Passage of the

Water Resources (Scotland) Bill 2012

SPPB 185
Passage of the

Water Resources (Scotland) Bill 2012

SP Bill 15 (Session 4), subsequently 2013 asp 5

SPPB 185
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant Marshalled List).

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The material originally linked to in Annexe A to the Stage 1 Report on the Bill (material relating to the Subordinate Legislation Committee and Finance Committee consideration of the Bill) is included after that Report, together with additional material relating to each Committee’s consideration. The letter from the Convener of the Finance Committee to the Scottish Government dated 8 October 2012 originally included the submission to that Committee by the Scotch Whisky Association, but that submission is not included with that letter in this volume, as it already appears in the “Written submissions to the Finance Committee” section.

Annexe D to the Stage 1 Report consisted of a list of links to written evidence submitted to the Infrastructure and Capital Investment Committee – including links to the written evidence submitted by those organisations which gave oral evidence to the Committee, which was also linked to in Annexe C. All of the relevant links in Annexes C and D still work, but the submissions from those organisations which gave oral evidence are actually located only in the Annexe C section of this volume (after the relevant Official Report extract) and are not duplicated in the section where the remaining Annexe D material is located.

Web-links to external sources or documents not incorporated in this volume have not been checked prior to publication, with the result that links which were effective in the original documents may not remain effective in this volume. Links to documents
that are included in this volume now link to the appropriate place in this volume rather than back to the Scottish Parliament’s website. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all currently effective links will continue to be effective.
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Water Resources (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

PART 1
DEVELOPMENT OF WATER RESOURCES

1 Duty of the Scottish Ministers

(1) The Scottish Ministers must—

(a) take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources,

(b) do so in ways designed to contribute to the sustainable use of the resources.

(2) In fulfilling the duty under subsection (1), the Scottish Ministers are to act so far as is consistent with the proper exercise of their—

(a) functions under the 2003 Act and the 2009 Act,

(b) other functions (whether or not relating to water resources or environmental matters).

(3) In subsection (1), the reference to the value of water resources includes the economic and other benefit deriving from the use of (or any activities in relation to) the resources.

(4) In this section—

“the 2009 Act” means the Climate Change (Scotland) Act 2009,

“water resources” means wetland, inland water and transitional water as defined by section 3 of the 2003 Act.
2 Involvement of public bodies

(1) For the purpose of securing its participation in development of the kind mentioned in section 1(1), the Scottish Ministers may give a designated body directions as to the exercise of its functions.

(2) Directions under subsection (1) may be—

(a) of a general or specific character,

(b) for collective or individual application.

(3) Before giving directions under subsection (1), the Scottish Ministers are to consult each body to which they would apply.

(4) A body must comply with directions under subsection (1) applying to it.

(5) Directions under subsection (1) may vary or revoke earlier such directions.

(6) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to a designated body.

3 Designation of bodies

(1) In section 2, the references to a designated body are to any of the following—

(a) Scottish Water,

(b) the Scottish Environment Protection Agency,

(c) Scottish Natural Heritage,

(d) Scottish Enterprise,

(e) Highlands and Islands Enterprise.

(2) The Scottish Ministers may by regulations modify the list in subsection (1) by—

(a) adding a public body,

(b) removing an entry.

(3) Before making regulations under subsection (2), the Scottish Ministers are to consult each body to which the modification would relate.

(4) Regulations under subsection (2) are subject to the negative procedure.

4 Reporting after 3 years

(1) The Scottish Ministers must lay before the Scottish Parliament a report on how (and the extent to which) during the reporting period they have fulfilled the duty under section 1(1).

(2) The report under subsection (1) is to be so laid as soon as reasonably practicable after the end of the reporting period.

(3) In this section, “reporting period” means period of 3 years beginning with the day on which section 1(1) comes into force.
Water Resources (Scotland) Bill
Part 2—Control of water abstraction

PART 2

CONTROL OF WATER ABSTRACTION

Introduction

5 Qualifying abstraction

(1) In this Part, “qualifying abstraction” means abstraction of water by any person—

(a) from a particular body of inland water within Scotland, and

(b) at a rate above the relevant threshold.

(2) In this Part, “abstraction” in relation to a body of inland water has the same meaning as in section 20(3)(b) of the 2003 Act in relation to a body of water of the sort to which that section relates (see section 20(6) of that Act).

(3) In this Part, “inland water” is as defined by section 3 of the 2003 Act.

6 Prohibition arising

(1) A qualifying abstraction is prohibited if it is not—

(a) approved as described in subsection (2), or

(b) exempt by virtue of section 7.

(2) It is approved if—

(a) it has been approved by the Scottish Ministers under this Part, and

(b) their approval has not ceased to have effect by reason of—

(i) the expiry of any period specified under section 11(1)(a) (including where extended), or

(ii) the imposition of a suspension or revocation under section 14(1)(a) to (c).

7 Exemption from approval

(1) A qualifying abstraction is exempt if, on the day on which this subsection comes into force, it is subject to an authorisation under the Controlled Activities Regulations.

(2) The exemption under subsection (1) comes to an end if the authorisation subsequently—

(a) is varied so as to relate to a greater rate of abstraction than that to which it relates on the day mentioned in that subsection, or

(b) ceases to have effect for any reason, except temporarily.

(3) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of the exercise by Scottish Water of its core functions in relation to premises in Scotland.

(4) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of—

(a) generating electricity by hydro-power,

(b) irrigating agricultural or horticultural land, or

(c) operating—

(i) a fish farm, or
Water Resources (Scotland) Bill
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(ii) a quarry or a coal or other mine.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) The Scottish Ministers may by regulations—

(a) modify any of the exemptions under this section,

(b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.

8 The relevant threshold

(1) In this Part, “the relevant threshold” means—

(a) the rate of 10 megalitres of water per day, or

(b) such other rate as the Scottish Ministers may by regulations prescribe.

(2) The Scottish Ministers may by regulations prescribe a method of calculation for the purpose of subsection (1) (including by providing for an amount of water to be left out of account).

Role of Ministers

9 Application for approval

(1) Any person may apply to the Scottish Ministers for their approval of a qualifying abstraction.

(2) The Scottish Ministers may by regulations make provision about the procedure in relation to an application under subsection (1).

(3) In particular, the regulations may—

(a) specify the form in which it is to be made,

(b) fix a reasonable fee for making it,

(c) describe the information that is to accompany it,

(d) require the applicant to give public notice of it,

(e) allow interested persons to make representations about it.

10 Factors as to approval

(1) In deciding whether to approve a qualifying abstraction, the Scottish Ministers must have regard to—

(a) the applicant’s financial position,

(b) the proposed use of the water to be abstracted,

(c) any—

(i) social, economic or other benefit that may arise in Scotland (or an area within it) in consequence of the abstraction,

(ii) adverse impact of any kind that may arise in Scotland (or an area within it) in consequence of the abstraction,

(d) such additional factors as they consider to be relevant.
(2) If the Scottish Ministers do not approve a qualifying abstraction, they must give the applicant their reasons.

11 Conditions of approval

(1) If the Scottish Ministers approve a qualifying abstraction, they may—

(a) specify the period for which their approval has effect,
(b) attach conditions to their approval.

(2) Conditions under subsection (1)(b) may—

(a) impose restrictions on—
   (i) the rate at which water may be abstracted (above the relevant threshold),
   (ii) the purposes for which the water may be used,
(b) require that particular steps be taken in relation to the abstraction or any associated operations,
(c) relate to compensation for any adverse impact of a specific kind caused by the abstraction,
(d) concern such other matters as the Scottish Ministers consider to be relevant.

(3) It is the holder who is subject to any conditions attached under subsection (1)(b).

(4) Except with the Scottish Ministers’ prior consent, their approval of a qualifying abstraction is not transferable by the holder to another person.

(5) After consulting the holder, the Scottish Ministers may—

(a) under subsection (1)(a), extend any period specified under that subsection,
(b) under subsection (1)(b)—
   (i) vary or remove any conditions attached to their approval, or
   (ii) attach new conditions to their approval.

12 Additional requirements

(1) The holder must—

(a) at such times and in such form as they may require, give the Scottish Ministers a report on the holder’s activities in carrying out (or in relation to) the abstraction or any associated operations, and
(b) pay the Scottish Ministers such reasonable fee as they may by regulations fix in accordance with subsection (2)(a) (and do so as required by virtue of subsection (2)(b)).

(2) Regulations under subsection (1)(b)—

(a) must relate to costs attributable to the exercise of the Scottish Ministers’ administrative functions under this Part,
(b) may require payment of the fee annually or otherwise.

(3) In the application of subsection (2)(a), no account is to be taken of costs to which a fee fixed by virtue of section 9(3)(b) relates.
13 Advice from other bodies

(1) Subsections (3) and (4) apply where the Scottish Ministers are considering—
   (a) an application under section 9(1),
   (b) what period (if any) should be specified under section 11(1)(a), or
   (c) what conditions (if any) should be attached under section 11(1)(b).

(2) Subsection (3) does not apply if Scottish Water is the applicant.

(3) Scottish Water must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the exercise of its core functions in relation to premises in Scotland.

(4) SEPA must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the environment in Scotland.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) In subsections (3) and (4), the references to impact are to impact that may arise if the qualifying abstraction in question were to be carried out.

14 Suspension and revocation

(1) The Scottish Ministers may suspend or revoke their approval of a qualifying abstraction—
   (a) if the holder requests that they do so,
   (b) if the holder—
       (i) breaches any conditions attached under section 11(1)(b), or
       (ii) fails to comply with section 12(1), or
   (c) in such other circumstances as they may by regulations prescribe.

(2) Before imposing a suspension or revocation under subsection (1)(b) or (c), the Scottish Ministers must—
   (a) with reasons, inform the holder of their intention to do so,
   (b) allow the holder to make representations.

Appeal, monitoring and offence

15 Appeal against decision

(1) For the purpose of subsections (2) to (4), a relevant decision is one—
   (a) following an application under section 9(1), not to approve a qualifying abstraction,
   (b) to specify a period under section 11(1)(a),
   (c) to attach any conditions under section 11(1)(b), or
   (d) to impose a suspension or revocation under section 14(1)(b) or (c).

(2) The applicant or (as the case may be) holder may appeal to the sheriff against a relevant decision, if aggrieved—
Part 2—Control of water abstraction

(a) in the case to which subsection (1)(a) or (d) relates, by the making of the relevant decision,
(b) in the case to which subsection (1)(b) relates, by the shortness of the period so specified,
(c) in the case to which subsection (1)(c) relates, by the nature or terms of the conditions so attached.

(3) An appeal under subsection (2) must be made—
(a) by way of summary application,
(b) within the period of 21 days beginning with the day on which the relevant decision is duly intimated.

(4) In the appeal, the sheriff may uphold, vary or quash the relevant decision.

16 Monitoring and records

(1) The Scottish Ministers may by regulations make provision about the monitoring of—
(a) an abstraction of water from a body of inland water that is, or is suspected of being, a qualifying abstraction,
(b) any activities appearing to relate to such an abstraction of water or any associated operations.

(2) The Scottish Ministers may by regulations make provision about—
(a) the keeping of records in connection with this Part, or
(b) the extent to which such records are to be made available to them, SEPA or other interested persons.

(3) Regulations under subsection (1) or (2) may confer functions on the Scottish Ministers, SEPA or other specified persons.

17 Abstraction-related offence

(1) A person commits an offence if the person wilfully or recklessly—
(a) contravenes the prohibition constituted by section 6(1), or
(b) breaches any conditions to which the person is subject by virtue of section 11(2)(a).

(2) A person who commits an offence under subsection (1) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.

Regulations etc.

18 Procedure for regulations

(1) Regulations under section 7(6) or 8(1)(b) or (2) are subject to the affirmative procedure.
(2) Other regulations under this Part are subject to the negative procedure.
(3) Regulations under this Part may make different provision for different purposes.
19 **Controlled Activities Regulations**

(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.

(2) An authorisation under the Controlled Activities Regulations is subject to approval of a qualifying abstraction by the Scottish Ministers under this Part, so far as relevant in relation to the activities to which the authorisation relates (except where the authorisation exempts the abstraction under section 7(1)).

(3) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations.

(4) The Scottish Ministers may by regulations modify—

(a) subsections (1) to (3),

(b) section 7(1).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the 2003 Act.

20 **Other definitions for Part**

In this Part—

“holder” means person in whose favour the Scottish Ministers’ approval under this Part has effect for the time being,

“SEPA” means the Scottish Environment Protection Agency.

**PART 3**

**SCOTTISH WATER’S FUNCTIONS**

**Exercise of functions**

21 **Value of water resources**

In section 25 (Scottish Water’s general powers) of the 2002 Act, after subsection (1) there is inserted—

“(1A) The power in subsection (1) includes, in particular, the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2012).”.

22 **Development of assets**

After section 50 of the 2002 Act there is inserted—
“50A Development of assets
(1) So far as it considers is not inconsistent with the economic, efficient and
effective exercise of its core functions, Scottish Water must take reasonable
steps to develop the value of its assets and expertise.
(2) In subsection (1), the reference to the value of assets and expertise includes the
economic and other benefit deriving from the use of (or any activities in
relation to) them.
(3) In this section, “assets” means property, rights and other assets (whether
tangible or intangible).”.

23 Supporting renewable energy
After section 51 of the 2002 Act there is inserted—
“51A Supporting renewable energy
(1) So far as it considers is not inconsistent with the economic, efficient and
effective exercise of its core functions, Scottish Water must take reasonable
steps to promote the use of its assets for the generation of renewable energy.
(2) In this section, “assets” means property, rights and other assets (whether
tangible or intangible).”.

24 Meaning of core functions
In section 70 (interpretation) of the 2002 Act, for subsection (2) there is substituted—
“(2) In this Act, references to core functions, in relation to Scottish Water, are to its
functions under or by virtue of—
(a) the 1968 Act and the 1980 Act,
(b) any other enactment (including this Act) so far as relating to the
provision of water or sewerage services in Scotland.”.

Financing and borrowing

25 Subsidiaries of Scottish Water
(1) After section 42 of the 2002 Act there is inserted—
“42A Financing and borrowing: subsidiaries
(1) The Scottish Ministers may pay to a subsidiary of Scottish Water grants of
such amounts as they may determine.
(2) A subsidiary of Scottish Water may borrow—
(a) from the Scottish Ministers (and they may lend to it) sums of such
amounts as they may determine,
(b) money from any other person, whether—
(i) in sterling or otherwise,
(ii) the person is in the United Kingdom or elsewhere.
(3) A grant or loan made in pursuance of subsection (1) or (as the case may be) (2)(a) may be made subject to such conditions as the Scottish Ministers think fit.

(4) A loan made in pursuance of subsection (2)(a) is to be repaid to the Scottish Ministers at such times and by such methods (and interest on the loan is to be paid to them at such times and at such rates) as they may from time to time direct.

(5) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).

(6) This section does not apply where the subsidiary is an undertaking established under section 13(1) of the Water Services etc. (Scotland) Act 2005.

(7) In this section and section 42B(1), “subsidiary” is as defined in section 1159 of the Companies Act 2006.

42B Borrowing: Budget Acts

(1) In any financial year, the net amount of sums borrowed by Scottish Water and any subsidiary of Scottish Water in pursuance of sections 42 and 42A (taken together) must not exceed the amount specified for that year for the purposes of this section in a Budget Act.

(2) In subsection (1), “net amount” means amount of sums borrowed in the financial year less—

   (a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and

   (b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.”.

(2) In section 42 (financing and borrowing) of the 2002 Act, subsections (4) and (5) are repealed.

(3) The title of section 42 of the 2002 Act becomes “Financing and borrowing: Scottish Water”.

26 Water and sewerage undertaking

(1) Section 14 (financing, borrowing and guarantees) of the 2005 Act is amended as follows.

(2) For subsection (2) there is substituted—

   “(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking may borrow—

   (a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,

   (b) money from any other person, whether—

      (i) in sterling or otherwise,

      (ii) the person is in the United Kingdom or elsewhere.
(2A) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).”.

(3) In subsection (3), for the words “(2)(a)” there is substituted “(2)”.

(4) In subsection (6), after the word “subsection” there is inserted “(2)(b) or”.

PART 4
RAW WATER QUALITY

27 Steps for sake of quality

(1) In section 38 (entry of premises) of the 1980 Act, after subsection (8) there is inserted—

“(9) This section does not apply in relation to the purposes mentioned in section 76M(1).”.

(2) After Part VIA of the 1980 Act there is inserted—

“PART VIB
RAW WATER QUALITY

76M Power to enter

(1) Scottish Water may—

(a) enter any premises for the purposes of—

(i) assessing or monitoring the quality of any raw water, or
(ii) investigating or isolating anything that appears to be affecting, or may affect, the quality of any raw water,

(b) take any steps at the premises which are reasonably required for those purposes.

(2) Subsection (1)—

(a) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes,

(b) does not authorise entry into a house.

(3) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

(4) In subsection (1), the reference to affecting the quality of the water is to affecting its quality adversely (directly or indirectly).

(5) In this section, “raw water”—

(a) means water contained in any bodies of water—

(i) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003, or
(ii) specified by an order made under section 76R(1),

(b) also includes water that flows or drains into any bodies of water so identified or specified (or is capable of doing so).
76N  **Entry warrants**

(1) Scottish Water may apply to the sheriff for a warrant authorising it to—
   (a) enter particular premises for the purposes mentioned in section 76M(1),
   (b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—
   (a) that there are reasonable grounds for entering the premises for those purposes, and
   (b) that—
      (i) the first and second conditions are met, or
      (ii) the third condition is met.

(3) The first condition is that—
   (a) admission to the premises has been refused,
   (b) the taking of steps at the premises has been obstructed, or
   (c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) A warrant under subsection (1)—
   (a) remains valid until the purposes mentioned in section 76M(1) are fulfilled,
   (b) allows the use of reasonable force (if required),
   (c) does not authorise entry into a house.

(7) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

76O  **Approved persons**

(1) Subsection (2) applies to the authority conferred on Scottish Water by—
   (a) section 76M(1), or
   (b) a warrant under section 76N(1).

(2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in section 76M(1).

76P  **Taking steps**

(1) Subsections (2) to (6) apply in relation to the exercise of the authority mentioned in section 76O(1)(a) or (b).

(2) An approved person must, if required by the occupier of the premises—
   (a) produce evidence of the approved person’s identity (and approval), and
(b) explain the nature of the authority by (as the case may be)—
   (i) reference to section 76M, or
   (ii) showing a copy of the warrant.

(3) An approved person may take onto the premises—
   (a) other persons acting under the approved person’s direction,
   (b) such equipment as is necessary in connection with the steps that may be
taken there.

(4) The steps that may be taken by an approved person at the premises include—
   (a) carrying out tests on or taking samples from any soil, water or other
   substance found there,
   (b) installing or maintaining any testing or sampling equipment for use
   there.

(5) An approved person may enter the premises only at a reasonable time.

(6) If the premises are unoccupied, an approved person must leave them as
effectively secured against entry as they were when that person entered them.

(7) In subsections (2) to (6), “approved person” means person approved as
mentioned in section 76O(2).

76Q Obstruction offence

(1) A person commits an offence if the person intentionally obstructs an approved
person in the exercise of the authority mentioned in section 76O(1)(b).

(2) In subsection (1), “approved person” means person approved as mentioned in
section 76O(2).

(3) A person who commits an offence under subsection (1) is liable on summary
conviction to a fine not exceeding level 3 on the standard scale.

76R Specifying bodies of water

(1) For the purpose of section 76M(5)(a)(ii), the Scottish Ministers may by order
specify any bodies of water that are—
   (a) used for the abstraction of water intended for human consumption, or
   (b) intended to be used as mentioned in paragraph (a).

(2) An order under subsection (1) may specify any bodies of water by reference to
a map prepared in connection with the order (and laid along with it).

(3) The Scottish Ministers must send to the Scottish Environment Protection
Agency a copy of—
   (a) an order made under subsection (1), and
   (b) any map prepared in pursuance of subsection (2).

(4) An order under subsection (1) is subject to the negative procedure.”.
28 Agreements about activities

(1) In section 68 (agreements as to drainage) of the 1980 Act, in subsection (1), for the words “collecting, conveying, or preserving the purity of,” there is substituted “collecting or conveying”.

(2) After section 68 of the 1980 Act there is inserted—

“68A Agreements for water quality

(1) With respect to the matters mentioned in subsection (2), Scottish Water may enter into agreements with—

(a) the owners and occupiers of any land (in so far as their interest enables them to bind it), or

(b) a local authority.

(2) The matters are—

(a) the carrying out by a party to the agreement of such activities as Scottish Water considers necessary for the purpose of protecting or improving the quality of any raw water,

(b) the refraining by a party to the agreement from such activities as Scottish Water considers detrimental to the purpose of protecting or improving the quality of any raw water.

(3) In subsection (2), the references to protecting or improving the quality of water include—

(a) preventing any deterioration in the quality of the water,

(b) reducing or eliminating the amount of any treatment that the water requires in order to be wholesome.

(4) Section 68(2) applies to an agreement under this section as it applies to an agreement to which that section relates (if the agreement under this section is with the owners of the land).

(5) In this section, “raw water” has the same meaning as in section 76M.”.

PART 5
NON-DOMESTIC SERVICES

29 Deemed contracts

After section 20 of the 2005 Act there is inserted—

“Contractual matters

20A Deemed contracts

(1) Subsection (4) applies as respects the circumstances specified in subsection (2) or (3).

(2) The circumstances are that water is supplied to eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—

(a) a water services provider, and

(b) the occupier of the premises.
(3) The circumstances are that sewerage is provided to, or sewage is disposed of from, eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—

(a) a sewerage services provider, and

(b) the occupier of the premises.

(4) The relevant parties are deemed to have made arrangements with each other for the provision to the premises of the services to which subsection (2) or (as the case may be) (3) relates.

(5) The terms and conditions set by a scheme made under section 20B are incorporated into the arrangements—

(a) as if they were agreed by the relevant parties, and

(b) so far as they are relevant having regard to the purposes or areas to which they extend.

(6) The arrangements are effective as from the later of—

(a) the day on which the premises began to receive those services,

(b) the day on which the occupier acquired the premises,

(c) the day on which section 29 of the Water Resources (Scotland) Act 2012 came into force.

(7) Sections 16 to 20 have effect in relation to the arrangements as if they were made ordinarily between the relevant parties.

(8) In this section—

(a) the references to the relevant parties are to—

(i) the water services or (as the case may be) sewerage services provider that is designated in accordance with a scheme made under section 20B, and

(ii) the occupier of the premises,

(b) the references to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.

20B Commission’s scheme

(1) The Commission must make a scheme setting out the terms and conditions to be incorporated into any arrangements deemed by section 20A(4) to have been made.

(2) A scheme under this section may—

(a) specify the basis on which a particular water or sewerage services provider is to be designated in connection with section 20A(8)(a)(i),

(b) in respect of the services to which section 20A(2) or (as the case may be) (3) relates—

(i) fix the maximum charges that may be recovered by the water or sewerage services provider so designated,

(ii) allow the water or sewerage services provider so designated to set the particular charges that are to be recovered by it.
(3) A scheme under this section may—
   (a) make different provision for different purposes or areas,
   (b) for future application, revise an earlier such scheme.

(4) Before making a scheme under this section, the Commission must consult—
   (a) every water or sewerage services provider,
   (b) Scottish Water, and
   (c) the National Consumer Council.

(5) As soon as practicable after the Commission makes a scheme under this section, it must—
   (a) in a manner appropriate for bringing the scheme to the attention of
certain persons likely to be affected by it, publish a notice stating its effect,
   (b) send a copy of the scheme to—
   (i) every water or sewerage services provider,
   (ii) Scottish Water, and
   (iii) any other person who requests it.”.

30 Notification of occupancy

(1) In section 34 (orders and regulations) of the 2005 Act, after subsection (2) there is
inserted—
   “(2A) Regulations under section 20C(4) or 20D(4) are subject to the negative
procedure.”.

(2) After section 20B of the 2005 Act there is inserted—
   “20C Notification of occupancy
   (1) Subsection (2) applies to any premises—
   (a) to which water is supplied under section 16(2), or
   (b) to which sewerage is provided, or from which sewage is disposed of,
under section 16(5).

(2) The owner of the premises must give the water or sewerage services provider
the required information if there is a change in occupancy because they—
   (a) are occupied by a new occupier, or
   (b) have fallen vacant.

(3) In subsection (2), “required information” means—
   (a) the address of the premises,
   (b) the identity of the new occupier or (as the case may be) the fact that the
premises have fallen vacant,
   (c) the day on which the change in occupancy occurred.

(4) The Scottish Ministers may by regulations—
   (a) make rules for timing and procedure in connection with subsections (1)
and (2),
Part 6—Sewerage network

20D Liability for charges

(1) Subsection (2) applies if, without reasonable excuse, an owner of any premises to which section 20C(1) relates fails to comply with section 20C(2) (except where the new occupier is the owner or the premises have fallen vacant).

(2) The new occupier’s liability (if any) to the water or sewerage services provider for the relevant charges becomes shared jointly and severally with the owner.

(3) In subsection (2), “relevant charges” means charges arising by virtue of any arrangements to which section 16(1) or (as the case may be) (4) relates.

(4) The Scottish Ministers may by regulations make rules for—

(a) timing and procedure in connection with subsections (1) and (2),

(b) exempting an owner from liability under subsections (1) and (2) where, although information supplied by the owner is inaccurate or incomplete, the owner has taken prescribed steps to ensure its accuracy or completeness.”.

Part 6
Sewerage network

Discharge into public sewer

31 Priority substances etc.

(1) In section 29 (decision on application for trade effluent consent) of the 1968 Act, after paragraph (o) of subsection (3) there is inserted—

“(p) the elimination from or diminution in any trade effluent of any priority substance or pollutant.”.

(2) After section 29 there is inserted—

“29A Priority substances etc.

(1) In section 29(3)(p)—

“pollutant” has the meaning given by regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),


(2) The Scottish Ministers may by regulations modify the definitions in subsection (1).

(3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of (as the case may be)—

(a) the Regulations or Directive mentioned in subsection (1), or
(b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003 or directive concerning the same subject-matter as that Directive.

(4) Regulations under subsection (2) are subject to the negative procedure.”.

32 Substances generally

(1) In section 46 (certain matter not to be passed into drains) of the 1968 Act—

(a) in subsection (2), for the words “a fine not exceeding £40,000” there is substituted “imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both)”;

(b) after subsection (2) there is inserted—

“(3) This section does not apply in relation to the passing of fat, oil or grease from trade premises into a public sewer or a drain connecting with such a sewer.”.

(2) After section 46 there is inserted—

“46A Offence as to fat, oil or grease

(1) A person commits an offence if—

(a) the person passes, or permits to be passed, any relevant substance from trade premises into—

(i) a public sewer, or

(ii) a drain connecting with such a sewer, and

(b) the condition in subsection (2) is met.

(2) The condition is that the relevant substance (alone or in combination with any matter with which it comes, or may come, into contact)—

(a) interferes with, or is likely to interfere with, the free flow of the contents of the sewer, or

(b) adversely affects, or is likely so to affect, the treatment or disposal of the contents of the sewer.

(3) In subsections (1) and (2), “relevant substance” means fat, oil or grease.

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

46B Damage caused by fat, oil or grease

(1) Subsection (4) applies if—

(a) an owner or occupier of trade premises passes, or permits to be passed, any relevant substance from the premises into—

(i) a public sewer, or

(ii) a drain connecting with such a sewer, and
(b) the condition in subsection (2) is met.

(2) The condition is that, as a result—

(a) the sewer or drain is damaged or blocked, or

(b) the free flow of the contents of the sewer is otherwise interfered with.

(3) In subsection (1), “relevant substance” means fat, oil or grease.

(4) Scottish Water may recover, from the owner or (as the case may be) occupier, any expenses that it reasonably incurs in investigating or remedying the damage, blockage or interference.”.

33 Powers of entry

In section 48 (powers of entry) of the 1968 Act, in subsection (1)—

(a) in paragraph (f), at the beginning there is inserted “monitoring, inspecting, testing or”,

(b) after paragraph (f) there is inserted—

“(g) installing or maintaining any monitoring, testing or sampling equipment for use on the premises,

(h) investigating the source of any matter or substance (other than sewage) which is passing from the premises into—

(i) public sewers, public SUD systems or public sewage treatment works; or

(ii) sewers, SUD systems or sewage treatment works not vested in Scottish Water but forming (or forming part of) any such system as is mentioned in the said section 46(1)(b)(ii).”.

