This document relates to the Water Environment and Water Services (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 18 June 2002

WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Water Environment and Water Services (Scotland) Bill introduced in the Scottish Parliament on 18 June 2002. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 57–EN.

2. The Bill seeks to promote the sustainable management and protection of the water environment in Scotland (Part 1) and to change the arrangements for funding new connections to the public water and sewerage infrastructure (Part 2). Each Part is dealt with separately below.

THE WATER ENVIRONMENT PROVISIONS (PART 1)

Introduction

3. The key to Scotland’s continued ability to use and enjoy its natural water environment – its rivers, canals, lochs, groundwaters and coastal waters – in the future is sustainability: to use it wisely now and to plan to use it wisely in the future. The water environment provisions in this Bill – which, for the first time, establishes a planning system for the water environment with SEPA as the lead authority working alongside the public, private and voluntary sectors – will meet these aims by setting out a framework for the sustainable management and protection of the water environment.

The EC Water Framework Directive


5. The Directive was first proposed in February 1997. It was adopted on 23 October 2000 and came into force on 22 December 2000. It is seen as one of the most progressive pieces of environmental legislation to come out of the Community in recent years. It streamlines and provides a context for all existing Community water legislation. A significant body of older
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Community legislation, including the Shellfish water, Freshwater fish water and Groundwater Directives will be repealed and replaced in due course by the provisions this Directive. However, the main Community water legislation – the Nitrates, Urban Waste Water Treatment and Bathing Water Directives - will remain.

6. The Directive takes an alternative approach to the earlier legislation. It does not set out absolute standards to be achieved (as, for example, in the Shellfish Water Directive) but it provides a framework for Member States to set their own standards by introducing the concept of ‘water status’ – a measure of the intrinsic quality of aquatic ecosystems. It takes a more holistic approach than the earlier Directives, introducing catchment thinking into European water protection policy by requiring Member States to plan for the management of their water resources on the basis of natural river basins. The Directive gives Member States the flexibility to protect their environments in a way best suited to local circumstances. Importantly, it allows balancing of environmental with social and economic priorities and stresses the importance of wide participation in the protection of the water environment. It fits in well with the Executive’s own priorities on sustainable development and open government.

POLICY OBJECTIVES OF THE WATER ENVIRONMENT PROVISIONS

7. The water environment provisions of the Bill (Part 1 and schedules 1 and 2) encompass two main policy objectives:

- to establish a statutory system for water management planning based on natural river basins and comprehensive environmental and economic assessment and monitoring (River Basin Management Planning); and

- to provide the framework for comprehensive controls over water abstraction, impoundment, engineering works affecting water courses and diffuse and point sources of pollution to water in order to achieve the best possible ecological status for all surface waters and to protect groundwaters from pollution and over abstraction.

8. The Bill is enabling in nature and provides for regulations to be made in due course. This is particularly the case in relation to the controls over activities with the potential to damage the water environment. The reason for this is that the Executive wishes to put in place control regimes that are appropriate to Scottish circumstances, have been developed after thorough consultation and are flexible but will last.

Valuing the benefits

9. The provisions in the Bill are intended to bring significant benefits to Scottish business and communities:

- Protection and enhancement of aquatic wildlife which will increase the amenity value of watercourses, bringing benefits to tourism generally and fishing and anglers in particular.
• Coherent water management planning leading to cost effective regulation and the better targeting of water protection measures to where they will deliver clear environmental benefits.

• Transparent water management planning that will make it easier for businesses and the public sector to plan and comply with the water protection measures.

10. The Executive has commissioned research to attempt to quantify the scale of these benefits by estimating individuals’ willingness to pay for the water environment improvements that will arise from river basin management planning. The research was carried out by WRc plc on behalf of the Executive and will be available on the Executive’s web site shortly. The researchers estimated that the annual benefits from ensuring that all water bodies meet ‘good status’ (the term is explained below) could be valued at between £141 and £324 million per annum. A central estimate of £227 million per annum totals up to a discounted figure of around £1.5 billion over a 40 year time horizon. The researchers also reported that there were significant benefits that it was not possible to quantify using these methods. The administrative, regulatory and compliance costs that might be incurred by the public and private sectors are explored in detail in the Financial Memorandum.

Definition of the water environment

11. The first Chapter of Part 1 of the Bill is devoted to defining what is meant by the water environment, establishing the general purpose of this Part of the Bill and to providing for the duties on public authorities that will flow from the Bill. It is important that the Bill sets out what the water environment consists of so it is clear what waters are afforded protection by it. Wholly artificial water treatment and storage systems are not included within the Bill’s scope although other artificial systems such as canals or artificial lochs and ponds are. Importantly, artificial wetlands, ponds and reedbeds that are created for the purpose of treating pollution are also excluded. It would make no sense to try and protect such systems from pollution when their very purpose is to treat it.

River Basin Management Planning

The need for River Basin Management Planning

12. Planning for the management of the water environment does occur in Scotland but it occurs on an ad hoc basis. Something more comprehensive and more transparent is required if the water environment is to be protected and sustained effectively for the future. The provisions in Chapter 2 of Part 1 of the Bill about River Basin Management Planning seek to establish such a system. Of key importance is the need to carry out a spatial analysis of all human impacts on the water environment that recognises the interconnections between all the elements of the water cycle – rivers, lochs, estuaries, coastal waters and water under the ground. This analysis will be used to derive the water status or ‘environmental’ objectives for individual ‘water bodies’ – river stretches, whole or parts of lochs or estuaries or groundwaters and areas of coastal water. Water bodies will be the basic unit of management in the river basin planning system. Success at protecting the water environment will be measured in terms of success at achieving objectives for individual water bodies. The analysis will also be used to derive cost effective strategies for meeting these objectives so that improvement measures will be targeted to where they will deliver the greatest benefit.
13. The system will be open, transparent and participative. That will be key to ensuring effective implementation. Not only will those with a part to play in meeting the objectives, policy makers, regulators, businesses and communities alike, have access to information about the plans and priorities for the water environment but they will also have had a role in shaping them. SEPA will take the lead on this work but it will need to do so in close partnership with other public sector authorities.

River Basin Management Planning in Scotland: overview

14. “River Basin Management Plans” will be drawn up for identified “River Basin Districts”. They will be continuously reviewed, updated and improved with a new Plan being produced every 6 years. The planning cycle will have the following distinct elements:

- **Characterisation** – a comprehensive survey of the environmental characteristics of the river basin district and human pressures on the water environment in the area together with a survey of the economics of water use in the area.

- This will be followed by environmental **monitoring** to examine the state of the environment in more detail.

