WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

EXPLANATORY NOTES

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1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Water Environment and Water Services (Scotland) Bill introduced in the Scottish Parliament on 18 June 2002:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 57–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill sets out new arrangements for the protection of the water environment and changes how new connections to the public water and sewerage infrastructure are to be funded.


6. EC Directives are legislative acts of the European Community. Member States are required to take all appropriate measures to fulfil the obligations arising out of the EC Treaties or resulting from action taken by the Community’s institutions (including Directives) by virtue of Article 10 of the Treaties. Article 249 of the Treaties specifically provides that Member States are required to achieve the outcomes and objectives specified in Directives although they have discretion about the methods and procedures to be employed in meeting them. The Scottish Ministers have responsibility for implementing the United Kingdom’s obligations under Directives so far as within devolved competence.

7. Article 1 of the Directive sets out the main outcomes that it is intended to deliver. These are to be realised through the achievement of the environmental objectives set out in Article 4. The Directive applies to all water in the natural environment – that is all rivers, lochs, estuaries and coastal waters as well as water under the ground. The basic objectives to be achieved as set out in Article 4(1) can be summarised as follows:

- prevent deterioration in the status of surface water bodies;
- protect, enhance and restore all bodies of surface water with the aim of achieving good surface water status by 2015;
- prevent deterioration of the status of groundwater bodies;
- protect, enhance and restore all bodies of groundwater with the aim of achieving good groundwater status by 2015;
These documents relate to the Water Environment and Water Services (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 18 June 2002

- prevent or limit the input of pollutants to groundwater and reverse any significant and sustained upward trend in the concentration of pollutants in groundwater;
- comply with European wide measures against priority and priority hazardous substances; and
- achieve compliance with any relevant standards and objectives for protected areas.

In addition, there is flexibility for Member States to take account of social, economic or wider environmental considerations by applying other objectives where it would be infeasible or disproportionately expensive to achieve the basic objectives. The circumstances in which these alternative objectives may apply are set out in the rest of Article 4.

8. The Directive requires Member States to put in place systems for managing their water environments, based on natural river basin districts and underpinned by extensive environmental monitoring and scientific investigation, called “river basin management”. It further requires Member States to take account of the need to recover the costs of water services as a way of encouraging the sustainable use of water resources.

9. The Directive repeals and replaces a number of older EC water Directives and incorporates the remaining existing water Directives (the Bathing Water, Nitrates and Urban Waste Water Treatment Directives) into its framework through its protected areas provisions. The “Natura” Directives on the protection of Habitats and Birds are also linked to this Directive by virtue of the protected area provisions.

THE BILL – AN OVERVIEW

10. The Bill is in three parts.

Part 1 – Protection of the water environment

11. This Part:

- sets out the general purpose of protection of the water environment;
- defines the water environment and sets out the duties of public authorities, including the Scottish Ministers and the Scottish Environment Protection Agency (SEPA), in respect of its protection;
- provides for the establishment of river basin districts and the characterisation thereof;
- provides for the establishment of a register of protected areas and for the identification of waters used for the abstraction of drinking water;
- requires an environmental objective to be set for each body of water in a river basin district and that monitoring of the status of the water environment in each river basin district is carried out;
- requires the preparation of river basin management plans for each river basin district;
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- describes the procedures for preparation, approval and review of these plans including the requirements for publicity and consultation;
- requires the creation of river basin district advisory groups and allows for the creation of sub-basin plans;
- places a duty on public authorities, including the Scottish Ministers, to have regard to river basin management plans, where relevant;
- enables provision to be made, by regulations, for or in connection with regulating any activity, and in connection with the fixing of charges for water services, for the purposes of protecting the water environment; and
- enables provision to be made, by regulations, for or in connection with remedial and restoration measures necessary for the purposes of achieving the environmental objectives.

Part 2 – Water and sewerage services

12. Part 2 of the Bill makes changes to the system for funding new connections to the water and sewerage infrastructure by amending the Sewerage (Scotland) Act 1968 and the Water (Scotland) Act 1980. These include clarifying when and how infrastructure vests in Scottish Water and conferring regulation making powers for various detailed provisions including determining reasonable cost and setting construction standards and detailed conditions for connection agreements.

Part 3 – General

13. This Part makes general provision for the making of orders and regulations under this Bill. It also makes provision about the application of the Bill to the Crown and commencement of the Bill.

THE BILL – SECTION BY SECTION

Part 1 – Protection of the water environment

Section 1 – General purpose of Part 1

14. Subsection (1) sets out the general purpose of the provisions included in Part 1 of the Bill. It provides that the purpose of Part 1 is to make provision for or in connection with protection of the water environment including making provision, or enabling provision to be made, for or in connection with implementing the Directive.

15. Subsection (2) explains what is meant by the term “protection of the water environment”. The list is non-exhaustive but it gives an indication of the scope of the provisions included in Part 1 and the scope of more detailed provisions that may in due course be included in subordinate legislation made under those provisions. The actions listed in subsection (2) are for the purpose of contributing to the achievement of the aims set out in subsection (3).

16. Subsections (2) and (3) largely mirror the terms of Article 1 of the Directive.
Section 2 - The general duties

17. Section 2 sets out the extent to which specified bodies are required to have regard to the requirements of the Directive when exercising their functions.

18. Subsections (1) and (2) should be read with subsection (8) which defines the terms “relevant enactments” and “designated functions”.

19. The effect of subsections (3) and (4) is to enable the Scottish Ministers, SEPA and the responsible authorities to take into account social and economic considerations when exercising the functions referred to subsections (1) and (2). This is consistent with the principle of proportionality in European law which requires that the means of achieving a particular objective should correspond to the importance of, and be necessary for the achievement of, that objective.

20. Subsection (5) places a general duty on the Scottish Ministers and all public bodies and office holders, in exercising any functions, to have regard to the desirability of protecting the water environment.

21. Subsection (6) enables the Scottish Ministers to direct or guide SEPA and the responsible authorities on how they must exercise those of their functions that are covered by this section.

22. Subsection (7) would enable Ministers, for example, to direct that specified functions must be exercised so as to satisfy technical standards set by SEPA.

Section 3 – The water environment: definitions

23. This section defines various terms that are used in this Part of the Bill. Subsection (2) defines the water environment as all surface water and groundwater. Subsection (9) specifies a number of artificial systems that are not affected by this Part. Some of the geographical limits of the definitions may (or must in the case of transitional water) be identified by reference to maps which the Scottish Ministers must deposit with SEPA (subsection (10)).

24. The cumulative effect of this section is that the water environment generally covers all water (other than the excluded water mentioned in subsection (9)) out to 3 miles from the territorial sea base-line. Certain specific provisions of the Bill (e.g. section 8 on monitoring) confer functions in relation to the territorial sea beyond that 3-mile limit.

