its work programme discussions. The volume of EU material relevant to the Committee’s remit is very significant, and awareness of European legislation may be helpful in relation to a large portion of the Committee’s referred work, such as primary and secondary legislation.

2. However, the Committee has agreed that its workload means that it has to be selective in undertaking detailed consideration of any EU issues on its own initiative (e.g. by undertaking inquiries). The Committee has therefore agreed that the Convener should provide an update on relevant issues approximately quarterly as the basis for work programme decisions. This is the second such update.

Recent Committee activity on EU issues

3. Following consideration of the first quarterly update on 3 December 2003, the Committee wrote to the Minister seeking further written information on a number of issues. The Committee then took oral evidence from the Minister and Deputy Minister at its meeting on 14 January 2004. The Committee used that session to take evidence on the outcome of the December Agriculture and Fisheries Council meeting as well as pursuing other specific issues of interest identified from the December update.

4. At its meeting on 25 February the Committee took oral evidence from the Deputy Minister on Scottish priorities for the Irish Presidency of the European Council, which began on 1 January 2004. Prior to this meeting the Executive provided a written briefing outlining its priorities for the presidency period.

5. In addition, the Committee is currently undertaking an inquiry into the implementation of the CAP reform, and has recently considered a number of statutory instruments directly relating to implementation of EU agricultural and fisheries policy as well as environmental regulation. Members may recall that the Scottish Executive was requested to provide an indicative case study of the implementation of a European regulation, in order to allow the Committee to more fully understand the process that the Department undertakes. This work is currently in preparation and is expected to form part of the next European update to this Committee.

Relevant current issues

6. As noted above, there are a large number of EU legislative proposals which are relevant to the Committee’s remit. The paragraphs below outline a number of current issues (along with a short note on their current status and their likely impact on Scotland or on the work of the Committee). This is not an exhaustive list, but a selection of some major items, and includes updates on some which were identified in
the previous paper on 3 December 2003. The list contains a mixture of items – some of which are at an early stage of development or not yet concluded at EU level, and others which are concluded at EU level and await domestic implementation.

a) **Environment**

**6th Environmental Action Programme (EAP)**

7. A strategic framework for the European Commission’s work programme on environment issues for the period until 2010 is set out in the [6th EAP](#). A mid-term review of this Programme is due in 2006. One key part of the Programme is the development of seven thematic strategies, as a method of tackling environmental issues which are thought to require a holistic approach because of their complexity and the need to find multiple and innovative solutions. Each strategy begins as a non-legislative communication and consultation programme, with a final strategy and any necessary legislative proposals likely to develop at a later stage. The ‘thematic strategy’ approach aims to improve participatory policy-making. The strategies are at different stages of development. Two currently worth noting are:

a) In May 2003 the Commission adopted a [Communication](#) entitled ‘Towards a thematic strategy on the prevention and recycling of waste’. The Committee’s inquiry report on the National Waste Plan contributed to consultation on this. A final strategy is expected to be produced in September 2004.

b) On 11 February 2004, the Commission adopted a [Communication](#) entitled ‘Towards a Thematic strategy on the Urban Environment’. There will be extensive consultations on this approach during 2004, including an open internet consultation (lasting until 15 April 2004), and a final strategy is expected to be produced in summer 2005. Although it is not a legislative proposal, the European Parliament and Council will still give opinions on the communication document. The main challenges identified in the communication are: urban management, transport, building and sustainable town planning. The proposals include a requirement for capitals and urban areas of over 100,000 population to adopt an urban environmental management plan, to set targets, and establish systems to implement the plan. They are also urged to establish and apply a sustainable urban transport plan. The Commission seeks consultation responses, including views on the social, economic and environmental aspects to be included in developing an extended impact assessment for the strategy.

**Chemicals policy**

8. The Commission presented a major [proposal](#) for a new regulatory framework for chemicals on 29 October 2003. This proposed system (called REACH) would replace over 40 existing Directives and Regulations. It aims to improve the protection of human health and the environment while maintaining the competitive and innovative capability of the EU chemicals industry. The Committee received further briefing on this proposal from the Executive prior to oral evidence from the Minister on 14 January 2004. The proposal is for a Regulation, which will be directly applicable in UK law without the need for subordinate legislation to transpose it. It will be agreed by co-decision of the European Parliament and the Council. At present the proposal remains at an early stage in the EU legislative process. Policy debates are expected at both the Competitiveness Council and the Environment Council in May and June, with agreement some way off. In due course Scottish subordinate legislation may be required to implement enforcement and infringement measures.
Environmental liability

9. The Council and the European Parliament agreed on a Directive on environmental liability at the end of March. National implementing legislation to bring it into force will be required by mid 2007. The Directive will standardise rules on environmental liability throughout the EU, so that companies or other operators will face similar laws in every EU country on their responsibility to prevent environmental damage or to pay for it to be cleaned up. This legislation is a response to a series of disasters in recent decades, including oil spills such as the Amoco Cadiz, the Erika and the Prestige. It implements the ‘polluter pays principle’. Its fundamental aim is to hold operators whose activities have caused environmental damage financially liable for remediying this damage. In addition, the Directive holds those whose activities have caused an imminent threat of environmental damage liable to taking preventive actions. The Commission will, if appropriate, propose legislation setting up a standardised compulsory financial guarantee scheme, particularly if cost-effective insurance for companies does not develop. Further details of how the regime will operate are available in a Commission press release.

