The Scottish Parliament

TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

25th Meeting, 2002 (Session 1)

Wednesday 18 September 2002

The Committee will meet at 9.30 am in Committee Room 2 to consider the following agenda items:

1. **Water Environment and Water Services (Scotland) Bill (in private):** The Committee will consider possible lines of questioning for witnesses.

2. **Item in Private:** The Committee will consider whether to take agenda item 6 in private.

3. **Subordinate Legislation:** Mr Peter Peacock (Deputy Minister for Finance and Public Services) to move motion S1M-3353—

   that the Transport and the Environment Committee recommends that the Scottish Public Services Ombudsman Act 2002 (Amendment) Order 2002 be approved.

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

   The Environmental Impact Assessment (Scotland) Amendment Regulations 2002, (SSI 2002/324)


5. **Water Environment and Water Services (Scotland) Bill:** The Committee will take evidence at stage 1 on the general principles of the Water Environment and Water Services (Scotland) Bill from—

   Kathy Cameron, Policy Officer, COSLA

   Graham U’ren, Director, Royal Town Planning Institute in Scotland
Eric Wilson, Head of Development Planning, Dumfries and Galloway Council, Royal Town Planning Institute in Scotland

Dr Andrew Black, Chairperson, ICE Scottish Hydrological Group

Michael Cunliffe, Head of Scottish Estates, The Crown Estate

David Howell, National Strategy Officer, Scottish Natural Heritage

Professor Alan Alexander, Chairman, Scottish Water

Geoff Aitkenhead, Asset Management Director, Scottish Water.

6. **Rail Inquiry:** The Committee will consider a draft report on its inquiry into the rail industry in Scotland.

Callum Thomson
Clerk to the Transport and the Environment Committee
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The following public papers are attached for this meeting:

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**Papers not circulated:**

**Agenda item 5**
Members are reminded to bring the written submissions (on peach paper) and the SPICe briefing notes which were issued in August (*plus the Bill; Policy Memorandum and Explanatory Notes*).

Supplementary evidence submission from BP Grangemouth, originally circulated in circular number 2 (10/09/02).

Supplementary evidence submission from the Malt Distillers Association of Scotland, originally circulated in circular number 2 (10/09/02).
Extract from 32nd Report of the Subordinate Legislation Committee:

The Environmental Impact Assessment (Scotland) Amendment Regulations 2002, (SSI 2002/324)

Background
90. The Committee raised one point with the Executive.

Question
91. Regulation 2(3) inserts a new regulation 28A into the principal Regulations. Regulation 28A(8) modifies the principal Regulations in their application to ROMP applications by the substitution of “section 47” in regulation 16(1). However, regulation 16(1) appears to refer to “sections 46 and 47”. The Executive was asked to clarify what is intended by this regulation.

Answer
92. The intention is that regulation 16 of the principal Regulations should apply in relation to a ROMP application that has come before the Scottish Ministers for determination.

93. In light of the Committee’s comments, the Executive has looked again at inserted regulation 28A(8) and considers that the provision as drafted does not wholly achieve its intended effect. An amending instrument will be brought forward to amend this provision at the earliest opportunity.

Report
The Committee draws the instrument to the attention of the lead committee and the Parliament on the grounds that regulation 2(3) is defectively drafted,
acknowledged by the Executive. The Committee observes that the effect of the instrument as drafted is wholly unclear. The Committee welcomes the Executive’s undertaking to lay an amending instrument as soon as possible, drawing it to the attention of the lead committee and the Parliament.
SSI Cover Note For Committee Meeting

SSI title and number: The A9 Trunk Road (Ballinluig) (Temporary 50mph Speed Limit) (Continuation) Order 2002, (SSI 2002/371)

Type of Instrument: Negative

Meeting: 25th meeting, 18 September 2002

Date circulated to members: 4 September 2002

Motion for annulment lodged: No

T and E deadline to consider SSI: 30 September 2002

SSI drawn to Parliament’s attention by Sub Leg Committee: No
I am writing to offer the Executive’s response to the Committee’s 'Report on Phase 2 of the Inquiry into Aquaculture', which was published at the end of June.

This second report of the Committee, like its first report earlier in the year, is a very comprehensive and balanced review of some of the issues and concerns surrounding aquaculture. Taken together, the two reports make a very significant contribution to the on-going debate about aquaculture in this country. I have therefore ensured that copies have been made available to my working group, which is developing a strategic framework for the future of aquaculture.

The annex to this letter contains my detailed response to each of the main recommendations in the Phase 2 report. I hope you find it helpful and self-explanatory. There are no major areas of disagreement between us. However, although I understand the Committee's desire for early action on some issues, for example, relocation of inappropriately sited farms, I do not believe that we are in a position to say precisely when this will happen. There are some very difficult issues to be tackled and our thinking is still at an early stage. You can be assured, however, that my officials and I will continue to keep you and your colleagues informed of any proposals on which we consult.

This letter and enclosure has been copied to the Clerk of the Committee and also to the Clerk to the Rural Development Committee.

ALLAN WILSON
Scottish Executive Response to Conclusions & Recommendations:

- **On relocation policy**

  The Executive notes the urgency that the Committee attaches to this issue and agrees that all interested parties must take responsibility for, and be involved in, moving the process forward. However, as I said in my response to the Phase 1 report, re-location is a complex issue; the rationale will need to be scientifically based and carefully handled. Proposals will take time to develop and there will need to be extensive consultation.

  In all the circumstances I believe that any timetable we might set out at the present time for developing and implementing a relocation programme would be meaningless. However, I shall ensure that the Committee is kept abreast of thinking as it develops and has the opportunity to comment on any proposals issued for consultation.

- **On regulation of the industry**

  It is important to remember that the aquaculture industry is already subject to extensive statutory controls, although the Executive is committed, as it has already shown, to streamlining and improving the regulatory framework where appropriate. Last year’s review of aquaculture regulation made a number of recommendations for change, some of which are currently being implemented under existing legislation: e.g. streamlining the application process for Environmental Impact Assessment (EIA) purposes and designating SEPA as joint relevant authority with the Crown Estate.

  And, as the Committee knows, the review also proposed other new environmental controls (e.g. SEPA should assume powers to regulate the process of fish farming) for introduction after enactment of the Water Environment and Water Services (Scotland) Bill. However, it is too early to say what the timescale might be. We shall need to balance our shared wish to put in place new regulations with our responsibility to involve the industry, the environmental regulator (SEPA) and other interested parties. While these new measures are being developed, it should not be forgotten that the industry will continue to be regulated under the Control of Pollution Act 1974.

  Monitoring of industry compliance with existing Codes of Practice, e.g. relating to Infectious Salmon Anaemia (ISA) and Containment, is already undertaken by the Executive (Fisheries Research Services) during routine health inspection visits to fish farms. Feedback from these compliance checks is compiled annually and given to the industry; and any shortcomings and how they should be addressed are discussed by the Joint Government & Industry Aquaculture Health Working Group (AHWG). The first such compliance report was produced in November last year and another is due this Autumn.
Copies of these reports are sent to all fish farming companies and publicised through a News Release.

Although much of the advice in the ISA Code of Practice remains valid and can be used to avoid and minimise the spread of other diseases, I believe we need additional disease and species-specific advice. This will be developed by the AHWG, alongside a review of the ISA and Containment codes, in the light of experience in recent years of their operation.

- **On the management of sea lice**

The Executive regrets that the Committee finds its intentions for the monitoring and regulation of sea lice unclear. Sea lice present a constant threat to farmed and wild salmonids and we agree unequivocally with the Committee that measures are necessary to monitor and minimise their impact. Where we appear to differ, is over the ways in which this might be achieved.

As the Committee knows, a number of control regimes are in place. SEPA licences the use of a range of therapeutic treatments for the control of sea lice. The industry operates its own national sea lice strategy, which encourages coordination of fish inputs, fallowing and sea lice treatments among farms in the same water catchment. And the Tripartite Working Group (TWG) builds on the industry strategy by involving wild fishery interests in the development and operation of Area Management Agreements (AMAs), which provide a means of extensively monitoring sea lice on farmed and wild salmon and agreeing local control measures. These arrangements are kept under review within the Executive as well as in fora such as the TWG and, in SEPA’s case, the Aquaculture Management Group. It is a continuous process, which involves the industry at all stages.

However, I agree that better information about sea lice numbers and their effects – on farmed and wild salmonids – is needed. At present, I see this being obtained through further development of the AMA process rather than as part of the fish health inspection programme conducted by the Fisheries Research Services. With the imminent appointment of a TWG National Development Officer, and the prospect of additional resources being made available to underpin the AMA process locally, the information flow and reporting of sea lice and other issues should be significantly enhanced; and that in turn should inform future policy and management decisions, both locally and nationally.

As I explained in my response to the Phase 1 report, I will consider legislating to control sea lice if the voluntary (AMA) approach fails. Before legislation was considered, however, some fundamental questions would need to be addressed: e.g. the rationale for setting sea lice limits and the nature of any enforcement action should such limits be exceeded. This is by no means straightforward.
• **On the transfer of planning powers**

I note again the importance the Committee attaches to the early transfer of planning powers to local authorities. The Executive’s position is not at odds with that view. We regard the transfer of planning powers to local authorities as an urgent priority and, as I have already made plain, we shall seek to legislate at the first available opportunity. It remains our view that a Planning Bill would be the most appropriate legislative vehicle and we hope that such a Bill will be available in the next Parliament. It will, however, be for the new Scottish Cabinet to prioritise its legislative programme. National Planning Policy Guidelines for marine fish farming will follow the transfer of powers to local authorities.

• **On integrated coastal zone management (ICZM)**

The EU Recommendation on ICZM has now been approved and was published in the Official Journal on 6 June. The UK has undertaken to implement the recommendation and a UK-wide conference of stakeholders is planned for November to discuss how best to do so. The Executive will work with other Government Departments and devolved administrations on a wide-ranging review of the institutions, laws and stakeholders that influence our coastline, prior to consulting on a Scottish coastal strategy. I would also expect that any Advisory Group established under Section 17 of the WEWS Bill might discuss the subject.

I expect the implications of ICZM, and other initiatives, such as the Water Framework Directive, to be reflected in the work that we are doing to develop a strategic framework for aquaculture. The Executive recognises the need to involve local communities in decisions about aquaculture and integrated management of this nature implies the full involvement of all stakeholder interests - as is already happening in a number of ways. For example, full public consultation on all fish farm developments, including Environmental Impact Statements, is required. The industry engages with local communities, especially Community Councils, in discussion of its plans; and there is a new initiative to establish Industry & Community Liaison Groups. The Executive is encouraging those involved in AMAs to consider the inclusion of other local interests in the process where this seems appropriate.

**Development of a Strategic Framework for Aquaculture**

Officials have made the Committee’s reports available to members of my Working Group. It is of course for the Group itself to decide whether and how these might be reflected in the strategic framework it is developing. I hope to be in a position this autumn to consult (including the Transport & Environment and Rural Development Committees) on a draft. Meanwhile, I offer the following views on some of the Committee’s strategy recommendations:
• **On development of an aquaculture market**

I agree that, in the enforcement of regulations, ways should be sought by the relevant authorities to recognise and reward, where possible, those operators who demonstrate compliance with the very highest operating standards, while penalising those who fail to do so. The extent to which this concept of recognition and reward might be applied will vary according to the scope of each regulatory regime: for example, fish health legislation prescribes only minimum requirements with which operators and the authorities must comply.

