TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

22nd Meeting, 2002 (Session 1)

Wednesday 26 June 2002

The Committee will meet at 10.15 am in Committee Room 1, to consider the following agenda items:

1. **Items in Private:** The Committee will consider whether to take agenda items 6 and 7 in private.

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

   - The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002, (SSI 2002/276)
   - The New Water and Sewerage Authorities Dissolution (Scotland) Order 2002, (SSI 2002/277)
   - The Bus Service Operators Grant (Scotland) Regulations 2002, (SSI 2002/289)
   - The Travel Concessions (Eligible Services) (Scotland) Order 2002, (SSI 2002/290)
   - The Home Zones (Scotland) (No.2) Regulations 2002, (SSI 2002/292)

3. **Organic Waste Spread on Land:** The Committee will consider the response of the Scottish Executive to the Committee’s report on Petition PE 327 by the Blairingone and Saline Action Group on Organic Waste Spread on Land.

4. **Polluting Activities in Built-Up Areas:** The Committee will consider a reporter’s paper on Petition PE 377 by Michael Kayes on polluting activities in built-up areas.
5. **Parliamentary Debate:** The Committee will consider whether to seek a debate in the Parliament on its report on the rail industry in Scotland in due course.

6. **Water Environment and Water Services (Scotland) Bill:** The Committee will consider arrangements for its consideration of the Bill at Stage 1.

7. **Rail Inquiry:** The Committee will consider the evidence it has taken.

Callum Thomson  
Clerk to the Transport and the Environment Committee  
Room 3.5, Committee Chambers  
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## SSI Cover Note For Committee Meeting

**SSI title and number:** The Designation of Nitrate Vulnerable Zones (Scotland) Regulations 2002, (SSI 2002/276)

**Type of Instrument:** Negative

**Meeting:** 22nd meeting, 26 June 2002

**Date circulated to members:** 18 June 2002

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 4 September 2002

**SSI drawn to Parliament’s attention by Sub Leg Committee:** No
TRANSPORT AND THE ENVIRONMENT COMMITTEE

SSI Cover Note For Committee Meeting

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Type of Instrument: Negative

Meeting: 22nd meeting, 26 June 2002

Date circulated to members: 18 June 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 4 September 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No
The Subordinate Legislation Committee considered the instrument at its meeting on Tuesday 18 June 2002 and agreed to raise points on the instrument with the Executive. The Subordinate Legislation Committee is due to consider the Executive response to these points at its meeting on Tuesday 25 June 2002.

At the Transport and the Environment Committee meeting on 26 June 2002, the Convener will update members on the outcome of the Subordinate Legislation Committee’s further consideration of the instrument.
SSI Cover Note For Committee Meeting

SSI title and number: The Travel Concessions (Eligible Services) (Scotland) Order 2002, (SSI 2002/290)

Type of Instrument: Negative

Meeting: 22nd meeting, 26 June 2002

Date circulated to members: 18 June 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 4 September 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No
TRANSPORT AND THE ENVIRONMENT COMMITTEE

SSI Cover Note For Committee Meeting

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Type of Instrument: Negative

Meeting: 22nd meeting, 26 June 2002

Date circulated to members: 18 June 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 4 September 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No
Transport and the Environment Committee

Petition PE 377: Polluting Activities in Built-up Areas

Background

At the meeting on 6 June, the Committee considered Petition PE 377. The petition expresses concern about the potential impact on local residents’ health of the concentration of polluting activities, such as toxic dumping and cattle incineration, in the East End of Glasgow. The Committee was particularly concerned about the extent to which the planning system and environmental regulations are meeting local residents’ concerns regarding waste disposal near their homes.

Action taken

In recognition of the Committee’s practise not to take a view on specific local planning issues, the Committee considered that it would appropriate to appoint a report to examine broader questions relating to the application of the planning system and environmental regulations which arise from the petition. At that meeting, the Committee also agreed that the Reporter should write to the Ministers for Social Justice and Environment & Rural Development respectively in respect of some of the issues raised by the petition and comments from members at that meeting. These letters are attached at the annex to this paper.

Proposed Terms of Reference

The reporter will report back to the Committee in respect of—

- the current guidelines on location of incinerators and whether there are any proposals to review the existing guidelines;
- the methods for disposal (incineration or otherwise) of material which may be BSE-infected;
- the level of information which is available regarding the number of BSE-infected cattle which are incinerated at individual operations in Scotland.

Proposed further action

Following the receipt of responses to these two letters, it is intended that the Reporter will seek to undertake a site visit of the operation at Carntyne and also hold a meeting with SEPA officials to discuss areas of concern. It is anticipated that a report will be brought back to the Committee in September.
Recommendation

The Committee is invited to approve—

- the terms of reference for the reporter;
- the action proposed in connection with this petition.

Fiona McLeod MSP
Reporter
PETITION 377: POLLUTING ACTIVITIES IN BUILT UP AREAS

At its meeting on 6 June 2002, the Transport and the Environment Committee considered Petition PE 377 by Michael Kayes on polluting activities in built-up areas.

One of the concerns raised in the petition is the proximity of an incinerator to built-up areas at Carntyne in Glasgow. It is the petitioner's view that the incinerator produces airborne emissions and releases pollutants into the water supply which are detrimental to the health of those living in the surrounding area.

You will be aware that planning approval for the incinerator at Carntyne was initially refused by Glasgow City Council. The Scottish Office then appointed a reporter to look into the planning proposal and went on to approve it at its appeal stage.

At the meeting on 6 June, the Committee agreed to appoint me as a reporter on the petition and that I should write to the Minister for Environment and Rural Development and yourself on issues arising from the petition.

Firstly, members of the Committee were interested in gaining an understanding of the types of circumstances in which decisions of planning authorities are overturned. I appreciate that you will not be able to comment on specific cases but I anticipate that, over the course of time, your officials will have identified some common reasons for successful planning appeals.

Secondly, members wished to understand the nature and status of the current planning regulations in relation to the siting of incinerators. I should be grateful if you could supply me with information on this, particularly with reference to operations which wish to burn animal remains in urban areas.

In the case of Carntyne, it has been argued that the planning permission did not allow for animals clinically confirmed or diagnosed as suffering from BSE to be burned at the plant.
However in a letter to the Committee’s convener, the Chief Executive of SEPA said that SEPA has not specifically prevented the plant incinerating carcasses which are later confirmed or diagnosed as suffering from BSE, as incineration of BSE contaminated carcasses is not a separately identified prescribed process under the Environmental Protection Regulations.

It is argued that the planning conditions may be being circumvented, because incineration has already taken place by the time the results have been received in respect of the BSE tests. So, in cases where positive tests are recorded, cattle are being incinerated at a plant which does not possess the necessary license.

It seems to me that one of the key issues raised by the petition is the interplay between conditions set by the planning permission and the conditions set by the licensing authorisation. In the case of Carntyne, local people clearly feel that the system – in not preventing the possibility of the incineration of BSE-infected cattle – has let them down. I should be grateful for your views on this. I have also written to Ross Finnie on this point.

On the basis that the operation at Carntyne is operating in compliance with the planning permission and licensing conditions, could you let me know what plans exist for a review of planning policy in respect of the siting of incinerators in urban areas?

I should be grateful to receive a response by 19 July. Please copy your response to the clerk to the Committee, Callum Thomson.

I have copied this letter to Dorothy-Grace Elder MSP.

Yours sincerely

Fiona McLeod MSP
Reporter
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At its meeting on 6 June 2002, the Transport and the Environment Committee considered Petition PE 377 by Michael Kayes on polluting activities in built up areas.

One of the concerns raised in the petition is the proximity of an incinerator to built-up areas at Carntyne in Glasgow. It is the petitioner’s view that the incinerator produces airborne emissions and releases pollutants into the water supply which are detrimental to the health of those living in the surrounding area.