Private sewage works

34 Common maintenance

After Part II of the 1968 Act there is inserted—

“PART IIA

PRIVATE SEWAGE TREATMENT WORKS

38A Application of Part

(1) This Part applies to any private sewage treatment works if the discharge of their contents is subject to an authorisation under the Controlled Activities Regulations.

(2) In this Part, “private works” means private sewage treatment works to which this Part applies.

38B Common maintenance

(1) Subsection (2) applies where two or more persons own any private works in common.
(2) Any of the persons may take (or cause to be taken) any measures that the person considers necessary for ensuring that the works are properly maintained so that they comply with any applicable conditions under the Controlled Activities Regulations.

(3) Subsection (2) is subject to section 38C.

(4) In subsection (2), the reference to being properly maintained includes being emptied as required from time to time.

38C Notice and effect

(1) Before taking (or causing to be taken) any measures under section 38B(2), a person must serve on each of the other owners a notice—

(a) giving the person’s name and address,

(b) specifying the private works in question,

(c) in addition to describing the measures to be taken, stating—

(i) why the measures are to be taken,

(ii) when the measures are to be taken,

(d) containing—

(i) an estimate of the cost of the measures,

(ii) a note showing the proportion of that cost for which each owner would be liable (along with their names and addresses),

(e) directing the reader to this Part.

(2) The measures described in the notice may be taken under section 38B(2) at any time after the end of the period of 28 days beginning with the day on which it is duly served (or, if it is so served on different days, the last of those days).

(3) Unless the notice has expired, the measures may be so taken—

(a) with or without the agreement of any or all of the other owners,

(b) subject to any review or appeal under section 38D.

(4) The notice expires—

(a) at the end of the period of 12 months beginning with the day on which it is duly served, or

(b) if it is extended in any review or appeal under section 38D, at the end of the period of extension.

(5) A notice under subsection (1) may be served by two or more persons acting together.

38D Review of notice

(1) A person on whom a notice is served under section 38C(1) may apply to the sheriff for a review of the notice, if aggrieved by the serving of the notice or its terms.

(2) An application under subsection (1) must be made—

(a) by way of summary application,
(b) within the period of 28 days beginning with the day on which the notice is duly served.

(3) In the application, the sheriff may—
   (a) uphold, vary or quash the notice,
   (b) make any further order necessary.

(4) The sheriff’s decision in the application may be appealed to the sheriff principal, but only on a point of law.

(5) The sheriff principal’s determination of the review is final.

(6) An application under subsection (1) may be—
   (a) made by two or more persons acting together,
   (b) heard by the sheriff along with another such application relating to the same notice.

38E Recovery of cost

(1) Where measures have been taken under section 38B(2)—
   (a) each of the owners of the private works is liable for a proportion of the actual cost of taking them, and
   (b) any of those owners is entitled to recover from any of the other owners the proportion of that cost for which the other owner is liable.

(2) Subsection (1) is subject to subsections (3) to (8).

(3) The proportion of the cost mentioned in subsection (1)(a) for which each owner is liable is the equivalent to the owner’s pro indiviso share of the ownership of the private works.

(4) Liability accrues to an owner under subsection (1)(a) only when there has been duly served—
   (a) a notice under section 38C(1) relating to the measures, and
   (b) a notice under subsection (5) relating to the measures.

(5) Before exercising the entitlement to make recovery under subsection (1)(b), an owner must serve on each of the other owners a notice containing—
   (a) a statement of the cost mentioned in subsection (1)(a),
   (b) a note confirming the proportion of that cost for which each owner is liable in accordance with subsection (3) (along with their names and addresses).

(6) The entitlement of an owner to make recovery under subsection (1)(b) is not—
   (a) established unless the owner has—
      (i) incurred the cost mentioned in subsection (1)(a), and
      (ii) duly served a notice under subsection (5),
   (b) exercisable until after the end of the period of 30 days beginning with the day on which the notice under subsection (5) is duly served (or, if it is so served on different days, the last of those days).
(7) A notice under subsection (5) is valid only if it is accompanied by an invoice or other clear evidence of the cost mentioned in subsection (1)(a).

(8) Section 38D applies in relation to a notice under subsection (5) as it does in relation to one under section 38C(1), except that in relation to a notice under subsection (5) a review under section 38D is competent only if the actual cost of the measures grossly exceeds the estimate of the cost of them contained in the notice under section 38C(1).

38F Liability of owner

(1) Subsection (2) applies to a person who is liable under section 38E(1)(a).

(2) The person does not stop being so liable merely because the person ceases to be an owner of the private works.

(3) Subsection (4) applies to a person who is entitled to make recovery under section 38E(1)(b).

(4) The person does not stop being so entitled merely because the person ceases to be an owner of the private works.

38G Controlled Activities Regulations

(1) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,

(c) a reference to any conditions under the Controlled Activities Regulations is to any conditions of an authorisation under those Regulations.

(2) The Scottish Ministers may by regulations modify—

(a) subsection (1),

(b) sections 38A(1) and 38B(2).

(3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003.

(4) Regulations under subsection (2) are subject to the negative procedure.”.
PART 7
WATER SHORTAGE ORDERS

35 Proposal for order

(1) Scottish Water may propose to the Scottish Ministers that they make a water shortage order if it believes that there is—

(a) a serious deficiency of water supplies in an area, or

(b) a threat of a serious deficiency of water supplies in an area.

(2) A proposal must include—

(a) a draft water shortage order,

(b) details of—

(i) the deficiency or threat as respects the water supplies,

(ii) the steps that Scottish Water has taken to abate the deficiency or threat,

(iii) the steps (other than steps in accordance with the draft order) that Scottish Water intends to take in order to abate the deficiency or threat,

(iv) how Scottish Water considers that the taking of those steps will abate the deficiency or threat,

(v) any prior communications about the proposal between Scottish Water and persons likely to be affected by the draft order,

(c) such other information as the Scottish Ministers may reasonably require.

(3) A proposal must be accompanied by—

(a) a map or plan showing the location of—

(i) any source from which Scottish Water proposes to abstract water,

(ii) any place to which Scottish Water proposes to discharge water,

(iii) any works which Scottish Water proposes to carry out,

(iv) any premises at which Scottish Water proposes to take any other steps in order to abate the deficiency or threat,

(b) a copy of any associated application made by Scottish Water under the Controlled Activities Regulations,

(c) such other documents as the Scottish Ministers may reasonably require.

(4) The Scottish Ministers may instruct Scottish Water about the form in which a proposal is to be presented to them.

36 Making of order

(1) The Scottish Ministers may make an ordinary water shortage order in relation to an area if the first and second conditions are met.

(2) The Scottish Ministers may make an emergency water shortage order in relation to an area if the first, second and third conditions are met.

(3) The first condition is that Scottish Water has made a proposal.
(4) The second condition is that the Scottish Ministers are satisfied that the deficiency or threat in question exists.

(5) The third condition is that the Scottish Ministers are satisfied that there is a risk to the health, or social or economic well-being, of people in the area.

(6) The function of making a water shortage order is not exercisable by Scottish statutory instrument.

37 Content of order

(1) A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate—

(a) a serious deficiency of water supplies in an area, or

(b) a threat of a serious deficiency of water supplies in an area.

(2) In particular, a water shortage order may—

(a) permit Scottish Water to—

(i) abstract water from any source specified in the order,

(ii) discharge water to any place specified in the order,

(iii) carry out and maintain works on any premises specified in the order for any purpose specified in the order,

(b) impose conditions or restrictions on any abstraction or discharge of water so permitted,

(c) relax any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) restrict or prohibit the abstraction of water by any person from any source specified in the order,

(e) impose such water saving measures as are specified in the order in relation to—

(i) persons of such descriptions as are specified in the order,

(ii) such circumstances as are specified in the order.

(3) An emergency water shortage order (but not an ordinary water shortage order) may permit Scottish Water to supply water by means other than through pipes.

38 Abstraction and discharge

(1) Permission as mentioned in section 37(2)(a)(i) or (ii) allows Scottish Water to abstract or (as the case may be) discharge the water even if—

(a) it is not otherwise entitled to do so,

(b) the abstraction or discharge would interfere with any right of any other person in the water.

(2) A restriction or prohibition as mentioned in section 37(2)(d) restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.
Further provision

Schedule 1 makes further provision in relation to water shortage orders.

Appeal and offence

A person who is aggrieved by a water shortage order may appeal to the sheriff against—

(a) the making of the order,
(b) the terms of the order.

An appeal under subsection (1) must be made—

(a) by way of summary application,
(b) within the period of 14 days beginning with the day on which notice of the order is published under paragraph 6 of schedule 1.

The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

In the appeal, the sheriff may—

(a) affirm the order,
(b) direct the Scottish Ministers to—
   (i) amend the order in a specified manner,
   (ii) revoke the order wholly or partly.

The sheriff’s determination of the appeal is final, except on a point of law.

Non-compliance offence

A relevant person commits an offence if the person, without reasonable excuse, fails to comply with—

(a) a water saving measure imposed by a water shortage order, or
(b) a restriction or prohibition on the abstraction of water imposed by such an order.

In subsection (1), “relevant person” means person who is, or ought to be, aware of the order.

A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.

Recommendations and directions

If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area, it must—

(a) publicise the threat in the area, and
(b) recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat.
(2) Scottish Water must take such steps as it considers appropriate to bring its recommendation under subsection (1)(b) to the attention of people in the area.

**43 Directions on functions**

(1) The Scottish Ministers may give Scottish Water directions as to the exercise of its functions under a water shortage order.

(2) Scottish Water must comply with directions given to it under subsection (1).

(3) Directions under subsection (1) may vary or revoke earlier such directions.

(4) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to Scottish Water.

**Definitions etc.**

**44 Water saving measures**

In this Part, “water saving measures” means measures listed in schedule 2.

**45 Serious deficiencies**

The references in this Part to a serious deficiency of water supplies (whether actual or threatened) are to an insufficiency of water supplies available to Scottish Water to enable it to carry out its functions under Part II of the 1980 Act.

**46 Controlled Activities Regulations**

(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.

(2) An authorisation under the Controlled Activities Regulations is subject to any restriction or prohibition as mentioned in section 37(2)(d), so far as relevant in relation to the activities to which the authorisation relates.

(3) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,

(c) a reference to an application under the Controlled Activities Regulations is to an application in accordance with regulation 11 (including as applied by regulation 24) of those Regulations.

(4) The Scottish Ministers may by regulations modify—

(a) subsections (1) to (3),

(b) section 35(3)(b),

(c) in schedule 1, paragraphs 2(5)(b)(iii), 3(2)(b)(iii) and 7(b)(ii).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or
(b) any subsequent regulations made under section 20 of the 2003 Act.

(6) Regulations under subsection (4) are subject to the negative procedure.

47 Other expressions in Part

In this Part—

“emergency water shortage order” means one under section 36(2),

“ordinary water shortage order” means one under section 36(1),

“premises” includes any land or building,

“proposal” means proposal under section 35(1) (relating to a water shortage order),

“water shortage order” means emergency water shortage order or ordinary water shortage order.

PART 8
GENERAL PROVISIONS

Miscellaneous

48 Repeal of enactments

Schedule 3 makes minor and consequential repeals.

49 Ancillary power

(1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.

(2) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),

(b) otherwise, are subject to the negative procedure.

50 Key definitions

In this Act—

“the 1968 Act” means the Sewerage (Scotland) Act 1968,

“the 1980 Act” means the Water (Scotland) Act 1980,

“the 2002 Act” means the Water Industry (Scotland) Act 2002,

“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003,

“the 2005 Act” means the Water Services etc. (Scotland) Act 2005.
Commencement and short title

51 Commencement

(1) Except section 48 (and schedule 3), this Part comes into force on the day after Royal Assent.

(2) The other provisions of this Act (including that section (and schedule)) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

52 Short title

The short title of this Act is the Water Resources (Scotland) Act 2012.
Notice of proposal

5 1 (1) Scottish Water must publish notice of a proposal—

(a) in at least one newspaper circulating in the area to which the proposal relates, and
(b) on its website.

(2) A notice under sub-paragraph (1) must contain details of—

(a) Scottish Water’s reasons for making the proposal,

(b) the nature of the proposal, and the general effect that it would have (if implemented),

(c) any premises that Scottish Water would intend to enter in connection with the proposal (if implemented).

(3) A notice under sub-paragraph (1) must also—

(a) name a place where a copy of the proposal, and any map or plan which accompanies it, may be inspected free of charge at all reasonable hours,

(b) state that representations about the proposal may be made—

(i) in writing to the Scottish Ministers,

(ii) within the period of 14 days beginning with the day on which the notice is published.

Notifying owners etc.

2 (1) Sub-paragraph (2) applies where—

(a) a draft order would permit Scottish Water to—

(i) carry out and maintain works on any premises, or

(ii) take any other steps on any premises, and

(b) Scottish Water would not otherwise be entitled to do so.

(2) Where this sub-paragraph applies, Scottish Water must give every owner, lessee and occupier of the premises—

(a) a copy of the proposal containing the draft order,

(b) a notice—

(i) explaining the nature and general effect of the draft order,

(ii) specifying the premises and the manner in which they would be affected by the draft order,

(iii) stating that representations about the proposal may be made in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notification is given,

(c) either—
(i) a map or plan showing the location of the premises, or
(ii) details of the place where such a map or plan may be inspected.

(3) Scottish Water must make such a map or plan available for inspection at all reasonable times and free of charge.

(4) Sub-paragraph (5) applies where a draft order would restrict or prohibit the abstraction of water by any person.

(5) Where this sub-paragraph applies, Scottish Water must give the person—

(a) a copy of the proposal containing the draft order,
(b) a notice—

(i) explaining the nature and general effect of the draft order,
(ii) explaining the effect of the draft order in relation to the abstraction of water by the person,
(iii) explaining the effect of the draft order in relation to any associated authorisation under the Controlled Activities Regulations,
(iv) specifying the period for which the restriction or prohibition is likely to have effect,
(v) stating that representations about the proposal may be made in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notification is given.

(6) In this paragraph, reference to the effect of a draft order (including something permitted or otherwise done under it) is to the effect that a water shortage order would have if it were made in the same terms as the draft order.

(7) In this paragraph and paragraphs 3 to 5, “draft order” means draft water shortage order included in a proposal.

Additional notice

3 (1) Sub-paragraph (2) applies where—

(a) the Scottish Ministers intend to make a water shortage order that would restrict or prohibit the abstraction of water by any person, and
(b) because the restriction or prohibition is not mentioned in the draft order, the person has not been given a notice under paragraph 2(5).

(2) Where this sub-paragraph applies, the Scottish Ministers must give the person—

(a) a copy of the proposal containing the draft order,
(b) a notice—

(i) explaining the nature and general effect of the draft order,
(ii) explaining the effect that the restriction or prohibition would have on the abstraction of water by the person,
(iii) explaining the effect that the restriction or prohibition would have on any associated authorisation under the Controlled Activities Regulations,
(iv) specifying the period for which the restriction or prohibition is likely to have effect,
(v) stating that representations about the proposal, and the restriction or prohibition, may be made in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notification is given.

**SEPA’s advice**

4 (1) The Scottish Ministers must seek SEPA’s advice in relation to—
(a) any adverse impact on the water environment that may arise if a water shortage order were made in the same terms as the draft order,
(b) the need to restrict or prohibit the abstraction of water by any person, by reason of any such adverse impact.

(2) SEPA must give the Scottish Ministers advice sought under sub-paragraph (1).

(3) In this paragraph—
“SEPA” means the Scottish Environment Protection Agency,
“water environment” is as defined by section 3 of the 2003 Act.

**Representations and decision**

5 (1) The Scottish Ministers must not decide whether to make a water shortage order until—
(a) the period for making representations under paragraphs 1 to 3 has expired, and
(b) they have received advice under paragraph 4.

(2) Before deciding whether to make a water shortage order, the Scottish Ministers must consider—
(a) any representations timeously made,
(b) the advice so received.

(3) The Scottish Ministers may decide to—
(a) make a water shortage order in the same terms as the draft order,
(b) make such an order in such other terms as they consider appropriate,
(c) refuse to make such an order.

(4) The Scottish Ministers must notify Scottish Water of their decision under sub-paragraph (3).

**Publication of order**

6 (1) Where the Scottish Ministers make a water shortage order, Scottish Water must publish notice of that fact—
(a) in at least one newspaper circulating in the area to which the order relates,
(b) on its website, and
(c) in such other manner as it thinks fit.

(2) Where the Scottish Ministers make a water shortage order that imposes water saving measures, Scottish Water must—
(a) publish notice of that fact—
(i) in at least two newspapers circulating in the area to which the order relates,
(ii) on its website, and
(iii) in such other manner as it thinks fit, and
(b) take such steps as it considers appropriate to bring the order to the attention of persons who are subject to the water saving measures.

(3) A notice under sub-paragraph (2) must specify—
(a) the water saving measures that are imposed by the order,
(b) the persons in relation to whom the measures are imposed,
(c) the circumstances (if any) that are specified in the order in relation to the measures.

(4) If sub-paragraph (2) applies, sub-paragraph (1) does not apply.

Notice regarding abstraction

7 Where the Scottish Ministers make a water shortage order that restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person—
(a) a copy of the order,
(b) a notice—
(i) explaining the effect of the order in relation to the abstraction of water by the person,
(ii) explaining the effect of the order in relation to any associated authorisation under the Controlled Activities Regulations,
(iii) specifying the period for which the restriction or prohibition has effect.

Effect of order

8 (1) An ordinary water shortage order—
(a) has effect from the day 3 days after the day on which notice of it is published under paragraph 6,
(b) ceases to have effect on the day falling 6 months after the day on which it first has effect.

(2) An emergency water shortage order—
(a) has effect from the day after the day on which notice of it is published under paragraph 6,
(b) ceases to have effect on the day falling 3 months after the day on which it first has effect.

(3) The Scottish Ministers may extend the period for which a water shortage order has effect—
(a) on the application of Scottish Water,
(b) on more than one occasion.
(4) The period for which a water shortage order has effect may be extended (in total) by a period of not more than two months from the day on which the order would otherwise cease to have effect under sub-paragraph (1)(b) or (as the case may be) (2)(b).

**Notice of extension**

9 (1) This paragraph applies where the Scottish Ministers extend the period for which a water shortage order has effect under paragraph 8(3).

(2) Scottish Water must publish notice of the extension—

(a) in at least one newspaper circulating in the area to which the order relates,

(b) on its website, and

(c) in such other manner as it thinks fit.

(3) Where the order imposes water saving measures, Scottish Water must—

(a) publish notice of the extension—

(i) in at least two newspapers circulating in the area to which the order relates,

(ii) on its website, and

(iii) in such other manner as it thinks fit, and

(b) take such steps as it considers appropriate to bring the extension to the attention of persons who are subject to the water saving measures.

(4) A notice under sub-paragraph (3) must specify—

(a) the water saving measures that are imposed by the order,

(b) the persons in relation to whom the measures are imposed,

(c) the circumstances (if any) that are specified in the order in relation to the measures.

(5) If sub-paragraph (3) applies, sub-paragraph (2) does not apply.

(6) Where the order restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person notice of the extension.

**Appeal against extension**

10 (1) A person who is aggrieved by the extension of the period for which a water shortage order has effect under paragraph 8(3) may appeal to the sheriff.

(2) An appeal under sub-paragraph (1) must be made—

(a) by way of summary application,

(b) within the period of 14 days beginning with the day on which notice of the extension is published under paragraph 9.

(3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

(4) In the appeal, the sheriff may—

(a) affirm or quash the extension,

(b) direct the Scottish Ministers to amend the order in a specified manner.
The sheriff’s determination of the appeal is final, except on a point of law.

Review and revocation of order

11 (1) The Scottish Ministers may review a water shortage order at any time.

(2) Following such a review, the Scottish Ministers may revoke the order wholly or partly.

(3) Where the Scottish Ministers revoke the order (whether wholly or partly), Scottish Water must publish notice of that fact—

(a) in at least one newspaper circulating in the area to which the order relates,

(b) on its website, and

(c) in such other manner as it thinks fit.

(4) Where the revocation of the order (whether wholly or partly) removes a restriction or prohibition on the abstraction of water by any person, the Scottish Ministers must give the person notice of the revocation.

Power to enter

12 (1) Scottish Water may—

(a) enter any premises for the purposes of—

(i) assessing whether there is a serious deficiency, or threat of a serious deficiency, of water supplies in an area,

(ii) carrying out its functions under a water shortage order,

(iii) carrying out its functions under Part 7,

(iv) determining whether a water saving measure, or restriction or prohibition on abstraction, imposed by a water shortage order is being complied with,

(b) take any steps at the premises that are reasonably required for those purposes.

(2) Sub-paragraph (1) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes.

Entry warrants

13 (1) Scottish Water may apply to the sheriff for a warrant authorising it to—

(a) enter particular premises for the purposes mentioned in paragraph 12(1),

(b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—

(a) that there are reasonable grounds for entering the premises for those purposes, and

(b) that—

(i) the first and second conditions are met,

(ii) the third condition is met, or

(iii) the fourth condition is met.

(3) The first condition is that—
(a) admission to the premises has been refused,
(b) the taking of steps at the premises has been obstructed, or
(c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to
the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) The fourth condition is that the case is one of urgency.

(7) A warrant under sub-paragraph (1)—
(a) allows the use of reasonable force (if required),
(b) remains valid until the purposes mentioned in paragraph 12(1) are fulfilled.

Approved persons

14 (1) Sub-paragraph (2) applies to the authority conferred on Scottish Water by—
(a) paragraph 12(1), or
(b) a warrant under paragraph 13(1).

15 (2) The authority is exercisable on behalf of Scottish Water by any person approved (in
writing) by Scottish Water for the purposes mentioned in paragraph 12(1).

Taking steps

15 (1) Sub-paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in
paragraph 14(1)(a) or (b).

20 (2) An approved person must, if required by the occupier of the premises—
(a) produce evidence of the approved person’s identity (and approval), and
(b) explain the nature of the authority by (as the case may be)—
(i) reference to paragraph 12, or
(ii) showing a copy of the warrant.

25 (3) An approved person may take onto the premises—
(a) other persons acting under the approved person’s direction,
(b) such equipment as is necessary in connection with the steps that may be taken
there.

(4) The steps that may be taken by an approved person on the premises include—
(a) carrying out any inspection or test, or taking any measurement, in connection with
the purposes in paragraph 12(1),
(b) installing or maintaining any testing or sampling equipment for use there.

(5) An approved person may enter the premises only at a reasonable time.

(6) If the premises are unoccupied, an approved person must leave them as effectively
secured against entry as they were when that person entered them.

(7) In sub-paragraphs (2) to (6), “approved person” means person approved as mentioned in
paragraph 14(2).
Obstruction offence

16 (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in paragraph 14(1)(b).

(2) In sub-paragraph (1), “approved person” means person approved as mentioned in paragraph 14(2).

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Compensation

17 (1) Scottish Water must compensate any person who has sustained loss or damage in consequence of—

(a) the abstraction or discharge of water by Scottish Water in accordance with a water shortage order,

(b) a restriction or prohibition on the abstraction of water imposed by such an order,

(c) the exercise by an approved person of the authority mentioned in paragraph 14(1)(a) or (b).

(2) Sub-paragraph (1) does not apply to loss or damage that is attributable to—

(a) the fault of the person who sustained it,

(b) the imposition of a water saving measure by a water shortage order,

(c) the relaxation by such an order of any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) the supply of water by Scottish Water by means other than through pipes, in accordance with an emergency water shortage order,

(e) a serious deficiency of water supplies that the provisions of a water shortage order are intended to abate.

(3) A claim for compensation under this paragraph must be given to Scottish Water—

(a) by notice in writing,

(b) within the period of 6 months beginning with the day on which the water shortage order to which the claim relates expires.

(4) A notice under sub-paragraph (3) must state—

(a) the grounds of the claim,

(b) the amount of compensation claimed.

(5) Any question of disputed compensation under this paragraph is to be determined by the sheriff.

(6) In sub-paragraph (1)(c), “approved person” means person approved as mentioned in paragraph 14(2).
SCHEDULE 2
(introduced by section 44)

WATER SAVING MEASURES

The following are water saving measures—

5 (a) refraining from using a hosepipe or sprinkler to water a garden or plants,

(b) refraining from using a hosepipe or pressure washer to clean—

(i) a private motor vehicle,

(ii) a private leisure boat,

(iii) a domestic path, patio or other artificial outdoor surface,

10 (c) refraining from using a hosepipe to—

(i) draw water for domestic recreational use,

(ii) fill or maintain a domestic pond,

(iii) clean the exterior of domestic premises,

(d) refraining from filling or maintaining—

(i) a swimming pool,

(ii) a paddling pool,

(iii) an ornamental fountain,

(iv) a non-domestic pond,

(e) refraining from watering—

(i) outdoor plants on commercial premises,

(ii) a fairway on a golf course,

(f) refraining from using water to clean—

(i) a vehicle or boat (other than a private motor vehicle or private leisure boat),

(ii) an aircraft or railway rolling stock,

(iii) non-domestic premises,

(iv) industrial plant,

(g) refraining from operating—

(i) a mechanical vehicle washer,

(ii) a cistern in an unoccupied or closed non-domestic building,

30 (h) refraining from using water to suppress dust at non-domestic premises,

(i) such other measures as Scottish Water or (as the case may be) the Scottish Ministers consider to be necessary or expedient to abate a serious deficiency, or threat of a serious deficiency, of water supplies.
SCHEDULE 3
(introduced by section 48)

REPEAL OF ENACTMENTS

1 (1) Section 69 of the 1980 Act is repealed.
(2) In the Natural Heritage (Scotland) Act 1991—
   (a) Part III is repealed,
   (b) section 24 is repealed,
   (c) Schedules 7, 8 and 9 are repealed.

2 Section 26 of the 2003 Act is repealed.
Water Resources (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

Introduced by: Alex Neil
On: 27 June 2012
Supported by: Keith Brown
Bill type: Executive Bill
These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

WATER RESOURCES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Water Resources (Scotland) Bill introduced in the Scottish Parliament on 27 June 2012:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 15–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government 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.

THE BILL – OVERVIEW

4. This Bill takes forward the Scottish Government’s wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda.

5. The Bill makes provision in relation to Scotland’s water resources. It provides for the Scottish Ministers and Scottish Water to further the sustainable development of the value of Scotland’s water resources, and for Ministers to control large-scale abstractions from the water environment. It places new duties upon Scottish Water to develop its assets and support renewable energy, and allows its subsidiaries to borrow money directly, rather than through Scottish Water. It gives Scottish Water powers to monitor and manage the quality of water in the water environment that is likely to be used for human consumption. It provides a new mechanism for Scottish Water to deal with temporary shortages of water supplies, replacing the system of drought orders under the Natural Heritage (Scotland) Act 1991 with a new system of water shortage orders. It also allows Scottish Water to protect the public sewerage network from certain substances and facilitates the maintenance of communal private sewage treatment works, as well as making minor changes to the functioning of the retail market for non-domestic water and sewerage services. It also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003.

6. The Bill is in eight Parts:

- Part 1 places a general duty on the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. It provides for Ministers to direct designated public bodies as to their involvement in this development. It places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty.

- Part 2 provides for the Scottish Ministers to control large-scale water abstractions. It does so by prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers.
Part 3 amends the Water Industry (Scotland) Act 2002 to alter Scottish Water’s powers and duties. It clarifies that Scottish Water has the power to do anything that it considers will assist in the development of the value of Scotland’s water resources and places a duty on Scottish Water to develop the value of its assets and expertise, and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person.

Part 4 gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” in the water environment that may be used for human consumption and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of any such raw water.

Part 5 provides for deemed contracts for water and sewerage services in certain circumstances and requires the owners of commercial properties to notify licensed providers of water and sewerage services of changes in the occupancy of the premises.

Part 6 allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems such as septic tanks to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances.

Part 7 makes provision for the management of temporary water shortages. It allows Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. These orders may, among other things, authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures.

Part 8 contains general provisions such as key definitions and repeals.