• **On diversification and polyculture**

I agree that diversification into new whitefish and shellfish species, and encouragement for organic farming, are highly desirable for the future of Scottish aquaculture. The excellent, collaborative development work undertaken in recent years has led to the emergence of commercial farming of whitefish species such as halibut and cod and there is the prospect of other species, notably haddock, being farmed before long. Most of the credit for this progress must go, as the Committee recognises, to the industry, the Enterprise Network, the retail sector and the Seafish Industry Authority. Against this encouraging background, the Executive and the Enterprise Network will continue to provide support for the diversification process through their respective funding arrangements. Fisheries Research Services will also continue to provide advice, as required, to those involved in the development and commercialisation of new species and, where appropriate, will undertake R & D into, for example, the susceptibility of new species to disease and their interaction with other farmed and wild fish and shellfish.

I acknowledge that the potential for polyculture has not been fully explored meanwhile, but this will be a factor in commissioning future R & D work. However, I must stress that any polyculture research proposals would have to be judged against competing priorities for very limited funds.

• **On scientific research**

I agree that the strategic framework for aquaculture should be underpinned by the best available science and acknowledge that there are gaps and shortcomings in our collective scientific understanding of some issues. The Committee quite rightly cites the issue of carrying capacity. However, we should not underestimate the advances in knowledge that have been achieved over the last 20 or more years. Both the public and private sectors have invested significant sums of money in aquaculture R & D. This effort and investment continue, and there is now more extensive collaboration between the Executive and others (regulators, academia and industry) than was previously the case: e.g. between the Executive, the Crown Estate and FRS on carrying capacity.

Although I would therefore argue that aquaculture R & D is already well coordinated and prioritised, the review and synthesis recently undertaken by the Scottish Association of Marine Sciences (SAMS) is helpful and its advice
on the priorities for, and gaps in, R & D into the environmental impacts of aquaculture is welcome. This, of course is but one, albeit very important, facet of aquaculture R & D. I welcome the Committee’s views on the SAMS report and will expect my officials to take account of those issues regarded as a priority when further R & D work is being commissioned. I would hope that others commissioning R & D might also bear in mind these recommended areas for research. Several fora already exist where such considerations can be encouraged and co-ordinated: the Aquaculture Health Joint Working Group and the Highlands & Islands Aquaculture Forum are two examples. Pooling resources and creating synergies will help to deliver the desired outcomes more quickly, as well as providing better value for money.

However, I would not wish the Committee to lose sight of or overlook the work that has been completed or, that is currently under way to address some of the issues contained in the SAMS report. For example:

- With regard to the impacts of aquaculture on benthic impacts (paragraph 66), a reliable body of research, in Scotland and overseas, already exists. The terms of a consent to discharge also require operators to provide SEPA with details of sediment surveys carried out under cage sites at regular intervals. I intend to keep fully abreast of research developments in this field.

- A number of current initiatives are addressing the issues relating to the presence of dissolved nutrients in the water column emanating from fish farms (paragraph 67) and these will be reported on over the next few months. These initiatives include both field-based survey work and reviews of existing scientific evidence and arguments regarding effects on algal populations. (This work was outlined in the response to the Phase 1 report.)

- Fisheries Research Services has embarked upon research to determine the effect of fish farms on the distribution and spread of sea lice and to assess the implications for the infection of wild fish (paragraph 69). Reliable sampling techniques have been established to assess sea lice numbers in loch systems and the information generated has now been included in modelling studies. These studies are aiding epidemiological risk assessments and the techniques are now being applied to additional loch systems; this ongoing work is of particular relevance to the TWG process.

- As I said in my response to Phase 1, work is already in hand to identify the criteria that may be used to determine the assimilative carrying capacity of the Scottish marine environment for both shellfish and finfish aquaculture. In addition, the initiatives referred to above, in respect of paragraph 67, will include an assessment of the current process of determining assimilative capacity in relation to nutrient supply. This “hotspot” analysis, also referred to in the Phase 1 response, is expected to be completed shortly.
I also agree that there should be a means of accessing up-to-date information about aquaculture R & D activity. How this can best be achieved will be considered by the UK Committee on Aquaculture Research & Development (known as CARD). CARD is chaired alternately by the Executive and by DEFRA and its membership is drawn from industry, other potential funding bodies (e.g. the National Environmental Research Council (NERC) and the Biotechnology and Biological Sciences Research Council (BBSRC)), the environmental regulators (SEPA and the EA), the Crown Estate, SeaFish Industry Authority and the Food Standards Agency. For its annual meeting CARD asks all sponsors of aquaculture R & D, including industry, to submit details of current research projects. These are compiled into a paper for the committee and help promote co-ordination between the various programmes. Consideration now needs to be given to how to make this information available publicly and this will be discussed at the forthcoming meeting of CARD, in November, when the SAMS report and the Committee’s R & D recommendations will also be tabled.

• **On Research Funding**

I agree that "near market" research should in general be for the industry, applied and strategic research for publicly funded bodies, and that co-ordination of publicly funded research is vital. The Aquaculture LINK programme was successful in addressing a wide range of research priorities. The Working Group I chair, which is developing a strategic framework for aquaculture, is discussing ways in which to bring greater synergy to the overall research effort in Scotland. One suggestion, first made at the Highland & Islands Aquaculture Forum, is for the establishment of a Scottish Aquaculture Research Forum, involving the Executive, SEPA, SNH, the Crown Estate, Local Authorities, the SeaFish Industry Authority, other potential funding bodies and the industry. The Forum's task would be to identify funds and commission and co-ordinate a programme of research. I would be prepared to consider our future involvement in this sort of model.

Robust scientific evidence is of vital importance in informing policy development and advising the industry and others. Summary details of the Executive's ongoing research programme are available on its website. Its outcomes are publicised in a number of ways - through scientific meetings, joint government and industry groups and as published reports and peer-reviewed scientific papers. By way of example, the research programme on sea lice medicines described above in relation to paragraph 70 of the Committee's report is subject to both internal and external assessment. The ongoing work in relation to "hotspot" analysis, regional modelling and algal blooms will be submitted to OSPAR (and scrutinised by other contracting parties) as part of a wider submission on the eutrophic status of UK waters.

• **On criteria for a successful strategic framework for aquaculture**

I have said I expect to consult this Autumn on a draft strategic framework document for aquaculture. This will include the shared vision developed by my Working Group. Sustainability will be central. Stakeholder interests
involved in the process will be encouraged to take ownership of the strategy and play a full part in its implementation. Delivering the outputs will be a shared responsibility, although the Executive will take a leading role in delivering certain aspects and will retain an overview of the whole implementation process. But it will be for the Working Group to decide how implementation of the strategy should be monitored and progress reported. These issues should all become clear within the next two–three months and will of course be the subject of consultation.

Finally, I acknowledge the need for cooperation and closer co-ordination among those parts of the Executive with an interest in aquaculture. As the Committee points out, this will be particularly important in future with regard to implementation of the strategy. I see no need for a review of procedures, but accept there is always room for improvement and I have asked my officials to think further about how they might achieve this.

ALLAN WILSON
Some comments from the Scottish Hydrological Group\(^1\) to the
Transport and Environment Committee of the Scottish Parliament

1. Flooding and Integrated Catchment Management

The Bill does little to seize the opportunity to integrate flood hazard management with the water environment objectives of the Water Framework Directive (WFD). Integration would be advantageous because:

- Many flood hazard management schemes in the future will need to include upstream flood attenuation measures in order to avoid lowering the status of downstream water bodies (according to the requirements of the WFD);
- Management of water bodies for environmental and flood prevention objectives could be undertaken within one organisation, allowing the most effective integration of these contrasting objectives to be achieved using the combined resources of that organisation;
- Specialist staff resources could be more effectively directed to managing flood hazards within one national body than is possible within 32 local authorities of varying sizes. Centralising this function would deliver efficiency gains, and allow the development of a national centre of excellence to help provide a consistently high level of expertise for flood management projects nationally.

As it stands, it is far from clear how the respective requirements of the WFD and of responsive flood hazard management are to co-exist. There is scope for local authority objectives in flood prevention to work against the water environment requirements of the Directive; the Bill does not explicitly direct that flood hazard management objectives should be included within River Basin Management Planning. It should do so, and the Committee is encouraged to consider the arguments above for incorporating flood hazard management objectives with the water environment objectives of the Bill as introduced.

The Committee is also encouraged to be aware that, in many areas, the success of implementing the Bill will be controlled by the success of the lead authority or its partners to work with land owners, to allow changes such as the removal of embankments to allow more natural flooding of (presently) agricultural land, or the avoidance of bank protection to allow rivers to change course naturally. Further, the Bill does not specify that amenity or landscape objectives must be taken into account in the River Basin Management Planning process. Because water policy objectives cannot be pursued without effectively interfacing with land management, and in view of the flood hazard management issues raised above, it is highly desirable that one lead authority is given responsibility for all water environment management objectives, and allowed to develop integrated policies, rather than maintaining the fragmented and sometimes ineffective status quo. This would bring the internationally respected ideal of Integrated Catchment Management to Scotland at a practical level.

\(^1\) The Scottish Hydrological Group has a membership of approximately 200 individuals concerned with the study and management of Scotland’s water resources. Members are employed by SEPA, Scottish Water, universities, consultancies, SNH, the Met Office and other environmental groups. The Group is affiliated to the Institution of Civil Engineers, Registered Charity No 210252.
2. Resourcing

Implementation of the Act will be constrained by the resources made available to the authorities charged with implementing it. To succeed with the worthy objectives set out by the Bill, considerable resources will need to be devoted to SEPA, Scottish Natural Heritage, Local Authorities and others, particularly for such tasks as:

- Assessing the condition of water bodies by means of appropriate monitoring programmes;
- Developing scientific methods to allow the interpretation of monitoring results as required by the Directive;
- Licensing environmental data sets (e.g. topography, meteorological data, satellite remote sensing data) for use by such responsible authorities as need them in order to undertake the functions required and to the appropriate standards.

Staff numbers in the competent authorities affected will need to be increased to undertake the work, which will need withstand scrutiny e.g. in the courts, in the event that water users should choose to challenge the decision of a regulator. The availability of suitably qualified staff is already emerging as an issue for some of the public bodies most likely to be affected directly by the Bill, so some attention should be directed to appropriate training within the universities and other institutions.

3. Secondary legislation

The Bill appears to serve an enabling role, and much of the detail will become clear only when secondary legislation is brought forward by the Executive. This detail will determine the impact of the legislation on water users, and will provide more evidence of how the objectives of the Bill are to be met. As the secondary legislation emerges, the Committee is encouraged to take such interest as it deems necessary to satisfy itself in this regard.

Dr Andrew Black
Chair, Scottish Hydrological Group
Geography Department, University of Dundee
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Dear Ms Galbraith

Water Framework Directive Consultation 2

I write on behalf of the Scottish Hydrological Group, a body of hydrologists and other water professionals employed in the regulation, consultancy, water services and academic communities in Scotland. The group has a multi-disciplinary membership in excess of 200 spanning scientific, engineering and resource management interests, and is affiliated to the Institution of Civil Engineers in Scotland. We welcome the opportunity to comment on the Scottish Executive’s latest plans for legislation to implement the Water Framework Directive (WFD), and enclose comments accordingly.

