RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

30th Meeting, 2010 (Session 3)

Wednesday 22 December 2010

The Committee will meet at 10.00 am in Committee Room 4.

1. Decision on taking business in private: The Committee will decide whether to take item 7 in private.

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

   the Vegetable Seeds Amendment (Scotland) Regulations 2010 (SSI/2010/425);

   the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations (SSI/2010/426);

   the Scallops (Luce Bay) (Prohibition of Fishing) Variation Order 2010 (SSI/2010/429).

3. Reservoirs (Scotland) Bill: The Committee will take evidence on the Bill at Stage 1 from—

   Roseanna Cunningham MSP, Minister for Environment and Climate Change, Judith Tracey, Head of Flooding and Reservoir Safety Policy, Fiona Quinn, Reservoir Policy Manager, Joyce Carr, Head of Water Environment Policy, and Stephen Rees, Solicitor, Food and Environment Division, Scottish Government.

4. Wildlife and Natural Environment (Scotland) Bill: The Committee will consider the Bill at Stage 2 (Day 1).

5. Petition: The Committee will consider the following petition—

   Petition PE1340: Petition by John Scott calling on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of Tree
Preservation Orders (TPOs) to give all trees a protection similar to that enjoyed by trees in conservation areas.


7. **Scottish Government's Draft Land Use Strategy:** The Committee will consider a draft letter to the Cabinet Secretary for Rural Affairs and the Environment.

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The papers for this meeting are as follows—

**Agenda Item 2**

- **the Vegetable Seeds Amendment (Scotland) Regulations 2010 (SSI 2010/425)**
- **the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations (SSI 2010/426)**
- **the Scallops (Luce Bay) (Prohibition of Fishing) Variation Order 2010 (SSI 2010/429)**

**Agenda Item 3**

- Information Pack
- Briefing Paper (Private Paper)

**Agenda Item 4**

- **First Marshalled List of Amendments for Stage 2**
- **First Groupings of Amendments for Stage 2**

**Agenda Item 5**

- Note from the Clerk
- Written Submission

**Agenda Item 6**

- Draft Report (Private Paper)

**Agenda Item 7**

- Draft Letter (Private Paper)

**For Information**

- Recent Developments
The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4) and (5), 17(1), (2), (3) and (4) and 36 of the Plant Varieties and Seeds Act 1964(a) and all other powers enabling them to do so.

In accordance with the section 16(1) of that Act they have consulted with representatives of such interests as appear to them to be concerned.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Vegetable Seeds Amendment (Scotland) Regulations 2010 and come into force on 31st December 2010.

(2) These Regulations extend to Scotland only.

Amendment to the Vegetable Seeds Regulations 1993

2. The Vegetable Seeds Regulations 1993(b) are amended in accordance with regulations 3 to 13.

Amendment to regulation 3

3.—(1) In regulation 3(1) (interpretation)—

(a) after the definition of “the Act” insert—

““additional region” means the region for seed production approved by the Ministers for the purposes of the second paragraph of Article 13.1 (additional regions) of Commission Directive 2009/145;

“Amateur Variety” means a variety of vegetable species with no intrinsic value for commercial crop production which is developed for growing under particular conditions and is contained within the National List;”;

(a) 1964 c.14. Section 16 was amended by the European Communities Act 1972 (c.68), section 4(1) and Schedule 4, paragraph 5(1) and (2). See section 38(1) for the definition of “the Minister”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) after the definition of “breeder’s confirmation” insert—

“Commission Directive 2009/145” means Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties(a);”;

(c) after the definition of “Common Catalogue” insert—

“Conservation Variety” means a landrace or variety of vegetable species which is naturally adapted to local and regional conditions and threatened by genetic erosion and is contained within the National List and for these purposes—

(a) “landrace” means a set of populations or clones of a plant species which are naturally adapted to the environmental conditions of their region; and

(b) “genetic erosion” means loss of genetic diversity between and within populations of varieties of the same species over time or reduction of the genetic basis of a species due to human intervention or environmental change;

(d) after the definition of “official label” insert—

“official post control” means a control plot has been sown with seed from the relevant seed lot and has produced plants which have been examined by or on behalf of the relevant European Authority and for these purposes—

(a) “control plot” means a plot sown by or on behalf of a European Authority with seed from a sample which is of at least the minimum weight specified in column 3 of the table in Part II of Schedule 5 taken by or on behalf of a European Authority or the person marketing the seed; and

(b) “European Authority” means—

(i) the Department of Agriculture and Rural Development in Northern Ireland;

(ii) the Welsh Ministers;

(iii) the Ministers;

(iv) the Secretary of State; or

(v) a competent seed certification authority of an EEA state other than the United Kingdom;

“region of origin” means the region forming a part or the whole of the United Kingdom identified by the Ministers for the purposes of Article 8.1 (region of origin) of Commission Directive 2009/145;”.

(2) In regulation 3(3)—

(a) after the definition of “Certified Seed” insert—

“Certified Seed of a Conservation Variety” means seed of a Conservation Variety which—

(a) is produced in the region of origin or an additional region;

(b) descends from seed produced according to well defined practices for the maintenance of the variety;

(c) satisfies the requirements of paragraphs 2, 4, 5, 6 and 7 of Part I of Schedule 4, paragraphs 2 and 3 of Part II of Schedule 4 and Part III of Schedule 4; and

(d) has sufficient varietal purity;

(a) O.J. L 312, 27.11.2009, p.44.
(b) for the definition of “Standard Seed” substitute—

“‘Standard Seed’ means seed, other than Standard Seed of a Conservation Variety and Standard Seed of an Amateur Variety, which is intended to be used mainly for the production of plants or parts of plants for human or animal consumption and which satisfies the requirements for Standard Seed set out in Part II of Schedule 4;”; and

(c) after the definition of “Standard Seed” insert—

“‘Standard Seed of a Conservation Variety’ means seed of a Conservation Variety which—

(a) is produced in the region of origin or additional region;
(b) descends from seed produced according to well defined practices for the maintenance of the variety;
(c) satisfies the requirements in paragraphs 2 and 3 of Part II of Schedule 4 and Part III of Schedule 4; and
(d) has sufficient varietal purity;

“Standard Seed of an Amateur Variety” means seed of an Amateur Variety which—

(a) satisfies the requirements in paragraphs 2 and 3 of Part II of Schedule 4 and Part III of Schedule 4; and
(b) has sufficient varietal purity.”.

Amendment to regulation 5

4.—(1) For regulation 5(1)(a) (marketing of seeds) substitute—

“(a) Uncertified Pre-basic Seed, Pre-basic Seed, Basic Seed, Certified Seed in respect of which an official certificate has been issued, Standard Seed, Certified Seed of a Conservation Variety in respect of which an official certificate has been issued, Standard Seed of a Conservation Variety or Standard Seed of an Amateur Variety; or”.

(2) After regulation 5(1)(b) insert—

“(bb) Standard Seed of an Amateur Variety which has been produced and packaged in a Member State other than the United Kingdom and which has been sealed in accordance with Article 29 and labelled in accordance with Article 30 of Commission Directive 2009/145; or”.

New regulations 5A and 5B

5. After regulation 5 (marketing of seeds) insert—

“Conservation Varieties

5A.—(1) The Ministers shall ascertain, so far as practicable, whether seed of a Conservation Variety has sufficient varietal purity by the use of official post control and the consideration of any other relevant information.

(2) Where the results of official post control show that the seed does not have sufficient varietal purity, the Ministers shall notify in writing the person marketing the relevant seed lot of that fact.

(3) Where, in the case of Standard Seed of a Conservation Variety, notice is given under paragraph (2), no further marketing of the relevant seed lot shall occur.

(4) No person shall market seed of a Conservation Variety other than in its region of origin or an additional region.
A person proposing to produce seed of a Conservation Variety must supply the Ministers, in such manner and form as the Ministers shall require, with the following details in writing—

(a) the size (in hectares); and
(b) the location,

of the area to be used to produce the seed.

(6) For the purposes of Article 15 (quantitative restrictions) of Commission Directive 2009/145, the Ministers may specify the maximum amount of seed of a Conservation Variety which may be marketed in any given growing season and specify different maxima for different persons or classes of person.

(7) Where a person proposing to produce seed of a Conservation Variety has supplied the Ministers with details under paragraph (5), the Ministers may in writing authorise the person to market seed of a Conservation Variety not exceeding the amount specified in the authorisation and shall give notice of that authorisation to the person.

(8) No person shall market more than the maximum amount of seed of a Conservation Variety specified in an authorisation given to that person under paragraph (7).

**Amateur varieties**

5B.—(1) The Ministers shall ascertain, so far as practicable, whether Standard Seed of an Amateur Variety has sufficient varietal purity by the use of official post control and the consideration of any other relevant information.

(2) Where the results of official post control show that the seed does not have sufficient varietal purity, the Ministers shall notify in writing the person marketing the relevant seed lot of that fact.

(3) Where, in the case of Standard Seed of an Amateur Variety, notice is given under paragraph (2), no further marketing of the relevant seed lot shall occur.

(4) The seed must be in a package not exceeding the maximum net weight specified for each species in Annex II to Commission Directive 2009/145/EC.”.

**Amendment to regulation 6**

6.—(1) In regulation 6(1) (official certificates) for “or Certified Seed” substitute “, Certified Seed or Certified Seed of a Conservation Variety”.

(2) After regulation 6(3)(a) insert—

“(aa) in the case of Certified Seed of a Conservation Variety—

(i) the results of an examination are declared null and void in accordance with regulation 7(3); or

(ii) the results of official post control show that the seed does not have sufficient varietal purity; or”.

**Amendment to regulation 7**

7.—(1) After regulation 7(1) (sampling) insert—

“(1A) A sample of seed of a Conservation Variety or Standard Seed of an Amateur Variety taken for the purposes of checking compliance with these Regulations shall be taken in accordance with the requirements contained in Schedule 5.”.

(2) After regulation 7(2) insert—

“(3) If a sample of seed of a Conservation Variety or Standard Seed of an Amateur Variety taken for the purposes of an examination is found not to have been taken in accordance with the requirements of seeds regulations, no examination or no further examination shall be made of that sample and any finding shall be null and void.”.
Amendment to regulation 8

8. After regulation 8(3) (sealing of packages) insert—

“(4) No person shall market a package of seed of a Conservation Variety or a package of Standard Seed of an Amateur Variety unless it has been sealed by the supplier using a non-reusable sealing system or some other sealing system—
(a) including the use of a label or the affixing of a seal; and
(b) in such a manner that the package cannot be opened without damaging the sealing system or without leaving evidence of tampering on the label or the package.”.

Amendment to regulation 9

9.—(1) In regulation 9(9) (labelling of packages), at the start, insert “Subject to the exception in paragraphs (12B) and (12C) in respect of seed of a Conservation Variety and Standard Seed of an Amateur Variety,”.

(2) In regulation 9(11), at the start, insert “Except in relation to seed of a Conservation Variety or Standard Seed of an Amateur Variety,”.

(3) After regulation 9(12A)(a) insert—

“(12B) A package of seed of a Conservation Variety shall bear a supplier’s label or a printed or stamped notice containing the information specified in Part VI of Schedule 6 (and for the avoidance of doubt neither an official label nor an official inner label is required).

(12C) A package of Standard Seed of an Amateur Variety shall bear a supplier’s label or a printed or stamped notice containing the information specified in Part VII of Schedule 6 (and for the avoidance of doubt neither an official label nor an official inner label is required).”.

Amendment to Schedule 2

10. In Schedule 2 (official certificates)—

(a) in paragraph 1 for “or Certified Seed” substitute “, Certified Seed or Certified Seed of a Conservation Variety”;

(b) in paragraph 2, at the start, insert “Except in the case of Certified Seed of a Conservation Variety,”;

(c) after paragraph 2 insert—

“2A. In the case of Certified Seed of a Conservation Variety, the Ministers shall refuse to issue an official certificate in respect of a seed lot unless—
(a) an application has been made to the Ministers, in such form and manner and at such time as they may require, for registration by them of—
(i) the seed lot or seed lots to be used for the production of the crop or crops from which the seed lot is to be obtained; and
(ii) the crop or crops from which the seed lot is to be obtained;

(b) an examination of the crop of crops from which the seed lot was obtained shall have shown that the crop or crops meets paragraphs 2, 3, 4, 5, 6 and 7 of Part I of Schedule 4; and

(c) an examination of a sample of the seed lot shows that the seed meets paragraphs 2 and 3 of Part II of Schedule 4.”;

(a) Regulation 9(12A) was inserted by the Vegetable Seeds Amendment (Scotland) Regulations 2007 (S.S.I. 2007/305), regulation 4.
(d) in paragraph 3, at the start, insert “Except in the case of Certified Seed of a Conservation Variety,”; and

(e) after paragraph 3 insert—

“3A. In the case of Certified Seed of a Conservation Variety the Ministers may refuse to issue an official certificate in respect of a seed lot if it appears to them that—

(a) a sample of the seed lot taken for the purpose of an examination in order to ascertain whether the seed lot meets the appropriate standards set out in paragraphs 2 and 3 of Part II of Schedule 4 has not been taken in accordance with the requirements contained in Schedule 5;

(b) official post control shows that the seed does not have sufficient varietal purity; or

(c) there has been any breach of seeds regulations in relation to the seed lot in respect of which an application for an official certificate has been made.”.

Amendment to Schedule 3

11. In Schedule 3 (particulars to be specified in an official certificate), at the end, insert—

“(vii) the region of origin or, where the region of origin is different from the region of seed production, the region of seed production of the Conservation Variety (if applicable).”.

Amendment to Schedule 4

12. In Schedule 4 (requirements for Basic Seed, Certified Seed and Standard Seed)—

(a) for the title substitute “REQUIREMENTS FOR BASIC SEED, CERTIFIED SEED, CERTIFIED SEED OF A CONSERVATION VARIETY, STANDARD SEED, STANDARD SEED OF A CONSERVATION VARIETY AND STANDARD SEED OF AN AMATEUR VARIETY”;

(b) after Part II insert—

“PART III

EXAMINATIONS USED TO ASCERTAIN WHETHER A CROP OR SEED LOT MEETS THE CONDITIONS RELATING TO CERTIFIED SEED OF A CONSERVATION VARIETY, STANDARD SEED OF A CONSERVATION VARIETY AND STANDARD SEED OF AN AMATEUR VARIETY

All examinations of Certified Seed of a Conservation Variety, Standard Seed of a Conservation Variety and Standard Seed of an Amateur Variety used to ascertain whether the crops or seed lots meet the standards in this Schedule applicable to the category shall be carried out in accordance with current international methods insofar as such methods exist.”.

Amendment to Schedule 6

13. In Schedule 6 (labels and marking) after Part V insert—
“PART VI
SUPPLIER’S LABEL FOR A PACKAGE OF SEED OF A
CONSERVATION VARIETY

The supplier’s label for a package of seed of a Conservation Variety shall be a minimum size of 110 millimetres by 67 millimetres, be coloured brown and contain the following information:—

(a) the words “EU rules and standards”;
(b) the name and address of the person responsible for affixing the label or notice or that person’s identification mark;
(c) the year of sealing, or the year of last sampling for the purposes of the last testing of germination, expressed by the word “sealed” or “sampled” (as the case may be), followed by the year in question;
(d) the species;
(e) the denomination of the conservation variety;
(f) the words “Certified Seed of a Conservation Variety” or “Standard Seed of a Conservation Variety”;
(g) the region of origin;
(h) where the region of seed production is different from the region of origin, the indication of the region of seed production;
(i) the reference number of the lot given by the person responsible for affixing the labels;
(j) the declared net or gross weight or declared number of seeds;
(k) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters of pure seeds and the total weight.

PART VII
SUPPLIER’S LABEL FOR A PACKAGE OF STANDARD SEED OF AN
AMATEUR VARIETY

The supplier’s label for a package of Standard Seed of an Amateur Variety shall contain the following information:—

(a) the words “EU rules and standards”;
(b) the name and address of the person responsible for affixing the label or notice or that person’s identification mark;
(c) the year of sealing, or the year of last sampling for the purposes of the last testing of germination, expressed by the word “sealed” or “sampled” (as the case may be), followed by the year in question;
(d) the species;
(e) the denomination of the Amateur Variety;
(f) the words “Amateur Variety”;
(g) the reference number of the lot given by the person responsible for affixing the labels;
(h) the declared net or gross weight or declared number of seeds;
(i) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters of pure seeds and the total weight.”.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
30th November 2010

Regulation 3 amends regulation 3 of the principal Regulations to introduce definitions of Certified Seed of a Conservation Variety and Standard Seed of a Conservation Variety. These are defined as types of seed where—

(a) the seed has been harvested from a crop that has been produced in the region of origin or an additional region (should such a region be approved by the Scottish Ministers);

(b) the seed descends from seed produced according to well defined practices for the maintenance of the variety;

(c) the seed has sufficient varietal purity;

(d) certain requirements as to the crop and the seed specified in Schedule 4 to the principal Regulations as amended by these Regulations are met. The requirements in Schedule 4 which must be satisfied are different for Certified Seed of a Conservation Variety and Standard Seed of a Conservation Variety.

Regulation 4 amends regulation 5(1) of the principal Regulations to provide that Certified Seed of a Conservation Variety and Standard Seed of a Conservation Variety must be on the National List and marketed in seed lots or parts of seed lots.

The new regulation 5A of the principal Regulations, inserted by regulation 5 of these Regulations, provides that seed of a Conservation Variety shall only be marketed in its region of origin, or an additional region, and is subject to quantitative restrictions. No official examination is required although seed of a Conservation Variety is subject to official post control.

The Regulations also provide for the marketing of Amateur Varieties. Regulation 3 amends regulation 3 of the principal Regulations to introduce a definition of Standard Seed of an Amateur Variety. Standard Seed of an Amateur Variety must meet certain requirements as to the seed specified in Schedule 4 of the principal Regulations and have sufficient varietal purity.

Regulation 4 amends regulation 5(1) of the principal Regulations to provide that Standard Seed of an Amateur Variety must be on the National List and marketed in seed lots or parts of seed lots.

The new regulation 5B of the principal Regulations, inserted by regulation 5 of these Regulations, provides that Standard Seed of an Amateur Variety is subject to the quantitative restrictions in Article 28 and Annex II of the Directive. No official examination is required although Standard Seed of an Amateur Variety is subject to official post control.

These Regulations also make consequential amendments to the principal Regulations including—

(a) the insertion of other new definitions in the principal Regulations (regulation 3);

(b) various amendments to the application of the provisions on official certificates, sampling, sealing, and labelling (regulations 6, 7, 8, 9, 10, 11, 12 and 13).

No Business Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15 and 60(2)(b) of, and paragraphs 13 and 14 of schedule 2 to, the Flood Risk Management (Scotland) Act 2009 and of all other powers enabling them to do so.

PART I
GENERAL

Citation and commencement

1. These Regulations—
   (a) may be cited as the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010; and
   (b) come into force on 24th December 2010.

Interpretation

2. In these Regulations—
   “the Act” means the Flood Risk Management (Scotland) Act 2009;
   “the consultative bodies” means—
   (a) SEPA;
   (b) Scottish Natural Heritage;
   (c) Scottish Water;
   (d) any planning authority whose district is likely to be affected by the proposed flood protection scheme (other than the local authority proposing the scheme); and

(a) 2009 asp 6.
(e) any other body designated by statutory provision as having specific environmental responsibilities which, in the opinion of the local authority proposing the flood protection scheme, has an interest in relation to the environmental effects of that scheme;

“environmental statement” means a statement prepared in respect of a flood protection scheme pursuant to regulation 6; and

“screening opinion” means a written statement of opinion as to whether the proposed flood protection scheme in question is likely to have a significant effect on the environment.