THE BILL – SECTION BY SECTION

PART 1 – DEVELOPMENT OF WATER RESOURCES

Section 1 – Duty of the Scottish Ministers

7. This section places a duty upon the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. Value in this context means not only economic value but other benefits such as social or environmental benefits. The steps that Ministers take must be designed to contribute to the sustainable use of Scotland’s water resources.
8. Ministers are to act so far as is consistent with the proper exercise of their functions under the Water Environment and Water Services (Scotland) Act 2003 (which concerns protection of the water environment) and the Climate Change (Scotland) Act 2009 (which concerns the reduction of greenhouse gas emissions) and any other functions (whether or not relating to water resources or environmental matters).

9. By Scotland’s water resources is meant wetland, inland water and transitional water as those terms are defined by section 3 of the Water Environment and Water Services (Scotland) Act 2003. Broadly, this means all standing or flowing water on the surface of the land and all groundwater, and includes partly saline water in the vicinity of river mouths.

Section 2 – Involvement of public bodies

10. This section enables the Scottish Ministers to give the bodies listed in section 3(1) directions as to the exercise of their functions for the purpose of securing their participation in the development of the value of Scotland’s water resources. Ministers must consult each body which will be subject to the directions before they are made.

Section 3 – Designation of bodies

11. This section lists the bodies to which Ministers may issue directions for the purpose of securing their participation in the development of the value of Scotland’s water resources. Ministers may alter the list by regulations, after consultation with each body to which the alteration relates.

Section 4 – Reporting after 3 years

12. This section requires the Scottish Ministers to report to the Scottish Parliament after 3 years from the date on which section 1 comes into force on how they have complied with their duty to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources.

PART 2 – CONTROL OF WATER ABSTRACTION

Section 5 – Qualifying abstraction

13. Part 2 of the Bill establishes a requirement for Ministerial approval for abstractions from the water environment in Scotland that are above the specified rate threshold, and are not exempt under section 7.

14. Section 5 sets out the abstractions to which the provisions of Part 2 apply (“qualifying abstractions”). The requirement for Ministerial approval applies to an abstraction from any body of inland water in Scotland that is above the threshold rate set in section 8.

15. Inland water is defined by the Water Environment and Water Services (Scotland) Act 2003 as all standing or flowing water on the surface of the land (other than partly saline water in the vicinity of river mouths) and all groundwater within the landward limits of coastal water.
Section 6 – Prohibition arising

16. This section prohibits abstractions from inland water in Scotland above the specified threshold rate that are not approved by the Scottish Ministers or exempt from the requirement for their approval under section 7.

Section 7 – Exemption from approval

17. This section sets out which abstractions are exempt from the requirement for Ministerial approval. The following abstractions are exempt:

- abstractions authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) on the day on which section 7(1) comes into force;
- abstractions by Scottish Water for the purpose of the exercise of its core functions (see section 70(2) of the Water Industry (Scotland) Act 2002, as amended by section 24 of the Bill) in relation to premises in Scotland; and
- abstractions for the purposes listed in subsection (4). Those purposes are generating electricity by hydro-power, irrigating agricultural or horticultural land and operating a fish farm or a quarry or mine.

18. Ministers may by regulations modify an exemption, or provide for an exemption in other circumstances.

Section 8 – The relevant threshold

19. This section sets out the rate threshold above which abstractions from inland water in Scotland are subject (unless otherwise exempt) to the approval of the Scottish Ministers. The rate threshold is 10 megalitres per day, although Ministers may alter that threshold in future by regulations. One megalitre contains one million litres.

20. Ministers may by regulations provide for a different rate of abstraction, or for a method of calculation of the rate of abstraction.

Section 9 – Application for approval

21. This section provides that any person may apply to the Scottish Ministers for approval of a qualifying abstraction. The details of the procedure for making such an application may be set out by the Scottish Ministers in regulations.

Section 10 – Factors as to approval

22. This section sets out the factors to which the Scottish Ministers are to have regard when deciding whether to approve a qualifying abstraction. In contrast to the determination by SEPA of applications for the authorisation of abstractions under regulation 15 of the Water Environment (Controlled Activities) (Scotland) Regulations (S.S.I. 2011/209), which focuses on mitigating any adverse impacts on the water environment, Ministers can consider a broad range
of social, economic and other benefits and impacts when considering whether to approve a proposed abstraction. Ministers are required to give their reasons for not approving an application.

Section 11 – Conditions of approval

23. This section allows the Scottish Ministers to attach conditions to their approval, and vary such conditions. Conditions may, in particular, impose an upper limit on the rate at which water may be abstracted, and restrict the purposes for which the abstracted water may be used. The section also provides that the holder of an approval cannot transfer it to another person without the Scottish Ministers’ prior consent.

Section 12 – Additional requirements

24. This section requires the holder of an approval to report, if required, to the Scottish Ministers on activities in relation to the abstraction or any associated operations. It also obliges the holder to pay any administrative subsistence fee, whether annual or otherwise, that the Scottish Ministers may fix relating to the costs of operating the abstraction control regime (other than costs relating to applications for approval, in respect of which a separate fee may be fixed under section 9). The fee fixed under this section might cover, for example, the cost of monitoring qualifying abstractions or suspected qualifying abstractions in accordance with regulations made under section 16.

Section 13 – Advice from other bodies

25. This section allows the Scottish Ministers to request from Scottish Water and the Scottish Environment Protection Agency, and requires those bodies to give, advice concerning any impact of the proposed abstraction upon, respectively, Scottish Water’s core functions and the environment.

Section 14 – Suspension and revocation

26. This section provides for the suspension and revocation of Ministers’ approval if the holder requests it, or if the holder of the approval breaches conditions of or related to the approval. The holder must be informed of the reasons for an involuntary suspension or revocation and be given the opportunity to make representations before it is imposed.

Section 15 – Appeal against decision

27. This section provides for persons who are unhappy with the refusal of the Scottish Ministers’ approval, with the period for which it has effect, with the conditions attached to it, or with a suspension or revocation of an approval, to appeal to the sheriff for review of that decision. The sheriff may uphold or quash the decision, or vary it (by, for example, substituting a different period of validity of the approval, or removing or altering a condition attached to it). Any such appeal must be made within 21 days of the decision being intimated.
Section 16 – Monitoring and records

28. This section provides for the Scottish Ministers to make regulations about the:
   • monitoring of any qualifying abstraction, or an abstraction that is suspected of being a qualifying abstraction, and related activities and associated operations, and
   • keeping of records, and the extent to which records must be made available to the Scottish Environment Protection Agency and other interested persons.

Section 17 – Abstraction-related offence

29. This section provides that it is a criminal offence wilfully or recklessly to make a qualifying abstraction that is not approved or exempt, or wilfully or recklessly to breach any conditions which Ministers have attached to an approval as to the rate at which water may be abstracted, or the purposes for which the water may be used.

30. The maximum prescribed penalty for committing the offence is a fine not exceeding the statutory maximum (for which, see the prescribed sum in section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46) – currently £10,000) on conviction under summary procedure, or an unlimited fine where the person is convicted on indictment.

Section 18 – Procedure for regulations

31. This section provides that regulations made under this Part are subject to the negative procedure (for which, see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) with the exception of regulations which modify the list of exempt abstractions or which modify the relevant threshold, which are subject to the affirmative procedure (for which, see section 29 of the 2010 Act).

Section 19 – Controlled Activities Regulations

32. This section provides that nothing in this Part of the Bill affects any requirement for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It clarifies that an abstraction may require both an authorisation under those Regulations and approval under this Part.

33. As it is possible that the 2011 Regulations might be altered or replaced in future, the section also enables the Scottish Ministers by regulations to modify this section and section 7, should that prove necessary as a result of the 2011 Regulations being revoked or amended or new regulations be made regarding the same subject-matter.

PART 3 – SCOTTISH WATER'S FUNCTIONS

Section 21 – Value of water resources

34. This section amends section 25 (Scottish Water’s general powers) of the Water Industry (Scotland) Act 2002 to clarify that the power in section 25(1) of that Act includes the power to do anything that Scottish Water considers will assist in the development of the value of
Scotland’s water resources. Scottish Water’s powers under section 25(1) of the 2002 Act are wide (it may engage in any activity which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions), but this section puts the matter beyond doubt.

Section 22 – Development of assets

35. This section inserts a new section 50A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to develop the value (in respect of both economic and other benefits) of its assets and expertise, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions. Scottish Water’s core functions are defined by section 70(2) of the 2002 Act (which is amended by section 24 of this Bill) but are essentially the provision of water and sewerage services in Scotland.

Section 23 – Supporting renewable energy

36. This section inserts a new section 51A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to promote the use of its assets (both tangible and intangible) for the generation of renewable energy, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions (for which see section 70(2) of the 2002 Act, as amended by section 24 of the Bill).

Section 24 – Meaning of core functions

37. This section amends the definition of Scottish Water’s core functions in section 70 (interpretation) of the Water Industry (Scotland) Act 2002. Currently, Scottish Water’s core functions are its functions under or by virtue of the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980, the 2002 Act, and any other enactment (with the exception of its functions under section 25(1) and (2) of the 2002 Act). This section of the Bill alters the definition of core functions so that it is confined to the provision of water or sewerage services in Scotland under all enactments (including the 2002 Act).

Section 25 – Subsidiaries of Scottish Water

38. This section inserts new sections 42A and 42B into the Water Industry (Scotland) Act 2002. The new section 42A allows the Scottish Ministers to pay grants directly to, or lend directly to, a subsidiary of Scottish Water (and not only to Scottish Water itself). It also allows a subsidiary of Scottish Water to borrow from any other person. However, Scottish Water’s consent is required to any borrowing from the Scottish Ministers or any person other than Scottish Water itself. The section does not, however, apply to the water and sewerage undertaking established by Scottish Water under section 13 of the Water Services etc. (Scotland) Act 2005, even if that entity is a subsidiary of Scottish Water.

39. Section 42(4) and (5) of the 2002 Act provide that Scottish Water’s net borrowings in each financial year must not exceed the limit to be set in a Budget Act. In light of the fact that, under new section 42A, subsidiaries of Scottish Water may now borrow, new section 42B provides that the net amount of sums borrowed by Scottish Water and any subsidiary of it must
not exceed the amount specified in a Budget Act. Section 42(4) and (5) of the 2002 Act are repealed by this section.

40. What is a “subsidiary” for the purposes of new sections 42A and 42B of the 2002 Act is defined by reference to section 1159 of the Companies Act 2006, which provides that a company is a subsidiary of another company if that other company (a) holds a majority of the voting rights in it, (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it (or is a subsidiary of a company that is itself a subsidiary of that other company).

Section 26 – Water and sewerage undertaking

41. This section amends section 14 of the Water Services etc. (Scotland) Act 2005. The amendments will allow the business undertaking established under section 13 of the 2005 Act (Scottish Water Business Stream Limited) to borrow money from persons other than Scottish Water and the Scottish Ministers, although the consent of Scottish Water will still be required to any borrowing other than from Scottish Water itself.

PART 4 – RAW WATER QUALITY

Section 27 – Steps for sake of quality

42. This section inserts a new Part VIB into the Water (Scotland) Act 1980. The new Part gives Scottish Water powers of entry to premises (other than a house) for the purposes of assessing or monitoring the quality of raw water, and investigating or isolating anything that appears to be affecting, or may affect, the quality of such water.

43. “Raw water” is defined by new section 76M(5) of the 1980 Act. It includes water:

(a) identified in an order made under section 6(1) (identification of bodies of water used for the abstraction of drinking water) of the Water Environment and Water Services (Scotland) Act 2003 (see the Water Environment (Drinking Water Protected Areas (Scotland) Order 2007 (S.S.I. 2007/529)); or

(b) specified in an order made under new section 76R of the 1980 Act.

Essentially, raw water is water in the water environment that is intended to be abstracted for human consumption.

44. Scottish Water must give at least 24 hours’ notice of the intended entry to the occupier (if any) of the premises and, if entry is refused, the taking of steps at the premises is obstructed (or refusal or obstruction is reasonably anticipated), or the premises are unoccupied, it can apply to the sheriff for a warrant authorising entry.

45. It is an offence under new section 76Q of the 1980 Act to intentionally obstruct a person approved by Scottish Water under new section 76O of that Act in exercise of the authority to enter premises conferred by a warrant.
Section 28 – Agreements about activities

46. This section inserts a new section 68A into the Water (Scotland) Act 1980 which enables Scottish Water to enter into voluntary agreements with the owners and occupiers of land, or with local authorities, for the carrying out of activities which Scottish Water considers will help protect or improve the quality of raw water. Scottish Water may also enter into agreements whereby one party agrees to refrain from carrying out activities which Scottish Water considers detrimental to the quality of raw water.

47. As new section 68A of the 1980 Act makes provision for Scottish Water to enter into agreements with owners or occupiers of land and local authorities regarding works to protect or improve raw water quality, there is no longer any need for agreements made under section 68 of that Act to concern works for the purpose of preserving the purity of water (purity being one aspect of water quality). As a result, section 28 of the Bill amends section 68 of the 1980 Act so that agreements under section 68 may only concern drainage or the more effectual collection or conveyance of water which Scottish Water is authorised to take.

PART 5 – NON-DOMESTIC SERVICES

Section 29 – Deemed contracts

48. The Water Services etc. (Scotland) Act 2005 established a framework whereby non-domestic customers could receive water and sewerage services from any one of a number of licensed providers operating in a competitive market, with Scottish Water effectively acting as the wholesale provider of the services. This section inserts into the 2005 Act new sections 20A and 20B, which address situations where customers are receiving services without being in a contract with a particular licensed provider.

49. New section 20A of the 2005 Act provides that where water or sewerage services are provided to premises by Scottish Water as wholesale provider but, for whatever reason, there is no contract in place between a licensed provider and the occupier, a deemed contract shall exist between the occupier and whichever licensed provider is designated by the Water Industry Commission for Scotland.

50. New section 20B of the 2005 Act provides for the basis on which a provider is designated for the purposes of new section 20A, and the terms and conditions of the deemed contract, to be set out in a scheme which is to be prepared by the Water Industry Commission for Scotland.

Section 30 – Notification of occupancy

51. This section inserts new sections 20C and 20D into the Water Services etc. (Scotland) Act 2005.

52. New section 20C of the 2005 Act requires the owner of premises to which water or sewerage services are provided by a licensed provider (i.e. a provider licensed under section 6 of the 2005 Act) to provide information to the provider in respect of any change in occupancy. The
Scottish Ministers may by regulations add to the information to be provided, and make rules on the timing of and procedure for the provision of information.

53. New section 20D of the 2005 Act provides that if the owner fails without reasonable excuse to advise the provider that a new occupier has taken occupancy, then the owner becomes jointly and severally liable with the new occupier for relevant charges. The Scottish Ministers may by regulations make rules on the timing of when joint liability arises and associated procedures, and for exempting from liability owners who have taken prescribed steps to ensure the accuracy and completeness of information provided by them.

PART 6 – SEWERAGE NETWORK

Section 31 – Priority substances etc.

54. This section inserts a new paragraph (p) into subsection (3) of section 29 (decision on application for trade effluent consent) of the Sewerage (Scotland) Act 1968. The new paragraph allows Scottish Water to impose conditions as to the elimination or diminution of any priority substance or pollutant contained in trade effluent in a trade effluent consent granted under section 26 of the 1968 Act. Any occupier of trade premises who discharges trade effluent into the sewers of Scottish Water contrary to conditions imposed under Part 2 of the 1968 Act commits a criminal offence under section 24(2) of that Act.

55. The section also inserts a new section 29A into 1968 Act which defines the terms “priority substance” and “pollutant” for the purposes of new section 29(3)(p) of the 1968 Act. “Priority substance” is defined by reference to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, and “pollutant” is defined by reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). The Scottish Ministers may make consequential modifications of those definitions by regulations where the Directive or Regulations are modified.

Section 32 – Substances generally

56. This section inserts a new section 46A into the Sewerage (Scotland) Act 1968 which creates a new offence of passing, or permitting to be passed, fat, oil or grease into a public sewer or connected drain where it is liable to interfere with the free flow of the sewer’s contents or adversely affect the treatment or disposal of its contents. The offence only applies to the passing of such matter from trade premises (defined by section 59(1) of the 1968 Act as any premises used or intended to be used for carrying on any trade or industry).

57. The section also inserts a new section 46B into the 1968 Act, which allows Scottish Water to recover the cost of investigating or remedying any resulting damage to or blockage of the sewer or drain, or interference with the free flow of the sewer’s contents, from the owner or occupier responsible.
These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

58. The section amends section 46 (certain matter not to be passed into drains) of the 1968 Act to bring the maximum penalties applicable to that offence on summary conviction into line with the maximum penalties provided for in the new section 46A(4).

Section 33 – Powers of entry

59. This section amends section 48 (powers of entry) of the Sewerage (Scotland) Act 1968 to provide that Scottish Water’s powers of entry under that section extend to taking entry for the purposes of:

- monitoring, inspecting, and testing sewage (in addition to taking samples away for analysis, which is already provided for by section 48 of the 1968 Act);
- installing or maintaining monitoring, testing or sampling equipment on the premises; and
- investigating the source of any matter or substance (other than sewage) which is passing from the premises into the public sewerage network.

Section 34 – Common maintenance

60. This section inserts a new Part IIA into the Sewerage (Scotland) Act 1968. The new Part applies to private sewage treatment works which are owned in common by two or more persons and the discharge of the contents of which are authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). Private sewage treatment works such as septic tanks will usually involve some discharge to the water environment and that discharge will almost always require authorisation under the 2011 Regulations.

61. The term “private sewage treatment works” is defined in section 59 of the 1968 Act as meaning any works, apparatus or plant used for the treatment or disposal of sewage that is not vested in Scottish Water. It includes a septic tank, but not a SUD (Sustainable Urban Drainage) system.

62. At common law, where property is owned in common, the consent of all pro indiviso owners is generally required before any alterations, non-essential repairs or other works can be carried out upon it, although the grant of ownership (as recorded in the title to the property) may make different arrangements. The new Part provides that, where works need to be carried out to private sewage treatment works that are owned in common in order to comply with conditions of the works’ authorisation under the 2011 Regulations, any one proprietor may carry out (or instruct) those measures without having to secure the consent of all (or a certain proportion of) the other co-proprietors. Before doing so, the owner(s) wishing to carry out the measures must serve a notice under new section 38C of the 1968 Act upon each of the other owners, who may apply to the sheriff under new section 38D for review of the notice if they are unhappy with the measures proposed.

63. The new Part also makes provision for each of the owners of the works to be liable for a share of the cost of measures taken under new section 38B(2) of the 1968 Act, based on the same proportion that each owner’s pro indiviso share of the property bears to the whole. Provision is
made for an owner to recover the cost of measures taken, subject to the cost having been incurred and to the service of a notice under new section 38E.

64. Provision is made in new section 38F of the 1968 Act for liability for the cost of measures to continue notwithstanding a change in ownership of any property connected to the private sewage treatment works.

65. New section 38G of the 1968 Act provides for a definition for the 2011 Regulations and related matters. The Scottish Ministers may make consequential modifications of that definition by regulations.

PART 7 – WATER SHORTAGE ORDERS

Section 35 – Proposal for order

66. This section makes provision for Scottish Water to propose to the Scottish Ministers that they (the Scottish Ministers) make an administrative water shortage order. Scottish Water may only make such a proposal if it believes that there is a serious deficiency (or threatened serious deficiency) of water supplies in an area. The section sets out the information that must be included in and accompany the proposal.

67. The provision for water shortage orders replaces the provision for drought orders in the Natural Heritage (Scotland) Act 1991 (the relevant provisions of which are repealed by section 48 and schedule 3).

Section 36 – Making of order

68. This section enables the Scottish Ministers to make two different types of water shortage order: an ordinary water shortage order and an emergency water shortage order. In order for Ministers to make an ordinary water shortage order, Scottish Water must have made a proposal and Ministers must be satisfied that the deficiency or threat in question exists. In order to make an emergency water shortage order, Ministers must, in addition, be satisfied that there is a risk to the health, or social or economic well-being, of people in the area affected. The differences in the effect of an ordinary water shortage order and an emergency water shortage order are that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (see section 37(3)), and an emergency water shortage order comes into force more quickly after it is made and is of shorter duration (see paragraph 8 of schedule 1).

Section 37 – Content of order

69. This section sets out what a water shortage order may contain. A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate a serious deficiency (or threatened serious deficiency) of water supplies in an area. Examples of what a water shortage order may do are given. Subsection (3) provides that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (which an ordinary water shortage order may not do).
Section 38 – Abstraction and discharge

70. This section clarifies that where the Scottish Ministers through a water shortage order permit Scottish Water to abstract water from or discharge it to a particular place, that permission gives Scottish Water legal entitlement to do so, even if, for example, a person has exclusive rights to abstract from the water body in question. It does not, however, override any requirement for an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (see section 46(1)), so Scottish Water will still require to apply for and obtain authorisation from the Scottish Environmental Protection Agency under the 2011 Regulations, if those regulations so require it.

71. The section also clarifies that a restriction or prohibition on the abstraction of water under a water shortage order restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

Section 39 – Further provision

72. This section introduces schedule 1, which makes more detailed provision in relation to procedural and other matters concerning water shortage orders.

Section 40 – Appeal against order

73. This section enables a person who is unhappy with a water shortage order to appeal to the sheriff, who may affirm the order or direct the Scottish Ministers to amend or revoke it. Any appeal must be made within 14 days from the day on which notice of the order is published. The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

Section 41 – Non-compliance offence

74. This section makes it an offence to fail, without reasonable excuse, to comply with a water saving measure imposed by a water shortage order, or a restriction or prohibition on the abstraction of water imposed by such an order.

Section 42 – Recommendations issuable

75. This section obliges Scottish Water to publicise the fact that it considers there to be a threatened serious deficiency of water supplies in an area and to recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat. Unlike water saving measures imposed by a water shortage order, it is not a criminal offence to fail to comply with water saving measures recommended under this section.

Section 43 – Directions on functions

76. This section provides for the Scottish Ministers to be able to give directions to Scottish Water regarding the exercise of its functions under a water shortage order.
These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

Section 44 – Water saving measures

77. This section introduces schedule 2, which lists the water saving measures that may be recommended under section 42, or imposed in a water shortage order under section 37(2)(e).

Section 45 – Serious deficiencies

78. This section defines a serious deficiency of water supplies by reference to there being insufficient water to enable Scottish Water to carry out its functions under Part II of the Water (Scotland) Act 1980, which concern the supply of wholesome water for domestic and non-domestic purposes.

Section 46 – Controlled Activities Regulations

79. This section makes it clear that, although Ministers may permit Scottish Water to make an abstraction or take other measures in connection with a water shortage order, that permission does not absolve Scottish Water of the need to separately obtain any authorisation required under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It also provides that Scottish Ministers may make consequential modifications of that definition by regulations.

80. Scottish Water will need to apply separately for any authorisation that it may need under the 2011 Regulations, and is required by section 35(3)(b) to provide a copy of any associated application under those Regulations to Ministers when proposing a water shortage order.

81. This section confirms that any restriction or prohibition on the abstraction of water imposed by a water shortage order overrides any authorisation of that abstraction under the 2011 Regulations, while the water shortage order is in effect.

PART 8 – GENERAL PROVISIONS

Section 48 – Repeal of enactments

82. This section introduces schedule 3 which makes minor and consequential repeals.

Section 49 – Ancillary power

83. This section allows the Scottish Ministers by regulations to make supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Bill.

SCHEDULES

Schedule 1 – Water shortage orders

84. Paragraph 1 requires Scottish Water to publish a public notice of a proposal for a water shortage order. The notice must state that representations about the proposal may be made in writing to the Scottish Ministers within 14 days of publication of the notice.
85. Paragraph 2 makes provision for owners, lessees and occupiers of premises upon which a water shortage order would permit Scottish Water to carry out works to receive notice of the proposal. It also requires Scottish Water to give notice to a person whose right to abstract water would be restricted or prohibited by the order. Such persons may make representations about the proposal in writing to the Scottish Ministers within 14 days of notification being given.

86. Paragraph 3 requires the Scottish Ministers to give a person notice of a proposal where they intend to make a water shortage order that would restrict or prohibit the abstraction of water by that person, but the person has not already received notice because the restriction or prohibition was not included in the draft order.

87. Paragraph 4 makes provision for Ministers to seek SEPA’s advice in relation to adverse impacts upon the water environment and the need, if any, to restrict or prohibit the abstraction of water by any person.

88. Paragraph 5 requires the Scottish Ministers to consider representations made and advice received before making their decision. It also provides that they may make a water shortage order in the same terms as the draft order contained in Scottish Water’s proposal, make an order in different terms to the draft order, or refuse to make an order.

89. Paragraph 6 provides for publication of the order. Where the order imposes water saving measures, the publication requirements are more onerous in order to increase the likelihood of bringing the measures to the attention of those liable to be affected by them.

90. Where a water shortage order restricts or prohibits the abstraction of water by a person, paragraph 7 provides for direct service of notice of the water shortage order upon the abstractor affected.

91. Paragraph 8 makes provision for the coming into effect and duration of water shortage orders. Ordinary water shortage orders come into effect 3 days after notice of them is published under paragraph 6, and have effect for 6 months. Emergency water shortage orders come into effect on the day after notice of them is published, and have effect for 3 months. The Scottish Ministers can extend the duration of both types of order by up to two months.

92. Paragraph 9 makes provision for the publication of notice of any extension of a water shortage order, with more onerous publication requirements where the order extended imposes water saving measures. Where the order extended restricts or prohibits the abstraction of water by a person, the Scottish Ministers are required to give individual notice to that person.

93. Paragraph 10 provides for anyone aggrieved by an extension of a water shortage order to appeal to the sheriff.

94. Paragraph 11 allows Ministers to review a water shortage order at any time and, if they consider it appropriate following such a review, to revoke it in whole or in part. Provision is made for public notice of the revocation to be given, and for the giving of individual notice to
any persons who were subject to a restriction upon, or prohibition from, abstracting that has been wholly or partly removed by the revocation.

95. Paragraphs 12 to 16 give Scottish Water powers of entry, by court warrant if necessary, in relation to assessing the need for water shortage orders, implementing them, and enforcing them. It is an offence to obstruct a person who is exercising authority to enter conferred by a warrant.

96. Paragraph 17 provides for Scottish Water to pay compensation to anyone who has sustained loss or damage as a result of measures undertaken, or restrictions or prohibitions imposed, in accordance with a water shortage order, or entry onto premises by an authorised person. Compensation is not payable if the loss or damage is caused by the fault of the person who sustains it, if it results from the imposition of a water saving measure, if it results from changes (sanctioned by the order) in the way Scottish Water supplies water, or if it is caused by the deficiency of water supplies that the order is intended to abate. If the parties cannot agree whether compensation is payable or the appropriate amount of compensation, the dispute can be determined by a sheriff.

Schedule 2 – Water saving measures

97. Schedule 2 lists the water saving measures that may be recommended by Scottish Water under section 42, or imposed by a water shortage order under section 37(2)(e).

Schedule 3 – Repeal of enactments

98. This schedule repeals section 69 (power to restrict use of hosepipes) of the Water (Scotland) Act 1980 Act and certain provisions of the Natural Heritage (Scotland) Act 1991 which concern drought orders. The provisions of the 1991 Act regarding drought orders are replaced by the provisions of this Bill regarding water shortage orders.

99. The schedule also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003, which requires the Scottish Ministers to report to the Scottish Parliament annually regarding compliance with the Water Framework Directive (2000/60/EC) and regarding progress towards achieving the environmental objectives for water status that member states are required to set under that Directive.

FINANCIAL MEMORANDUM

INTRODUCTION

100. This document relates to the Water Resources (Scotland) Bill introduced in the Scottish Parliament on 27 June 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.
101. This Bill takes forward the Scottish Government’s wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda. The Bill is an essential keystone to this objective and sets a framework to develop the value of Scotland’s water resources, Scotland’s water knowledge and Scotland’s water technology. The successful achievement of this vision will be to the benefit of the people of Scotland and more widely will contribute to the better global management of water, the planet’s most precious resource. The increase in the value should be measured widely in economic, environmental and social terms. It will be secured by public bodies, private companies and our academic and third sectors through new duties and responsibilities and improvements in how we manage water resources.