Waste Electrical and Electronic Equipment (WEEE) Directive

10. In January 2003 Directive 2002/96/EC was agreed. This major Directive aims to promote re-use, recycling and other forms of recovery of electrical and electronic waste. Subordinate legislation will be required to transpose this into UK law by 13 August 2004. If this is done by a separate Scottish instrument it is likely to be considered by the Environment and Rural Development Committee. The Committee considered this Directive on 14 January and wrote to the Minister, seeking information on the Executive’s approach to transposition of this Directive, and its practical preparations for implementing it. The Executive indicated that it was consulting stakeholders on implementation and gave no final decision on transposition.

Proposed Batteries Directive

11. In November 2003 the Commission adopted a Proposal for a new Batteries Directive, which will require the collection and recycling of all batteries placed on the EU market. It aims to prevent spent batteries ending up in incinerators or landfills and therefore to recover the various metals used in batteries. This will be subject to the co-decision procedure, and is still in its early stages. Subordinate legislation (which is likely to be considered by the Environment and Rural Development Committee in due course) will be required to transpose this into UK law. The Committee also considered this Directive on 14 January and wrote to the Minister, seeking information on the progress of this proposal, and its practical preparations for implementing it. The Executive indicated that it was too early to consider preparations for implementation, and that it was likely to approach transposition in conjunction with the other UK administrations.

Bathing water Directive

12. In October 2002 the Commission adopted a proposal for a revised Directive concerning the quality of bathing water which sets a higher health standard than the existing 1976/160 Directive. It will be decided by the co-decision procedure and is likely to require subordinate legislation to be transposed to UK law. However, discussion at the December Environment Council did not produce any consensus, and it is not expected to progress in the first half of 2004.

13. The Scottish Parliament debated protecting bathing water quality on 4 December 2003. Members may also wish to note that the Executive has recently issued a
consultation paper on proposals for a bathing water identification strategy, which relates to the EU legislative framework.

**Groundwater directive**

14. In addition to the existing measures for the protection of groundwater against pollution caused by certain dangerous substances, groundwater protection is also a feature of the Water Framework Directive. Article 17 of that Directive requires that, on the basis of a proposal from the Commission, the European Parliament and the Council shall adopt specific measures to prevent and control groundwater pollution by defining common criteria on good chemical status and on quality trends. In September 2003 the Commission adopted a proposal for a Groundwater ‘daughter’ Directive to meet that requirement. This is subject to the co-decision procedure, and is likely to require Scottish legislation to implement it in due course. It is not expected to make substantial progress in the first half of 2004.

**b) Fisheries**

**Cod and haddock management regime**

15. The Committee has previously taken evidence on the outcome of the Agriculture and Fisheries Council in December 2003, including decisions on the management of cod and haddock stocks via quotas and a days-at-sea scheme. The Committee has also considered subordinate legislation implementing some of these measures.

16. The days at sea scheme has been included as part of the long-term cod recovery plan (see below). On quotas, the low cod quota set for 2003 was maintained for 2004. In 2003, the haddock quota had also been cut following scientific advice on the effects of catching cod and haddock together in a mixed fishery, although the haddock stock itself is relatively abundant. A key objective for the UK delegation in the negotiations for fishing quotas for 2004 was to separate the management of cod and haddock, and obtain a higher haddock quota. The UK successfully negotiated an increased haddock quota, but with conditions attached. 80% of the haddock quota had to be caught and landed by vessels carrying a special permit. The main condition of the permit is that these fish are caught outside a “cod protection area”, consisting of 46 ICES statistical rectangles, mainly in the North North Sea. Vessels fishing with a special permit cannot retain on board more than 5% by weight of cod as a proportion of their catch.

17. The Deputy Minister indicated to the Committee and the Parliament that negotiations were continuing over possible revisions to the measures. In answer to an emergency Parliamentary oral question on 1 April 2004, the Deputy Minister outlined the resulting revised proposals from the Commission. The Commission proposes that 10 ICES rectangles be removed from the western side of the area, and 7 new rectangles be added in the eastern part of the area, 6 of which are within Norwegian waters. The proportion of the UK haddock quota which must be taken with a permit would also be lowered from 80% to 66%. Further non-permit quota will be made available to Nephrops fishermen who take haddock as a bycatch. Finally, the Commission has agreed that haddock caught outside the cod protection area before the permits were introduced can be treated as if they were caught with a permit. This latter change has allowed the Executive to reopen haddock fisheries which had been closed. These proposals are due to be discussed at the Agriculture and Fisheries Council on 26-27 April. These will emerge as a directly applicable Regulation decided by the Council. However, some revised subordinate legislation may be required.
Long-term cod recovery plan
18. In February a Regulation setting out a long-term cod recovery plan for the North Sea, west of Scotland and other areas was agreed. The Regulation has direct effect in the UK. It is the first of the multi-annual management plans for stocks which were envisaged by the reformed Common Fisheries Policy (CFP). It provides for a method of calculating quotas based on safe biological limits for the stock, and then relates management of fishing effort to this. This is regarded as a way to de-politicise the negotiations over quotas. It also limits fishing effort by restricting fishing days of boats which catch cod. For 2004, fishing days will be those set by the 2004 TACs and quotas Regulation. The number of days will be adjusted according to scientific advice on fishing effort.