- The characterisation and monitoring, will inform the setting of **environmental objectives** for individual water bodies within the district and the **measures** that will need to be applied to meet them. Water bodies will be highly localised - individual river stretches, parts or whole lochs and estuaries, bodies of groundwater and areas of coastal water.

15. All of this will be reported on in the **River Basin Management Plans** (“RBMPs”). The first characterisation report will be produced in 2004 with monitoring commencing in 2006 and the first plan being produced in 2009. The process will be repeated again in time for the second plan to be produced in 2015 and so on.

16. The Executive considers that River Basin Management Planning should be carried out at a strategic scale and accordingly, that River Basin Districts should cover wide geographic areas. This proposition gained support in both consultation exercises. However, it is worth noting that the Plans will also need to contain detailed information about the environmental objectives that apply in the catchments that they cover and that they will be based on rigorous environmental and economic analysis and monitoring carried out at scale of individual water bodies.

17. The Executive’s proposals for putting these policy objectives into practice are described in more detail below.

River Basin Districts

18. The Executive considers that it may be most appropriate to identify one main river basin district in Scotland. This proposition has gained significant support from consultees. The Executive will consult again on this issue in the process of drawing up the designation order under the Bill.
19. It is worth noting that the Directive does not allow a single river basin to be split between river basin districts. Special consideration will therefore have to be given to the Scottish area of the river basins that straddle the border with England (the Solway, the Tweed and the English Tyne). Consultees who expressed a preference have said that they would prefer there to be a separate river basin management plan for each of the cross border basins. The Executive will give this further consideration, and consult again on this issue in the process of establishing the river basin district boundaries.

20. The definition of coastal waters in the Bill is important. The outer limit of coastal waters determines the seaward extent of river basin district and the seaward extent of the requirement to protect the ecological status of the water environment. The Directive calls for coastal waters to be defined as those up to 1 nautical mile from Member States’ territorial sea baseline. However, the Control of Pollution Act 1974 currently extends to 3 nautical miles from this baseline and there has been general support from consultees for the proposition that this should be the outer extent of coastal waters under the Bill, with some calling for it to extend further. It is worth noting that all of the Minch and large areas of open sea off the West Coast and the full extent of all major sea lochs are within the territorial sea baseline itself. The Bill provides that coastal waters should extend to 3 miles from the baseline.

Environmental and economic characterisation and monitoring

21. Section 5 of the Bill confers a duty on SEPA to carry out a characterisation of the river basin districts in accordance with regulations made by Ministers. These regulations will be used to implement the Directive’s technical requirements for characterisation and monitoring which are laid down in its Annexes II, III and V. The main purpose of the environmental characterisation is to identify the human pressures on the water environment in the district and to evaluate the extent to which they impact on ecological status.

22. The first round of characterisation is to be completed by 2004. In addition to identifying pressures and impacts, it will also involve identifying the individual water bodies in the district and deriving a system for classifying them according to their ‘water status’. There will be 5 classes of ecological quality for surface waters (rivers, lochs, estuaries and coastal waters) – high, good, moderate, poor and bad – where high status represents reference or undisturbed conditions and good status slight deviation from that. There will be two classes of water status for groundwaters – good or poor depending on the degree to which they are impacted by pollution or over abstraction. The Directive sets out general criteria for defining these status classes in its Annex V. It will be necessary to interpret these for Scottish conditions – to define precise criteria for determining water status. SEPA will publish a consultation paper on the detailed implications of these requirements shortly.

23. SEPA will also be required to carry out an economic analysis of water use in the river basin districts. This analysis will consider the value of water as a resource to businesses and the economic value of the activities that have been shown to have a significant impact on the water environment in the pressures and impacts analysis described above. It is worth noting that ‘water use’ in this context means any activity that impacts on the ecological quality of the water environment so it encompasses pollution to water as well as abstraction. It will compare those who receive water services from the public water supply and sewerage networks on a level playing field with those who abstract or discharge direct to the water environment. The purpose
of this analysis will be to provide for the development of cost effective strategies to meet the environmental objectives of the Plan.

24. It is clear that river basin management plans will need to be underpinned by robust environmental monitoring. The intention is that SEPA will take a lead, but not an exclusive role, in carrying out this monitoring. The Bill places a duty on SEPA to draw up a Scottish Monitoring Strategy in accordance with regulations made by Ministers. The strategy would set out what monitoring needs to be undertaken, identify any gaps in relation to current monitoring activity and set out how they are to be plugged. SEPA would be required to draw up this strategy in partnership with other relevant players, including public and private sector and voluntary organisations.

Environmental objectives and programmes of measures

25. As described above, the core purpose of river basin management planning will be to arrive at the environmental objectives that apply to individual water bodies. The purpose of river basin management planning will be to interpret and apply the Directive’s generic objectives to local circumstances and to derive the measures by which they will be achieved. This will be based on information gathered during the environmental and economic characterisation and the environmental monitoring.

26. The Directive’s general objectives, as set out in its Article 4 are to:

- 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;
- 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;
- achieve compliance with any relevant standards and objectives for protected areas (see below).

27. “Good status” is a high target. There is flexibility in the Directive to take social, economic or wider environmental considerations into account by applying other objectives where it would be unfeasible or disproportionately expensive to achieve the above basic objectives. Perhaps the most important facility is the designation of certain waters as “artificial” or “heavily modified” where there have been substantial physical alterations to the water body to adapt it for a particular use, such as the generation of hydro electricity, navigation or flood defence. If the criteria for designation are met then objectives can be set which do not compromise the social, environmental and economic benefits that the modification brings. In cases where it would only be possible to achieve good status after more than 15 years, where for example, environmental recovery would be slow, longer timescales can be set. If achieving the
basic objectives is never going to be possible then less stringent objectives can be set. New sustainable development will be allowed, as will temporary deterioration in the case of floods, droughts or other emergencies.

28. Therefore, for each and every water body in the district, there will need to be an examination of which of the 5 classes of ecological quality (for surface waters) or the two classes of groundwater status they fall into. That analysis will indicate which of the general objectives apply. There will also need to be an examination of the way that water body is being used by business or communities to see if the heavily modified waters or one of the other alternative objectives apply. These objectives will be of crucial importance because they will determine how the regulation of controlled activities provided for in Chapter 3 of Part 1 of the Bill is carried out by SEPA and other regulators. That regulation will have to be carried out such that the most cost effective combination of measures is applied to meet any given environmental objective. The economic considerations that will be inherent in environmental objective setting will ensure that RBMPs will not entail any measures that are disproportionately costly.