102. The Scottish Government considers that of fundamental importance to the Hydro Nation agenda is the good management of Scotland’s water resources. It is therefore sensible to seek to legislate to improve that management wherever possible, in line with new knowledge, procedures and approaches. This Bill provides an opportunity to consider and update existing law and Scottish Ministers have listened to stakeholders in developing the new provisions. Those parts of the Bill which update the law for example in relation to catchment management and priority substances, aim to reflect a more proactive approach to management of the water environment. The Bill is in eight Parts and these are described below:

   Part 1: duty of Scottish Ministers to develop the value of Scotland’s water resources
   Part 2: a new approval regime for water abstraction
   Part 3: duty of Scottish Water to develop the value of its assets, and provision about grants and loans to its subsidiaries
   Part 4: protecting raw water sources
   Part 5: contracts for non-domestic services
   Part 6: discharge into public sewers, and maintenance of private sewage treatment works
   Part 7: water shortage orders
   Part 8: general provisions, repeals and commencement.

103. This Memorandum considers the cost implications of the whole Bill for the Scottish Government and local authorities, before looking at other key bodies in the context of each Part of the Bill. Many of the requirements under the Bill will be delivered by the aligning of existing work plans and budgets with the new duties. Other areas of the Bill are enabling in nature and hence do not directly impose costs. As a consequence the concept of margins of uncertainty does not apply as it would when new costs are imposed. Where new costs are imposed by the Bill, such as the requirement of landlords to notify licensed providers, a range of costs is provided to demonstrate the uncertainty in the estimate.

104. Scottish Water features in several parts of the Bill. It is predominantly financed by customer charges, the levels of which are set by the Water Industry Commission for Scotland.
The Scottish Government also provides loan financing to support an element of the capital investment programme.

**COSTS ON THE SCOTTISH GOVERNMENT**

105. Part 1 of the Bill places a duty on Scottish Ministers to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. In February 2012 the Scottish Ministers published “Scotland The Hydro Nation Prospectus and Proposals for Legislation” which set out the first steps they intend to take to deliver this duty. These steps cover economic development, international action and research excellence. Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance these steps. This expenditure, which is already planned, supports the Hydro Nation agenda and is not directly attributable to the Bill. However, following the passage of the Bill, this expenditure will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland’s water resources. Key expenditure items to support these steps will include up to £1 million per annum for international development grants for water related projects in developing nations under the Climate Justice Fund. The remaining £2 million will support delivery of Hydro Nation Saltire fellowships and post-graduate posts. It will also allow the development of water technology innovation facilities to accelerate water technologies to market and support a range of events and projects including establishing the Hydro Nation Forum to bring together key players to shape the water resources agenda in Scotland.

106. The expenditure will directly benefit the Scottish economy by supporting the development and deployment of new technologies and extending the scope and scale of research on water related subjects. The spending is also expected to raise the profile of Scotland as a Hydro Nation thus increasing our influence on global water management issues. The international development spending on water projects is a practical contribution to Scotland’s commitment to global climate justice and better global water governance.

107. As a result of the Bill, staffing and administrative costs of £100,000 annually will be incurred on policy implementation and reporting going forwards. These costs will be subsumed within existing budgets for administering the water industry in Scotland.

108. The Scottish Ministers already fund academic work on water issues. A Centre of Expertise on Water has been commissioned and receives funding of £1m a year. A further £2.2 million per annum is provided for strategic research on Water and Renewable Energy – both of these expenditures, while not a direct consequence of the Bill, support the Hydro Nation agenda.

109. Part 2 of the Bill prohibits qualifying abstractions over the 10 megalitres threshold unless they have been approved by the Scottish Ministers and sets out a framework by which persons may apply for this approval. There are currently less than twenty inland water abstractions over the proposed threshold. As a result of growth in the distilling industry and the potential for large water users to be attracted to Scotland it is estimated that there will be between five to ten applications to Ministers over the next five years for new or increased abstractions. The staffing, administrative and enforcement costs associated with these applications is estimated to be £15,000 annually. These costs may be recovered from application and on-going fees to abstractors. Where they are not, the costs will be subsumed within existing budgets for
administering the water industry in Scotland. Due to climate change and population growth increasing the demand for fresh water, Scotland will become an increasingly attractive place for large water users to locate to. Over time it is therefore expected that the number of applications will increase.

110. Part 3 of the Bill provides Scottish Ministers with the powers to be able to lend or make grants to Scottish Water’s subsidiaries. With the permission of Ministers, Scottish Water and, with the exception of Business Stream, its subsidiaries already have powers to borrow from third parties. For consistency, Business Stream is also provided with the power to borrow from a third party. These are enabling powers and do not impose any direct costs on Scottish Ministers. Under Part 7 of the Bill, Scottish Ministers will need to consider any applications from Scottish Water for water shortage orders. The costs of considering any applications, which are expected to be infrequent, will be subsumed within existing budgets for administering the water industry in Scotland. The repeal of section 26 of the Water Environment and Water Services (Scotland) Act 2003 in schedule 3 to the Bill will lead to some minor administrative savings.

COSTS ON LOCAL AUTHORITIES

111. Local authorities are not given any specific role or responsibility by the Bill. There are, therefore, no direct costs falling to local authorities specifically arising from the Bill. Local authorities are named as a party that Scottish Water may enter into agreements with for the purpose of protecting or improving the quality of any raw water – this is an enabling power and does not impose any duty or burden, and therefore cost on local authorities. Some local authorities may hold trade effluent consents from Scottish Water, which enable them to discharge trade effluent to the sewer. The provisions of the Bill clarify that Scottish Water can include conditions about priority substances in trade effluent consents. Further explanation of these provisions is provided below – at this stage it is not possible to quantify the impact on any specific local authority, if any, that will result from this provision.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

112. There will be no costs falling on private individuals as a result of the Bill, other than those that may arise from particular water shortage orders under Part 7 of the Bill.

113. The costs falling on other bodies and businesses are presented according to the Parts of the Bill, as follows:

Part 1: Development of water resources

114. Part 1 of the Bill places a duty on Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. It also provides that Scottish Ministers may give a designated body directions for the purpose of securing its participation and identifies five public bodies as designated bodies, these being: Scottish Water, Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Scottish Enterprise and Highlands & Islands Enterprise (HIE). This Part of the Bill does not impose any new duties on these bodies, so there are no specific costs imposed directly by the Bill under this Part. It is intended that the Hydro Nation agenda will be
delivered by these designated bodies through aligning of the existing budgets and work plans with the Hydro Nation agenda.

115. To deliver its existing statutory functions Scottish Water spends in excess of £1bn per year, employing 3500 staff. Scottish Water’s business activity is focused on water resource management through the supply of treated drinking water to customers and drainage and treatment of wastewater and sludge. Scottish Water has commercial subsidiaries that are developing their response to the wider Hydro Nation agenda – the investment plans associated with these are set out below.

116. SEPA’s corporate plan identifies water as a key priority. Approximately £31 million annually of its revenue budget is spent delivering its existing statutory duties on water activities e.g. regulation, monitoring, river basin management planning, representing around 40% of the overall budget. These costs and activities support the development of Scotland’s water resources and underpin the wider Hydro Nation agenda. Additionally, SEPA’s work on flooding (which is not included in the costs above) further contributes to the Hydro Nation agenda.

117. SNH is charged with looking after Scotland’s wildlife, habitats and landscapes. To deliver its existing statutory functions SNH has a Freshwater and Wetlands Team (8 FTEs) plus senior management, whose work is directly aligned with the development of Scotland’s water resources. Additionally, SNH has a number of staff across the business who are contributing to the wider Hydro Nation agenda e.g. casework relating to assessment of hydro schemes and partnership working on freshwater designated sites. This amounts to another 8 FTEs.

118. Scottish Enterprise is well-placed to support businesses who wish to develop the value of Scotland’s water resources. The workload is distributed across the organisation, as companies who have an interest in water often do not identify themselves directly as “water companies” as such; they may be textiles, food processing, biosciences, technology or consultancy companies who use or offer expertise in the water sector. The wider Hydro Nation agenda provides impetus to the work that Scottish Enterprise is undertaking with these companies.

119. The Environmental Clean Technologies Strategic Partnership (ECT Partnership), which consists of the Enterprise Networks, SEPA, the Scottish Funding Council and the Scottish Government, delivers coordinated support for businesses and academia within the emerging Environmental and Clean Technologies sector to accelerate the development of new technologies. HIE is the lead agency on behalf of the ECT Partnership for the Water sub-sector. On behalf of the ECT Partnership, HIE is currently project managing a number of research projects relating to the water sector and has commenced a feasibility study for a water innovation centre in Scotland. This activity is directly aligned with the wider Hydro Nation agenda. Activity in these areas is led by the Director of Energy and Low Carbon with support from lead managers and other staff.

Part 2: Control of water abstraction

120. The Bill prohibits qualifying abstractions over a threshold unless they have been approved by the Scottish Ministers and enables them in regulations to make provision about the procedure in relation to an application. If the Scottish Ministers approve an abstraction they may
attach conditions to it. It is estimated that between five and ten applications will be made over the next five years.

121. The costs of applying for an application will be determined by the procedures set down in regulations – these costs will be set out in a Business Regulatory Impact Assessment that will accompany those regulations. The costs of complying with any conditions that Ministers attach to their approval, if any, will vary on a case by case basis.

122. The Bill includes regulation making powers that enable Scottish Ministers to fix a reasonable fee for an application and an on-going annual fee. If a fee level for either is set it will only be to recover the administrative costs of considering applications and maintaining the abstraction regime. The costs and impact of any such regulations will be set out in a Business Regulatory Impact Assessment that will accompany them.

Part 3: Scottish Water’s functions

123. This Part of the Bill:
• clarifies that Scottish Water has the general power to do anything to assist in the development of the value of Scotland’s water resources;
• requires Scottish Water to take all reasonable steps that it considers necessary to develop the value of its assets;
• requires Scottish Water to promote and facilitate the use of its assets for renewable energy generation;
• distinguishes between Scottish Water’s core functions, these being the provision of water and sewerage services, and its other functions;
• enables Ministers to makes grants and lend directly to a Scottish Water subsidiary; and
• enables Business Stream to borrow from sources other than the Scottish Government and Scottish Water, the only sources permitted under current legislation.

124. Clarification of Scottish Water’s general powers and functions does not generate any new costs, nor do the enabling powers for granting or lending to Scottish Water subsidiaries.

125. In response to the Hydro Nation agenda, and to deliver the new functions imposed by this Part of the Bill, Scottish Water has developed a Growth Plan. The 2012 version of this plan anticipates £44 million of direct investment over 2012/13 and the following two years primarily in renewable energy and financed from internally generated resources. All such schemes will only be taken forward where there is a strong commercial case for doing so. As a consequence over time these investments should generate income that is sufficient to cover the initial investment cost, the operating costs of these schemes and a commercial return on capital.
Part 4: Raw water quality

126. The Bill enables Scottish Water to undertake activities in drinking water catchments to protect sources of drinking water. Specifically, the Bill provides powers for Scottish Water to access any premises other than a house to inspect and monitor factors that may be affecting the quality of raw water and to enter into agreements with owners and occupiers of land to implement best practice to protect drinking water sources. The Bill provides the opportunity to make considerable cost savings on treatment and capital investment costs.

127. Scottish Water’s costs for visiting a drinking water catchment, taking samples and analysing these samples range from £50k – £200k per catchment annually, depending on the physical size of the catchment and its remoteness from the laboratory. Any new costs incurred by Scottish Water in this regard will be covered by reduced operational costs – see below.

128. The costs to Scottish Water of entering into agreements with landowners to implement best practice to protect drinking water sources will vary depending on the nature of the agreement. Scottish Water has budgeted to spend £1.2 million per year across 7 catchments in the period to 2015.

129. Implementation of best practice to protect drinking water sources can reduce operational expenditure as a result of lower levels of treatment being required and can save the need for capital expenditure when additional treatment steps can be avoided. Scottish Water has estimated that in one large drinking water catchment, implementing best practice could save upwards of £10m over a 25 year period. The economic case will be different for each catchment and water treatment works.

Part 5: Non-domestic services

130. The Bill makes provision for deemed contracts to exist between the owner or tenants of commercial premises and a licensed provider (LP) for water and wastewater services, where no formal contract exists. The introduction of deemed contracts is a legal and administrative tool to ensure there is clarity as to the legal relationship between the LP of water and wastewater services and non-domestic customers. It is estimated that LPs could collectively save in the region of £30,000 to £60,000 per annum (at 2011 prices) in reduced administrative costs by the elimination of enquiries on this subject as a result of the Bill. While it is not possible to quantify them as they vary case by case, there will also be savings from reductions in escalation costs, late payment costs, legal costs for recovery of charges and any unrecoverable charges that have to be written off.

131. The Bill also provides that landlords of commercial properties have an obligation to inform the relevant LP of any change in the occupancy of their property. While the required details to be provided are simple, landlords will incur an administration cost to fulfil this obligation. However, as landlords have similar obligations for other utilities, these costs are considered to be marginal. It is estimated that the total cost across Scotland will be between £90,000 and £250,000 per year once the Bill has been commenced.
132. The introduction of an obligation to inform is designed to reduce the amount of bad debt that exists within the non-household market. Bad debt is a cost to LPs for which all non-household customers contribute. Based on analysis of the levels of bad debt, we estimate that the obligation to inform provision in the Bill will bring a benefit to the non-household market in Scotland of between £528,000 and £2.64m per year once the Bill has been commenced.

Part 6: Sewerage network

Discharge into public sewer

133. The Priority Substances Directive, 2008/105/EC, sets environmental quality standards for surface waters to achieve a target of “Good Chemical Status” for certain named “Priority Substances”. It is a daughter directive of the Water Framework Directive, 2000/60/EC, which requires good status to be achieved in all water bodies by 2015 unless it is disproportionately costly or technically infeasible to do so. The designated priority substances are a wide range of chemicals that are considered to be detrimental to the water environment or organisms that live in the water environment. The European Commission has a rolling programme to designate new priority substances. Costs will arise in relation to the daughter directive and work is on-going within Scotland to establish the most cost effective way of delivering this European directive, with an emphasis on control of pollution at source and the “polluter pays” principle.

134. The Bill clarifies that trade effluent consents issued by Scottish Water can identify “priority substances” and a range of other substances that are subject to control under the Water Framework Directive. It also provides for Scottish Water to have powers of entry for monitoring, sampling and inspecting inputs into the sewerage network and establishes a specific offence for the discharge of fats, oils and grease to the foul sewer from non-domestic dwellings.

135. Work is on-going to establish the loadings of “priority substances” in the sewerage network by Scottish Water and SEPA is working to establish the extent to which priority substances are affecting the water environment. Additionally, SEPA is considering the extent to which measures are required to achieve “Good Chemical Status” and what those measures would be, including the use of discharge consents under a Water Environment (Controlled Activities) Regulations 2011 (CAR) licence on Scottish Water. Only after SEPA has completed this work will Scottish Water be in a position to assess, where a waste water treatment works would fail its revised discharge consent, whether it is more cost effective to install additional treatment (i.e. an end of pipe solution) or to limit the discharge that is permitted in its trade effluent consents (amongst other measures that will appear in the River Basin Management Plans). Initial estimates by Scottish Water of the investment requirements for end of pipe solutions at waste water treatment works receiving trade effluent suggests they could be as high as £1.8bn over the next 25 years.

136. In most situations, it is likely that source control by producers will be far more cost effective than end of pipe solutions at Scottish Water's waste water treatment works. The costs for businesses with a trade effluent consent from Scottish Water, which may be reviewed to include priority and other substances, cannot be estimated at this time as all the components of the costs are not yet fully known i.e. which waters in the environment need to be improved, which wastewater treatment works discharge into these waters and hence which trade effluent discharges are affected.
137. A trader may be required to implement pre-treatment of their discharge in order to satisfy the conditions of a trade effluent consent. The costs of this will vary depending on the substance to be treated and the volumes of the trade effluent being discharged.

138. The Bill provides for Scottish Water to have powers of entry for proactive monitoring, sampling and inspecting inputs into the sewerage network. Sewerage networks are open systems which are very difficult to “police”. Priority substances can enter directly via trade effluent discharges (e.g. hospitals, industrial plants etc.), via surface water drains (e.g. road runoff, drainage from premises) or from domestic inputs (cosmetics, pharmaceuticals, flushing of paints and solvents and matter excreted from the human body). The estimated additional cost as a result of the provisions in the Bill of undertaking pro-active catchment inspection, analysis and advisory/enforcement work with dischargers to the network is in the region of £1m per annum – this would be met from customer charges and would begin to be incurred as soon as the Bill is commenced. It is within the parameters of the allowed revenue determined by the WICS.

139. The Bill clarifies that the discharge of fats, oils and greases into the foul sewer is an offence. Fats, oils and greases are contributors to chokes, particularly in pumping stations. There will be savings to Scottish Water’s operating costs arising from this clarification but it is too early to assess the scale of these savings.

Private sewage works

140. Where a septic tank is owned communally by a number of properties, the Bill will enable one or more owners to employ septic tank emptying services and recover the costs from the shared owners. Septic tank emptying is necessary in order to keep it in good working order and ultimately protect the water environment from human pollution. The requirement is not new; all septic tank owners have this responsibility. Consequently, the Bill does not impose new costs on septic tank owners – instead it provides a route to achieve proper maintenance of septic tanks. The costs of emptying will be borne by owners only; the Bill gives no rights to tenants or other occupiers to conduct any works in relation to shared septic tanks.

141. Scottish Water has a statutory duty to provide a septic tank emptying service and charges £158.90 for scheduled emptying of a domestic tank. Other commercial providers charge similar amounts.

Part 7: Water shortage orders

142. The Bill replaces the existing framework for managing temporary water shortages with more streamlined processes that align with the regime that manages abstractions and discharges to the water environment, the Water Environment (Controlled Activities) Regulations 2011 (CAR).

143. The introduction of more streamlined processes for managing temporary water shortages offers a number of improvements over the existing arrangements, including:

- reduced time from application to introduction of water shortage management mechanisms with the consequence that less applications will be required to be made;
These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

- more flexibility for customers, through the introduction of advisory water saving measures prior to any bans on water use; and
- lower administrative overheads resulting from the alignment with the regime that manages abstractions from and discharges to the water environment.

These benefits will deliver savings both for Scottish Water and for customers whenever a temporary water shortage event occurs. The frequency, intensity, duration and location of temporary water shortage events cannot be predicted and hence it is not possible to quantify any savings that will result from the Bill. However the Climate Change Risk Assessment for Scotland\(^1\) which was published in January 2012 predicted that summer rainfall will fall by 12% by 2050 and that future temporary water shortages may be more severe than those experienced to date.

144. For information, the cost for Scottish Water of the localised and relatively short term water shortage in Dumfries and Galloway in 2010 was £550k. Had the temporary water shortage continued, resulting in water requiring to be tankered into the locality, tankering costs (estimated at £0.25m per day) would have been incurred. To fulfil existing Ministerial requirements Scottish Water has plans to produce 48 drought plans over the next 5 years at a cost of around £0.6m. The annual cost of maintaining the existing plans and producing regional plans is expected to be in the region of £0.1m per annum. These costs are included within current investment plans and demonstrate that Scottish Water is able to respond to temporary shortages of water in line with its statutory duty.

COSTS ARISING FROM FINES WITHIN THE BILL

145. The Bill introduces 5 new criminal offences which attract fines.

146. Part 2 of the Bill introduces a requirement for large abstractions of fresh water to be authorised by the Scottish Ministers. Part 2 will contain a new offence relating to a large abstraction that has not been approved by the Scottish Ministers or where certain conditions of the approval are breached. Anyone guilty of such an offence may be subject to a fine on summary conviction not exceeding the statutory maximum, currently £10,000 or an unlimited fine on indictment.

147. Part 4 provides for protection of waters in the environment used for drinking water. These provisions allow Scottish Water to enter land in order to identify the causes of pollution in drinking water sources and then enter into agreements to remedy these problems. Part 4 will contain a new offence relating to obstructing Scottish Water in these activities. Anyone guilty of intentionally obstructing Scottish Water exercising powers of entry conferred by a sheriff court warrant may be subject to a maximum fine on level 3 on the standard scale, currently £1,000.

148. Part 6 provides that discharging fats, oils and greases (FOG) from non-domestic premises into the public sewer so as to cause, or be likely to cause, a blockage of the public sewer or to interfere with the free flow of its contents is an offence. The maximum fine is £40,000 on summary conviction (or up to 12 months imprisonment) and an unlimited fine (or up to two

\(^1\) The Climate Change Risk Assessment for Scotland can be found at:
years imprisonment) on indictment. This provision clarifies that discharging FOG in particular is an offence under the Sewerage (Scotland) Act 1968, consequently the fines in this area are not new.

149. Part 7 makes provision for managing water shortages. This Part lays out arrangements for managing demand for water from domestic and commercial customers as water resources decline. Part 7 will contain new offences relating to i) non-compliance with a water saving measure and ii) an obstruction offence. Anyone found guilty of using water in a manner that contravenes a mandatory water management order may be subject to a fine of up to £10,000 for summary conviction. Anyone found guilty of intentionally obstructing Scottish Water exercising powers of entry conferred by a sheriff court warrant may be subject to a maximum fine on level 3 on the standard scale, currently £1000.

SUMMARY OF COSTS

150. The below table summarises the expenditure being made to support the delivery of the Hydro Nation agenda and the costs that arise as a direct result of the Bill

<table>
<thead>
<tr>
<th>Expenditure being made to support the delivery of the Hydro Nation agenda</th>
<th>Costs arising as a direct result of the Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Government</td>
<td>£3m per year from 2012/13 to 2014/15 contributing to the Climate Justice Fund and Hydro Nation Forum, Innovation Park, Hydro Nation Saltire Fellowships &amp; PhDs and other related activity to develop the value of water resources in Scotland. £3.2m per year developing a Water Centre of Expertise and strategic research on Water and Renewable Energy</td>
</tr>
<tr>
<td>Local authorities</td>
<td>None</td>
</tr>
</tbody>
</table>
**These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012**

<table>
<thead>
<tr>
<th>Other bodies, individuals and businesses</th>
<th>Expenditure being made to support the delivery of the Hydro Nation agenda</th>
<th>Costs arising as a direct result of the Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1: Development of water resources</td>
<td>None</td>
<td>No direct costs but designated bodies expected to align existing budgets with the Hydro Nation Agenda</td>
</tr>
<tr>
<td>Part 2: Control of water abstraction</td>
<td>None</td>
<td>Costs of applying will be determined by the procedures set down in regulations and will be set out in a Business Regulatory Impact Assessment that will accompany those regulations</td>
</tr>
<tr>
<td>Part 3: Scottish Water’s functions</td>
<td>£44m investment over the next three years, primarily in renewable energy</td>
<td>The £44m investment will deliver the new functions imposed by this Part of the Bill.</td>
</tr>
<tr>
<td>Part 4: Raw water quality</td>
<td>None</td>
<td>Scottish Water’s costs for visiting a drinking water catchment, taking and analysing samples ranges from £50k–£200k annual depending on the size of the catchment</td>
</tr>
</tbody>
</table>

Scottish Water has budgeted to spend £1.2m per year entering into agreements with land owners within 7 catchments in the period to 2015.
These documents relate to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

<table>
<thead>
<tr>
<th>Other bodies, individuals and businesses (contd.)</th>
<th>Expenditure being made to support the delivery of the Hydro Nation agenda</th>
<th>Costs arising as a direct result of the Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 5: Non-domestic services</td>
<td>None</td>
<td>Costs on landlords to notify licensed providers on change of occupancy estimated to total between £90k and £250k per year.</td>
</tr>
<tr>
<td>Part 6: sewerage network</td>
<td>None</td>
<td>Costs on businesses of meeting tighter trade effluent discharge consents cannot be estimated at this time and will vary depending on the substance to be treated and the volumes being discharged.</td>
</tr>
<tr>
<td>Part 7: Water shortage orders</td>
<td>None</td>
<td>Costs on Scottish Water of undertaking pro-active catchment inspection and advisory/enforcement work with dischargers to the network estimated to be in the region of £1m per annum</td>
</tr>
</tbody>
</table>

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

151. On 27 June 2012, the Cabinet Secretary for Infrastructure and Capital Investment (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Water Resources (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
152. On 26 June 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Water Resources (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
WATER RESOURCES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Water Resources (Scotland) Bill introduced in the Scottish Parliament on 27 June 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 15–EN.

OVERVIEW OF THE BILL

Policy objectives

2. This Bill takes forward the Scottish Government’s wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda. The Bill is an essential keystone to this objective and sets a framework to develop the value of Scotland’s water resources, Scotland’s water knowledge and Scotland’s water technology. The successful achievement of this vision will be to the benefit of the people of Scotland and more widely will contribute to the better global management of water, the planet’s most precious resource. The increase in the value should be measured widely in economic, environmental and social terms. It will be secured by public bodies, private companies and our academic and third sectors through new duties and responsibilities and improvements in how we manage water resources.

3. The Scottish Government considers that of fundamental importance to the Hydro Nation agenda is the good management of Scotland’s water resources. It is therefore sensible to seek to legislate to improve that management wherever possible, in line with new knowledge, procedures and approaches. This Bill provides an opportunity to consider and update existing law and Scottish Ministers have listened to stakeholders in developing the new provisions. Those parts of the Bill which update the law for example in relation to catchment management and priority substances, aim to reflect a more proactive approach to management of the water environment. The Bill is in 8 Parts and these are described below:

Part 1: duty of Scottish Ministers to develop the value of Scotland’s water resources
Part 2: a new approval regime for water abstraction
Part 3: duty of Scottish Water to develop the value of its assets and provision about grants and loans to its subsidiaries
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Part 7: water shortage orders
Part 8: general provisions, repeals and commencement.

Consultation

4. There have been two public consultation exercises. The first commenced in December 2010 and the second in February 2012, which have led to the development of the Bill and the Hydro Nation programme of work.

5. The first consultation, called “Building a Hydro Nation” ran for 12 weeks, from December 2010 until March 2011, inviting comments on the ideas. The consultation paper is available at: [link]. The responses to the consultation and analysis of results are available at: [link].

6. This consultation sought views on giving Scottish Water new functions and how its development could be financed. Consultees were also invited to respond about areas of the law they considered were in need of updating. In general, there was support for developing Scotland as a Hydro Nation, agreement that Scottish Water was a public sector success story, and that it could be challenged to do more, for example in developing its commercial activities, but that core services should not be affected by the taking on of additional functions. Suggestions were made for the law to be updated, in particular the framework for managing water shortages, and the control of discharges of certain substances.

7. The First Minister announced the intention to legislate in this area in the Programme for Government in September 2011. Detailed legislative proposals were drawn up and a 6 week consultation exercise on the publication “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” was undertaken. In the prospectus part of the document, the Government described the programme of work that it was putting in place to develop what it described as the Hydro Nation agenda. It made clear that these were initial steps in a long term and ambitious process. In addition to inviting comments on the document, officials undertook a range of meetings and workshops to involve those with an interest in the water industry, the academic sector, businesses and interested members of the public. The consultation paper can be viewed at: [link]. The summary of responses to the consultation can be viewed at: [link].

8. A wide range of stakeholders responded to both consultations, over 100 responses were received in total. Respondents included public bodies, businesses and their industry
representatives, environmental NGOs and private individuals. For the second consultation on “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” 3 public meetings were held and a number of meetings arranged on request or by invitation. Given the open nature of the consultation a qualitative summary was drafted, highlighting the main comments received. There was strong support for the vision set out in the document, the importance of the water resource to Scotland’s continuing prosperity, and the key proposal of developing the value of Scotland’s water resources. Consultees supported the continuation of Scottish Water in the public sector. Crucially, that support was tempered with a consistent view that delivery of Scottish Water’s core functions should not be compromised by new responsibilities in legislation or through the pursuit of the Hydro Nation agenda. Customers in Scotland should be protected from any financial risk and suffer no fall in quality of service as a result of the broadening agenda. The Prospectus set out that protecting core functions remains as a principle and that was clearly supported.

9. In addition, the concept of value in relation to Scotland’s water resources and assets attracted comment from stakeholders. While the pursuit of economic value was clearly supported, maximising social and environmental value was also seen as a key priority by consultees. Consultees considered it important to ensure that in building a Hydro Nation, Scotland ensures that sustainable development is central to the programme, and that customer interests remain a priority. The Scottish Government will continue to engage with stakeholders during the Bill’s passage through the legislative process and beyond. The Hydro Nation agenda is a long term programme of work which will require continuing collaboration between key players in order to succeed.