PART II
ENVIRONMENTAL IMPACT ASSESSMENT

Restriction on confirmation of flood protection schemes

3. A proposed flood protection scheme may not be confirmed under paragraph 4, 7 or 9 of schedule 2 to the Act unless the local authority proposing the scheme and, where relevant, the Scottish Ministers, have complied with the relevant requirements of these Regulations in relation to that scheme.

Duty to consider environmental impact of a proposed flood protection scheme

4.—(1) Prior to—
(a) giving notice of a proposed flood protection scheme under paragraph 1 of schedule 2 to the Act;
(b) confirming a proposed flood protection scheme with modifications under paragraph 9(1)(b) of schedule 2 to the Act; and
(c) submitting further details of scheme operations for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997(a),

a local authority must, at each stage, consider whether the scheme as proposed at that stage is likely to have a significant effect on the environment.

(2) In considering whether a scheme is likely to have a significant effect on the environment, it shall take account of the criteria in Schedule 1.

Screening opinions

5.—(1) Where, at any of the stages referred to in regulation 4(1), a local authority considers that a proposed flood protection scheme is not likely to have a significant effect on the environment, it shall request a screening opinion from each of the consultative bodies.

(2) A request for a screening opinion must be accompanied by—
(a) a plan sufficient to identify the site which is the subject of the proposed scheme and any land that may be affected by it or over which access may be required;
(b) a brief description of the nature and purpose of the proposed scheme and of its possible effects on the environment;
(c) where it is proposed that the scheme be confirmed with modifications, a summary of the modifications; and
(d) where further details of scheme operations are to be submitted for approval in compliance with a condition of deemed planning permission, a summary of the further details.

(a) 1997 c.8.
(3) A request for a screening opinion may be accompanied by such further information or representations as the local authority may wish to provide or make.

(4) Within three weeks of receiving a request for a screening opinion, a consultative body must, if it considers that it has not been provided with sufficient information to give an opinion, give notice to the local authority of the particular points on which it requires further information, and the local authority must provide such further information as it is reasonably able to provide.

(5) When a consultative body considers that it has sufficient information it must give a screening opinion within three weeks of whichever is the later of—
   (a) the date of receipt of the request for a screening opinion; and
   (b) the date by which it has received the further information referred to in paragraph (4).

(6) Where a consultative body concludes that the proposed scheme is likely to have a significant effect on the environment, it must provide with its screening opinion a written statement giving full reasons for its conclusion.

Environmental statements

6.—(1) Where—
   (a) a local authority considers under regulation 4 that a proposed flood protection scheme is likely to have a significant effect on the environment; or
   (b) a consultative body has concluded in a screening opinion under regulation 5 that a proposed flood protection scheme is likely to have a significant effect on the environment,

the local authority must prepare an environmental statement in accordance with paragraph (2).

(2) An environmental statement must identify, describe and assess the direct and indirect effects of the proposed scheme on the following factors—
   (a) human beings, flora and fauna;
   (b) soil, water, air, climate and the landscape;
   (c) material assets, including architectural and archaeological heritage; and
   (d) the interaction between the factors mentioned in sub-paragraphs (a) to (c).

(3) An environmental statement must include—
   (a) the information referred to in Part I of Schedule 2; and
   (b) such of the information referred to in Part II of Schedule 2 as is reasonably required to assess the environmental effects of the proposed scheme and which, having regard in particular to current knowledge and methods of assessment, the local authority can reasonably be required to compile.

(4) Where a local authority is obliged by paragraph (1) to prepare an environmental statement in respect of—
   (a) a flood protection scheme that it proposes to confirm with modifications under paragraph 9(1)(b) of schedule 2 to the Act; or
   (b) a flood protection scheme for which it has been requested to submit further details as a condition of deemed planning permission under section 57(2B) of the Town and Country Planning (Scotland) Act 1997,

and an environmental statement has already been prepared in respect of the scheme, it may comply with paragraph (1) by updating the existing environmental statement to take account of the modifications to, or further details of, the scheme.
Notification of a scheme with an environmental statement

7.—(1) This regulation applies where—
   (a) a local authority has prepared an environmental statement relating to a proposed flood
   protection scheme, and
   (b) it has not previously given notice of the proposed scheme.

(2) The local authority must—
   (a) give notice of the proposed scheme in accordance with paragraphs 1(1), (2) and (4) of
   schedule 2 to the Act; and
   (b) make a copy of the environmental statement available for public inspection alongside the
   scheme documents that are made available in accordance with paragraph 2 of schedule 2
   to the Act.

(3) A notice under paragraph (2)(a) must, in addition to the information required by
paragraph 1(3) of schedule 2 to the Act, include a statement—
   (a) that the scheme is likely to have a significant effect on the environment;
   (b) that the scheme documents are accompanied by an environmental statement which is
   available for public inspection;
   (c) describing the circumstances under the Act in which the Scottish Ministers may cause a
   public inquiry into the application; and
   (d) setting out the nature of possible decisions that may be taken in relation to the scheme.

(4) The local authority must supply a copy of the scheme documents and the environmental
statement to the consultative bodies no later than the date that the notice referred to in paragraph
(2)(a) is given.

Confirmation of modifications to a scheme with an environmental statement

8.—(1) This regulation applies where—
   (a) a local authority or the Scottish Ministers intend to confirm a proposed flood protection
   scheme with modifications under paragraph 7(4)(b) or 9(1)(b) of schedule 2 to the Act; and
   (b) an environmental statement has been prepared in respect of the modified scheme.

(2) The local authority must—
   (a) give notice of the modified scheme in accordance with paragraphs 1(1), (2) and (4) of
   schedule 2 to the Act; and
   (b) make a copy of the scheme documents and the environmental statement available for
   public inspection in accordance with paragraph 2 of schedule 2 to the Act.

(3) A notice under paragraph (2)(a) must—
   (a) comply with paragraph 1(3) of schedule 2 to the Act; and
   (b) contain a statement—
      (i) that the proposed scheme has been modified;
      (ii) describing the modifications;
      (iii) explaining the reasons for the modifications;
      (iv) that the modified scheme is likely to have a significant effect on the environment;
      (v) that the scheme documents are accompanied by an environmental statement which is
      available for public inspection;
      (vi) describing the circumstances under the Act in which the Scottish Ministers may
      cause a public inquiry into the application; and
(vii) setting out the nature of possible decisions that may be taken in relation to the modified scheme.

(4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to a modified scheme as it applies to objections to a proposed flood protection scheme.

(5) An objection to a modified scheme is valid if it—
(a) is made in writing;
(b) sets out the name and address of the objector; and
(c) is made before the expiry of the period of 28 days beginning with the date notice of the modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

(6) Neither the local authority nor the Scottish Ministers may confirm a modified scheme in respect of which an environmental statement has been prepared unless at least 28 days have elapsed since the date notice of the modified scheme is first published under paragraph 1(1)(a) of schedule 2 to the Act.

Submission of further details of a scheme with an environmental statement

9.—(1) This regulation applies where—
(a) in accordance with section 57(2B) of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers direct that planning permission shall be deemed to be granted in respect of operations to be carried out under a flood protection scheme;
(b) the Scottish Ministers impose a condition in their direction requiring the local authority to submit further details of the scheme for approval (whether by the Scottish Ministers or a planning authority); and
(c) an environmental statement has been prepared in respect of the further details of the scheme.

(2) Where this regulation applies, the local authority must—
(a) give notice of the further details of the scheme in the manner and to the persons referred to in paragraph 1(1), (2) and (4) of schedule 2 to the Act; and
(b) make a copy of the scheme documents and the environmental statement available for public inspection in accordance with paragraph 2 of schedule 2 to the Act.

(3) A notice under paragraph (2)(a) must—
(a) comply with paragraph 1(3) of schedule 2 to the Act; and
(b) contain a statement—
(i) that the scheme is likely to have a significant effect on the environment;
(ii) that the scheme documents are accompanied by an environmental statement which is available for public inspection;
(iii) setting out the nature of possible decisions that may be taken in relation to the scheme;
(iv) that further details of the scheme operations have been submitted for approval in compliance with a condition of deemed planning permission granted under section 57(2B) of the Town and Country Planning (Scotland) Act 1997; and
(v) describing the further details so submitted.

(4) Subject to paragraph (5), paragraph 3 of schedule 2 to the Act applies to objections to the further details as it applies to objections to a proposed flood protection scheme.

(5) An objection to further details of a proposed flood protection scheme is valid if it—
(a) is made in writing;
(b) sets out the name and address of the objector; and
Decisions in relation to flood protection schemes with environmental statements

10.—(1) Neither a local authority nor the Scottish Ministers may confirm—
(a) a flood protection scheme in respect of which an environmental statement has been prepared; or
(b) a modified flood protection scheme in respect of which an environmental statement has been prepared,
unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(2) Where—
(a) it is a condition of a direction granting deemed planning permission for a proposed flood protection scheme that further details must be submitted for approval (whether to the Scottish Ministers or to a planning authority); and
(b) an environmental statement has been prepared in respect of that scheme,
neither the Scottish Ministers nor a planning authority may approve such further details unless they have taken the environmental information referred to in paragraph (3) into account, and they must state in their decision that they have done so.

(3) The environmental information is—
(a) any environmental statement or revised or updated environmental statement prepared in connection with the scheme;
(b) any representation made by any of the persons referred to in paragraph 1(1)(f) of schedule 2 to the Act;
(c) any representation made by any of the consultative bodies; and
(d) any valid objection to the scheme (unless withdrawn).

PART III
SCHEME DOCUMENTS

Maps, plans and specifications

11.—(1) A proposed flood protection scheme must include a description, by reference to maps, plans and specifications, of—
(a) the extent and scale of the scheme operations;
(b) the land which the local authority considers may be affected by those operations; and
(c) any land on which the local authority would require to enter (whether temporarily or otherwise) for the purposes of carrying out the operations.

(2) The maps and plans referred to in paragraph (1) must be at an appropriate scale to enable interested persons to identify whether their land will be affected by the scheme operations.

(3) A proposed flood protection scheme must include an estimate of the cost of the scheme operations proposed to be carried out.
Objections

12.—(1) Any objection to a proposed flood protection scheme under paragraph 3 of schedule 2 to the Act must be accompanied by a statement of the reasons for the objection.

(2) Where an objector under paragraph 3 of schedule 2 to the Act has an interest in any land on which the proposed operations are to be carried out or which may be affected by any of the proposed operations, or by any alteration in the flow of water caused by any of the operations, that person’s objection must include—
   (a) details of the land in which the objector has an interest;
   (b) disclosure of the nature of the objector’s interest in the land; and
   (c) details of which aspects of the proposed operations affect the objector.

Withdrawal of objections

13.—(1) Where a local authority confirms a proposed scheme with modifications under paragraph 5(1)(b) of schedule 2 to the Act it must, when giving notice of that decision in accordance with paragraph 5(3) of that schedule, offer any person who made an objection the opportunity to withdraw that objection in writing.

(2) Where all relevant objectors (within the meaning of paragraph 5(4) of Schedule 2 to the Act) withdraw their objections following notification, in accordance with paragraph (1), of a local authority’s decision, the duty of the local authority to give the Scottish Ministers notice of its decision under paragraph 5(5) of schedule 2 to the Act does not apply.

(3) A withdrawal of an objection which is made by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.

Deemed planning permission

14.—(1) Where a local authority confirms a proposed scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, it must request that the Scottish Ministers direct that planning permission for any development described in the scheme is to be deemed to be granted.

(2) A request under paragraph (1) must be made to the Scottish Ministers in writing and must be accompanied by—
   (a) a brief description of the nature and purpose of the confirmed scheme;
   (b) a copy of the confirmed scheme;
   (c) a summary of the scheme documents; and
   (d) a summary of the environmental statement (if any).

(3) A request under paragraph (1) may be accompanied by any other material which the local authority considers relevant to the grant of deemed planning permission.

Service of notices

15.—(1) Any notice or other document to be sent, served or given under these Regulations or under schedule 2 to the Act may be sent, served or given either—
   (a) by delivering it to the person on whom it is to be served or to whom it is to be given;
   (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address;
(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at their usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address;

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office; or

(e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address.

(2) The condition mentioned in paragraph (1)(e) is that the notice or other document must be—

(a) capable of being accessed by the person mentioned in that provision;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference,

and for this purpose “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form.

PART V
POTENTIALLY VULNERABLE AREAS AND LOCAL PLAN DISTRICTS

Publicity and consultation for documents identifying potentially vulnerable areas and local plan districts

16.—(1) SEPA must comply with paragraphs (2) to (6) before submitting to the Scottish Ministers—

(a) a document identifying, in accordance with section 13 of the Act—

(i) areas in a flood risk management district for which it considers that significant flood risk exists or is likely to occur; and

(ii) areas around such an area for the purpose of preparing local flood risk management plans; or

(b) an updated document in accordance with section 14 of the Act.

(2) When preparing a document referred to in paragraph (1), SEPA must consult—

(a) every responsible authority which has functions exercisable in or in relation to the areas identified by the draft document;

(b) every category 1 responder (other than a responder which is a responsible authority) which has functions in relation to the areas identified by the draft document;

(c) Scottish Natural Heritage;

(d) where any part of the areas identified by the draft document has been designated as a National Park, the National Park authority for the National Park; and

(e) such other persons as SEPA considers appropriate.

(3) SEPA must prepare a draft of the document referred to in paragraph (1) and publish details of the draft document—

(a) in at least one newspaper circulating within the areas identified by the draft document; and

(b) in such other media as SEPA considers appropriate for the purpose of bringing the draft document to the attention of individuals or bodies likely to be affected or to have an interest.
(4) The details published under paragraph (3) must include—

(a) a summary of the nature and purpose of the draft document;

(b) the areas identified by the draft document;

(c) the location where a copy of the draft document may be inspected by the public;

(d) the period, being a period of not less than 2 months from the date on which the details are first published in accordance with paragraph (3)(a), within which representations about the draft document can be made to SEPA; and

(e) information about how representations may be made to SEPA.

(5) SEPA must make a copy of the draft document referred to in paragraph (3) available to the public at all reasonable times during the period specified by SEPA in accordance with paragraph (4)(d).

(6) In finalising the document referred to in paragraph (1) for submission to the Scottish Ministers, SEPA must take into account—

(a) any views on the draft of the document expressed by those consulted under paragraph (2); and

(b) any representations made about the draft document which are received by SEPA before the expiry of the period specified under paragraph (4)(d).

(7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation has effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

Submission of documents identifying potentially vulnerable areas and local plan districts

17.—(1) SEPA must prepare and submit the documents referred to in section 13 of the Act to the Scottish Ministers by 22nd September 2011.

(2) SEPA must review, update where appropriate, and submit to the Scottish Ministers any documents approved under section 13 of the Act by 22nd September 2018 and by the end of every period of six years thereafter.

(3) When submitting any document to the Scottish Ministers in accordance with section 13 or 14 of the Act, SEPA must also submit—

(a) a summary of the actions taken by SEPA to publicise and consult on a draft of the document in accordance with regulation 16;

(b) a summary of the views expressed by those consulted and the representations received (if any); and

(c) a statement of any modifications made to the document in response to such views or representations.

(4) SEPA must make a copy of any document that it submits to the Scottish Ministers in accordance with section 13 or 14 of the Act, and the supporting documents referred to at paragraph (3) above, available to the public at all reasonable times.

(5) SEPA must—

(a) publish details of the documents that it has submitted to the Scottish Ministers—

(i) in at least one newspaper circulating within the areas identified by the draft document; and

(ii) in such other media as SEPA considers appropriate for the purpose of bringing the document to the attention of individuals or bodies likely to be affected or to have an interest; and

(b) give notice of the document that it has submitted to the Scottish Ministers to every local authority whose area falls wholly or partly within the areas identified by the document.
(6) The details published under paragraph (5)(a) must include—
(a) a summary of the nature and purpose of the document submitted to the Scottish Ministers;
(b) the areas identified by the document;
(c) details of any supporting documents submitted with the document; and
(d) the location where a copy of the document and any supporting documents may be inspected by the public.

(7) Where documents referred to in this regulation relate to a Scottish cross border area, this regulation shall have effect as if each reference to the Scottish Ministers is a reference to the Scottish Ministers and the Secretary of State.

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th November 2010
MATTERS TO BE TAKEN INTO ACCOUNT UNDER
REGULATION 4(2)

1. Characteristics of scheme

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

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

2. Location of scheme

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

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

3. Characteristics of the potential impact

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

(a) the extent of the impact (geographical area and size of the affected population);
(b) the transfrontier nature of the impact;
(c) the magnitude and complexity of the impact;

(a) O.J. L 20, 26.01.10, p.7.
(b) O.J. L 206, 22.7.1992, p.7.
(d) the probability of the impact; and
(e) the duration, frequency and reversibility of the impact.
SCHEDULE 2

CONTENT OF AN ENVIRONMENTAL STATEMENT

PART I

1. A description of the scheme comprising information on the site, design and size of the scheme.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

3. The data required to identify and assess the main effects which the scheme is likely to have on the environment.

4. The main alternatives studied by the local authority and the main reasons for its choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

PART II

1. A description of the scheme, including in particular—
   (a) a description of the physical characteristics of the whole scheme and the land-use requirements during the construction and operational phases;
   (b) a description of the main characteristics of the production processes, for instance, the nature and quality of the materials used;
   (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, etc.) resulting from the operation of the proposed scheme.

2. A description of the aspects of the environment likely to be significantly affected by the scheme, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

3. A description of the likely significant effects of the scheme on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the scheme, resulting from—
   (a) the existence of the scheme;
   (b) the use of natural resources;
   (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the local authority of the forecasting methods used to assess the effects on the environment.

4. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

6. An indication of any difficulties (such as technical deficiencies or lack of know-how) encountered by the local authority in compiling the required information.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations make provision in relation to flood protection schemes, potentially vulnerable areas, and local plan districts under the Flood Risk Management (Scotland) Act 2009 (“the Act”).

A flood protection scheme is a scheme prepared by a local authority in accordance with section 60 of the Act for the management of flood risk within the authority’s area.

Potentially vulnerable areas are areas identified by the Scottish Environment Protection Agency (“SEPA”) in accordance with section 13 of the Act where SEPA considers that significant flood risk exists or is likely to occur.

Local Plan Districts are areas around potentially vulnerable areas that SEPA must identify in accordance with section 13 of the Act for the purpose of preparing local flood risk management plans.

The Regulations comprise five parts and two schedules.

Part I – General

This part defines various terms used in the Regulations.

Part II – Environmental Impact Assessment

Part II makes provision about the assessment of the environmental effects of flood protection schemes.

Regulation 4 requires local authorities, at key stages of the confirmation process, to consider whether a scheme is likely to have a significant effect on the environment. In the event that a local authority considers that a scheme is not likely to have a significant effect on the environment, the local authority is required by Regulation 5 to obtain a second or “screening” opinion from certain specified bodies.

If the local authority or one of the bodies that has given a screening opinion thinks that the scheme is likely to have a significant effect on the environment, regulation 6 requires the local authority to prepare an environmental statement assessing the scheme’s environmental effects.

Regulations 7 and 8 impose certain additional notification requirements where an environmental statement has been prepared that are intended to bring the environmental sensitivity of the scheme to the attention of interested parties and specified public bodies. Where the Scottish Ministers direct that planning permission is deemed to be granted for a flood protection scheme that is likely to have a significant effect on the environment, but require a local authority to submit further details of the scheme for approval, regulation 9 also imposes notification requirements at that stage.

Regulation 10 requires local authorities and, where applicable, the Scottish Ministers to take the environmental statement (and any representations or objections made in response to it) into account when deciding whether or not to confirm a flood protection scheme or a modification of it. Similar requirements apply to the Scottish Ministers and planning authorities when they are approving further details of a scheme that have been submitted in compliance with a condition of deemed planning permission.