Responsible authorities

29. Section 2 of the Bill provides for two tiers of responsibility on Scottish public sector bodies. Firstly, all bodies must have regard to the desirability of protecting of the water environment in the discharge of their functions. They must also have regard to the relevant RBMP when exercising their functions as far as they affect that river basin district. Secondly, certain key public sector bodies, including SEPA and the Scottish Ministers, will need to have a more clearly defined role in river basin management planning. Accordingly, section 2 also allows Ministers to identify “responsible authorities” (over and above themselves and SEPA) and to specify how they should exercise their existing functions in order to secure compliance with the requirements of the Directive.

30. The Executive envisages that these “responsible authorities” will act as to support SEPA in its lead role. It is likely that the “responsible authorities” will include local authorities, National Park Authorities, Scottish Natural Heritage, Scottish Water and the Water Industry Commissioner. The Executive will consult further on which authorities should be so designated and what their functions will be in the process of drawing up the order identifying the responsible authorities.

River Basin Management Planning and Development Planning

31. Many consultees, principally local authorities, have expressed concerns about the relationship between river basin management planning and development planning under the Town and Country Planning legislation. The issues were discussed in the second consultation paper (see under Consultation below). There will need to be a two way interaction between the two systems. It will be important that development plans contain an expression of the water environment priorities from the river basin management plan so that planning authorities can be in a position to discharge their general duty under section 2 of the Bill. It will also help them to deliver on one of the primary objectives of the planning system, namely to maintain and enhance the quality of the natural environment. So development plans will need to take appropriate account of the environmental objectives of RBMPs in their land allocations and development policies; i.e. take on board those aspects of RBMPs that are relevant to planning. Similarly, it will be important that RBMPs take account of future development allocations and general policies for development control. Thus each planning system will need to act as a dynamic
information resource and policy context for the other. It is clear that SEPA and planning authorities will need to work closely with one another in preparing river basin management plans and development plans.

**Participation, information and consultation**

32. Securing ownership for river basin management plans in the wider stakeholder community beyond the public sector - in private and voluntary sectors and in communities - is possibly the most challenging aspect of river basin management planning. Yet it will be vital to its success. Many such groups and individuals will have relevant knowledge and expertise to contribute to the exercise and that needs to be drawn on. More than that, the objectives, and the measures that are put in place to meet them, are more likely to be realistic and achievable if they incorporate the aspirations of stakeholders and have been developed in partnership with them. So SEPA will need to engender real participation from stakeholders as well as consulting them.

33. The Bill places a requirement on SEPA to seek and have regard to the views of a wide variety of interest groups and stakeholders and to prepare a report demonstrating how they have done so. The policy intention is that all those with an interest have an opportunity to become involved in and have their say about the RBMPs. These provisions will send a strong signal to SEPA about the importance of consultation and participation.

34. There is a range of issues to consider in relation to how SEPA will make participation work in practice. For example, SEPA will need to ensure that all those with an interest have a voice and it will need to strike the right balance between stakeholder’s views in drawing up the plans. SEPA will also need to use existing consultative fora and networks creatively to avoid consultation fatigue. Comprehensive water management planning has never been attempted in Scotland before and it is difficult to predict what problems might arise in taking forward the participation agenda or what the solutions might be. The Bill therefore provides flexibility. It is envisaged that the Ministerial guidance and direction making powers in the Bill will be used to guide SEPA on how it should carry out its participation duties. The first of the series of consultative documents that SEPA must produce on the plans, in 2006, will contain a statement outlining the steps SEPA will take to ensure the effective consultation and involvement of all interested parties in the production of the plan.

35. The Bill provides SEPA with one specific tool to enable it to fulfil these duties – River Basin District Advisory Groups. The purpose of these groups will be to act as standing consultative panels on river basin management planning. The Bill requires that these Groups are representative of all the water environment interests in the area that they cover. The Bill leaves it up to SEPA to determine the number of groups to be established. In practice, it is likely that SEPA will need to convene groups at least on a regional scale and perhaps a national group also. SEPA may also wish to convene sub-groups to tackle specific cross-cutting issues such as the methodologies for determining ecological status or ways to tackle diffuse pollution. Several consultees have called for these groups to be given a more formal status. However, the Executive’s policy preference is to put in place a flexible system whereby the scale and structure of these groups is a matter for SEPA to determine, within the context of Ministerial guidance. The Executive will expect SEPA to use a range of other methods to discharge its participation and consultation duties such as public meetings, bilateral meetings with stakeholders and other forms of localised consultation.
36. The Bill also requires SEPA to produce a specific series of consultative documents leading up to the production of full draft river basin management plans by 2008, at least one year before they are due to be finalised at the end of 2009. The first of these will be published in 2006.

Ministerial approval

37. Section 13 of the Bill provides for Ministers to approve RBMPs, once they have been prepared by SEPA. Ministers will therefore have the final say on the content of the plans and, importantly, the environmental objectives that are set out therein. Ministers will be able to consider any objections made to the plan as submitted and conduct further investigations of their own before coming to a decision.

38. Consultees have generally welcomed these provisions. Several have called for more extensive procedures than provided for in the Bill, such as further consultation on any modifications that Ministers request or that the plans be referred to a public inquiry before being approved. However, the Executive believes this would threaten the Executive’s policy objective which is to make sure that effective and real involvement is at the core of the river basin planning system. The Executive wants to ensure that every issue is pursued to a conclusion in the river basin planning process. Final Ministerial approval will be an important backstop or safeguard but the Executive wants to preclude any signal that difficult decisions – or any party making its views known – can be postponed until the end of the process. The Directive’s strict timetable also rules out a cumbersome approval process.

Sub-basin plans

39. Section 15 of the Bill makes provision for the production of “sub-basin plans” to supplement the main river basin management plan by SEPA or any of the other responsible authorities as designated under section 2. “Sub-basin plans” within the meaning of the Bill would include a management plan for a particular catchment within the district. It would also include more generic and non geographically based plans for tackling particular water environment problems or for the use of water by particular sectors. The Executive’s recent Bathing Water Strategy could, for example, be a “sub-basin plan” in the river basin planning system. The Bill requires SEPA or any other responsible authority to ensure the same amount of participation by stakeholders in sub-basin plans as for the main river basin district plan.

