REGULATORY REFORM (SCOTLAND) BILL

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Regulatory Reform (Scotland) Bill (introduced in the Scottish Parliament on 27 March 2013) as amended at Stage 2. It has been prepared by the Scottish Government to satisfy Rule 9.7.8B of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. This Memorandum supplements the original Financial Memorandum to explain significant financial cost implications resulting from Stage 2 amendments to the Bill.

PART 1 – REGULATORY FUNCTIONS

3. This section relates to the provisions contained in Part 1 of the Bill to further improve regulatory consistency, to require regulatory functions to be exercised in a way that contributes to sustainable economic growth and to encourage regulators to adopt practices that are consistent with regulatory principles. Stage 2 amendments introduced a statutory requirement to publish any directions, guidance and Code of Practice issued.

Costs on the Scottish Administration

4. Consultation and publication costs are included in the original Financial Memorandum and it is not anticipated that the additional publication requirements would increase these significantly.

Costs on local authorities

5. There are no supplementary costs.

Costs on other bodies, individuals and businesses

6. There are no supplementary costs.

PART 1A – PRIMARY AUTHORITIES

7. This Part makes provisions whereby a business operating in several local authority areas can form a statutory partnership with one local authority (primary authority), which then provides robust and reliable advice relating to the regulatory functions of local authorities.
Costs on the Scottish Administration

8. The Bill introduces powers which enable the Scottish Ministers to nominate an authority as the primary authority in relation to a regulated person in Scotland. Costs to the Scottish Administration relate to the development of a primary authority scheme and the subsequent operation of this.

9. It is anticipated that the development of the primary authority scheme would require 0.25 x B2 and 0.25 x C2 staff at a one-off cost of £30,000. This would be supported by a 0.5 of a post funded within COSLA to help coordinate the development and delivery of the Bill’s regulatory functions. The total cost of this post is included in paragraph 6 of the original Financial Memorandum (£70,000 per annum plus associated travel and subsistence costs). Developing proposals for the scheme, associated secondary legislation and guidance would also incur consultation, analysis and publication costs which are estimated at around £15,000. The estimated cost to the Scottish Administration, excluding costs already included in the Financial Memorandum, is £45,000, which will be met from existing resources.

10. Functions regarding nomination of primary authorities and the maintenance of a register of nominations can be delegated to another person. Until the scope and detail of the scheme is fully established it is not possible to estimate or anticipate these operational costs. A full assessment of the costs and impact will be carried out in developing the scope and detail of the primary authority scheme in Scotland.

Costs on local authorities

11. The powers impose no additional costs on local authorities at this stage. There may be resource implications for local authorities entering into primary authority arrangements and the impact of any such costs and benefits will be considered during the development of the scheme and any associated legislation. The provisions enable local authorities to charge fees which represent the costs reasonably incurred in exercising primary authority functions. The scheme should therefore in overall terms be cost-neutral.

Costs on other bodies, individuals and businesses

12. The Bill provisions impose no obligatory costs on other bodies, individuals or businesses at this stage. There would be cost implications for businesses which voluntarily enter into these arrangements as primary authorities can - and will be expected to - charge fees for primary authority functions provided. However, the detailed scope and operation of the primary authority scheme are still to be developed and the associated costs will be fully considered as part of the scheme’s development and the introduction of associated secondary legislation.
PART 2 – ENVIRONMENTAL REGULATION

SECTION 32B – OFFENCES RELATING TO SUPPLY OF CARRIER BAGS: FIXED PENALTY NOTICES

Costs on the Scottish Administration

13. The measure enabling fixed penalties for carrier bag charging offences is designed to provide a proportionate and direct enforcement option and, by reducing the number of cases referred to courts, will generate considerable savings.

14. While it is difficult to estimate the likely cost of criminal enforcement action in such cases, Audit Scotland’s 2011 report, ‘An overview of Scotland’s criminal justice system’ estimated the costs of processing a summary case through the sheriff courts at around £2,100 (including legal aid; the costs of witnesses; and court running costs). Local authority enforcement costs would be additional to this figure. Civil fixed penalty action would therefore prevent such costs being incurred.

Costs on local authorities

15. It is anticipated that the measure will lead to considerably lower administration costs for local authorities, although the level of such savings cannot be quantified at present.

Costs on other bodies, individuals and businesses

16. Providing a more proportionate enforcement option will help ensure retailer compliance with carrier bag charging as local authorities will be more likely to take necessary enforcement action. This will create a level playing field, as responsible businesses will not be put at a disadvantage if competitors chose not to comply in the belief that no enforcement action would be taken. Where a business is served with a fixed penalty notice, it will have the option of paying the fine at a considerably lower cost than going to court.

SECTION 37A - SMOKE CONTROL AREAS: AUTHORISED FUELS AND EXEMPT FIREPLACES

Costs on the Scottish Administration

17. Fuels and fireplaces to be used in smoke control areas currently have to be approved by a statutory instrument made under the Clean Air Act 1993. The costs for this, in terms of staff costs in development of the regulations, are negligible. The Bill will enable the maintenance of this lists of fireplaces and fuels to be done administratively, which will immediately make granting approval considerably easier, quicker and simpler. Changing to an administrative procedure will mean that an approval can be granted soon after a fuel or fireplace passes the test. The savings are expected to reduce the staff time spent managing this process. The testing process itself, undertaken jointly across the UK administrations, remains unchanged.