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It seems to me that one of the key issues raised by the petition is the interplay between conditions set by the planning permission and the conditions set by the licensing authorisation. In the case of Carntyne, local people clearly feel that the system – in not preventing the possibility of the incineration of BSE-infected cattle – has let them down. I should be grateful for your views on this. I have also written to Margaret Curran on this point.

Furthermore, I should be grateful for your views on what are the safe operating practices for the incineration, or other methods of disposal, for fallen cattle, in particular where there is a possibility of BSE-infection. Do you consider that the current Regulations are adequate in light of the comments from the Chief Executive of SEPA?

The Chief Executive also noted that SEPA had requested information from both DEFRA and the Scottish Executive on the number of carcasses that have been incinerated at Carntyne and have tested positive for BSE. This request was refused and only the total number of carcasses tested in Scotland and, of those, the number of confirmed BSE cases was provided. Why has this information not been made publicly available or, indeed, provided to SEPA when it has responsibility for setting the licensing conditions?

I should be grateful to receive a response by 19 July. Please copy your response to the clerk to the Committee, Callum Thomson.

I have copied this letter to Dorothy-Grace Elder MSP.

Yours sincerely

Fiona McLeod MSP
Reporter
Scottish Executive response to the Transport and the Environment Committee’s report on Petition PE 327.

The Scottish Executive welcomes the opportunity to respond to this report from the Transport and the Environment Committee.

The report considers Petition PE327 from the Blaringone and Saline Action Group on the spreading of sewage sludge and other non-agriculturally derived waste on land. Petition PE327, submitted on 12 December 2000, asked the Scottish Parliament to request that legislation be revised to ensure that public health and the environment are not at risk from the current practice of spreading sewage sludge and other non-agriculturally derived waste on land in Scotland. The Committee agreed terms of reference for its work on the petition, which focussed not just on the specific issues raised by the petition, but on the wider question of the adequacy of the current regulatory and legislative framework for waste disposal in Scotland. This was considered in the Scottish Environment Protection Agency’s (SEPA) Strategic Review of Organic Waste Spread on Land, ‘the OWL Report’, (October 1998) to which the Executive responded (4 January 2001) following public consultation on the OWL report’s recommendations.

The Committee’s report makes a number of recommendations for action and the Executive welcomes the acknowledgement that there has been progress in relation to many of the issues raised in the petition.

1. The Committee recommends that the proposals to amend the Waste Management Licensing Regulations are taken forward with urgency.

The Executive recognises the committee’s concerns about the urgency of this matter and plans to consult on the amendments in 2002.

2. The Committee recommends that the process of consulting on and implementing revised regulations to put the Safe Sludge Matrix on a statutory basis, and a revised Code of Practice be taken forward quickly.
The guidance for livestock farmers, arable farmers and growers in “The Safe Sludge Matrix”, advocated phasing out the use of untreated sewage sludge used on food crops from the end of December 1999 and banning the use of untreated sewage sludge for agricultural purposes from the end of 2001. It introduced a range of cropping and grazing restrictions for the use of two levels of treated sludge. The UK water industry took this guidance on board at the time and pledged to follow it.

The Scottish Executive is currently revising the Sludge (Use in Agriculture) Regulations 1989 to introduce the “Matrix” on a statutory basis and to define the two levels of sludge treatment processes – “treated” and “enhanced treated” sludges. The latter are capable of virtually eliminating any pathogens which may be present in raw (untreated) sludge. The Code of Practice will also be updated at the same time as the regulations.

The Executive is pleased that the Committee welcomes its indication to introduce revised regulations to put the Safe Sludge Matrix on a statutory basis and that it is to revise the Code of Practice. The Executive notes that the Committee recommends that this process is taken forward quickly. A consultation paper on the Executive's proposals will be published in the near future.

3. The Committee welcomes the move to implement the EU Animal By-Products Regulation.

The petitioners were particularly concerned with the practice of spreading blood and gut content from abattoirs on land. The implementation of the EU Animal By-Products Regulation (2000/0259) is expected to address this problem. It will require the treatment of blood and by-products mixed with blood before they can be spread and will only permit the spreading of gut content to non-pasture land. The Regulation was expected in summer 2002, but has been delayed in the European Parliament and is now expected to be implemented in the first half of 2003. In the meantime, the Scottish Executive has commissioned research into treatment methods for blood. This project is due to report in May 2002.

4. The Committee supports SEPA in its objective of strengthening the guidance relating to the storage and spreading of sewage sludge, and hopes that this might reduce the sort of
abuse of the PEPFAA code identified by the petitioners. In particular, the Committee recommends a revision of the PEPFAA Code to include better operational guidance on waste injection.

The Scottish Executive recognises that adherence to the PEPFAA (Prevention of Environmental Pollution from Agricultural Activity) Code needs to be increased. The Scottish Agricultural Pollution Group (SAPG), which assists the Executive with writing the Code, has recently enhanced its membership with a member from NFU Scotland. The Executive will be looking to him in the course of the current revision of the Code to provide a practising farmer’s perspective and to assist with ideas on disseminating the Code’s messages to greater numbers of the farming community. The Executive recognises the increasing reliance on contractors for application of waste to land and the Executive will ensure that contractors are given the opportunity to comment on the revised Code.

The Executive also recognises that the format of the Code needs to be addressed. The Agriculture and Environment Working Group (AEWG), which was established as an Action from the Forward Strategy for Agriculture, is examining as part of its remit the provision of best practice advice. The Group was set up to examine the environmental issues which will impact on farming and food processing businesses in the next 5-10 years and to advise on how best to tackle them. The Group has called for an abbreviated guidance document which would provide best practice advice in a concise and simplified way. The Executive will take on board the Group’s suggestions in its revision of PEPFAA.

The Code currently contains a mixture of sections which have a statutory base for preventing water pollution and others which reflect up to date practical guidance measures. The revised document will attempt to more clearly identify the statutory measures from the non-statutory measures. The Executive has no plans currently for producing a statutory PEPFAA Code.

SEPA has indicated that it will play a positive role in ensuring that environmental protection advice is actively promoted to farmers via the code and aims to improve the overall effectiveness of the code of practice in conjunction with the members of the SAPG.
5. The Committee recommends that a review of injecting waste into land with field drains should be established, and that this review should consider possible changes in regulations in order to address the health and environmental concerns arising from the practice.

This is a particularly difficult question to address as field drains are widespread in Scotland. Many field drains were installed over a hundred years ago and therefore farmers may not always be aware whether they have them and where they are. Consequently, following public consultation on the OWL Report, the Executive concluded in its response to the report that the prohibition of this of this activity would not be taken forward as it is considered impracticable.

However, the Environmental Protection Act (EPA) 1990 and the Control of Pollution Act (COPA) 1974 make it an offence to cause environmental pollution and operators spreading waste to land must therefore take action to prevent it. It is the role of SEPA to initiate enforcement action under EPA 1990 where it can be demonstrated that there has been a failure to meet the terms of an exemption and under COPA 1974 where actual pollution of the environment, for example, of a watercourse has occurred.

The proposed amendments to the Waste Management Licensing Regulations (WMLR) will include a requirement for prior risk assessment of land before the spreading of waste covered by the regulations such as blood and gut content from abattoirs. Such a risk assessment would be expected to include a consideration of the position of field drains and the risk of pollution via this route.