Regional Advisory Councils
19. In October 2003 the Commission presented a proposal setting out a common framework for Regional Advisory Councils (RACs). The creation of RACs is one of the main pillars of the reform of the CFP. The aim of these bodies is to strengthen dialogue by increasing the involvement of stakeholders in the CFP decision-making process. The structures of the RACs will be adapted to the characteristics of the fisheries and fishing areas concerned. The Commission proposal sets out the elements that will be common to all of them: the rules governing their creation, membership, structure, functioning and financing. Depending on the time of adoption of the present proposal, the first RACs could start operating in 2004, with a RAC covering the North Sea expected to be one of the first. The Scottish Executive issued a consultation (which closed on 6 February 2004), to help inform its position on this proposal.

Darwin Mounds
20. At the March Agriculture and Fisheries Council a Regulation was agreed protecting deep-water coral reefs in the area 180 km north-west of Scotland (known as the ‘Darwin Mounds’). The measures prohibit the use of bottom trawls and similar fishing gear, aiming to protect unique cold water corals which, according to scientific advice, are threatened by bottom trawling. Emergency measures to protect these reefs were put in place in August 2003 for an initial period of 6 months before being extended to August 2004. The present Regulation makes these measures permanent.

21. The Secretary of State for the Environment, Food and Rural Affairs, Margaret Beckett MP stated in October 2001 (http://www.defra.gov.uk/news/2001/011023a.htm) that the protection of the Darwin Mounds was a priority. A DEFRA consultation on designating the Darwin Mounds as the first offshore candidate Special Area of Conservation (cSAC) closed on 5 December 2003. DEFRA has also consulted on Regulations (“Offshore Marine Conservation (Natural Habitats &c. Regulations”) which would allow the Habitats and Birds Directives to be applied beyond the 12-mile limit. DEFRA cannot designate the Darwin Mounds until these Regulations are in place, which is likely to be in the summer of 2004. The protection of the “Darwin Mounds” and any other areas of deep-sea coral that lie beyond the limit of Scottish territorial waters is a reserved matter, as under the Scotland Act 1998, “Scotland” does not include waters beyond the 12 mile limit.

Enforcement of fisheries rules
22. The Commission’s annual report on serious infringements of the rules of the CFP in 2002 was published in December 2003. In December the Commission also announced that it was taking action against the UK and Spain for poor enforcement of
fisheries rules. UK fisheries departments launched a consultation on 10 March 2004 on proposals for improved fisheries monitoring, control and surveillance in response to the concerns raised by the European Commission and others. Comments were sought by 16 April.

23. The European Council has also decided to site the EU Fisheries Inspection Agency in Vigo in Spain. This Agency is intended to deliver the level-playing field on enforcement that fishermen have called for and to encourage better compliance with CFP rules. The Commission intends to submit a formal proposal for the creation of the Agency in March.

c) Agriculture

CAP reform package
24. In June 2003 the framework for the mid-term review of the Common Agriculture Policy was agreed by the Agriculture and Fisheries Council. The Committee is currently engaged in an inquiry examining the Scottish Executive’s decisions on implementing the reforms. Detailed implementing regulations have recently been agreed.

25. Related to this is the development of the EU financial perspective for 2007-13, and the options for reform of the scope and funding of the Rural Development Regulation for the same period. These will have fundamental implications for the development of Scottish agriculture, and can be returned to in future updates, following the conclusion of the current Committee inquiry.

Transport of live animals
26. In July 2003 the Commission adopted a proposal on the protection of animals during transport. It introduces improved enforcement measures and much stricter rules for journeys of more than 9 hours (including journeys within Member States) which mirror other EU legislation governing the time that drivers can spend on the road. This is subject to the consultation procedure, and decided by qualified majority voting in Council. There has been considerable controversy over the correct balance between business needs and animal welfare considerations. It is anticipated that political agreement on a compromise text put forward by the Irish Presidency may be reached at the Agriculture Council on 26-27 April. It is expected to be in force by the end of 2005. Some subordinate legislation will be required to introduce rules on penalties for infringements and for other operational provisions ancillary to the Regulation.

Sheep identification
27. In December 2002 the Commission adopted a proposal for a Regulation on the identification and registration of sheep and goats. The proposal was designed to reinforce current measures, specifically by introducing gradually in all Member States an identification system to mark each animal, making it possible to trace the individual movements of sheep and goats. This is part of ongoing efforts to prevent the spread of animal diseases.

