The Committee will meet at 9.30 am in Committee Room 1 to consider the following agenda items:

1. **Water Inquiry (in private):** The Committee will consider possible lines of questioning for witnesses on its inquiry into water and the water industry.

*Not before 9.45 pm*

2. **Declarations of Interests:** The Convener will invite new members of the Committee to declare any relevant interests.

3. **Item in Private:** The Committee will decide whether to take item 7 in private.

4. **Subordinate Legislation:** The Committee will consider the following negative instruments—

   - The Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430)
   - The Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000 (SSI 2000/432)

5. **Water Inquiry:** The Committee will take evidence as part of its inquiry into water and the water industry from—

   - Scottish Environment Protection Agency
   - Caroline Davies, Wetland Policy Officer, RSPB Scotland (Scottish Environment Link)
   - Ian Findlay, Director of Conservation, Scottish Wildlife Trust (Scottish Environment Link)
6. **Telecommunications Developments:** The Committee will consider its response to the Scottish Executive’s consultation on proposed changes to permitted development arrangements for telecommunications developments.

7. **Water Inquiry:** The Committee will consider possible fact-finding visits to be undertaken in connection with the inquiry.

Shelagh McKinlay  
Clerk to the Transport and Environment Committee  
Room 2.02, Committee Chambers  
0131 348 (8)5208  
e-mail Shelagh.McKinlay@scottish.parliament.uk

The following papers are relevant for this meeting:

<table>
<thead>
<tr>
<th>Committee covering note on the Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430) Agenda item 4</th>
<th>TE/01/1/1</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430), plus Executive note Agenda item 4 (previously circulated)</td>
<td>TE/01/1/2</td>
</tr>
<tr>
<td>Committee covering note on the Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000 (SSI 2000/432) Agenda item 4</td>
<td>TE/01/1/3</td>
</tr>
<tr>
<td>The Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000 (SSI 2000/432), plus Executive note and regulatory impact assessment Agenda item 4 (previously circulated)</td>
<td>TE/01/1/4</td>
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<tr>
<td>Submission by Scottish Environment Protection Agency Agenda item 5</td>
<td>TE/01/1/5</td>
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<tr>
<td>Submission by Scottish Environment Link Agenda item 5</td>
<td>TE/01/1/6</td>
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</tbody>
</table>

Members may wish to bring to the meeting copies of the SPICe Research Note RN 00/111 on the Scottish Executive Consultation Telecommunications Developments, and the Executive’s consultation on proposed changes to permitted development arrangements for telecommunications developments – these have previously been circulated.
1. The Financial Assistance for Environmental Purposes (Scotland) Order 2000 (SSI 2000/430) was laid on 30 November 2000. The Parliament has designated the Transport and the Environment Committee as the lead committee for the consideration of this instrument. An Executive note accompanies the Regulations.

2. The order was laid under a "negative procedure" which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 26 January 2001.

3. Any MSP may lodge a motion to propose to the lead committee that the order be annulled. The Committee is required to report on the instrument by 22 January 2001. Consequently any member who wishes to lodge a motion to annul the instrument must do so in advance of the meeting on 17 January 2001. Should a motion for annulment be lodged, under Rule 10.4, the Transport and the Environment Committee must debate the issue and then report to the Parliament with its decision.

4. The instrument sets up a specific grant scheme which will allow the payment of capital and revenue grants to local authorities and others for activities which will contribute towards the implementation of the National Waste Strategy: Scotland.

5. The Local Government Committee was designated a secondary committee on the instrument. The Committee considered the instrument at a meeting on 9 January 2001, and had no recommendations to make on the instrument.

6. The Subordinate Legislation Committee considered this instrument at its 35th meeting on 5 December 2000. The Committee agreed to raise points with the Executive on the instrument. The Committee considered the instrument again at its 36th meeting on 12 December 2000 and subsequently reported on the instrument in its 46th Report (SL/00/46R). The relevant extract from the report is attached as an Annex to this note.