The Committee Report highlighted concerns from the petitioners about run-off from fields following the injection of waste and concerns from SEPA about the impact on the aquatic environment. The Executive too is concerned about environmental damage form this and other potential sources of diffuse pollution. Presently, the PEPFAA Code clearly states that: "wastes should not be applied to areas where there is a risk of direct entry of the waste into the drainage system". The Executive is currently working towards better dissemination of the messages in the Code to greater numbers of the farming community as well as making it clearer and more straightforward.
In addition, as part of the development of a bathing waters strategy to protect bathing waters, the Executive commissioned the Scottish Agricultural College to examine the risks of pollution from agriculture activities in river catchments. The resulting report *Impact of Agricultural Practices and Catchment Characteristics on Ayrshire Bathing Waters*, published in June 2001, identified a number of pollution risks, including handling, storage and spreading of slurries and manures and other livestock management practices. The research suggested measures that farmers and their contractors could adopt to reduce pollution risks significantly. The measures concerned are generally aimed at addressing diffuse pollution sources, but will also reduce the risks of unintentional injection of waste into field drains. The measures could achieve a significant reduction of pollution risks often at no, or very low costs. There are even economic benefits to be achieved by more efficient use of fertilisers. The suggested measures have been grouped into four headings, as follows:

- The drawing up, and use of a risk assessment for manures and slurries and their management by every livestock farm, establishing the quantities of waste produced, and safe methods of collection, storage and spreading to land.
- Nutrient balancing: farm nutrient budgets to go beyond a risk assessment and examine the use of all fertilisers.
- The protection of watercourses and management of adjacent land, notably by establishing a buffer strip of at least 10m between activities such as spreading and open watercourses.
- The undertaking of an assessment of farmyard drainage.

The Scottish Executive has commissioned the College to familiarise farmers in sensitive catchments with these four measures. In the workshops this year, the links with procedures recommended in the PEPFAA Code have been highlighted, as have the potential economic benefits. In the meantime, the College is continuing to research transport and survival of faecal contamination from the field to the sea, research that will take into account field drains and the role they play in the spread of pollution.

The AEWG has stated in its interim report that techniques such as those described above are deserving of wider application. This issue will be considered further by the Executive in the light of the AEWG’s final report.
The Executive’s planned Water Environment and Water Services Bill will also provide for the introduction of regulations to control activities that can cause diffuse pollution to water. That might include, for example, general binding rules to control the environmental impacts of this particular activity. The Executive’s legislative intentions for the water environment provisions in the Bill are outlined in the consultation paper published February this year: "The Future for Scotland’s Waters: Proposals for Legislation". Copies have been placed in SPICE and a copy was sent to every MSP. The Executive plans to introduce the Bill shortly.

6. The Committee recommends that the Scottish Executive should investigate more effective mechanisms for substantiating genuine odour nuisances, with a view to changing the current system so it is more responsive to residents’ complaints.

In addition to the Waste Management Licensing Regulations, statutory controls on nuisance exist in the Environmental Protection Act 1990, with the relevant provisions being extended to Scotland in 1996 by the Environment Act 1995. Under these controls local authorities have the powers to act on nuisance issues and can serve an abatement notice. Such powers can be used, for example, on any premises in such a state so as to be prejudicial to health or a nuisance; in relation to any fumes or gases emitted from premises so as to be prejudicial to health or a nuisance (private dwellings only); with respect to dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance; and in connection with any accumulation or deposit which is prejudicial to health or a nuisance. It is clearly necessary that any abatement requirements placed on an individual or business are based on clear evidence of the nature and extent of the problem. Although substantiating an odour complaint, or any other type of statutory nuisance, may present difficulties, these are inherent to what are often intermittent problems. In the absence of clear technological solutions to these difficulties, and in the light of the need to substantiate complaints, it is the Executive’s conclusion that the current system is the appropriate one.

The Committee may be aware that where a local authority, for whatever reason, does not take action, individuals can take their complaints about a statutory nuisance directly to the Sheriff Court under Section 82 of the Environmental Protection Act 1990. If the residents are unhappy with a local authority’s handling of their complaint, they can make a formal complaint to the Authority’s Chief Executive. Failing a satisfactory response from this course
of action, residents can complain to the Commissioner for Local Administration in Scotland (the Local Government Ombudsman).

It is noted that many of the petitioners’ complaints regarding odour nuisance were concerned with the nuisance caused by spreading of blood and gut content and sewage sludge. It is expected that the proposed improvements to controls on the spreading of these wastes, already outlined in this document, will move towards reducing this nuisance.

7. The Committee recommends that spreading outwith daylight hours should be prohibited.

The Executive has stated, in its response to the OWL report on 4 January 2001, that it views an outright ban on landspreading outwith daylight hours as impracticable. This is due to the short daylight hours in winter and the irregular hours demanded by farming and the Executive has no plans to take this forward at present. In light of the Committee’s recommendation, however, the Executive has asked the Scottish Agricultural Pollution Group to examine this issue as part of its consideration of the revisions of the PEPFAA code. The petitioner’s complaints about traffic noise are an issue for the Local Authority in its competence as the Road Traffic Authority.

8. The Committee recommends that the Executive provides a detailed response to SEPA explaining why the concept of land management plans was rejected, which fully sets out the possible advantages and disadvantages of such plans, and which takes into account the views of all relevant parties.

In its OWL Report, SEPA recommended the introduction of the concept of land management plans, a deliberately wider concept than farm nutrient or waste plans. These would encompass the beneficial and detrimental aspects of all wastes going to farmland as well as incorporating inorganic fertiliser inputs. The Executive’s response to the OWL Report reiterated its commitment to promoting better planning of farm activities to prevent adverse environmental impacts. It also highlighted the good practice advice already provided in the PEPFAA Code. The PEPFAA Code advocates the use of farm waste management plans in order to maximise the nutrient benefits from waste spreading and minimise the risk of pollution.
Much progress has been made to encourage farm planning. The proposed amendments to the Waste Management Licensing Regulations are designed to implement several practices which will contribute towards better planning. These include a requirement for those intending to spread organic wastes to demonstrate to SEPA the agricultural benefit or improvement for animal and plant communities and for wastes to be analysed for chemical and microbiological parameters prior to spreading.

SEPA’s original OWL Report recommendations for land management plans advocate the assessment of not only all wastes going to land but the use of inorganic fertiliser too. The "four-point plan" detailed in section 5 sets out the Executive’s approach to this issue. It is based on the promotion of cost-effective planning and risk management by farmers. It includes a recommendation of farm nutrient budgets which go further than a risk assessment and examine the use of all fertilisers.

A specialist adviser, overseen and funded largely by the Executive and by a steering group of which the Executive is a member, has developed a first draft of guidance on the four-point plan. As indicated in the Executive’s comments on Petition PE327 in September 2001, this project is a partnership between the National Farmer’s Union Scotland, the Scottish Agricultural College, Scottish Natural Heritage, SEPA, WWF, and the Executive. The group has been joined by the Farming and Wildlife Advisory Group (FWAG).

The guidance on the four-point plan will be road tested by farmers with help from NFU Scotland and the Farming and Wildlife advisory Group for a similar exercise. This process also involves ensuring the transfer of technology and the maximum uptake of advice through workshops. This entails training operations level advisors in SEPA, farm quality assurance schemes and SEERAD agricultural staff in the guidance so that they may disseminate it as broadly and effectively as possible. Efforts are also being made by the Executive and the Scottish Agricultural College to direct contractors to this guidance.

The issue of land management planning has also been considered in the Agriculture and Environment Working Group. The Executive will consider it further in the light of the forthcoming report of the group.
9. *The Committee recommends that the terms of reference of the group established by SEPA on Blairingone and the findings of this investigation team, are made available to the Blairingone and Saline Action Group and are made public.*

This is a matter for SEPA to pursue together with other members of the investigation team. The Executive understands that SEPA has asked the investigation team to reconvene and hear evidence from the community on the health effects of the composting and landspreading operations locally. The Chairman of the team has agreed and efforts are currently being made to arrange this. Furthermore, SEPA has asked the team to provide the Committee with information about its proceedings and findings.
SPICe Briefing

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL - OVERVIEW

GRAEME COOK

The Scottish Executive’s Water Environment and Water Services (Scotland) Bill\(^1\) was introduced to the Scottish Parliament on 18 June 2002. The Bill seeks to transpose the Water Framework Directive in Scotland and establishes new rules around financing new water and sewerage network connections. This is the first in a series of 5 bill briefings and gives an overview of the Bill. Others will be produced on particular themes: diffuse and point source pollution, wetlands, river basin management, and licensing.