Part III – Scheme Documents

This part of the Regulations specifies the information that flood protection schemes must, as a minimum, include by way of maps, plans and specifications.


Part IV of the Regulations makes further procedural provision regarding flood protection schemes.
Regulation 12 requires that objections to a proposed flood protection scheme, in addition to meeting the requirements of paragraph 3 of schedule 2 to the Act, must be accompanied by a statement of reasons. It also requires objectors to disclose the nature of their interest (if any) in land affected by operations to be carried out under the scheme.

Regulation 13 provides for objectors to be given the opportunity to withdraw their objections following modification of a scheme.

By virtue of section 65 of the Act (which amends the Town and Country Planning (Scotland) Act 1997), where a local authority confirms a flood protection scheme under paragraph 4(1) or 9(1) of schedule 2 to the Act, the Scottish Ministers must direct that planning permission be granted for scheme operations that would constitute development under the 1997 Act. Regulation 14 requires local authorities to request such a direction from the Scottish Ministers and makes provision about the form of such a request.

Regulation 15 makes provision about methods of service of notices or other documents under these Regulations or schedule 2 to the Act.

**Part V – Potentially Vulnerable Areas and Local Plan Districts**

Section 13 of the Act requires SEPA to prepare and submit to the Scottish Ministers a document identifying for each flood risk management district any area for which it considers that significant flood risk exists or is likely to occur (a “potentially vulnerable area”). The document must also identify areas around those areas for the purpose of preparing local flood risk management plans “(local plan districts”). Part V of the Regulations sets out consultation and publicity requirements for this document and requires that a copy be made available to the public.

Regulation 16 obliges SEPA to take account of consultee views and any representations before submitting the document to the Scottish Ministers.

Regulation 17 sets deadlines for submission by SEPA of the document and updates of it, and requires that SEPA provide information about the consultation and publication process. It requires SEPA to publish details of the document that it submits to the Scottish Ministers, so as to bring it to the attention of those persons likely to be affected by it.

**Schedule 1**

Schedule 1 lists the matters to be taken into account by local authorities when considering under regulation 4 whether a flood protection scheme is likely to have a significant effect on the environment.

**Schedule 2**

Schedule 2 lists the required content of an environmental statement prepared by a local authority under regulation 6.
The Scottish Ministers make the following Order in exercise of the powers conferred by sections 5(1), 15(3) and 20(1) of the Sea Fish (Conservation) Act 1967(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Scallops (Luce Bay) (Prohibition of Fishing) Variation Order 2010 and comes into force on 6th December 2010.

Variation of the Scallops (Luce Bay) (Prohibition of Fishing) Order 2010

2.—(1) The Scallops (Luce Bay) (Prohibition of Fishing) Order 2010(b) is varied as follows.

(a) for paragraph (2), substitute—

“This Order remains in force until the end of 7th December 2010.”; and

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(a) 1967 c.84 (“the 1967 Act”); section 5(1) was substituted by the Fisheries Act 1981 (c.29), section 22(1); section 15(3) was substituted by the Sea Fisheries Act 1968 (c.77), section 22(5), Schedule 1, paragraph 38(3) and amended by the Fishery Limits Act 1976 (c.86), Schedule 2, paragraph 16(1) and the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), Schedule 2, paragraph 43(2)(b). Relevant modifications are contained in the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (S.I. 1999/1748), article 5 and the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), articles 3, 5 and 6. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). Section 22(2) of the 1967 Act, which contains a definition of “the Ministers” for the purposes of sections 5 and 15(3), was amended by the Fisheries Act 1981, sections 19(2)(d), (3) and 45. The definition was modified in relation to Scotland by section 22A(12)(b) of the 1967 Act, as inserted by S.I. 1999/1820, Schedule 2, paragraph 43(13).

(b) S.S.I. 2010/375.
(b) for paragraph (3), substitute—

“The prohibition in article 3 has effect during the period from 1st November 2010 until the end of 7th December 2010.”.

Victoria Quay,
Edinburgh
1st December 2010

DAVID BREW
A member of the staff of the Scottish Ministers
EXPLANATORY NOTE
(This note is not part of the Order)

This Order varies the dates during which the prohibition of fishing for scallops under article 3 of the Scallops (Luce Bay) (Prohibition of Fishing) Order 2010 (S.S.I. 2010/375) (“the 2010 Order”) applies.

Article 3 of the 2010 Order prohibits fishing for scallops of the species *Pecten maximus* in Luce Bay (the area of the prohibition is described in the Schedule to the 2010 Order). The prohibition in article 3 of the 2010 Order has effect from 1st November 2010 and applies to any fishing boat within the area of the Scottish zone described in the Schedule to the 2010 Order.

This Order varies article 1 of the 2010 Order such that the 2010 Order remains in force until the end of 7th December 2010 at which time the prohibition on fishing in article 3 will come to an end.

A person who contravenes the prohibition contained in article 3 of the 2010 Order is guilty of an offence under section 5(1) of the Sea Fish (Conservation) Act 1967. Penalties applicable to the commission of such offences are contained in section 11 of that 1967 Act.

No Business and Regulatory Impact Assessment has been prepared for this instrument.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

INFORMATION PACK

This pack includes reports from both the Finance Committee and Subordinate Legislation Committee, and a further supplementary written submission from David Crichton.

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FINANCE COMMITTEE REPORT

REPORT ON THE FINANCIAL MEMORANDUM OF THE RESERVOIRS (SCOTLAND) BILL

The Committee reports to the Rural Affairs and Environment Committee as follows—

INTRODUCTION

1. The Reservoirs (Scotland) Bill (“the Bill”) was introduced in the Parliament on 6 October 2010. The Rural Affairs and Environment Committee has been designated as the lead committee on the Bill at Stage 1.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

3. At its meeting on 26 October 2010, the Committee agreed to adopt level 2 scrutiny in relation to the FM (i.e. that it would take oral evidence from the bill team and seek written evidence from financially affected bodies). The Committee received written submissions from—

- City of Edinburgh Council;
- East Dunbartonshire Council;
- Moray Council;
- Scottish Environment Protection Agency (SEPA);
- Scottish Water. and
• West Lothian Council;

4. All submissions can be found as an annexe to this report. At its meeting on 23 November, the Committee took evidence from the bill team.¹

SUMMARY OF COSTS AS OUTLINED IN THE FINANCIAL MEMORANDUM

5. The Reservoirs (Scotland) Bill aims to protect the public from flooding from reservoirs by modernising the reservoir safety regime in Scotland.² The FM estimates that the Bill will give rise to £7.39 million of one-off capital costs from 2011 until 2016, and will result in annual resource costs of £3.94 million (from 2011 until 2016) and £3.65 million after 2016.³

Costs on the Scottish Administration

6. The new Ministerial duties and powers set out in the Bill will incur costs of approximately £0.58 million on the Scottish Government. These include non-recurring staff costs and administration costs of approximately £0.1 million.⁴

Savings for local authorities

7. The FM states the transfer of responsibility for enforcement of the Reservoirs Act to SEPA will produce small savings for local authorities, because they will no longer have responsibility for maintaining registers of reservoirs, compiling reports to Scottish Ministers and carrying out enforcement duties. However, as the FM explains, this was a small role for officials within local authorities and the shift is unlikely to result in a reduction in staffing.⁵

8. The FM calculates estimated savings for each local authority to be approximately £7500 per annum. The estimated total saving for all local authorities is £0.24 million.⁶

Costs on local authorities

9. The FM indicates the Bill will have cost implications for those local authorities who are reservoir managers. The accumulated estimated cost for local authorities is £0.11 million per annum which are expected to rise to around £0.28 million per annum.⁷

10. The FM sets out collective one-off costs of approximately £0.23 million for the preparation of reservoir flood plans and estimated additional costs of around £0.3 million to upgrade previously unregulated reservoirs.⁸

² Financial Memorandum, paragraph 158.
³ Financial Memorandum, table 1, page 39.
⁴ Financial Memorandum, paragraph 166.
⁵ Financial Memorandum, paragraph 169.
⁶ Financial Memorandum, paragraph 169.
⁷ Financial Memorandum, paragraphs 170 – 172.
Costs on other bodies, individuals and businesses

**Costs on SEPA**

11. The FM states that under the new legislation SEPA will be identified as the enforcement authority for reservoirs, therefore, the Bill is likely to have cost and resource implications for SEPA.\(^8\)

12. The FM explains that until SEPA can carry out its new duties under the Bill, the exact number of reservoirs and the exact proportion of reservoirs in each category is unknown.\(^9\) All cost estimates for SEPA are calculated on the assumption that there is a total of 1150 reservoirs and that 40% of the reservoirs will be categorised as high risk, 30% as medium risk and 30% low risk.\(^10\)

13. Based on these assumptions, the FM predicts SEPA will incur one-off capital costs of approximately £2.3 million during the implementation phase.\(^11\) This figure could vary between £1.7 million to £2.9 million, depending on the exact number of reservoirs.\(^12\)

14. The FM estimates that during the implementation phase SEPA will require approximately four to five additional staff in 2011/12 and 2012/13, which will increase to between six to ten staff during 2013/14 to 2015/16. The FM calculates total staffing costs of £2.19 million for the implementation period up to 2016.\(^13\)

15. The FM sets out the possibility of allowing SEPA to charge fees to reservoir owners to fund their administration costs.\(^14\) The FM suggests these fees will range from £100 to £300 per reservoir for all medium to high risk reservoirs. The FM estimates £0.37 million will be generated from charges by 2016. This will result in the resource costs for SEPA being reduced to £1.82 million for the phase up to 2016.\(^15\) The FM predicts the total costs on SEPA for the implementation period of the Bill until 2016 are approximately £4.12 million.\(^16\)

16. The FM anticipates that after the implementation period, SEPA will require around three to six staff to carry out its enforcement duties under the Bill with an estimated cost of £0.41 million per annum.\(^17\) This figure includes the three to six staff, legal and hydrology staff, IT support, training costs and engineering costs. The FM

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8 Financial Memorandum, paragraph 173.
9 Financial Memorandum, paragraph 177.
10 Financial Memorandum, paragraph 178.
11 Financial Memorandum, paragraph 178.
12 Financial Memorandum, paragraph 179.
13 Financial Memorandum, paragraph 179.
14 Financial Memorandum, paragraph 180.
15 Financial Memorandum, paragraph 181.
16 Financial Memorandum, paragraph 181.
17 Financial Memorandum, paragraph 182.
18 Financial Memorandum, paragraph 183.
takes into consideration the income from the charges and predicts annual costs to SEPA will be an estimated £0.24 million.\textsuperscript{19}

\textit{Costs on Scottish Water}
17. Scottish Water owns or manages over 300 reservoirs, 248 of which are currently regulated.\textsuperscript{20} It is predicted that Scottish Water will have one-off capital costs of £1.2 million for the production of reservoir flood plans. This figure is based on the assumption that 140 reservoirs will be categorised as high risk, 69 as medium risk and the remainder as low risk.\textsuperscript{21}

18. The FM predicts that Scottish Water’s annual costs will increase by £87,500 from 2013-14; this estimate could vary between £48,000 and £0.13 million. The total estimated resource costs for Scottish Water until the year 2016 are £0.26 million.\textsuperscript{22}

19. The FM estimates that Scottish Water will incur total implementation costs of approximately £1.4 million. The annual cost to Scottish Water after this phase of the Bill is anticipated to be £0.09 million.\textsuperscript{23}

\textit{Costs on private reservoir owners}
20. The FM estimates private owners will collectively incur costs in the region of £4.85 million for the implementation period of the Bill (see paragraphs 191 to 200 for this breakdown of the costs). After this period the FM indicates annual costs of approximately £3.34 million on private owners.\textsuperscript{24}

\textbf{SUMMARY OF EVIDENCE}

\textbf{General issues}

21. The FM states that the exact number of new reservoirs which will be regulated under the Bill is not known and that work is currently being carried out to achieve a more accurate figure. This task was due to be completed by mid September, but officials have advised that it is ongoing.\textsuperscript{26}

22. The Committee notes the lack of data. However, to get a clear idea of the financial impact of the Bill, it would have been helpful to the Committee’s scrutiny of the FM if this work had been completed prior to the Bill’s introduction.

\textsuperscript{19} Financial Memorandum, paragraph 183.
\textsuperscript{20} Financial Memorandum, paragraph 184.
\textsuperscript{21} Financial Memorandum, paragraph 184.
\textsuperscript{22} Financial Memorandum, paragraph 185.
\textsuperscript{23} Financial Memorandum, paragraph 186.
\textsuperscript{24} Financial Memorandum, paragraph 201.
\textsuperscript{25} Financial Memorandum, paragraph 202.
23. The FM sets out the potential costs of the Bill to 2015/16. In light of the publication of Scotland’s Spending Plans and Draft Budget 2011-12, the Committee questioned how the Government was able to give cost estimates for the next parliamentary session, given that the Draft Budget is for one year. The bill team stated—

“The costs that are set out are the resource costs that will be associated with implementing ministers’ intentions for the Bill. If the public sector landscape changes as a consequence of work such as the Christie commission, we will factor that into who takes responsibility. We have estimated the costs of implementing the Bill. In future spending reviews and budgets, we would seek to negotiate for that resource to support our objectives.”

Local authorities

24. The Bill sets out a revised threshold for regulated reservoirs and revised risk categories from 25,000 cubic metres to 10,000 cubic metres. In its submission, West Lothian Council expressed concerns about the potential increased costs if SEPA later indicates the reservoirs in local authorities to be within the high risk category—

“Because local authorities have limited means to raise additional income to offset these costs, the Scottish Government would be expected to provide funding to underwrite the additional cost pressures.”

25. During the evidence session, in response to the concerns raised, the bill team said—

“If a local authority has newly identified reservoirs of between 10,000m³ and 25,000m³, and those reservoirs are identified as being high risk, the authority’s costs could increase. At the same time, if any reservoir that it currently regulates is identified as being low risk, its costs could go down. There is a balance between the two in the legislation.”

26. In its submission, the City of Edinburgh Council was critical of the savings the FM set out for local authorities. They argued that under current conditions, local authorities do not receive any funding for carrying out enforcement duties, but under new proposals will be expected to pay SEPA charges, which is an increase rather than a saving. In response the bill team stated—

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29 West Lothian Council, written submission to the Finance Committee.
“As part of its block grant, the City of Edinburgh Council receives funding for enforcing reservoir safety, because that is a recognised local authority duty that is wrapped up in the block grant.” 31

The bill team continued—

“I understand why the council does not recall that the funding is bedded in, because the funding transfer to reflect that burden was undertaken more than two decades ago, when we dealt with the financial burden from the Reservoirs Act 1975.” 32

27. The Committee notes the response from the bill team, but highlights the concerns of local authorities regarding potential additional costs for the lead committee’s attention.

Scottish Environment Protection Agency

28. The FM sets out costs of £4.12 million for the implementation stage of the Bill for SEPA and annual on-going costs of £0.41 million. In its submission, SEPA acknowledged that the assumptions used in the FM reflect their understanding of the Bill. However, they highlighted that the exact financial implications for the organisation are not known at this stage in the process. They stated—

“The Financial Memorandum does note that the total number of reservoirs that would fall under this legislation is unknown and therefore the true costs associated with implementing and thereafter regulating the legislation are variable.” 33

29. In its submission, SEPA also expressed concerns about the margins of uncertainty in the FM—

“If the situation occurs whereby the actual cost of undertaking the activity reflects SEPA’s or the Scottish Government’s upper estimates then it would mean a lack of funds being available if the CSR bid were tied to these estimates. This could have implications on SEPA’s ability to undertake its regulatory role and protect the public.” 34

30. The Draft Budget for the coming year shows a £4.9 million reduction for SEPA, while the implementation of the Bill gives rise to costs of approximately £4.12 million. 35 The Committee questioned if the Bill was the correct priority when SEPA’s budget is being reduced. The bill team stated—

33 SEPA, written submission to the Finance Committee.
34 SEPA, written submission to the Finance Committee.
“We are working closely with SEPA to develop the legislation. Significant costs are not expected from much of the work in the next financial year; as we discussed earlier, most of the costs that accrue to SEPA are in later years. We are working closely with SEPA to ensure that it understands ministers’ priorities and that we are able to use the resource to protect the people of Scotland.”\textsuperscript{36}

31. The bill team continued to explain that SEPA is currently carrying out significant structural changes and savings are being made as a result of this.

32. The Committee notes the concerns raised by SEPA and the response from the bill team, and invites the lead committee to pursue these issues with the Cabinet Secretary.

**Scottish Water**

33. Although, Scottish Water stated in its submission that the information they provided during the consultation exercise with the bill team was accurately reflected in the FM, they have now revised their estimates. The FM predicts that the total implementation costs for Scottish Water until 2016 are likely to be in the region of £1.4 million. The revised forecast by Scottish Water predicts the total implementation costs (if works have to be carried out by 2016) as £2.7 million.\textsuperscript{37}

34. This figure includes an additional estimate of a £1 million one off cost for complying with legislation for 34 newly designated reservoirs and a one off cost for display of emergency response information of £365,000.\textsuperscript{38} The Committee questioned the change in the estimated costs on Scottish Water. During the evidence session the bill team replied—

“The margin of error on all the costs in the financial memorandum is very much dependent on the number of reservoirs that come under the auspices of the Bill and on the number of reservoirs that are identified as being high risk. Those are variable factors in the Bill. The fact that we do not know the number of reservoirs that are between 10,000m$^3$ and 25,000m$^3$ is one reason for bringing forward the Bill.”\textsuperscript{39}

35. In its submission, Scottish Water stated that they have not been financed for the requirements of the Bill within this regulatory period. They highlighted that Scottish Water is financed by customer charges and they will be including the requirements of the Bill in their business planning process for the regulatory period, commencing 2015, as they expect these requirements will be part of the Ministerial Direction to Scottish Water.\textsuperscript{40}

\textsuperscript{37} Scottish Water, written submission to the Finance Committee.
\textsuperscript{38} Scottish Water, written submission to the Finance Committee.
\textsuperscript{40} Scottish Water, written submission to the Finance Committee.
36. The Committee notes the issues raised by Scottish Water and the response from the bill team and encourages the lead committee to pursue the change in the estimated costs on Scottish Water with the Cabinet Secretary.

CONCLUSION

37. The Committee directs the lead committee to the specific comments made throughout this report on certain aspects of the FM.

ANNEXE: WRITTEN EVIDENCE RECEIVED

SUBMISSION FROM CITY OF EDINBURGH COUNCIL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   Yes. Yes

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   Not sure.

3. Did you have sufficient time to contribute to the consultation exercise?

   Consultation exercise yes.

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   Our costs will probably fall within the estimated ranges, but these are very broad ranges. NOTE - Local Authorities received no grant aid for carrying out Enforcement duties, but are now expected to pay SEPA charges for doing so. That is a clear cost increase.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

   The memorandum does not say whether the estimated costs will be made available to Local Authorities. Based on my experience that the savings from
Enforcement Duties stated here appear to be overestimated, and the safety measures costs to be underestimated, then NO.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The margins appear broad enough

**Wider Issues**
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Yes. There is provision for costs to be imposed by regulation – e.g. “manner in which information is to be recorded (para 49); or SEPA charges (CAR charges are considerably higher than first estimated)

**SUBMISSION FROM EAST DUNBARTONSHIRE COUNCIL**

**Consultation**
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

*East Dunbartonshire did not make any submission to the consultation exercise.*

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

*Not applicable*

3. Did you have sufficient time to contribute to the consultation exercise?

*Yes*

**Costs**
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
The assumption in terms of ‘average’ costs does not accurately reflect the implications for East Dunbartonshire Council. Our historical involvement has been fairly minor with only one reservoir and accordingly our costs have been significantly lower than the average quoted. The Council will not see any material difference or cost saving as a consequence of the change in legislation.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The Council will not have any material change in costs incurred but neither will it secure any cost savings.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No considered view

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No considered view

SUMMSSION FROM MORAY COUNCIL

It is planned that most of these duties will transfer to SEPA at some point but there is a financial implication with the proposal to drop the threshold from 25,000m3 down to 10,000m3.