Alastair Macfie
Assistant Clerk
Transport and Environment Committee
January 2001
EXTRACT FROM 46TH REPORT (2000) OF THE SUBORDINATE LEGISLATION COMMITTEE

The Financial Assistance for Environmental Purposes (Scotland) Order 2000, (SSI 2000/430)

The instrument amends section 153(1) of the Environmental Protection Act 1990 to enable the Scottish Ministers to give financial assistance towards the grant scheme known as the Strategic Waste Fund.

The Committee noted that the instrument provides for the granting of financial assistance from public funds towards projects that could conceivably affect trade between Member States. The Committee therefore asked the Executive to confirm that any necessary steps had been taken and clearance from the European Commission obtained to ensure that the proposals are in accord with EC rules on State Aids in so far as they may be relevant.

The Executive explained in its response, reprinted at Appendix C, that the Order adds to the list of organisations and programmes to which financial assistance may be given. The Executive further explained that it is aware of its obligation to comply with the EC rules on state aid and will ensure that the obligation, insofar as it may be relevant, is complied with when assistance is given to, or for the purposes of, the Strategic Waste Fund programme.

The Committee therefore draws the attention of the Parliament and the lead committee to the Executive’s response as providing the explanation requested.

APPENDIX C

THE FINANCIAL ASSISTANCE FOR ENVIRONMENTAL PURPOSES (SCOTLAND) ORDER 2000(SSI 2000/430)

On 5 December 2000 the Committee asked the Executive to confirm that any necessary steps have been taken and clearance from the European Commission obtained to ensure that the proposals are in accord with the EC rules on State Aids in so far as they may be relevant.

The Scottish Executive responds as follows-

The Order adds to the list of organisations and programmes to which financial assistance may be given. The Executive is aware of its obligation to comply with the EC rules on state aid and will ensure that the obligation, insofar as it may be relevant, is complied with when assistance is given to or for the purposes of the programme known as the Strategic Waste Fund.

Date: 7 December 2000 for the Scottish Executive Rural Affairs Department
1. The Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000 (SSI 2000/432) was laid on 30 November 2000. The Parliament has designated the Transport and the Environment Committee as the lead committee for the consideration of this instrument. An Executive note and a regulatory impact assessment accompany the Regulations.

2. The order was laid under a "negative procedure" which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 26 January 2001.

3. Any MSP may lodge a motion to propose to the lead committee that the order be annulled. The Committee is required to report on the instrument by 22 January 2001. Consequently any member who wishes to lodge a motion to annul the instrument must do so in advance of the meeting on 17 January 2001. Should a motion for annulment be lodged, under Rule 10.4, the Transport and the Environment Committee must debate the issue and then report to the Parliament with its decision.

4. The Regulations bring into force the Enforcement Notice provisions at sections 49A and 49B of the Control of Pollution Act 1974 in order to provide SEPA with an additional tool to tackle non-compliance with conditions of consent. The Regulations also provide for appeals against enforcement notices and for information relating to such notices to be included in the appropriate registers.

5. The Subordinate Legislation Committee considered this instrument at its 35th meeting on 5 December 2000. The Committee agreed to raise points with the Executive on the instrument. The Committee considered the instrument again at its 36th meeting on 12 December 2000 and subsequently reported on the instrument in its 46th Report (SL/00/46R). The relevant extract from the report is attached as an Annex to this note.

Alastair Macfie
Assistant Clerk
Transport and Environment Committee
January 2001
EXTRACT FROM 46TH REPORT (2000) OF THE SUBORDINATE LEGISLATION COMMITTEE

The Control of Pollution (Registers and Consents for Discharges) (Secretary of State Functions) Amendment Regulations 2000, (SSI 2000/432)

The Regulations make provision in relation to the enforcement of conditions applicable to consents for discharges of potentially polluting matter into controlled waters. In particular, it provides for appeals against enforcement notices issued under section 49A of the parent Act as amended by the Environment Act 1995 and for the recording of prescribed particulars in the appropriate register.

The Committee noted that the title in the heading did not correspond with the title in regulation 1.

The Committee noted that the footnote (a) on page 1 did not indicate relevant amendments to the primary legislation and in particular to an enabling power, section 41 of the 1974 Act.

In the footnote (a) on page 3 the Committee noted that the quoted amendment is stated as not being relevant and refers to "Order" rather than "Regulations".