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INTRODUCTION

The Water Environment and Water Services Bill, introduced to the Scottish Parliament on 18 June 2002 will transpose the Water Framework Directive (WFD) into Scots law. This is the first transposition of a European Community law instrument into Scots law by the Scottish Parliament via primary legislation. The Directive applies principally to freshwater but controls will also extend into the coastal environment. Freshwater can be defined as including rivers, lochs, canals, ports, and, importantly, groundwater.

The first part of the Bill implements the WFD, the second part is unrelated to the WFD, but complements the Water Industry (Scotland) Act 2002, introducing new rules regarding paying for new water and sewerage connections.

Figure 1 - Scotland’s freshwater resource

- 90% of UK resource;
- 30,000 freshwater lochs and ponds;
- 7,000 river systems comprising 109,000 streams;
- ‘artificial waters’ including reservoirs and canals;
- water covers 2% of Scotland; 5% of Highlands & Islands; 10% of Western Isles;
- Most extensive freshwater bodies in UK - largest (Loch Lomond, 71km²), longest (Loch Awe, 41km), deepest (Loch Morar, 310m);
- Volume of Loch Ness (7,452 million m³) exceeds combined volume of all lakes and reservoirs in England and Wales;
- Insh marshes (River Spey) is the largest intact floodplain wetland in UK;
- 60% of the EU's freshwater pearl mussels are found in Scotland.

Water has a great many human uses, including navigation, drinking, agriculture (including irrigation), sewage treatment, electricity generation, industry, and aquaculture. In addition, the water environment supports all wildlife habitats. The nature of water movement means that use of the resource upstream can have very real effects further down the watercourse. Similarly, how we manage land can influence the quality and quantity of water. This means that, to a certain extent, water users rely on the goodwill of others to ensure security of good supply. In addition, engineered waters, such as reservoirs, can be used not only for storing drinking water, but also as conduits for hydroelectric power and flood control.

There is a common view that Scotland’s freshwater resources are pristine, a perception backed up by the wet climate. In some respects, Scotland does have

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less to worry about than other countries, in that many watercourses are free from significant human impact, but there remains no comprehensive strategic approach to freshwater resource management, an approach that would protect sensitive water bodies. A strategic approach would have to involve the many stakeholders who have a potential impact on the water environment. The Water Framework Directive sets out to give all these players a structure in which they can actively participate in management of a diverse resource.

**Table 1 - Principal players in water resource management**

<table>
<thead>
<tr>
<th>European Union</th>
<th>European Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>European Parliament</td>
</tr>
<tr>
<td></td>
<td>Council of Ministers</td>
</tr>
<tr>
<td>National and Local Government</td>
<td>UK Government</td>
</tr>
<tr>
<td></td>
<td>Scottish Parliament</td>
</tr>
<tr>
<td></td>
<td>Scottish Executive</td>
</tr>
<tr>
<td></td>
<td>Local authorities</td>
</tr>
<tr>
<td>Government agencies and public bodies</td>
<td>Scottish Environment Protection Agency (SEPA)</td>
</tr>
<tr>
<td></td>
<td>Scottish Natural Heritage (SNH)</td>
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<tr>
<td></td>
<td>Scottish Water</td>
</tr>
<tr>
<td></td>
<td>District Salmon Fisheries Boards</td>
</tr>
<tr>
<td></td>
<td>Forestry Commission</td>
</tr>
<tr>
<td></td>
<td>Research Institutes eg Macaulay Institute</td>
</tr>
<tr>
<td>Non-Governmental Organisations</td>
<td>Conservation groups</td>
</tr>
<tr>
<td></td>
<td>Landowning interests</td>
</tr>
<tr>
<td>Companies and Private Interests</td>
<td>Industrial interests eg CBI, Alcan</td>
</tr>
<tr>
<td></td>
<td>Business interests eg whisky distillers, brewers</td>
</tr>
<tr>
<td></td>
<td>Electricity companies eg Scottish Hydro-Electric</td>
</tr>
<tr>
<td></td>
<td>Local communities</td>
</tr>
<tr>
<td></td>
<td>Riparian (ie next to watercourse) owners/occupiers</td>
</tr>
</tbody>
</table>

**CURRENT WATER REGULATION IN SCOTLAND**

Much water legislation derives from Europe. Recent water related directives can be found on page 8 and 9. There exist different regulatory and control regimes for different water uses in Scotland. For instance SEPA regulate controlled discharge to the water environment, SNH are heavily involved in development of land management practice, whilst domestic supply is regulated by the new Drinking Water Quality Regulator.

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Water quality controls are derived mostly from Part II of the Control of Pollution Act 1974 (sometimes known as COPA) as amended by the Environment Act 1995, the Water (Scotland) Act 1980 as amended, the Groundwater Regulations 1998 and from secondary legislation implementing European Directives. As well as a statutory Drinking Water Quality Regulator, the Water Industry (Scotland) Act 2002 established a single water authority, Scottish Water. 

5 http://www.hmso.gov.uk/si/si1998/19982746.htm#end
6 For SPICe briefing on the Water Industry (Scotland) Bill 2001, see http://www.scottish.parliament.uk/whats_happening/research/pdf_res_papers/rp01-16.pdf
7 http://www.scottishwater.co.uk

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THE WATER FRAMEWORK DIRECTIVE (WFD)

European Union controls on water fall under two main types of measures - the first comprises directives setting out quality objectives. These directives set standards for waters used for particular purposes. The second group of directives regulates the discharge of certain polluting substances into water. The draft European Commission Sixth Environment Action Programme sets the objective of:

"Achieving levels of water quality that do not give rise to unacceptable impacts on, and risks to, human health and the environment and to ensure the rates of extraction from our water resources are sustainable over the long term."

The Water Framework Directive (WFD) was adopted on 23 October 2000, and came into force on 22 December 2000. It seeks to prevent deterioration and improve the quality of all fresh surface and ground water, together with some coastal waters, and must be transposed into national legislation by November 2003. Given the geographic extent of the legislation, and the need for sharing of best practice, a Common Implementation Strategy has been developed across the European Commission, Member States and Norway. This includes a number of working groups - the UK take the lead on 3 of these - and 3 expert advisory forums. Details of these are available at Annex I to this briefing.

The WFD introduces a new approach to European water management, namely one that integrates the traditional approaches of developing technology to reduce pollution at source and setting quality objectives for the receiving environment.

The WFD:

♦ Protects rivers, lochs, coastal waters and groundwater;
♦ Sets objectives to ensure all waters meet 'good status' by 2015;
♦ Establishes management systems for river basins recognising that water systems do not stop at political boundaries and so require cross-border co-operation;
♦ Encourages active participation in water management;
♦ Ensures reduction and control of pollution from all sources;
♦ Requires water pricing policies which ensure the polluter pays;

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12 In addition, there is a WFD electronic forum at http://forum.europa.eu.int/Public/irc/env/wfd/home
13 With the exception of artificial and modified waters which need to be of 'good ecological potential' and 'good chemical status'
The WFD took 5 years of negotiation\textsuperscript{14} and is the first directive to recognise that 'one size fits all' environmental legislation for all Member States cannot apply from the dry Mediterranean countries to the wetter climate of northern Europe. The WFD sets another first with a requirement that all stakeholders should be actively encouraged to participate.

The WFD is designed as a framework to give Member States some flexibility in implementation. Having said that, there are mandatory 'basic measures' that must be undertaken, and a suite of 'supplementary measures' which can be used to achieve water environment objectives.