Protected areas

40. Each River Basin Management Plan will include a “Register of Protected Areas”. These will be areas designated as requiring special protection under other Community legislation: bathing waters, nitrate vulnerable zones and urban waste water treatment sensitive areas and those areas designated under the Habitats and Birds Directive where the status of water is an important factor in their protection. The list will also include significant drinking water sources and areas designated for the protection of economically significant aquatic species. The Executive intend that the latter category will include all areas currently designated as shellfish waters or freshwater fish waters under the shellfish water and freshwater fish water Directives. The consequence of an area being included in the Register is to reinforce the standards set out in the relevant Community legislation for those particular waters. The standards that currently apply in designated shellfish and freshwater fish waters will be maintained.
Alternative approaches

Responsible authorities

41. The main characteristics of river basin management planning as described above – the need for characterisation, monitoring, the setting of objectives and the criteria for determining ecological status – are all prescribed in the Directive. Therefore there is no scope for departing from those requirements. However, the Executive does have some flexibility about the legal and administrative arrangements that are to be put in place to deliver those requirements. The two main questions that the Executive considered in drawing up its proposals for river basin management planning were:

- whether it was better to create a new authority to take the process forward or to give that responsibility to an existing authority; and
- if the responsibility was given to an existing authority, who should the lead authority be.

42. Setting up a new river basin management authority would not be the most efficient means of implementing the Directive’s requirements. As should be clear from the descriptions above, river basin management planning will be a cross cutting exercise. The plans will impinge on many different policy areas. No single authority, however carefully constructed, would be able to take the process forward by itself. Moreover, to set one up would entail considerable institutional upheaval as a whole range of relevant powers and functions would have to be transferred from existing authorities such as SEPA, Scottish Natural Heritage (SNH) and Scottish Water to the new authority.

43. It is clear that one authority needs to be given lead responsibility for taking river basin management planning forward. There are several options for lead authority. Ministers themselves could take on the role, or perhaps ask local authorities to conduct river basin management planning. Local authorities do have a wealth of planning expertise and experience. However, a fundamental problem with either the Scottish Ministers or local authorities is that the planning and regulatory functions provided for in the Bill will need to be intimately connected and mutually reinforcing. The data collected and analysed in the planning process will form the basis of regulatory decisions. Above all, if the same organisation is taking forward both planning and regulation under the Bill they will be able to use information about interested parties’ views gained in the planning process to adjust their regulatory approach to one that best suits stakeholders needs. Neither local authorities nor Ministers would have the necessary scientific and technical expertise to take forward both planning and regulation under the Bill.

44. Of all the existing public sector organisations that could take on a lead role, SEPA seems best suited to the task. SEPA already has much of the necessary environmental, technical and regulatory expertise. As an organisation, it has both a national perspective and the operational capacity across the country to be able to put the Directive’s requirements into practice at the local level. SEPA is accountable through its regional and national boards and to Ministers. Taking on this role will be challenging for SEPA as it will need to develop new areas of expertise in environmental planning and participatory working. The Executive is committed to supporting SEPA so that it can discharge its new duties effectively and will ensure that it is adequately resourced to do so.
The role of sub-basin planning

45. The Bill gives SEPA and the other responsible authorities discretion over whether they establish sub-basin plans or not. Some consultees have suggested that there should be an enhanced role for sub-basin planning within the river basin management planning. They argue it will not be possible to achieve the Directive’s stretching objectives or to determine meaningful measures to achieve them without partnership working at the localised level and that this should be achieved through the establishment of a comprehensive network of localised catchment management plans. They feel that the river basin district plan will be too strategic in scale to engender the necessary level of participation from all stakeholders.

46. However, whilst it is true that river basin management plans will cover strategic areas it is also true that they will be based on detailed and localised planning necessary to arrive at the objectives for particular water bodies. There will also be a role for specific catchment management plans covering particular river basins or sub-basins within a district where there are real issues on the ground that will benefit from a focussed partnership initiative. However, this will not be necessary everywhere. Importantly, this more flexible approach means that catchment plans can be established at the geographic scale most suitable to each local problem.

Regulation of controlled activities

The need for new controls

47. Currently, the main legislative vehicle for the protection of the water environment is Part II of the Control of Pollution Act 1974. That Act has been highly effective in tackling point sources of pollution to water. However, it is increasingly recognised that there is now a need to tackle other types of human pressure on the water environment. For example, diffuse pollution in the form of rain water run off from roads, industrial estates and agricultural land can cause environmental problems. The Executive has already recognised that it will be necessary to tackle diffuse pollution from agriculture in order to meet European standards in Scotland’s bathing waters, for example (see the Executive’s recent Bathing Water Strategy). It is also important to pay attention to the physical integrity of water courses; this can be as important as chemical quality for the plants, animals and fish that live there. For example, over-abstraction of water in catchments where there is little to go round can and occasionally does lead to the drying up of watercourses. ‘Engineering’ works - structures such as bridges, jetties and piers and the straightening and diverting of watercourses as a result of construction and building projects - also affect the physical integrity of watercourses and the coastal zone.

48. Some statutory controls do exist over the abstraction and impoundment of water. The most significant of these are the rights that are granted to Scottish Water to abstract water for the public supply through water orders made by Scottish Ministers and the rights to use water granted to hydro-power generators by the Electricity Act 1989, the Hydro-Electric (Scotland) Act 1943 and several scheme-specific Private Acts. Environmental conditions are factored into water orders and the hydro-electricity Acts and other permits. However, these do not amount to a comprehensive scheme for controlling the environmental impacts of all abstractions and impoundments.

49. The Executive believes that it is not possible to achieve real environmental benefits without tackling all of the factors that can impact on the water environment. Accordingly, the Bill will provide for the establishment of control regimes over all forms of pollution and over
water abstraction and impoundment and engineering works affecting the water environment. One of the key benefits of this more holistic approach is that it will be possible to target investment at those problems that will yield the greatest returns in terms of environmental improvement. Under the existing legislation, all the focus is on cleaning up polluting discharges. There may be cases where greater environmental benefits would arise from tackling over abstraction or mitigating the impacts of a modification. The new regime provided for in the Bill will make these judgements possible.

The common regulatory framework

50. The Executive’s three general principles for the regulation of controlled activities under the Bill set out in its consultation papers have found favour with consultees. They are that the controls should be selective, proportionate and streamlined.

51. The Bill provides Ministers with an enabling power to set up the control regimes by regulations in accordance with the general scheme set out in schedule 2. These regulations will set out the details of how the regimes will operate in practice, including specific definitions of the controlled activity, notification, application, publicity, appeal and call in procedures. The Executive will consult fully on these regulations before they are made.

52. In most cases, the Executive intends to make SEPA the regulator for the control regimes. The single most important feature of regimes provided for in the Bill is that they will be strongly linked to the environmental objectives set out in the relevant river basin management plans. Therefore, they will be selective - only being deployed where necessary to protect the environment.