Background

10. In Scotland, public drinking water and sewerage services are provided by Scottish Water, a public sector corporation, which is accountable to the Scottish Ministers and through Ministers to the Scottish Parliament. Scottish Water operates within a regulatory framework established by the Scottish Parliament in which Scottish Ministers, acting on behalf of the people of Scotland, set the objectives for the industry. The regulatory process ensures that these are delivered at lowest reasonable cost to customers. Key players in this regulatory framework are Scottish Water’s economic regulator, the Water Industry Commission for Scotland; the Drinking Water Quality Regulator; the Scottish Environment Protection Agency; the customer representative body Consumer Focus Scotland; and the Scottish Public Services Ombudsman for the investigation of complaints.

11. The role of the Scottish Ministers and their officials is to manage the relationship with Scottish Water and its regulators within the statutory framework established by the Scottish Parliament. The Scottish Ministers set the objectives for the industry (and the principles that should underpin charges). More information can be found on the Scottish Government’s website: www.scotland.gov.uk/Topics/Business-Industry/waterindustryscot.

12. Scottish Water provides clean safe drinking water to 2.2 million households and 130,000 business customers in Scotland. Every day it supplies 1.3 billion litres of treated drinking water and takes away nearly 1 billion litres of wastewater from customers’ properties and treats it carefully before returning it safely to the environment.
13. The Water Industry Commission for Scotland (WICS) has the statutory duty to determine price limits for Scottish Water based on the lowest reasonable cost of achieving Ministers’ objectives for the water industry. There is a competitive market for the provision of retail services (billing, collection, customer management etc.) to non-domestic customers in Scotland. All retailers must be licensed by WICS and a list of licensed providers is available from its website. Scottish Water is the wholesale provider to that market.

14. The Drinking Water Quality Regulator for Scotland (DWQR) is responsible for monitoring and confirming that the drinking water supplied by Scottish Water through the public water mains system meets the requirements of the drinking water quality regulations and is safe to drink. DWQR also advises Ministers on the delivery of and the need for future investment in drinking water quality.

15. The Scottish Environment Protection Agency (SEPA) is Scotland’s environmental regulator. Their main role is to protect and improve the environment and as part of this, they have a responsibility to monitor Scottish Water’s discharges to ensure they meet environmental requirements. SEPA also advises Ministers on the delivery of and the need for future investment in environmental improvements.

16. Consumer Focus Scotland (CFS) is the statutory organisation which campaigns for a fair deal for consumers in Scotland. CFS is the trading name of the Scottish Consumer Council, which is itself a territorial committee of the National Consumer Council.

Current law

17. The powers and duties associated with the stewardship of the water environment and the management of the water industry in Scotland are primarily contained within 5 pieces of primary legislation, these being:

- **the Sewerage (Scotland) Act 1968**, which sets out Scottish Waters functions, duties and powers in relation to sewerage and drainage;
- **the Water (Scotland) Act 1980**, which sets out Scottish Water’s functions, duties and powers in relation to water supply;
- **the Water Industry (Scotland) Act 2002**, which established Scottish Water, DWQR, the Customer Consultation Panels and the domestic charging regime;
- **the Water Environment Water and Water Services (Scotland) Act 2003**, which transposed the European Water Framework Directive, aiming to protect and where required, improve the management of the water environment; and updated the law in relation to the provision of water and sewerage services.
- **the Water Services etc. (Scotland) Act 2005**, which strengthened economic regulation by establishing the WICS, strengthened customer representation and introduced retail competition for non-domestic customers.
THE BILL PART BY PART

Part 1: Development of water resources

Policy objectives

18. Part 1 of the Bill places a new duty on the Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the value of Scotland’s water resources is developed through the Hydro Nation programme. It sets out those public bodies which are expected to play a key role (Scottish Enterprise, Highlands & Islands Enterprise, Scottish Environment Protection Agency (SEPA), Scottish Water and Scottish Natural Heritage). It also gives Ministers powers to direct those bodies in this regard, powers to alter the list of key players, and requires Ministers to report to the Parliament after 3 years on how they have fulfilled their obligations under the duty.

19. The new duty is designed to create an explicit focus for the Scottish Ministers on Scotland’s water resources and their potential and therefore the continuing development of the Hydro Nation programme. Ministers will be required to act to bring together all the key participants in this agenda from the many sectors who can contribute. The Hydro Nation programme of work recognises the breadth of knowledge and experience that exists in Scotland, and the duty will ensure that Ministers consider how that could be fully coordinated and made increasingly effective to the greater benefit of the people of Scotland.

Alternative approaches

20. The Scottish Ministers carefully considered the extent to which they could develop the Hydro Nation Programme through non-legislative means. They concluded that this would not give the structure they required or the impetus on other bodies to engage. They therefore rejected this option. The provisions highlight for the first time in a statutory context the concept of the value of the water resources, and working to increase that value. However a number of elements of the Hydro Nation agenda will take place under non-statutory frameworks, such as a Hydro Nation Forum, Centre of Expertise in Water and the Hydro Nation International Development programme. These will be developed in tandem and subsequent to the Bill. Placing the Hydro Nation duty on Ministers in the Bill gives significant weight and impetus to the agenda, and in particular the duty to report to the Parliament (after 3 years) will act as a key driver to taking action and ensuring collaboration.

Consultation

21. There was strong support in responses to both consultation exercises for developing Scotland as a Hydro Nation and that with its abundant water resources, Scotland had a valuable asset that was likely to become increasingly important and attractive as more areas of the world suffer water stress in future. There was also recognition that the Hydro Nation programme of work would include both legislative and non-legislative activity and collaboration across sectors and organisations.
Part 2: Control of water abstraction

Policy objectives

22. The Bill introduces a new framework to govern the abstraction of water over a specified threshold. Applicants will be required to seek Ministerial approval of their proposals to abstract. Existing abstractions, and certain types of abstraction will be exempt from the regime, for example the abstractions that Scottish Water makes in exercise of its core functions; abstractions of water for use in generating electricity by hydro-power; and abstractions for the purpose of irrigating agricultural land.

23. The application process will be separate from the Controlled Activities Regulations (CAR) licensing regime that SEPA operates, where the impact on the environment of the proposed abstraction is considered. In future applications which fall within the eligibility criteria will need Ministerial approval, as well as a CAR licence to proceed.

24. Ministers consider that future years will see significant changes in the economic factors affecting the use and management of water resources on a global level. Climate change, population growth and movement, urbanisation and industrialisation are all relevant and will change our view of Scotland’s valuable water resource. These factors are not easily taken account of in the present abstraction regime or the planning framework. Ministers will wish to develop a view as to whether the overall water resources of Scotland are being used to the best advantage of Scotland’s people. It might therefore be that they would have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth. Similarly, they may use the new powers to consider competing applications relating to one water body or with reference to the overall availability of water resources across Scotland.

Alternative approaches

25. The proposed new Ministerial consent for large scale water abstraction in Scotland will protect these precious resources for the benefit of the people of Scotland. When an application is made for a Controlled Activities Licence for an abstraction, SEPA looks almost exclusively at the environmental impact of the abstraction, in keeping with their role as the environmental regulator. The Scottish Government is seeking to ensure that when a large scale abstraction is proposed, a decision is made which looks beyond the environmental impact and takes into account the broader impact of that abstraction.

Consultation

26. This proposal developed at a late stage in the Bill development process, as a result of further investigation into the issue of water ownership in Scotland, and how best to ensure that maximum value is made of this resource for the people of Scotland. During the summer recess, the intention is to engage further with stakeholders including large water abstractors to explain the policy intention and answer questions.
Part 3: Scottish Water’s functions

Policy objectives

27. Part 3 of the Bill is concerned with Scottish Water’s functions and its exercise of those functions. The “Building a Hydro Nation” consultation set out the potential for Scottish Water to develop commercially, to use its assets to promote renewable generation and generally to support the Hydro Nation agenda. These proposals received strong support in the consultation responses. The Scottish Government considers that Scottish Water’s considerable potential in these areas should be encouraged and recognised in legislation. Consequently the Bill gives Scottish Water new duties to develop the value of its assets and to promote the use of its assets for the generation of renewable energy. While Scottish Water is expected to be proactive and dynamic in seeking opportunities, the Bill includes the safeguard that these activities must not undermine the delivery of Scottish Water’s core water and sewerage functions.

28. The existing statutory framework ensures that Scottish Water is almost wholly focused on the delivery of its core water and sewerage services. It does not envisage Scottish Water undertaking significant activities beyond these services. A consequence of the current framework is that all of the functions of Scottish Water under any enactment, other than the exercise of its general powers under section 25 of the Water Industry (Scotland) Act 2002, are defined as core functions. The Scottish Government considers that, in order to protect the customers who receive the core services, the additional functions the Bill will bestow on Scottish Water should not be classified as “core functions” and the Bill therefore distinguishes between Scottish Water’s water and sewerage functions and the additional functions set out above. The Bill also provides clarity and certainty over the powers Scottish Water has to operate beyond its core functions.

29. The Water Industry (Scotland) Act 2002 provides for Scottish Ministers to make grants or lend to Scottish Water, and for Scottish Water to borrow from any third party. The Water Services etc. (Scotland) Act 2005 provides for Scottish Ministers to make grants or lend to Scottish Water’s non-domestic retail business undertaking, Business Stream, but does not provide for Business Stream to able to borrow from a third party. Scottish Water set up Business Stream as a wholly owned subsidiary but there are no powers for Scottish Ministers to lend to any other subsidiary of Scottish Water. If Ministers wished to make such lending available, for instance to support investment in renewable energy infrastructure on a commercial basis, that lending would have to be routed through Scottish Water. This is administratively inefficient and it potentially exposes water and sewerage customers to commercial risk, a concept which was not supported by responses to the “Building a Hydro Nation” consultation. The Bill therefore provides for Scottish Ministers to have powers to make grants or lend to Scottish Water and all its subsidiaries. For consistency, Business Stream is also provided with the power to borrow from a third party.

Alternative approaches

30. As Scottish Water is subject to a statutory framework, the only way to alter its powers or functions is by amending that legal framework. During the “Building a Hydro Nation” consultation exercise, comments were invited on giving Scottish Water additional functions and how these might be delivered (through Ministers’ powers of direction, through extending Scottish Water’s functions, or having a new legislative framework). Amongst the respondents
there was a strong preference for a separate legislative framework for any new functions that Scottish Water is given.

Consultation

31. As set out above, there was a strong preference amongst consultees for a separate legislative provision to separate additional functions for Scottish Water from its “core” functions (the provision of water and sewerage services). In response to the second consultation exercise, respondents stressed that clarity was needed on what is or is not a core function, that any new structural or lending provisions must be transparent, and that any changes should have due regard to ensuring the fair competitive nature of the market and to the existing hydro power generation assets and operations.

Part 4: Raw water quality

Policy objectives

32. The policy objective of this Part of the Bill is to seek to safeguard and improve where possible the quality of raw water (that is, unprocessed drinking water in a catchment that Scottish Water is entitled to take for use in the supply of water for human consumption). This is achieved by giving Scottish Water powers to enter and inspect premises for the purposes of monitoring the quality or finding the source of pollution of the raw water. In addition, Scottish Water may enter into agreements with owners or occupiers of any land, or a local authority, to undertake works to prevent the deterioration of water quality; or to reduce the amount of treatment the water requires in order to be wholesome. The policy intention is to allow for a more proactive approach to be used within a catchment, with land owners, farmers, SEPA and Scottish Water working together.

Alternative approaches

33. An alternative approach would be to use collaborative working, without updating the law. This option was rejected as it was felt the Bill provided the opportunity for the law to be updated to reflect more modern approaches, and that this combined with joint working amongst Scottish Water, SEPA and land owners or tenants, would produce a more effective result.

Consultation

34. In “Scotland the Hydro Nation, Prospectus and Proposals for Legislation”, comments were invited on the proposal that Scottish Water could have powers to access land that forms part of the water catchment and to test the raw water. This was widely welcomed by respondents. A need for Scottish Water and SEPA to co-ordinate and co-operate to avoid inefficient duplication during implementation was highlighted. Also, it was commented that in granting Scottish Water additional access powers, the rights of land owners must be protected.

Part 5: Non-domestic services

Policy objectives

35. Under the framework set up in the Water Services etc. (Scotland) Act 2005, non-domestic customers receive water and sewerage services from their chosen licensed provider. A number of licensed providers operate in a competitive market in Scotland and supply water and sewerage
services to the private, public and voluntary sectors. This market is comparatively new within Scotland and as it has matured a number of areas of detailed operation need to be addressed to ensure that the market is operating efficiently and that those receiving water and sewerage services pay for them.

36. Licensed providers may inherit customers from another provider, either because a gap site has been identified and allocated to them or because another licensed provider has failed and its customers are reallocated amongst the remaining providers. The customers would be in receipt of water and sewerage services but would not have signed a contract with the new licensed provider. However, as these customers are receiving a service, licensed providers should be able to demand and recover charges from them. This is clarified in the Bill. To aid further the effective functioning of the market, the Bill introduces a requirement on landlords to inform the relevant licensed provider when there is a change in occupancy in their property. The intention is to encourage landlords to maintain communication with a licensed provider when there is a change in the tenancy, in much the same way as happens with other utilities.

Alternative approaches

37. Consideration was given as to whether the desired changes could be achieved using market mechanisms such as the market codes and license conditions issued by the Water Industry Commission for Scotland that all licensed providers must comply with. However it was concluded that such mechanisms could not provide the certainty that a statutory underpinning can provide, nor could such mechanisms require landlords to notify licensed providers when there is a change in tenancy.

Consultation

38. In response to “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” the Water Industry Commission for Scotland and Business Stream proposed that, in order to promote the efficient operation of the market, there should be a requirement on landlords to inform the relevant licensed provider when there is a change in occupancy in the property. This proposal has been incorporated into the Bill.

Part 6: Sewerage network

Policy objectives

39. The policy intention is to restrict inputs into the sewer which can cause harm to the water environment and can be costly and difficult to remove. “Priority substances” are substances which are listed in a European Directive (2000/60/EC) as being of particular concern for the water environment. The Bill provides that trade effluent discharge licences issued by Scottish Water can include restrictions on priority substances.

40. Fats, oils and greases can interfere with the flow of the contents of the sewer, cause blockages and require repairs to be made to the network. The Bill creates a specific offence for people on trade premises to pass fats, oils or greases into the sewer network. The policy intention is to encourage traders to use proper disposal methods and act responsibly, with enforcement action of a fine or imprisonment (or both) available to the court.
41. Scottish Water will be granted powers to enter land or non-domestic properties for the purposes of obtaining samples or monitoring what is being passed to the sewer. It will also be able to install monitoring, testing or sampling equipment in order to facilitate this work. This is to enable a more proactive approach to be taken to managing the flows into the sewerage system.

42. Private sewage treatment works, such as community septic tanks, are facilities where more than one owner discharges into them. These are more common in rural areas, and around 5% of the population use septic tanks. The Bill aims to make it easier for the owners to maintain and empty such shared assets as required to keep them functioning and in good order, by allowing owners to arrange for works to be undertaken without the consent of all co-owners and to recover the cost from the owners.

Alternative approaches

43. An alternative approach would be to seek voluntary co-operation, Scottish Water already runs campaigns to highlight the problems caused to the sewer network by fats, oils and greases for example, and asks traders to dispose of waste responsibly. In order to meet the policy objective and back up the awareness raising and collaborative work, changes to the law in this area are also required, so that enforcement action could be taken if necessary. On shared septic tanks, there was a suggestion by respondees to both consultations that Scottish Water could take ownership and maintain them, this was rejected as it impacted on individual property rights.

Consultation

44. Some respondents to the “Building a Hydro Nation” consultation suggested more could be done to update the law in relation to prescribed substances, and in the subsequent consultation “Scotland the Hydro Nation, Prospectus and Proposals for Legislation” there was broad support from respondents for this proposal, which is expected to be beneficial to the environment. On shared septic tanks, there was a strong welcome for the principle of resolving any maintenance issues before an asset failed (and could cause pollution). Some suggested that the proposal might go further and sought the adoption of some septic tanks by Scottish Water in extreme circumstances, although this was rejected as impacting on individual property rights.

Part 7: Water shortage orders

Policy objectives

45. The policy intention is to update the law in relation to the management of interruptions to the public water supply. This is to provide a regime where action can be stepped up as necessary in response to the circumstances, initially by Scottish Water seeking voluntary co-operation from consumers to reduce their demand through issuing advice on water saving measures, but this can be escalated to enforcement action if required. A more streamlined process than is possible under current provisions is proposed, with the aim that Scottish Water, SEPA and Scottish Ministers can react swiftly and in a proportionate way to temporary water shortages. The policy intention to update the term “drought order” to “water shortage order” is to reflect that interruptions to the public water supply can be caused by a number of factors, not solely by drought. The new proposals reflect the policy intention that it is prudent to make preparations for scenarios which are rare, but when they do occur, procedures and timescales for action should be set out clearly.
Alternative approaches

46. Legislation is required to achieve the policy objective of updating the law in this area.

Consultation

47. In the “Building a Hydro Nation” consultation, many respondents welcomed the proposal to modernise the legislation on drought orders and update the provisions contained in section 69 of the Water (Scotland) Act 1980. This was confirmed by responses to the more detailed proposals that were consulted on in “Scotland the Hydro Nation, Prospectus and Proposals for Legislation”. Many respondents welcomed the updating and clarity new provisions would bring. Comments were received about ensuring that in implementing these new orders, care was taken to avoid perverse effects such as increased air pollution or biohazard risks when restricting water use. It was warned that care should be taken to ensure equity of approach to domestic and non-domestic water users in the design of these orders, and the draft provisions were adjusted in light of these comments.

Part 8: General provisions

48. This Part contains general regulation making powers for the Scottish Ministers, and defines the main legislation referred to throughout the Bill. There are consequential repeals in schedule 3, including the minor repeal of section 26 of the Water Environment and Water Services (Scotland) Act 2003, which requires the Scottish Ministers to report to the Scottish Parliament annually regarding compliance with the Water Framework Directive. The policy intention is to reduce the administrative burden of annual reporting, when this information is made available through the River Basin Management Plan reporting duties. This Part also provides for the commencement of the Bill.

EFFECT ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

49. The Bill’s provisions do not discriminate on the basis of age, gender, race, religion, disability or sexual orientation.

Human rights

Control of water abstractions

50. Although the imposition of a requirement for Ministerial approval for abstractions from the water environment, and the possibility of conditions being placed upon that approval, will constitute an interference with the peaceful enjoyment of possessions that is liable to engage Article 1 of Protocol 1 to the European Convention of Human Rights, such interference is considered to be justifiable in the general interest and proportionate. The primary purpose of the Ministerial approval regime is to allow Ministers to manage the use of a national resource in the general interest. The regime allows Ministers to ensure that large-scale abstractions from the water environment in Scotland are only carried out where they are sustainable and where the use of the resource is in the general interest of the people of Scotland, with Ministers required to consider both adverse impacts and social and economic benefits. The provisions are considered
to strike a fair balance between the demands of the general interest and the interests of the individuals concerned. They are proportionate in that the Ministerial approval requirement only applies to large-scale abstractions above the specified threshold.

**Powers of entry**

51. Parts 4 and 6 of the Bill give Scottish Water certain new powers of entry. The exercise of such powers of entry could potentially interfere with an individual’s peaceful enjoyment of his or her possessions and thus with that person’s rights under Article 1 of Protocol 1 to the ECHR. However, the powers are justified in the general interest and proportionate. The additional powers of entry are for the legitimate aims of protecting and improving the quality of public drinking water and reducing the costs incurred by Scottish Water in treating such water to make it wholesome — costs which are ultimately met by Scottish Water’s customers, representing most households in Scotland. The supplementary powers of entry in Part 6 of the Bill are for the legitimate aim of monitoring and investigating the passing of matter into the sewer, something which, if prohibited matter is passed, can result in costly repairs to the sewer being required — costs which again are ultimately borne by Scottish Water’s customers. Any interference is likely to be fairly minor because entering premises to monitor water quality or the passing of matter into the sewer is likely to be temporary and unlikely to be particularly invasive. Entry is subject to at least 24 hours notice unless the premises are unoccupied and, if entry is refused, can only be authorised by a sheriff granting a warrant.

**Private sewage treatment works**

52. Part 6 of the Bill gives any common owner of private sewage treatment works, such as septic tanks, powers in certain circumstances to carry out works without the consent of the other common owners, and entitles the owner who has carried out the works to recover the cost from the other owners. To the extent that works may be carried out without the consent of all co-owners of the private works, the exercise of such powers may constitute an interference with the rights of owners to the peaceful enjoyment of their possessions under Article 1 of Protocol 1 to the ECHR. However, the power to carry out works without the consent of all co-owners of private sewage treatment works can only be exercised where and to the extent that the works are necessary to comply with any applicable conditions of the relevant authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). Those Regulations concern the protection of the water environment. It is in the general interest to ensure that works which are necessary to comply with the conditions of an authorisation under the 2011 Regulations and thereby protect the water environment are not blocked by certain owners of common property. All common owners of a private sewage treatment works commit a criminal offence if they fail to carry out works to it that are necessary to comply with the conditions of an authorisation under the 2011 Regulations. Allowing a co-owner who does wish to comply with his or her obligations under the 2011 Regulations to carry out works without the consent of certain owners who do not, is considered to be proportionate in light of the general interest in protecting the water environment and in ensuring observance of the law.

**Water shortage orders**

53. Part 7 of the Bill makes provision for Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. Water shortage orders may, among other things, authorise Scottish Water to abstract water from any source and discharge it to any place. They may also authorise Scottish Water to restrict or prohibit abstractions by any person. They may
also impose water saving measures on any person or group of people. All such measures could conceivably engage Article 1 of Protocol 1 to the ECHR. However, all such measures will only be made in the circumstances of a serious deficiency or threatened deficiency of water supplies. It is in the general interest that steps are taken in such circumstances to address such a deficiency and ensure continuity of water supplies. Compensation is payable for any loss or damage sustained as a result of the abstraction or discharge of water by Scottish Water in accordance with a water shortage order, or a restriction or prohibition on the abstraction of water imposed under such an order. Given that compensation will be paid for any loss or damage sustained, it is thought that a fair balance has been struck between community and individual interests. Compensation is not payable for loss or damage sustained as a result of the imposition of a water saving measure, but given the non-essential nature of the uses that may be temporarily prohibited by water saving measures, and the significant community interest in ensuring continuity of water supplies for other uses, it is thought that a fair balance has been struck between community and individual interests.

Island communities

54. The Bill has no differential impact upon island communities. The provisions of the Bill apply equally to all communities in Scotland.

Local government

55. Local authorities are not named in the Bill or given any specific role or responsibility by the Bill. Part 4 of the Bill provides that Scottish Water may enter into agreements with them for the carrying out of activities for the purpose of protecting or improving raw water quality, but such agreements are voluntary and whether or not to enter into any particular agreement that Scottish Water may propose is a matter for the local authority concerned.

56. Some local authorities may hold trade effluent consents from Scottish Water, which enable them to discharge trade effluent to the sewer. The provisions within the Bill clarify that Scottish Water can include conditions about priority substances in trade effluent consents.

Sustainable development

57. On the whole, the provisions are expected to have largely positive environmental effects and complement existing plans, strategies and measures. The Scottish Government has undertaken a Strategic Environmental Assessment (SEA) of “Scotland The Hydro Nation, Prospectus and Proposals for Legislation” available at: http://www.scotland.gov.uk/Publications/2012/06/4338. This highlights the largely positive impacts of both the Bill and the wider Hydro Nation programme it supports. The Bill provisions will help ensure the availability and quality of Scotland’s water resources in the future, through protecting water supply sources and helping Scotland adapt to the likely effects of climate change. The provisions further seek to support sustainable development by protecting the public sewerage network, maintaining private sewerage arrangements and by modernising the water shortage order process. Benefits for biodiversity and flora and fauna, improving energy efficiencies and reducing pollution risk are also considered likely. The Bill includes specific reference to sustainability in the duty that is placed on Ministers to develop the value of
Scotland’s water resources and the definition of value very clearly includes economic and other benefits.
WATER RESOURCES (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Water Resources (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill makes provision in relation to Scotland’s water resources. It provides for the Scottish Ministers and Scottish Water to further the sustainable development of the value of Scotland’s water resources, and for Ministers to control large-scale abstractions from the water environment. It gives Scottish Water powers to monitor and manage the quality of water in the water environment that is likely to be used for human consumption. It provides a new mechanism for Scottish Water to deal with temporary shortages of water supplies, replacing the system of drought orders under the Natural Heritage (Scotland) Act 1991 with a new system of water shortage orders. It also allows Scottish Water to protect the public sewerage network from certain substances and facilitates the maintenance of communal private sewage treatment works, as well as making minor changes to the functioning of the retail market for non-domestic water and sewerage services.

4. The Bill has eight parts:
   - Part 1 places a general duty on the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. It provides for Ministers to direct designated public bodies as to their involvement in this development. It places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty.
   - Part 2 provides for the Scottish Ministers to control large-scale water abstractions. It does so by prohibiting abstractions from the water environment that are above the
specified threshold rate, unless they are exempt or are approved by the Scottish Ministers.

- Part 3 amends the Water Industry (Scotland) Act 2002 to alter Scottish Water’s powers and duties. It clarifies that Scottish Water has the power to do anything that it considers will assist in the development of the value of Scotland’s water resources and places a duty on Scottish Water to develop the value of its assets and expertise, and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person.

- Part 4 gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” in the water environment that may be used for human consumption and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of any such raw water.

- Part 5 provides for deemed contracts for water and sewerage services in certain circumstances and requires the owners of commercial properties to notify licensed providers of water and sewerage services of changes in the occupancy of the premises.

- Part 6 allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems such as septic tanks to be able to carry out essential maintenance without the consent of every co-owner, and to share the costs fairly, provided they follow the procedure for notifying their co-owners.

- Part 7 makes provision for the management of temporary water shortages. It allows Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. These orders may, among other things, authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures.

- Part 8 contains general provisions such as key definitions.

5. Further information about the Bill’s provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 15-EN, and in the Policy Memorandum published separately as SP Bill 15-PM.

Rationale for subordinate legislation

6. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Scottish Government has carefully considered whether and in what manner
provisions should be set out in subordinate legislation rather than on the face of the Bill. In consideration of this, and in determining the appropriate level of scrutiny, the Scottish Government has had regard to:

- the likely frequency of amendment;
- the need to make proper use of valuable parliamentary time;
- the need to ensure sufficient flexibility to respond to changing circumstances; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

Delegated powers

7. The delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

Section 3(2) – Designation of bodies

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<thead>
<tr>
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</tbody>
</table>

Provision

8. Section 3(2) allows the Scottish Ministers, by regulations, to modify the list of designated bodies in section 3(1). Designated bodies can be subject to directions from the Scottish Ministers for the purpose of securing their participation in the development of the value of Scotland’s water resources, although only as regards the exercise of their functions. The bodies currently listed in section 3(1) are Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Enterprise, and Highlands and Islands Enterprise.

Reason for taking power

9. Ministers have a duty under section 1 of the Bill to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources (where “value” includes economic and other benefit). Section 3(1) of the Bill designates the main bodies that have the potential to play a significant role in furthering this agenda. However, given the breadth of the policy objective, it is conceivable that Ministers may wish to secure the participation of other public bodies. The power in section 3(2) to modify the list of bodies in section 3(1) allows flexibility to bring other public bodies within the scope of Ministers’ direction-giving power in future. Section 3(3) requires the Scottish Ministers to consult bodies before designating them under section 3(2).

Choice of procedure

10. Such regulations will be subject to the negative procedure. If Parliament approves the principle that Ministers should be able to direct public bodies so that they must exercise their functions with a view to securing their participation in the development of the value of
Scotland’s water resources, the question of which bodies are to be subject to this power is thought to be largely a technical issue (relating to the nature of their functions) and as such the negative procedure provides sufficient opportunity for scrutiny.