Table 2 - Water Framework Directive Timetable for Implementation

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Item</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.12.2003</td>
<td>Article 24</td>
<td>Necessary national legislation must be adopted.</td>
</tr>
<tr>
<td>22.06.2004</td>
<td>Article 3(8)</td>
<td>The Commission must be provided with a list of competent authorities.</td>
</tr>
<tr>
<td>22.12.2004</td>
<td>Article 6</td>
<td>A register of areas requiring special protection must be established.</td>
</tr>
<tr>
<td>22.12.2004</td>
<td>Article 5(1)</td>
<td>An analysis of the characteristics of the river basin district, an assessment of human impact and an economic analysis of water use must be undertaken.</td>
</tr>
<tr>
<td>22.12.2006</td>
<td>Article 8</td>
<td>Programmes for monitoring water status must be established.</td>
</tr>
<tr>
<td>22.12.2009</td>
<td>Article 11(7)</td>
<td>Programmes of measures in relation to water basin districts must be established.</td>
</tr>
<tr>
<td>22.12.2009</td>
<td>Article 13(6)</td>
<td>River basin management plans must be published, and circulated to the Commission within 3 months of publication.</td>
</tr>
<tr>
<td>2010</td>
<td>Article 9</td>
<td>Water-pricing policies providing incentives for efficient water use and to which Industry, households and agriculture must contribute adequately must be operational.</td>
</tr>
<tr>
<td>22.12.2012</td>
<td>Article 11(7)</td>
<td>Programmes of measures for water basin districts must be operational.</td>
</tr>
<tr>
<td>22.12.2012</td>
<td>Article 10(2)</td>
<td>Controls and limit values must be established and/or implemented.</td>
</tr>
<tr>
<td>22.12.2013</td>
<td>Article 5(2)</td>
<td>A review of the analysis of the characteristics of the river basin district, of the assessment of human impact and of the economic analysis</td>
</tr>
</tbody>
</table>

\textsuperscript{14} Negotiation can be followed at: http://wwwdb.europarl.eu.int/oeil/oeil_ViewDNL.ProcViewCTX?lang=2&procid=2070&HighlightType=1&Highlight_Text=policy water

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of water use must be carried out.

<table>
<thead>
<tr>
<th>Date</th>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.12.2015</td>
<td>4(1)(a),(b)</td>
<td>Surface water and ground water must be protected, enhanced and restored.</td>
</tr>
<tr>
<td>22.12.2015</td>
<td>4(1)(c)</td>
<td>Standards and objectives for protected areas must be complied with.</td>
</tr>
<tr>
<td>22.12.2015</td>
<td>11(8)</td>
<td>The programmes of measures established under Article 11 must be reviewed.</td>
</tr>
<tr>
<td>22.12.2015</td>
<td>13(7)</td>
<td>River basin management plans must be reviewed</td>
</tr>
</tbody>
</table>

The WFD will see the repeal of some water related directives, and will pull together the monitoring and compliance regimes of others under a single framework.

Directives repealed, unaffected and with monitoring/compliance regimes pulled together under WFD

Directives not affected by WFD include
- **Directive 98/83/EC** on quality of water for human consumption
- **Directive 91/676/EEC** on protection of waters from pollution caused by nitrates from agricultural sources
- **Various Directives** on pollution from specific industry sources

To be repealed by December 2007
- **Directive 75/440/EEC** on quality of surface water for drinking
- **Decision 77/795/EEC** establishing a common procedure for the exchange of information on the quality of surface fresh water
- **Directive 79/869/EEC** on the sampling and analysis of surface water for drinking;

To be repealed by December 2013
- **Directive 78/659/EEC** on quality of fresh waters needed to support fish life
- **Directive 79/923/EEC** on quality required of shellfish waters
- **Directive 80/68/EEC** on protection of groundwater against pollution
- **Directive 76/464/EEC** on pollution caused by discharge of certain dangerous substances into the aquatic environment

Directives brought under single framework by WFD\(^\text{[15]}\)
- **Directive 76/160/EEC** on Bathing Water
- **Directive 79/409/EEC** on Birds
- **Directive 80/778/EEC** on Drinking Water as amended by Directive *(98/83/EC)*
- **Directive 96/82/EC** on Major Accidents
- **Directive 85/337/EEC** on Environmental Impact Assessment

\(^{15}\) Article 11 of the WFD requires that these directives are not considered not only in isolation (as they were first meant to be) but also have regard to the environmental objectives established by WFD.
The European Committee of the Scottish Parliament has examined the WFD to:

"consider the scope for a different approach in Scotland vis-à-vis the rest of the UK and/or the European Union (EU) in terms of implementing the European Community's (EC) Water Framework Directive (WFD)."

The committee’s report\textsuperscript{16}, published on 9 May 2002 provides information on where a flexible approach to the implementation of WFD may be possible in Scotland.

\textsuperscript{16} http://www.scottish.parliament.uk/official_report/cttee/europe-02/eur02-02-01.htm

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WATER ENVIRONMENT AND WATER SERVICES
(Scotland) Bill Proposals

This section of the briefing is not designed to go into the detail of each section of the Bill, the explanatory notes and policy memorandum adequately carry out that task. Instead, the headline detail of the bill is outlined, whilst 4 further specific theme areas\textsuperscript{17} will be the subject of SPICe briefings in summer 2002.

PART I - PROTECTION OF THE WATER ENVIRONMENT

A number of consultations have surrounded the transposition of WFD into Scots Law. The Scottish Executive’s original proposals were outlined in the June 2001 publication ‘Rivers, Lochs and Coasts: The Future for Scotland’s Waters’\textsuperscript{18}. There were 110 responses to this, an analysis of which was published\textsuperscript{19} for the Scottish Executive in January 2002 by the Institute for European Environmental Policy\textsuperscript{20}. The Executive launched a further consultation exercise in the form of ‘The Future for Scotland’s Waters: Proposals for Legislation’\textsuperscript{21}, published in February 2002, which had 97 respondents, summarised by the Executive. In addition the Executive hosted a national stakeholder conference, and co-sponsored a series of seminars with Scottish Environment LINK. However, there has been some criticism that there was no draft version of the Bill\textsuperscript{22}.

The Bill is very much enabling legislation. This is partly due to the long-term nature of implementation of the WFD (over 12 years) as set out on pages 7 and 8 of this briefing. As part of the process of implementation, many of the technical aspects of the detail of, for example a monitoring regime, will need to be worked out at European level. Some further Community legislation will also be required.

Subordinate legislation is not generally in practice subject to the same degree of scrutiny as primary legislation, although committees in the Scottish Parliament have the power to vote down secondary legislation or refuse to confirm it as a whole. NGO’s have pointed out that it will be important for the Executive to take a participatory approach when developing secondary legislation, in keeping with a participatory approach\textsuperscript{23}. It will be important that the principles of participation outlined in the WFD are carried through to secondary legislation.

\textsuperscript{17} Themes are diffuse and point source pollution, wetlands, river basin management (incorporating relationship with land use planning, participation), licensing (incorporating abstraction, single water use licence, pricing)
\textsuperscript{18} http://www.scotland.gov.uk/consultations/environment/ffsw-00.asp
\textsuperscript{19} http://www.ieep.org.uk/Scot%20Exec%20WFD%20finalreport.pdf
\textsuperscript{20} http://www.ieep.org.uk/
\textsuperscript{21} http://www.scotland.gov.uk/consultations/environment/ffsw2-00.asp
\textsuperscript{22} Cosla response to The Future for Scotland’s Waters - Proposals for Legislation. Available in SPICe.
\textsuperscript{23} Scottish Environment LINK response to ‘The Future for Scotland’s Waters - Proposals for Legislation’

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The key to the WFD is the move away from analysis of water chemistry, to a more holistic approach based on the ecological quality of water, with a far tighter monitoring regime. The focus is to be on those areas under particular stress, whether that is through pollution, abstraction or other pressures.