Our response is based on responses from a small number of group members who have all read the consultation, and were involved in responses to your autumn 2001 consultation. All comments were made by individuals acting in a personal capacity. What we have done is present a collective hydrological view. We do not seek to represent the view of any other organisation.

I hope you find our comments helpful; I apologise for the slightly late submission of this response.

Yours sincerely

A R Black (Dr)
Chair, Scottish Hydrological Group
Response to The Future for Scotland’s Waters – Proposals for Legislation

by the Scottish Hydrological Group
(a specialist study group of the Institution of Civil Engineers)

This response is a collation of responses from individual members of the Scottish Hydrological Group, and seeks to raise a collection of points from a hydrological perspective. Such a perspective emphasises the interconnections between flows and storages of water in river basins, and draws on the experience of the Group’s members in dealing with water management issues in Scotland.

We welcome the Proposals for Legislation in your Paper 2002/4 as making well-reasoned positive plans for the sound management of Scotland’s waters. Overall, we find the proposals to be appropriate and encouraging. This response is in two parts –

1. the high-level points on which there has been a good level of agreement among respondents dealing with major aspects of the proposals; and
2. detailed technical points on which individual respondents have raised issues which are not contradicted by other respondents.

Most of the detail involves concerns expressed by respondents; this is inevitable given the process and should not be taken to imply overall unease with the proposals.

Major points

1. We welcome the progress made in this second consultation – particularly the adoption of water resource management strategies, a national monitoring strategy and the use of risk-based approaches in chapters 4-7.
2. We note that much of the detail of the Directive’s implementation will need to await the production of secondary (or lower-level) legislation and instruments. This is understandable given the external time constraints, but also unfortunate. Much of the impact of the Bill will only be clear once these further steps have been taken, and it is therefore desirable that further consultation takes place, and that this is done in a way which allows the impact of these steps to be seen clearly.
3. Monitoring and scientific requirements will be key to the sound implementation of the Bill’s provisions, and we encourage the implementation of appropriate monitoring activities and scientific assessments at the earliest possible opportunity in order to allow maximum confidence in the river basin management planning process.
4. While good reasons can be seen for adopting a single (national) river basin district (except for cross-boundary areas) and for sub-basin districts, the consultative forums and sub-basin liaison between relevant authorities seems likely to generate complexity and the scope for inconsistent decisions. The exclusion of land use planning from the RBMP process may also lead to such inconsistencies, and may occupy large amounts of SEPA effort. Early involvement of local authority planners in the formulation of RBMPs may help to minimise such problems.
5. Skills and resourcing issues will be key to the successful implementation of the Bill. Proper attention should therefore be paid to providing training appropriate to the needs of personnel who will be tasked with implementing the Directive in the future, and to providing resources within the organisations affected, particularly SEPA, which will allow the provision of a thorough and dependable underpinning to the Directive in practice.

6. We feel strongly that licenses should be time-limited as a means of maximising the effectiveness of the licensing system. There may be a danger that SEPA would not undertake meaningful review of some apparently less important licenses if no time limits existed, possibly allowing gradual increases in environmental damage. Conversely, licensee uncertainty without a specified license life-time is likely to affect licensee planning decisions.

7. Given the generalisation of the regulatory regime, the removal of thresholds, and the exclusion of indirect effects, we see little benefit in distinguishing between impoundments and engineering works. Combining the two would remove the need for arbitrary boundaries and further streamline regulations in line with Ministers’ wishes.

Detailed technical points

CHAPTER 1: THE RIVER BASIN PLANNING PROCESS

(1.4) We understand the merit in adopting a single river basin. However, we are concerned that such a central part of the Directive is ultimately left to secondary legislation and hence left undefined at this time. This is bound to make it difficult for SEPA and other agencies to put in place appropriate reporting mechanisms and procedures well in advance of implementation. This will particularly affect those agencies involved in integrating the RBMP’s with other policy areas (1.14-1.18).

We accept that SEPA should be the lead authority (1.12). However, we note that SEPA’s ability to implement RBMPs will be dependent on the nature of the secondary legislation that follows and the likely heavy reliance on non-regulatory tools in some areas.

We welcome the proposal that SEPA should have a duty to promote sustainable use of water. We wish to encourage the Executive to consider extending this idea to requiring all relevant authorities to adopt this duty and indeed, ideally, the same for all water users.

We would wish the Bill or secondary legislation to clarify the legal status of the proposed stakeholder forums, and the basis and mechanisms by which individuals will be appointed to them. Individuals may be appointed either to represent an organisation or because of their personal experience. At the sub-basin level, representatives should perhaps dominate the membership while, at national level, we suggest there should be a closer balance between representatives and individuals.

By giving SEPA the power to set up a forum for each river basin (1.23) the issue of compatibility with other policy areas and across boundaries is simply made more complex by forcing agencies to address these issues at the forum scale.
Requirements for sub-basin plans should be determined by the level of environmental risk. Ministers should have the power to direct SEPA to establish such a plan, to provide for the eventuality that SEPA may display reluctance for whatever reason.

By leaving it to SEPA and other local interests to form Catchment Management Plans (CMP’s) as appropriate (1.24-1.27) is unhelpful to those trying to plan for the implementation of the Directive. Moreover, it allows for strong local interests to promote single issues and to overly influence the RBMP. Areas which lack strong local lobbies or a dominant single issue may well find themselves under-represented in the RBMP. Although SEPA are required to seek the views of all interested parties, there is no guidance on how SEPA should balance these views. Hence the danger that limited timescales and resources will force SEPA to use existing forums which may not reflect the objectives of the Directive. Best practice in developing plans should be followed, and the process should allow a process of quality assurance.

We believe that the structure to the RBMP must be fixed as early as possible to allow all parties to plan for implementation and to reduce uncertainties for business.

It still appears that issues which do not directly impact on ecological status will be excluded from the planning process. Examples include flood risk management, drought management, recreational and commercial levels of fisheries. This is a major weakness of the proposals since there is a real danger of duplication of effort with other plans necessary for the same rivers to deliver different aspects of water management. Integrated management of all the water management issues in a river basin or sub basin would be more effective, lead to better solutions and management, be less wasteful of resources and capacity and be less confusing to the public and stakeholders.

We would strongly encourage the Executive to consider advising that SEPA set up a dedicate web site for the dissemination of RBMP’s as well as providing hard copies to ensure that access is as wide and as open as possible.

CHAPTER 2: ENVIRONMENTAL OUTCOMES: ENVIRONMENTAL OBJECTIVES

(2.4) We note the specific purpose to contribute to the mitigation of the effects of floods and droughts. It is not clear how this purpose will be balanced against others that are aimed at preventing deterioration and enhancing status. Flood protection measures may well lead to down-grading of waters if they involve engineering works.

(2.8) Wetlands are rarely isolated from surface and/or groundwater and as such will more than likely benefit from the Directive. However, the proposals imply that wetland-specific habitats will not be protected unless they have a direct linkage with surface water habitats.

The same is true for the unsaturated zone which is not explicitly protected by the Directive. However, it is indirectly protected in that dependent surface and ground waters are protected.
(2.7) It is important that the status of artificial waters once they cease to be used for their intended purpose is also clarified.

(2.13) We note that the effectiveness of the Directive relies heavily on the typology and classification that underlies the definition of “good status”. We would therefore recommend that this characterisation is open to scrutiny and is widely accepted prior to implementation in secondary legislation.

The costs to business will depend heavily on the boundary between moderate and good status, so there must be wide acceptance of this boundary prior to implementation.

We would note that there is only limited data available to support this characterisation process and would therefore advise that SEPA be required to review this process on a routine basis.

(2.20) We fully support the requirement for a Scottish Monitoring Strategy.

(2.21) We suspect that Ministers may have difficulty in instructing authorities to share data. We encourage the Executive to consider how organisations such as the Ordnance Survey, Met Office, British Geological Survey and NERC Centre for Ecology and Hydrology could be persuaded to share data with SEPA at minimal or zero cost; failure to do so would present an obstacle to SEPA’s effective operation.

CHAPTER 3: DELIVERING ENVIRONMENTAL OBJECTIVES

(3.13) We suggest it would be advisable to put a time limit on licence reviews. The number of licences is likely to be such that unless a requirement is placed on SEPA to review them then a number may never get reviewed and an opportunity to improve water efficiencies (and sustainability) will be lost.

(3.14) We would advise against simple licences for complex arrangements (e.g. abstractions taken from multiple sources or discharges taken from multiple locations). It is important that a licence clearly identifies the source and recipient. In addition, the licence should identify the point of abstraction/discharge and the point of use (the point of use is frequently distant from the source).

(3.15) SEPA should be asked to consider placing monitoring conditions an all licences above a specified threshold. Licence returns will be essential for monitoring actual usage against the water resource strategy. SEPA’s water resource monitoring is too sparse to be able to monitor abstractions/discharges at sufficient resolution for strategy development.

(3.26) It is not clear how restoration of redundant structures may be funded where owners are unknown. Consideration should be given to establishing a fund for such environmental improvements through the charging schemes to be introduced under this legislation. Grant aid may be necessary.
(3.33) The mechanism for appeal will have to reflect the high number of appellants as the new legislation beds in.

(3.37) We agree that hard and fast criteria are not appropriate. However, the proposal gives SEPA a lot of flexibility that could potentially lead to inconsistency across Scotland. We would prefer to see a stronger mechanism for delivering a consistent approach to assessing environmental impact (risk) rather than relying solely on publication of methods and decisions.

(3.41) We suspect that call-in will always be a necessary control on the regulator. However, the real power of the Ministers should be in approving the RBMP. Once the plan is approved call-in should only be required where a regulator's decision appears to contravene the objectives set out in this plan. Call-in may also be necessary when SEPA needs to regulate its own activities.

(3.43) We suggest that charging schemes should be designed to provide incentives for environmental improvement. This principle could usefully be signalled in the Bill.

CHAPTER 4: POLLUTION

(4.8) There needs to be a mechanism by which SEPA, Forestry Commission, Local Authorities and the Executive can co-ordinate and agree their regulatory activities to ensure compliance with the RBMP. It is not clear how duties will be imposed on organisations other than SEPA, since the Bill Provisions of para. 4.7 relate only to SEPA.

CHAPTER 5: ABSTRACTION

(5.4) This definition needs to be broadened to take in diversions for abstraction where a mechanical or physical apparatus may not be used at point of abstraction.

(5.5 – Bill provisions) The installation of equipment for abstraction should not be permitted except by licence.

(5.6) In endorsing SEPA as regulator, it will be important for SEPA to consult and have regard for the views of other organisations in terms of the level of control needed and the appropriateness of conditions, e.g. SNH, Fisheries (Electricity) Committee, District Salmon Fisheries Boards etc (also applies re impoundment and engineering).

(5.9) The reliance on the water resource management strategies to set local thresholds for regulation is appropriate from an ecological perspective as it would allow SEPA to take into account the sensitivity of a water body. However, this approach is likely to lead to inconsistent thresholds across Scotland and to lead to uncertainty for
developers. We would advise that a mechanism is put in place to ensure a consistency in approach (i.e. method and definition of risk).

To reduce this uncertainty it is important that the water resource management strategies are published well in advance of the implementation of the regulatory regime. We have some concerns over the availability of hydrological data to support the models that will be required to support these strategies.

It is highly desirable that a duty be placed on SEPA to draw up a national water resource management strategy, with powers available to SEPA to develop sub-basin plans as necessary. Similarly, it would be advantageous to have a national strategy in relation to flood hazard management and other national issues, in the interests of consistency.