Section 4 – Establishment of river basin districts

25. Subsection (1) places a duty on the Scottish Ministers to designate one or more river basin districts by order.

26. Subsection (2) makes it clear that river basin districts are to be made up of one or more river basins together with associated coastal and groundwater bodies. The smallest unit could be a single river basin although a district can, and is more likely to, comprise more than one river basin together with associated bodies of groundwater and coastal water. River basins and coastal and groundwater bodies are defined in section 25. “River basin” includes the transitional water at the mouth of the river.
27. Subsection (3) provides for the allocation to appropriate river basin districts of bodies of coastal water and bodies of groundwater that are not fully contained within the area of one river basin. The Scottish Ministers are to assign them to the nearest river basin district or, if another district appears more appropriate, to that one.

28. The order-making power in this section will enable the Scottish Ministers to implement Article 3(1) of the Directive.

Section 5 – Characterisation of river basin districts
29. Subsection (1), as read with subsection (2), requires SEPA to carry out, by 22 December 2004, an environmental and economic characterisation of all the river basin districts identified under section 4. Subsection (3) requires SEPA to review this characterisation by 22 December 2013 and every 6 years thereafter.

30. Subsection (4) requires SEPA to carry out any such characterisations and reviews in accordance with technical specifications in the Directive. These are specifications on the classification of bodies of water in river basin districts and how their status is to be determined and monitored.

31. Subsection (5) enables the Scottish Ministers to make more detailed provision, by regulations, as to the methods and procedures and criteria by reference to which the characterisations and reviews are to be carried out.

32. This section will enable the Scottish Ministers to implement Article 5 of the Directive.

Section 6 - Bodies of water used for the abstraction of drinking water
33. Subsection (1) enables the Scottish Ministers to implement, in part, Article 7(1) of the Directive.

34. Subsection (2) enables the Scottish Ministers to identify the boundaries of the areas on a map prepared for the purposes of the order and to be laid before the Parliament. The Scottish Ministers must send a copy of the order and map to SEPA (subsection (3)).

Section 7 – Register of protected areas
35. Subsection (1) requires SEPA to prepare and maintain a register of protected areas for each river basin district in accordance with regulations made by the Scottish Ministers. The duty to “maintain” the register covers keeping it under review and up to date.

36. Subsection (2) gives an indication of the matters in respect of which the regulations may make provision. It enables Ministers to specify the date by which a register is to be prepared, its form and the information which it must contain.

37. This section will enable the Scottish Ministers to implement Article 6 of the Directive. The wording in subsection (4) mirrors to some extent the terminology used in Article 6(1) and Annex IV to the Directive.
Section 8 – Monitoring

38. This section will enable the Scottish Ministers to implement the requirements of Article 8 of the Directive, and Article 7(1) in so far as that Article requires monitoring of waters used for the abstraction of drinking water to be carried out.

Section 9 – Environmental objectives

39. This section concerns the setting of environmental objectives for all the bodies of water within river basin districts. “Body of water” is defined in section 25. Subsection (1) places a duty on SEPA to set these objectives. Subsection (2) provides for derogations to the objectives to apply in certain circumstances.

40. Subsection (3) confers power on the Scottish Ministers to specify in regulations the details of how and when the environmental objectives are to be determined and achieved. This will include specifying the circumstances in which derogations will apply.

41. This section will enable the Scottish Ministers to implement the requirements of Article 4 of the Directive. The provisions of Article 4 in respect of environmental objectives are explained at paragraphs 26 to 29 of the Policy Memorandum.

Section 10 – River basin management plans

42. Subsection (1) requires SEPA to prepare and submit to the Scottish Ministers a river basin management plan for each river basin district in Scotland. The Scottish Ministers may direct SEPA as to when such a plan must be submitted.

43. Subsection (2) provides that a river basin management plan must include the matters listed in Part 1 of schedule 1 and any other matters that may be set out in regulations by the Scottish Ministers.

44. Subsections (3) and (4) provide for the incorporation of maps, diagrams and other illustrative information in river basin management plans. The plans must include such elements as directed by the Scottish Ministers and may contain others that SEPA thinks are appropriate. Where they do appear they are to be treated as forming part of the plan.

Section 11 – River basin management plans: publicity and consultation

45. Subsection (1) provides that SEPA must publish a statement about its preparation of the plan, including what consultation measures it proposes to take in that respect, a minimum of 3 years before the plan is to become effective.

46. Subsection (2) provides that SEPA must publish a summary of the significant water management issues for the relevant river basin district a minimum of 2 years before the plan is to become effective.

47. Subsection (3) provides that SEPA must publish a draft of the plan a minimum of 1 year before the plan is to become effective.
48. SEPA must consult on the statement, summary and draft plan and anyone may make representations to SEPA about them (subsections (4) to (7)). Subsections (8) and (9) require SEPA to take into account any views or representations received about the statement, summary or draft plan.

Section 12 – River basin management plans: submission for approval

49. This section makes provision in connection with the submission of a river basin management plan to the Scottish Ministers.

50. Subsection (1) requires SEPA, when it has submitted a river basin management plan to the Scottish Ministers, to publicise that fact and to make copies of the plan available for public inspection free of charge.

51. Subsection (2) provides that a river basin management plan submitted to the Scottish Ministers by SEPA must be accompanied by a statement of the action taken by SEPA in publishing the draft plan, making it available for public inspection and consulting the bodies and persons described in section 11(6). The statement must also include a summary of the representations received about the draft plan and of any consequential adjustments made to the plan.

52. Subsection (3) provides that the Scottish Ministers may – having considered the statement and if they believe further work by SEPA on the issues covered by the statement is required – return the plan to SEPA. In doing so they may direct SEPA to take such further action in that regard as they may specify and to resubmit the plan with such modifications as SEPA considers appropriate. The Scottish Ministers may specify the timescale in which the plan should be resubmitted. Subsection (4) requires the Scottish Ministers to state their reasons for returning the plan to SEPA.

53. Subsection (5) provides that the requirements in this section – about publicising submission of a plan, making copies available, attaching a statement about consultation and about return of the plan to SEPA – also apply to resubmitted plans.

Section 13 – River basin management plans: approval

54. This section makes provision for the Scottish Ministers’ approval of river basin management plans.

55. Subsection (1) provides that once a river basin management plan has been submitted to them, the Scottish Ministers may approve the plan or reject it. They may approve the whole of the plan or part of it and may do so with or without modifications. Subsection (4) requires the Scottish Ministers to state their reasons for such a decision.

56. Subsection (2) allows the Scottish Ministers to seek further information or undertake such other investigations and consultation as they consider appropriate before determining whether to approve or reject a plan.
57. Subsection (5) provides for the circumstances in which the Scottish Ministers reject a plan. In that case, they must return the plan to SEPA and direct it to resubmit the plan with any modifications they may specify together with any further changes that SEPA considers appropriate. The Scottish Ministers may direct the timescale in which a plan must be resubmitted.

58. Subsection (6) requires SEPA, when a river basin management plan has been approved, to publicise the approved plan as it thinks fit. It must also make copies of it available for public inspection and for sale at a reasonable price.

Section 14 – River basin management plans: review

59. Subsection (1) requires SEPA to review periodically each approved river basin management plan.

60. Subsection (2) gives the Scottish Ministers a power to direct SEPA, following a review, to prepare and submit a revised river basin management plan to the Scottish Ministers by a given date.

61. Subsection (3) provides that a revised plan must contain the matters set out in Part 2 of schedule 1, over and above the requirements in relation to content of the plan set out in section 10. The terms of Part 2 of schedule 1 largely mirror the terms of Part B of Annex VII to the Directive.