According to the Policy Memorandum, the Bill:

"seeks to promote the sustainable management and protection of the water environment in Scotland and to change the arrangements for funding new connections to the public water and sewerage infrastructure".

**Based on the Policy Memorandum, the Bill:**

- Introduces ‘River Basin District Planning’;
- Makes SEPA the lead authority for implementation (though does not clearly say so in the Bill) but gives Ministers powers to identify others to work in the process;
- Covers all inland waters, with some exceptions\(^{24}\), and extends to 3 nautical miles from the UK territorial sea baseline;
- Sets out the importance of ‘real participation’ in the river basin management process;
- Establishes a new regime for connecting new developments to the water and sewerage network;

**And provides for further consultation and/or secondary legislation for:**

- Establishment of River Basin Management District(s)
- Regulations establishing control regimes over all forms of pollution and over water abstraction and impoundment / engineering works, together with the repeal of control regimes in the Control of Pollution Act 1974 and the Groundwater Regulations 1998;
- Identification of ‘responsible authorities’ other than SEPA to work in the process;

**LEAD AUTHORITY**

The Bill sets **SEPA** as lead authority for implementation of WFD in Scotland through river basin planning. This has broadly been welcomed, although SEPA, as environmental regulators, will need to develop suitable expertise to deal with economic and social development considerations, as highlighted in the Policy Memorandum. Ministers will have powers to designate other parties as having a key role to play, whilst all public sector bodies must take the need to protect the water environment into account.

\(^{24}\) These are: wholly artificial water treatment and storage systems - i.e. designed to deal with pollution therefore pointless trying to improve their water status.
RIVER BASIN PLANNING AND EXTENT OF CONTROL

River basin management is to be the medium through which protection of the water environment will be progressed. This is a new holistic approach, and develops the theme of river basin district management, that is, assessing all human impacts on entire 'water bodies', to drive 'environmental objectives'.

**Key terminology**

*River basins* - Sometimes known as a river catchment, a river basin is the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly freshwater lochs into the sea at a single river mouth, estuary or delta.

*River basin district* - A river basin or several small river basins combined with larger river basins or joined with neighbouring small basins together with stretches of coastal water.

*River Basin Management Plan (RBMP)* - For each river basin district, the WFD requires an RBMP to be published. This must set out the environmental objectives for water bodies and provide a summary of measures that are being used to achieve them. The first stage of the plan is an environmental and economic characterisation of the river basin district (due for completion in 2004). A work programme for producing the first RBMP is required by 2006, this is also the date when water status monitoring must begin. The RBMP will be published in 2009 and reviewed every six years. RBMPs are subject to ministerial approval. Schedule 1 to the Bill outlines what must be included in RBMPs. RBMPs will be the subject of a future SPICE briefing.

*Sub-basin plans* - these would supplement the RBMP and would require a management plan of their own. Similar procedures in regard to participation in the process by stakeholders will apply (discussed later in this briefing).

River basin districts are to be the building blocks for protection of the water (and surrounding) environment. The Schelde in Belgium, or Rhine river basins serve as useful examples of taking a more holistic approach to water management.

Scotland will have to define how many river basin districts are to be designated. In their first consultation, the Executive was keen on 3 river basin districts. In their second consultation, one was the preferred option. The Bill does not provide for the establishment of a particular number, although the Policy Memorandum implies one is the preferred option. This matter will be the subject of further consultation and secondary legislation.

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25 RBMPs will have to focus on the key European objectives of: general protection of the aquatic ecology, specific protection of unique and valuable habitats, protection of drinking water resources, and protection of bathing water.

26 A further SPICe briefing will examine case studies.

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The WFD does not allow single river basins to be split between river basin districts. This raises an interesting issue with regard to who will control cross-border river basins such as the Solway, Tweed and the English Tyne. This will be discussed further in a later briefing.

In addition, concern has been raised in consultation about the interrelationship between river basin management plans and development plans drawn up by local planning authorities. Given the long-term nature of both RBMPs and development plans, it will be vital to ensure the WFD requirements are fundamentally built into the planning process and RBMPs take account of the development plan process. This could be easier in some areas than others, as many development plans have just been newly approved - the Policy Memorandum states that:

"development plans will need to take appropriate account of the environmental objectives of RBMPs in their land allocations and development policies; i.e. take on board those aspects of RBMPs that are relevant to Planning. Similarly, it will be important that RBMPs take account of future development allocations and general policies for development control…It is clear that SEPA and Planning Authorities will need to work closely with one another in preparing RBMPs and development plans."

One of the express purposes of the WFD is to mitigate the effects of floods and droughts, however the WFD does not set operational objectives or obligations as regards flooding, flood protection or mitigation. The WFD though, does not preclude flooding from being an integral part of the Water Environment and Services Bill. From a practical point of view, the anticipated structures and dialogue to be used in implementing the WFD could equally be used to address flooding. This is something the European Committee discussed in their recent report on WFD.

The other consideration here is that whilst flood control is not a priority of the WFD, some flood prevention measures can impact on water quality. Flooding is the responsibility of local authorities, and introduces another key player to implementation of the WFD.

Currently, SEPA regulate to 3 nautical miles from the territorial sea baseline. The WFD specified that the definition of coastal waters should be 1 nautical mile from the baseline. The Bill specifies 3 miles as the preferred option. This includes all major sea lochs and extensive areas of open sea off the west coast (including the

28 Flood protection or flooding related measures are not part of Scotland's formal obligations to transpose and implement the WFD and therefore would not subject to scrutiny by European institutions.

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Minch). The Crown Estate, who own much of the land to the territorial baseline are in agreement with the 3 nautical miles proposals\textsuperscript{30}.

**ENVIRONMENTAL OBJECTIVES AND WATER ENVIRONMENT CONTROLS**

Protection under WFD is focused on those sites and activities under most pressure in the water environment, so while there will be a flat rate of protection for all waters, some areas and activities will be subject to more stringent regulation.


**Surface and ground water status**

*Surface waters* are subject to general requirements for ecological protection and chemical standards under the WFD, i.e. ‘good ecological status’ and ‘good chemical status’. Both ecological and chemical protection standards can be high, good, moderate, poor or bad for any water body. ‘**Good ecological status**’ is defined in terms of the ‘quality of biological community, hydrological characteristics and chemical characteristics’\textsuperscript{31}. Because of the diversity of water environments in Europe, ‘good ecological status’ will be measured against a benchmark unique to the relevant implementing areas. Procedures for this task are set out in the annexes to the WFD and SEPA are consulting on the Scottish approach. It is important to note that certain surface waters can be classified differently - these ‘heavily modified’ & ‘artificial’ water bodies, such as canals, water storage or flood defences are set targets relating to their ‘maximum ecological potential’\textsuperscript{32}.

‘**Good chemical status**’ is defined as compliance with current EU law\textsuperscript{33}. In addition, a priority list of particular hazardous substances has been developed to ensure a flat level of compliance across the EU. This list has been developed based on risk to aquatic environment and human health and is classified at different levels\textsuperscript{34}. The most harmful substances must have releases phased out by

\textsuperscript{30} Crown Estate response to *The Future for Scotland's Waters - Proposals for Legislation*. Available in SPICE.
\textsuperscript{31} From http://europa.eu.int/comm/environment/water/water-framework/overview.html
\textsuperscript{32} More on this is available in SEPA’s consultation *The Future for Scotland's Waters: Guiding Principles on the Technical Requirements of the WFD* available at http://www.sepa.org.uk/publications/waterframework/index.htm
\textsuperscript{33} ibid p34.
2020, a process facilitated through daughter directives\textsuperscript{35}. A second priority list is due in 2004\textsuperscript{36}.