28. The main difficulty with the proposal for Scotland was that it would have required the tag numbers of individual sheep to be read and recorded manually each time they were moved. At peak times of year there may be hundreds of thousands of sheep moved around Scotland in the space of a week. Farmers’ representatives contended that the existing system of recording the movement of batches of animals could deliver sufficient traceability needed in the case of a disease outbreak pending the implementation of electronic tagging. Following its meeting on 3 December 2003, the
Committee wrote to the Minister in support of the Executive’s view that the details of the proposals were unworkable. The Regulation was formally agreed at the December Agriculture Council. The compromise agreed will allow recording of the movement of batches of sheep, rather than individuals. This allows the existing Scottish system to remain, but it will be audited by the Commission.

29. The Regulation sets a date of 1 January 2008 for the compulsory introduction of electronic tagging (though it would remain optional for Member States with less than 600,000 sheep or 160,000 goats for animals not intended for export). The Regulation also provides that the Commission will make a proposal by the 30 June 2006 on the implementation of electronic tagging. The Regulation specifies that the proposal could extend the 2008 deadline if necessary, or change the technical requirements for electronic tagging which the Regulation establishes. Subordinate legislation will be required to introduce rules on penalties for infringements and for other operational provisions ancillary to the Regulation.

Summary

30. The Committee is invited to note the work on EU issues which is already being conducted by this Committee and the Parliament.

31. The Committee is also invited to consider whether it wishes to undertake any further work on any of the issues mentioned at paragraphs 7-24 above (or on any other EU issue). If so, the Committee is invited to consider whether it wishes to:

- authorise the Convener to seek a detailed briefing from the Minister on any topic of particular interest;
- request further information and detailed options for further consideration of any particular issue from the Convener as part of future work programme discussions.

Sarah Boyack MSP
Convener
April 2004
Annex

EU timetable for 2004–05

Members may also wish to note the following calendar highlighting some key events in 2004 and early 2005:

**April**
Report on progress towards renewable energy directive targets

**May**
Enlargement of the Union to 25
10 Commissioners without portfolio (1 from each accession state) join the College of Commissioners
Revision of the EU Sustainable Development Strategy
Proposals for the EU’s next financial perspective after 2006 (which the Commission proposed should have sustainable development as its political centre of gravity)

**June**
Report on the implementation of the EU forestry strategy
European Parliament Elections

**July**
The Netherlands takes over the Presidency of the EU

**September**
Thematic Strategy on Waste Recycling and Prevention
Thematic Strategy on Soil Protection
Thematic Strategy on the Sustainable Use of Pesticides

**November**
New Commission of 25
Priorities for 2005 announced

**December**
European Council

**January 2005**
Luxembourg takes over the Presidency of the EU

**End 2004 – Mid 2005**
The Commission will make a proposal to replace the Rural Development Regulation which will establish the rules for spending from the EU budget on this from 2007-13

**June 2005**
Target date for political agreement in the European Council on the financial perspectives for 2007-13 (including fixing the EU contribution for rural development)

**July 2005**
United Kingdom takes over the Presidency of the EU
Finance Committee

Stage 1 of the 2005-06 Budget Process

Guidance to Subject Committees

1. At the first stage of the annual budget process, the terms of which have been approved by the Parliament, subject committees are asked to consider and report on the future spending priorities within their responsibilities. At this stage, there is little scope to reallocate resources for 2005-06 and as this is a Spending Review year, Committees are asked to consider their priorities for the period to 2007-08.

2. The new Annual Evaluation Report (AER) is in a revised format. The Finance Committee had recommended that the format should be altered and this has been accepted by the Executive. This revised format refocuses Stage 1 on strategy and performance issues as originally envisaged in the Financial Issues Advisory Group (FIAG) report, and recognises the centrality of the Spending Review process in planning and allocating resources. The AER now contains a new statement of strategy and priorities; an assessment of performance against the portfolio targets set out in previous budgetary documents; and an updating of the expenditure plans for 2005-06. As this is a novel approach, Committees will recognise it has further scope for improvement.

3. In particular, Committees should recognise that it has not been possible to provide a financial report, as the first year of the SR2002 Budget cycle – 2003-04 - only ended on 5 April. The Finance Committee will discuss with Ministers how this can be included in future years. In addition, the targets too only represent an interim report as these were set to cover the period to 2005-06 and beyond, in some cases. Finally, the AER has no sections covering portfolio priorities, what the Budget does, and what the Executive will do with the money as these will appear in the Draft Budget in September/October. Committees can, however, refer back to Draft Budget 2004-05 as necessary.

4. Those developments apart, the arrangement whereby the Executive will cost any specific spending options Committees want to pursue, if these go beyond the simple identification of Levels 2 and 3 programmes as priorities, will continue. Parliament’s recommendations will be discussed by Cabinet in the summer. The Finance Committee will assess Committee recommendations against the revised budget strategy. Subject Committees should ensure that their advisers are aware that whilst they may raise process issues in their advice, the format of the documents needs to be consistent with the agreement between Parliament and the Executive, and responsibility for the process remains with the Finance Committee.
5. The Finance Committee recognises that there may be budgetary issues which are internal to their subject area, and Committees can address these directly with the Ministers concerned. The Finance Committee, however, shall receive a corporate response from the Executive regarding the overall issues raised in its Stage 1 Report. It would therefore welcome responses from the subject Committees on the undernoted key questions:

- Is the Committee satisfied that progress has been made over any outstanding issues made in its recommendations last year?