62. Subsection (4) provides that the specified provisions of the Bill apply to a revised plan in the same way they do to an original plan. This will give Ministers the same control of the process as they have for the original plan.

63. This section will enable the Scottish Ministers to implement Article 13(7) of the Directive.

Section 15 – Sub-basin plans

64. This section provides for the preparation of sub-basin plans and will enable implementation of Article 13(5) of the Directive. Subsection (1) provides that SEPA, or any other responsible authority, may prepare a sub-basin plan. Subsection (2) gives some examples of the sort of thing that a sub-basin plan might deal with, namely a particular type of body of water, a particular catchment area, a particular matter in relation to the water environment or a particular type of water use.

Section 16 – Duty to have regard to river basin management plans

65. This section places a specific requirement on the Scottish Ministers and every public body and office holder to have regard to any relevant river basin management plan in the exercise of their functions.
Section 17 – River Basin District Advisory Groups

66. This section provides for the establishment of River Basin District Advisory Groups. Subsection (1) provides that at least one such Group must be established for each river basin district. The function of these Advisory Groups will be to advise SEPA on any matter relating to the preparation of the river basin management plan. Subsection (2) provides that SEPA must have regard to any advice provided by the Advisory Groups.

67. Subsections (3) to (5) provide for the membership and procedure of the Advisory Groups. The number of Advisory Groups, their membership and procedure will be a matter for SEPA to determine. However, SEPA must seek to ensure appropriate representation of the interests of the bodies and persons listed in section 11(6) in the Advisory Groups. SEPA may pay such expenses and allowances to members of an Advisory Group as it considers appropriate.

Section 18 – Power to obtain information and documents

68. This section provides for SEPA to obtain information and assistance from the Scottish Ministers and the responsible authorities and to obtain information from other persons to enable it to carry out its functions under Chapter 2 of Part 1 of the Bill.

69. Subsection (1) places a duty on the Scottish Ministers and the responsible authorities designated pursuant to section 2, to provide SEPA with such information and assistance as SEPA may reasonably seek in connection with the exercise of any of its functions under Chapter 2.

70. Subsection (2) enables SEPA to serve a notice on any person (other than the Scottish Ministers or the responsible authorities) in order to obtain information from them that it needs to carry out its functions under Chapter 2. Subsections (3) and (4) provide more detail about the form and content of such notices.

71. Subsection (5) allows the Scottish Ministers to arbitrate where there are differences of opinion between SEPA and a responsible authority or any other person about the reasonableness of SEPA’s requests for information or assistance, as appropriate.

72. Subsection (6) provides that SEPA may not require the disclosure of any information that is legally privileged.

73. Subsection (7) makes it clear that persons on whom such notices are to be served must produce documents in legible form (e.g. a print out of a document held electronically).

74. Subsection (9) makes it an offence not to comply with a request for information or documents or to intentionally alter, suppress or destroy any documents requested by SEPA. Subsection (10) describes the penalties that are attached to this offence. The statutory maximum referred to in subsection (10)(a) is currently £5,000. There is no limit on the level of fines in the event of conviction on indictment.
Section 19 – General regulation-making power

75. Subsection (1) confers power on the Scottish Ministers to make regulations specifying the form and content of river basin management plans and sub-basin plans, matters to be taken account of by SEPA in preparing the plans and the detailed procedures to be followed in connection with their preparation, submission, approval and modification.

76. Subsection (2) provides that the regulation making power may, in particular, be used to specify more detailed procedures for publicity and consultation on the plans. Subsection (3) makes it clear that regulation making power is without prejudice to sections 10 to 15 and 17.

Section 20 – Regulation of controlled activities

77. Subsection (1) confers power on the Scottish Ministers to make regulations for or in connection with the control of any activity (referred to as a “controlled activity”) that they consider is necessary or expedient for the purposes of protecting the water environment.

78. Subsection (2) specifies that Ministers may use this power, in particular, to make provision for the regulation of a number of specified activities (described in subsection (3)) and to make such other provision for or in connection with the basic measures and supplementary measures mentioned in paragraph 2 of Article 11 of the Directive as they consider necessary for the achievement of the environmental objectives set out in river basin management plans.

79. Subsection (3) describes certain activities which the regulations may, in particular, deal with and subsection (6) further defines them.

80. Subsections (4) and (5) enable the regulations made under this section to make provision for any of the purposes set out in schedule 2.

81. This section will enable the Scottish Ministers to implement the requirements of Article 11 of the Directive. Subsection (3)(a) relates to Article 11(3)(g) and (h) of the Directive. Subsections (3)(b) and (3)(c) relate to Article 11(3)(e) of the Directive. Subsection (3)(d) relates to Article 11(3)(i) of the Directive.

82. In the Policy Memorandum, the part headed “Regulation of Controlled Activities” explains how the power in this section is intended to be exercised.

Section 21 - Controlled activities regulations: procedure

83. Subsection (1) requires the Scottish Ministers to consult various bodies (including SEPA, the responsible authorities and representatives of local government, industry, agriculture, fisheries and small business interests) before making any regulations under section 20. Subsection (1)(d) will enable the Scottish Ministers to include other interests in their consultation as they see fit.

84. Subsection (2) provides additional consultation requirements that apply in relation to the making of general binding rules pursuant to section 20 and paragraph 3(2) of schedule 2. General binding rules will be generally applicable conditions applying to particular water uses,
sectors or areas and will be made by the Scottish Ministers by regulations. In addition to the consultation requirements specified in paragraph 83 above, the Scottish Ministers must consult on the rules for at least 28 days. They must give notice of the opportunities for interested parties to make representations about the proposed rules. Further, they must have regard to views expressed during the consultation period in finalising the rules (subsection (4)).

Section 22 – Remedial and restoration measures

85. Subsection (1) confers power on the Scottish Ministers to make regulations for or in connection with any remedial or restoration measures that they consider are necessary for the purposes of achieving the environmental objectives in river basin management plans. Remedial or restoration measures might include, for example, the removal of a redundant weir or lade or the clean up of historical pollution where these threaten the achievement of the environmental objectives for the body of water concerned.

86. Subsection (3) gives particular examples of the provision that could be made by the Scottish Ministers in regulations under subsection (1). They could give SEPA or any responsible authority the function of undertaking remedial or restoration measures. Or they could make provision for determining what other persons should bear responsibility for such measures and allow SEPA or a responsible body to either serve notices on the persons so identified requiring them to carry out the works themselves or to undertake the works themselves or arrange to have the works undertaken and recover the costs from the persons so identified.

Section 23 – Fixing of charges for water services

87. Subsection (1) confers power on the Scottish Ministers to make by regulations such provision in relation to charging for water services as they consider necessary or expedient for the purpose of protection of the water environment.

88. Subsection (2) provides that the regulations may, in particular, specify principles, objectives or other matters to be taken account of in the fixing of charges. Regulations under this section can amend enactments (section 31(3)) e.g. enactments conferring power to charge, for or relating to the fixing of charges, for the provision of water services. “Water services” is defined in subsection (3).