**Ground waters** are treated differently under WFD. The approach has been taken to prohibit direct discharges to groundwater and have a stringent monitoring regime in place that will cover quantity of groundwater. This is important, as recharge rates for groundwater are very slow. The European Commission will publish proposals for a daughter directive on groundwater by 22 December 2002, which will include specific measures for preventing and controlling pollution.

<table>
<thead>
<tr>
<th>Point source pollution</th>
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<tr>
<td>Sometimes known as ‘end-of-pipe’ pollution, this can be defined as detrimental input into the environment via a verifiable source. Examples include discharge from industrial sites. SEPA issue licences for such discharges as well as carrying out monitoring. Because of the nature of the water environment, regulators have to be aware of the cumulative effects of issuing too many licences in one area.</td>
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<tr>
<th>Diffuse pollution</th>
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<tbody>
<tr>
<td>This is pollution characterised by small inputs from many sources. Classic examples include leached agricultural chemicals, such as nutrients and pesticides. SEPA cannot monitor all such inputs, and do not issue licences for diffuse pollution. Improved land management practices (often voluntary at present) can reduce the problem. The WFD specifies that diffuse pollution must be controlled, something which needs more than just regulation.</td>
</tr>
</tbody>
</table>

The WFD allows for a suite of 'mandatory basic measures' and 'supplementary measures' to achieve environmental objectives. Member States are free to decide on the form of supplementary measures.

**Mandatory basic measures for water pollution, abstraction, impoundment and engineering**

The Executive is keen that the regulatory burden should not be increased unnecessarily, indeed there is recognition from many quarters that regulation alone cannot, and should not, be the only tool through which protection of the water environment is progressed. The Policy Memorandum states that "controls should be selective, proportionate and streamlined"\textsuperscript{37}.

The Bill allows Ministers to create, by secondary legislation, a new regulatory regime to replace the Control of Pollution Act 1974 (COPA) and the Groundwater Regulations 1998 (though it is the Policy Memorandum, not the Bill, which says this). The Executive will consult further on the new regime, but this is unlikely to happen until 2005 and controls would not be fully operational until the WFD

\textsuperscript{35} A 'daughter directive' is one that is required under a previous directive. The 'parent directive' will normally have a time limit relating to when the daughter is introduced.


\textsuperscript{37} p12, para 50
deadline of 2012. A key reason behind the change of regime is that current law is only really targeted at point source pollution, while the WFD demands a more integrated approach to tackling all kinds of pollution. The proposed new regulations would have three levels of control:

- **Simple registration** - SEPA will need notification from all who have a polluting discharge or abstract, impound or engineer water. SEPA can assess whether the relevant water body’s environmental objectives mean further control is required.

- **General binding rules** - highly specific (to sector or pollution type) the Policy Memorandum explains that these "allow Ministers to set out generally applicable conditions". Whilst such a tool may be necessary, it is argued by some organisations that statutory rules are less preferable to voluntary codes of practice. General Binding Rules are a tool used previously in the Integrated Pollution Prevention and Control Directive.

- **Water use licences** - These are specific authorisations for particular types of water use. SEPA will have the power to issue 'single water use licences'. This approach is designed to reduce the regulatory burden on water users, something industry is keen on, by for example, allowing one licence covering abstraction and discharge activities, rather than issuing a different licence for each activity. Water use licences will be transferable between operators at the same site. SEPA will be able to develop management agreements in water use licences.

As well as the measures outlined above, SEPA will be able to develop national standard licence conditions for specific activities, as well as water resource management strategies in relation specifically to water abstraction and impoundment.

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38 Further specific information on the workings of these controls is available in the Policy Memorandum to the Bill.
39 Directive available at:
Abstraction is the removal of water from a surface or groundwater source. Currently controls over abstraction of water in Scotland are very limited, and really only extend to large engineering works such as at hydroelectric power stations. Some industries are concerned that abstraction controls could increase their regulatory burden. The whisky industry have been particularly vocal on this topic, and indeed lobbied hard in Europe during develop of the WFD. They argue that many of the areas where they operate are remote, they are often the single user of a source, and profit margins are so tight, that extra regulation would hit them hard. The counter argument to this is that abstraction in some parts of the country is causing concern, and SEPA would need a full picture in order to characterise river basins. In addition, management agreements would ensure a continuity of supply, rather than threaten it.

Supplementary measures

In addition to the regulatory controls outlined above, the Bill gives powers to the Scottish Ministers to make provision for supplementary measures that can be employed to achieve environmental objectives. There have been arguments as to whether the full range of measures outlined in Annex VI of the Directive should be included in Schedule 2 of the Bill with a view to obliging Scottish Ministers to use all or some of them. The Executive is keen to continue with the non-statutory route for measures such as those set out below. These measures are mentioned in the Policy Memorandum:

♦ Legislation;
♦ Codes of practice;
♦ Recreation and restoration of wetlands;
♦ Negotiated environmental agreements, e.g. between agencies and landowners;
♦ Education and awareness raising;
♦ Research and development.

WATER PRICING

The WFD develops the theme of the ‘polluter pays’ principle. The WFD states that by 2010, Member States shall ensure that:

♦ Water pricing policies provide adequate incentives for users to use water resources efficiently and thereby contribute to environmental objectives;

40 Policy Memorandum para 62
♦ An adequate contribution (is made by) the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis and taking into account of the polluter pays principle.

The Bill makes provision for SEPA to recover costs relating to which type of regulatory regime is employed (as set out on page 16). In addition SEPA will have powers to determine liability for restoration work in regard to restoration of historical pollution (e.g. coal mines). The Executive is of the opinion that current arrangements for charging domestic and commercial customers for water and sewerage services adequately meet the requirements of the WFD41.

PARTICIPATION

Article 14 of the WFD states that:

"Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans"

"Active involvement" is based on two criteria42:

♦ Decisions on appropriate measures to achieve the objectives of RBMPs will need balancing of various interests;
♦ Improved enforceability comes from greater transparency of objectives, development of measures and reporting of standards.

In Scotland there is recognition that suitable fora already exist in some areas, such as the Tay Estuary Forum. However, the Bill itself does not emphasise the need to use existing networks, although the Policy Memorandum does. SEPA will be required to state how they will ensure this takes place. Some organisations have criticised the Executive’s proposals for not mapping out clearly enough how people will be able to become involved in the process43.

There may be scope to use the proposed Community Planning arrangements outlined in the Local Government in Scotland Bill, currently progressing through the Scottish Parliament, as a model for integrated local participation. Community Planning is examined in SPICe Research Briefing 02/67 Local Government in Scotland Bill - Community Planning44.

41 Rivers, Lochs and Coasts, p33, Scottish Executive 2001
43 Executive rejects WWF claims over water shake-up, Press & Journal, 14 June 2002 - http://www.thisisnorthscotland.co.uk/displayNode.jsp?nodeId=62692&command=displayContent&sourceNode=62244&contentPK=1914365

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PART 2 - WATER AND SEWERAGE SERVICES

The provisions included in this part of the Bill were initially designed to be included as part of the Water Industry (Scotland) Act 2002, and so were consulted on as part of that process through 'Managing Change in the Water Industry'\textsuperscript{45} published in June 2000, and 'The Water Services Bill - The Executive’s Proposals'\textsuperscript{46} published in March 2001. The proposals relate to how new connections to the public water and sewerage infrastructure are funded, and the criteria for determining costs, construction standards and connection agreements.

The Bill provides that amendments will be made to the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980 which place a duty on the public water supplier, now Scottish Water, to provide water and sewerage services where it was practicable to do so at reasonable cost.

The current regime for connection of new water and sewerage services does not take into account either how much income the connected development will generate in the future for Scottish Water, or whether the development was dependent on Scottish Water contributing to cost of a new connection.