- In the context of the 2005-06 budget, does the Committee wish to recommend any realignment of resources within the Departmental Expenditure Limit (DEL)*? Committees should note that any increase proposed for programmes must be balanced by a compensating reduction from other programmes within their portfolio.

- In the context of the forthcoming Spending Review which is expected to provide for a lower rate of growth in real terms than SR2002, which programme(s) should be given priority in the allocation of resources? If Committees recommend more than one programme (at Level 2 or 3) these should be ranked and the case for the priority made. If the Committee feels any programme should be a low priority within the portfolio, it should state which and why. Finally, if the Committee wishes to identify a specific proposal below Level 3, it can do so, and the Executive will cost this if necessary.

- As the Executive’s budget strategy has been extensively revised and focussed on crosscutting themes, the Committee’s view on this approach and its relevance to its responsibilities would be welcome. In short, is the Committee content with the new strategy?

- The performance reporting material sets out progress so far against portfolio targets. How does the Committee view that progress; does it consider the targets are challenging enough and are they appropriate?; and does it feel there are any gaps in the targets?

- What written evidence is available to the Committee in making its recommendations, and from which individuals and organisations did it take evidence?

* Committees will notice there have been significant increases in Annual Managed Expenditure (AME) but this is ring-fenced
1. At its meeting on 30th March the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds within its remit.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

   Environment and Rural Development  
   SSI 2004/112  
   SSI 2004/118

The Special Waste Amendment (Scotland) Regulations 2004 (SSI 2004/112)

Background
3. The Committee asked the Executive to explain what is meant by “producer return” in new regulation 15A(5) inserted into the principal Regulations by regulation 10.

4. The Executive has replied that the reference to “producer return” was a mistake. As the error may possibly have the effect of imposing of additional administrative burden on existing special waste producers, which is not the policy intention the Executive intends to bring forward amending Regulations as soon as possible and in any event before the relevant part of the above Regulations comes into force. The Executive’s reply is reproduced at Appendix 1.

Report
5. The Committee draws the attention of the lead committee and the Parliament to the above Regulations on the grounds of defective drafting in the above respect, acknowledged by the Executive.

The Dairy Produce Quotas (Scotland) Amendment Regulations 2004 (SSI/118)

Background
6. The Committee asked the Executive three questions on these Regulations.

Question 1
7. Regulation 16(5) (conversion of quota) of the principal Regulations refers to regulation 12(6) of those Regulations for a definition of “exceptional circumstances”. Regulation 9 on page 3 of the present Regulations replaces regulation 12 in its entirety but does not re-enact paragraph (6) nor is regulation 16 amended to remove the reference to that paragraph. The Executive was asked to explain the effect of the removal of the definition in paragraph (6) on the interpretation of regulation 16.
8. The Executive has confirmed that this was a drafting error that the Executive will correct in the next amending instrument of the principal Regulations. The Executive’s reply is reproduced at Appendix 6.

Report 1

9. In the light of the Executive’s reply, the Committee reports the instrument on the grounds of defective drafting as above, acknowledged by the Executive.

Question 2

10. The Committee asked why regulation 2 (interpretation) was thought necessary, given that the principal Regulations are referred to only once in the Regulations.

11. The Executive acknowledges the point made by the Committee, but as the inclusion of regulation 2 has no impact on the substance of the Regulations the Executive does not consider that an amending instrument is necessary.

Report 2

12. While the Committee agrees that the inclusion of regulation 2 does not affect the substance of the Regulations, unnecessarily wordy, repetitive and complicated drafting is not good legislative practice and is to be avoided.

13. The Committee therefore reports the Regulations on the grounds of failure to follow proper legislative practice in the above respect.

Question 3

14. The Committee noted that there is no extent provision in this instrument although the instrument is made under an Act of the UK Parliament and extends throughout the UK. The principal Regulations do however have a full extent provision and therefore it is arguable that as a result no such provision is needed in amending Regulations. However, practice within the Executive seems to vary in this respect, with some amending instruments including extent provisions and others not. The Executive was therefore asked to explain its policy in this respect.

15. The Executive explains that it is the Executive’s practice to include an extent clause when the extent of the instrument is not already obvious from the enabling powers or the instrument being amended.

Report 3

16. The position in law is perhaps not quite as obvious as the Executive claims. Even although the principal Regulations state that they extend only to Scotland, this does not necessarily mean that the amending instrument is so limited. Nonetheless, the Committee accepts that there is nothing in the present Regulations that would imply an intention that they should extend beyond the limits set out in the principal Regulations. The Committee therefore simply draws the attention of the lead committee and the Parliament to the Executive’s response as providing the information requested.
Appendix 1

THE SPECIAL WASTE AMENDMENT (SCOTLAND) REGULATIONS 2004
(SSI 2004/112)

In its letter of 23 March 2004 the Committee requested an explanation of the following-

“The Committee asks the Executive to explain what is meant by “producer return” in new regulation 15A(5) inserted into the principal Regulations by regulation 10.”.