(5.11-5.12) There is some risk that many existing abstractions regulated by Water Orders and private Acts of Parliament will fail to meet the Environmental Objectives. In order that SEPA can improve on the existing arrangements it is important that they are brought within one comprehensive system as proposed.

CHAPTER 6: IMPOUNDMENT

(6.5) The definition of impoundment may need to be broadened to capture all impoundments (including those which are temporary or which impound only intermittently) and to complement the definition of engineering works. Given that the Environmental Objectives and proposed regulatory mechanisms for both impoundments and engineering works are similar, we question the need to separate them within the Bill. Simply adopting the Directive’s definition of “water flow regulation, including water transfer and diversion, on overall flow characteristics and water balances” would be sufficient to catch all relevant works. This would also serve to streamline regulation in line with the Ministers’ wishes.

(6.7) Consideration of remediation of impoundments should include recognition of the cultural, natural heritage and amenity value which they may provide.

(6.7 – Bill provisions) The installation of works for impoundment should not be permitted except by licence.

(6.9) The regulation of impoundments also relies on the water resource management strategies and hence will lead to some uncertainty for developers.

CHAPTER 7: ENGINEERING

(7.4) Given that indirect impacts are to be excluded from the Bill, we can see little benefit in separating Engineering from Impoundment regulation. The difference will, in any case, be somewhat arbitrary. For example, when will a pipe constructed across a river channel cease to be classed as engineering works and begin to be classed as an
impoundment (is it simply a matter of scale)? In actual fact it makes little difference as the measure for regulation will be its impact on the ecology. The form of licence is likely to be similar, if not identical, at the end of the day.

Engineering works should include river maintenance and development activities such as gravel removal, realignment and the development of fishing pools. River engineering should not be restricted to the building and maintenance of structures.

(7.5 – Bill provisions) The installation of equipment or structures intended for engineering works should not be permitted except by licence.

(7.10) SEPA is involved in engineering works and maintenance for its hydrometric network. The issue of self-regulation needs to be clarified.

(7.11) The Bill should explicitly identify other relevant control regimes.
CONSULTATION ON THE WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

COSLA COMMENTS

1. Introduction

1.1 COSLA welcomes the opportunity to respond on the proposals for legislation as outlined in the Bill. Scottish local authorities have a key role to play in the management of the Scottish water environment, and, as such, are keen to ensure that the implementation of the EU Water Framework Directive in Scotland is carried out in a way that recognises the roles of all key partners and allows the proper access and opportunity for those partners to have an ongoing involvement and voice in the management of Scotland's water resources. Equally COSLA welcomes the opportunity to comment on the Water Services element of the Bill, as local government has been concerned for some time as to the level of development constraints and views the Bill as an opportunity to address this issue.

2. Water Environment

2.1 Provisions in Respect of River Basin Management Planning

2.1.1 There is still a key concern is that extending SEPA’s general duty to include social and economic considerations in drawing up River Basin Management Plans should be carried out as part of the development planning system, and not seen as a separate exercise.

2.1.2 There remains a significant issue over the delivery of the new system in terms of co-ordination between the local authorities and SEPA with regard to the operational relationship between the Local Plan/Structure Plan and the River Basin Management Plan/River Basin District Plans processes and also the timetables for reviewing these processes being different. It is accepted that Planning Authorities will need to work more closely with SEPA in both the preparation of Development Plans and RBMPs. That RBMPs will need to recognise that future development needs of the area is welcomed, but there is no specific requirement for them to take account of Statutory Development Plan policy nor with National Planning Policy Guidelines. There continues to be a concern, therefore, that the RBMPs could be an overarching framework for Development Planning. The RBMP’s will have a significant status. It is not clear whether, being led by European Legislation, how they will relate to Community plans, development plans and other documents prepared and approved by Scottish councils. The legal position is not clear and is of concern. There appears to be contradictory requirements of the RBMP. An RBMP must be produced for the River Basin District (i.e. the proposal is for a single Scotland wide plan plus cross border districts plans). The proposal is for a strategic document yet the proposals also call for ‘localised and detailed information about the environmental objectives that will apply in the catchments covered.’
How this will be resolved is not clear as the Bill provisions give Ministers “powers to prescribe matters to be covered in river basin district plans in secondary legislation.”

2.1.3 Bearing in mind the position held by the then West of Scotland Water with regard to providing infrastructure for planned development, and with no clear indication that Scottish Water holds a different position, these new proposals will add to the problems that were experienced with WoSW. What about the short (and perhaps more fragile) west coast rivers? There is a danger that these, which have suffered most from the decline of native salmon and sea trout stocks in recent times, could end up as the “poor relations” in a management system which concentrates resources on the major rivers of the east.

2.1.4. Section 4 (3) provides for the allocation to appropriate river basin districts of bodies of coastal water. How will this be applied to river basin districts that cross national boundaries, for example, the Solway estuary?

2.1.5 Flood management and flood prevention is a major issue for many councils, increasingly in the last few years. The Scottish Executive has, during the current spending review provided funds for flood prevention schemes introduced by councils. However, COSLA would seek reassurance that flood prevention matters are recognised fully in the preparation of the RBMPs and in the proposed control regimes.

2.2 The Role Envisaged for SEPA as Lead Body for River Basin Management

2.2.1 The role of SEPA as the lead body, while understood, gives cause for concern in relation to the culture and capacity of SEPA in terms of consultation and in the gathering of economic and social data to inform the RBMP. In addition, COSLA is concerned about the interrelationship between SEPA’s proposed roles and the statutory development planning role of local authorities, particularly in relation to Local Plans and Structure Plans.

2.2.2 The reservations previously expressed about the appropriateness of SEPA having the lead role as river basin planning authority seem to have been addressed by the Bill provisions to ensure that SEPA are given a more general duty to have regard to relevant economic and social considerations in drawing up RBMPs give SEPA the duty to carry out their river basin management planning functions in consultation with other relevant authorities and other interested parties, including establishing a network of consultative fora.

2.3 Transposing of the EU Water Framework Directive Provisions on Public Participation in River Basin Management planning

2.3.1 COSLA would reiterate the points made above concerning the interaction with local authority development/Structure Plans. In general, while welcoming the proposals for consultation, COSLA would suggest that RBM planning cannot take place in isolation. Many of COSLA’s member councils have commented during their responses to the various consultations regarding the proposals in this Bill, as to the importance of setting RBM planning within the wider context of Community Planning, in order that it both informs and in turn, is informed by the stakeholders in the community.

2.3.2 While Section 11(6) (i) provides a wide-ranging authority for SEPA to consult "such other persons as SEPA thinks fit", the specific omission of SERAD and the Forestry Commission as relevant consultees is surprising.
2.3.3 Section 12(2) provides that a river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement that must include a summary of the representations received about the draft plan and any consequential adjustments made to the plan. Section 12(3) provides that Scottish Ministers may - having considered the statement and if they believe further work by SEPA on the issues covered by the statement is required - return the plan to SEPA. In doing so they may direct SEPA to take such further action in that regard as they may specify and to resubmit the plan with such modifications, as SEPA considers appropriate. No provision appears to be made for any examination in public of representations that may oppose an element of the plan, for example, such as a Public Local Inquiry as used in the planning system or a Regional Advisory Committee as in the case of Forestry proposals. It is unclear whether the role of the proposed River Basin District Advisory Group envisaged in Section 17 of the Bill, which is "to advise SEPA on any matter relating to the preparation of the river basin management plan", extends to examination in public of representations which object to any element of the proposed management plan.

2.4 The framework for controls over:

- **Water abstraction**

  There are many properties in Scotland that are dependent on a private water supply. It is unlikely that the majority will be capable of transferring to mains supplies, as it will not be cost effective not practical to do so. The second consultation document\(^1\) mentions the need to define “abstraction”. COSLA would ask for clarification of this issue in relation to private water supply users. Will all such users require consent from SEPA, will there be any inherent financial implications involved in such consents, or will there be a threshold abstraction limit below which users will be exempt?

- **Impoundment**

  It is noted that large raised reservoirs (with a capacity greater than 25,000 m\(^3\)) will continue to be controlled by the Reservoirs Act 1975. Notwithstanding the requirements of the Reservoirs Act 1975, it is not clear whether large raised reservoirs, as either new construction or existing impoundments, will require notification to the regulator. Similarly, clarification is sought as to whether large enclosed tanks, for water supply purposes, are to be included.

- **Engineering works affecting water courses**

  It is noted that no engineering works should take place without prior notification to the regulator and the appropriate consent being received.

  In response to the earlier consultation process, it was considered that the proposals should take into account local authorities’ obligations for flood prevention under the Flood Prevention (Scotland) Act 1961 and the Flood Prevention and Land Drainage (Scotland) Act 1997.

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\(^1\) ‘The Future for Scotland’s Waters – Proposals for Legislation’
Recognition of the conflicts, which can arise between the need to maintain watercourses for flood prevention purposes and the possible impact on the aquatic environment, could be useful.

It is agreed that the Bill should provide that the maintenance and restoration of existing structures will be classed as engineering works within the terms of the regime, and that the Bill will need to make provisions to ensure an appropriate degree of co-ordination between the new regime and existing controls.

- **Diffuse and point sources of pollution**
  
  COSLA has no comment on this matter.

2.5 The Bill’s provisions as they relate to other policy areas and regulations

2.5.1 There is a requirement to integrate Development and River Basin Management Planning. The RBMP’s should not stand in isolation from national and local policy documents such as Community Plans, Development Plans, Local Economic Strategies, Area Waste Plans and Local Agenda 21 and they will need to integrate with other planning regimes such as sustainable urban drainage, local biodiversity actions plans and coastal zone management. It is not clear if this would be addressed through the National Spatial Perspective proposed by the Review of Strategic Planning, whether this co-ordination would fall to SEPA or to Council Development Plans. If there is no clear public scrutiny of RBMPs, this could raise Human Rights issues and could create difficulties if a development plan has used RBMP as a material consideration and is subsequently challenged.

2.6 The Bill and how well it meets agreed sustainable development criteria

2.6.1 COSLA has no comment on this matter.

3. Water Services

3.1 The Creation of a Framework Regulating the Duty of Scottish Water to Provide Mains Water and Sewerage in Respect of New Developments

3.1.1 COSLA suggests the following amendments:

- Add after 25 (7) (2D):

  (2E):
  
  “In determining what is a reasonable cost for the purposes specified Scottish Ministers will have regard to the requirements of development plans prepared within the terms of the Town and Country Planning (Scotland) Act and the river basin plans prepared in the terms of Part 1 of this Act.”

  (2F):
  
  “In setting criteria to be applied and the method of calculation to be adopted as prescribed under (2D) above, Scottish Ministers will be required to have regard to variations in development returns in different locations.”
3.1.2 The context for this proposed amendment is the growing concern about the mismatch between the development requirements of Local Plans and investment in new infrastructure capacity by Scottish Water. This is currently resulting in major constraints on development in a number of parts of Scotland including some of the most economically deprived areas. East Ayrshire has been identified as one of the most seriously affected areas. In this area Scottish Water is unable to approve connections to its sewerage systems for applications that have been subject to planning approval (in some cases without any indication of objection by Scottish Water at the stage of planning approval). Lack of capacity in the water system could prevent development of a number of industrial sites essential to attract new jobs to an area of high unemployment and to new housing schemes, including brownfield sites central to secure the regeneration of the local economy.