53. The Bill enables a streamlined common regulatory framework to be adopted that offers 3 options for controlling water uses (i.e. pollution, abstraction, impoundment and engineering works in or near watercourses). This will ensure that the regulatory response can be proportionate to the degree of environmental risk:

- **Simple registration.** All those with a polluting discharge or who abstract or impound water or who carry out engineering works near watercourses will be required to notify SEPA. SEPA will then determine whether that activity actually needs to be controlled in order to satisfy the environmental objectives for the relevant water body. In many cases, SEPA is likely to decide that notification is, of itself, a sufficient form of control. The intention is that notification will be administratively simple process and place relatively few burdens on water users.

- **General Binding Rules.** These will be regulations made by Ministers that set out generally applicable conditions applying to particular water use activities or particular sectors. They are likely to be highly specific, perhaps dealing with a particular water environment problem, such as urban diffuse pollution or applying to a particular sector such as cage salmon fish farming. The Silage, Slurry and Fuel Oil (Scotland) Regulations 1991 and the Salmon (Fish Passes and Screens) (Scotland) Regulations 1994 are two examples of regulations that might be considered to be general binding rules under the new system. It is envisaged that the control of diffuse pollution will be almost entirely achieved by this method. A further form of control
would be a registration under a general binding rule whereby a person would notify SEPA that they were intending to carry out a particular activity in accordance with a particular rule. It is anticipated that this would be dealt with under the same administrative procedures as notification.

- **Water Use Licences.** These will be the most stringent form of control – a specific authorisation that allows a water user to carry on one or more of the controlled activities at a particular site. Water Use Licences will be activity and site specific, rather than person specific so that it will be simple to transfer them from one operator to another. It will also be possible for SEPA to issue “single water use licences”. These would cover permissions for a number of different water uses at a particular site or for similar but related activities occur over a wider geographic area. For example, an entire hydroelectricity scheme could be covered by one licence. The use of such single licences will allow a holistic approach that can take into account all the related water needs of a particular business or operation in looking at its impact on the environment.

54. The regulator will have significant flexibility in relation to the conditions that may be imposed on the grant of a water use licence. These may include:

- effluent treatment methods, standards and limits;
- requirements to follow best practice and best available technology;
- measures to allow the long-term availability of a resource or environmental capacity;
- reporting requirements;
- requirements to comply with a code of best practice;
- conditions to support the promotion of strategic drainage or water supply infrastructure – this would allow, for example, the imposition of a condition on a licence for a septic tank discharge that connection to the public sewer should take place where that is available at reasonable cost;
- restricting the use of a licence to a particular person; and
- restricting the time over which a licence can be used where that is necessary to protect the environment.

55. The regulator will be able to include management agreements, as agreed between different water users, in water use licences. Such agreements will allow water users in a particular area to co-ordinate their activities to better protect the water environment and their own interests. They would, for example, allow a group of abstractors who all wished to use the same scarce supply to agree on how it should be shared between them. It is envisaged that the regulator will be involved at an early stage in the development of the terms of such agreements. Once agreed between the various users and also in terms acceptable to SEPA, such agreements would become enforceable by virtue of their being incorporated into the water use licences for each party to the agreement.
56. SEPA will also be able to develop nationally applicable **standard licence conditions** that could be appended to water use licences for particular types of activity. For example, standard conditions could be developed for the use of chemical treatments in aquaculture. Some aspects of the use of a therapeutant at a particular site, such as the volume applications would have to be determined locally. Others, such as the methods of delivery could be specified in generic standard conditions. This approach would offer certainty to regulated industries and has found favour from consultees.

57. As distinct from management agreements, SEPA will draw up “**Water Resources Management Strategies**” to help them carry out the regulation and control of the abstraction and impoundment of water. It is likely that these strategies would be drawn up at a sub-district scale. They would report on SEPA’s assessment of the risk to the environment posed by abstractions and impoundments, pinpointing particular water rich or water poor areas within the area they covered. They would also give an indication of the thresholds at which SEPA was likely to look to impose restrictions on abstractors and impounders. This kind of approach has found favour in England and Wales where the Environment Agency is actively developing Catchment Abstraction Management Strategies to underpin their abstraction control system.

**Charging**

58. The Bill will provide for regulators to recover the costs incurred by undertaking its functions in relation to the water environment by means of charging schemes, in accordance with regulations made by Ministers. These charges will be applied at all levels of control - whether for simple registration, registration under a general binding rule or a water use licence. Clearly, simple registration and registration under a general binding rule will involve much less work for SEPA and therefore will attract much lower charges. However, SEPA will be required to undertake assessments of every notified activity and any registration under a general binding rule and so they cannot escape charges altogether. The charging schemes will be subject to consultation and Ministerial approval.

**Restoration**

59. In some cases, active restoration of the environment will be justified in order to meet the environmental objectives. For example, on rivers where there are abandoned or redundant weirs or lades, restoring the structure of the river may lead to significant environmental benefits. Similarly, in some circumstances, it may be necessary to tackle historical pollution problems in order to meet the environmental objectives. The regulations made under the Bill will give SEPA the ability to undertake works to restore the environment themselves, and in some cases, to recover the costs from landowners or other responsible parties. The regulations will set out criteria for determining liability if costs are recovered. The regulations will also give SEPA the ability to serve notices on landowners or other responsible parties to require them to undertake restoration works themselves. These notices will be used in situations where establishing liability is straightforward. As they will be linked to the need to meet the environmental objectives, SEPA will only be able to exercise these powers in situations where restoration will not be disproportionately expensive.

**Call in**

60. Part II of the Control of Pollution Act 1974 allows for Ministers to call in pollution control licence determinations by SEPA, and to receive representations from third parties
requesting them to do so. In practice, very few cases are called in. However, it is a route for third parties to influence the process of regulation. The Executive asked consultees views on the value of this process in both consultation papers. Most were supportive of the procedure but acknowledged the need to restrict call ins to significant cases. The Bill will allow Ministers to make provisions for call in as a part of the regulations establishing the control regimes and the Executive will consult again on these issues in the course of drawing up the regulations.

**Timing**

61. The Bill does not specify when the control regimes are to be introduced or when the controls will become effective. The Directive requires the controls to be in place by the end of 2009 and operational by the end of 2012. The Executive believes a better option would be to phase in the controls earlier and over a longer time period. To wait until 2009 would impose a huge administrative and technical burden on regulators over a very short space of time and would extend uncertainty for water users. The Executive currently intends to start implementation of the new controls from 2005 after the first characterisation report has been completed. Once the necessary regulations are in place, regulators could start to receive notifications and issue water use licences (where appropriate) in a phased and controlled manner. Ministers would start to develop the regulations establishing general binding rules over the same time period. In the main, the controls would not become effective until 2012. The exception might be cases where a particular pressure was having a serious and significant impact on the environment and was not adequately controlled by existing legislation. This proposal found favour from the majority of consultees.