The Scottish Executive responds as follows:

The Executive is grateful to the Committee drawing our attention to this matter. Regulation 2(10) of SSI 2004/112 inserts into the principal Regulations, a new regulation 15A. This regulation transposes, in part, Article 4(2) of Council Directive 91/689/EEC on hazardous waste and Article 14 of Council Directive 75/442/EEC on waste, and requires a producer of special waste to maintain adequate records of waste management activities. The reference to “producer return” reflects a proposal that envisaged the submission of certain information regarding special waste produced being submitted to SEPA on a periodic basis, by way of a quarterly return (the “producer return”). This approach was not pursued, however, and unfortunately the reference to producer return in the final version of the Regulations was not omitted, as was intended.

The inclusion of this phrase has no practical effect, meantime, as the relevant part of the Regulations is not to come into force until 1 July 2004.

The Executive intends to correct this error at the earliest opportunity, and certainly before 1 July 2004, in order to avoid the possibility of additional administrative burden an existing special waste producers.

Scottish Executive

Appendix 6

THE DAIRY PRODUCE QUOTAS (SCOTLAND) AMENDMENT REGULATIONS, (SSI 2004/118)

1. On 23rd March the Subordinate Legislation Committee asked the Executive for an explanation of the following matters.

2. “The Committee notes that regulation 16(5) (conversion of quota) of the principal Regulations refers to regulation 12(6) of those Regulations for a definition of “exceptional circumstances”. Regulation 9 on page 3 of the present Regulations replaces regulation 12 in its entirety but does not re-enact paragraph (6) nor is regulation 16 amended to remove the reference to
that paragraph. The Executive is asked to explain the effect of the removal of
the definition in paragraph (6) on the interpretation of regulation 16.”

The Executive is grateful to the Committee for raising this point. A
requirement for a further amendment to the principal Regulations is currently
being considered. An amendment to rectify this oversight will be included in
the next amending instrument of the principal Regulations.

3. “The Committee asks why regulation 2 (interpretation) was thought
necessary, given that the principal Regulations are referred to only once in the
Regulations.”

The Executive acknowledges the point made by the Committee, but as the
inclusion of regulation 2 has no impact on the substance of the Regulations
the Executive does not consider that an amending instrument is necessary.

4. “The Committee notes that there is no extent provision in this
instrument although the instrument is made under an Act of the UK
Parliament and extends throughout the UK. The principal Regulations do
however have a full extent provision and therefore it is arguable that as a
result no such provision is needed in amending Regulations. However,
practice within the Executive seems to vary in this respect, with some
amending instruments including extent provisions and others not. The
Executive is therefore asked to explain its policy in this respect.”

The principal Regulations contain the following extent provision in regulation
1:

“(2) Subject to paragraph (3), these Regulations extend to Scotland only.
(3) In so far as these Regulations extend beyond Scotland in accordance with
regulation 2, they do so only as a matter of Scots Law.”

The Committee has noted that the present instrument does not require an
extent provision and that no extent provision has therefore been included.

In terms of the Executive’s general policy, it is the Executive’s practice to
include an extent clause when the extent of the instrument is not already
obvious from the enabling powers or the instrument being amended.

Scottish Executive Environment and Rural Affairs Department
ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

I refer to your letters of 27 November and 3 December, to Mr Finnie and Ms Curran, on behalf of the Environment and Rural Development Committee about various odour control issues raised by the Committee at its meeting on 19 November. Ms Curran and I acknowledge the concerns raised and as you requested I am responding to your questions on this issue.

With regard to local authority enforcement, you requested that the Minister for the Environment and Rural Development write to local authorities reinforcing the existing powers available to them. On the basis of information gathered by my officials, it would appear that all local authorities are aware of the present position. However to make the present position absolutely clear to local authorities, my officials plan to write to local authorities in the near future on this issue.

With respect to the appeal process in the House of Lords, we understand that the House of Lords has not yet decided to whether to allow the appeal by Thames Water to be heard. It is envisaged that a decision whether to allow this appeal will then be made by the House of Lords by March. If the House of Lords does grant leave to appeal, we do not expect a final ruling until November 2004 at the earliest.

As you already know the Executive is not waiting until the result of the appeal to take appropriate action, and is proceeding with the production of a Voluntary Code of Practice. Scottish Water, local authorities, the Water Industry Commissioner and SEPA will be involved in this process with a view to the draft Code being put to public consultation this summer. The Code will confirm the present legal position, and set out procedures agreed with operator and enforcer to resolve odour issues.
You observe that only one abatement notice under the section 80 of the statutory nuisance provisions of the Environmental Protection Act 1990 has been served in Scotland since 1999]. However I understand that Edinburgh City Council has served a total of six notices on Seafied waste water treatment works, and that Argyll & Bute Council have served two notices, one against Rothesay waste water treatment works, and one on Bi-water Leslie due to odour emissions generated during commissioning works. SEPA supplied information last September which illustrated there were some 28 investigations being undertaken in 2002-03 at waste water treatment works in Scotland. The present situation at Seafied, is that Scottish Water have appealed against the timescales imposed in the last abatement notice served.