3.1.3 By way of further example, East Ayrshire has also experienced development constraints for both domestic and business sites in its area in terms of the Scottish Water’s ‘reasonable cost’ criteria. It is considered likely that many of the constraints could be overcome by individual developers agreeing to contribute additional resources for drainage provision for the sites concerned. Equally, a review of Scottish water’s ‘reasonable cost’ criteria may also help address this problem.

3.1.4 It is drawn to the Committee’s attention that the proposed amendment is consistent with the stated intentions of the Scottish Executive as set out elsewhere in the Bill and in the associated policy memorandum and explanatory notes. The following points are drawn to the Committee’s attention:

- Clause 2 of Part 1 of the Bill requires “Scottish Ministers, SEPA and responsible Authorities to have regard to the social and economic impact of such exercise of their functions.”

- Under Part 1 of Schedule 1 of the Bill river basin plans are required to take account of “significant pressures, and the impact of human activity, on the status of surface water and ground water within the district.”

- Paragraph 19 of the Explanatory Memorandum makes it clear that the Clauses quoted above are specifically to enable Scottish Ministers, SEPA and responsible Authorities to take into account social and economic considerations when exercising the relevant functions.

- The modifications to previous Acts relating to the setting of “reasonable costs” which may be contributed by Scottish Water to the provision of a new infrastructure is to replace a non-variable definition of reasonable costs by a definition which will be determined, and varied by Scottish Ministers to take account of the circumstances of individual proposals and other considerations (which would be specified in Regulations). The imposition of requirements may presumably be taken into account in financial arrangements between the Scottish Executive and Scottish Water.
Paragraph 172 of the Explanatory Memorandum indicates that the intention of modifying the definition of reasonable cost is to increase the proportion of new infrastructure costs met by developers. It is crucial that the Scottish Executive should reflect in determining relevant regulations the variation in commercial returns to developers across different parts of Scotland. In areas where there is a relatively high return on investment by developers it is reasonable to expect that any cost benefit formula will result in a view that a higher proportion of new infrastructure costs may be met by developers. In areas such as East Ayrshire and Dumfries and Galloway, however, where development returns are often inadequate to cover basic construction costs there is no scope for developers to increase their contribution to new infrastructure. Even under the present regime cost of contributing to new infrastructure can have the effect of deterring investment. These are the areas in which generally our investment is most needed to support economic regeneration.

Paragraph 31 of the Policy Memorandum makes it clear that the Scottish Executive expects there to be close interaction between river basin planning and development planning. To the extent that river basin plans are reflected in the determination by Scottish Ministers of reasonable costs for contributions by Scottish Water to new infrastructure the proposed amendment will reinforce this recognition of the importance of the interaction of the two systems.

In paragraph 84 of the Policy Memorandum the advantages of the proposed new system for determining reasonable costs are set out. The objectives are, however, more restrictive than the commitments elsewhere in the legislation to take into account economic considerations. The proposed amendment would, however, clearly extend the range of considerations to reflect the underlying objectives set out in the Bill.

Paragraph 88 of the Policy Memorandum reports on consultation responses. It notes that the proposed changes relating to contribution to the cost of new infrastructure represented a significant proportion of the responses. This indicates that the Scottish Executive accepts that strategic network development and liaison with planning authorities should be reflected in the determination of reasonable cost. It indicates that these factors will be taken into account in regulations determining reasonable cost. It is submitted by CoSLA, however, that this matter is too fundamental to be left entirely to Scottish Ministers in drawing up regulations and should be imposed as a general duty in drawing up the relevant regulations.

3.1.5 The Committee has also been engaged in recent months in reviewing the Scottish Executive’s proposals for changes in the development of planning framework. Their proposals are intended amongst other objectives to make development plans more effective as a means of co-ordinating the activities of all organisations with a role in development, which would include Scottish Water. The Executive has also requested Scottish Water to participate in local forums set up by local planning authorities in areas where infrastructure capacity is forming a major constraint in order to ensure that forward investment plans are brought more closely into a line with development plan requirements. The proposed amendments would be entirely in line with the thrust of these initiatives by the Scottish Executive.
3.1.6 An underlying purpose of the Bill is to establish a democratically accountable regime for managing the relationship between Scottish Water and developers in the context that Scottish Water is no longer itself democratically accountable. The proposed amendments would ensure that Scottish Ministers will be required to reflect strategic development policies of the Government and the Scottish Parliament in controlling this relationship.

4. Other Matters

4.1 Policy Memorandum

4.1.1 COSLA found the Policy Memorandum to be informative and found that it clarified certain aspects of the Bill, and, indeed, found that it re-enforced some of COSLA’s suggested amendments. Please note the comments expressed in paragraph 3.1.4

4.2 Financial Memorandum

4.2.1 COSLA also found the Financial Memorandum to be informative, though there is still a concern as to possible hidden costs that may fall to local authorities in respect of Part 2 of the Bill. Equally, COSLA has concerns as to the figures outlined in paragraph 156 of the Financial Memorandum. As the Financial Memorandum suggests that the majority of costs will fall in period 2007 – 2011, COSLA notes that this goes beyond the current Spending Review period, which ends in 2006. It is therefore essential that the burden on councils concerning this aspect of the proposed legislation is recognised by additional resources being given to the local government sector.

4.3 Consultation Process

4.3.1 COSLA must, once again, express its concern at the lack of production of a draft Bill to allow appropriate consideration of and comment upon the detailed transposition of the proposals. Moving from a consultation to a final Bill can create a situation where lack of time to assess and understand the possible implications of wording will lead to rushed comment and challenges on contested areas of the Bill which may be arbitrary, rather than considered. The experience of the way in which the Transport Bill was handled was a clear indication that production of a draft Bill is a necessary, practical and inclusive means of conducting the legislative process.

COSLA
9 August 2002
The Institute is concerned that the broad terms of the bill leave many of the detailed operational aspects to question. With the introduction of a new planning regime, with inevitable cross cutting consequences for other regimes, this type of enabling legislation leaves many difficult procedural issues to be dealt with by statutory instruments. We strongly recommend that the Executive be pressed to issue consultative draft statutory instruments, where appropriate.

The Institute strongly supports the policy objectives. As these are essentially environmental objectives, the statutory town and country planning system in Scotland, as in the rest of the UK, is a powerful instrument for delivering sustainable development. This means that environmental constraints must be clearly defined. A holistic approach to environmental management and control helps with such definitions, but it can also introduce problems.

The main challenge which the Institute recognises arising from the Bill is that of effectively integrating the river basin management planning process with other spatial planning processes, particularly the statutory land use planning system under the Town and Country Planning (Scotland) Acts.

Many tranches of legislation and policy are promoted by the Scottish Executive while emphasising the importance of the statutory town and country planning system in delivering the Executive’s objectives, where there are spatial planning issues to be addressed. This suggests, therefore, that the two-way relationship between the land use planning system and the proposed new policy/system should be set out in statute. In this case, the Institute would strongly recommend that the section of the Bill dealing with river basin management plans, should not only include a duty for others to have regard to river basin management plans but also for SEPA to have regard to the statutory land use planning processes, both development plans and planning control. In the Institute’s experience, although there are many departments and agencies which are statutory consultees under the Town and Country Planning Acts, there is often strong resistance from them to their participation in the planning system being a statutory duty and hence figuring in their own strategic objectives. We believe that this is a premise which should change, particularly in the light of the Executive’s decision to proceed with a National Planning Framework, the ultimate in cross cutting spatial planning exercises.

The Institute is concerned that the main purpose of the Bill will be seen as a context for the regulatory provisions of chapter 3 (Measures for the protection of the water environment), as exercised by SEPA. In practice, this will throw an emphasis on the relationship between SEPA and the relevant planning authorities at the point when applications are submitted. SEPA will be guided by the river basin management plan and the planning authority by the statutory structure or local plan. These plans should be compatible if there has been two-way agreement at the outset. We would see the difficulties arising, however, as follows.

For the purposes of regulation, there may be a tendency to develop the river basin management plans as criteria based plans. It is essential that these should be maps showing areas within which different prescriptions apply. As with structure and local
plans, developers, both public and private sector, depend heavily upon the guidance given by the land use framework of structure and local plans, and this principle should be adopted for river basin management plans. Hence, they should contain mapped information which should be durable for a period of at least five years.

The converse of this situation is that developers will not only lack guidance when they come to make their forward plans but that they may find that the application of criteria may result in a different interpretation of the acceptability of their proposal five years on from when the plan was originally prepared. While it is not directly an issue for the Bill, therefore, we are concerned that SEPA should have the necessary resources and management objectives to secure an effective integration with the statutory planning process.

With regard to part 2 of the Bill, the Institute is concerned that its representations at the time of the Water Industry Bill, did not lead to greater recognition of the issues which arise for the servicing of new development from the establishment of a more commercially orientated water authority. The provisions of the present Bill may reasonably facilitate private sector contribution towards water and sewerage infrastructure but it does nothing to clarify the obligation of Scottish Water towards facilitating new development. At the present time, servicing new development is a low priority compared with its other objectives for improving water quality, cleaning up beaches and replacing outmoded infrastructure. This situation was already clear under the former West of Scotland Water Authority and it appears that the imperatives of Scottish Water’s statutory brief will make the situation worse.

Planning authorities and developers, particularly housing developers, are experiencing grave difficulty in forward planning for land release for new development in view of the uncertainties over water and sewerage. Increased contributions from the private sector would not alter the need for permissions to be secured for connections which may be frustrated through lack of resources and design assessment.

When allocating new land for development in structure and local plans, planning authorities require to carry out supply and demand assessments under the criteria of National Planning Policy Guidelines, NPPG 3 Land for Housing, for example. This requires consultation with housing developers over the effectiveness of land proposed for development, from the point of view both of its marketability and its physical characteristics. The physical characteristics include the feasibility of provision of water and sewerage infrastructure, and the related cost. At the present time, planning authorities and developers require early information with regard to design and costings for new sites, for the purposes of preparing structure and local plans, even though the planning application may not be made for five years and the development may not take place for a further five.

As with the concerns over SEPA and its responsibilities for river basin management planning, the Institute is greatly concerned over the guidance which will be available from Scottish Water for development planning. We would seek further clauses in the Bill, to complement the freer context for developer contributions, which will place a duty on Scottish Water to co-operate with planning authorities in identifying land for development and the likely costs of servicing them, in statutory development plans.
WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

SUBMISSION BY THE CROWN ESTATE

Introduction

The Crown Estate is part of the hereditary possessions of the Sovereign “in right of the Crown”, managed under the provisions of the Crown Estate Act 1961 by the Crown Estate Commissioners who have a duty to maintain and enhance the capital value of the Crown Estate and the income obtained from it.

The Crown Estate’s interest in the Bill arises from its roles:

- As owner of virtually all the seabed within territorial waters, and more than half of the Scottish foreshore
- As the body currently responsible for controlling the location of marine fish farms, including EIA responsibilities, other than in Shetland and parts of Orkney
- As owner of extensive rural estates comprising tenanted farms, forestry, mineral and sporting rights
- As proprietor of salmon fishing rights on a number of Scottish rivers.

General Comments

The Crown Estate’s comments are confined to Part 1 of the Bill, dealing with Protection of the Water Environment, and the associated Schedules 1 and 2. We do not wish to express any views on Part 2.