89. This section will enable the Scottish Ministers to implement the requirements of Article 9 of the Directive.

Section 24 – Power to give effect to Community obligations etc.

90. Subsection (1) provides that the Scottish Ministers may by regulations provide that the provisions of Part 1 of the Bill are to have effect with such modifications as the regulations may specify but only for the purpose of giving effect to any Community obligation of the United Kingdom or of exercising any related right.

91. A related right includes the right of the UK to derogate from a Community obligation or to make a more onerous provision in respect of an obligation (subsection (2)).
Section 25 – Interpretation of Part 1

92. This section defines the various terms used in Part 1 of the Bill. It also provides that any term used in Part 1 of the Bill and in the Directive, but not defined in Part 1, has the same meaning as it has for the purposes of the Directive.

Part 2 – Water and sewerage services

Section 26 – Duty to provide water and sewerage services

93. This section amends section 1 of the Sewerage (Scotland) Act 1968 (“the 1968 Act”) and section 6 of the Water (Scotland) Act 1980 (“the 1980 Act”) to make further provision regarding Scottish Water’s duty to provide water and sewerage services at reasonable cost.

94. The 1968 and 1980 Acts, as amended by other enactments including the Water Industry (Scotland) Act 2002, set out Scottish Water’s core duties to provide, respectively, public sewerage services and water supplies. The 1968 Act makes general provision for sewerage and trade effluent. The Act sets out the duties and powers of Scottish Water, and the rights and obligations of owners and occupiers, in relation to sewerage provision and also includes arrangements for the vesting of sewers, drains and works. The provision on trade effluent includes the right to discharge into public sewers, control of discharges and agreements in lieu of applications for consent. There are other miscellaneous and general provisions in the 1968 Act covering such matters as the powers of Scottish Water to execute works, require information and enter premises.

95. The 1980 Act consolidates previous enactments relating to water supply in Scotland. It confers functions on Scottish Water, and on the Scottish Ministers, in relation to the conservation, protection and effective use of water resources and in relation to the provision of water supplies throughout Scotland for domestic and non-domestic purposes. The 1980 Act confers order making powers on the Scottish Ministers, for example, regarding acquisition of water by Scottish Water. It also confers powers on Scottish Water relating to restriction of water supply and usage, survey and acquisition of land, acquisition of water rights, carrying out of works, breaking open of streets, laying pipes and the making of byelaws. The Act also sets out the rights and duties of owners and occupiers, including the option to take a supply of water by meter in certain circumstances. It also makes provision for offences, including the offence of polluting water, and penalties.

96. Section 1 of the 1968 Act imposes a duty on Scottish Water to provide sewerage, provided it is practicable to do so at reasonable cost (subsection (3)). Section 26(2) of the Bill inserts three new subsections after subsection (3) of section 1 of the 1968 Act. New subsection (3A) allows the Scottish Ministers to specify cases or types of cases to which subsection (3) does not apply, with the effect that Scottish Water must comply with the duties set out in subsections (1) and (2) despite this requiring actions which are not practicable at reasonable cost. New subsection (3B) allows the Scottish Ministers to determine reasonable cost for the purposes of section 1 of the 1968 Act in regulations. New subsection (3C) specifies that the regulations may, in particular, make provision for determining reasonable cost, and that different provisions may be made for different cases or types of case.
97. Subsections (3) and (4) of section 26 insert references to regulations under the new subsection (3B) in subsections (4) and (6) of section 1 of the 1968 Act. The effect of the amendment to section 1(4) is that an aggrieved person can appeal to the Scottish Ministers on the grounds that a determination of reasonable cost has not been made properly in accordance with the regulations, whereupon the Scottish Ministers will determine the issue, following consultation with Scottish Water, and Scottish Water must give effect to that determination. The effect of the amendment to section 1(6) is that the power to make regulations under new subsection (3B) is exercisable by statutory instrument, subject to negative procedure.

98. Subsection (6) of section 26 amends section 6(2) of the 1980 Act to make Scottish Water’s duty to supply water under that subsection subject to the new subsection (2A) added by subsection (7), so that Scottish Water is not required to take pipes to a connection point for buildings where an agreement is in force between Scottish Water and another person for them to carry out this action. Subsection (7) also adds new subsections (2B), (2C) and (2D) to section 6. Subsection (2B) provides that the Scottish Ministers can specify cases or types of cases where the duties in Section 6(1) and (2) of the 1980 Act apply despite requiring actions which are not practicable at reasonable cost. Subsection (2C) enables the Scottish Ministers to define reasonable cost for the purposes of section 6 of the 1980 Act in regulations. Subsection (2D) specifies that those regulations, may in particular, make provision as to matters to be taken into account, the criteria to be applied and the method of calculation to be adopted in for deciding what is reasonable cost. The regulations will be made by statutory instrument and subject to negative procedure in the Scottish Parliament, in accordance with section 101(2) of the 1980 Act (as amended by the Scotland Act).

99. Subsection (8) of section 26 amends subsection (3) of section 6 of the 1980 Act so that the issues which the Scottish Ministers can be requested to determine include whether a reasonable cost has been properly determined in accordance with regulations under subsection (2C).

Section 27 – Private sewers and sewage treatment works etc.: conditions for connection or takeover

100. This section makes detailed provision on construction standards, connection agreements and takeover conditions, by amending sections 8 and 12 of the 1968 Act and adding two new sections, 14A and 14B, to that Act.

101. Subsection (1) adds a subsection (1A) to section 8 of the 1968 Act, and repeals section 8(2). The new subsection specifies that an agreement by Scottish Water to take over a sewage treatment works is subject to the works complying with the construction standards set out in new section 14A to that Act and also to any conditions that Scottish Water has made under new section 14B. Subsection (1A) also provides that the takeover of a sewage treatment works should not take effect until any security required as part of an agreement under section 14B, for example a bond, has been provided.

102. Subsection (2) makes similar provision to subsection (1), in respect of connecting drains or sewers to those of Scottish Water, by adding a new subsection (2A) to section 12 of the 1968 Act. Subsection (2A) provides that an owner can only connect their drains or sewers to those of Scottish Water if they meet the required construction standards and, if required by Scottish
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Water, the owner has entered into a connection agreement with Scottish Water and has provided adequate security.

103. Subsection (3) provides for new sections 14A and 14B to be added to the 1968 Act.

104. Section 14A relates to private sewers and sewage treatments works. It makes provision as to the construction standards which drains, private sewers and private sewage treatment works must meet for the purposes of the new subsections 8(1A)(a)(i) and 12(2A)(a). Subsection (1) of the new section specifies that these standards are to be prescribed by the Scottish Ministers in regulations. Subsection (2) provides that these standards required by the regulations can include those specified in other enactments, e.g. those that are legally binding on Scottish Water. Subsection (3) provides that any regulations made pursuant to this section can apply different standards to different persons or cases or types of case. The Scottish Ministers must consult Scottish Water and any other persons they consider appropriate before making any such regulations (section 14A(4)), and the regulations are to be made by statutory instrument, subject to negative procedure in the Scottish Parliament (section 14A(5)).