Section 7(6) – Exemption from approval

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

11. Section 6 prohibits qualifying abstractions from the water environment unless they are approved by the Scottish Ministers or exempt under section 7. Section 7 provides that the following abstractions are exempt: (a) abstractions which are authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) when section 7(1) comes into force, (b) abstractions by Scottish Water for the purpose of performing its core functions in Scotland, and (c) abstractions for the sole or principal purpose of the activities listed in section 7(4). Section 7(6) allows the Scottish Ministers, by regulations, to modify the exemptions and specify other circumstances in which a qualifying abstraction is exempt.

Reason for taking power

12. Ministers wish to ensure that, where Scotland’s water resources are abstracted in large quantities, sufficient benefit accrues to the people of Scotland, taking into account the social and economic impact of the abstraction. There are certain abstractions which Ministers, for policy reasons, consider that they do not require to approve, such as those which Scottish Water make for the purposes of supplying drinking water in Scotland. However, Ministers may wish to modify that list in light of experience or changing policy. The power to modify the exemptions and specify other circumstances in which a qualifying abstraction is exempt allows flexibility to add or remove certain types of abstractions in future without requiring primary legislation.

Choice of procedure

13. Such regulations will be subject to the affirmative procedure by virtue of section 18(1). The power may be used to modify primary legislation. It could, depending on how it is used, substantially alter the practical effect of the Ministerial approval regime. It could also have a substantial effect on certain stakeholders if the existing exemptions were removed. As such, the greater level of parliamentary control offered by the affirmative procedure is considered appropriate.

Section 8(1)(b) and (2) – Relevant threshold

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure
Provision

14. Section 8(1)(a) sets the relevant threshold, above which an abstraction is a “qualifying abstraction” (and therefore prohibited unless approved by the Scottish Ministers or exempt) at a rate of 10 megalitres per day. Section 8(1)(b) allows Ministers to prescribe a different rate. Section 8(2) allows Ministers, by regulations, to prescribe a method of calculation for the purposes of subsection (1).

Reason for taking power

15. Ministers may wish to alter the threshold rate in order to fine-tune the application of the Ministerial approval regime in light of experience or changing policy, without requiring primary legislation to do so. Ministers may also wish to prescribe technical details of how to calculate whether the threshold rate has or has not been exceeded in certain circumstances. It is not considered appropriate to include such technical detail on the face of the Bill.

Choice of procedure

16. Such regulations will be subject to the affirmative procedure by virtue of section 18(1). The power involves modifying a threshold provided for in primary legislation and could substantially alter the practical effect of the Ministerial approval regime, depending on the extent to which the threshold was raised or lowered or changes made to how it is calculated. In the circumstances, the greater level of parliamentary scrutiny offered by the affirmative procedure is considered appropriate.

Section 9(2) – Application for approval

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

17. Section 9(2) allows the Scottish Ministers, by regulations, to make provision about the procedure in relation to an application for approval of a qualifying abstraction (under section 9(1)). An indicative list of the procedural matters such regulations may address is provided in section 9(3), and includes (among other things) the form of application, the fixing of a reasonable application fee, and the information that is to accompany it.

Reason for taking power

18. Procedural matters relating to the form of the application for Ministers’ approval of a qualifying abstraction are technical in nature, and it is not considered appropriate to make provision in that respect in primary legislation.

Choice of procedure

19. Such regulations will be subject to the negative procedure by virtue of section 18(2). They will concern technical matters relating to the procedure of applying for Ministers’ approval of a qualifying abstraction, and do not affect the substance of the policy that Ministers should
require to approve such abstractions. In the circumstances, the negative procedure is considered appropriate.

**Section 12(1)(b) – Fixing subsistence fee**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative procedure

**Provision**

20. Section 12(1)(b) allows the Scottish Ministers, by regulations, to fix a reasonable subsistence fee (whether annual or otherwise) that the holder of Ministerial approval for a qualifying abstraction must pay.

21. Regulations under section 12(1)(b) must relate to costs attributable to the exercise of the Scottish Ministers’ administrative functions under Part 2 of the Bill, and may require the fee to be paid annually or otherwise (section 12(2)).

22. Section 12(3) makes clear that a fee fixed under section 12(1)(b) must not include costs related to an application for approval.

**Reason for taking power**

23. The fixing of a subsistence fee is a technical detail and one that may require to be updated from time to time. As such, it is considered more appropriate to do so through subordinate legislation rather than primary legislation.

**Choice of procedure**

24. Such regulations will be subject to the negative procedure by virtue of section 18(2). As they will concern a technical matter, the negative procedure is considered appropriate.

**Section 14(1)(c) – Grounds for suspension and revocation**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** negative procedure

**Provision**

25. Section 14(1)(a) and (b) allows the Scottish Ministers to suspend or revoke their approval of a qualifying abstraction if the holder of the approval requests it or if the holder breaches any conditions attached to the approval under section 11(1)(b) or fails to comply with any reporting or fee-paying requirements under section 12(1). Section 14(1)(c) allows the Scottish Ministers, by regulations, to prescribe other circumstances in which they may suspend or revoke their approval.
Reason for taking power

26. In order to achieve their policy aim of controlling large-scale abstractions from the Scottish water environment, the Scottish Ministers may wish to prescribe additional circumstances in which they may suspend or revoke their approval of an abstraction. It is not, however, considered appropriate to provide that Ministers may suspend or revoke an approval on such grounds as they think fit, as that would not provide sufficient transparency and certainty to abstractors. It is therefore considered appropriate to give the Scottish Ministers a power to prescribe such additional circumstances in subordinate legislation.

Choice of procedure

27. Such regulations will be subject to the negative procedure by virtue of section 18(2). If Parliament approves the principle that Ministers may suspend or revoke approvals, it is not thought necessary for it to positively affirm any additional grounds upon which an approval may be suspended or revoked, and the negative procedure is considered appropriate.

Section 16(1) and (2) – Monitoring and records

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

28. Section 16(1) allows the Scottish Ministers, by regulations, to make provision about the monitoring of actual or suspected qualifying abstractions and any related activities. Section 16(2) allows the Scottish Ministers, by regulations, to make provision about the keeping of records in connection with Part 2 of the Bill (control of water abstraction) and the making available of such records to Ministers, SEPA or others. Subsection (3) provides that regulations made under subsections (1) or (2) may confer functions on the Scottish Ministers, SEPA, or other specified persons.

Reason for taking power

29. As the abstraction control regime develops, Ministers may wish, in light of experience, to provide for a greater or lesser degree of monitoring to ensure compliance with the regime and any conditions imposed upon approved qualifying abstractions. This power will provide flexibility in designing a monitoring regime that is informed by experience of compliance with the Bill and which is proportionate and fit for purpose.

Choice of procedure

30. Such regulations will be subject to the negative procedure by virtue of section 18(2). Monitoring and record keeping are simply means to ensure compliance with the approval regime, the basic principles of which the Scottish Parliament will already have approved if it passes the Bill. The details of the monitoring regime ought not to be controversial and, as such, the negative procedure is considered appropriate.
This document relates to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

Section 19(4) – Control of water abstraction: references to Controlled Activities Regulations

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

31. Section 19(1) to (3) concerns the interaction of the abstraction control regime created by Part 2 of the Bill with the regime for the protection of the water environment that exists under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), which also affects abstractions. Section 7(1) provides that a qualifying abstraction is exempt from the prohibition imposed by section 6 if, on the day when section 7(1) comes into force, it is subject to an authorisation under the 2011 Regulations. Section 19(4) provides that the Scottish Ministers may by regulations modify section 19(1) to (3) and section 7(1), but section 19(5) provides that such regulations may only be made if the Scottish Ministers consider them to be necessary or expedient in consequence of any amendment or revocation of the 2011 Regulations or any subsequent regulations made under the same enabling power as the 2011 Regulations (section 20 of the Water Environment and Water Services (Scotland) Act 2003). In other words, Ministers’ power to modify sections 7 and 19 of the Bill (which refer to the 2011 Regulations) is only a power to modify in consequence of changes to the 2011 Regulations.

Reason for taking power

32. It is possible that the 2011 Regulations will be amended, replaced or supplemented in future. In order to ensure that references to those Regulations in the Bill can be kept up-to-date, provision has been made for Ministers to be able to modify those parts of the Bill that refer to the 2011 Regulations, where such modifications are considered by Ministers to be necessary or expedient in consequence of their revocation, amendment or replacement.

Choice of procedure

33. Such regulations will be subject to the negative procedure by virtue of section 18(2). As the power in question is confined to modifications in consequence of the revocation, amendment or replacement of the 2011 Regulations, its use is unlikely to be controversial and the negative procedure is accordingly considered appropriate.

Section 26 – Circumstances in which water and sewerage undertaking may borrow money

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

34. Section 26 amends section 14 (financing, borrowing and guarantees) of the Water Services etc. (Scotland) Act 2005 to alter the persons from whom the undertaking that Scottish Water is obliged to establish by section 13 of the 2005 Act may borrow. Amended section 14(2) provides that Ministers may by order specify the circumstances in which the undertaking may
borrow from the specified persons. This replaces the existing, similar, order-making power already provided in section 14(2) of the 2005 Act.

Reason for taking power

35. Although Ministers wish to remove some of the restrictions on borrowing by the undertaking, they wish to retain the possibility of exercising control over that borrowing. The precise degree and form of control that they may wish to exercise cannot be foreseen at this time, so Ministers wish to take the power to specify by order the circumstances in which the undertaking may borrow. This is in line with the current power in section 14(2) of the 2005 Act.

Choice of procedure

36. Such an order will be subject to the negative procedure by virtue of section 34(3)(a) of the 2005 Act. This is the procedure that currently applies to section 14(2) of the 2005 Act and it is proposed to retain that procedure for the amended provision. The specification by Ministers of the circumstances in which the undertaking may borrow is a relatively technical matter for which the negative procedure is considered appropriate.

Section 27 – Assessment of raw water quality

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</tr>
</tbody>
</table>

Provision

37. Section 27 inserts a new Part VIB into the Water (Scotland) Act 1980. The new part gives Scottish Water certain powers of entry into premises for the purposes of assessing or monitoring the quality of “raw water” and investigating anything that may be affecting its quality. “Raw water” is defined by newly inserted section 76M(5) of the 1980 Act as being water contained in bodies of water (a) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003 or (b) specified in an order made under newly inserted section 76R(1) of the 1980 Act. Newly inserted section 76R(1) of the 1980 Act enables the Scottish Ministers, for that purpose, to specify by order any bodies of water that are used (or intended to be used) for the abstraction of water intended for human consumption.

Reason for taking power

38. Although many of the water bodies in relation to which Scottish Water may need to exercise the powers of entry afforded to it by the Bill will already be listed in an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003, Ministers may wish to add to that list. In particular, the order under section 6(1) of the 2003 Act can only list water bodies that are used for the abstraction of water intended for human consumption and that provide more than 10 cubic metres per day or serve more than 50 persons, whereas Ministers may wish to specify bodies of water from which smaller abstractions are made, so that Scottish Water can exercise its powers of entry in relation to those. Ministers wish to have flexibility in specifying the water bodies in relation to which Scottish Water may exercise its new powers of entry.
Choice of procedure

39. Such an order will be subject to the negative procedure by virtue of newly inserted section 76R(4) of the 1980 Act. The listing of additional bodies of water in relation to which Scottish Water may exercise its powers of entry under new Part VIB of the 1980 Act ought not to be controversial. The power in section 6 of the 2003 Act is similarly subject to the negative procedure. The bodies that may be specified must be used (or intended to be used) for the abstraction of water intended for human consumption, so Ministers cannot specify any other water body, and the powers of entry are only for the specified purposes and require a court warrant (and therefore judicial scrutiny) if permission to enter is refused by the occupier. In the circumstances the negative procedure is thought to be appropriate.

Section 30 – Rules and procedure regarding notification of occupancy

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

40. Section 30 inserts new sections 20C and 20D into the Water Services etc. (Scotland) Act 2005. The new sections require the owner of eligible premises to notify the relevant water or sewerage services provider of changes in the occupancy of the premises. They also provide that failure to do so can result in the owner being jointly and severally liable for relevant charges. New section 20C(4) provides that the Scottish Ministers may, by regulations, make rules for timing and procedure regarding notification of changes in occupancy, and modify the information that must be notified. New section 20D(4) provides that the Scottish Ministers may, by regulations, make rules for timing and procedure in connection with owners’ liability for charges, and as regards exempting owners from liability where they have taken prescribed steps to ensure the accuracy and completeness of information.

Reason for taking power

41. The detail of the timing and procedures regarding notification of changes in occupancy, and owners’ liability for charges, and related matters is relatively technical in nature and is not considered appropriate for inclusion within the Bill itself, which simply establishes the basic principles of a requirement to notify and liability for charges where there is a failure to so comply. Such details are considered best left to subordinate legislation.

Choice of procedure

42. Such regulations will be subject to the negative procedure by virtue of newly inserted section 34(2A) of the 2005 Act. If the Scottish Parliament approves the basic policy of a requirement to notify and potential liability for charges, it is considered appropriate for the detail of timing and procedures to be in subordinate legislation subject to the negative procedure.

Section 31 – References to priority substances etc.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
This document relates to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

Parliamentary procedure: negative procedure

Provision

43. Section 31 amends section 29 of the Sewerage (Scotland) Act 1968 to enable Scottish Water, when granting its consent under section 26 of the 1968 Act to any new trade effluent discharge, to impose conditions relating to the elimination or diminution in that trade effluent of any priority substance or pollutant. Section 31 of the Bill also inserts a new section 29A into the 1968 Act, subsection (1) of which defines the terms “pollutant” and “priority substance”. New section 29A(2) empowers the Scottish Ministers, by regulations, to modify the definitions in subsection (1).

Reason for taking power

44. The terms in question are defined by reference to a definition contained in regulation 2 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209), and substances listed in an annex to the Water Framework Directive (2000/60/EC). It is possible that the 2011 Regulations or the Water Framework Directive will be amended or replaced in future. In order to ensure that these definitions can be kept up-to-date, provision has been made for Ministers to be able to modify the relevant definitions, where such modifications are considered by Ministers to be necessary or expedient in consequence of the revocation or amendment of the instruments from which the terms are derived.

Choice of procedure

45. Such regulations will be subject to the negative procedure by virtue of newly inserted section 29A(4) of the 1968 Act. If the Bill is passed in its current form, the Scottish Parliament will have approved the basic principle that Scottish Water should be able to use the trade effluent consent regime in the 1968 Act to control inputs of substances harmful to the environment (as opposed to simply being harmful to the sewer network itself). Having done so, it is considered appropriate that any changes to the substances concerned can be implemented through subordinate legislation subject to the negative procedure.

Section 34 – Common maintenance – references to Controlled Activities Regulations

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

46. Section 34 inserts a new Part IIA into the Sewerage (Scotland) Act 1968. The new Part makes provision regarding the maintenance of private sewage treatment works where those works are the subject of common ownership. The new Part makes several references to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) because the provisions allow individual owners of such works to carry out maintenance and take other measures necessary to comply with any applicable conditions imposed under the 2011 Regulations. The new Part only applies to private sewage treatment works the discharge of the contents of which is authorised under those Regulations.
47. In a similar manner to section 19(4) of the Bill, newly inserted section 38G(2) of the 1968 Act provides that the Scottish Ministers may by regulations modify section 38G(1) and sections 38A(1) and 38B(2), which all refer to the 2011 Regulations. However, newly inserted section 38G(3) provides that such regulations may only be made if the Scottish Ministers consider them to be necessary or expedient in consequence of any amendment or revocation of the 2011 Regulations or any subsequent regulations made under the same enabling power as the 2011 Regulations (section 20 of the Water Environment and Water Services (Scotland) Act 2003). In other words, Ministers’ power to modify sections 38A(1), 38B(2) and 38G(1) of the 1968 Act (which all refer to the 2011 Regulations) is only a power to modify in consequence of changes to the 2011 Regulations.

Reason for taking power

48. It is possible that the 2011 Regulations will be amended, replaced or supplemented in future. In order to ensure that references to them can be kept up-to-date, provision has been made for Ministers to be able to modify those parts of the Bill that refer to the 2011 Regulations, where such modifications are considered by Ministers to be necessary or expedient in consequence of their revocation, amendment or replacement.

Choice of procedure

49. Such regulations will be subject to the negative procedure by virtue of newly inserted section 38G(4). As the power in question is confined to modifications in consequence of the revocation, amendment or replacement of the 2011 Regulations, its use is unlikely to be controversial and the negative procedure is accordingly considered appropriate.

Section 46 – Water shortage orders – references to Controlled Activities Regulations

| Power conferred on: | the Scottish Ministers |
| Power exercisable by: | regulations made by Scottish statutory instrument |
| Parliamentary procedure: | negative procedure |

Provision

50. Part 7 of the Bill makes provision for the Scottish Ministers to make water shortage orders allowing Scottish Water to take certain steps to address a deficiency of water supplies. Those steps can include abstracting water from a specified source. Abstractions of water from the water environment generally require authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). In a similar manner to section 19(4) of the Bill and section 38G(2) of the 1968 Act (inserted by section 34 of the Bill), section 46(4) of the Bill provides that the Scottish Ministers may by regulations modify section 46(1) to (3), section 35(3)(b) and, in Schedule 1, paragraphs 2(5)(b)(iii), 3(3)(b)(iii) and 7(b)(ii). These sections and paragraphs all refer to the 2011 Regulations.

51. However, section 46(5) provides that such regulations may only be made if the Scottish Ministers consider them to be necessary or expedient in consequence of any amendment or revocation of the 2011 Regulations or any subsequent regulations made under the same enabling power as the 2011 Regulations (section 20 of the Water Environment and Water Services (Scotland) Act 2003). In other words, Ministers’ power to modify section 46(1) to (3), section
This document relates to the Water Resources (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 27 June 2012

35(3)(b) and paragraphs 2(5)(b)(iii), 3(3)(b)(iii) and 7(b)(ii) of Schedule 1 is only a power to modify in consequence of changes to the 2011 Regulations.

Reason for taking power

52. It is possible that the 2011 Regulations will be amended, replaced or supplemented in future. In order to ensure that references to them can be kept up-to-date, provision has been made for Ministers to be able to modify those parts of the Bill that refer to the 2011 Regulations, where such modifications are considered by Ministers to be necessary or expedient in consequence of their revocation, amendment or replacement.

Choice of procedure

53. Such regulations will be subject to the negative procedure by virtue of section 46(6). As the power in question is confined to modifications in consequence of the revocation, amendment or replacement of the 2011 Regulations, its use is unlikely to be controversial and the negative procedure is accordingly considered appropriate.

Section 49 – Ancillary regulations

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure if they add to, replace or omit any part of the text of an Act; otherwise negative procedure

Provision

54. Section 49 provides that the Scottish Ministers may, by regulations, make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Bill.

Reason for taking power

55. Ministers may need to make provision in subordinate legislation to support the full implementation of the Bill and ensure that the policy intentions of the Bill are achieved. For example, when implementing the Bill, unforeseen issues may arise which require supplemental provision. The supplementary power would allow changes to be made without the need for further primary legislation. This is considered to be necessary to allow for flexibility to address these issues.

56. Provision may also be needed to ensure a smooth transition from the current law to that in the enacted Bill. Unforeseen issues may arise at the time of implementation which require transitional or transitory provision or the saving of repealed or amended provisions. Consequential amendments may be required that have not been identified before the Bill’s introduction or during its passage.

57. Without the power, it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions
of the original Bill. That would not be an effective use of resources by Parliament or the Scottish Government.

Choice of procedure

58. Where regulations under this section add to, replace, or omit any part of the text of an Act (including this Bill, once enacted), section 49(2) provides that they are subject to affirmative procedure. Otherwise, they are subject to the negative procedure. It is submitted that, where primary legislation is to be changed, the higher level of parliamentary scrutiny offered by the affirmative procedure is appropriate. However, where ancillary regulations are more limited in scope and effect, such as those containing incidental, consequential, transitional, transitory or savings provisions, the negative procedure is considered appropriate, so that minor textual amendments to subordinate legislation are not subject to a disproportionate level of parliamentary consideration.

Section 51 - Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: the order must be laid before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Provision

59. Section 51 provides for Part 8 of the Bill (other than section 48) to come into force on the day after Royal Assent. Section 51(2) gives the Scottish Ministers the power to appoint, by order, the day on which all other provisions come into force. Section 51(3) provides that such an order may include transitional, transitory or saving provision.

Reason for taking power

60. Exact commencement dates for the substantive provisions of the Bill have not yet been determined. This power allows the Scottish Ministers flexibility to control the commencement of the various provisions as they consider appropriate.

61. Unforeseen issues may arise at the time of commencement which require transitional or transitory provision or the saving of repealed or amended provisions. The power in subsection (3) enables such provision to be made, thereby allowing a smooth transition from the current law to that contained in the provisions being commenced.

Choice of procedure

62. As is usual for commencement orders, the power is subject to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.
Infrastructure and Capital Investment Committee

11th Report, 2012 (Session 4)

Stage 1 Report on the Water Resources (Scotland) Bill

Published by the Scottish Parliament on 4 December 2012
Infrastructure and Capital Investment Committee
11th Report, 2012 (Session 4)

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Infrastructure and Capital Investment Committee

Remit and membership

Remit:

To consider and report on infrastructure, capital investment, transport, housing and other matters falling within the responsibility of the Cabinet Secretary for Infrastructure, Investment and Cities, apart from those covered by the remit of the Local Government and Regeneration Committee.

Membership:

Malcolm Chisholm
Jim Eadie
Adam Ingram (Deputy Convener)
Alex Johnstone
Gordon MacDonald
Margaret McCulloch
Maureen Watt (Convener)

Committee Clerking Team:

Clerk to the Committee
Steve Farrell

Assistant Clerk
Lewis McNaughton
Infrastructure and Capital Investment Committee

11th Report, 2012 (Session 4)

Stage 1 Report on the Water Resources (Scotland) Bill

The Committee reports to the Parliament as follows—

Introduction

1. The Water Resources (Scotland) Bill (the Bill) was introduced by the then Cabinet Secretary for Infrastructure and Capital Investment, Alex Neil MSP, on 27 June 2012. When Nicola Sturgeon MSP became Cabinet Secretary for Infrastructure, Investment and Cities, she assumed lead responsibility for the Bill.

2. The Bill was accompanied by a Policy Memorandum, a Financial Memorandum and a Delegated Powers Memorandum. On 4 September 2012, the Parliament agreed to designate the Infrastructure and Capital Investment Committee as lead committee to consider and report to the Parliament on the general principles of the Bill.

Purposes of the Bill

3. The Scottish Government’s intention is that the Bill should set a framework for making the most of Scotland’s water resources. The Bill seeks to develop and improve the management of water resources as a key part of achieving the Government’s wider Hydro Nation agenda.

4. In addition, the Bill makes provision across a broad range of topics relating to water and sewerage services in Scotland. These include: the control of water abstraction, Scottish Water’s functions, raw water quality, non-domestic services, sewerage network, and water shortage orders.

5. In oral evidence to the Committee, the Cabinet Secretary for Infrastructure, Investment and Cities set out the objective behind the Bill—

“The Bill seeks to acknowledge the importance of water as a natural asset; to put a duty on ministers and others to develop Scotland as a hydro nation, which means a nation that utilises its water resources to the fullest potential; and to further improve our management and protection of the water environment.
“That is an ambitious agenda. It goes without saying that the work of building Scotland into a hydro nation is not only down to legislation that we pass; it is also about the programme of work that we are developing alongside the Bill.”

Committee scrutiny
6. The Committee issued a call for written evidence on the Bill, to which it received 28 written submissions and two supplementary responses. The Committee took evidence on the Bill at seven meetings between 19 September and 7 November. During its evidence-gathering phase, the Committee heard from a range of witnesses representing environmental, consumer and energy bodies as well as academics and water industry specialists, Scottish Water, the Water Industry Commission for Scotland and the Cabinet Secretary for Infrastructure, Investment and Cities.

Part 1: Development of water resources

Development of the value of Scotland’s water resources
7. The Bill proposes the creation of a new duty on the Scottish Ministers to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources” (Section 1). Ministers must also report to the Scottish Parliament on how they have fulfilled this duty after a three-year reporting period.

8. This Part of the Bill is designed to create an explicit focus for the Scottish Ministers on developing the potential of Scotland’s water resources as part of the wider Hydro Nation agenda.

9. In general, witnesses favoured the inclusion in the Bill of the Ministerial duty to develop water resources. The IHP-HELP Centre for Water Law, Policy and Science (hereafter referred to as The Centre for Water Law), for example, was supportive of the Government’s decision to focus its attention on policy issues relating to water and to give some legislative expression to the ideas underpinning the Hydro Nation concept. The James Hutton Institute saw the Bill as an important step to firming up the Hydro Nation agenda, and Scottish Water

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2 See Annexe D for a list of the written evidence received by the Committee. The written submissions are available on the Parliament’s website: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/54251.aspx
3 See Annexe C for a list of the oral evidence and associated written evidence received by the Committee.
4 Policy Memorandum, paragraph 19.
5 The Centre for Water Law operates under the auspices of United Nations Educational, Scientific and Cultural Organisation (UNESCO)’s International Hydrological Programme - Hydrology for the Environment, Life and Policy (IHP-HELP), and is part of the University of Dundee.
7 Centre for Water Law. Written submission, page 1.
welcomed the proposals that “provide a strong statutory basis for developing Scotland’s water resources in the interests of Scotland”\(^9\).

10. The Institution of Civil Engineers Scotland (ICE) also viewed the Bill in a positive light and suggested it will help Scotland to maximise the benefits of what it is already good at doing in the water sector; to continue to build capability in addressing complex sustainable water management issues; and to further increase Scotland’s competitiveness on the world stage in this area.\(^10\) Similarly, the UK Environmental Law Association (UKELA) expressed support for the Hydro Nation agenda and its over-arching intention to make the most of Scotland’s water resources and expertise in water matters.\(^11\)

11. SEPA’s view was that the Bill supplements the existing framework for protecting the environment and the Hydro Nation agenda complements the existing river basin planning process.\(^12\)

12. Whilst these comments were on the whole very positive, some witnesses questioned the extent to which customers would benefit from the development of water resources and suggested that more needed to be done to improve water efficiency at home before looking at expanding Scotland’s expertise worldwide. For example, Consumer Focus Scotland called for more clarity about what benefits the Bill, and the Hydro Nation agenda more generally, would be expected to bring to customers.\(^13\) It commented that there was little emphasis on whether economic gains would be passed on to customers in the form of lower bills.

13. Consumer Focus Scotland also referred to the recent Scottish Government consultation\(^14\) that sought views on the service that Scottish Water should provide to its customers and society in the next five-year regulatory period from 2015.\(^15\) Consumer Focus Scotland called for a detailed study into the charging system, including looking at the affordability of water bills and the extent that people are having difficulty in paying for their water.\(^16\) Consumer Focus Scotland argued that this was a good time to conduct the review given that, in its view, water prices are likely to rise in 2015, and suggested that there was some complacency that the affordability issue had been dealt with and that more thought needed to be given to the needs of future consumers.


\(^14\) Investing In and Paying for Your Water Services from 2015 (June 2012), See Scottish Government website: [http://www.scotland.gov.uk/Publications/2012/06/3533](http://www.scotland.gov.uk/Publications/2012/06/3533)


14. RSPB Scotland expressed the view that Scotland had some way to go to improve and prevent deterioration of its water resources and commented that only two thirds of water bodies in Scotland were in good or better status (as defined under the European Water Framework Directive). To support this view, whilst RSPB Scotland acknowledged the progress that Scottish Water had made in reducing leakage in recent years, it argued that “leakage remains unacceptably high”. RSPB Scotland quoted figures for 2009-10, when 704 million litres of water were lost each day in Scotland through leakage. It considered that the “target Economic Level of Leakage of 612 million litres per day is still too high” and stated that “a Hydro Nation should be one that strives to reduce leakage while improving water efficiency in households and industry”.

15. The Committee also raised the matter of leakage with Scottish Water when it gave evidence in relation to its Annual Report and Accounts for 2011-12. Scottish Water stated that it was “getting close to the economic level of leakage, which has been calculated as 600 megalitres per day”. It told the Committee that it is committed to reaching this economic level of leakage by 2014 and noted that “when we started our journey, the level of leakage was more than 1,100 megalitres per day”.