The Crown Estate welcomes the introduction of systematic water management planning in Scotland and the laying down of the foundation for strengthened and modernised controls over water pollution and abstraction. It is important, however, to ensure that the Bill's provisions are implemented in harmony with other planning and control regimes to avoid duplication or conflict.

We endorse the role given to SEPA under the Bill and the extent of application of the Bill's provisions to coastal waters.

River Basin Districts (Section 4)

It is important that river basin districts should be defined in a way that makes sense in a marine context. In earlier consultations, the Scottish Executive proposed a division that would have created anomalies, for example splitting the Sound of Mull between two RBDs. We understand that a single Scottish RBD, other than for cross-border rivers, is now envisaged. This will avoid such
difficulties, other than possibly in relation to the Solway where defining the seaward limit of the Anglo-Scottish RBD will require careful thought.

**Protected Areas (Sections 6 and 7)**

The areas to be designated as “protected” under section 7 could potentially be very large. For example, drinking water is abstracted from the River Spey through gravel beds at Dipple just upstream of Fochabers. Thus the entire river and its tributaries above this point could become a protected area. The implications of this are not clear from the Bill. If it is envisaged that more stringent controls should be applied within protected areas, the economic implications of such controls and the practicality of their enforcement need to be taken into account.

**River Basin Management Plans (Sections 10-17)**

It is important to recognise that much the greater part of the waters covered by RBMPs will be seawater, and the plans need to be framed with this in mind. In setting objectives and controls for the marine environment, the plans should take account of the principles of Integrated Coastal Zone Management (ICZM) and articulate with other planning and control mechanisms that seek to promote sustainable development of both the aquatic and landward components of the coastal zone. It may be sensible to develop the planning for coastal waters more fully through sub-basin plans (section 15).

The Crown Estate wishes to be consulted in the preparation of RBMPs that include coastal and transitional waters, and has received assurance from the Scottish Executive that this will happen.

**Regulation of Controlled Activities (Section 20 and Schedule 2)**

Section 20 confers on Ministers a very wide regulation-making power for the control of activities affecting the water environment. Such regulations are likely to affect a number of interests of the Crown Estate, particularly:

- Agriculture and forestry
- Aquaculture
- Other marine development.

There would be little value in speculating at this stage as to the detailed contents of regulations. However, in the specific case of marine aquaculture, regulations made under the Bill should provide SEPA with more appropriate controls over processes, waste dispersal and the use of chemicals than the present regime under the Control of Pollution Act which was devised with end-of-pipe discharges in mind.
The Crown Estate has sought, and received, an assurance from the Scottish Executive that it will be consulted on the framing of regulations affecting its interests.

**Planning Control of Marine Fish Farming**

While the Bill will, through regulations, substantially improve the tools available to SEPA in controlling the water quality aspects of marine aquaculture, it does not address the lack of a proper statutory regime for regulating the location and size of fish farms by extending local authority planning control. This is a matter for regret.

As the Committee will be aware, the present arrangements rely on the issuing of a seabed lease by the Crown Estate as the mechanism for control (different arrangements apply in Shetland and parts of Orkney). A non-statutory system of consultation and decision-making, in which local authorities play the key role, directs the location and scale of fish farming development. This is overlaid by a statutory EIA regime in which the Crown Estate is designated as responsible authority. The Crown Estate is not an appropriate body to undertake this role, and the system is characterised by misalignment of power and responsibility.

The Crown Estate welcomes the view expressed by the Committee in paragraph 27 of its Report on Phase 2 of the Inquiry into Aquaculture that the transfer of planning powers to local authorities is an urgent priority, and that the Committee is minded to support the transfer of these powers should it be competent for the necessary amendments to be lodged in respect of the Bill.

The location of fish farms can have profound implications for the ecological quality of coastal and transitional waters whose protection and improvement the Bill aims to promote. The absence of any statutory control over this would appear a major weakness in the machinery for achievement of the objectives of the Water Framework Directive, albeit that non-statutory mechanisms and SEPA licensing ultimately provide back-up safeguards. It could therefore be argued that the introduction of planning controls over fish farming comes within the scope of the Bill.

The actual provisions to achieve this need not be lengthy or detailed. It would be necessary to extend the jurisdiction of planning authorities to include powers of planning control, for marine fish farming purposes only, below low water springs for a specified distance out to sea. Detailed adaptations of the Town and Country Planning (Scotland) Act as it applies to marine fish farming could then be set out in regulations to be brought into force at the same time as the new powers.
Conclusion

The Crown Estate commends the general principles of Part 1 of the Bill, subject to the comments set out above, and urges the Committee to give further consideration to the possibility of adding provisions for planning control of marine fish farming.
WATER ENVIRONMENT & WATER SERVICES (SCOTLAND) BILL
STAGE 1: TRANSPORT & ENVIRONMENT COMMITTEE

EVIDENCE FROM SCOTTISH NATURAL HERITAGE

Summary of main points:

• The Bill holds the potential to provide a framework for integrating different interests within a holistic approach to land and water use and management.
• We see the WFD making a major contribution to safeguarding and enhancing the environment, as well as ensuring that development is set on a sustainable course.
• The scale at which people are engaged in management planning will strongly influence the degree of participation: RBMP(s) need to be underpinned by strong arrangements for local involvement through sub-basin plans.
• While we support a “step-wise” approach of primary and secondary legislation we believe that there should be a clear vision of the comprehensive planning and management regime that is the ultimate goal for the planning process.

Introduction

1. Scottish Natural Heritage (SNH) is the Government's statutory adviser in respect of the conservation, enhancement, enjoyment, understanding, and sustainable use of the natural heritage of Scotland. SNH has followed the progress of the Water Framework Directive (WFD) since the 1990s, providing advice to SEPA and the Scottish Executive throughout this period. This has included contributing to the UK negotiating line on the text of WFD, and in examining how best to implement it in Scotland. SNH joined the SEPA-chaired group which drafted the current consultation paper on WFD Annexes II and V, and our response to that is in preparation. SNH staff are also involved in several WFD working groups and research projects at Scottish, UK and EU scales.

2. SNH responded to the Scottish Executive's WFD consultation papers (dated June 2001 and March 2002). Our evidence below is based on examining the Bill in the light of those responses (dated September 2001 and April 2002 respectively: copies are available on www.snh.gov.uk). We focus on Part 1 of the Bill, regarding WFD; we have no significant comments on Part 2 of the Bill.

General SNH comments on the Bill

3. SNH has consistently welcomed the WFD, and we support the Bill's general principles. Through enforceable objectives for Scottish waters, identified through participation and set with reference to the need to safeguard natural systems and native aquatic biodiversity in the long term, the WFD will make a major contribution to sustainable development in Scotland. We see the WFD making a major contribution to safeguarding and enhancing the environment, as well as ensuring that development is set on a sustainable course. Although the primary focus is water quality, this cannot be addressed without also attending to the use of land and other natural resources within the catchment. It therefore holds the potential to provide a framework for integrating different interests within a holistic approach to land and water use and management. The Bill's provisions should help to meet many of the natural heritage objectives set out in SNH's 25-year forward-looking 'Natural Heritage Futures' programme. Expected benefits include:

• Exerting upward pressure on the quality of all of Scotland's waters;
• Enshrining the need to work with natural processes as a guiding principle for better practice in the management of natural resources;
• Better regulation (more transparent, consistent, and better targeted);
• Accelerated progress in meeting the UK’s biodiversity obligations; and providing an ecosystem basis for managing aquatic and wetland protected areas (often difficult to achieve with the UK’s existing site-based approach to nature conservation).

4. SNH notes the enabling nature of the Bill, with significant aspects of WFD detail left for secondary legislation. This may attract adverse comment in some quarters. However, WFD is an unusually far-reaching EC directive, and implementing it requires significant changes to the statutory water management framework in Scotland. Given the WFD transposition deadline of December 2003, it is sensible to use the remaining time to design the legislation. The ‘stepwise’ approach allows further exploration of how to apply the detail of WFD (e.g. through ongoing working groups and research projects at EU, UK and Scottish scale, and through debates during the Bill’s progress). It should also keep the legislative and consultative workload manageable for the Executive, Parliament, SEPA, regulated sectors or other interests.

5. Secondary legislation, through which much of the important detail is to be implemented, is subject to less by way of formal Parliamentary scrutiny. SNH therefore welcomes the statutory provision (in s20 of the Bill) for consultation over the new regulatory control regimes, and the Executive’s intention (stated in the Policy Memorandum) to consult over many other areas of secondary legislation and guidance. These are likely to be of significant public interest, and consultation will help greatly in clarifying responsibilities and resource requirements, and in establishing links to related policy areas (see below).

River Basin Management Planning
6. SNH has commented that the scale at which people are engaged in management planning will strongly influence the degree of participation (see below). In particular, SNH has advised the Executive that the proposed low number of RBDs needs to be underpinned by strong arrangements for local involvement through sub-basin plans. The Bill and its Policy Memorandum leave significant discretion for Ministers and SEPA regarding links between RBMPs and sub-basin plans, and we shall continue to explore this issue as the Bill progresses.

7. The Bill’s process of preparing RBMPs is consistent with WFD requirements. SNH agrees that Ministers should have the final approval function in ‘signing off’ RBMPs. We welcome the expectation in the Policy Memorandum (para. 38) that the majority of disputes over the content of RBMPs will be resolved before submission to Ministers for approval. This sends a clear signal regarding the extent of participation and negotiation which SEPA is expected to undertake in RBMP preparation.

8. There may be some merit in the Bill stating that the purpose of RBMPs is to protect the water environment (as defined in S1(2)). This would create a useful general positive duty in relation to wetlands (see below). This is a key concern of a number of consultees, and an area where much uncertainty surrounds WFD’s precise requirements.
SEPA’s role – and that of SNH and other public bodies

9. We agree with the lead WFD role proposed for SEPA. We note that SEPA will not be the sole WFD regulator, and we have in the past highlighted the need to ensure that all WFD regulators operate in a consistent and complementary manner. SNH is examining closely what role we may be able to play by way of a supporting ‘Responsible Authority’. We will explore this further in response to SEPA’s consultation paper on WFD Annexes II & V, and in ongoing discussions with SE & SEPA. We note Ministers’ expectations that the anticipated costs of WFD implementation will be met within baseline (e.g. Financial Memorandum, paras 146, 150, 154). We are keen to contribute but the expectation that we should do so within our baseline means that the work involved could only be undertaken at the expense of significant elements of our existing programme.

10. We note that SEPA and designated Responsible Authorities must exercise their general and specific duties in accordance with Ministerial guidance. However, Scottish Ministers will also have many functions relevant to WFD. These include acting as a regulator in Nitrate Vulnerable Zones or under the Food and Environment Protection Act; as a source of funds for flood prevention schemes, or agricultural support payments; as a source of monitoring data, through Fisheries Research Services. SNH therefore recommends that the Bill also requires Scottish Ministers to publish a statement of how they will exercise their functions in accordance with WFD requirements.

Public participation

11. We are aware that WWF has challenged the Executive’s approach on the basis that it fails to meet the letter of the Directive’s consultation requirements. SNH does not take a view on this legal matter. However we do see the links between RBMPs and the local scale (individual catchments and coastal zones) as crucial in making the WFD relevant to local communities through securing participation, shared ownership of objectives, and transparency in regulatory decisions. While having sympathy with concerns over the need to get participation right, we acknowledge that any approach adopted by SEPA is likely to take time and experience to work effectively.