The Policy Memorandum indicates that a new regime is to be introduced, whereby future income and costs to Scottish Water can be used as part of the new connection decision making process, and there is no obligation on Scottish Water to contribute to developers’ costs.

At present Scottish Water can dispense with its duty to provide sewerage in their area when "it is not practicable at reasonable cost". Section 25 of this Bill amends section 1 of the Sewerage (Scotland) Act 1968 and in effect further qualifies the duties of Scottish Water. The Bill allows for secondary legislation to determine what technical conditions should be taken into account when defining 'reasonable cost'.

Decisions on whether Scottish Water need contribute to costs of new connections will need to continue to have regard to Water Industry Commissioner advice on environmental protection and public health. According to the Policy Memorandum the new proposals will:

"Allow Scottish Water to target resources for new infrastructure in accordance with objective cost benefit analysis, or in line with public health and environment protection priorities as determined through consultation in the quality and standards process."

The Bill gives powers to Ministers to make regulations in order to set construction standards for water and sewerage infrastructure and to impose conditions in agreements for connection or take-over by Scottish Water. The Bill gives powers to Scottish Water to impose conditions in agreements for connection or take-over.

\textsuperscript{45} http://www.scotland.gov.uk/consultations/industry/mcwi-00.asp
\textsuperscript{46} http://www.scotland.gov.uk/consultations/government/wsbep-00.asp

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POSSIBLE ISSUES ARISING FROM THE BILL

Most respondents to the Executive’s recent consultations have broadly welcomed the Bill. Future SPICe briefings will focus in on specific aspects of the Bill. However some issues for broader consideration could include those set out below. The organisations referred to all responded to the Scottish Executive’s latest consultation on proposals for the Water Environment and Water Services Bill47.

**River Basin Districts**

The Executive has changed its mind in relation to the number of River Basin Districts in Scotland, with one now the preferred option rather than three. This though is to be considered further before a final decision is made. Most stakeholders are of the opinion that one river basin is the preferred option although issues arise with regard to different types of water environment, cross-border river basin districts (e.g. River Tweed) and the relationship with the planning system. SEPA have called for a WFD Planning Policy Guidance Note, whilst concern has been raised that RBMPs may not be subject to public objection as development plans are.

**SEPA as lead authority**

SEPA will be the lead body for River Basin Management (although this is not specifically stated in the Bill). Scottish Environment LINK has stated its concern that SEPA and Scottish Ministers will have most of the powers and responsibilities48. Alcan Smelting and Power UK felt another body entirely should be established as SEPA would not be able to have a balanced approach. Concern here could include the fact that SEPA would be the lead party implementing RBMPs, but would also be regulating specific sites within such RBMPs.

**Participation**

WWF has said that the Executive’s proposals for legislation did not fully meet the requirements of the WFD with regard to participation in the process. Fundamental to WWF’s arguments is that a top-down system of management will not engender enough stakeholder involvement in the development of RBMPs and that the level of participation proposed by the Executive cannot be described as meeting the ‘active involvement’ criteria of the WFD49.

The National Trust for Scotland has also expressed concern that consultative fora

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47 These responses are available in SPICe. In addition the Executive have published an Analysis of Responses - http://www.scotland.gov.uk/library/5/environment/waterresponses.pdf.
48 Scottish Environment LINK - Initial responses to the Water Environment and Water Services (Scotland) Bill. Available in SPICe.
49 Executive risks European court over Water - WWF Press Release, 14 June 2002

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may not allow local level participation, and should not rely on voluntary arrangements. The Scottish Wildlife Trust has called for such fora to be linked to planning at a sub basin level.

**Integration with other policy areas**

The National Trust for Scotland is of the opinion that the Executive’s proposals for legislation were ‘insufficiently robust to ensure full integration of WFD objectives with other policy areas’. ScottishPower felt that there had to be more logical links with other pollution control processes, such as Part IIA of the Environmental Protection Act 1990.

There are also issues as to how the WFD requirements will link in with the new **European Coastal Zone Management**\(^{50}\) strategy and development of the **European Soil Strategy**\(^{51}\).

**Amount of secondary legislation**

The Bill is enabling in nature and there will be more consultation and secondary legislation to follow. SNH are of the view that there should be no scope for water environment deterioration after December 2003, instead of phasing in such requirements.

**Resources**

SEPA, as lead organisation, will have additional resource requirements. Scottish Water too, ‘anticipate considerable additional costs’. Local authorities have expressed concerns that extra data monitoring requirements will require more resources. NFU Scotland are of the opinion that resources would be needed for farmers to comply. The Forestry Commission did not reply to the consultation.

**NGO work and WFD research**

There has been significant work put in by NGOs and research bodies around development of the WFD and the Water Environment and Water Services Bill. Specific Scottish work includes campaigns carried out by **Scottish Environment LINK**\(^{52}\), whilst The Scotland and Northern Ireland Forum for Environmental Research (**SNIFFER**\(^{53}\)) and **WWF**\(^{54}\) have been heavily involved in developing implementation strategies. The **European Environmental Bureau** provides a wealth of background material on the implementation of WFD, which adds to that found on the **European Commission DG Environment** website.

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\(^{50}\) [http://www.europa.eu.int/comm/environment/iczm/home.htm](http://www.europa.eu.int/comm/environment/iczm/home.htm)

\(^{51}\) [http://www.europa.eu.int/comm/environment/agriculture/soil_protection.htm](http://www.europa.eu.int/comm/environment/agriculture/soil_protection.htm)

\(^{52}\) [http://www.scotlink.org/web.htm](http://www.scotlink.org/web.htm)

\(^{53}\) [http://www.sniffer.org.uk/wfd.htm](http://www.sniffer.org.uk/wfd.htm)

\(^{54}\) [http://www.panda.org/europe/freshwater/seminars/seminars.html](http://www.panda.org/europe/freshwater/seminars/seminars.html)
If you have any comments or questions about this briefing, please contact Graeme Cook on extension 85086 or Graeme.Cook@scottish.parliament.uk.

**SPICe Briefings** are compiled for the benefit of Members of the Scottish Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.
ANNEX I

Water Framework Common Implementation Strategy Working Groups and Expert Advisory Forums

For the first time, the Commission and the Member States have agreed to work together for the implementation of the WFD.

This is because the WFD raises “a number of shared technical challenges for the Member States, the Commission, the Candidate Countries and other stakeholders” and also because, as the Commission emphasises, “many of the European river basins are international, crossing administrative and territorial borders and therefore a common understanding and approach is crucial to the successful and effective implementation of the Directive.”

The main aim is to make additional guidelines available to the Member States, in particular guidance on technical issues. The key activities of this strategy are:

1. Information sharing
2. Developing guidance on technical issues
3. Information and data management
4. Application, testing and validation

The common strategy will also support the Commission in delivering on its obligations for further policy development (Daughter Directives on groundwater and on priority substances).

Working Groups:

1. Heavily Modified Water Bodies (UK joint lead with Germany)
2. Pressures and Impacts (UK joint lead with Germany)
3. Coastal and Transitional Waters (UK lead)
4. Reference Conditions (Sweden lead)
5. Intercalibration (Commission lead - Joint Research Centre)
6. Economics (France lead)
7. Monitoring (Italy joint lead with European Environment Agency)
8. Groundwater
9. River Basin Management Planning (Spain lead)
10. Geographic Information Systems (Commission lead)
11. Testing in pilot river basins (Commission lead - Joint Research Centre)

Expert Advisory Forums:

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56 UK environmental agencies are taking the lead on the UK led groups. These are SEPA for Modified Bodies, Environment Agency on Pressures and Impacts and NI Environment and Heritage Service on Typology and Classification.
57 http://www.jrc.org/
1. Priority Substances and Pollution Control
2. Groundwater
3. Reporting - data and information collection