**Supplementary or complementary measures**

62. The scheme of regulatory controls outlined above will work best if they are complemented with a range of other, non regulatory approaches. These include:

- voluntary codes of practice and other voluntary initiatives;
- the recreation and restoration of wetlands, for example, within the context of agricultural support payments;
- negotiated environmental agreements, such as those negotiated between SNH and landowners within SSSIs;
- education, awareness raising and training; and
- research, development and demonstration projects such as demonstration farms.

63. Many consultees have stressed the importance of such non-regulatory approaches and initiatives for protecting the environment, calling for them to be supported and resourced within the river basin planning process. Others stress that such initiatives can be very resource intensive and that it can be difficult to demonstrate tangible environmental outcomes from them.

64. The Executive does not see a need to make express provision for such initiatives in the Bill other than requiring them to be identified and reported in river basin management plans. Ministers, SEPA and the other public sector authorities in Scotland already can and do produce codes of good practice, carry out education and awareness raising projects and become involved in wetland recreation schemes. That is as it should be and will continue. Decisions on the
deployment of voluntary or supplementary measures will, of course, be an important function of the river basin planning process.

Alternative approaches

65. In bringing forward proposals for a comprehensive water use controls, the Executive has considered carefully whether its policy objectives could be fulfilled by existing legislation.

66. Part II of the Control of Pollution Act 1974 is a tried and tested regime and the Groundwater Regulations 1998 already provide for the control of pollution to groundwater. It could be argued that there is no need to introduce a new pollution control regime in the Bill. However, the advantage of introducing new and comprehensive control regimes is that regulation can be streamlined. Single water use licences, for example, would not be possible under a more ‘patchwork’ approach. The Control of Pollution Act 1974 does not provide the same degree of flexibility for simple registration and general binding rules to act as forms of control as the new regime will. Moreover it will be possible to introduce unified controls over pollution to both surface and groundwater under the Bill. Therefore, the Executive plans to repeal the regime provided for in the Control of Pollution Act 1974 and the Groundwater Regulations once new replacement regulations are in place. This proposal has received general support from consultees.

67. Consultees have pointed out that there is potential for overlap between the engineering regime provided for by the Bill and planning controls. It could be argued that the engineering controls could be achieved through planning legislation because many of them will be covered by the Town and Country Planning system in any case. However, leaving the control of such works entirely to planning would cause significant difficulties. Although many of the works and structures that would be subject to control under the Bill fall within the definition of “development” in the Town and Country Planning legislation and hence require a specific grant of planning permission, many others are “permitted development” which means a planning application is not needed. Moreover, planning controls are focused on new development and changes of use. The planning legislation would not be a suitable means of ensuring that the impact of existing engineering works and engineered structures is mitigated, where appropriate, in order to meet the environmental objectives.

Consultation

68. The Executive has made every effort to ensure that there has been an open and transparent approach towards developing the policies given effect in Part 1 of this Bill. Two consultation papers were produced and widely circulated, along with an initial introductory leaflet. The Executive also hosted a national stakeholder conference as an open forum for discussion of the legislative proposals. A variety of seminars have been held to promote awareness of the Directive and its implications for Scotland as well as to discuss how to put its requirements into practice. Bilateral meetings with stakeholders and other public sector bodies have formed an important part of the ongoing consultation process. The Executive also liaised with stakeholders and interest groups in the context of research it has carried out to help inform policy development for the Bill.
Leaflet

69. In February 2001 the Executive published an introductory leaflet on the Directive. Its principal purpose was to raise general awareness of the Directive and its implications for Scotland. 7,500 copies were issued to a wide range of interested parties and stakeholders, including to every community council, MSP, SPICe and the main public libraries in Scotland. The leaflet was also placed on the Executive’s website.

Rivers, lochs, Coasts: The Future for Scotland’s Waters

70. The first consultation paper, Rivers, Lochs, Coasts: The Future for Scotland’s Waters, was published in June 2001 with the consultation period running from 29 June until 28 September. It is available on the Scottish Executive’s web site (www.scotland.gov.uk/publications). This set out in detail the Directive’s requirements and initial proposals for meeting these in a way best suited to Scottish circumstances. 2,500 copies of this document were distributed to a total of 385 organisations and individuals, including the following:

- MSPs and SPICe;
- SEPA;
- SNH;
- water authorities;
- CoSLA and local authorities;
- private sector/business organisations including trade associations;
- academic and policy institutes including legal interests;
- equalities groups and community/civic interests;
- voluntary organisations/charities and other environmental interests;
- leisure interests.

71. 110 organisations and individuals responded. The Executive published an analysis of the responses on its website on 7 February 2002. 23 of these were from local authorities and other public bodies accounted for a further 12. Fishery organisations provided 21 of the responses with a further 9 from other land use, leisure and agricultural interests. 13 responses were received from industry organisations. 11 of the responses were from individuals. Environmental NGOs (7), academia (6) and consultants (6) provided the next significant number of responses. While comments were not received from every sector on each of the questions that the paper asked, sufficient responses were received to enable the Executive to determine the majority view on the main issues.

The Future for Scotland’s Waters: Proposals for Legislation

72. The second consultation paper, The Future for Scotland’s Waters: Proposals for Legislation, was published on 7 February 2002. It is also on the Executive’s website. It set out the Executive’s proposals for the Bill’s provisions in some detail. 2,000 copies of this paper were sent to over 500 different organisations and individuals in the same categories as the first
paper and including to all those that commented on the first paper. Consultees were given until 5 April to respond, although later responses were taken account of in the analysis.

73. 92 organisations and individuals responded to the second paper. 25 of these were from local authorities with a further 8 from other public bodies. 14 responses were received from industry organisations. Fishery organisations provided 10 of the responses with a further 5 from other land use, leisure and agricultural interests. Environmental NGOs (12) and academia (5) also provided a significant number of responses. An analysis of these responses is also available on the Executive’s website.

74. Both consultation papers and the leaflet have been well received by consultees, many of whom have been complimentary about the clarity and the accessibility of the language of all three documents. Every effort was made to avoid over technical word usage, with a full glossary being provided in the first document. Copies of all responses to both consultation papers, excluding those sent on a confidential basis, are available in both SPICe and the Scottish Executive’s library. Those kept in the latter can be viewed by the public by appointment.

**National Stakeholder’s Conference**

75. During the first consultation period, the Executive hosted a conference on 10 September 2001 to stimulate debate over the issues surrounding implementation of the Directive in Scotland. A wide range of stakeholders attended and there was a good balance between all the key interest sectors. The European Commission gave an address at the Conference, welcoming the open approach that the Executive was taking to implementation of the Directive. Workshops were held to allow particular policy proposals, such as on abstraction and pollution controls to be explored further. To allow impartial reporting and encourage shared ownership of the debate, facilitators were chosen from among the attendees. A report of the conference was prepared afterwards and circulated to attendees and other interested parties.