Costs on local authorities

18. Delays currently lead to confusion amongst local authorities regarding the status of products which have passed the tests but not yet been approved for use. The results in staff
spending time finding the correct lists and fielding numerous calls from manufacturers and members of the public. Evidence from the Scottish Pollution Co-ordination and Control Committee (which includes representatives from Scottish local authorities) suggests that having an accurate, current list of approved fireplaces and fuels available to all electronically will reduce the need for local authority staff to handle these enquiries.

**Costs on other bodies, individuals and businesses**

19. The Bill will have significant benefits for business. Manufacturers and suppliers, often SMEs, will no longer face delays waiting for approval to market and sell their products after these products have passed the necessary tests. The Bill will also create a level playing field across the UK by rectifying the current anomaly where authorisations can be made at different times in different parts of the UK.

**SECTION 32A – CORPORATE OFFENDING**

**Costs on the Scottish Administration**

20. This section makes various amendments in relation to “vicarious liability”, such as extending the offences in sections 29 and 30 of the Bill to apply to all persons, including, for example, trusts and unincorporated associations and allowing directors of a company and similar office holders to be prosecuted for offences under sections 28, 31 and 32 of the Bill. The primary purpose of these amendments is to ensure that those who benefit from offending behaviour can be held accountable for regulatory breaches.

21. The corporate liability provisions are common provisions which already apply to most of SEPA’s main offences and the provisions in the Bill are modelled on sections 19 and 45 of the Water Resources (Scotland) Act 2013. The provisions are not expected to increase costs for SEPA.

22. The number of cases referred to court is expected to be small and will not lead to significant additional costs for the Crown Office and Procurator Fiscal Service or the Scottish Court Service. Any costs arising will be met from existing budgets.

**Costs on local authorities**

23. It is not anticipated that there will be any additional costs on local authorities arising from these amendments.

**Costs on other bodies, individuals and businesses**

24. It is not anticipated that there will be any additional costs on other bodies, individuals and businesses arising from these amendments.
SECTION 34A – AMENDMENT OF POWERS UNDER SECTION 108 OF ENVIRONMENT ACT 1995

Costs on the Scottish Administration

25. The amendments to section 108 of the Environment Act 1995 will both grant SEPA additional investigatory powers (for example the power to take original documents and records) and amend existing powers (such as removing the requirement for seven days’ notice for bringing heavy plant onto sites or entering residential property). It is not anticipated that these additional and amended powers will lead to additional costs for SEPA and, by streamlining enforcement processes, modest administrative savings may be generated.

26. The amendment to section 110 of the Environment Act 1995, relating to the assault or hindrance of a SEPA officer, may lead to additional cases being referred to the courts. The number of cases referred is expected to be small and will not lead to significant additional costs for the Crown Office and Procurator Fiscal Service or the Scottish Court Service. Any costs arising will be met from existing budgets.

Costs on local authorities

27. It is not anticipated that there will be any additional costs on local authorities arising from these amendments.

Costs on other bodies, individuals and businesses

28. It is not anticipated that there will be any additional costs on other bodies, individuals and businesses.

SCHEDULE 3 – PART 2 – ENFORCEMENT OF REGULATIONS ON ENVIRONMENTAL ACTIVITIES ETC.

Costs on the Scottish Administration

29. The litter and flytipping amendments to the Environmental Protection Act 1990 extend the organisations who can issue fixed penalties, initially to Loch Lomond & The Trossachs National Park Authority; and require alleged offenders to provide their name and address.

30. While there will be some initial cost to Loch Lomond & The Trossachs National Park Authority in preparation for and delivery of enforcement action, it will be able to decide what resources to allocate to this activity and can expect the costs to be offset by reduced clean-up costs. The amendment allows the Scottish Ministers to appoint other authorities to issue fixed penalties in the future. The exact arrangements would be considered on a case-by-case basis in consultation with the organisations concerned.

31. Closing the gap in legislation to require alleged offenders to provide their name and address to litter authorities would not create additional costs.
Costs on local authorities

32. This amendment is not expected to have a cost implication for local authorities.

Costs on other bodies, individuals and businesses

33. Reducing litter and flytipping can be expected to have a positive effect on visitor numbers and therefore businesses in the National Park.

SUMMARY OF COSTS

34. The table below summarises the additional costs that arise as a direct result of stage 2 amendments to the Bill:

<table>
<thead>
<tr>
<th>Costs arising as a direct result of the Bill</th>
<th>Scottish Government</th>
<th>Local authorities</th>
<th>Other bodies, individuals and businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staffing and administration costs of £45,000</td>
<td></td>
<td></td>
<td>Part 1A – Regulatory functions - There will be no obligatory additional costs on businesses, although where a primary authority partnership is entered into businesses may be charged for services delivered.</td>
</tr>
<tr>
<td>This comprises costs:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Part 1A Primary Authorities £45,000</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Part 2 Environmental Regulation £0</td>
<td></td>
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<tr>
<td>The provisions within Part 1A enable local authorities to charge fees which represent the costs reasonably incurred. The scheme should, therefore, in overall terms be cost-neutral.</td>
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<tr>
<td>The carrier bag and smoke control area amendments are anticipated to lead to administrative efficiencies and savings for local authorities</td>
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<tr>
<td>Part 2 – Environmental regulation – The smoke control and litter amendments are anticipated to have a positive effect on businesses. The carrier bag amendment will ensure a level playing field for business and allow businesses to pay fines at a considerably lower cost than going to court.</td>
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This document relates to the Regulatory Reform (Scotland) Bill as amended at Stage 2 (SP Bill 26A)

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