In its response, reprinted at Appendix A, the Executive explained that the discrepancies are drafting errors. The Executive pointed out that none of the errors are contained in the body of the Regulations and proposed that the necessary adjustments will be made before the Regulations are printed in the annual volume.

The Committee therefore draws the attention of the Parliament and the lead committee to the instrument on the grounds of defective drafting, though not affecting the substance of the instrument, acknowledged by the Executive.

The Committee noted that any appeal under the Regulations is to be to the Scottish Ministers or to a person delegated by them under section 114 of the Environment Act 1995. The Committee considered SEPA to be party to any such appeal and noted that, although it is a statutory body, the Scottish Ministers appoint and have powers to dismiss the members.

In light of recent decisions of the Scottish Courts, where it has been held that appeals to the Scottish Ministers in cases where they could be said to have an interest lack the necessary independence to satisfy Article 6 of the ECHR, the Committee asked for clarification on how the appeal provisions are considered to be compatible with Article 6 of ECHR.

The Executive replied that it is not of the view that the matter covered by sections 49A and 49B is necessarily determinative of civil rights and obligations under Article 6. The Executive further explained that, in its view, the appeal set out in section 49B, in all the circumstances, taken together with the availability of judicial review, would afford sufficient protection in Article 6 terms.
The Committee notes the Executive’s view that 49A and 49B are not necessarily determinative of civil rights and obligations under Article 6 of ECHR and accepts the Executive’s position that the Regulations afford sufficient compatibility with Article 6 of ECHR.

The Committee therefore draws the attention of the Parliament and the lead committee to the response of the Executive as providing the explanation requested by the Committee.

THE CONTROL OF POLLUTION (REGISTERS) AND (CONSENTS FOR DISCHARGES) (SECRETARY OF STATE FUNCTIONS) AMENDMENT REGULATIONS 2000 (SSI 2000/432)

On 5 December 2000 the Committee asked the Executive –

1. Why the title in the heading does not correspond with the title in regulation 1.

2. Why the footnote (a) on page 1 does not indicate relevant amendments to the primary legislation and in particular to section 41 of the 1974 Act.

3. Why the footnote (a) on page 3 is stated as not being relevant and refers to "Order" rather than " Regulations".

4. For clarification on how the appeal provisions are considered to be compatible with Article 6 of ECHR, particularly in light of current case law."

The Scottish Executive responds as follows-

Questions 1, 2 and 3
The Executive is grateful to the Committee for raising these points. The discrepancies mentioned are simply drafting errors. None of them are contained in the body of the Regulations and it is proposed that the necessary adjustments will be made before the Regulations are printed in the annual volume.

Question 4
The Committee will be aware that that the case County Properties v the Scottish Ministers has been appealed. The Executive does not agree that the matter covered by sections 49A and 49B is necessarily determinative of civil rights and obligations under Article 6. However, and in any event, the Executive is of the view that the appeal set out in section 49B, in all the circumstances, taken together with the availability of judicial review, would afford sufficient protection in Article 6 terms.

for the Scottish Executive Rural Affairs Department
6 December 2000
**Water and the Water Industry**

Evidence to the Transport and Environment Committee from Scottish Environment LINK

*LINK’s evidence at this stage of the Inquiry focuses on general environmental issues rather than technical details relating to the water industry and the new Water Framework Directive. LINK would be keen to give further evidence on the Water Framework Directive in the second stage of the inquiry.*

**Water: more than a commodity**

Water is not a commercial product like any other - it has its own natural system and balance. It is an irreplaceable natural resource which must be passed onto future generations. Consideration and any reform of the water industry must take into account the impacts on natural water systems.

The water which comes out of our taps is essentially an integral part of our environment. Providing good water quality for household and business use means looking after the whole water system - not just the pipes and sewage facilities. It means ensuring good stewardship of our rivers, lochs, and seas and of the species which depend on these invaluable habitats.

**Healthy water, healthy Scotland**

For Scotland’s economy, environment and society to stay healthy, clean water is vital. As well as wildlife, tourism, beaches and industry depend on clean water.