**Seminars with interest groups**

76. In November and December 2001, the Executive hosted three consultative seminars in conjunction with Scottish Environment LINK, an umbrella organisation for environmental bodies within Scotland. All three seminars attracted somewhere in the region of 50 delegates from across all interest groups. These explored the following issues in greater detail:

- diffuse pollution;
- the role that wetlands might play in enhancing the water environment;
- the means for ensuring proper public participation in the River Basin Planning process.

77. SEPA has also taken the lead on organising stakeholder seminars with industry, agriculture, fishery and environmental NGO interests and with local authorities. The Executive has actively participated in all of these and in other seminars and conferences hosted by other organisations, in particular, the Scottish Borders Council, the Forth Estuary Forum, the Moray Firth Partnership and Tweed Forum, to enable and encourage debate on its proposals at all stages of policy development.
Bilateral meetings with interest groups

78. The Executive has also held a number of bilateral meetings with a wide range of bodies covering the majority of sectors with an interest in Scotland’s water environment. These have included the whisky, textile and hydro-generating industries and mineral water producers. Regular meetings have taken place with Scottish Environment LINK. The Executive has also held discussions with and received advice from SEPA, SNH and Scottish Water from an early stage.

Research

79. The Executive has funded various research projects in order to support the development of its policy proposals for the Bill. These projects have provided another means for the Executive to hear and understand stakeholders views:

- **Heavily modified waters studies.** These were undertaken by the University of Dundee to look into how the heavily modified waters designation might operate in practice. The work centred on 3 case studies: the Dee and Tummel hydro-power schemes and the Forth Estuary. The Executive set up a stakeholder Advisory Group to inform the work. That group included the two main hydro-power companies in Scotland, SEPA, SNH, the Forth Ports Authority, the Forth Estuary Forum, Royal Society for the Protection of Birds Scotland and WWF Scotland.

- A **cost/benefit analysis** of the implementation of the Directive in Scotland was commissioned from WRe plc. The results of this study are reported on in paragraph 11 above and in the Financial Memorandum that accompanies this Bill.

- A study into river basin management planning in Scotland. This involved the drawing up of a **shadow river basin management plan for the SEPA South West Area.** An advisory group was established to assist with the project, consisting of the main public sector organisations with an interest in the water environment in the area including SEPA, SNH, the structure planning authorities, Scottish Water, the Association of District Salmon Fishery Boards and the Forestry Commission.

- The Executive has also recently commissioned a study to quantify the **effects of abstraction controls on major Scottish water users.** Questionnaires will be sent to a sample of businesses from all the sectors that might be affected by abstraction controls in order to obtain better information about the impact of the introduction of abstraction controls.

WATER SERVICES PROVISIONS (PART 2)

Policy objectives

80. The consultation paper *The Water Services Bill – The Executive’s Proposals*, published in March 2001, indicated the Executive’s intention to address the issue of responsibility for funding new infrastructure on the public networks. This issue was not included in the Water Industry (Scotland) Act 2002 which delivered other provisions in the consultation paper. Instead Part 2 of this Bill, Water and Sewerage Services, contains these provisions. The provisions amend existing water and sewerage legislation to address the current practice whereby Scottish Water, and previously the three water and sewerage authorities, contribute to the costs of laying mains and sewers incurred by those developing sites.
81. The amendments contained in sections 26 to 29 of the Bill concern the operation of section 1 of the Sewerage (Scotland) Act 1968 and section 6 of the Water (Scotland) Act 1980, which place on Scottish Water duties to provide sewerage and water services respectively where it is practicable to do so at reasonable cost. These duties led to the previous water authorities setting a "reasonable cost" threshold beyond which they could not justify making new connections, and this regime has been inherited by Scottish Water. This can result in Scottish Water making payments to developers in excess of £1,500 per property regardless of whether the development in question was dependent on the contribution, and regardless of the future income and cost to the Scottish Water of connecting the development to the networks.

82. Against this background, the provisions will establish a new principle: that Scottish Water should contribute to the cost of funding new infrastructure where this can be justified by reference to the revenue and costs to Scottish Water arising from the infrastructure in the future. They will also confer on Ministers order making powers to determine the detail of the means by which Scottish Water, acting on a consistent and objective basis, reaches decisions in this area. Section 26(7) will allow what could be fairly technical regulations to determine how "reasonable cost" should be calculated. These regulations will be the subject of full consultation with interested parties, such as the local authorities, SEPA, the Drinking Water Quality Regulator, the Water Industry Commissioner and representatives of developers and builders.

83. These provisions should be seen in conjunction with section 33(4)(d) of the Water Industry (Scotland) Act 2002. This has the effect of requiring the Water Industry Commissioner for Scotland, in preparing advice on Scottish Water’s charges, to include the costs to Scottish Water of making first time connections to the public networks in the interests of environment protection and public health, where this is required by Ministers. This enables decisions about first time connections to be taken as part of the exercise that sets the standards to be met by Scottish Water in the period covered by the Water Industry Commissioner’s advice on charges.

84. Taken together, the provisions in Part 2 of the Bill on funding new infrastructure and the new approach to first time connections on public health and environment protection grounds in the Water Industry (Scotland) Act 2002 will allow Scottish Water to target resources for new infrastructure in accordance with objective cost benefit analysis, or in line with public health and environment protection priorities as determined through consultation in the quality and standards process. The Executive believes that this represents a fairer and more even handed approach to this matter than the current rather arbitrary arrangements.

**Alternative approaches**

85. Consideration was given to establishing the details of the regime in primary legislation rather than through the enabling provisions in Part 2 with subsequent detailed provisions in secondary legislation. However, the Executive believes the latter approach to be the most appropriate: the subject matter is technical and likely to require flexibility for revision when, perhaps, costs change; and the detail of the regulations should be subject to consultation and involvement from stakeholders once the principles have been established through the Bill.

**Consultation**

86. These proposals were consulted on in the consultation paper *The Water Services Bill – The Executive’s Proposals*. This paper focused on creating a single all Scotland water authority,
equipped to realise efficiency savings and compete in a competitive market, and establishing a robust framework for regulation of the water industry in a competitive environment. However, the sections entitled “Contributing to developers’ costs” and “Meeting the costs of network developments” addressed funding of new infrastructure and the proposals consulted on are the basis of Part 2 of the Bill.