As to your questions on methodology and definition of nuisance, my officials advise through feedback from Environmental Health Officers (EHOs) that EHOs use their nose to establish whether a statutory nuisance has occurred. The measurement is based on the officer’s experience. The relevant definition is contained in section 79(1) (d) of Part III of the Environment Protection Act 1990 as “any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance.” It must be noted there is no such thing as an odour free waste water treatment works, but odours can be minimised with correct planning, operating and monitoring and enforcement controls.

With regard to your points on the relevant priority of odour control within Scottish Water’s investment and funding regime, I can advise that funding has or will be provided for the period 2002/03 to 2005/06 for the delivery of Quality and Standards II. We accept your Committee’s request that the Executive consider the need for higher odour control standards in future Q&S III consultations with the appropriate authorities.

You further raise the issue of the Executive initiating legislative change using the forthcoming Water Services and Planning Bills. The Scottish Ministers consider neither of these Bills to be the appropriate legislative vehicle for dealing with this matter. Nevertheless in order to address the concerns of the Committee, and if the House of Lords does allow the appeal by Thames Water, we would propose to publish a consultation on future legislative options, to accompany the proposed Voluntary Code of Practice consultation in March. This will enable the Executive to move quickly to consider further legislation if the House of Lords ruling is for inapplicability.

We would certainly wish to involve SEPA in any consultation to introduce improved odour control standards from waste water treatment works. Waste water treatment works that meet certain criteria (including capacity) will fall within the scope of the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC) on a phased basis over the next few years. Plants regulated under PPC will be strictly controlled by SEPA and will be required to use best available techniques to prevent or minimise pollution, including offensive odour. While SEPA will continue to regulate waste water treatment works (WWTW) under PPC to BAT standards, it would be advantageous to have SEPA’s input into whether there are practical steps that could be taken to improve standards in order to minimise the risk of odour.

Local authorities remain the main bodies responsible for the monitoring and enforcement of odour control from WWTW through the statutory nuisance provisions and planning process. SEPA has no authority to regulate odours arising from sewage works unless there is a waste management licence (WML) attached to the site. A small proportion of WWTWs have such a licence, usually regulating operations involving the disposal or recovery of sewage sludge. In the future, some larger sewage works will also be brought under PPC. The threshold in the PPC relates to the disposal of non-hazardous waste in plant with a capacity exceeding 50 tonnes per day by biological or physicochemical treatment, which results in final mixtures or compounds which are then discarded. In these
cases, as with permits for landfill sites, SEPA will have the power to include conditions relating to odour.

In relation to your comments about the planning aspects, we should firstly say that it is a long established principle that the land use planning system should not be used to duplicate other statutory controls or to regulate activity more appropriately controlled by other legislation. The dividing line between planning and environmental controls is not always clear, but as a general principle the planning system should focus on whether the development itself is an acceptable use of land and, where necessary, regulate the location of development. The weight to be attached to matters such as pollution or nuisance through the planning process will depend on the scope of any other, perhaps more relevant, regulatory controls in place. Of course, granting planning permission for a development would not imply a guarantee that any other relevant consent would be forthcoming. In this regard, the Executive is currently carrying out research into the interaction between planning and environmental regulation. This will identify strengths and the causes and impacts of any weaknesses in the way they interact and should also identify possible solutions to any weaknesses.

Potential odour problems can be considered at planning application stage, particularly through an environmental impact assessment. Where appropriate, conditions can be attached to new planning permissions on matters such as design specifications and location where the purpose is to avoid or mitigate potential odour issues. The power to attach conditions must be exercised carefully, and on a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In this respect, there are six key tests for the validity of conditions. These are that conditions should only be imposed where they are (1) necessary, (2) relevant to planning, (3) relevant to the development to be permitted, (4) enforceable, (5) precise and (6) reasonable in all other aspects. As with planning controls generally, conditions need to relate to clear land use planning objectives and should not be used to duplicate controls available under other legislation.

Where conditions are attached to a planning permission, there are a range of enforcement powers available to planning authorities to ensure those conditions are complied with. These include serving enforcement notices or breach of condition notices requiring particular action to be taken, serving stop notices or seeking interdicts to prevent particular activity from continuing, or taking direct action to remedy breaches of planning control. To make such actions feasible, any particular conditions would need to meet the six criteria identified above. Planning enforcement action would not be an appropriate method to control odour where relevant planning conditions have been complied with but, nevertheless, odour remains an issue.