Few of the reservoirs between 10,000 and 25,000 m3 will have as built record drawings. This in turn raises the cost of surveying them to establish their maximum possible capacity. If the measured volume is greater than 10,000 m3, then presumably the owner pays for the survey and all subsequent inspections. If this is correct, it should to be clearly stated so that owners are able to budget for the possible expenditure involved. (Prior to the survey, they do not know for certain if their reservoir is covered by the Bill or not.)
If a survey is carried out and the volume proves to be less than 10,000 m³, it should also be clarified who pays for that survey. Presumably not the owner since their reservoir is not covered by the legislation. If it is some other body, they must be told in advance of these circumstances so that budget provision can be made.

As it stands, responsibility for these costs is not clear and this should be clarified before the Bill comes into force.

SUBMISSION FROM SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

Opening Remarks

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to respond to the Finance Committee on the Financial Memorandum of the Reservoirs (Scotland) Bill.

The Bill will create the framework that will ensure reservoirs in Scotland are regulated in a proportionate and risk-based regime to protect the people of Scotland from the risk of flooding from reservoirs, whilst limiting the burden on those owners whose sites pose minimal risk.

SEPA recognises the responsibilities associated with its new role and looks forward to the challenges it will bring. Success will depend on the powers and duties conferred by the legislation, the working relationships SEPA builds with the regulated sector and other key stakeholders and the resources that are made available.

To enable SEPA to provide cost estimates we have drawn on our experiences of implementing other recent legislation such as the Water Environment and Water Services (Scotland) Act 2003. By so doing we have attempted to build cost estimates based on working regulatory models and thereby reflect true and accurate figures.

We have also drawn on the experiences of the Environment Agency who in 2004 took over the enforcement role for reservoir safety in England & Wales. When doing so they encountered many similar issues that we envisage SEPA will face and so their knowledge and experience has been drawn upon, again to provide estimates based upon working systems and processes.

Wherever possible SEPA will look to incorporate this new regulatory duty within existing systems and processes to ensure efficiencies, but our ability to do so could be severely impacted by efficiency savings on SEPA’s overall budget. This will minimise the cost to the public purse and limit the charges which may be passed on to reservoir managers.
This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Reservoirs (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

**Consultation**

1. *Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Yes, SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Reservoirs Bill Team during the Bill drafting process and provided comment on the wording of the provisions relevant to SEPA when requested.

SEPA formally responded to the Scottish Government consultation “Reservoir Safety in Scotland” in April 2010. We also assisted the Government in the stakeholder engagement process of this consultation by attending and sitting as panel members at public awareness raising workshops around the country. SEPA also sits on the Government’s ‘Reservoir Safety Stakeholder Group’, which comprises a cross section of the reservoir safety community, including individual owners, large reservoir owning organisations such as Scottish & Southern Energy, Local Authorities, Panel Engineers and Scottish Water.

SEPA worked closely with Scottish Government on the development of options and the range of financial assumptions made.

SEPA believes it has achieved the best it can to establish an estimate of the future resources required at each of the various stages of the Bill’s development, given the available knowledge at each stage of the process.

2. *Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Yes, the assumptions used in the Financial Memorandum reflected our understanding of the Bill.

3. *Did you have sufficient time to contribute to the consultation exercise?*

Yes.

**Costs**

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*
The Bill has significant financial implications for SEPA; in the Financial Memorandum these were presented as £4.12 million for the implementation stage, 2011 to 2016. Thereafter when the regulatory process becomes ‘business as usual’ it was estimated that SEPA’s annual on-going cost was £0.41 million.

The precise financial implications, both for the implementation stage and on-going business will depend on a number of factors. To a great extent costs will be determined by the number of new sites that will be captured by the legislation when the registration threshold is reduced from 25,000 cubic metres to 10,000 cubic metres. Also, as noted in the Financial Memorandum, there has been an assumption that 40% of reservoirs will be classified as high risk, 30% as medium risk and 30% as low risk. As the regulatory effort is dictated by the number of registered sites and the classification they receive, any variation on the assumptions made will impact upon the cost estimates. Until the exact number of sites is known and they have been classified, it is impossible to be precise about the level of the resource requirements and about other financial necessities such as the reservoir inundation mapping exercise and external engineering support.

The figures contained in the Financial Memorandum do try to take account of this variation where associated work elements will be impacted by these unknowns. For example the estimates for staff costs during the later part of the implementation period range from £0.40 to £0.77 million, with a figure of £0.5 million being used in the final calculation. This scenario is replicated in several other areas, such as costs for the production of inundation maps ranging from £0.9 to £2.0 million. As can be seen, the impact of these variations could have a significant bearing on the final costs.

The Bill also permits Scottish Ministers by regulations to make provisions for SEPA to implement a charging scheme, both for the registration of sites and annual on-going charges, to limit the cost to the public purse. It is proposed that those sites posing the greatest risk and therefore requiring a higher level of regulation will be charged at a higher level than those posing a medium risk, with low risk sites not receiving a charge. Estimates have been provided on the income that would be generated, £0.37 million, up until 2016.

This figure is less than that estimated for SEPA’s on-going regulatory activities as noted above. This situation has occurred because, when estimating possible charges, SEPA was advised to exclude from any cost estimates those work elements that related to undertaking enforcement action. This was because the Scottish Government wanted to avoid passing on this cost to those undertakers who were compliant with the legislation. Powers have also been included in the Bill to reclaim expenses associated with appointing engineers, exercising their emergency powers and costs associated with the application of civil sanctions so that these costs are borne only by those who do not comply with the legislation.
Again these figures are reliant on the number of registered sites and the various risk classification levels that they fall under.

The financial implications outlined in the Financial Memorandum are in line with those submitted by SEPA, based on our understanding of the Bill at that time. We will continue to work with the Scottish Government and once we have a better understanding of how many reservoirs will be affected by the Bill we will have a better understanding of the possible scenarios for delivery of the Bill. In doing so we hope to be able to further refine our estimates of the resources required in light of the clearer guidance and assumptions made. However the exact costs of enforcing the Bill will not be known until SEPA carries out the risk assessment of each reservoir and categorises them.

5. **Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?**

Yes, with the required Government funding but it will be challenging.

The majority of the implementation tasks that SEPA must complete to ensure that we are able to undertake this new regulatory duty are likely to fall within the next Comprehensive Spending Review (CSR) period (2011 – 2015) although we understand there are no set deadlines for implementing this legislation and the delivery period may be extended if necessary. SEPA will work with the Scottish Government to ensure all efficiencies and cost savings are captured in this CSR bid and where possible SEPA will look for efficiencies by integrating current and future reservoir safety regulatory work with our other duties.

Thereafter a proportion of SEPA’s on-going regulatory costs will be met by funds raised through a proposed charging scheme, with the remaining proportion being met by future CSR funding as outlined in the Financial Memorandum. Should the proposed charging provisions contained within the Bill not come into force then there will be a need for a higher level of funding through the CSR bid.

6. **Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

The Financial Memorandum does note that the total number of reservoirs that would fall under this legislation is unknown and therefore the true costs associated with implementing and thereafter regulating the legislation are variable. It also states that an assumption has been made in regard to the proportion of sites falling into each of the three risk categories and acknowledges that if this changes then it will impact upon implementation and on-going costs.

The Financial Memorandum does include a range of costs for each activity which tries to take account of some of these unknowns. However, it then puts forward
an estimated cost, which has subsequently been used to calculate the overall estimated cost to SEPA. If the situation occurs whereby the actual cost of undertaking the activity reflects SEPA’s or the Scottish Government’s upper estimates then it would mean a lack of funds being available if the CSR bid were tied to these estimates. This could have implications on SEPA’s ability to undertake its regulatory role and protect the public.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

SEPA has a significant role in reducing wider flood risk issues and is heavily involved with the Scottish Government and other stakeholders in implementing the Flood Risk Management (Scotland) Act 2009.

The Reservoirs (Scotland) Bill has, where appropriate, been drafted to align with this Act and will therefore help to deliver outcomes in a co-coordinated and efficient manner. An example of how the two pieces of legislation complement each other is demonstrated by that of the inundation mapping process. Those maps required under the Reservoirs (Scotland) Bill, to support the risk designation process, will subsequently be used to inform the work required of SEPA under the Flood Risk Management (Scotland) Act 2009.

In the financial memorandum that was produced for the Flood Risk Management (Scotland) Act 2009 the costs associated with regulating reservoir safety are shown as additional costs to the wider FRM costs and, as such, are reflected in the Reservoirs Bill Financial Memorandum.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Reservoirs (Scotland) Bill is a framework Bill that will lead to a significant amount of secondary legislation. Depending on the detail that emerges in this secondary legislation it could lead to extra costs for SEPA, but until this is drafted it is not possible to quantify these costs.

SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to respond to the Financial Memorandum for the Reservoir (Scotland) Bill. We are particularly interested in this proposed legislation, as we own and operate a large number of reservoirs across Scotland and, as such, we are a reservoir undertaker under the terms of the existing Reservoirs Act 1975.
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RAE/S3/10/30/4

- Scottish Water will own and be responsible for 365 reservoirs (defined under this Bill) which include service reservoirs and clear water tanks. 70 of these reservoirs are no longer operational. A number of sustainable urban drainage ponds (SUDS) ponds will now also be controlled under the Bill.

- The Bill will reduce the minimum volume for the definition of a reservoir to 10,000 cubic metres. This will introduce a further 95 reservoirs and water retaining structures to be controlled made up of 34 small reservoirs and 61 clear water tanks or service reservoirs. The additional 34 small reservoirs will incur a one off cost estimated to be almost £1m to comply with requirements of the Bill.

- Scottish Water welcomes the introduction of the risk designation of reservoirs as high, medium and low based upon the potential adverse consequences and the probability of an uncontrolled release of water thus allowing a proportionate supervision and inspection regime dependant on the risk designation of the reservoir.

- The new Bill will require Scottish Water to produce flood plans for all reservoirs and this may result in an additional one off cost in the region of £1m. However some flood plans have already been carried out by Scottish Water and if these are acceptable to the enforcement authority, then this cost may be reduced.

**Consultation**

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?


- The Bill introduces additional responsibilities for Scottish Water and therefore additional costs. In our response to the consultation we highlighted that the risk designation should be based upon the potential adverse consequences and the probability of an uncontrolled release of water thus allowing a proportionate supervision and inspection regime dependant on the risk designation of the reservoir. Scottish Water believes that SEPA should be responsible for producing the inundation maps to ensure consistency throughout all reservoir owners. Scottish Water proposed that where owners had already prepared inundation maps these could be used by SEPA and may result in a decision that there is no need to prepare a basic inundation map for that reservoir. This could provide best value for the Scottish Government.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Scottish Water provided financial information based upon the Consultation exercise, this was accurately reflected in the Financial Memorandum. Since this time Scottish Water has continued to work with the Government to better understand the implications for Scottish Water. We reviewed the Bill when it became available and revised some of our estimates accordingly.

3. Did you have sufficient time to contribute to the consultation exercise?

- Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

- Scottish Water believes that the Bill has material financial implications. As a result of reviewing the Bill we have revised our estimates.

- Scottish Water has revised our estimate of forecast annual operating costs as a result of the increased management time for regulatory matters within SEPA, as set out in the Bill, to approximately £100k per year from 2013/14.

- In addition to the costs set out in the Financial Memorandum Scottish Water has now included a one off cost for complying with the legislation in relation to the newly designated 34 small reservoirs which is expected to take effect from 2016 and is estimated to be almost £1m.

- Scottish Water has included an additional one off cost for display of emergency response information of approximately £365,000.

- Scottish Water has estimated that the one off cost of flood plans would be in the region of £1m for the initial draft for all reservoirs. The annual updating and testing of the flood plans has been included in our estimate within the forecast annual operating costs in bullet point 2.

Therefore the estimated additional cost of implementing the new Bill until 2016 compared with the Reservoirs Act 1975 is shown in the table below:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forecast additional annual operating costs</td>
<td>£0.3m</td>
</tr>
<tr>
<td>3 years from 2013 when transfer of enforcement to SEPA to 2016</td>
<td></td>
</tr>
<tr>
<td>Cost of complying for the 34 newly designated reservoirs</td>
<td>£1.0m</td>
</tr>
<tr>
<td>Display of emergency response information</td>
<td>£0.37m</td>
</tr>
</tbody>
</table>

17
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

- Scottish Water has not been financed for the requirements of the Bill in this regulatory period (2010-15).
- Scottish Water is financed by customer charges. The priorities for expenditure are set by Government and Regulators through the Quality and Standards process for each five year regulatory period.
- Scottish Water will be including the requirements of this Bill into our business planning process for the next regulatory period. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period SR15 (2015-20).

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- Scottish Water has assumed that the margin of error is in the region of 20% and these are set out in the Scottish Water costing. Therefore the range for future forecast annual additional cost is £46,000 to £126,000. The cost of the flood plans range between £866,000 and £1,118,000.
- Scottish Water expect that reservoirs above 25,000 cubic metres will transfer to the new regime in 2013 when SEPA takes on the enforcement role. Scottish Water expects that the regulation of reservoirs between 10,000 and 25,000 cubic metres will be regulated by SEPA from 2016.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

- The Flood Risk Management Act 2009 requires Scottish Water as a responsible authority to exercise their flood risk related functions with a view to reducing overall flood risk. Reservoirs may attenuate flooding. Where a reservoir is no longer used as a source of drinking water, Scottish Water still retains all obligations under Reservoir (Scotland) Act. Works we may undertake in the interests of safety (such as breaching a reservoir) may be contrary to management of flood risks. However, maintaining reservoirs in the interests of flood risk management may be more costly than actions taken in the interests of safety. In this case, the additional costs to retain reservoir structures (in proper
condition in the interests of safety) for the purpose of flood risk management, requires additional funding. We suggest that Scottish Water should be funded to maintain reservoirs for flood attenuation purposes where they are no longer required as a source of water.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

- The Bill includes many sections where additional guidance may be forthcoming in the future. It is our view that reservoir managers should be consulted early in the development of any guidance. Until the guidance is drafted it is difficult to anticipate additional costs. It is essential that any costs are proportionate to the risk posed.

- In addition there may be more sustainable urban drainage ponds (SUDS) that will be designated under the Bill.

- Scottish Water believes that when further information is available about the risk designation of the reservoirs, that a more accurate costing of the impact on Scottish Water can be produced.

- Under the proposed review process, every 6 years reservoirs may be redesignated for risk, for instance if redevelopment occurs downstream. Redesignations of this nature may result in additional costs for Scottish Water.

Scottish Water
15 November 2010

SUBMISSION FROM WEST LOTHIAN COUNCIL

1.0 Background & context

1.1 West Lothian Council currently has eight Large Raised Reservoirs in its administrative area, a number which has reduced sharply in recent years during which several have been taken outwith the ambit of the Act.

1.2 The council owns two reservoirs. Beecraigs is a Large Raised Reservoir, which currently falls within the ambit of the existing legislation. Eliburn Reservoir used to be a Large Raised Reservoir but was engineered by Livingston Development Corporation some years ago to limit its capacity. No flood plans have previously been prepared for either of these structures.
2.0 The Council’s views

2.1 The Council considers it critical that the cost of introducing new legislation and regulating the safety of reservoirs remains proportionate to the benefit to society at large. The more that relevant processes can therefore be integrated with the SEPA’s existing activities, the better in terms of minimising duplication, reducing the number of processes and minimising regulatory costs.

2.2 The proposed approach to align reservoir safety legislation with the Water Environment Controlled Activities licensing arrangements should help minimise costs.

2.3 If SEPA later determines that reservoirs owned by local authorities were to constitute high-risk structures the additional statutory burden would result in significant revenue cost pressures.

The Financial Memorandum estimates such costs to be between £2,500 and £25,000. Because local authorities have limited means to raise additional income to offset these costs, the Scottish Government would be expected to provide funding to underwrite the additional cost pressures.

2.4 The principal of charging for the regulation of reservoirs concerns the council. The proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of complying with said regulation. Given the changing dynamics of reservoir ownership in favour of small businesses such as fisheries and those promoting the shooting of game, this is not regarded as sustainable, particularly in the current economic climate. Increased risk associated with development downstream of the structure is outwith the control of reservoir operators and yet it is the operators that will have to pick up the additional costs in the event of a reservoir risk rating being changed when their license is reviewed by SEPA.

2.5 The number of occasions where the regulator needs to intervene in a practical way due to the failure of a reservoir operator is expected to be minimal. However, this might well increase over time given the changing dynamics of reservoir ownership and the age / condition of the structures and the maintenance regimes or absence of them. It is only right that the relevant reservoir operator meets the cost of personal or corporate failure. However, it
is anticipated that the circumstances when such intervention will be necessary will relate to individuals with insufficient capital and recovery of costs could be challenging and potentially controversial.

In promoting the Bill, the Scottish Parliament needs to be mindful of the economically delicate nature of some of the businesses, which are now responsible for reservoirs and reservoir safety. There are limited commercial returns from fishing and the shooting of game for example. Where landowners are not the reservoir undertakers, responsibility for the reservoir and compliance with reservoir safety legislation is often included in leases. The council considers that this might sometimes represent an unfair burden given the scale of investment that might potentially be necessary when work becomes necessary in the interests of safety.

2.6 In considering the merits of the risk-based approach to reservoir safety and the introduction of enabling legislation, members of the Scottish Parliament need to be mindful of the fragile economic viability of some flood plans for example which the Financial Memorandum estimates will cost between £2.5K and £25K. Over recent years, water authorities and other public bodies have rationalised their asset base and divested themselves of unwanted assets to the highest bidder. Many structures have been purchased as fisheries or for the shooting of game. Many new owners and operators may struggle to meet the cost of preparing associated with a reservoir and necessary in the interests of safety. The added burden, particularly for those structures later deemed by SEPA to be high-risk in nature have the potential to undermine the viability of some business and leisure interests. Under the new legislation, actions by SEPA to recover any costs that it incurs in securing compliance could potentially send such businesses into administration.

2.7 There are wider concerns that the proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of compliance. Given the changing tends in reservoir ownership in favour of small businesses such as fisheries and for game shooting, this is not regarded as sustainable, particularly in the current economic climate.

3.0 Conclusion

3.1 The council is supportive of the general principles of the Bill but urges caution in terms of ensuring that the cost of administering the legislation remains in proportion to its benefit, that very careful consideration be given before
passing on the regulator’s costs onto reservoir operators or otherwise significantly increasing the financial burden associated with compliance on local authorities and small / medium enterprises.

SUBORDINATE LEGISLATION COMMITTEE REPORT

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 16 November and 7 December 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Reservoirs (Scotland) Bill at Stage 1. The Committee submits this report to the Rural Affairs and Environment Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Reservoirs (Scotland) Bill (“the Bill”) was introduced in the Parliament on 6 October 2010 by the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

4. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.


Delegated powers provisions

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution

6. Section 1(2) defines a “controlled reservoir” as being a structure designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas
which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.

7. Section 1(3) makes related provision for combinations of structures that could collectively release 10,000 cubic metres. Section 1(4) enables the Scottish Ministers to make provision by order for a structure or combination of structures to be treated as a controlled reservoir, notwithstanding that the requirements of subsections (2) or (3) are not met.

8. Before making any such order the Scottish Ministers must take into account (a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination, and (b) the probability of such a release. However, having taken these matters into account, the Bill does not require Ministers to apply a defined test before exercising their powers.