Wetland habitats, such as bogs, marshes and peatlands, have been polluted or damaged throughout Scotland due to factors such as agricultural intensification, inappropriate development on floodplains, and insensitive river engineering. Species such as the water vole, freshwater pearl mussel, salmon - priority species in the Government’s Biodiversity Action Plan - and wading birds like redshank and lapwing have suffered population declines as a consequence of pollution and mismanagement.

Recent flooding has been exacerbated by widespread land drainage. The loss of flood plains and their sponge-like capacity to hold back water has lead to increased flooding in downstream areas.

**Solutions**

Prevention is better than cure, and pollution is no exception.

More holistic and sympathetic systems of water and land management are needed, which works with, rather than against natural ecosystems. Clean, well managed water is vital for Scotland’s environment, economy and society - it is often cheaper, and better for the environment, to use naturally functioning rivers and reedbeds to filter out pollutants rather than build expensive effluent treatment systems.

Likewise, it makes economic and environmental sense to use floodplains to store floodwater unhindered -such as at Insh Marshes in Strathspey - rather than build ever-higher flood defences at astronomical cost. Of course, proper policies and incentives need
to be in place to allow this to happen - but there can be no doubting that this is better for the environment, and cheaper to the public purse.

It is essential that the environment is central to the current debate on the water industry. Whatever the system of ownership or control it is vital that suppliers are not allowed to cut environmental corners - rather, they should be building environmental goals into their business. Environmental protection and enhancement must be a responsibility, not an afterthought.

Good water management is possible. East of Scotland Water’s “Watermark” initiative - the Authority’s five-year commitment to improve the environment of rivers and coastal areas, aims to ensure water quality through a combination of conservation and sound land management. However, such work needs to be a normal way of working rather than a special project. This will mean a change in the water industry - for example, away from the expensive treatment of polluted water towards up-front investment in the prevention of water problems.

**The EU Water Framework Directive**

The recently adopted Water Framework Directive offers an opportunity for us to take a fresh look at water management, and the role of the water industry. We hope to give more detailed evidence on the opportunities and implications of the Directive for Scotland at the second stage of this Inquiry, but in a nutshell, it will require all factors which influence water quality to be addressed with the aim of the majority of waters in Scotland achieving “good ecological status”. It will also introduce a much more participative system than currently exists with the development of statutory River Basin Management Plans.

There are many questions yet to be addressed and The Executive and SEPA are undertaking much valuable research at present in preparation for transposition into Scottish law. However, we are optimistic that implementation of the Directive will provide for important environmental enhancements and safeguards, offer more certainty to business users of water, and ensure that communities and individuals benefit from water management. In short, it will encourage us to work together to manage water as a heritage, rather than as a commodity.

**Conclusions**

- the water industry, in whatever form, must have a duty to protect and enhance the environment
- it is cost effective for the water industry to work with, rather than against, natural systems
- appropriate incentives will be essential to achieve this level of integration
- the Water Framework Directive provides an important opportunity to deliver sustainable water management.

Scottish Environment LINK, January 2001

*Scottish Environment LINK is the liaison body for voluntary organisations interested in ensuring a sound future for Scotland’s environment. There are 38 member bodies representing approximately half a million people in Scotland.*
Scottish Environment Link have also expressed an interest in the following areas of questioning:

How pursuing an environmental approach to water management might be more effective, and more cost-effective, than investment in infrastructure such as water treatment plants and flood defences.

How to reduce the regulation burden on industry which might arise from the Water Framework Directive.

How the Committee intends to progress the general points raised during the meeting.
Scottish Environment Protection Agency
Transport and Environment Committee - 17 January 2001

SEPA’s Role with Respect to the Water Authorities

- SEPA is a non-departmental public body responsible via the Scottish Executive to the Parliament. SEPA was formed in 1996 when it took over the environmental regulatory functions with respect to radioactivity, air, waste and water pollution control. In particular, it is responsible for the regulation of Water Authority discharges and their disposal of sewage sludge onto land, to landfill or by incineration.