You have suggested that Scottish Water is subject to less stringent planning procedures. Scottish Water, like all developers, requires to meet necessary planning requirements, whether that be by applying for planning permission or in certain circumstances by carrying out development which is deemed to be 'permitted' by the planning system. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GFDO), as amended, grants a general planning permission across Scotland for a broad range of developments which, because of the nature of the proposals, would almost without exception be granted. In effect, this removes the need to obtain planning permission from the planning authority in the defined circumstances and applies to all developers. These ‘permitted development’ rights are necessary to ensure we have an efficient planning system where resources within planning authorities can be appropriately allocated and developers, and indeed individuals, are not hampered unnecessarily by the planning system. A mechanism exists whereby planning authorities can withdraw certain permitted development rights within designated areas, subject to confirmation by Ministers. For the most part permitted development rights apply to either relatively minor developments (such as house extensions), proposals in relation to existing development, or to development required by statutory undertakers in carrying out their duties. These include permitted development in the circumstances set out in Class
43A of Schedule 1 of the GPDO (extract attached as Annex A) in relation to sewerage undertakings. In effect, this allows Scottish Water to carry out works such as the construction of a control kiosk for a pump station or monitoring station (within defined size limits) without the need to apply for planning permission. Before exercising these permitted development rights, Scottish Water must give at least 28 days notice to the planning authority that it intends to carry out the development. Permitted development does not of course allow Scottish Water to operate any part of the facility without complying with any other necessary (non-planning) regulatory requirements. As noted above, other developments by Scottish Water, not subject to permitted development rights, require to follow the usual planning process.

You mention your recommendation in your Committee's report on the National Waste Plan that the Landfill (Scotland) Regulations 2003 be amended to specify a minimum distance between new landfill developments and residential areas. The Executive responded to this report on 14 January, but for convenience the main and relevant points are set out below.

The Scottish Executive has addressed issues of siting and odour in the 2003 Regulations. These Regulations provide that all landfills, both new and existing, will be permitted not (as at present) under the Waste Management Licensing Regulations 1994 (as amended) but under the more stringent PPC Regulations (again, as amended). New landfills will be permitted under the PPC Regulations from the outset, whereas existing landfills will have to have a PPC permit by 31 March 2007 (or 16 July 2009 in the case of the smallest installations).

The 2003 Regulations make a number of stipulations about the content of the permit. In terms of location, Schedule 3 paragraph 1(1) lists a number of factors which must be taken into consideration. One of these, sub-paragraph (a) is "the distances from the boundary of the site to residential and recreational areas, waterways, water bodies and other agricultural or urban sites". It was not considered appropriate to put definitive limits on these distances in the context of the 2003 Regulations, since they are a matter that is properly to be considered in the context of the individual application for a permit. It may also be that this distance will vary with local circumstances, such as topography, prevailing winds etc. Planning considerations will also separately apply, but Regulation 5 which states that planning permission may be granted only where the requirements of Schedule 1 paragraph 1(1) have been taken into consideration. These same factors for not specifying a minimum distance can apply in considering the proximity of waste water treatment plants to residential areas.

To conclude, both the Scottish Executive and Scottish Water recognise that there are continuing but manageable problems relating to odour control from waste water treatment works, and are working together to resolve these issues. Scottish Water and its predecessor organisations have introduced odour abatement technology where appropriate and have developed odour management plans for the larger waste water treatment facilities. However over the past 5-10 years odour has become a very emotive subject, due to increased awareness of odour, the increased production of new works to achieve EC legislative obligations and partly due to changing patterns and intensity of rainfall and increasing temperatures. The Executive do intend to work with Scottish Water in future Quality and Standards III discussions, and with the WIC, local authorities and SEPA to produce a Voluntary Code of Practice to best resolve odour control problems. The Executive will advise local authorities of the current legal position and will also consult on future legislative change this summer, if the House of Lords allow the appeal from Thames Water to be heard.
I hope this response goes some way to alleviating your Committee and the Public Petitions and Finance Committee's concerns on the issue of odour control.

[Signature]

ALLAN WILSON
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (SCOTLAND) ORDER 1992

EXTRACT

SCHEDULE 1

CLASSES OF PERMITTED DEVELOPMENT

PART 13

DEVELOPMENT BY STATUTORY UNDERTAKERS

Sewerage undertakings

Class 43A. — (1) Any development relating to sewerage by a sewerage authority or by a person authorised under section 3A of the Sewerage (Scotland) Act 1968 in relation to that development, being—

(a) development not above ground level required in connection with the provision, improvement, maintenance or repair of a sewer, outfall pipe or sludge main or associated apparatus; or

(b) development consisting of the erection, construction, maintenance, improvement or other alteration of

(i) a control kiosk for a pump station or monitoring station, where the control kiosk does not exceed 6 cubic metres in volume, 2 metres in height, 3 metres in width or 1 metre in depth;

(ii) a sewer pipe which is supported on pillars or a truss above ground to maintain a gradient and which does not exceed 1 metre in height;

(iii) a raised manhole cover or sampling chamber which does not exceed 1 metre in height or 1 metre in width;

(iv) a vent pipe which does not exceed 3 metres in height; or

(v) a concrete head wall for sewer discharge pipes which does not exceed 1.5 metres in height, 1.5 metres in length or 0.5 metre in depth.

(2) Development is permitted by this class subject to the condition that not less than 28 days before the beginning of operations the sewerage authority or, as the case may be, the person authorised under section 3A of the Sewerage (Scotland) Act 1968 shall give notice in writing to the planning authority of its intention to carry out the development, identifying the land under or on which the development is to take place.