12. The Bill leaves this for SEPA (guided by Ministers) to address, for example by setting up Advisory Groups. We recognise that there is much detail to develop, and agree that creative thinking will be needed on links to Community Planning, existing sub-basin plans and partnerships, and related policy sectors. SNH therefore recommends that, in implementing the WFD, the Bill (or secondary legislation, if appropriate) requires SEPA to take advantage of evolving techniques in public participation. This is a relatively simple provision, which would give SEPA a positive duty, yet still leave flexibility to adapt to future circumstances, tailored to local needs.

Framework for new regulatory controls

13. SNH welcomes the Bill’s framework for new regulatory controls required to implement WFD. The ‘sliding-scale’ of regulation, and the water use licences, are welcome innovations. We have some queries regarding the regulation of activities which might affect the seabed, for example in relation to reserved matters; the regulatory role of Ministers (see above) and s20(3) of the Bill, regarding the definition of engineering and other activities.

Related policy areas

14. The Bill clearly offers the potential to link the implementation of the WFD with other planning and regulatory regimes (e.g town and country planning, flood
prevention, coast protection, inland and inshore fisheries, aquaculture) and to align the public programmes that support relevant land using activities such as agriculture and forestry with the objectives identified through the WFD process. It may be difficult - and perhaps counter-productive - to make explicit provision for these links in primary legislation. However, while we support “step-wise” implementation in the way proposed, we believe there should be a clear vision of the comprehensive planning and management regime that is the ultimate goal for the planning process.

15. The Directive is long and complex, with many uncertainties still to be resolved, and many of the sectors named above are already going through significant change. It is right to focus the Bill on implementing WFD fully and appropriately for Scottish needs. The general duties proposed for public bodies are potentially far-reaching, and there is broad provision for secondary legislation, Ministerial guidance, and ‘sub-basin plans’. It should therefore be possible to ensure that WFD brings beneficial new policy approaches for these related sectors, and better integration between them. We look forward to debates on this issue as the Bill is scrutinised.

Sustainable development
16. Paras. 101-105 of the Policy Memorandum summarise the importance of WFD for sustainable development in Scotland. In particular, the WFD has the potential to provide useful targets and monitoring data which can contribute towards sustainable development indicators. We commend what is in the Policy Memorandum, and its emphasis on environmental sustainability. However SNH does considers that there are significant further sustainable development benefits in WFD implementation (see para 4 above), which the Policy Memorandum understates. SNH has recently revised its own Policy Statement on sustainable development.

Accompanying documents
17. With few exceptions, SNH found the memoranda accompanying the Bill to be very useful in explaining its implications, the Executive’s policy intentions, and how these have been developed in the light of various arguments advanced by consultees. We would have welcomed further analysis of the wider context of WFD, for example in relation to the sectors of activity indicated above. In particular the memoranda often lack detail on the Bill’s implications for maritime waters.

18. The Executive’s arrangements for consultation and public involvement (paras. 68-79 of the Policy Memorandum) have so far been refreshing, especially when compared with preparations for previous EC Directives. In addition, the WFD fora established through the UK Technical Advisory Group, and the European ‘Common Implementation Strategy’, adopt a productive multi-agency approach to problem-solving. We understand that the proceedings of these fora should soon be more widely available, via the Internet. SNH welcomes this development.

19. The Financial Memorandum usefully highlights the potential economic benefits of WFD implementation, and we look forward to publication of further details of the Executive’s research in this area. SNH has previously recommended that incentive charging could help to pay for restoration and remedial measures, especially where liability for costs is difficult to establish. However, this issue is not examined in any detail in the Financial Memorandum.
Other aspects of the Bill
20. We have several more detailed queries about the Bill which we are pursuing with SEPA and the Executive. Perhaps the most significant of these are whether the Bill should make specific provision for wetlands (see above), and when WFD’s ‘no deterioration’ requirements apply.

Conclusion
21. SNH welcomes the Bill, and supports its general principles. We are examining closely what resources may be needed to deliver the new statutory roles proposed for SNH. Pressure on our existing resources is high given the extent of existing Ministerial expectations of SNH. We shall follow the Bill’s progress closely, maintaining close liaison with the Bill Team, our sponsor division, and SEPA. We would be happy expand further on this evidence, orally or in writing, as the Bill progresses.

Scottish Natural Heritage
August 2002
Dear Mr McGill

WATER ENVIRONMENT AND WATER SERVICES SCOTLAND BILL

I write in response to the letter from the Convener of the Finance Committee, Mr McNulty, inviting views on the financial implications of the above Bill for Scottish Natural Heritage.

We have mentioned this issue briefly in our written evidence to the Transport & Environment Committee. Since submitting that evidence, we have had the opportunity to discuss resourcing issues in a little more detail with the Scottish Executive and SEPA, and to assess further our internal capacity to assist SEPA. Our evidence to the Finance Committee (attached), reflects these developments.

We would be happy to expand further on this evidence, orally or in writing, if required. In the meantime, if you have any further queries, please contact David Howell (Tel: 0131 446 2436; e-mail: david.howell@snh.gov.uk) or Dominic Counsell (Tel: 0131 446 2418; e-mail: dominic.counsell@snh.gov.uk).

Yours sincerely

Jan Jardine

cc. Roz Wheeler, Clerk to Transport & Environment Committee
Annex

WATER ENVIRONMENT & WATER SERVICES (SCOTLAND) BILL
STAGE 1: FINANCE COMMITTEE

EVIDENCE FROM SCOTTISH NATURAL HERITAGE

Summary of main points:

- SNH has doubts about its capacity, within existing resources, to provide SEPA with the assistance that it is seeking in the implementation of the Water Framework Directive. We have alerted the Scottish Executive to these concerns, which we have also voiced in our evidence to the Transport and Environment Committee.

- SNH is working with SEPA and the Scottish Executive to examine the implications for SNH's existing programmes, of trying to absorb any additional resource costs within existing budgets, as envisaged in the Financial Memorandum to the Bill.

- The deadlines imposed by the Directive oblige SNH to decide how far we can contribute before our role has been defined in statute and before Ministers have been able to provide us with any formal guidance on it.

- The Water Environment & Water Services Bill has many other financial implications, some being of particular interest to SNH. We have commented on these in earlier consultation responses, and in evidence to the Transport & Environment Committee.

Introduction – SNH interest in the Water Framework Directive

1. Scottish Natural Heritage (SNH) is the Government's statutory adviser on the conservation, enhancement, enjoyment, understanding, and sustainable use of the natural heritage of Scotland.

2. SNH has followed the progress of the Water Framework Directive (WFD) since the 1990s, providing advice to SEPA and the Scottish Executive throughout this period. This has included contributing to the UK negotiating line on the text of the WFD, and in examining how best to implement it in Scotland. For example, SNH joined the SEPA-chaired group which drafted the current consultation paper on WFD Annexes II and V, and our response to that paper is available on www.snh.gov.uk. SNH staff are also involved in several WFD working groups and research projects at Scottish, UK and EU scales.

3. SNH has also responded to the Scottish Executive’s WFD consultation papers (dated June 2001 and March 2002). Our evidence below is based in part on
those responses (dated September 2001 and April 2002 respectively; copies are available on our website).

Implications of the Directive for SNH workload and resources

4. SNH’s involvement so far has been largely strategic, contributing to technical and policy discussions about how the WFD should be implemented. It has been possible so far to accommodate the associated resource demands largely by redeploying research funds and the efforts of existing staff as appropriate. This has all been manageable within our normal bidding processes: the SNH ‘Operational Plan’ which covers each financial year, and the ‘Corporate Plan’ which rolls forward over a 3-year horizon, all within the context of the Scottish Executive’s Spending Reviews.

5. We expect to continue our current involvement with preparatory work in Scottish, UK and EU fora. Some aspects of WFD implementation are still several years away. The balance of work is, however, already starting to change, with implementation tasks rapidly becoming necessary alongside policy development in order to meet some of the WFD’s early deadlines. These operational aspects of WFD are increasingly local in emphasis.

6. Previous SNH consultation responses about WFD implementation have included clear statements that it would be difficult for SNH to assist SEPA further without additional resources. We were surprised to learn (via the Financial Memorandum) that Ministers expected such WFD commitments to be absorbed within our existing budget. We also note that, if early WFD deadlines are to be met (such as those in December 2004), work needs to begin on the relevant tasks before domestic legislation and Ministerial guidance have formally assigned the responsibilities for undertaking it.

7. There have been difficulties for all parties in making accurate predictions about the WFD’s resource implications. However, a clearer view is now emerging about how WFD requirements are likely to translate into workloads. This has enabled SEPA to make more accurate assessments of what it considers is needed to implement the Directive, its internal capacity to deliver this, and hence the level of assistance likely to be required from other bodies, such as SNH.

8. As a result, there are several areas of early WFD implementation where SEPA is seeking additional assistance from SNH this financial year, as well as in future years. These have particular implications for staffing and research priorities over the next 3-4 years, and they include tasks such as:

- describing the natural variation of Scottish waters, and dividing them into different ‘types’;
defining 'water bodies' in Scotland for WFD management, monitoring and reporting purposes;
- describing the pressures of human activity on Scottish waters, and the environmental impacts of these pressures;
- provisionally classifying water bodies according to their 'water status';
- delivering particular requirements relating to nature conservation sites to be listed in 'Protected Areas Registers';
- developing environmental monitoring techniques and associated protocols.

9. We are discussing this in detail with SEPA, and examining our capacity to help. We are also discussing with our sponsor division whether meeting SEPA's requests within existing resources might compromise our ability to address existing Ministerial priorities, or to pursue other activities central to our statutory duties and corporate priorities.

10. We are now working up an estimate of additional costs, in collaboration with SEPA and staff from our respective sponsor divisions in the Scottish Executive. When this is available, we would expect it to inform further budget allocations within SNH and, in due course, statutory Ministerial guidance to SNH regarding our WFD roles and responsibilities.

Other financial aspects of the Bill of interest to SNH

11. The paragraphs above have focused on the most immediate implications of the Bill for SNH's budget, and in particular for our staff resources and research costs. There are other, wider, aspects of the Bill which are of interest to us. These include:

- SNH funding of catchment & Firths projects ('sub-basin plans' in terms of the Directive);
- interactions between SNH grant spend on aquatic and waterside habitat improvements and possible WFD regulatory requirements to improve habitat;
- interactions between payments we make to influence the management of protected nature conservation areas and possible WFD regulatory requirements;
- interactions between WFD regulatory requirements and the public expenditure programmes which support the enterprise network and the forestry, agriculture, fisheries, aquaculture and tourism sectors; and
- the basis for calculating the costs and benefits of the environmental improvements which the Directive will require, and in particular, how the 'non-market benefits' of a high quality environment can be captured in cost-benefit analyses.
12. We have commented on these issues in previous consultation responses and, to a lesser extent, in evidence to the Transport & Environment Committee. We have not commented on them in detail in this evidence, as they relate more to policy matters than to the financial and other resource issues that are of primary concern to the Finance Committee. However, we would be pleased to expand further on these points if required.

Scottish Natural Heritage
September 2002
CONSULTATION ON THE WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

Response to Call for Evidence

August 2002
INTRODUCTION

As the primary supplier of both water and wastewater services in Scotland, Scottish Water (SW) recognises the important role that it has to play in protecting the water environment in which it operates. While Scottish Water welcomes the legislation in principle, there are a number of areas in which SW would welcome further clarification and discussion.