105. Section 14B provides for takeover conditions and taking over a sewage treatment works (section 14B(1)), and for connection agreements and connecting drains or sewers (section 14B(2)). It also confers a regulation making power on the Scottish Ministers to prescribe conditions which must be included in these agreements, and exceptions in which the agreements are not required, or are required with modifications. Section 14B(4) enables detailed provision to be made for financial conditions which can be made in the regulations. Any such regulations must be made by statutory instrument, subject to negative procedure in the Scottish Parliament (section 14B(6)).

Section 28 – Laying of water mains by persons other than Scottish Water

106. This section inserts three new sections, 23A, 23B and 23C, in the 1980 Act.

107. Section 23A relates to laying of mains by persons other than Scottish Water. It provides for Scottish Water to authorise another person to lay a main and clarifies the arrangements for subsequently vesting the main. It provides a power for Scottish Water to authorise another person to lay a main where this involves road works or crossing a third party’s land (section 23A(1)), and transfers to the authorised person the requirements to give reasonable notice to interested parties and the procedure for responding to objections provided in section 23 of the 1980 Act (section 23A(2)). Section 23A(3) provides for a main which connects to a main which is vested in Scottish Water to vest in Scottish Water. An exception to this is provided for where Scottish Water has made a determination during the construction of the main, vesting the main and its management, maintenance and renewal instead in the person who has laid it (section 23A(4)), and giving notice of this determination (section 23A(5)). Where a main is laid by a person other than for or on behalf of Scottish Water and the consequent main does not connect to another main which is vested in Scottish Water, section 23A(6) provides that it vests in the person who laid the main.

108. However, section 23A(7) provides that, despite a main not connecting with a main vested in Scottish Water or a determination having been made by Scottish Water that the main should vest in the person who laid it, Scottish Water may enter into an agreement for the main to vest in
These documents relate to the Water Environment and Water Services (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 18 June 2002

it instead. Section 23A(8) provides that where the main which is intended to vest in Scottish Water connects to a public main, such an agreement is only valid if the main meets the constructions standards provided by section 23B, and is subject to any conditions and security Scottish Water require under section 23C.

109. Section 23B relates to construction standards for mains to vest in Scottish Water. It provides a regulation-making power for the Scottish Ministers to prescribe the standards referred to in section 23A which a main not laid by or on behalf of Scottish Water must meet for it to vest in Scottish Water. These standards can include those specified in other enactments, e.g. those that are legally binding on Scottish Water (section 23B(2)). The regulations under this section may make provision for different standards for different cases or types of case, and before making the regulations, the Scottish Ministers must consult Scottish Water and any other persons they consider appropriate (sections 23B(3) and (4)). Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament (section 101(2) of the 1980 Act).

110. Section 23C relates to vesting conditions for mains. It sets out arrangements for an agreement between Scottish Water and the person who laid the main to include payments to either party, and a regulation-making power for the Scottish Ministers to make detailed provision relating to how costs and liabilities in vesting conditions should be determined.

111. Section 23C(1) provides that Scottish Water may require conditions (“vesting conditions”) to be included in an agreement under section 23A(7) between Scottish Water and another person to allow a main to vest in Scottish Water. These conditions may include a payment from Scottish Water to the person who laid the main to cover the costs of laying it, and a liability on that person to pay Scottish Water in respect of expenses they incur, either through maintaining, repairing or renewing the mains, connecting it to a public main, or other work that Scottish Water considers necessary as a consequence of connecting the main. Section 23C(2) provides a regulation making power for the Scottish Ministers in relation to these vesting conditions. The regulations can specify provision which should be included in an agreement, and cases where section 23C(1) does not apply, or applies only with modifications. Section 23C(3) provides further detail as to provision which may be made in these regulations: they may provide for how a sum which Scottish Water should contribute in respect of the costs of laying the main should be determined; they may set out the matters, criteria and methods of calculation for determining the liability of the person who laid the mains; when sums due under vesting conditions should be paid; and the security Scottish Water is entitled to require under section 23A(8)(c). Section 23C(4) clarifies that these regulations can make different provision for different cases or types of case. Regulations under this section will be made by statutory instrument and subject to negative procedure in the Scottish Parliament in terms of section 101(2) of the 1980 Act.

Section 29 – Vesting in Scottish Water of waterworks and mains

112. This section amends sections 21 and 23 of the 1980 Act to clarify that all waterworks constructed in accordance with section 21(1), and all water mains laid in accordance with section 23(1), whether before or after the provisions commence, are vested in Scottish Water. “Waterworks” is defined in the 1980 Act as including “streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines and all
machinery, lands buildings and things for supplying, or used for supplying, water or used for protecting sources of water supply”. Where any of these waterworks is used for providing a public water supply under the Act, section 29 will ensure that it is vested in Scottish Water.

Part 3 General

Section 30 – Crown application

113. This section makes provision for the application of the Bill to Crown bodies. Part 1 will, in line with the Directive and subject to subsection (3), apply equally to bodies of water on Crown held land and activities carried on by Crown bodies as it applies to other bodies of water and activities by other persons. Subsection (2) ensures that the textual amendments made to the 1968 and 1980 Acts by Part 2 apply to the Crown to the same extent as those Acts.

114. Subsection (3) provides that the Crown will not be criminally liable for any contravention of the Bill’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Bill’s provisions unlawful, upon application by the public body or office holder responsible for enforcing the provision in question.

115. Subsection (4) provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.

Section 31 – Orders and regulations

116. This section prescribes the procedure for the making of orders and regulations under the Bill.

117. Subsection (2) as read with subsection (3) allows the Scottish Ministers, amongst other things, to make any changes to existing enactments or other documents (such as administrative guidance) that are necessary to bring them into line with the provisions of the Bill or regulations made under the Bill. Subsection (4) provides that orders and regulations made under specified provisions of the Bill are generally subject to negative procedure.

118. Regulations made under section 20 (regulation of controlled activities) can be subject to affirmative or negative procedure, at the choice of the Scottish Ministers (subsection (5)), although they must be made by affirmative procedure if they textually amend primary legislation (subsection (6)). It is expected that normally they will be made subject to affirmative procedure. But they could be made by negative procedure if necessary – if for example, they needed to be made quickly in order to comply with infraction proceedings from the EC or if they deal with minor or inconsequential matters.

119. Subsection (6) requires regulations made under specified provisions to be subject to affirmative procedure if they contain textual amendments of primary legislation.

Section 32 – Ancillary provision

120. This section enables the Scottish Ministers by order to make incidental, supplemental, consequential, transitional, transitory or saving provision, if appropriate.
Section 33 – Commencement and short title

121. This section provides that all of the provisions of the Bill, except Part 3, shall come into force when Scottish Ministers by order appoint. Part 3 comes into force on Royal Assent. The section also provides for the short title of the Bill.

Schedules

Schedule 1 – Matters to be included in river basin management plans

122. This schedule describes matters that must be included in the river basin management plan. The explanatory notes on sections 9 and 14 provide more detail. Part 1 of the schedule describes matters that must be included in every river basin management plan. Part 2 describes the additional matters that must be included in revised river basin management plans.

Schedule 2 – Controlled activities regulations: particular purposes

123. Schedule 2 is in two parts. Part 1 sets out the purposes for which regulations made pursuant to section 20 of the Bill may be made. Part 2 supplements Part 1.