16. Consumer Focus Scotland considered that there was not enough in the Bill about conserving our water and suggested that there was an overarching need through the Hydro Nation agenda to develop water awareness to educate and encourage people to use water more efficiently. Consumer Focus Scotland argued that the Hydro Nation agenda should be focused on resolving such issues before starting to seek development opportunities abroad.

17. Other comments highlighted the importance of linking the Hydro Nation agenda with other Scottish Government policy streams to ensure a holistic approach is taken. The James Hutton Institute noted that conflicts could exist between regulations that governed different aspects of water services and the environment, for example, dredging under the Controlled Activities Regulations and achieving flood management, or in adopting new techniques for removing sewage pollution from the water supply and the disposal of sewage. The Institute suggested that often these different regulations operated in isolation and called for effort to “unite these policies a little more so that these clashes and trade-offs don’t happen and impede some of the more visionary things that the Bill is trying to get in place”.

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18 RSPB Scotland. Written submission, page 2.
19 RSPB Scotland. Written submission, page 2.
22 Consumer Focus Scotland. Written submission, page 6.
18. The James Hutton Institute also commented that links could be established with the Scottish Government’s land use strategy, which refers to water, in order to allow account to be taken of different and competing aspects of our water environment. Similarly, Consumer Focus Scotland called for better integration with policies on energy efficiency, such as the sustainable housing strategy, national retrofit programme, micro-generation, and house-building standards. These agendas, it argued, needed to be joined up to incorporate water issues, with the aim of strengthening the governance aspects in the Bill.

19. More widely, witnesses referred to the EU water blueprint and highlighted the need for the Bill and the Hydro Nation agenda to take account of developments at EU level. The Centre for Water Law considered that whilst the European Commission was in the process of developing its policy, it didn’t anticipate anything in the Bill that would cause a problem for what might arise at EU level. Consumer Focus Scotland flagged a number of areas where it would make sense for the Bill and the Hydro Nation agenda to take account of the EU agenda, including, for example, the better management of water resources, looking at including agriculture, water efficiency in relation to building standards, and the use of economic instruments to incentivise water efficiency, charging, metering and pricing schemes.

20. Also on the issue of integration, SSE noted that the Bill did not make any explicit provision for developing the competitive framework for the water industry in Scotland, whilst a recently published UK Government Bill included the stated aim of ensuring a common retail market for water and sewerage services across Great Britain. The Centre for Water Law suggested that the developments in England and Wales could offer opportunities for Scottish businesses to get involved in the new marketplace, and Consumer Focus Scotland called for the experiences gained in Scotland to be shared there.

21. In addition, RSPB Scotland and Scottish Environment LINK raised the issue of whether water resources included peatland habitats. They argued that the development of water resources allowed for by Part 1 of the Bill must be able to encompass peatland restoration. In their view, peatlands needed to be recognised

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30 SSE. Written submission, page 3.
34 Scottish Environment LINK. Written submission, page 1.
on the basis that they deliver a multitude of social, environmental and economic benefits, including improved water quality, flood risk management, carbon storage, climate change adaptation and biodiversity.

22. The Cabinet Secretary responded to the concerns raised by stakeholders. In terms of benefits to customers in Scotland, the Cabinet Secretary suggested that the Bill had the potential to deliver tangible benefits where “in the longer term it would be open to Ministers… to utilise or allow to be utilised any profits that derive from Scottish Water’s commercial activities in its non-core business to benefit the customers and consumers of its core business products”\(^{35}\). Other less tangible benefits could be derived from maximising the full potential of Scottish Water’s resources and expertise, which “will cross over into how it does its business in its core functions, which will benefit customers”\(^{36}\). More widely, she suggested that Scotland as a whole would benefit if it were to become a global leader on the Hydro Nation front and be recognised as a leader on the use of water and sharing expertise on water management and governance with other parts of the world.

23. The Cabinet Secretary acknowledged the importance of linking the Bill and the Hydro Nation agenda with other relevant strands, including planning and climate change. In addition, she recognised the importance of the EU agenda for a Blueprint for water and confirmed that the “Hydro Nation agenda in general and the Bill in particular are consistent with the priorities across Europe on the good stewardship of water”\(^{37}\). She gave a commitment to continue to monitor and track developments at EU level carefully, to ensure that alignment exists and offered to give further evidence to the Committee at a suitable point following the publication of the Blueprint.

24. More generally, the Committee explored the rationale behind the inclusion in the Bill of a duty on Ministers to develop the value of Scotland’s water resources, given that the Scottish Government could already undertake this role as a consequence of its devolved responsibilities/powers. The Cabinet Secretary responded that the Bill was important because it represented a “move from a more permissive approach to clear and explicit duties”\(^{38}\). She explained that the duty on Ministers “is much more powerful and meaningful than simply saying that there is nothing preventing ministers from doing that already”\(^{39}\). She said that—

“It highlights the importance of water as a national resource and the importance of our realising the potential of that resource both domestically and internationally. It is a duty under which we are accountable to the

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Parliament on the issue, and ministers will be required to report to the Parliament on what has been done to carry out that duty.\textsuperscript{40}

25. The Committee acknowledges the widespread support for the broad intention of the Bill and for the wider Hydro Nation agenda. The Committee welcomes the Cabinet Secretary’s aim to give issues relating to the water environment a new prominence in policy-making in Scotland. The Committee is mindful, however, of the need to ensure that the Bill and the Hydro Nation agenda is closely linked with other environmental, planning and energy efficiency policy strands, as highlighted by witnesses. The Committee will monitor the integration of these policies closely, particularly in the context of its scrutiny of the actions being taken to meet Scotland’s climate change targets in the second Report on Proposals and Policies (RPP2).

26. The Committee recognises, however, that the specific duty on Scottish Ministers to develop the value of Scotland’s water resources does not place new powers or responsibilities on Ministers.

27. In developing Scotland’s water resources, the Committee considers that, in doing so, effort must be made to realise the potential for benefits to be passed on to customers, as intimated by the Cabinet Secretary.

28. The Committee welcomes the Cabinet Secretary’s commitment to continue to engage with the Committee on issues relating to the water environment once the EU water blueprint has been published.

29. In addition, the Committee seeks a response from the Scottish Government on whether peatland habitats are covered by the reference to water resources under the Bill.

\textit{Definition of the “value” of water}

30. There was general support for the concept of developing the value of water as proposed by the Bill. However, some concern was expressed about the specific definition of the “value” of water that is used in the Bill.

31. In developing the value of Scotland’s water resources, the Bill as currently drafted defines the term value as including “the economic and other benefit deriving from the use of (or any activities in relation to) the resources” (Section 1(3)).

32. However, the clear view received in oral and written evidence to the Committee was that this definition was not wide enough and that it should specifically acknowledge the environmental and social benefits as well as the economic ones.

33. In SEPA’s view, for example, environmental and social elements are integral to the value of Scotland’s water and so should be made explicit in the Bill.\textsuperscript{41} Despite


the assurance of Scottish Government officials that such factors were included in
the phrase “other benefit”. SEPA maintained that it would be better if they were
made explicit. In addition, SEPA was concerned that without these terms being
specified in the Bill, directions from Ministers (under section 2 of the Bill) could
potentially compromise its ability to undertake its core duty of protecting and
improving the water environment. SEPA suggested that it could be distracted from
this core duty were there too much emphasis on value, but said “that would not
happen if environmental factors were included in the Bill”.

34. Consumer Focus Scotland also considered that it would be better for the Bill
to specify environmental and social aspects and argued that without the inclusion
of such criteria, there was a danger that impacts on communities might not be fully
taken into account during the development of water resources. UKELA and the
Centre for Water Law agreed that it was important to make it clear to anyone
reading the Bill that it was not just concerned with economic benefits. In addition,
Scottish Environment LINK suggested that the Bill should be amended to reflect
the three constituent parts of sustainability in line with the widely-accepted legal
definition of sustainable development.

35. Scottish Natural Heritage concurred with the majority view and considered that
changing the Bill in this way would also ensure that “Scottish Water’s powers to
develop the value of Scotland’s water resources [in Part 3, section 21 of the Bill]
were also framed in terms of sustainable use.”

36. A contrary view was expressed by Energy UK, however, which felt the use of
the term “sustainable” in the Bill was sufficient, as it had taken this to mean social
and environmental issues.

37. In responding to the calls from stakeholders to include environmental and
social aspects in the definition of value in the Bill, the Cabinet Secretary stated that
she was “struck by the near unanimity of that view”.

38. The Cabinet Secretary confirmed that “it is my clear understanding and
interpretation of the definition as it is currently drafted that although it indicates the
importance of economic value, it does not do so to the detriment of other factors,

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48 Scottish Natural Heritage. Written submission, page 1.
such as environmental or social benefits. She also confirmed that aside from the Bill, Ministers are tasked to act in a way that ensures the sustainable use of resources.

39. In recognition, however, of the strength of opinion presented to the Committee in evidence, the Cabinet Secretary gave the commitment that—

“as we proceed to Stage 2, we will certainly give consideration to whether we want to respond to that by lodging amendments.”

40. The Committee acknowledges that the definition of value in the Bill does not preclude consideration of environmental and social benefits and accepts that Ministers must have regard to the sustainability of resources in their wider activities. However, it seems clear to the Committee that adding environmental and social elements would provide clarity and a deserved equality of emphasis to all three pillars of sustainability rather than just the economic aspects. It would also go some way to providing an assurance to SEPA that its core duty of protecting and improving the water environment would not be adversely affected by any potential directions from Ministers (under Section 2), and would ensure that Scottish Water is required to carry out its activities (under Part 3 of the Bill) in accordance with such values.

41. The Committee notes the strength of feeling on the subject and welcomes the Cabinet Secretary’s commitment to look at this matter at Stage 2. The Committee urges the Cabinet Secretary to bring forward an appropriate amendment to amend the definition of value in this regard.

Designated bodies and directions

42. The Bill would give Scottish Ministers the power to direct a “designated body” to participate in any water resources related development. The Bill states that, for the purpose of securing its participation in developing the value of Scotland’s water resources, “Scottish Ministers may give a designated body directions as to the exercise of its functions” (Section 2(1)).

43. A list of five designated bodies is included at Section 3(1). The designated bodies identified in the Bill are Scottish Water, SEPA, SNH, Scottish Enterprise and Highlands and Islands Enterprise. Scottish Ministers may add or remove bodies from this list.

44. On the whole, witnesses were content with the provisions for specifying designated bodies and the use of directions by the Scottish Ministers. However, some suggestions were made about the extent to which directions should be subject to consultation. For example, SSE suggested that if directions for Scottish Water could affect a third party’s rights in relation to a specific area of water then

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any direction should be the subject to consultation prior to the direction being issued.\textsuperscript{53}

45. Others called for a wider public consultation. UKELA suggested that before directions are given to any designated body, Ministers should be required to consult all the designated bodies for their views\textsuperscript{54} and, except in emergencies, to hold a public consultation.\textsuperscript{55} RSPB Scotland\textsuperscript{56} and Scottish Environment LINK\textsuperscript{57} also considered that directions should be subject to a full public consultation. Scottish Water, however, did not have strong views on the matter of consultation, although it did acknowledge that “it might be appropriate to consult other bodies more widely should they become designated, and to have wider discussion”\textsuperscript{58}.

46. The Centre for Water Law expressed a general concern about the transparency of directions and called for them to be published in order to make them as easily accessible as regulations or any other legal requirement.\textsuperscript{59} UKELA agreed and stated in written evidence that “directions have the force of law and yet they are not always easy to find, so there should also be a provision requiring their publication”.\textsuperscript{60}

47. In considering the delegated powers in the Bill, the Subordinate Legislation Committee referred to the issues of consultation and publication of directions and reported to the lead Committee that—

“Given the public interest in water as a commodity for general use the Committee considers that there is a public interest in the terms of directions to public authorities on how they are to operate with a view to developing the value of Scotland’s water resources. Accordingly the Committee recommends that the Scottish Government considers whether such directions, while not exercisable as subordinate legislation, should be subject to consultation and publication requirements.”\textsuperscript{61}

48. Other comments related to the list of designated bodies proposed in the Bill and a number of organisations suggested that the Forestry Commission could usefully be added. The James Hutton Institute\textsuperscript{62} said that the Forestry Commission should be included as a designated body on the basis that it is a large


\textsuperscript{55} UKELA. Written submission, page 2.

\textsuperscript{56} RSPB Scotland. Written submission, page 3.

\textsuperscript{57} Scottish Environment LINK. Written submission, page 2.


\textsuperscript{60} UKELA. Written submission, page 2.

\textsuperscript{61} Subordinate Legislation Committee, 48th Report, 2012 (Session 4): Water Resources (Scotland) Bill. The report is available on the Parliament’s website at: \url{http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66165.aspx}

landowner, especially in protected source regions and the Scottish Wildlife Trust (SWT)\(^63\) highlighted the impact that planting trees, for which the Forestry Commission is responsible, had on the water balance.

49. RSPB Scotland\(^64\)\(^65\) Scottish Environment LINK\(^66\)\(^67\) and the SWT\(^68\) also called for a wider range of bodies to be included in the list, including the Water Industry Commission for Scotland, Scottish Canals and the National Park Authorities, with a view to promoting the partnership approach to catchment management. They argued for a duty to be included in the Bill to reflect this in a similar way to the one included in the Flood Risk Management (Scotland) Act 2009, which was said to be working well. They considered that the catchment management approach could deliver a number of benefits. SWT considered that it was important that Scottish Water and others enter into agreements with NGOs and organisations with interests related to river catchments such as the SWT, which were already working with local communities. SWT suggested that “because it did not go in with a regulatory stick”\(^69\) organisations like it could go and talk to land managers in a way that Scottish Water and SEPA could not.

50. Scottish Environment LINK suggested that a benefit of such a partnership approach was that it would enable any conflicts to be eliminated at an early stage. For example, it said, the Forestry Commission’s approach to increasing the amount of forest coverage in Scotland could have a considerable effect on the quality of the water that comes out of those catchments depending on the types of tree species that are used. Scottish Environment LINK argued that, in its view, it makes sense to adopt a preventative approach “to include those public bodies at the earliest stage, so that the benefits of their experience can be reaped and to ensure that problems are not run into down the line”\(^70\).

51. The James Hutton Institute welcomed the proposal in the Bill that would allow Ministers to extend the list of designated bodies should the need arise.\(^71\)

52. The Cabinet Secretary envisaged that the power of direction would be “used sparingly.”\(^72\). She suggested that whilst it was hard to highlight individual examples, a possible direction from Ministers for an organisation could be to ring-fence a particular aspect of its activity in order to focus on the issues in the Bill.

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\(^64\) RSPB Scotland. Written submission, page 3.
\(^66\) Scottish Environment LINK. Written submission, page 2.
\(^71\) James Hutton Institute. Written submission, page 2.
53. In response to the suggestion from some organisations that directions should be subject to public consultation, the Cabinet Secretary told the Committee that whilst she would reflect on the evidence that has been submitted, “on balance, however, my view at the moment is that the issuing of a direction of this nature should not require a public consultation or a wider consultation, although it would clearly require consultation with the body that was subject to the direction”\(^73\). She suggested that including such a requirement to carry out wider consultation “would limit the ability of ministers to use the power of direction quickly and flexibly”\(^74\).

54. The Committee recognises that a full public consultation on proposed directions would be unnecessary but thinks that consultation with all designated bodies would be worthwhile. This would help to ensure that any directions do not duplicate the activities of other bodies and provide a suitable opportunity for advice and assistance to be shared. The Committee welcomes the Cabinet Secretary’s commitment to reflect on this matter.

55. Also, the Committee highlights the comments of the Subordinate Legislation Committee, which calls for Ministerial directions to be subject to publication requirements. This echoes some of the concerns raised in evidence to the lead Committee and the Committee requests that the Scottish Government reflects on this suggestion and provides a response.

56. In addition, the Committee suggests that the Scottish Government also considers whether the list of designated bodies as set out in the Bill is comprehensive enough. It seems to the Committee that there is a strong case for the inclusion of the Forestry Commission given its landowner status and the impact that tree-planting could have on raw water and water catchments. The Committee, therefore, invites the Cabinet Secretary to consider whether there would be benefit in including a duty to work in partnership with a broader list of designated bodies.

**Reporting period**

57. The Bill requires Scottish Ministers to lay before the Scottish Parliament, after a period of three years, a report on how (and the extent to which) Ministers have fulfilled their obligation in developing the value of Scotland’s water resources (Section 4(1)). The Bill also repeals the annual reporting requirement under the Water Environment and Water Services (Scotland) Act 2003.

58. The requirement to report to the Parliament was widely welcomed in evidence to the Committee. However, some organisations highlighted concerns over the clarity and length of the reporting period. Other comments were received in relation to the content of the reports and their placement alongside other statutory reports on the water environment.

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59. The Centre for Water Law\textsuperscript{75} and UKELA\textsuperscript{76} considered that the wording in the Bill was ambiguous and, in their view, only appeared to specify a single three-year reporting period rather than an ongoing requirement. Scottish Water commented that it interprets the Bill to mean that there would be a reporting duty every three years, although it acknowledged that the Bill was a little ambiguous in this regard and that it could be useful for the Bill to clarify this.\textsuperscript{77}

60. Also in relation to the wording in the Bill, UKELA suggested that the requirement for a report to be laid “as soon as reasonably practicable after the end of the reporting period” was unnecessarily open-ended.\textsuperscript{78} Whilst it did not have a view on what might be an appropriate timescale within which to lay a report, UKELA suggested that the Bill should specify a deadline.

61. Other organisations commented that three years was not sufficiently frequent to ensure that Ministers are held accountable for meeting their duty under the Bill. For example, Scottish Environment LINK felt that an annual reporting cycle would be more appropriate and would allow the Parliament the best chance to scrutinise the Government’s actions in relation to the Bill.\textsuperscript{79} Similarly, ICE was concerned that three years was too long to wait, at least for the first report. It suggested that, given the importance of the Hydro Nation agenda, “a shorter first reporting term would help to establish momentum and ensure that progress is made and that there is a return on the investment”.\textsuperscript{80} ICE proposed that the reporting periods for subsequent reports could be reviewed.

62. SEPA’s view, however, was that a shorter period (less than three years) would be overly onerous and suggested that the Bill’s reporting period could usefully fit with the six-year cycle for reporting on River Basin Management Plans.\textsuperscript{81} Scottish Water’s view was that the three-year reporting cycle was an appropriate length of time.\textsuperscript{82}

63. UKELA and the Centre for Water Law referred to the proposal in the Bill to repeal the annual high-level reporting requirement under the Water Environment and Water Services (Scotland) Act 2003. UKELA suggested that “it was perhaps wrong to repeal the [WEWS] reporting requirement”.\textsuperscript{83} The Centre for Water Law suggested that there was an opportunity to continue a single form of high-level reporting to Parliament by coalescing Ministerial reports under the continuing annual requirement of the Flood Risk Management Act 2009 and the proposed

\textsuperscript{76} UKELA. Written submission, page 2.
\textsuperscript{78} UKELA. Written submission, page 2.
\textsuperscript{81} SEPA. Written submission, page 1.
Bill. 84 Scottish Environment LINK sought clarity about “what steps will be taken to ensure that Parliament adequately scrutinises the implementation of the Water Environment and Water Services Act 2003”85.

64. Other views related to the content of the reports required under the Bill. ICE suggested that the reports should be closely aligned with the aspirations of the overall Hydro Nation agenda; that they should be wide-ranging and should include the broad value of the resource, including aspects relating to employment, education and knowledge transfer. 86 Scottish Water also envisaged an overarching report: “it would be helpful for the public to understand what the Government has done, what activities have taken place during the three years and what benefits activity is bringing to the economy and the environment”87.

65. The Cabinet Secretary confirmed that the intention was for the Bill to initiate a continuous three-year cycle. 88 However, she noted the desire of stakeholders for greater clarity on a regular timetable for the submission of reports and gave the commitment to look to see whether the Scottish Government should introduce amendments at Stage 2 to make it clear that there is a requirement to report regularly after the first report. 89

66. The Cabinet Secretary also responded to views from stakeholders that called for a shorter reporting period than three years. She considered that given that it was a long-term agenda, three years was a reasonable period after which to expect a progress report.90

67. In terms of the concerns about repealing the annual reporting provision in the Water Environment and Water Services (Scotland) Act 2003, the Cabinet Secretary suggested that the information included in those reports was readily available: “MSPs can ask for an update at any time, so I am not sure that we should continue to have the burden of annual reporting on what is a long-term agenda”91.

68. The Committee is minded to agree that the proposed three-year reporting cycle is appropriate. However, in recognition of the concerns raised by witnesses about the importance of reporting annually, the Committee has agreed that, if the Bill is passed by Parliament, it will conduct annual scrutiny during at least the first reporting period to assess the Government’s

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85 Scottish Environment LINK. Written submission, page 2.
actions under the Hydro Nation agenda, including activities in relation to the Bill. It is hoped that this will provide sufficient opportunity to scrutinise the legislation in the early years following its coming into force.

69. In addition, the Committee notes that annual reports are still required under the Flood Risk Management (Scotland) Act 2009 as well as six-yearly River Basin Management Plan reports, which creates a confusing picture. The Committee, therefore, considers that in line with the over-arching approach taken by the Hydro Nation, the Cabinet Secretary gives further thought to how a co-ordinated Hydro Nation reporting structure might be established.

70. In relation to the terminology used in the Bill regarding the reporting period, the Committee considers that it should specify more clearly the intention for this to be an ongoing requirement rather than simply a single report. The Committee welcomes the Cabinet Secretary’s commitment to look at this further and hopes that she will bring forward a suitable amendment at Stage 2 in order to clarify the matter.

Part 2: control of water abstraction

71. Part 2 of the Bill provides for the Scottish Ministers to control large scale water abstractions. It requires Ministerial approval before an abstraction, which is above the specified threshold of 10 megalitres per day, can take place. The Bill also includes certain exemptions that apply to these rules.

The new abstraction regime and the Controlled Activities Regulations

72. The Policy Memorandum states that the proposed abstraction application process will be separate from the Controlled Activities Regulations (CAR) licensing regime that SEPA operates in circumstances where a proposed abstraction may have a potential impact on the environment. In future, all applications which fall within the eligibility criteria will need Ministerial approval, as well as a CAR licence to proceed.

73. The policy intention is to ensure that applications for abstractions are considered not only in terms of their environmental impact but also in their broader and long-term impact on the value of the water resources of Scotland. The Policy Memorandum states that “when an application is made for a Controlled Activities Licence for an abstraction, SEPA looks almost exclusively at the environmental impact of the abstraction, in keeping with their role as the environmental regulator”. The Policy Memorandum states that the long-term factors of climate change, population growth and movement, urbanisation and industrialisation could impact on Scotland's water resources, and argues that these “are not easily taken account of in the present abstraction regime or the planning framework”.

74. The Committee has been made aware in evidence of a number of concerns in relation to the proposal to introduce the new abstraction regime. The primary

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92 Policy Memorandum, paragraph 23.
93 Policy Memorandum, paragraph 25.
94 Policy Memorandum, paragraph 24.
concern expressed by stakeholders was that they had not had an opportunity to comment on the draft proposals prior to the introduction of the Bill. As a result, stakeholders were unclear about the purpose and intention of this aspect of the Bill.

75. In particular, doubt was expressed about the need for the new abstraction regime given the existence of the CAR process, which was considered to be working well. RSPB Scotland noted that Ministers already had the power to call in abstractions under CAR\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 19 September 2012, Cols 863-864.}; while the SWT suggested that a better approach would be for the Bill to build on CAR rather than introduce a whole new regulatory process\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 19 September 2012, Col 864.}. SSE was not clear about the nature and scale of the problem the proposals in the Bill were attempting to address and told the Committee that overall, it was unable to say whether the proposals were necessary to achieve their objectives because it did not have enough information to form a view on it.\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 3 October 2012, Col 956.}

76. The Centre for Water Law considered that the CAR system worked well and found it difficult to see the added benefit of another layer of regulation—

\begin{quote}
“Our view… is that a comprehensive set of abstraction controls already applies in Scotland under the controlled activities regulations and we struggle to see the added benefit that the bill will provide. I know that it is argued that Ministers are better placed to consider economic and social aspects… but we see no reason in principle why Ministers could not exercise their call-in powers over abstractions that are of certain types and above certain limits.

“The CAR regime is well established and works well. It is thorough and has good provision for third-party representation and so forth.”\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 24 October 2012, Col 1003.}
\end{quote}

77. Similarly, UKELA argued that there was duplication between CAR and the proposals for the new abstraction regime. It outlined that under the CAR regime, where an abstraction is deemed to have a significant ecological impact, SEPA “must conduct a major balancing exercise that is based on sustainable development principles” and in doing so “is therefore required to consider economic and social as well as environmental aspects”.\footnote{Scottish Parliament Infrastructure and Capital Investment Committee. \textit{Official Report}, 24 October 2012, Col 1009.} UKELA, therefore, did not accept the need for Part 2 of the Bill on account of the suggestion that SEPA only looks at the environmental aspects of major abstractions. In UKELA’s view, SEPA has a well-developed method for dealing with those decisions and which, it explained, has also been successfully defended on appeal.
78. Energy UK considered that Part 2 of the Bill was not in keeping with the better regulation agenda.\textsuperscript{100} It stated that the new regime would mean double the number of applications for businesses, where they must apply to Ministers in addition to the CAR process, bringing with it the extra costs associated with this process. Scottish Land and Estates agreed and suggested that the proposals run counter to the Scottish Government’s policy of reducing bureaucracy and regulation. In addition, the Scotch Whisky Association was concerned about additional costs for businesses and specifically consultants’ fees, which it raised with the Finance Committee (see also paragraph 195).\textsuperscript{101}

79. In written evidence, SEPA stated that its main concern would be where a conflict arose with its duty to protect the water environment from abstractions under CAR. It was, however, content that the “Bill clearly sets out that it does not affect the requirements under CAR”\textsuperscript{102}. In oral evidence to the Committee, SEPA considered that whilst it had sufficient powers to protect the water environment, “further powers may be needed if Ministers feel that there is a need to consider wider social or economic issues”\textsuperscript{103}. Scottish Water was also comfortable with the abstraction regime proposed in the Bill and considered it to be reasonable for abstractions at the level that is envisaged to come to the attention of the Scottish Ministers.\textsuperscript{104}

80. In its report to the lead Committee, the Subordinate Legislation Committee commented on the process for setting grounds on which consents granted for abstractions could be suspended or revoked. It stated that—

“The Committee is of the view that setting out the grounds on which consents granted for large scale abstraction may be suspended or revoked is a matter of importance in which there is a significant public interest. It therefore recommends that the power to set additional grounds which will empower Ministers to suspend or revoke consents should be subject to the affirmative procedure.”\textsuperscript{105}

81. In responding to the concerns about a lack of consultation, the Cabinet Secretary explained that this “was simply down to the fact that the part of the Bill on abstraction was developed at a relatively late stage of the process”\textsuperscript{106}. Whilst she was not convinced by the need for holding a formal consultation on the proposed abstraction regime, she confirmed that her officials would continue to


\textsuperscript{101} Scotch Whisky Association. Written submission to the Finance Committee, page 2. The submission is available on the Parliament’s website at: \url{http://www.scottish.parliament.uk/S4_FinanceCommittee/Inquiries/Water.pdf}

\textsuperscript{102} SEPA. Written submission, page 1.


\textsuperscript{105} Subordinate Legislation Committee, 48th Report, 2012 (Session 4): Water Resources (Scotland) Bill. The report is available on the Parliament’s website at: \url{http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56165.aspx}

talk to stakeholders about the provisions in question and her team would “pay particularly close attention to the comments that have been made to the Committee in oral and written evidence on part 2 to inform any changes that we might want to introduce at Stage 2”\(^{107}\).

82. The Committee also explored with the Cabinet Secretary what the new abstraction regime would add to the existing CAR process. The Cabinet Secretary responded that, in her view, it would add a lot because “the CAR system is restricted to environmental factors”\(^{108}\). She argued that in considering applications, “Ministers will be able to have regard to factors, such as the social and economic value of the activity, the applicant’s financial circumstances and the overall effect of the abstraction, that they are unable to have regard to under the CAR process”\(^{109}\).