9. The Committee queried why the power by order in section 1(4) is subject to negative resolution procedure, when the power in section 1(6)(a) to vary the 10,000 metre threshold is subject to draft affirmative resolution procedure. The Committee notes that the effect of both orders would be to extend the scope of the Bill to include reservoirs (or combinations of them) in the Bill controls, though not meeting the 10,000 cubic metre threshold. The Committee also asked for an explanation why it is not considered appropriate to include any minimum cubic threshold, in section 1(4).

10. The Government DPM explains that it is important that all reservoirs that have the potential to pose a risk to the public are regulated under the new legislation. The 10,000 cubic metre threshold above which a reservoir would be subject to regulation has been agreed in close consultation with ICE (the Institution of Civil Engineers). One of the concerns about the 1975 Act was that it relied upon a strict volume criterion for determining the reservoirs that needed to be supervised, regardless of the risk a reservoir actually posed. It is therefore viewed as important to include a power to enable Scottish Ministers to exercise some discretion to include individual reservoirs or combinations of reservoirs that have the potential to pose risk, even though they do not meet the basic cubic metre threshold. The Committee accepts that explanation in justification for this delegated power.

11. In relation to the choice of negative procedure, the Scottish Government explains this is viewed as appropriate, as this power is intended only to be used in exceptional circumstances in relation to individual structures where, notwithstanding that the reservoir in question is below the volume threshold, a particular risk is identified.

12. The Committee accepts that a decision to include a reservoir within the Bill’s regime by means of an order under section 1(4) will involve professional or technical considerations.

13. On the other hand, an order under section 1(4) would extend the regulatory regime by providing that the reservoirs specified by the order would be “controlled reservoirs”,

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even though the 10,000 m3 threshold is not satisfied. While the Scottish Ministers would have regard to potential adverse consequences and the probability of flooding in terms of section 1(5), the Committee does not consider this imposes specific criteria for which reservoirs below the 10,000 m3 threshold could be included in any order.

14. The Committee is content that the delegated power to make orders under section 1(4) is acceptable in principle.

15. In relation to the choice of negative rather than draft affirmative procedure for the exercise of this power, the Committee notes that an order under section 1(4) could substantially extend the application of the Bill, by providing that the reservoirs specified by the order would be “controlled reservoirs”, even though the 10,000 cubic metre threshold is not satisfied.

16. Therefore for negative procedure to apply to this power to amend the Bill, the Committee considers that the criteria allowing such amendment should be drawn clearly, specifically and no wider than is necessary. The Committee does not consider that this is provided by section 1(5) as drafted. If clearer criteria are not set the Committee considers that the scope of the power merits draft affirmative procedure as was selected in relation to section 1(6)(a) described below.

17. The Committee asks the Scottish Government to consider that aspect further in advance of Stage 2 of the Bill.

Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Draft affirmative

18. Section 1(6)(a) allows the Scottish Ministers to set a different volume threshold for controlled reservoirs from the 10,000 cubic metres specified in the Bill.

19. The Committee accepts from the explanation provided by the Scottish Government in the DPM that this power is justifiable in principle, and that it should be exercisable by draft affirmative procedure.

20. The Committee asked the Scottish Government why, although the power to change the 10,000 cubic metre threshold for controlled reservoirs may be required if engineering advice on the minimum threshold changes in the future, it is considered necessary to have an unqualified power to amend the Bill with any different volume, without—
(a) Any minimum or maximum threshold being stated, or

(b) any requirement to have regard to advice from the Institution of Civil Engineers ("ICE"), for example, or the safety matters set out in section 1(5).

21. The Scottish Government's response, in relation to point (a), explains that it would be difficult to state with any precision a volume below which no (safety or flooding) risk whatsoever could be posed, or the volume above which there will always be a risk, without those figures being at such extreme ends of the spectrum as to be meaningless. The Committee accepts this explanation why no minimum or maximum threshold is specified within section 1(6)(a). The Committee is satisfied that this power shall be subject to draft affirmative resolution procedure.

22. In relation to point (b) above, the response confirms that the Government will consider amending the provision so that this order-making power is exercisable after having had regard to advice from ICE.

23. The Committee is content with the power in section 1(6)(a) in principle, and that it is subject to draft affirmative procedure. The Committee welcomes the Scottish Government's proposal to consider amending this power, so that it is exercisable with regard to advice provided by ICE. The Committee will review this after Stage 2.

Section 25 – Power to establish panels of reservoir engineers

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution

24. Section 25(a) requires the Scottish Ministers to establish one or more panels of reservoir engineers, and to specify by order the sections of Part 1 of the Bill, under which the members of any such panel may be appointed. The panels have an important function under the structure of the Bill. It is members of these panels which will conduct the supervision and inspection arrangements for controlled reservoirs.

25. The DPM explains that the structure of the various panels to be appointed is a technical matter that will need to be worked out in liaison with ICE. It will also need coordination with the panel structure in England and Wales. It is intended that this order-making power shall give the Scottish Ministers powers to shape the membership of the panels in light of that (by specifying the relevant sections at the appropriate times).

26. The Committee asked for further information as to how the panel structure will operate and in particular how the power in section 25 will facilitate that. The Committee was not clear whether the power was intended to provide for additional criteria for
appointment or if it was restricted to allocating members of the panel or panels between the different technical functions under the Bill. The Scottish Government’s response states that “To be appointed under any of these sections, an engineer must be a member of a panel of engineers established under section 25 – and must also be entitled to be appointed under the particular section (sections 31(4)(a), 43(3)(a), 47(3), 75(4)) The intention is that an order under section 25 will determine entitlement to be appointed under any particular section, by specifying the sections of the Act under which members of any particular panel may be appointed.”

27. The response has been helpful in clarifying the Committee’s understanding of the means by which panels are to be appointed and adopt functions under the Bill. The Committee notes that flexibility in the panel structure is required due to the limited number of persons in the UK with the necessary technical expertise to act as panel engineers. The Committee therefore accepts the need for the delegated power in principle.

28. As regards the procedure applicable to the exercise of the power the Committee recognises the need for Parliamentary scrutiny given the importance of the functions of panel engineers within the regulatory scheme. As the appointments will be based on technical criteria the Committee is content that negative resolution procedure is sufficient level of scrutiny.

29. The Committee considers that the power in section 25(a) is acceptable in principle and is content that the power is subject to negative resolution procedure.

Section 52(1) –Power to make provision for reporting incidents to SEPA relating to reservoir safety

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Draft Affirmative

30. Section 52(1) enables the Scottish Ministers to make provision in regulations for the reporting of incidents at any reservoir to SEPA. Section 52(2) states that the regulations can provide that SEPA or another person (i) may specify the criteria, or (ii) is to determine whether the reservoir meets the criteria for incidents to be reported on.

31. Section 52(2)(k) permits the regulations to make provision in connection with ensuring remedial action is taken after an incident report. This includes amending the Act itself (other than section 52), or applying the Act with modifications.

32. The Committee asked the Scottish Government in relation to section 52(2) –
(a) Why is it necessary to extend the power to make regulations to provide that another person (apart from SEPA operating the reporting scheme) may specify the criteria for incidents to be reported, or that that person may determine whether a reservoir meets the criteria?

(b) Why is it necessary for the provision in relation to ensuring remedial action is taken after an incident report, to include the power to amend the Act (apart from section 52) or to apply the Act with modifications. Could examples be provided as to how this power could be used?

33. The Scottish Government states: “The reason for providing that regulations may, among other things, provide that a person other than SEPA may specify the criteria for incidents to be reported or may determine whether a reservoir meets the criteria, is that ICE or panel engineers, rather than SEPA, have the necessary experience and expertise to do so…”

34. The response also explains that section 52(2)(k) provides that the regulations may include provision amending the Act or applying it with modifications because as the Bill already contains certain provisions where reservoir managers can be compelled to take action, if those provisions are to be applied (with or without adaptation) to remedial action after an incident report, it may be necessary to textually amend or modify the existing provisions.

35. The Committee accepts this further explanation, in justification of the proposed powers. It also notes that if exercised, these powers are subject to draft affirmative procedure.

36. **The Committee is content with the powers in section 52(1) in principle, and that they are subject to draft affirmative resolution procedure.**

**Section 53(1) – Power to make provision for preparing reservoir flood plans**

**Power conferred on:** Scottish Ministers

**Power exercisable by:** Regulations

**Parliamentary procedure:** Draft Affirmative

37. Section 53(1) enables the Scottish Ministers to make provision in regulations for the preparation of flood plans in relation to reservoirs. A reservoir flood plan would set out action to be taken by the reservoir undertaker in order to control or mitigate the effects of flooding which could result if water escaped. Examples of what the regulations will cover are outlined in the list in section 53(3).

38. Section 53(3)(n) permits regulations to amend the Act (other than this section), or to apply the Act with modifications. This is limited to the purposes of paragraphs (j), (l) and
(m) – making provisions to refer matters to a referee; providing that SEPA may in specified circumstances do anything another person is required to do in the regulations and recover the expenses, and conferring powers of entry on SEPA in connection with its function in these regulations.

39. The Committee asked for an explanation why the power to amend the Act in section 53(3)(n) is necessary, given that this section appears to make particular provision for the preparation of flood plans for controlled reservoirs, and otherwise it appears that flood plan provisions do not extend throughout the Bill.

40. The Scottish Government does not provide a specific example of how this power to amend the Act could be exercised. However, it does provide a general explanation that the Scottish Ministers may wish to make further provision, specifically in the areas set out in section 53(3)(j), (l) and (m), when making regulations in relation to reservoir flood plans. If it was decided to apply these provisions in connection with flood plans, then textual amendment of them may be required.

41. The Committee accepts this explanation in justification of the proposed powers. It also notes that the power would be exercisable by draft affirmative procedure, and that it is restricted in scope to amendments in connection with the matters set out in section 53(3)(j), (l) and (m).

42. The Committee is content with the delegated power contained in section 53(1) in principle, and that it is subject to draft affirmative procedure.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs

Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Draft affirmative

43. Sections 71(1), 76(1), 77(1) and 80(1) provide for a substantial structure of powers to enforce the controls over reservoirs in the rest of the Bill, particularly, enforcement powers of SEPA. Most of the required provisions are set out in these sections. But there
are also areas of further detail that will be appropriate to be left to orders (and on which further consultation would be required).

44. The Committee asked the Scottish Government for an explanation as to why it is necessary or appropriate to provide for the enforcement measures set out in these sections in the form of discretionary order-making powers, which the Scottish Ministers can either implement as a whole, or partially, or not, as they determine. The Committee asked why the approach has been taken that Parliament is asked to approve all the provisions in these sections (and related sections) but thereafter the decision to implement the provisions will be discretionary, by order.

45. The Committee also asked, in relation to sections 80(4)(a) and 83(1), for an explanation why it is necessary to delegate powers to SEPA to impose penalties on reservoir managers which are potentially unlimited. In particular, the Committee asked why SEPA should be given discretion over the penalty amount, when they are not responsible directly to the Parliament?

46. The Scottish Government has responded as follows. Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs. It was not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers. Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted such persons as they consider appropriate, under section 84. Ministers will do so in light of experience in England and Wales, where the Environment Agency has recently been given similar powers via the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010, and an equivalent order for Wales. The Scottish Parliament will have the opportunity to scrutinise any such Order using the affirmative procedure.

47. In relation to sections 80(4)(a) and 83(1) the Government explains that the reason for SEPA being able to determine the amount of the penalty is that SEPA is considered to be best-placed to determine this, as an appropriate deterrent for a particular offender (reservoir managers) in a particular case. However, the Government confirms that it will consider the insertion of appropriate maximum penalty amounts in the Bill.

48. The Committee draws the attention of the lead committee to sections 71(1), 76(1), 77(1) and section 80(1). The Committee notes that these provide powers to enforce Part 1 of the Bill in the form of discretionary order-making powers which the Scottish Ministers may either implement as a whole, or partially, or not, as they determine. While the Parliament will require to approve any delegation of these functions to SEPA when they are brought forward, the Parliament cannot require that any of the powers are conferred.
49. The Committee draws to the lead committee’s attention that it is normally considered the function of the Parliament to impose the maximum level of penalty which is to be imposed by a third party which is not accountable to the Parliament. The Committee therefore recommends that the Scottish Government considers the insertion of appropriate maximum penalty amounts, in relation to the powers contained in sections 80(4)(a) and 83(1), by amendment at Stage 2. The Committee will review these sections after Stage 2.

50. The Committee also draws to the attention of the lead committee, the Scottish Government’s explanation why SEPA is considered the appropriate body to determine any amounts of penalty under the powers in section 80(4)(a) and 83(1) to be imposed in a particular case.

Section 87(1) – Power to permit SEPA to publish information

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution

51. Section 87(1) seeks to give the Scottish Ministers power to permit SEPA to publish information which they deem appropriate about enforcement action which SEPA has taken. However, it was not clear to the Committee what additional function the order making power was to have beyond commencing the power to publish. The Committee therefore asked the Scottish Government why this order-making power is necessary or appropriate, given that the power does not specify any further matters which could be set out in an order.

52. The Scottish Government has confirmed that the order-making power in section 87(1) was intended to give Ministers’ discretion whether or not to permit SEPA to publish information about enforcement action it has taken. The Government will consider amending the provision, so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.

53. The Committee notes in relation to the powers in section 87(1) that the Scottish Government intends to clarify the scope of the power and in particular to amend this section at Stage 2, so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken, as Ministers may specify. The Committee will therefore review this section as amended after Stage 2.
Section 103 - Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specified liabilities

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: A choice of draft affirmative or negative resolution

54. Section 103 amends section 22 of the Water Environment and Water Services (Scotland) Act 2003. This allows regulations about remedial and restoration measures made under that section, to create offences, which may be triable only summarily, or either summarily or on indictment, and punishable on conviction by the means set out in subsections (2) and (3). This provision expands an existing delegated power to make regulations, rather than providing for a new power.

55. The Committee asked the Scottish Government for clarification whether the Delegated Powers Memorandum is correct to state that the power in section 103 is proposed to be subject to negative procedure. In the Committee’s view section 36(5) of the 2003 Act appears to provide that regulations under section 22 are subject to the “open” procedure affording the Scottish Ministers a choice of either negative or draft affirmative procedure.

56. The Committee also asked whether, given that regulations under this section of the Bill may create offences, including those triable on indictment and subject to a term of prison of up to 1 or 2 years (as the case may be), such provision should be subject to draft affirmative procedure.

57. The Scottish Government has confirmed that regulations under section 22 of the Water Environment and Water Services (Scotland) Act 2003 are, by virtue of section 36(5), subject to the “open” procedure of either negative resolution or draft affirmative. The Delegated Powers Memorandum was inaccurate in describing the provision as being subject to the negative resolution procedure.

58. The Government also confirms that the Scottish Ministers will give careful consideration to whether to utilise the draft affirmative procedure, if and when they make regulations that create offences under the powers introduced by section 103 of the Bill. It is not thought appropriate to restrict Ministers to the use of the affirmative procedure, given the inconsistency that this would introduce into the 2003 Act (where the “open procedure” applies), and given that the underlying policy of section 22 (to allow SEPA to require persons to undertake remedial or restoration measures) has already been approved by the Parliament.

59. The Committee notes that extending an existing power, so as to permit the creation of offences where one was not available previously, changes the
character of the power significantly. The Committee therefore considers that it would be open to the Parliament to revisit the level of scrutiny appropriate to such a power should it wish to do so. However the Committee is content with the commitment given by the Government that it would consider carefully whether to adopt affirmative or negative procedure in any particular case.

60. The Committee is content with the delegated power in section 103, and that it is subject to a choice of draft affirmative or negative resolution procedure.

ANNEXE

Correspondence with the Scottish Government

Reservoirs (Scotland) Bill at Stage 1

Section 1(4) – Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

The Committee asks the Scottish Government to explain why this power by order is subject to negative resolution procedure, when the power in section 1(6)(a) is proposed to be subject to draft affirmative procedure, given that the effect of both orders would be to amend the Bill to include reservoirs (or combinations of them) in the Bill controls, though not meeting the 10,000 cubic metre threshold. The Committee asks why it is not considered appropriate to include any minimum cubic metre threshold.

The power in s.1(6)(a), if used, could significantly alter the number of reservoirs subject to the Act. Alterations to the volume threshold under that section would have universal application, potentially bringing a large number of reservoirs under the regime of the Act (if lowered) or excluding large numbers from it (if raised). That power is accordingly subject to affirmative procedure.

The power in s.1(4), by contrast, is intended only to be used in exceptional circumstances in relation to individual structures where, notwithstanding that the reservoir in question is below the volume threshold, a particular risk is identified.

I do not consider it appropriate to require an affirmative resolution of the Scottish Parliament to bring individual reservoirs within the regulatory regime of the Bill.

I do not consider it appropriate to specify a minimum cubic metre threshold because the purpose of the provision is to allow the Scottish Ministers to provide for individual exceptions to the minimum threshold of 10,000 cubic metres already set by section 1(2).

Section 1(6)(a) – Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified
The Committee asks the Scottish Government why, although the power to change the 10,000 cubic metre threshold for controlled reservoirs may be required if engineering advice on the minimum threshold changes in future, it is considered necessary to have an unqualified power to amend the Bill with any different volume, without—

(a) any minimum or maximum threshold being stated, or

(b) any requirement to have regard to advice from ICE, for example, or the safety matters set out in section 1(5)

It is considered necessary to have the power to amend the Bill by the substitution of a different threshold volume to “future-proof” the Bill against changes in our understanding of the risk that reservoirs may pose. The ethos of the Bill is that regulation should be risk-based, so the Bill sets a relatively low threshold (in comparison to the 1975 Act) above which SEPA must carry out an assessment of the risk posed by each reservoir. However, scientific understanding of the risk reservoirs pose and public acceptance of levels of risk can change over time, so the power to alter the threshold has been included. The exercise of that power will be subject to Parliamentary scrutiny under the draft affirmative procedure.

It would be difficult to state with any precision the volume below which no risk whatsoever could be posed, or the volume above which there will always be a risk, without those figures being at such extreme ends of the spectrum as to be meaningless, so no maximum or minimum threshold has been specified.

Ministers would no doubt wish to consult the Institution of Civil Engineers or an equivalent body before making any such change. I am happy to consider amending the Bill such that the power has to exercised with regard to advice from ICE.

**Section 25 – Power to establish panels of reservoir engineers**

The Committee asks the Scottish Government for further explanation of the intended effect of the power in section 25(a) to “specify by order the sections of this Part under which the members of any such panel may be appointed.” The Committee asks if it is intended that the order may only specify the relevant sections, which then have effect for that purpose and, if so, if it can be clarified why negative procedure should apply to the power rather than no procedure. Or, the Committee asks, is it intended that the order may also specify the parameters within which the members of a particular panel may be appointed under section 26? If so, the Committee asks whether this could be made clearer.

The panel structure, and the specific functions under the Bill that engineers from a particular panel will be permitted to exercise, are yet to be determined. Flexibility is essential to allow coordination with the equivalent panel structure in England and Wales (failing which the limited pool of appropriately qualified UK-based engineers may be dissuaded from becoming members of the Scottish panels).
The Bill itself sets out the roles the panel engineers will fulfil – the purposes for which they will be appointed – for example as construction engineers (section 31), inspecting engineers (section 43), supervising engineers (section 47) and to make recommendations to SEPA about emergency measures to be taken (section 75). To be appointed under any of these sections, an engineer must be a member of a panel of engineers established under section 25 – and must also be entitled to be appointed under the particular section (sections 31(4)(a), 43(3)(a), 47(3), 75(4)). The intention is that an order under section 25 will determine entitlement to be appointed under any particular section, by specifying the sections of the Act under which members of any particular panel may be appointed. This will enable the Scottish Ministers to ensure that only panel engineers with the appropriate level of qualification and experience will be able to be appointed to particular roles.

Although a relatively technical matter, the panel structure and the roles that panel engineer are to perform are important elements of the regulatory regime, as they will determine the qualification and experience levels required to perform the various engineer roles that the Bill provides for. It is thought more appropriate to give the Parliament the opportunity to scrutinise these matters through the negative procedure rather than having no procedure.