124. Paragraph 1 enables the regulations made pursuant to section 20 to expand on the definitions of controlled activities given in section 20(3) and to amend those definitions if desirable. The regulations may also specify controlled activities in addition to those specified in section 20(3).

125. Paragraph 2 enables the Scottish Ministers to specify in the regulations which authority will exercise any regulatory functions conferred by them. The Scottish Ministers, SEPA or any other public or local authority may be appointed as regulators. The regulations may specify that the regulators functions are to be exercised with a view to achieving the environmental objectives set out in river basin management plans and any other purposes (for example, mitigating flood or drought). The regulations may also enable the Scottish Ministers to issue directions and guidance to any regulator in connection with the exercise of their regulatory functions. Directions must be complied with. Guidance need only be had regard to.

126. Paragraph 3 enables the regulations to make provision for prohibiting persons from carrying on, or from causing or permitting others to carry on, any controlled activity unless it is authorised by or under and carried on in accordance with the regulations. The paragraph contemplates three types of authorisation: general binding rules (paragraph 3(2) and (3)), water use licences (paragraph 3(4(a)) and registration (paragraph 3(4)(b)), as further described below.

127. Paragraph 3(2) is the main provision dealing with general binding rules but paragraph 17 is also relevant because it gives some indication of the type of provision that could be made in general binding rules. It makes it clear that general binding rules may impose conditions or requirements on the carrying out of a controlled activity. They may also set standards or objectives to be complied with or achieved and require standards or objectives set out in other enactments to be complied with or achieved. Paragraph 3(3) enables provision to be made for treating controlled activities as authorised if they are subject to general binding rules.
128. Paragraph 4 enables provision to be made for requiring anyone who proposes to carry on a controlled activity to notify the relevant regulator first. This will enable the regulator to determine what form of authorisation (if any) is required to be obtained in respect of that activity. The regulations will specify the procedure for notifying proposed controlled activities and for the assessment of how an activity requires to be authorised.

129. Paragraph 5 enables the regulations to make provision for or in connection with water use licences. They may prescribe the form and content of applications for water use licences and the procedure for making applications and for issuing such licences. It allows for such licences to be reviewed and varied periodically by the relevant regulator. It also allows for such licences to be suspended or revoked by the relevant regulator. It further allows for the regulations to specify requirements to be met if licences are transferred from one operator to another or surrendered. It will be possible for regulators to grant single water use licences covering a number of controlled activities.

130. Paragraph 5(6) should be read together with paragraph 18, which makes more detailed provision in relation to the imposition of conditions in respect of a water use licence. It provides that regulations may, in particular, provide for conditions to be imposed in the light of any specified general principles, directions or guidance given under the regulations. Paragraph 18(c) will enable provision to be made to allow a regulator to impose conditions with reference to management agreements entered into between a number of licence holders. The regulations can specify the circumstances in which any such agreements may be incorporated in a water use licence.

131. Paragraph 6 enables the regulations to make provision for or in connection with the registration of controlled activities. For example, in some cases the regulations might permit the carrying on of a controlled activity subject only to a requirement to register the proposed carrying on of that activity with the relevant regulator. The regulations may require all notified activities to be registered irrespective of whether they are controlled by means of a water use licence or general binding rules or neither.

132. Paragraph 7 enables the regulations to make provision allowing regulators to establish charging schemes to recover costs incurred in connection with processing and assessing notifications, registering activities and water use licensing. Paragraph 7(2) will enable the regulations to provide that any such charging schemes must be approved by the Scottish Ministers before they take effect.

133. Paragraph 7 should be read together with paragraph 19, which makes further provision in relation to charging schemes. It provides that the regulations may require fees and charges payable under a charging scheme to be determined in the light of any specified general principles, directions or guidance given under the regulations or for them to be sufficient taking one year with another to cover expenditure specified in the regulations. The regulations may authorise any charging scheme to make different provision for different cases and that the regulations may specify different kinds of cases.

134. Paragraph 8 allows for requirements to be placed on the regulators to publicise various matters and to maintain certain public registers in connection with their regulatory functions.
For example, the regulations may specify that regulators are to maintain public registers of both applications received for authorisations and authorisations granted. The regulations may also require persons to publicise the fact that they applying for an authorisation in certain circumstances, for example, when the controlled activity they propose to carry out is likely to have a significant effect on the water environment.

135. Paragraph 9 enables the regulations to specify the circumstances in which regulators must consult on various aspects of their regulatory functions. The regulations may, in particular, specify requirements for regulators to consult on any general guidance that they may make in connection with their regulatory functions (such as, for example, guidance on the risk assessment methodologies used to assess notifications of controlled activities).

136. Paragraph 10 enables the regulations to confer on regulators’ functions with respect monitoring and inspecting the carrying on of controlled activities. This will enable them to ensure that authorisations are complied with. The regulations may, for example, allow regulators to enter premises, take samples or copy information and to arrange for remedial work to be carried out at the expense of those carrying out the controlled activities.

137. Paragraph 11 enables the regulations to provide regulators with powers to issue various notices on persons. It provides a non-exhaustive list of such notices (paragraph 11(1)(a) to (e)). Paragraph 11(1)(a) provides for notices to notify. This is to cater for the situation where a person is found to be carrying on a controlled activity without an authorisation and would require that person to notify the activity to the regulator. It provides for an administrative means of bringing persons into the control regime – the alternative is likely to be a prosecution under the proposed prohibition of the carrying on of controlled activities without an authorisation.

138. Paragraph 12 enables the regulations to specify offences and make related provision. The regulations could, for example, create an offence of non-compliance with a notice. Paragraph 12 must be read subject to paragraph 20 in Part 2 of the schedule which specifies maximum penalties and makes provision for continuing offences. Where a person has been convicted of an offence the regulations may enable the courts to deal with that person by requiring that person to take remedial action in addition to or instead of imposing any punishment. They may also enable regulators to arrange for remedial action to be taken at the expense of that person.

139. Paragraph 14 enables the regulations to specify rights of appeals in respect of decisions made or notices served or other things done (or omitted to be done) by regulators in connection with the various regulatory regimes. Any such regulations would make detailed provision in respect of, for example, procedural matters and the making, consideration and determination of appeals.

140. Paragraph 15 provides that the regulations may make provision along similar lines to the provisions of sections 157, 158 and 160 of the Environmental Protection Act 1990. Sections 157 and 158 of that Act deal with offences. Section 157 provides that directors, managers, secretaries of corporate bodies or other similar officers of such bodies or persons purporting to act in such a capacity or a member of a corporate body where it is managed by members are guilty of offences committed by the corporate body in question when liability for the offence can be attributed to them. Section 158 provides that where offences are committed because of acts or
the default of some other person then the other person may be convicted of the offence in question. Section 160 sets out procedures and requirements for the serving of notices. It provides for notices to be left in person or sent by post. It further specifies the type of addresses notices should be sent to and, in relation to corporate bodies on whom, precisely notices can be served.