87. The Water Services Bill – The Executive’s Proposals was published on 23 March 2001 and the deadline for responses to be received was 13 June 2001, almost twelve weeks later. Given the high level of interest, the Executive agreed to accept contributions after that date and these continued to be received into July and early August. The consultation paper was made available on the Executive website, in certain libraries and in Stationery Office bookshops. It was also distributed widely to more than 350 individuals and organisations including:

- MSPs;
- MPs representing Scottish constituencies;
- CoSLA and local authorities;
- academic and policy institutes;
- private sector and business organisations;
- STUC and trades unions;
- voluntary organisations/charities;
- water authorities;
- Water Industry Consultative Committees;
- the Water Industry Commissioner.

88. Sixty-nine responses to The Water Services Bill – The Executive’s Proposals were received, around a quarter of which commented on this issue. For those who commented, most agreed with the Executive’s proposal to remove from the water authority the obligation to contribute to developers’ costs. They argued that it was fair that developers should pay the costs of establishing water and sewerage infrastructure. In contrast those who opposed the move said that in some cases it could lead to developments failing due to the extra costs involved and that it was unfair to put all these costs on to developers when the infrastructure would then become the property of the water authority. This criticism should be countered by the provisions in the Bill which provide for a balanced approach to be taken based on a cost benefit analysis. Concern was also expressed by a few respondents that strategic network development and liaison with planning authorities should be included. The detail of the regime will be contained in regulations which will be the subject of consultation with all those affected.
EFFEECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Impact on equal opportunities

89. Copies of the consultation paper on the Bill’s water environment provisions were sent to all the main national equality groups and no equalities issues were raised during these consultations.

90. The Bill should not be considered in isolation from existing statutory obligations in relation to equal opportunities. Public authorities have relevant statutory obligations under the Race Relations Act (RRA), the Sex Discrimination Act (SDA) and the Disability Discrimination Act 1995 (DDA). All three Acts make discrimination in service provision unlawful. The RRA also places a general duty on public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between people of different racial groups. The Commission for Racial Equality produces codes of practice to provide practical guidance to public authorities on how to fulfil that duty. SEPA and the other responsible authorities will be obliged to carry out their river basin management planning functions, including the provision of information to interested parties in accordance with this legislation and in accordance with the Access to Environmental Information Regulations as well as the Freedom of Information (Scotland) Act 2002.

91. Equality issues could arise in relation to the way that SEPA, as lead authority, carried out its consultation and participation duties under the water environment provisions of the Bill. SEPA will need to ensure that consultation on and the environmental information in river basin management plans is accessible to all equality groups, in particular disabled and ethnic minority people but also women, especially in rural areas. SEPA is already required to do this by the statutory framework described above. However, if necessary, Ministerial guidance produced under the Bill can make it clear the steps that SEPA should take to fulfil these requirements in relation to river basin management planning.

92. Part 2 of the Bill is not thought to have any impact on equal opportunities, nor were any equality issues raised during consultation on these proposals.

Impact on human rights

93. The Executive considers that the Bill is compatible with the European Convention on Human Rights.

94. The ECHR implications of the control regimes that will be introduced under section 20 of the Bill will be considered in the context of the regulations establishing those regimes. However, the Executive believes that, so long as the regimes are reasonably focused on achievement of the environmental objectives established under the Bill, issues of human rights will not arise.

95. Part 2 of the Bill is not considered to have any implications for human rights, since it provides for an even handed and systematic approach to funding new infrastructure based on cost benefit analysis. The result of this approach will be consistency of treatment for all parties: it has no adverse implications for the human rights of particular individuals or groups.
Impact on island and rural communities

96. The purpose of the water environment provisions of the Bill is to secure and promote a quality water environment in all settings – be they rural, island or urban water courses. Scottish tourism relies, amongst other things, on Scotland’s image as a country with a pristine natural environment. Many island and rural businesses, particularly food and drink businesses, also trade heavily on that image. The provisions in this Bill will ensure that this image continues to be founded in reality by protecting those waters that are already high quality and improving degraded watercourses where necessary.

97. Part 2 of the Bill is not expected to have any particular effect on island communities. Where new infrastructure is proposed on the islands, Scottish Water’s contribution will be calculated on the same basis as elsewhere in Scotland.

Impact on local government and other Scottish public authorities

98. Part 1 of the Bill will enhance SEPA’s environment protection role in a number of significant ways. Not least of these will be the new duties to carry out river basin management planning. As described above, the Executive is committed to resourcing SEPA adequately so that it can carry out these new duties effectively.

99. Other public sector authorities, including local authorities, will need to devote limited resources to becoming involved in the river basin management planning process. Some of them, notably Scottish Water, will incur compliance costs and these are discussed in more detail in the Financial Memorandum. However, all public sector authorities will benefit from being able to access better information about the state of Scotland’s water environment in the form of river basin management plans.

100. Part 2 of the Bill will only affect the division of costs for funding new infrastructure between developers and Scottish Water and as such is not expected to have an impact on local government.

Impact on sustainable development

101. Part 1 of the Bill will have an important role to play in driving forward the Executive’s sustainable development agenda. Meeting the Needs - Priorities, Actions and Targets for Sustainable Development in Scotland, published by the Executive in April 2002, set at the heart of all its programmes the premise that there is a responsibility to conserve, protect and harness all the resources – natural and social – that Scotland possesses. Part 1 of the Bill meets that responsibility in respect of the natural water environment.

102. The Executive believes that sustainable development is about the promotion of integration and holistic thinking. It is not about the economy being engaged in a pugilistic duel with the environment. Rather, development should be based on proper management of environmental resources taking into account full life cycle impacts and costs. The river basin planning system delivered by Part 1 of the Bill provides for that proper and effective management. The state of the water environment will be thoroughly assessed together with the contribution water use makes to industries and communities. On the basis of that assessment, a
mature, inclusive and accountable planning regime will determine the most effective way forward.

103. Part 1 of the Bill will also make a contribution to the Executive’s goal of eliminating environmental injustice. A very large number of communities are situated alongside rivers, lochs or coasts – indeed, the water environment was very often the decisive factor in their location in the first place – but over many years some of these communities suffered because their local river or loch became a repository of overwhelming amounts of pollution and environmental degradation. That situation has improved dramatically in recent times but Part 1 of the Bill will ensure it cannot happen again.

104. Meeting the Needs also established priorities for action on sustainable development in Scotland. One of them – resource use – is obviously at the heart of Part 1 of the Bill. Under this heading, Part 1 of the Bill will make an important, direct contribution to the indicators on water quality (9) and biodiversity (10).

105. In relation to Part 2 of the Bill, the Water Industry (Scotland) Act 2002 gave Scottish Water a general duty to act in the way best calculated to contribute to the achievement of sustainable development. This duty will inform all its decisions, including those on funding new infrastructure.