I hope this clarifies the position for the Committee.

Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety

The Committee asks the Scottish Government, in relation to section 52(2)-

- why is it necessary to extend the power to make regulations to provide that another person (apart from SEPA operating the reporting scheme) may specify the criteria for incidents to be reported, or that that person may determine whether a reservoir meets the criteria? Would it be possible or appropriate to restrict this power to another person acting for SEPA?
- why is it necessary for the provision in relation to ensuring remedial action is taken after an incident report, to include the power to amend the Act (apart from section 52) or to apply the Act with modifications? Could examples be provided as to how this power could be used?

Section 52(2) merely describes indicatively what regulations made under s.52(1) may provide for. It does not extend the power contained in s.52(1). The actual content of the regulations will be subject to Parliamentary scrutiny under the affirmative procedure.

The reason for providing that regulations made under s.52(1) may, among other things, provide that a person other than SEPA may specify the criteria for incidents to be reported or may determine whether a reservoir meets the criteria, is that ICE or panel engineers, rather than SEPA, have the necessary experience and expertise to do so. It is envisaged, for example, that an engineer may be engaged by SEPA to specify
appropriate criteria, but it may be that Ministers will wish the regulations to provide that panel engineers will determine whether a reservoir meets the criteria for incident reporting – without any involvement of SEPA.

The reason for including in s.52(2)(k) that the regulations may include provision amending the Act or applying it with modifications is that the Bill already contains certain provisions where reservoir managers can be compelled to take action, and if those provisions are to be applied (with or without adaptation) to remedial action following an incident report, it may be necessary to textually amend or modify them.

**Section 53(1) – Power to make provision for preparing reservoir flood plans**

The Committee asks the Scottish Government for an explanation why the power to amend the Act or apply it with modifications in section 53(3)(n) is necessary, given that this section appears to make particular provision for the preparation of flood plans for controlled reservoirs, and otherwise it appears that flood plan provisions do not extend through the Bill.

The Act already provides for referral of certain matters to a referee (in Chapter 8), for SEPA to step in and take certain actions and recover costs (e.g. sections 65, 69, 75 and 86), and for SEPA to exercise powers of entry (s.88 et seq.). As Ministers may wish to make further provision in these areas when making regulations under s.53, it was thought desirable to allow for the possibility that Ministers may wish to amend or modify the Act as regards these matters. If it was decided to apply these provisions in connection with flood plans, textual amendment of them may be required.

**Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs**

**Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager**

**Section 77(1) – Power to impose fixed monetary penalties on reservoir managers**

**Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers**

The Committee asks the Scottish Government whether, generally, in relation to sections 71(1), 76(1), 77(1) and section 80(1), it can be explained and clarified why it is necessary or appropriate to provide for most of these enforcement measures, to enforce the rest of Part 1 of the Bill, in discretionary order-making powers which Scottish Ministers can either implement as a whole, or partially, or not, as they determine. The Committee asks why the approach has been taken that Parliament is asked to approve all the provisions in these sections (and related sections) but thereafter the decision to implement the provisions will be discretionary, by order.
The Committee asks, in relation to sections 80(4)(a) and 83(1), for an explanation why it is necessary to delegate powers in an order to SEPA to impose on reservoir managers (a) an amount of penalty as a further enforcement measure which is potentially unlimited by the enabling power, and (b) a non-compliance penalty which is again potentially unlimited? Could any maximum limits be specified? Can the Government provide any analogous examples of enforcement powers of SEPA (or other Scottish public bodies) which are potentially unlimited in amount?

In particular, can it be clarified why SEPA should be given discretion over the penalty amount, when they are not responsible directly to the Parliament?

I have considered the Committee’s various questions on the “civil sanctions” that the Bill proposes to create. Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs. It was not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers. Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted such persons as they consider appropriate under s.84. Ministers will do so in light of experience in England and Wales, where the Environment Agency has recently been given similar powers via the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010 and an equivalent order for Wales. The Scottish Parliament will, of course, have the opportunity to scrutinise any such Order using the affirmative procedure.

In relation to s.80(4)(a) and 83(1) the reason for SEPA being able to determine the amount of the penalty is that SEPA is considered to be best-placed to determine the amount of the penalty that will act as an appropriate deterrent for a particular offender in a particular case. However, I am happy to consider the insertion of appropriate maximum penalty amounts.

**Section 87(1) – Power to permit SEPA to publish information**

In relation to section 87(1), the Committee asks the Scottish Government why this order-making power is necessary or appropriate, given that, in the Committee’s view, as drafted it permits SEPA to publish information and the power does not specify any further matters which could be set out in an order.

The order-making power in s.87(1) was intended to give Ministers discretion whether or not to permit SEPA to publish information about enforcement action it has taken.

I am happy to consider amending the provision so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.
Section 103 – Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specific liabilities

The Committee asks the Scottish Government for clarification whether the Delegated Powers Memorandum is correct to state that the power in section 103 is proposed to be subject to negative procedure, as section 36(5) of the 2003 Act appears to provide that regulations under section 22 are subject to the “open” procedure of either negative resolution or draft affirmative.

The Committee asks whether, given that regulations under this section of the Bill may create offences, including those triable on indictment and subject to a term of prison of up to 1 or 2 years (as the case may be), such provision should be subject to draft affirmative procedure.

The Committee are correct that regulations under s.22 of the Water Environment and Water Services (Scotland) Act 2003 are, by virtue of s.36(5), subject to the "open" procedure of either negative resolution or draft affirmative. The Delegated Powers Memorandum was inaccurate in describing the provision as being subject to the negative resolution procedure, although Ministers are free to choose whichever of the two Parliamentary procedures they consider appropriate when making regulations under s.22 of the 2003 Act.

The power to make regulations under s.20 of the 2003 Act includes the power to create offences but allows Ministers a choice of procedure. Rendering regulations creating offences under s.22 subject to affirmative procedure only would be inconsistent.

Ministers will, of course, give careful consideration as to whether to utilise the draft affirmative procedure if and when they make regulations that create offences under s.103 of the Bill, but it is not thought appropriate to restrict Ministers to the use of the affirmative procedure given the inconsistency that this would introduce into the 2003 Act and given that the underlying policy of s.22 (to allow SEPA to require persons to undertake remedial or restoration measures) has already been approved by Parliament.

ROSEANNA CUNNINGHAM

SUPPLEMENTARY WRITTEN SUBMISSION FROM DAVID CRICHTON

This supplementary response expands on issues which seemed to interest members of the committee.

My relevant experience in this field.

- I am a former member of the Natural Environment Research Council’s Earth Observation Expert Group and the DTI’s Earth Observation Programme Board which was responsible for funding the UK’s earth observation research programme.
I also represented the insurance industry on the steering committee of a major project which looked at all aspects of reservoir risk management.\textsuperscript{41}

I am the sole author of a 1,600 page, four volume text book on liability insurance and the author of the Chartered Insurance Institute’s “Flood Fact File”.

**Compulsory public liability insurance**

In the UK the operators of reservoirs have a strict legal liability for any injury, loss or damage resulting from escape of water.\textsuperscript{42} This means they have no defence to a legal action for compensation.

Compulsory public liability insurance would have at least eight major benefits:

1. Blight would be avoided when dambreak inundation maps are published, because home and motor insurers would know that they could recover their claims costs from the reservoir owner.
2. Independent risk assessment and monitoring could be carried out by experts in risk, especially flood and subsidence.
3. Insurers would spread the risk globally using reinsurance. Thus the cost of a major disaster would be spread over the world economy and not carried solely within Scotland.
4. Financial incentives could be offered to reservoir owners to cooperate, provide information, and to reduce risk.
5. Bigger insurers could give advice, data, and assistance to SEPA and reservoir owners on their experience in the use of the latest satellite and aerial survey technology, such as synthetic aperture radar and LiDAR\textsuperscript{43}.
6. Zero cost to taxpayer.
7. Unforeseen events would be covered, including aircraft crash, avalanche, landslip and peat slide. Insurers can also access the terrorism insurance pool.
8. Liability compensation payment is guaranteed (subject to policy conditions), even if the reservoir owner becomes bankrupt.

Other benefits:

1. Flexible. Limit of indemnity can be varied for different levels of risk or different sizes of operator. Ideal for “light touch” cases to save work for SEPA. Suggested minimum £250,000. Amounts up to £10m or more should not be a problem.

\textsuperscript{41} Hughes, A; Hewlett, H W M; Samuels, P G; Morris, M; Sayers, P; Moffat, I; Harding, A; and Tedd, P. 2000 “Risk Management for UK Reservoirs.” Construction Industry Research and Information Association (CIRIA) Research project report C542. London.
\textsuperscript{43} Laser instrument detection and ranging.
2. Most operators will have public liability insurance already so added costs would only be incurred by less responsible owners. The annual premium for a small reservoir should be much less than a panel engineer’s fee.

3. Fishing or sailing clubs etc can have an indemnity to individual committee members for personal liability.

4. Public liability insurance can be extended in suitable cases to cover environmental impairment liability (for example, gradual pollution) under the EU’s Environment Liability directive.

5. Insurance experts could support and work in alliance with SEPA to help each other to resolve problems as already happens with flood in Flood Liaison and Advice Groups.

6. Access to insurers’ risk management expertise, GIS capabilities and surveyors.

7. Speedy resolution of claims settlements.

8. Access to the British flood insurance claims database for assistance in calculating estimated maximum probable loss.

However, in order to comply with the EU Solvency Directive, insurers would need complete freedom of access to inundation maps and engineers’ reports. It is possible that some reservoirs may be found to be in such a dangerous state of repair that they are uninsurable. In such cases, SEPA may wish to consider ordering decommissioning.

**Dam failures.**

In the USA the rate of dam removal has exceeded the rate of construction for the last ten years with 80 dams removed in recent years mainly for safety reasons. The Environment Agency has produced a report which claims that 69% of large dams in England pose a threat to human life, but it does not identify which dams. In addition, the Environment Agency say that each year there are on average six emergency draw downs in England to reduce water levels to prevent collapse.

According to a report for Government, climate change will increase the risk of failure of the 5,000 dams in the UK for a number of reasons:

- Summer droughts will lead to more subsidence of earth embankments.

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44 This is probably the largest such database in the world, containing flood insurance claims from 25 major insurance companies. It was established by me in 1995 and is held at Dundee University.


• Stronger winds will lead to increased wave activity in reservoirs which could lead to overtopping and erosion.
• More severe rainfall events will lead to sudden loadings on embankments and spillways.

There is a big danger of complacency when dealing with reservoir safety. Dams do fail, and often the results are catastrophic.\textsuperscript{49} The most serious disasters have been due to landslip.

Avalanche, landslip, peat slide, rockfall, earthquake and erosion risks.

Not one of the panel engineers’ reports I have studied makes any mention of these risks and witnesses seemed to play down their importance, despite the lessons from the Vaiont disaster in Italy in 1963 when 2,600 people died from a landslip into a reservoir.

Peat slides are a particular problem in Scotland and it is concerning that other witnesses did not seem to be aware of this. It is true that peat slides are rare in other countries, but they are common in the British Isles. Almost all peat slides involve blanket peat\textsuperscript{50}. The British Isles have approximately 10 per cent of global blanket peat deposits, and most of these are in Scotland.

I made reference to a Scottish peat slide in 2003 which was near a reservoir which is surrounded by blanket peat on a steep slope. Some 20,000 people live in the inundation zone and the 150 year old dam wall is cracked. The panel engineer’s reports for this reservoir make no reference at all to the peat slide risk.

In 2003 following a prolonged drought, two unrelated rainfall events in northern Scotland and western Ireland on the same day each triggered numerous peat failures causing over £500,000 of damage, including the loss of large numbers of livestock and buildings. Film of the event was shown on national television news. Only four weeks later a major peat flow of around 450,000 m\textsuperscript{3} volume was triggered by engineering work to prepare the site for a wind turbine at an Irish wind farm development.

The Glen Doe dam was opened by the Queen in June 2009. It was the biggest hydro electric dam built for nearly 50 years in Scotland. It was claimed that it was designed to last for 75 years. Glen Doe had the highest head – the drop from the reservoir to the turbine – of any hydro station in the UK, allowing it to generate more energy from every cubic metre of water than any other facility in the country. The huge dam wall is 950m long.


\textsuperscript{50} Dykes A P (in press) “Tensile strength of peat: laboratory measurement and role in Irish blanket bog failures.” Landslides: Journal of International Consortium on Landslides
In August 2009, only three months after opening, it was the subject of a major rock fall and no longer produces power. It is still under repair at the time of writing. One wonders why the rock fall risk was not anticipated by the engineers who constructed it? The Glen Doe website has now been closed down.

While UK earthquakes are usually of too short a duration to cause liquefaction\textsuperscript{51}, there is a case of an embankment dam failing altogether following an earthquake, namely the Earl’s Burn dam\textsuperscript{52} in 1839, fortunately with no loss of life.

Visual inspections are not enough to give early warning of ground movement. Traditional piezoelectric sensors do not usually have adequate telemetry and require site visits. Traditional movement sensors can and have been disconnected by the supervising engineer if they show movement.

One answer is:

**PS InSAR transponders.**

“Permanent Scatterer Synthetic Aperture Radar Interferometry” uses data from radar satellites such as RADARSAT 1, RADARSAT 2, or ENVISAT to detect sub millimetre movements on the ground. They can detect:

- Reflections from hard surfaces such as concrete walls or dams,
- Reflections from specially designed metal corner reflectors (about the size of a satellite dish)
- Signals from a dedicated transponder (cost around £100 each). Ideal for soft ground or snow or peat surfaces.

PS InSAR is already used by Thames Water in London and the transport industry has shown interest for railway embankments. The orbits of the three satellites ensure that there is complete coverage of every part of Scotland at least once every 35 days. The results can be recorded and mapped in a central point and archived, thus avoiding the risk of interference from the reservoir operator or the need for site visits. Most importantly, the satellites can give early warning of tiny movements in any axis. This early warning can allow remedial action to be taken before there is a failure.

If you are interested, I can provide further information, including images showing the capabilities of PS InSAR. (I am not connected financially with any suppliers of this technology. I simply think it is in the public interest to use it.)

**Flood Mapping**


Larger insurers are experts in flood mapping and have helped SEPA already. An EU research project has developed user friendly software to help with dambreak inundation mapping and this is in the public domain\textsuperscript{53}. If there was a compulsory public liability regime, this would encourage insurers to assist SEPA with the preparation of inundation maps, using airborne LiDAR surveys and British Geological Survey data.

\textsuperscript{53} See http://www.hrwallingford.co.uk/projects/IMPACT/
Or see http://www.samui.co.uk/impact-project/
Some case studies

Ulley Reservoir is a 35 acre reservoir, up to 10 metres deep and holding 580 million litres of water. It was built in the 1870s to provide a water supply for Rotherham. Latterly it has been used for fishing and sailing. The 25th June recorded the highest ever June rainfall in a single day and the dam was declared in “imminent danger” of collapse. 13 pumps were brought in from surrounding areas for an emergency “draw down” to reduce water levels in the reservoir. It is not known why they did not open the sluice gates to reduce the water levels more quickly. It could well be that they were jammed. According to Mr Milliband (Commons statement on 26th June 2007) on this occasion the fire service used their new high volume pumps supplied by DCLG to some brigades in England. Despite this they were initially unable to keep pace with the amount of water flowing into the reservoir.

Press reports state that in the morning of the 26th June, 700 people were evacuated from the villages of Treeton, Catcliffe and Whiston. Some evacuees claim that they were woken without warning at 2.30 am and given 5 minutes to get dressed and go to waiting coaches. Many did not have time to take essential medication with them let alone pack sentimental items. It is not known why they could not have been given more notice, for example at the time the coaches were ordered. Press reports indicate that some evacuees were apparently ignorant that they lived in the danger zone of the reservoir and never expected an evacuation.

Boltby England, 2005. Embankment failure
Boltby reservoir was constructed in 1880 near Thirsk. It had a 20m high earth embankment. At the time of the River Rye floods in Yorkshire on 19th June 2005 the embankment and spillway suffered extensive damage from overflow discharge. Engineers do not call it a failure, but the village of Boltby was flooded with fast moving water to a depth of about a metre. The reservoir had not been used for water supplies for many years, but it was not emptied. Work was carried out to lower the retained water level in 2007, and the reservoir is no longer big enough to be subject to the Reservoirs Act 1975.

On 9 January 2002 there was very nearly a major disaster involving the Upper Rivington Reservoir near Manchester. One of the 12m-high earth embankments of the 150-year-old reservoir sprung a major leak and emergency action had to be taken to empty the million-cubic-metre reservoir before it collapsed sending torrents of water over an area occupied by 100,000 people. Large pumps were brought in from all over the country to

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pump the water out, because the emergency sluices did not work, and this took three days\textsuperscript{55}. Warnings were issued to only 57 homes\textsuperscript{56}.

**Dolgarrog, Wales, 1925 Landslip**
This involved sequential failure in a cascade of dams. No lives have been lost in the UK since the failure of the Eigiau dam near Dolgarrog in North Wales in 1925, when 10 adults and six children died. The death toll would have been much worse had not most of the population been attending the weekly film show in the village assembly hall, or working in the aluminium smelting plant.

**Dale Dykes, England, 1864. Dam break**
The worst dam disaster in the UK was the collapse of the Dale Dykes dam near Sheffield in 1864, when 250 people died and 415 homes were destroyed. This disaster was followed by legislation to create strict liability on the part of reservoir owners. This means that they have no defence at law against legal actions for damages.

In 1852 the Bilberry dam failed at Holmfirth, leading to 81 deaths and the destruction of 244 properties.

**Others**
- In 1959 when the Malpasset dam in France failed, 421 people died.
- In 1963, overtopping of the new Vaiont dam in Italy caused by a landslide resulted in 2,600 deaths, even though the dam itself remained intact.
- In 1972, a dam in West Virginia, USA failed causing 125 deaths.
- In 1976, the Teton dam in Idaho, USA, failed during its initial filling, killing at least 11 people.


\textsuperscript{56} Dr Andy Hughes, June 2007, personal communication
Introduction and action by Public Petitions Committee

1. This petition calls on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of Tree Preservation Orders (TPOs) to give all trees a protection similar to that enjoyed by trees in conservation areas. It was lodged on 3 August 2010 by Mr John Scott on behalf of Neilston and District Community Council. The petitioner has been supported by the Woodland Trust Scotland.

2. The Public Petitions Committee first considered the petition on 7 September 2010 (See Official Report extract at annexe A, page 3), when it took evidence from Mr Scott, and agreed to write to the Scottish Government and other stakeholders to seek responses on the issues raised in the petition. Written submissions from the organisations that responded to the questions are set out in annexe B (page11). The PPC then considered the petition again on 23 November 2010 (see Official Report extract at annexe C, page 21). The Committee agreed to refer the petition to this Committee for consideration as part of its Stage 1 scrutiny of the Wildlife and Natural Environment (Scotland) Bill. However, this Committee in fact agreed and published its Stage 1 report on the Bill on 24 November.

Factual background to the petition

3. The petitioner objected to the felling of a number of mature trees from a local beech avenue. The trees were felled by employees or contractors of a power company because they were near a pylon. Apparently, it had previously been the company’s practice to trim the trees from time to time. There is no reason to believe that this was done unlawfully; indeed that is the point of the petition.

Legal background

4. Trees are property, which means that, in line with the general law of property, the owner ordinarily may dispose of them how they wish. A tree may be lawfully felled with the owner’s permission. However anyone involved in the felling of trees must have obtained a felling license from the Forestry Commission (Forestry Act 1967).