141. Paragraph 21 defines various terms used in schedule 2.

FINANCIAL MEMORANDUM

PART 1 – PROTECTION OF THE WATER ENVIRONMENT

Introduction

142. Part 1 of the Bill sets out the principles for river basin management planning, leaving technical details to regulations to be made in due course. The control regimes referred to above will also be established by regulations made under the Bill in due course. The direct costs entailed by the Bill will be the administrative costs associated with the river basin management planning system. These will primarily fall on the public sector and the Scottish Environment Protection Agency (SEPA) in particular. However, in the longer term, companies, individuals and the public sector bodies will also incur compliance costs because they will have to change their practices or invest in new capital in order to meet the standards and objectives set by the river basin planning process. This memorandum sets out the likely scale and impact of the administrative costs.

143. The wider compliance costs that might flow from the regulations under the Bill are more difficult to establish. However, the Executive has commissioned research into the likely scale and impact of the Bill’s regulatory provisions from WRc plc in conjunction with the University of Glasgow and the University of Dundee. Their report will be available on the Executive’s website shortly. The compliance costs described here are based on the outcomes of that research. They are likely to represent the worst case estimates of the costs that might arise. It was not possible for the researchers to take full account of the cost minimisation measures in the Bill that are described below. Neither was it possible for them to distinguish clearly between the costs that may be imposed by the measures in this Bill from other environmental measures that may also need to be imposed to meet other Community legislation such as from the continuing implementation of the Nitrates and Shellfish Water Directives. The research by WRc also looked at the benefits that might flow from the Bill and its regulations. Its findings in this respect are summarised in the Policy Memorandum. The Executive will refine and update these analyses in the course of producing the regulations under the Bill, which will be accompanied by full regulatory impact assessment in each case.

144. All the costs quoted in this memorandum are discounted to current values and, where they are given, total costs are estimated over a 40 year period.
Minimising the financial implications of Part 1

145. A number of measures are built into the Bill to ensure cost-effective regulation and therefore that the compliance costs will be minimised. Comprehensive economic appraisal of different policy options is embedded in the river basin management planning system. The objective for all agencies involved in the implementation of these measures, and particularly for SEPA, will be to impose the minimum costs on the economy as a whole and on individual sectors, while achieving the goals of the Directive. Especially difficult judgements will have to be made about situations where the costs are disproportionate to the benefits of particular measures in specific locations. Ultimately the costs and benefits of the measures flowing from this Bill will be determined by the environmental objectives that are set out in the river basin management plans. The river basin management planning system, including the flexibility that will be inherent in the system to take account of social and economic considerations in the setting of these objectives, is described in more detail in the Policy Memorandum.

146. The Executive has also sought to keep the administrative and monitoring costs associated with the production of river basin management plans to a minimum by putting in place a system that will make the best use of the existing spread of expertise and activities across the public sector in Scotland.

Timing and profile

147. The administrative and monitoring costs associated with river basin management planning will start now, building up gradually to the production of the first plans in 2009. Over this period SEPA and other public sector authorities will start to collect and collate the necessary data, conduct the economic analysis and commence work on preparing and consulting on the river basin management plans. Businesses, voluntary and community groups may also incur costs as a consequence of becoming involved in river basin management planning.

148. Under the Executive’s proposals for the timing of introduction of the control regimes, it is expected that compliance costs will start to be incurred over the period from 2007 – 2011. Most of these will comprise capital costs for the installation of new equipment and facilities. Ongoing costs from changed practices, and the costs of operating and maintaining new facilities, will follow after 2011.

Costs on the Scottish Executive and public bodies

Costs on the Scottish Executive

149. The principal costs that will fall on the Scottish Executive will comprise additional grant in aid that it will need to provide to SEPA to resource it to carry out its new duties under the Bill, together with the costs of measures by Scottish Water to improve water services. In addition, it is anticipated that a small team will need to be established within the Executive to implement the provisions in the Bill and to oversee the ongoing process of river basin management planning. That would include the preparation of the secondary legislation and Ministerial directions and guidance flowing from the Bill.
150. Some of the Executive Agencies or Departments of the Executive, principally its Fisheries Research Services but also, for example, the Forestry Commission, may bear some administrative and monitoring costs arising out of their role in river basin management planning. It is currently anticipated that it will be possible to assimilate these costs into existing expenditure programmes. The Executive will examine the likely costs to the public sector of the monitoring required by the Directive in the context of drawing up the regulations on monitoring.

151. The Executive could also find itself bearing some of the costs of cleaning up contaminated land that is affecting the water environment in cases where liability for the clean up cannot be established. These costs are unlikely to fall directly on the Executive. However, the Executive may need to provide support to local authorities and to SEPA towards some of these costs. Some compliance costs may fall directly on Ministers as a result of controls over operations on land held by the Forestry Commission in Ministers’ name.

**Costs on SEPA**

152. The administrative and regulatory costs will fall mainly on the Scottish Environment Protection Agency, a Non Departmental Public Body. SEPA is likely to bear significant up front costs for the development of expanded monitoring networks, new regulatory capacity and for the preparation of river basin management plans, including the economic analysis. In the longer term, SEPA will be able to recover the large majority of these costs through charges. Additional annual costs to SEPA during the initial implementation phase may rise to around £2.5 million per annum by 2005/06.

**Costs on Scottish Water**

153. Scottish Water is a public body, accountable to the Scottish Ministers and to the Scottish Parliament. It is a public corporation, which covers its full operating costs and increasingly much of its capital programme through charges levied on customers. Scottish Water is expected to incur some £28 million per year of capital expenditure in the years 2007-2011 in order to comply with the regulatory controls under the Bill and incur some £5 million per year of ongoing costs thereafter. These figures represent only modest increases in expenditure by Scottish Water. It is currently predicted to spend some £630 million on capital for environmental improvements in the years 2002 - 2006 alone. The total discounted capital costs to Scottish Water up to 2042 are estimated at around £180 million. It is expected that these costs will be passed on to the customer under the polluter pays principle. However, depending on agreements yet to be reached on revenue levels for the period concerned, some of these capital costs may be covered in the short-term by additional loans from the Scottish Ministers.

**Costs on other public sector bodies**

154. Administrative and, in some cases, monitoring costs may fall to other public sector authorities including, in particular, Scottish Natural Heritage but also others such as British Waterways. It is currently anticipated that it will be possible to assimilate these costs into existing expenditure programmes. The Executive will return to this point in the context of drawing up the secondary legislation identifying the responsible authorities and the regulations setting out the environmental monitoring requirements.
Costs on local authorities

155. Local authorities are likely to incur some administrative costs arising from their potential role as a “responsible authority” in the river basin planning process. However, these costs are likely to be minor in relation to their overall expenditure on development planning. Moreover, any extra costs incurred may well be offset by the benefits that will arise from the existence of a central repository of information on the water environment for planning authorities in the form of river basin management plans.

156. Local authorities may also incur compliance costs arising from the regulation of controlled activities in connection with their functions as roads and coast protection authorities and for their flood prevention activities. For example, the rehabilitation of watercourses modified for flood protection works may be justified in certain cases. The majority of these costs would fall in the period 2007-2011. Total discounted costs could be in the range £25 million to £65 million.