- SEPA regulates the discharges of sewage effluent through a system of consents, issued under the Control of Pollution Act 1974, with quality conditions set to protect the receiving waters. Monitoring is undertaken by SEPA and in 1999/2000 86% of Water Authority discharges complied with the conditions of the consents to discharge. This independent audit by SEPA is valued highly by the public.

- Additionally, SEPA works with the Water Authorities to prioritise capital investment on new facilities so as to deliver maximum environmental benefit and European Union obligations cost effectively.

- Finally, SEPA works in partnership with the Water Authorities to promote environmental initiatives, such as the Sustainable Urban Drainage Scottish Working Party and promoting waste minimisation/best environmental practice through the VIBES (Vision in Business for the Environment of Scotland) award scheme.

Public Sewerage Facilities and Water Pollution in Scotland

- SEPA considers that the creation of the Water Authorities in 1996 resulted in significant improvements in the provision of water services in Scotland. Their large size has allowed them to become more professional and technically competent and to take a more strategic approach to planning and delivering infrastructure improvements, given adequate financial resources.

- Over 90% of Scotland’s population is provided with public sewage collection and treatment facilities operated by the Water Authorities. In addition, the Water Authorities have responsibilities for the collection and discharge of surface water in urban areas which results from rainfall running off roofs, car parks, etc..

- Inadequately treated sewage effluent discharges and unsatisfactory sewer systems are the dominant cause of water pollution in Scotland. They are the primary cause of:
  - 34% of the 4323 km of polluted rivers - 1466 km
  - 21% of the 95 km² of polluted lochs - 20 km²
  - 92% of the 32 km² of polluted estuaries - 29 km²
  - 89% of the 260 km of polluted coastal waters - 230 km

In addition, sewage pollution is also the most common cause of reported incidence of water pollution, accounting for 29% of all serious pollution incidents.

- Inadequate sewage collection and treatment facilities results in failure to comply with the standards for designated bathing waters and poses a risk to achieving the standards for shellfish waters. However, compliance with the Urban Waste Water Treatment Directive will result in secondary treatment being provided for
48% of Scotland’s sewage which previously discharged to coastal waters with little or no treatment.

- Surface water/urban drainage is typically contaminated by sediment, metals, oil from roads and yards, and sewage from the misconnection of foul drainage into surface water drains. As a result, urban drainage is the fourth most important cause of river pollution, impacting on 493 km.

Adequate Investment
- Under investment in Scotland’s sewerage infrastructure over many years has resulted in inadequate environmental protection and difficulties in complying with European Directives which aim to achieve good environmental standards. The investment level will be the major rate determining factor in the reduction in water pollution in Scotland.

- Consequently, SEPA welcomes the formal approach to planning the investment cycle introduced by the Scottish Executive’s Quality and Standards process. Once the investment level has been set, following public consultation, the Water Industry Commissioner will have an important role in monitoring the expenditure relative to that planned. The Competition Act must not impair the achievement of an adequate investment level in the sewerage infrastructure of Scotland.

- SEPA has concerns that resolving the other major cause of water pollution involving the Water Authorities, namely urban drainage, may not be addressed effectively by the Quality and Standards process.

- In the future, the Water Framework Directive will provide for a flexible and pragmatic system for setting water quality improvement targets involving the production of river basin plans. These plans will address wider issues such as urban drainage, the effects of sludge disposal and water abstractions.

First Time Sewerage
- Universal provision of public sewerage systems is not required. However, for a small number of villages first time sewerage is the only practical means of eliminating water pollution and public health risks. It attracts low priority in Water Authority investment plans and even when it is provided there can be a reluctance by house owners to connect. A highly targeted rural sewerage support scheme is required. The related problem of properties and trade premises disconnecting from public sewerage systems is of growing concern.

Abstraction Control
- There is no effective system of water resource management in Scotland and existing abstractors, such as Water Authorities are at risk from the uncontrolled actions of others. SEPA has recommended to the Executive that such a system be introduced, particularly with the introduction of competition in water services provision.

The future
- SEPA considers that a wide range of environmental benefits will be delivered over the next 10 years as a result of increasing levels of focused investment by the Water Authorities. The improvement in the quality of rivers and beaches in the vicinity of our towns and cities will have major recreational and economic benefits.