5. Under section 160 of the Town and Country Planning (Scotland) Act 1997, a planning authority may impose a TPO. A tree subject to a TPO may not be felled, lopped or otherwise damaged. (A TPO does not give complete protection: the tree may be felled etc if permission is given by the planning authority, or for other reasons, including that it is urgently necessary in the interests of public safety or that development consent has been granted.)
6. A planning authority may make a TPO if satisfied that doing so is “expedient in the interests of amenity”, giving it relatively wide discretion. In practice, TPOs tend to be granted to protect veteran trees, or trees of historical, conservation or aesthetic interest. Planning authorities are not required to impose TPOs and there is no formal mechanism set out in the 1997 Act for any person to require an authority to consider granting one.

7. However, section 172 of the 1997 Act in effect extends the protection afforded by a TPO to any tree growing in a conservation area. Anyone wishing to fell, etc, a tree in a conservation area must make an application to the authority, and the authority has six weeks to decide whether to protect the tree. (If the authority does not respond, the protection is removed.)

8. The petitioner originally wished the protection afforded to trees in conservation areas to be extended to all trees. Stakeholders who responded to the PPC expressed some doubts as to the practicability of this proposal. The Woodland Trust which, as noted, has been supporting the petition, proposed instead the creation of a new statutory designation – “tree conservation areas”. There would be a statutory presumption against any works carried out to trees in any TCA without prior notification to the local authority. The Trust does not elaborate on the mechanism by which these new areas would be brought into being but the implication is that there would be some sort of stakeholder involvement in the designation of any TCA. The Trust made similar comments in its Stage 1 submission to this Committee on the Wildlife and Natural Environment (Scotland) Bill, and suggested that the Bill afforded an opportunity to amend the law along these lines.

9. The Woodland Trust has indicated to the clerks that it proposes to issue a further briefing on the petition. However, the petition is being notified now, given that it was referred to this Committee because of its perceived relevance to the WANE (Scotland) Bill, Stage 2 of which is now underway.

**Action**

10. Members are invited to note the petition and consider its possible relevance to the WANE (Scotland) Bill, which is now at its amending stages.

11. Members may wish to await the further submission from the Woodland Trust before deciding what further action, if any, to take on the petition.
ANNEXE A

EXTRACT FROM OFFICIAL REPORT OF PUBLIC PETITIONS
COMMITTEE MEETING ON 7 SEPTEMBER 2010

INCREASING THE PROTECTION OF SCOTLAND’S TREE HERITAGE

The Convener: The second new petition is PE1340, by John Scott, on behalf of Neilston and district community council. The petition calls on the Scottish Parliament to urge the Scottish Government to extend and simplify the system of tree preservation orders to give all trees protection similar to that which is enjoyed by trees in conservation areas.

I welcome John Scott from Neilston and district community council, and Jill Butler, who is conservation adviser to the Woodland Trust. One of you is invited to make an opening statement of no more than three minutes, after which members will have the opportunity to ask questions. I thank you for the additional information that has been provided to members.

John Scott (Neilston and District Community Council): Good afternoon, ladies and gentlemen. As has already been mentioned, I am here on behalf of Neilston and district community council. I thank the Public Petitions Committee for inviting us here and giving us the opportunity to discuss the petition.

We have come together as a community to improve the protection of mature and ancient trees, not only in our local area but throughout Scotland. We feel extremely strongly about the continued loss of trees from our communities, which often happens for the most trivial of reasons. Unfortunately, the problem seems to be getting worse every year. We believe that the current system and, indeed, some of the proposals that are set out in the Scottish Government's recent consultation on TPOs do not adequately protect the important trees in our communities, so we would like to see changes to the legislation and the tree protection system in order to give all trees a similar level of protection to that which is enjoyed by trees in conservation areas.

Scotland is already at the forefront of tree conservation, with imaginative projects such as the big tree project, which is rescuing and conserving some of the world's most threatened conifers from as far away as Brazil and Chile and replanting them in the Perthshire woodlands. It is both historically and culturally important and has a potentially long-term tourist benefit.

Unfortunately, however, the majority of our own home-grown and—dare I say it?—less glamorous trees have little or no protection. I offer a brief example that I mention in the petition. Between the villages of Neilston and Uplawmoor there is a 2 mile long avenue of beech trees, which are about 150 years old. At one point on the road, they are straddled by power lines on tall pylons. I am
not talking about small pylons; I am talking about your big 142,000kV pylons. Every four to five years those trees used to be trimmed back by Scottish Power for obvious health and safety reasons. One summer afternoon this year, three trees on each side of the road—a total of six mature beech trees—were cut down and put through the chipper. The answer to the question why Scottish Power did it is that rather than trim the trees every four or five years, it is cheaper just to chop them down and that is your problem solved forever.

Neilston and district community council and Uplawmoor community council approached East Renfrewshire Council and asked it to at least write to Scottish Power to ask why it cut down the trees without any consultation and whether it would consider replanting semi-mature trees in their place. The council was unwilling to do so and said that the trees had no protection and it was not really within its remit to do so. Unfortunately, after all this time we have mature trees without any protection.

There are problems with tree protection in Scotland. When the Scottish Government started to consider changes to the Planning Act 2008, the input on trees was supplied mainly by external consultants. They are good consultants who know all about planning, but they are not exactly tree experts. The people with the knowledge and experience in the field—the Woodland Trust and the ancient tree forum—lobbied hard but unsuccessfully for a change to the TPO regulations.

The local authority approach to trees also varies considerably, as was mentioned in Roger Jessop’s report, which I also mentioned in the original petition. In East Renfrewshire Council we have one planning officer who deals with trees, tree protection orders and maintenance. To put that into perspective, East Renfrewshire Council covers 174km2, is classed as being 85 per cent rural and has a total of 73 tree preservation orders in place. That is one tree preservation order per 2.5km2.

Although the concept of having some sort of protection order for every tree in Scotland would be an ideal, it is vital that we acknowledge and identify our trees of greatest value and make sure that they are adequately safeguarded. We need a system that identifies such trees and their value to our communities at both local and national levels, and which ensures that owners are aware of trees' significance.

At present, conservation areas are determined by the architecture or historical value of the buildings within a village, town or settlement. The protection of trees in conservation areas has been included almost as an accidental by-product of the legislation. As a practical approach, we could develop one of the concepts in our petition, which calls for the extension to

"all trees a protection similar to that enjoyed by trees in conservation areas"
to at least have areas or groups of trees in Scotland designated as tree conservation areas. For example, those might be avenues of trees leading into a village or within a village, groups of trees in the countryside, groups of important trees in a garden or designed landscape in the Scottish inventory, even within a town. The trees within such designated tree conservation areas would enjoy the same protection as trees within the present conservation areas—that is, any proposed tree works would have to be notified to the local authority before any work was carried out. The identification of such proposed tree conservation areas could be led by community groups submitting their proposals to the local authorities.

We earnestly ask the Scottish Parliament as a matter of urgency to examine and enhance the legislation to protect and ensure the conservation of trees in Scotland. As I mentioned, I have with me Jill Butler from the Woodland Trust Scotland and the ancient tree forum to help to answer any questions. Jill Butler has many years’ experience of tree conservation both with the Woodland Trust and the ancient tree forum and has a long-standing interest in the protection of trees and woodland in Scotland and throughout the UK.

Robin Harper: Again, I refer people to the register of interests and my membership of several woodland trusts including Carrifran wildwood and the Woodland Trust Scotland.

I was involved in trying to get some improvements to the legislation back in 2007, but was sadly ineffective. Would it be even a start to have a presumption against the cutting down of mature trees and an injunction that notification of intention with several months' notice should always be given before such a tree be attacked?

Col 2807

My second question is tangential to the petition as it stands, and is about the extra recognition that you and I feel should be given to trees that could be identified as being of great historic and cultural significance. There are not so many of them, but there is no special recognition of their value or special protection for them under the legislation as it stands. Do you want to make any observations on that?

John Scott: The answer to your first question is emphatically, "Yes." We would like there to be a presumption against felling. Your second question about ancient trees and so on falls more within Jill's territory. They would require special protection in addition to conservation.

Jill Butler (Woodland Trust): Conservation is the mechanism, but at the moment the historic and architectural interests of conservation areas drive the system and it sweeps up trees as part of that. We are asking only for a very modest step to be taken to broaden that concept for designation of conservation areas to include trees. We believe that the system that we propose would be effective because all that would be required is a notification system for the owner of the trees. It is relatively straightforward for the local
authority to manage notifications in such a way as to give permission for works to go ahead in the majority of cases, if it is happy with that. The system that we would prefer is therefore very simple.

Scotland has an international heritage of important trees and our current system means that many of our most important trees have no protection whatever, so someone could cut them down without doing anything legally wrong—we are not accusing people of that—whereas many other trees, particularly those in conservation areas, are extremely modest, if not relatively unimportant, but are protected. That is an anomaly and we are not balancing the situation very well.

It is also unfair for tree owners. On the one hand, a tree owner with an important tree has no need to notify anyone or to pay any money to manage that tree, while on the other hand someone who lives in a conservation area or who has a tree protection order, which usually means that the tree is important, faces a big burden. The system that we have at the moment is very unfair.

We would like communities to be involved in identifying areas of rich and important trees. The concept behind conservation areas is that communities get involved in the process of identifying those areas: we have, through our ancient tree hunt project, demonstrated during the past four years that communities are interested in that process.

I can give you any number of examples. For example, in south-west Scotland, Cally Palace

Col 2808

park, which is on the register of landscape gardens and historic parks, and Cardoness Castle, which is not, have superb trees, but neither of them will have protection for those trees. We are looking for a mechanism to introduce conservation areas for such incredibly rich collections of trees. Generally speaking, we are talking about areas that have many highly important trees with many ownerships. The conservation area approach is very cost-effective in such circumstances.

15:00

**John Scott:** I will add one thing from my experience. At the moment, a developer who wants to build houses in an area where there are mature trees must submit to the council their plans for which trees they would leave and which they would remove. That is all agreed with the council and, if there are trees to be retained, the council will apply the legislation. I do not know the exact British standard, but the trees have to be fenced off and protected and no damage must be done to them in the course of the development. However, as happened where I stay, once the houses pass into private ownership, that protection lapses and some owners chop the trees down because they do not like their gutters getting full of leaves or having leaves in their driveways.
Believe it or not, that has happened. We are protected from the developers but not from householders. There is something wrong with that.

**Jill Butler:** We know from arboricultural contractors and surveyors who are involved in such developments that, in certain cases, before they are invited in to do their presentations before a project goes to planning application, the developer cuts down the trees because they know that they are important and do not want them in the way, which would jeopardise their planning application. We have the evidence that that is happening.

**Nanette Milne:** You took the words out of my mouth. I was going to cite an instance from when I was a council member of beautiful trees being felled just ahead of a planning application's being submitted. It was very frustrating even though the trees were obviously not protected.

I have a lot of sympathy with what you propose. However, given that councils are under significant pressure and that there might be only one tree expert in a large council area, would it place an even greater burden on councils? Having heard you, I am not sure that that would necessarily be the case. Would it increase or, perhaps, decrease the load on them?

**Jill Butler:** It would, if it were introduced, be one tool in the package of tools that the local authority would have. Authorities would be able to choose the right tools for the right circumstances. There would still be a notification process, but we would bring many trees into that process under the same auspices and it would be simpler.

If the community encouraged the owners of 75 per cent of the trees to realise that they were living in an important tree area, it would probably work to ensure that the trees were looked after and the notifications would just be a question of ticking a box. We want to move to proactive engagement with the community to ensure that it values what it lives in.

I do not underestimate how valuable such areas are. Recent research says that avenues such as the one that John Scott mentioned reduce speed and save lives. There are all sorts of benefits. We know about climate benefits. Mature trees are more important for those, as well as being important for health benefits and the value of properties.

We need to shift into a much more explanatory role. If we introduce a conservation area approach, it will be more possible for communities that have been designated as important to draw down money from sources other than the local authority to help them to manage the trees in highly effective ways such as tree trails, awareness raising, events and publicity.
Nanette Milne: I envisaged that the notification would go to the council, which would be obliged to verify it. Would it have to go and check every tree in an area that was notified? However, if communities were to be much more proactive, I can see where you are coming from.

Jill Butler: The notification process applies even to small trees. Mechanisms could be introduced through regulation, including raising the threshold for the size of tree that requires notification. It is important that the measures should be uniform across Scotland. We are concerned about that aspect of the latest TPO consultation. We do not want differences between one local authority and another. That would give the lawyers a licence to play off one authority against another in the courts; an owner in one local authority area could come under one set of rules and an owner in another authority under a different set of rules. That would be an onerous system that would be not only unfair but hugely confusing and difficult to manage. Indeed, over time, it would become an enormous burden. We are very concerned about the proposed changes to the model order. We are looking for improvements to TPOs and conservation areas so that the tools work as effectively as possible for tree protection. At the moment, trees are falling through the net. That is a serious situation.

Col 2810

John Wilson (Central Scotland) (SNP): A number of years ago, I had experience of a local authority taking responsibility for topping an avenue of lime trees. I mention this in respect of the conflict that arises when local authority officers give their authority the go-ahead to top trees that have a TPO. The example also raises the issue of the application of TPOs by local authorities. You talked of a six-week notification period for consultation and raised the issue of local authorities interpreting the regulations differently. The community council has raised the question of conflict between a local authority and a local community. I referred to an authority removing an avenue of trees. An authority can get into conflict with a community because the community wants a preservation order placed on a tree or trees and the authority disagrees with the need for a TPO. Is the six-week notification period sufficient time in which to allow a community to be engaged in the consultation process? How can we ensure that authorities get the right solution to the issues that have been raised?

Jill Butler: You are saying that if there was a conservation area for trees, would the six-week period be sufficient for consultation to take place?

John Wilson: My concern is consultation with communities. If we are talking about communities being engaged in the process, surely they need to be consulted. At the moment, if a developer or someone else wants to remove trees, they need only consult the local authority. I understand that there is no onus on the authority to consult the local community.
**Jill Butler:** In conservation areas, which are mainly for buildings, the strong guidance is that authorities should set up community involvement in area management plans. We are very supportive of longer-term management plans that set out what is expected in the community. Such plans would operate over five years and not require a lot of detail. We agree that the same standards that apply to a private owner should apply to local authorities in managing their own trees. We are not certain that that is happening as effectively as possible at the moment.

We need a mechanism by which to determine the value of trees. Obviously, local authority resources have to go to the most important trees. We need a national register, beneath which would be a register of regional value trees and one for local value trees. Such a mechanism would enable resources to go to the most important trees as a priority. People will know which trees in their community are the most important, and when resources are tight they will ensure that resources go in that direction. We need such a system, not one that results in notifications for very small trees where the impact of losing them would be small.

Col 2811

Resources must not be taken away from the more important trees.

We feel that there is an opportunity for more reallocation of resources, but we need to have a tree conservation area tool in the toolbox so that when local authorities consider whether they have the right tree in the right place and do tree and forest strategies as part of the trees and woodlands strategy approach, they can follow that up by giving wonderful areas of trees conservation area-type designations.

**John Scott:** I would like to add to that. At the moment, there is a statutory obligation to consult community councils if any development work is to be done, regardless of whether it involves trees being felled. In addition, if someone wants to do any tree work in a conservation area, whether it is trimming or whatever, they have to fill in a form and state in their application the extent of the work and the reason for it. I think that having to put in such applications helps to focus people's minds. For example, someone who wanted to chop down a tree simply because it was making a mess of their driveway would realise, "Oh no. Maybe that is not an acceptable reason for removing a tree." Apart from anything else, having to sit down and put in writing why they want to carry out tree works raises people's general awareness and appreciation of trees in the environment.

**The Convener:** Thanks very much. Do members have suggestions about where we should go with the petition?

**Nanette Milne:** Again, we need to get in touch with the Government and ask what its views are on what the petitioners propose. Some valid points have been made, which potentially offer a good way forward on the preservation of the country's important trees.
The Convener: Absolutely. Anyone else?

Robin Harper: It might be useful to write to a selection of local authorities and—given that what is proposed has workload implications—the National Association of Tree Officers and the Royal Town Planning Institute, as well as the Forestry Commission and the Woodland Trust. We should ask them to address the issues that have been raised about TPOs and the idea of having a presumption against the felling of trees. That would be a simple way forward.

The Convener: Okay.

John Wilson: I suggest that we also write to the RSPB and the Scottish Wildlife Trust because, as a member of both organisations, I know that they own extensive areas of land. In the past, the RSPB has been involved in clearing land of particular types of trees, so it would be useful to get its view on the proposals in the petition.

Col 2812

The Convener: Yes. Thanks for that.

Robin Harper: It has occurred to me that two other organisations—Historic Scotland and the National Trust for Scotland—might have some useful observations to make. I should add that I am a member of both those organisations.

The Convener: I thank the witnesses very much for their evidence.
ANNEXE B

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

PETITION PE1340 – INCREASING THE PROTECTION OF SCOTLAND’S TREE HERITAGE

WRITTEN SUBMISSIONS

The following written submissions were received by the Public Petitions Committee in response to questions asked in relation to Petition PE1340. The questions were as follows:

Scottish Government—

• Will you extend the protection enjoyed by trees in conservation areas to all trees?

• Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

• What is your response to the points made by the petitioners that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village? What solutions exist to address this type of situations?

• Can the system of Tree Preservation Orders be a) simplified, b) improved and c) made more accessible? If so, what actions will you take to that effect and when?

• What was the outcome of the recent consultation on the Tree Preservation Orders?

• What is the potential to establish a register to protect trees on a national/regional/local area basis?

• Does the tree protection that applies to developers also applies to householders?

A selection of local authorities (City of Edinburgh, Scottish Borders and East Renfrewshire)—

National Association of Tree Officers—

Royal Town Planning Institute—

Forestry Commission—

Woodland Trust (Scotland)—
Royal Society for the Protection of Birds—

Scottish Wildlife Trust—

Historic Scotland—

National Trust for Scotland—

- [To all organisations] Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

- [Not to RSPB, National Trust for Scotland] What is your response to the points made by the petitioner that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village?

- [to local authorities only] What evidence do you have that people who propose to work on a tree in a Conservation Area which is not protected by a TPO, but has a trunk diameter over 75mm when measured at 1.5m from ground level, systematically give you notice? Similarly, what evidence do you have that people wishing to fell, prune or uproot a tree within a Conservation Area, always give you six weeks notice? How is this enforced and monitored?

- [To National Association of Tree Officers only] Does the tree protection that applies to developers also applies to householders?

WRITTEN SUBMISSION FROM SCOTTISH GOVERNMENT

PETITION PE1340 – PROTECTION OF TREES

I refer to your letter of 9 September, requesting a written response from the Scottish Government to the issues raised in the petition and related discussion, and written questions raised by members of the Committee.

Q 1 – Will you extend the protection enjoyed by trees in conservation areas to all trees?

Conservation Areas are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. There is not a strict presumption against felling trees in a conservation area. It is an offence to carry out works to trees in a conservation area without notifying the planning authority which then has an opportunity to designate a TPO should they choose to do so. We do not intend to introduce the same requirement outwith Conservation Areas. Through the planning reform programme we are striving to make the system more efficient and proportionate. Extending planning regulation to all trees in Scotland would be inconsistent with these objectives.
Preliminary investigations also indicate that the proposal would have significant resource implications for planning authorities. A notification would require to be processed by the planning authority every time someone wished to carry out works to a tree. Officer time would be required to investigate alleged breaches. There is no fee system attached to notifications so the planning authority would be unable to recoup the additional costs involved.

**Q 2 - Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?**

As discussed above, there is not a strict presumption against felling trees in a Conservation Area. It is an offence to carry out works to trees in a Conservation Area without notifying the planning authority which then has an opportunity to designate a TPO should they choose to do so.