Costs on other bodies, individuals and businesses

Introduction

157. Compliance costs will fall on a wide range of other bodies, individuals and businesses, as a wide range of activities in the economy have an effect on water quality. Within industrial sectors, there will be a wide range of affected businesses. Affected sectors will include food and drink, pulp and paper, mining, forestry, aquaculture, hydro-power generators and developers involved in construction work by water. There will also be effects on agriculture and on individual households. All of these sectors will also face minor administrative costs arising from the new regulatory regimes flowing from the Bill.

158. It is assumed that, in most cases, existing controls on point sources of pollution will not need to be tightened significantly, except in certain locations. Therefore the majority of compliance costs for businesses and individuals will arise from the need to mitigate adverse impacts of water abstraction and impoundment, engineering works and tackling diffuse pollution.

Industry

159. The main sectors that abstract or impound water in Scotland are the distillers, hydroelectricity generators, and the paper and pulp and textile industries. Current indications are that the majority of distillers are unlikely to be subject to restrictions on the amount of water they abstract from the environment although some will need to be investigated to see if mitigation measures can be achieved at proportionate cost. The Executive and SEPA are currently conducting research to investigate and quantify the possible impacts on distillers further. A similar approach may be necessary for some paper and pulp plants and textile plants. Such plants may need to invest in extra water storage to cover summer use. For the paper and pulp industry, for which it is likely that only a very few plants might be affected, this could cost in the region of £5 million for the industry as a whole.

160. The hydro-power industry makes a very important contribution to meeting Scotland’s renewable energy obligations. Hydro-power production, involving, as it does, significant
modifications to water catchments including water impoundments and diversions, has a significant effect on the water environment and will need to be regulated under the Bill. However, the use of the heavily modified waters designation will ensure that this regulation does not have any significant adverse effects on the generation of renewable energy. The purpose of this designation is to ensure that the sustainable use of water can continue. However, some changes in the management of hydro-power impoundments, principally in relation to changes to compensation flows that are provided downstream of impoundments to maintain river levels or the periodic release of water from the schemes to create artificial spates downstream for the benefit of migratory salmon and sea trout (freshets) may be required. The Executive’s consultants estimated that the total discounted cost up to 2040 to the industry as a whole could be in the range £75 million to £150 million. However, this is very much a worse case scenario and, in practice, the use of the heavily modified waters designation will ensure that any costs imposed by the regulations are not disproportionate for individual businesses.

161. Mining activities, particularly the legacy of abandoned mines and bings, will need to have remedial treatment systems installed to deal with mine-waters affecting 270 kms of waterbody. It is assumed that this will require an acceleration of the current abandoned mine remediation programme at a cost of £0.2 to £1.5 million per scheme. This is estimated to require capital expenditure in the region of £10m for the four years 2007-2011, with a total discounted cost to 2042 estimated at £100 million.

162. Forestry operations are already strictly circumscribed to protect water quality through a variety of procedures that secure compliance with best-practice guidance published by the Forestry Commission. The Guidance is currently under revision to take into account recent research findings and the provisions of this Bill. It is possible that extra measures may need to be taken by forestry operators, but the extent or the potential cost of any extra measures is not clear.

163. Additional pollution controls may be necessary in the aquaculture industry. It is difficult to determine their extent and cost at this stage.

164. There may be a need to accelerate the clean up of contaminated land where it affects the achievement of water status objectives in water bodies. It is estimated that this will require the earlier clean up of some 140 sites than would have occurred otherwise at a cost of £200,000 per site. In total, this is estimated to cost some £5 million in each of the four years 2007-2011.

Agriculture

165. It is anticipated that the most significant costs on agricultural enterprises will arise from the controls over water abstraction and diffuse pollution.

166. Potato growers have the highest demand for water within the agricultural sector in Scotland. It is anticipated some 3,500 ha of potato growing land (around 12% of the total) may be in catchments that are particularly sensitive to irrigation pressures and farmers there may need to alter their abstraction practices accordingly. The amount of water available for irrigation has a direct impact on the market value of the crop because it is crucial to ensuring high quality and yields, particularly in dry years. Most affected farms would experience, on average, modest reductions in gross margins per ha (0.5% rising to 11% if it was necessary to put in place a total
ban on abstraction to protect minimum river flows, say in a very dry year.) The precise effects will, of course, vary from year to year as climate and the demand for irrigation varies. This could, of course, represent a significant reduction in net farm incomes, depending on market prices at the time. The total discounted cost to the sector as a whole 2042 is estimated at £20 million.

167. The WRc researchers assumed that arable, intensive livestock and mixed farming enterprises working some 625,000 hectares of land (around 10% of the total land in agricultural production in Scotland) currently present a risk to the quality of surface and groundwaters. Adherence to best practice on this land will go a long way to mitigating these problems. However, a smaller number of farms (8-15%) will need to go beyond these generally established good practices because of the sensitivity of the bodies of water on their land. In most farms costs were estimated to be around £10 per ha but significant up-front investments (e.g. farm storage) could also be required. These assumptions gave rise to estimates of significant costs for this group of farming enterprises, with total capital costs of some £15 million a year for each year 2007-2011, and ongoing costs of £12 million each year thereafter. The total discounted cost to 2042 is estimated at around £250 million. However, it is possible that some of this cost will arise in any case from the implementation of existing European Directives.

*Households*

168. Households will be indirectly affected by the impacts on other sectors but also directly affected for example where rural sewage treatment systems need to be improved to meet the water status objectives. It is assumed that around 120 instances where there are a group of houses or commercial premises whose private sewage treatment infrastructure leads to the downgrading of water bodies (and where connection to the mains sewer is uneconomic) will need to invest in modern private sewage treatment systems. Additional costs of £600 per household would be needed to operate the systems and investments of £6,000 per household for construction. Overall, the total discounted cost to households to 2042 is estimated to be around £20 million.

**PART 2 - WATER AND SEWERAGE SERVICES**

*Introduction*

169. Part 2 of the Bill will provide for a systematic approach to funding new infrastructure connections in the water industry.

*Costs on the Scottish Administration*

170. Part 2 of the Bill places no costs on the Scottish Administration.

*Costs on local authorities*

171. Part 2 of the Bill will place no costs on local authorities.
Costs on other bodies, individuals and businesses

172. Part 2 of the Bill will alter the division of the costs of funding new infrastructure in the water industry between Scottish Water and developers, replacing the previous fixed contribution from Scottish Water with a contribution based on a fair and objective cost benefit analysis. This will mean some increased costs for developers, depending on the circumstances of each development. The cost of contributions to developers’ costs by the three water authorities (the predecessors of Scottish Water) in 2000-01 was around £16 million, and the additional costs to business will be a proportion of that sum. The intention is to develop a more equitable system and the water industry, business and individuals will all be involved in the consultation on the detail of regulations. Regulatory Impact Assessment will be a carried out on the regulations providing the detail of the regime.

173. This will mean a consequent slight reduction to Scottish Water’s costs, which will be reflected in customers’ charges.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

174. On 17 June 2002, the Minister for Environment and Rural Development (Ross Finnie) made the following statement:

“In my view, the provisions of the Water Environment and Water Services (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

175. On 18 June 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Water Environment and Water Services (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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