Compatibility with Quality and Standards

Scottish Water is currently undertaking a significant investment programme, the outputs of which were set by the Scottish Executive through the Quality and Standards 2 (Q&S 2) process. The funding and outputs for Q&S 2, which runs until 2005/06, were however agreed prior to the introduction of this bill and consequently do not take account of any additional obligations imposed upon SW under this new legislation.

Although the bill remains in its initial stages, SW are concerned about the financial implications for the organisation and customers alike, of imposing further obligations during a review period without recourse to additional funding.

Potential impact of Secondary Legislation

There are a number of sections within the Bill which provide Scottish Ministers with regulation making powers. Until the content of this secondary legislation is defined SW is unable to assess the potential impact. SW would welcome further clarification from the Scottish Executive on its intentions in relation to these sections.

SEPA Charges

In their recent consultation document, SEPA have proposed raising discharge application consent charges to three times their current levels. The revised charging scheme will cost SW an additional £1.5m over the next 3 years. SW would welcome a move towards a fair charging policy which is based on monitoring and impacts of pollutant loads rather than a simple cost revenue policy.

Reasonable Cost Threshold

Scottish Water notes the powers within the Bill for Scottish Ministers to instruct SW to carry out works above the “reasonable cost” threshold. Scottish Water seeks clarification that Scottish Ministers direction to carry out such work will either be restricted to direction given during the preparation of a strategic review or will include provision for additional funding or an agreement from regulators to drop other outputs to compensate.
Scottish Water welcomes the opportunity to comment on this draft legislation. SW would like to take this opportunity to commend the Scottish Executive on its use of workshops and papers in previous consultation and would suggest that these may again be appropriate for disseminating further information on the bill.

Scottish Water’s response to this consultation document is structured around the format of the document itself on a chapter by chapter basis.

PART 1 – PROTECTION OF THE WATER ENVIRONMENT

CHAPTER ONE – PURPOSE, GENERAL DUTIES AND DEFINITIONS

General duties
Section 1 of the general duties within the Bill refers explicitly to the responsibilities that it places upon Scottish Ministers and SEPA to ‘exercise their functions … … so as to secure compliance with the requirements of the Directive’. Under paragraph two this duty is extended to include ‘responsible authorities’ that must exercise ‘their designated functions so as to secure compliance’.

Scottish Water is aware of its responsibilities as a public body to ‘have regard to the desirability of protecting the water environment’ as stated in section 2(5) of the general duties. However, SW would welcome further clarification from the Scottish Executive on their assessment of Scottish Water’s role under the Bill and whether SW as a whole, or in relation to specific functions, will be designated as a “responsible authority” under section 2(8).

Additionally although SW support in principle the appointment of SEPA as the body responsible for river basin planning, SW would suggest that there is the potential for this new position to create conflict with its regulatory responsibilities.

The Water Environment - Definitions
Section 3(9) specifies a number of artificial water containing systems that are excluded from this part of the Bill. These exclusions include:
- ‘mains or other pipes belonging to Scottish Water or which are used by Scottish Water … … for the purpose only of providing a supply of water to any premises’;
- ‘sewers and drains which drain into sewers’
- ‘sewage treatment works’, and
- ‘artificially created systems for the treatment of pollutants’

Scottish Water wishes to note that water treatment works are not excluded under this section of the Bill. SW recognises that this may reflect the Directive’s desire to incorporate reservoirs and other sources of water within its scope, however, SW would suggest that a narrow definition of water treatment works is required within this section. This would allow treated water held within the storage reservoirs and water going through the treatment process to be classed as exempt.

CHAPTER TWO – RIVER BASIN MANAGEMENT PLANNING

Characterisation of River Basin Districts
Scottish Water suggests that if there is to be one single river basin for Scotland then cross-border catchments be included in the river basin district which includes the largest proportion of that catchment. For example, the Tyne would be included in the North-East of England RBD, the Tweed in Scotland and the Solway to either Scotland or North West England. This would avoid the need for the creation of RBDs at a scale significantly smaller than their neighbours.
Register of Protected Areas
Section 7(4) refers to ‘recreational waters’, however, this term does not appear to be defined within the Bill.

River Basin Management Plans – Approval
SW suggests that section 13(5) should include a requirement for River Basin Management Plans to be published on the SEPA website.

Duty to have regard to River Basin Management Plans
Section 16 of the Bill places a responsibility on ‘every public body’ to ‘have regard to the river basin management plan for that district’ when ‘exercising any functions so far as affecting a river basin district’. This could potentially have significant implications and SW would welcome clarification from the Scottish Executive on any additional obligations that this may impose upon SW.

CHAPTER THREE – MEASURES FOR PROTECTION OF THE WATER ENVIRONMENT

Regulation of controlled activities
Section 20 of the Bill defines the activities that Scottish Ministers have the power to regulate under the Bill. Under subsection one, Ministers have the power to regulate where ‘they consider necessary or expedient for the purposes of protection of the water environment’.

Sections 20(2) and 20(3) detail the activities to which regulation can be applied as ‘measures mentioned in paragraph 2 of Article 11 of the Directive’;
- ‘activities liable to cause pollution of surface water or ground water’;
- ‘abstraction of water from bodies of surface water or ground water’;
- ‘the construction, alteration or operation of impounding works in bodies of surface water’;
- ‘building, engineering or other works in, or in the vicinity of, surface water which are liable to have an adverse impact on the status of the water’; and
- ‘activities connected with the above activities.’

Scottish Water is naturally concerned at the extensive range of its business activities ‘s encompassed in this section of the Bill. SW would welcome further clarification from the Scottish Executive on its approach to the regulation of core activities such as abstractions, operation of dams and reservoirs, compensation flows and other obligations currently under Water Orders.

SW welcome the inclusion of Water Use Licences for abstraction and suggest that these offer an effective means of regulating water abstraction which could be expected in most instances to replace the terms of the Water Orders. However, SW suggest that there is limited scope for ‘single use licences’, for public water supply, where the point of discharge may be some distance from the abstraction. In terms of groundwater abstractions water licences could be used as a tool in the promotion of sustainable abstraction.

On a cautionary note, the current system by which the Scottish Executive controls the abstraction of water does not impose any associated costs and SW has not therefore allowed for the cost of abstraction licences within the current regulation period. Any additional costs associated with licences would require additional funding.

Scottish Water would also suggest that the term directly or indirectly be included in subsection 20 (3)(a) to take account of the problem of diffuse pollution and in particular diffuse pollution to sewers.

Controlled Activities Regulations – Procedure
Scottish Water seeks assurances from the Scottish Executive that it will be included as a consultee under section 21(1).
Remedial and Restoration Measures
Section 22(1) provides Scottish Ministers with the power under the Bill to ensure remedial or restorations measures are undertaken where it is necessary to remedy or mitigate the effects of pollution or improve or restore the characteristics of the water body. The Bill provides ministers with the power to impose these measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans.

Scottish Water is concerned at the extensive nature of this clause and the onus on the parties carrying out the remedial or restoration work to meet the cost of this work. SW would welcome further clarification from the Scottish Executive on its approach to the enforcement of remedial and restoration measures.

Fixing of Charges for Water Services
Section 23 of the Bill allows for the Scottish Executive to make provision through regulations for the ‘fixing of charges for the provision of water services… … … for the purposes of protection of the water environment’. Under this section, water services are defined as ‘abstraction, impoundment, storage, treatment and distribution of surface water or ground water’ and ‘wastewater collection and treatment facilities that subsequently discharge into surface water’. The clause further states that in fixing such charges account is taken of such principles as are included in the regulations.

At present the majority of Scottish Water’s domestic charges and some business charges are based on rateable value and, as such, do not reflect the cost to the environment of particular activities. The powers set out in this section of the Bill would therefore reflect a significant shift in policy and SW would welcome further clarification from the Scottish Executive on the costs which would be imposed upon SW and how these are likely to impact upon customer tariffs.

SW would also seek reassurance that the economic regulator, SEPA and the Scottish Executive would all apply a consistent approach on the fixing of charges.

PART 2 - WATER AND SEWERAGE SERVICES

Duty to Provide Water and Sewerage Services
Section 25(2) provides for “reasonable cost” referred to within section 1 of the Sewerage (Scotland) Act 1968 to be defined within regulations.

This section of the Bill also gives Scottish Ministers the powers to instruct SW to carry out works above the “reasonable cost” threshold. It is Scottish Water’s understanding that this direction will be restricted to instructions given during the preparation of a strategic review period in order to allow funding to be included within the regulatory settlement. Should Ministers decide to instruct works above the “reasonable cost” threshold during a review period SW would require additional funding or the agreement from regulators to drop other outputs to compensate.

Section 25.7.2(b) – SW suggests that the words "so far as excepted from the duties under those subsections things which cannot be done at a reasonable cost" should be deleted and this framework then adopts an identical framework in connection with water mains as the earlier sections develop in relation to sewers.

Private Sewers and Sewage Treatment Works etc - Conditions for Connection or Takeover
Section 27(1) of the Bill alters the 1968 Act to allow Scottish Water to require certain conditions be met prior to taking over sewage treatments works. Section 27(3) further sets
outs these new regulatory conditions which are to be included under section 14 of the 1968 Act.

Scottish Water are concerned that sufficient flexibility be included in setting construction standards into regulations and would welcome further clarification from the Scottish Executive as to whether these new regulations would simply allow the approval of the standards prepared from time to time by Scottish Water. This point also applies to section 27(2) which states that an owner cannot connect their drains or sewers, unless the drains and sewers meet the construction standards specified in the regulations. Scottish Water further suggest, that the word "private" should be deleted from this clause to allow the above mentioned construction standards apply to all drains, sewers and sewage treatment works whether public or private.

Section 27(3) of the Bill makes provision for a new 14B in the 1968 Act, relating to private sewers and sewage treatment works connection agreements and takeover conditions. This section allows Scottish Water to include within any agreement to take over sewers or sewage treatment works conditions regarding the payment of capitalised maintenance and upgrading works in other parts of the system etc. These provisions are repeated both in Section 27(3) 14B (1) in relation to sewage treatment works and Section 27(3) 14B (2) in relation to sewers. The regulations will determine how and what contribution can be required, however, Scottish Water would again welcome further clarification on this point from the Scottish Executive.

**Laying of Water Mains by Persons other than Scottish Water**

Section 28 of the Bill introduces a new clause to section 23 of the 1980 Act allowing Scottish Water to authorise third parties to lay mains, this is similar to the current powers that apply in relation to sewers.

Scottish Water suggest that a specific provision is required making it unlawful to connect any main constructed by any person to the system of Scottish Water where that person does not have the permission of Scottish Water. Scottish Water would further suggest that this clause should contain a provision granting Scottish Water the power to disconnect any main so connected thus preventing vesting occurring through an unlawful connection.

Section 28 23B (1) stipulates that Scottish Ministers will set construction standards for mains to vest in Scottish Water in regulations. Scottish Water would reiterate its early contention that standards prescribed in the regulations must be capable of being altered without further statutory authority. This could be achieved through empowering Scottish Water to set the standards and amend them as circumstances dictate.

Section 28 23C sets out vesting conditions for mains. Scottish Water welcomes the opportunity that this will provide for the authority to obtain a capitalised maintenance payment from third parties in relation to upgrading downstream infrastructure or plant.

**Schedule 2, Part 1, Section 7**

Scottish Water suggests that any charging scheme introduced by regulators should be reflective of the actual costs associated with maintaining that licence and not by apportioning by volume of use.