Scottish Planning Policy states that ancient and semi natural woodland is an important and irreplaceable natural resource that should be protected and enhanced. Woodland of high nature conservation value should be identified in development plans along with relevant policies for its protection and enhancement. Other woodlands, hedgerows and individual trees, especially veteran trees may also have significant biodiversity value and make a significant contribution to landscape character and quality so should be protected from adverse impacts resulting from developments.

The Scottish Government’s control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits.

A felling licence from Forestry Commission Scotland is required in order to fell trees, except where exemptions apply, relating to either certain locations, including gardens, orchards, churchyards and designated open space; the type of tree work; the volume and diameter of the tree; where certain other permissions are required and have been obtained; or where trees need to be felled to comply with legal and statutory requirements.

**Q 3 - What is your response to the points made by the petitioners that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village? What solutions exist to address this type of situation?**

The research report *The Effectiveness of Tree Preservation Orders in Scotland (2002)* indicated that it costs £10,000 to designate a TPO. As the TPO is a legal document staff costs both in terms of tree officer time and solicitors costs are unavoidable. There are also costs associated with land searches, notification and registering the TPO in the Land Register of Scotland.

A TPO can be designated on an individual tree, groups of trees or woodlands, therefore one TPO could cover a large number of trees. Individuals or groups can request that the planning authority serve a TPO on specified trees. It is the planning authority who considers that request and takes the decision on whether or not to designate the TPO.
Q 4 - Can the system of Tree Preservation Orders be a) simplified, b) improved and c) made more accessible? If so, what actions will you take to that effect and when?

In Scotland the legislation relating to Tree Preservation Orders has changed little since 1975. In 2002 research was commissioned to examine whether the TPO procedures in Scotland are still effective. The research report *The Effectiveness of Tree Preservation Orders in Scotland* published in December that year, found that the TPO system is basically sound, and that a series of fine tunings would provide an up-to-date structure for protecting trees across Scotland.

The Planning etc. (Scotland) Act 2006: introduces a duty on planning authorities to review existing TPOs, expands the powers of planning authorities to serve TPOs to include trees, groups of trees, or woodlands of cultural or historical significance; makes all TPOs provisional for 6 months and introduces a new power for a person authorised by the planning authority to enter land for the purposes of affixing a TPO in certain circumstances. The TPO Consultation Paper and the draft Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 proposed changes to the TPO system that would: update the references within the regulations to the Town and Country Planning (Scotland) act 1997 and the Planning etc. (Scotland) Act 2006; remove the Model order from regulations to guidance; introduce new procedures where a TPO is not confirmed and introduce new procedures for varying and revoking TPOs. The changes to both primary and secondary legislation are aimed at simplifying, improving and making TPO more accessible. We hope to lay the regulations in Parliament in October 2010, with commencement expected to be early next year.

Q 5 - What was the outcome of the recent consultation on Tree Preservation Orders?

The Tree Preservation Order (TPOs) Consultation Paper (April 2010) sought views on the proposed Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 and the proposed Model Tree Preservation Order. Overall respondents were generally supportive of the procedures being put forward in the consultation paper. The analysis of consultation responses is available at [http://www.scotland.gov.uk/Publications/2010/09/10103253/0](http://www.scotland.gov.uk/Publications/2010/09/10103253/0)

Q 6 - What is the potential to establish a register to protect trees on a national/regional/local area basis?

The Directorate for the Built Environment does not consider that there is any potential for a statutory register but indicated during the Planning Bill that a non-statutory register may be a possibility. Robin Harper MSP proposed amendments at both Stages 2 and 3 of the Planning etc. (Scotland) Bill, seeking to give Scottish Ministers (or someone on their behalf) powers to compile a register of trees of special interest. The amendment was rejected at Stage 3. The Scottish Government at that time considered that a non-statutory register may be attractive for the purposes of funding, managing or protecting trees, but would not in itself protect trees. The provisions in the Act offer new opportunities to protect special trees, strengthen powers of
protection and are proactive on the protection of cultural and historical trees, therefore the case for a statutory register of trees of special interest is not justified. The Scottish Government remains of the view that a register will not guarantee the protection of trees.

Q 7 - Does the tree protection that applies to developers also apply to householders?
With regard to tree protection afforded both by TPOs and conservation areas there are no significant differences in the provisions that apply to developers and householders. The main distinction is that where there is a planning application, it will be considered on the basis of policies within Scottish Planning Policy and Local Plans through the planning system while proposals from an individual simply carrying out work to a tree may not be.

WRITTEN SUBMISSION FROM ROYAL SOCIETY FOR PROTECTION OF BIRDS

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?
RSPB Scotland considers that trees, including those within woodland, can provide important habitats for priority bird species and other important wildlife, depending on the location and setting of the tree, the woodland and tree type, tree age, form and condition. RSPB Scotland, however, would not welcome a strict presumption against felling, or damage to any trees, irrespective of whether or not these lie in a conservation area, because:

a) The RSPB has biodiversity concerns about inappropriately located forestry plantations that are on priority open ground habitats, such as blanket and raised bogs, semi-natural grassland and breeding wading bird sites.

The Scottish Forestry Strategy, UK Biodiversity Action Plan, Scottish Biodiversity Strategy and the Scottish Government’s Policy on Control of Woodland Removal recognise that such afforested sites and habitats should be restored by tree removal combined with other appropriate remedial action - such as hydrological restoration - and onward management, including grazing management and removal of tree regeneration.

b) Felling woodland trees can be an important method to improve the biodiversity condition of existing native woodlands, as well as maintaining priority open ground habitats, for priority species, priority habitats and designated wildlife sites. There may also be circumstances where it is appropriate to increase the volume and diversity of deadwood habitats for priority biodiversity in woodland through selected management of key woodland trees.

Improving the biodiversity condition of native woodlands, including for priority wildlife species, is a key objective of the UK Biodiversity Action Plan, the Scottish Biodiversity Strategy and the Scottish Forestry Strategy.
WRITTEN SUBMISSION FROM WOODLAND TRUST

As the Committee is now aware, tree protection in Scotland is still lacking particularly for ancient and veteran trees and other trees of special interest (TSIs). For a detailed description of what we mean by ancient, veteran and trees of special interest, we refer you to the document we submitted as additional evidence at the Committee hearing on the 7 September. Our response to the questions asked in your letter is below.

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

We do not believe that current strict presumptions against works to trees without notification (Conservation Areas – felling or works to trees) or permission (Felling Licences – felling only) should be extended to cover all or any individual trees in Scotland; but we do believe that the extension of the Conservation Area approach, should be available to stakeholders to protect trees, especially of special interest (TSIs), where they have been identified as being of the highest value by their communities. This should be on the basis of trees in their own right and not require the area to be of special architectural or historic interest.

The original petition statement suggested that all trees be afforded the protection of trees within a Scotland wide conservation area mechanism. After further discussion with us subsequent to lodging their petition, and as stated during the committee meeting on 7 September, it is our understanding that the petitioners recognise that a strict presumption against all “felling or damage to any trees” would be unworkable. Instead a modified approach to use Conservation Areas in a targeted way, according to local priorities and resources for identified significant groups of trees of great value, would achieve their objective.


Instead of a strict presumption against the felling or damage to any tree regardless of size or location, we are in favour of improving tree protection by a modest step that would broaden the concept for designation of conservation areas to include trees. In this case the strict presumption would be against any works carried out to trees without prior notification to the Local Authority in an area designated as a Tree Conservation Area (TCA). This alerts the LA to possible harm to an important tree and gives the LA time in which to decide if it needs to act in the interests of the community and give it the added protection afforded by a TPO. We believe that in many cases through negotiation and advice to the owner, the requirement to TPO would be limited thereby saving resources and costs. Furthermore, with prior knowledge of the tree resource and a review of the size thresholds in these areas, LA’s could deal with notifications in more cost effective ways. We would be happy to explain how this would work to the appropriate stakeholders.
If the Tree Conservation Area designation were developed to enable areas to be designated for trees it would provide another tool for communities and local authorities to use in protecting the most important trees in their local area. Two recent Scottish Government publications, the “Policy on Control of Woodland Removal” and the “Scottish Planning Policy” both identify that woods and trees should be protected, especially those of ancient or veteran status. However an individual tree of special interest that is not within a conservation area or protected by a TPO may be easily lost despite these policies because as a tree owner they the policies do not apply to them. It is only a public body that would need to consider the policies in taking a decision on a planning application or local plan for example. For these important policies to be effective the local authority has to have the appropriate tools to influence the management or protection of trees, especially those that are outside planning application sites.

There is therefore a difference between the situation faced by developers and other tree owners. A developer has to submit a planning application that alerts the LA to a threat to a tree and they can act to protect it if it is of appropriate value. An owner outside a Conservation Area does not need to alert the LA to any works to any trees and some of those trees maybe of very great value to the community. It is an unfair system where owners of tree with TPOs have to obtain approval for further works to a tree, compared with owners of TSIs which are unprotected, who can do what they like.

Communities are understandably very frustrated by this system and incensed when trees that they value are cut down without LA involvement. Judicious use of Conservation Area status for trees would be a cost effective way of preventing loss of trees of value without prior notification to LAs.

In considering this question it is important to be aware that the requirement for owners to seek consent to fell trees (subject to exemptions) already operates over very wide areas, principally of the rural environment, through felling licence controls under the Forestry Act. However the exemptions are such that 5 cubic meters per quarter, which is approximately the equivalent of 2/3 fully mature trees can be felled without the requirement for a felling licence and as such does not protect individual trees of significant value.

What is your response to the points made by the petitioner that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village?

The 2002 report The Effectiveness of Tree Preservation Orders in Scotland estimated the cost of implementing a TPO is about £10,000. We question this considerable figure because there is no publicly available information to enable us to comment. Furthermore a TPO can be made to protect an individual tree, groups, areas and woodlands in any combination, so costs will vary. Where community requests are made for large numbers of trees to be protected, we believe that through good community engagement the costs of
surveying and recording could be reduced by the use of appropriate volunteers.

It is important to remember that protection of what is valuable cannot come without costs and we are pleased that LAs, once alerted by a planning application, recognise the value of trees that may be threatened by development and place TPOs on important trees of value to the community to secure their future.

What concerns us is that many trees of greater worth than those directly affected by development are not protected where appropriate. It is our view that resources should be directed to trees of greatest value regardless of whether they are affected by planning applications or are owned by individual or multiple owners. There should be choice available for LAs to use the mechanism that is most appropriate to the circumstances. If the tree conservation area approach were available to LAs, the steps could be as follows:

- If there are many significant trees of special interest in an area in the ownership of many owners then the TCA approach is the first step.
- If there are many TSIs at risk in the ownership of one or two owners then a TPO utilising the Area notation maybe more appropriate
- If there is one or a few TSIs at risk then a TPO may be the most appropriate way forwards.

The additional tool of the TCA would achieve a number of things. First it would allow stakeholders and LAs to be proactive in the protection of their tree resource. Secondly it would allow LAs the time to protect the most important trees of special interest in a strategic manner. And thirdly it would allow areas of trees with multiple owners to be protected in a more cost effective way.

We believe that the use of a new Tree Conservation Area designation could result in local authorities being better able to prioritise the trees in their area that require TPOs and at the same time enable them to engage with applicants on managing and maintaining trees that may otherwise have been lost. Ultimately this could reduce the TPO cost burden by reducing the need for TPOs to be placed on all but the most important trees that are threatened. Furthermore there would be no requirement on LAs to use Tree Conservation Areas if they were not appropriate for them.

WRITTEN SUBMISSION FROM SCOTTISH WILDLIFE TRUST

Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

The Scottish Wildlife Trust acknowledges that trees outwith woodlands, can add value to local biodiversity, contribute to green infrastructure and the green ecological network, provide a ‘sense of place,’ connect people to nature - particularly in an urban setting, and provide ecosystem services such as
attenuating the micro-climate, storing carbon, removing atmospheric pollutants and regulating water flow.

Woodland provides substantial benefits to both wildlife and people. As the former climax vegetation community over much of Scotland, woodland and scrub supports more species than any other terrestrial habitat, particularly ancient semi-natural woodlands which are the surviving descendants of our original natural forests. These are vitally important, irreplaceable reservoirs from which wildlife can begin to spread back into newly restored habitat thereby helping Scotland’s ecosystems to recover from centuries of degradation. In addition to supporting much of our biodiversity, woodland provides highly valued social and economic benefits to Scotland’s people.

We do not believe that a strict presumption against felling or damage to any tree is practical, workable or desirable. There are circumstances where tree planting/regeneration is inappropriate and a programme of tree removal should be implemented to increase the biodiversity value of the site. E.g. removal of trees encroaching on lowland raised bog, blanket mires and fens (although it is accepted that some ‘bogs’ are now likely to be so heavily modified that removing trees may do more harm than good, both ecologically and in terms of carbon release); tree thinning/removal to ‘open up’ the forest canopy and/or increase the amount of ‘dead wood in the woodland/park. In addition, part of a woodland management strategy may involve the removal of non-native tree species, such as sycamore and Sitka spruce.

We do recognise that there are notable trees (e.g. those that have high biodiversity value as well as cultural value), particularly those located in an urban setting, which presently lack protection and are therefore vulnerable to felling because they do not have a tree preservation order (TPO) or lie outwith a conservation area. Therefore it would appear sensible to re-examine the ways in which trees which have biodiversity, cultural and historical value could be protected to prevent the occurrence of inappropriate felling which can cause anger and frustration within the local community and in some circumstances be harmful to wildlife.

**WRITTEN SUBMISSION FROM THE NATIONAL TRUST FOR SCOTLAND**

The National Trust for Scotland (the Trust) welcomes the invitation to comment on the above Petition. It is our understanding that our views are particularly sought on the question ‘whether there should be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area’.

The Trust, as Scotland’s largest conservation charity, does much to manage and advocate on behalf of the natural environment. As such it can sympathise with the motivations of the petitioner but considers for such a presumption to be credible and effective that it would need to be accompanied by a system for management and with it attendant standards, possible public liability requirements, exemptions and sanctions. There is such a wide range of objectives, contexts and circumstances not to mention numbers, under which
trees are managed or landscapes / public realm improvements can be sought to make such a system, if workable, very resource intensive. In addition we understand there are increasing attempts to protect trees through supplementary planning guidance and that the Forestry Commission Scotland operates stringent licensing limits on numbers of trees removed for commercial purposes. Rather we would prefer to see any additional resource being used to manage better existing woodlands, incentivise increased planting where appropriate and help with promoting the value and benefits of trees to owners and the wider community.

For the avoidance of doubt we would be happy for this letter to be made available to the public and we would be grateful to be kept advised of the outcomes of this consultation.
ANNEXE C

EXTRACT FROM OFFICIAL REPORT OF PUBLIC PETITIONS
COMMITTEE MEETING 23 NOVEMBER 2010

INCREASING THE PROTECTION OF SCOTLAND’S TREE HERITAGE

Tree Preservation Orders (PE1340)

The Convener: Our next petition is PE1340, by John Scott, on behalf of Neilston and district community council, on increasing the protection of Scotland’s tree heritage. I seek members’ views on the petition.

Robin Harper: As the notes point out, I have pursued the issue previously. The Wildlife and Natural Environment (Scotland) Bill is currently passing through stage 1 in the Parliament. Trees are part of ecosystems and make a considerable contribution to biodiversity and wildlife. I wonder whether the committee would see fit at least to refer the petition to the relevant committee, which I believe is the Rural Affairs and Environment Committee, while the bill is at stage 1 for consideration in relation to the way in which the bill is being formed.

The Convener: Are you proposing that we keep the petition open and refer it to the Rural Affairs and Environment Committee?

Robin Harper: Yes. I should declare an interest as a member of the Woodland Trust and several other woodland trusts.

Col 3147

The Convener: Does the committee agree to keep the petition open and refer it to the Rural Affairs and Environment Committee?

Members indicated agreement.
Further to the recent referral to the Rural Affairs and Environment Committee of the Neilston and District Community Council Petition on ‘Increasing the protection of Scotland’s tree heritage’, PE1340, we write to clarify what our petition is asking for and why we believe it is possible to include this proposal in the Wildlife and Natural Environment Bill.

Our original petition set out a proposal for all trees in Scotland to be protected to the same degree as trees within Conservation Areas (as designated in the Town and Country Planning (Scotland) Act 1997). Having talked to professionals, local authority staff, staff at the Woodland Trust Scotland and members of the Petitions Committee, we acknowledge that blanket protection of this nature is not necessary because of other legislation pertaining to trees. However there is still a need for an additional mechanism to allow local authorities to increase tree protection in specified areas.

As a result, we would like to see a provision for ‘Tree Conservation Areas’ (TCA), taking the form of the protection currently set out for trees in the Conservation Area legislation.

What we are proposing is a tidying up measure to designate areas of trees, specified by local authorities in consultation with their communities, where a need for further protection has been identified. At present local authorities have the ability to place important trees under a Tree Preservation Order if they deem it necessary but this process takes a number of weeks and can be costly. The TCA proposal would allow local authorities another tool to prevent important trees being felled without a discussion on the management of the tree taking place. This would help reduce the burden to both the local authority and the tree owner. If a tree was still deemed to be under threat, the local authority would still be able to place a TPO upon it as a last resort.

The conditions that would be imposed in a TCA are already in statute under Conservation Areas the Town and Country Planning (Scotland) Act 1997. We seek the specific ability for the powers relating to trees to be used specifically for the designation of tree protection. The terms of protection would be the same as the protection currently afforded to trees within Conservation Areas. Designated TCAs would only apply measures to trees within the designation area and would not apply any other restrictions or requirements as set out for Conservation Areas more generally. For example the conditions relating to altering outside features of property would not be included.
How are they designated?

At present, in relation to Conservation Areas, a planning authority is required to determine which parts of its area are of special architectural or historic interest. It may designate these as conservation areas. The public will normally be consulted on any proposal to designate conservation areas or to change their boundaries. Proposals for conservation areas are usually brought to the public’s attention when the local plan for your area is reviewed.

We propose that the process for designating a TCA would be the same as an architectural or historic Conservation Area. TCA could be included in a planning authority’s local plan and become an important tool in delivering protection to trees identified in their Forestry and Woodland Strategy.

The scope of the Wildlife and Natural Environment Bill

It is our understanding that the WNE Bill has an overarching purpose to, “deliver a package of measures intended to ensure that the legislation which protects wildlife and regulates the management of the natural environment and natural resources is fit for purpose.”

We view Scotland’s trees, and particularly its ancient, veteran, and trees of special or historical interest, to be extremely valuable natural resources in their own right but also in their role as key habitat for a host of other biodiversity and wildlife, and for their amenity value to local communities.

We also believe that the addition of TCA would help address weaknesses in the current provisions for the protection of trees in Scotland by adding another tool for tree protection.

The addition of a subsection within Part 4 of the Bill seems the most obvious position for an amendment to this affect to be placed.

Submitted by John Scott, On behalf of Neistont and District Community Council, with support from the Woodland Trust Scotland.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

Wildlife and Natural Environment (Scotland) Bill

The Solicitor General has written to the Convener. The letter can be accessed here:


Scottish Government’s Draft Land Use Strategy

SE Link have submitted supplementary written evidence, which can be accessed here:


Common Agricultural Policy

The Convener of the European and External Relations Committee wrote to the Convener of the Rural Affairs and Environment Committee on 2 December. The RAE Convener replied on 9 December. The correspondence can be accessed using the links here:


Code of practice for the welfare of gamebirds reared for sporting purposes

The Cabinet Secretary has written to the Convener. The letter can be accessed here:


LIFE+ and Natura 2000 consultations

The European Commission has launched two online consultations in the field of environment. Both can be accessed using the link to the European Commission’s press release, here:
EUROPA - Press Releases - Environment: Commission launches consultations on LIFE+ and Natura 2000

Environment Council

The final Environment Council under the Belgian Presidency will be held on 20 December in Brussels. Read the news release here:

EUROPA - Press Releases - Environment Council, 20 December 2010