83. In relation to any additional costs for businesses arising from the proposed abstraction regime, the Cabinet Secretary stated that these would be set out in the regulations that would be brought forward by Ministers. She said that she would also consult and listen to stakeholder views before reaching any decision on the content of the regulations\(^{110}\). In addition, Scottish Government officials confirmed that alongside the regulation, the Government would publish a Business and Regulatory Impact Assessment, which would “capture the costs incurred by applicants including any consultancy that may be required by them”\(^{111}\).

84. The Committee acknowledges the substantial concerns that were raised in oral and written evidence that questioned whether there is a need for the new abstraction regime. In particular, the Committee notes the views of witnesses who suggested that it might be better to enhance the Controlled Activities Regulations rather than create an additional regulatory and cost burden on businesses.

85. The Committee considers that the proposed abstraction regime would have benefited from consultation prior to the introduction of the Bill. The Committee is disappointed that the Government did not manage to include the abstraction proposals in either of its two previous consultations.

86. Whilst the Committee agrees that a full consultation would perhaps not be particularly practical given the Bill’s current stage of its Parliamentary progress, it considers that it is necessary for the Scottish Government to demonstrate that its ongoing discussions with those organisations that could have an interest in the abstraction regime are an appropriate


alternative in the circumstances. The Committee, therefore, calls on the Scottish Government to report to the Committee on the nature of, and outcomes from, its programme of engagement with stakeholders prior to Stage 2.

87. In addition, the Committee requests that the Scottish Government considers and responds to the recommendation of the Subordinate Legislation Committee that the power to set additional grounds which will empower Ministers to suspend or revoke abstraction consents should be subject to the affirmative procedure.

Threshold of 10 megalitres per day
88. The Bill sets the threshold for qualifying abstractions at above 10 megalitres per day (Section 7). The abstraction must also take place from any body of inland water,\(^\text{112}\) as defined by the Water Environment and Water Services (Scotland) Act 2003.

89. The Committee heard in evidence that, other than SEPA, which considered it to be appropriate,\(^\text{113}\) there was little understanding of why the threshold of 10 megalitres had been set in the Bill. The James Hutton Institute considered it to be an arbitrary figure,\(^\text{114}\) Scottish Environment LINK called for further clarification before Stage 2\(^\text{115}\); and the Scotch Whisky Association questioned whether the threshold applied to entire organisations or individual sites\(^\text{116}\). The Institute also highlighted the difficulty in setting a threshold when every catchment is different and therefore it was important to measure the impact on a particular local area rather than applying a figure across the board.\(^\text{117}\) ICE agreed, but recognised that for practical purposes it made sense to have a single figure threshold.\(^\text{118}\)

90. In oral evidence to the Committee UKELA provided data that it had received from SEPA, which gave an indication of the number of authorised abstractions around the 10 megalitres threshold over the past five years since CAR came into force. UKELA stated that—

“"There are currently 199 authorised abstractions exceeding 10 megalitres per day, of which 177 would be exempt under the proposals. The remaining 22 are for industrial process water, although it is not clear from the data that I have received whether that is for cooling or other industrial uses. Below that threshold, there are about 100 abstractions of between 2 and 10 megalitres per day, so there are more in the higher category.""

\(^{112}\) Inland water is defined by the Water Environment and Water Services (Scotland) Act 2003 as all standing or flowing water on the surface of the land (other than partly saline water in the vicinity of river mouths) and all groundwater within the landward limits of coastal water.

\(^{113}\) SEPA. Written submission, page 2.


Under the current proposals, we would be looking at 20 abstractions over the five years since CAR came into force.”

91. In other evidence to the Committee, the Scotch Whisky Association suggested that the threshold should specify the volume of water that is consumed rather than the amount abstracted. In written evidence, the Association explained that although the Scotch Whisky industry used a significant amount of water (in 2010 it used 37,024,340m³), the majority (66%) was returned to the environment. SCDI also argued for the threshold to be based on consumption rather than abstraction on the basis that “abstracted water may be returned to the environment unharmed”120.

92. The Committee called upon SEPA’s expertise in relation to whether a measure of consumption could be used. SEPA provided the following response—

“Even if an abstraction returns the water to the water environment, there is a gap, and a stretch of river could be depleted of water. That stretch could be several hundred metres, several miles or tens of miles. In the hydro sector, for example, there are a lot of cross-catchment transfers of water, which can result in localised impacts unless they are properly addressed. From an environmental point of view, it is important that we deal with both consumptive and non-consumptive uses of water.”121

93. In oral evidence to the Committee, the Cabinet Secretary stated that the threshold of 10 megalitres per day had been chosen “simply because it is a significant volume of water”122. She stated that the vast majority of abstractions in Scotland currently fall beneath that threshold, “so the regime is not likely to have a massive impact on those who use water”123. She added that “it is right to set a fairly high threshold, given that big abstractions will be more likely to jeopardise that kind of sustainable safeguarding”124. The Cabinet Secretary confirmed, however, that the threshold could be changed if reasons for doing so emerged.

94. The Committee notes that there is some doubt about the rationale for the abstraction threshold of 10 megalitres per day. It seems to the Committee that this is due to a general lack of understanding on the part of stakeholders about the policy intention behind the new abstraction regime.

95. In order to provide greater clarity, the Committee considers that the Scottish Government should include discussion on the threshold limit when

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120 Scotch Whisky Association. Written submission, page 2.
it engages with stakeholders on the wider policy intention of Part 2 of the Bill.

96. In response to the call for a consumptive threshold, whilst the Committee is not in a position to make a fully-informed view on the matter, it seems reasonable that any abstraction, whether the water is largely returned to the environment or not, will have an impact on the water environment to some extent, which must be recognised in any threshold.

Exemptions
97. The Bill proposes that abstraction applications above the threshold of 10 megatitres per day are to be exempt if they are to be carried out for the sole or principal purpose of—

- the exercise by Scottish Water of its core functions in relation to premises in Scotland; or

- generating electricity by hydro-power; irrigating agricultural or horticultural land; or operating a fish farm, or a quarry or a coal or other mine.

98. In addition, applications would be deemed to be exempt if, once the Bill is enacted, they had already been granted under CAR.

99. In evidence received by the Committee, a number of organisations called for the list of exemptions to be extended. For example, the Scotch Whisky Association called for the Scotch Whisky industry to be exempt from the abstraction regime. It considered that as a significant, key water user “we ask for our industry to be considered for an exemption, along with the other organisations that are currently exempt and classed as key to Scotland”\(^{125}\).

100. SSE\(^{126}\) welcomed the exemption for hydro generation, but suggested that gas-fired power stations could also be added to the list and Energy UK\(^{127}\) suggested that all thermal power stations should also be included, not just gas-fired stations.

101. Scottish Water acknowledged that perhaps one or two sectors had been missed out in terms of exemptions and suggested that it would be worth clarifying whether that was the case\(^{128}\). In addition, Scottish Water confirmed that abstractions relating to its non-core activities would require authorisation through CAR and the new abstraction regime, just like any other applicant\(^{129}\).

102. Although the Policy Memorandum did not include any explanation as to why certain sectors had been given exemptions under the abstraction regime, the

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\(^{125}\) Scotch Whisky Association. Written submission, page 2.


Cabinet Secretary was able to provide some clarification. She confirmed that whilst the list could be amended, the general criteria included activities that are “for the most part non-consumptive of the water abstracted and which confer wider public benefit”\textsuperscript{130}.

103. The Committee does not have strong views on which sectors should and should not be included in the list of exemptions. However, the Committee recommends that the Scottish Government should carefully consider whether there is scope for extending the list to include any additional activities.

104. Where an organisation or sector is to be added to or removed from the list of exemptions once the Bill has been enacted, the Committee would expect the full list of designated bodies (included in Section 3 of the Bill) to be consulted on the proposal.

Part 3: Scottish Water’s functions

105. The Bill seeks to give new powers to Scottish Water and to encourage it to develop commercially and to support the Hydro Nation agenda. The Policy Memorandum states these new powers are to be differentiated from Scottish Water’s “core” services, which relate to the provision of water and sewerage services. In this way, the Bill aims to protect the customers who receive the core services and to provide “clarity and certainty over the powers Scottish Water has to operate beyond its core functions”\textsuperscript{131}.

106. The Bill would allow Scottish Water to do anything that it considers will assist in the development of the value of Scotland’s water resources (Section 21). It also proposes a new duty on Scottish Water to take reasonable steps to develop its property, rights, other assets and expertise and promote the use of its assets for the generation of renewable energy (Sections 22 and 23).

107. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water and for these subsidiaries to borrow from other sources (Section 25). The total amount that can be borrowed by Scottish Water and its subsidiaries cannot exceed the amount set out for that purpose in the annual Budget (Scotland) Act.

Definition of core and non-core activities

108. SEPA welcomed the new functions for Scottish Water relating to renewable energy generation, particularly using waste water products and hydro generation. However, SEPA warned that by moving into these non-core areas, Scottish Water must not become distracted from delivering its future environmental objectives, such as the River Basin Management Plans\textsuperscript{132, 133}.

\textsuperscript{131} Policy Memorandum, paragraph 28.
\textsuperscript{132} SEPA. Written submission, page 2.
109. Similarly, RSPB Scotland\textsuperscript{134} and Scottish Environment LINK\textsuperscript{135} commented that any activities undertaken by Scottish Water in carrying out its non-core services must be carried out in the interests of sustainable development. They also said that they would like to see a requirement for Scottish Water to produce a strategy to underpin its development of renewables, including onshore wind and hydropower schemes in Scotland.\textsuperscript{136 137}

110. The Centre for Water Law commented that Part 3 of the Bill adds clarity to Scottish Water’s core and non-core functions.\textsuperscript{138} However, it did suggest that the phrase “relating to” could result in some grey areas where, for example, some power generated from renewables goes to the grid (non-core) but some is also used to provide power for a treatment works (core).

111. Consumer Focus Scotland commented on the mechanisms in the Bill that would allow Ministers to lend to Scottish Water’s subsidiaries. It was satisfied that, following a conversation with Scottish Government officials, there would be a distinct funding stream for Scottish Water’s subsidiaries that was entirely separate from the core funding. Consumer Focus Scotland agreed with that separation and confirmed that it was “very clear that there should be no cross-subsidy from the core service funding stream to the non-core funding stream”\textsuperscript{139}. Consumer Focus Scotland was, however, concerned with exploring why the non-core funding stream should be protected, and asked what “will happen to the money when it is in that pot, and why it should not be clear to consumers in Scotland—who will ultimately pay for it—what benefit they will get from it”\textsuperscript{140}.

112. Scottish Water considered that the Bill offered a helpful clarification that its “core business is to provide water and waste water services for customers in Scotland”\textsuperscript{141}. It considered that it kept the core and non-core parts of its business absolutely separate. It added that it saw no conflict in that respect and stated that—

“as a regulated business, we are absolutely transparent. Scottish Water Horizons makes commercial decisions... everything is audited and open to scrutiny.”\textsuperscript{142}

\textsuperscript{136} Scottish Environment LINK. Written submission, page 4.
\textsuperscript{137} RSPB Scotland. Written submission, page 4.
113. The Water Industry Commission for Scotland (WICS) also considered that it was worth having clarity between core and non-core activities. In its view, the way in which the Bill separates Scottish Water’s core and non-core functions was strong enough to ensure that customers did not end up paying extra to finance non-core activities. It did, however, acknowledge that some renewables activities could be defined as core activities as well as non-core, which was down to whether they were part of the defined objectives set out by the Scottish Government.

114. WICS also confirmed to the Committee that it had the necessary powers and procedures with which to regulate Scottish Water and its subsidiaries. It explained that, on an annual basis, it collected detailed accounting information about Scottish Water’s allocations of costs between the core business and non-core business. Also, around every two or three years, WICS looked at how Scottish Water allocates its costs.

115. The Committee questioned WICS on whether any lending to Scottish Water subsidiaries could deplete the funding available for core services. WICS confirmed that it would not be desirable for this to be the case explained that it “considers the borrowing carefully in relation to Scottish Water’s ongoing financial sustainability.”

116. WICS considered that—

“if someone decided that no borrowing at all was going to be available to Scottish Water because the money was all going into its non-core activities, there would clearly be an impact on household bills. We would no doubt want to say something about that...”

“We want to create a financial regime for Scottish Water in which we can look ahead confidently, as we can now, and we see no particular reason why bills need to go up in the foreseeable future, which includes beyond 2015, when the next regulatory period kicks in.”

117. It was a role for the Scottish Government, WICS said, to decide where any benefits that accrue from Scottish Water’s activities are allocated. For example, the Government could choose to leave some of the benefits in the business for households, or it may choose to use them for alternative purposes. WICS emphasised, however, that “what cannot happen is that customers get any of

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the benefits but bear none of the costs – that would not work in a rational commercial world”\(^{147}\).

118. The Cabinet Secretary referred to the work of WICS and the regulatory regime and confirmed that they protected core services and stipulated that “nothing in the non-core part of Scottish Water’s services should be subsidised by the money that people pay for water and sewerage services”\(^{148}\).

119. The Cabinet Secretary added that a Scottish Water subsidiary would be required to adsorb any financial loss made in its non-core services and that this “would not impact on its core business”\(^{149}\). She confirmed that any Scottish Water subsidiary “has to make decisions to ensure that it is operating in a sustainable way, but the function of the Government is to ensure that the law is designed and the regulatory system works to protect consumers of core services”\(^{150}\). In response to the suggestion from Consumer Focus Scotland on whether non-core profits could be used for the benefit of consumers of core services, the Cabinet Secretary confirmed that this would be subject to Ministerial decision-making.\(^{151}\)

120. The Committee welcomes the clarity offered by the Bill to differentiate between Scottish Water’s core and non-core activities. The Committee also welcomes the assurance from WICS and the Scottish Government that funding for core services will be entirely separate from the non-core side of Scottish Water’s business.

121. However, in the light of the evidence from WICS, the Committee would welcome clarification from the Cabinet Secretary on the specific types of renewables activities that would be classed as core Scottish Water services.

122. The Committee notes the extensive preparatory work and discussions that have now started, looking ahead to the next Regulatory period from 2015. As part of this process, the Committee invites the Scottish Government to consider how benefits to customers could be derived from profitable non-core activities, whilst also maintaining a degree of protection for customers.

**Impact on Scottish Water’s commercial position**

123. The Committee also heard from the renewable energy and waste management sectors, which had substantial concerns about the provisions in Part 3, suggesting that they could give Scottish Water an unfair competitive advantage in the market. The Scottish Environmental Services Association (SESA),\(^{152}\)


SSE\textsuperscript{153} and Energy UK\textsuperscript{154} did not have any objection to Scottish Water entering into the market, so long as there was a level playing field in terms of competition.

124. SESA argued that its members reported distortions in competition arising from Scottish Water’s commercial activities and its ability to provide waste management services at below market rates.\textsuperscript{155} Specifically, Scottish Water was said to have a number of advantages, including that it could use existing assets such as redundant sewage treatment works and it has access to large land banks, whereas a private sector company has to acquire land. As a result, SESA argued that “the concern is that Scottish Water does not have the same up-front costs and financial constraints as private sector companies have and so would be able to offer its services at below the market rate”\textsuperscript{156}.

125. SSE’s concerns with the Bill were centred on how Scottish Water’s activities are funded and whether it, or any of its subsidiaries, received preferential treatment. SSE was concerned that these lending mechanisms “could be construed as state aid and would have the potential to distort competition and affect trade in the competitive electricity generation market”\textsuperscript{157}. It also questioned the appropriateness of Business Stream’s apparent receipt of loans from the Scottish Government for it to operate in the competitive water retail market.\textsuperscript{158}

126. The Committee understands that through its subsidiary – Scottish Water Horizons – Scottish Water is already investing in renewable energy generation and undertaking some waste management activities. The Water Industry (Scotland) Act 2002 permits Scottish Water to “engage in any activity (whether in Scotland or elsewhere) which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions”. Given this, the Committee asked Scottish Water what benefits Part 3 of the Bill will bring. In response, Scottish Water confirmed that although it was already involved in those commercial activities, the Bill would provide “a formal green light” and “would make it much more publicly known and transparent that we are expected to move in this direction”.\textsuperscript{159} It added that, in its view, “if people are concerned about unfair advantages in a competitive market, making all this transparent and bringing it out into the open that we are expected to develop in this area will lead to more scrutiny”\textsuperscript{160}.

127. In response to the concerns expressed by SESA, SSE and Energy UK that Scottish Water and its subsidiaries had an unfair competitive advantage, Scottish Water replied that it could—

\textsuperscript{155} SESA. Written submission, page 2.
\textsuperscript{157} SSE. Written submission, page 3.
\textsuperscript{158} SSE. Written submission, page 3.
"understand how that might be the perception of those organisations, but
the reality is that the non-core business is financed at commercial rates
and not at any Scottish Government-subsidised rate. We and indeed the
Government have to be very careful of European Union state aid rules.
For the record, Scottish Water Horizons does not enjoy any beneficial
financing rate from the Scottish Government; everything is carried out on a
proper commercial basis.

"… we are routinely subject to scrutiny by WICS through the reviews that it
undertakes as part of its auditing of transfer pricing. There is protection
both for customers and for the Government in ensuring that we have no
cross-subsidies between our core and non-core activities or with regard to
financing from outside Scottish Water."\(^{161}\)

128. With Scottish Water’s commercial non-core activities being encouraged
under the Bill, it said that it would welcome a debate “on the public’s expectations
of us, how we are to perform, how we manage risk and what is and is not
acceptable”\(^{162}\).

129. WICS referred to its role in ensuring that Scottish Water and its subsidiaries
are not operating at an advantage in comparison with their commercial rivals.
WICS said that it had been careful to ensure that “the cost allocations that are
made are reasonable and fair and do not compromise people’s ability to
compete”\(^{163}\). It confirmed that “in the retail space, we clearly set a return that
Scottish Water Business Stream must be capable of earning to ensure that it has
absolutely no advantage over other potential retailers in Scotland”\(^{164}\).

130. In response to the issue of whether the Scottish Government’s support of
Scottish Water Horizons might breach EU state aid rules, WICS explained that—

“We have taken counsel’s opinion on state aid for other purposes. Based
on that opinion, I think it unlikely that the Government is breaching the
rules. In essence, under those rules, there must be a material advantage
that impacts on interstate trade in a material way.

“It is unclear that any of the specific projects in which Scottish Water would
be involved are big or substantial enough to be caught by that. That does
not mean that the Government does not want to be careful on the issue. It
certainly does not want to be cavalier and it wants to ensure that the
financing is not overtly generous.”\(^{165}\)

October 2012, Col 1032.

\(^{162}\) Scottish Parliament Infrastructure and Capital Investment Committee. Official Report, 31
October 2012, Col 1031.

October 2012, Col 1040.

October 2012, Col 1040.

October 2012, Cols 1040-1041.
131. Similarly, the Cabinet Secretary was “very clear”\textsuperscript{166} that Scottish Water Horizons did not and would not have a competitive advantage over its commercial rivals. She confirmed that—

“Scottish Water’s non-core activities operate fairly and on a level playing field. For example, lending to Scottish Water Business Stream happens at a commercial rate that is determined by the economic regulator; similarly, any future lending to any Scottish Water subsidiary would also take place at a commercial rate. That is very important for state aid reasons… We expect Scottish Water to earn a fair economic return from all its non-core commercial activities. I do not believe that it is able to operate at an unfair advantage, and nor should it be.”\textsuperscript{167}

132. The Committee welcomes the assurance from the Water Industry Commission for Scotland (WICS) and the Scottish Government that Scottish Water and its subsidiaries do not and will not operate at any commercial advantage to its competitors.

133. However, the Committee acknowledges the significant concerns raised by witnesses about whether Scottish Water would be operating at a commercial advantage under the Bill. As such, the Committee recommends that WICS and the Scottish Government engage directly with the renewable energy and waste management sectors to provide them with the necessary assurances.

Part 4 – Raw water quality

134. The Policy Memorandum states that the intention of Part 4 of the Bill is to safeguard and improve, where possible, the quality of raw water.\textsuperscript{168} Part 4 of the Bill would give Scottish Water powers to enter premises for the purpose of monitoring the quality of raw water (water that, once treated, may be used for human consumption) and for the purpose of investigating or isolating anything that may be affecting the quality of such water (Section 27).

135. The Bill would also allow Scottish Water to enter into agreements with owners and occupiers of land as well as with local authorities with a view to taking action to prevent the deterioration of raw water quality or reducing the need to treat the water.

136. The Policy Memorandum reflects the Scottish Government’s intention that the proposals in the Bill would be combined with non-legislative measures to promote joint working amongst Scottish Water, SEPA and land owners or tenants on issues related to raw water quality.\textsuperscript{169}


\textsuperscript{168} Policy Memorandum, paragraph 32.

\textsuperscript{169} Policy Memorandum, paragraph 33.
137. However, the Committee heard in evidence that there were some concerns about the new powers for Scottish Water. For example, Scottish Land and Estates argued that Scottish Water should not be given new powers of entry and inspection of premises and instead considered that it was “essential that Scottish Water works with land managers in order to rectify problems rather than acting in a top down fashion”\textsuperscript{170}. The Centre for Water Law said that it could be argued that SEPA would be better placed to carry out monitoring of raw water quality and suggested that “if further monitoring is required, then it [SEPA] should have additional resources”\textsuperscript{171}.

138. SEPA was, however, fully supportive of the proposals in the Bill and felt that they complemented SEPA’s role. It welcomed its partnership with Scottish Water, particularly in dealing with the very challenging issues of diffuse pollution—

“In those areas where there are drinking water problems, we feel that it is appropriate that Scottish Water works with us and landowners to assist in mitigating the situation.

“That is already happening, and we work hand in hand with Scottish Water staff in a number of catchments, in particular the Ugie catchment in the north-east. We also work with land managers to raise awareness, advise them of their obligations and assist them in mitigating against the pollutants that affect drinking water. We think that our work is complementary.”\textsuperscript{172}

139. Scottish Water agreed that its new powers proposed in Part 4 complemented those of SEPA. Scottish Water distinguished between its focus, which “relates to the protection of raw water for consumption and public health reasons” and SEPA’s role of protecting the environment.\textsuperscript{173} Scottish Water considered that the new powers would assist it in its duty to provide drinking water that is fit for consumption.

140. SWT also pointed to the benefits of partnership working, which it saw as supported by the Bill. It emphasised the importance of treating pollution issues “at source” by working with the local communities. It stressed that, in its view, this was “one of the most positive areas of the Bill” and called for “it to be developed to include the NGOs among all the others”.\textsuperscript{174}

141. Similarly, RSPB Scotland observed that the Bill reflected a shift towards a sustainable catchment management approach, which it considered to be extremely positive.\textsuperscript{175} The Centre for Water Law\textsuperscript{176} and UKELA\textsuperscript{177} also highlighted
this type of partnership approach – as contained in the Flood Risk Management (Scotland) Act 2009 – and suggested that a similar duty of co-operation between Scottish Water, SEPA and all other key stakeholders should be included in the Bill.

142. The Cabinet Secretary acknowledged that whilst the roles of SEPA and Scottish Water could overlap, “it is right and proper that Scottish Water has the ability to find out what might be undermining the raw water quality, so that it can decide what the most effective solution to that is and find a solution in a way that benefits customers”\textsuperscript{178}.

143. In response to the partnership approach to catchment management that was highlighted by a number of witnesses, Scottish Water confirmed that it was currently collaborating with SEPA and NFU Scotland. In addition, it said it was involved with a voluntary initiative in the River Ugie and was about to start discussions with the RSPB.\textsuperscript{179} Scottish Water considered the proposals relating to partnership working as extensive and did not need to be reinforced further.

144. The Cabinet Secretary confirmed that the type of partnership working that had been referred to by various witnesses in evidence to the Committee would continue to operate on a voluntary basis. She considered, however, that “those voluntary partnerships do not always work as effectively as we would want them to” and suggested that “in those circumstances and given the importance of the quality of raw water, it is important that Scottish Water has the power to do what is envisaged in the Bill”.\textsuperscript{180} She confirmed, however, that the powers in Part 4 of the Bill would “be used sparingly, as a last resort” and that “the partnership approach will continue to be the preferred approach”.\textsuperscript{181}

145. A number of other issues were raised in evidence to the Committee. The Centre for Water Law\textsuperscript{182} and UKELA\textsuperscript{183} noted some concern about whether Part 4 of the Bill could incentivise land managers to undertake actions that they were in fact already required to carry out under other environmental legislation. This was also something that the RSPB Scotland referred to in its written evidence and it called for added safeguards to ensure that land managers did not receive financial payments from Scottish Water in this way.\textsuperscript{184}

\textsuperscript{183} UKELA. Written submission, page 7.
\textsuperscript{184} RSPB Scotland. Written submission, page 5.
146. In response, Scottish Water was clear that “first and foremost, farmers’ activities must comply with the general binding rules that have been set out in Scotland, which SEPA enforce”\(^{185}\). It added that the types of activities included—

“the provision of biobeds, which are biological beds that take away pesticide run-off when farmers are starting to fill up sprayers, and working with farmers to encourage them to fill up pesticide sprayers far from watercourses. We provide advice and finance to help farmers to put in place biobeds and extend buffer strips. We also help farmers to switch pesticides, in circumstances where it is beneficial for them to cease using chemicals such as metaldehyde and switch to some other pesticide.

“Those activities are beyond the general binding rules, and we are very clear about that. We have been in discussion with the Scottish Government state aid department. Our schemes have been through the European Commission to ensure that we do not infringe state aid rules.”\(^{186}\)

147. The Cabinet Secretary concurred with Scottish Water and told the Committee that it was certainly not the intention of the Bill to incentivise land managers in such a way. The Cabinet Secretary gave a commitment, however, “to see whether we need to do more to clarify that in the Bill”\(^{187}\).

148. On a separate issue, UKELA referred in written evidence to the use of the term “premises” in the context of Scottish Water’s power of entry. UKELA sought clarification on whether land and buildings would be included in the definition of premises.\(^{188}\) The Cabinet Secretary confirmed that it was envisaged that the term premises meant land and building, and did not include houses.\(^{189}\) However, given UKELA’s concern about a potential lack of clarity in the Bill, she undertook to look at whether any changes are required at Stage 2. The Committee welcomes this commitment and looks forward to receiving details of the outcome of the Scottish Government’s consideration of this issue.

149. The Committee also welcomes the emphasis on partnership working and its reference to catchment management initiatives together with the non-legislative work that the Scottish Government intends to undertake to accompany the Bill. However, the Committee would welcome further details of what the non-legislative work will include, and also how the Scottish Government intends to engage with those groups that have concerns about this Part of the Bill to explain the rationale behind the provisions and their practical effect.


\(^{188}\) UKELA. Written submission, page 7.

The committee also calls on the Scottish Government to consider whether NGOs and catchment management groups should be specifically included in the Bill and to what extent it will include them in its non-legislative activity that will be conducted in parallel with the Bill.

Part 5 – Non-domestic services

Deemed contracts

151. This part introduces measures allowing water and waste water providers (known as licensed providers) to demand and recover charges from non-domestic customers where payment is due (Section 29). It would also require landlords to inform a licensed provider when there is a change in occupancy in their property (Section 30). The Policy Memorandum states that the intention of this Part of the Bill is “to ensure that the [non-domestic water] market is operating efficiently and that those receiving water and sewerage services pay for them”\(^\text{190}\).

152. Few organisations provided comments on Part 5 of the Bill. Those that did seemed largely content but raised some important operational points. For example, COSLA commented that the new duty “is consistent with practice in relation to other utilities and seems appropriate”, it raised a concern in relation to the liability of landlords in cases of unpaid water charges. COSLA would be concerned if public sector landlords such as local authorities could be held liable despite having passed on new occupier information to the licensed provider. COSLA sought assurance and clarification on whether this was indeed the intention of the Bill.

153. From a customer perspective, Consumer Focus Scotland supported the principle that non-domestic customers that are receiving services from a licensed provider should pay for them. However, it had some concerns about the detail of the scheme. It referred to its experience in the energy sector where “a lack of clarity and agreement between suppliers and customers on whether, and what services are being provided can cause significant, sometimes intractable, problems”\(^\text{191}\). Consumer Focus Scotland felt that the detail of the scheme for deemed contracts would be critical.

154. The Cabinet Secretary responded to the view of Consumer Focus Scotland and told the Committee that she was keen to understand more about what lies behind its concerns. The Cabinet Secretary said that she would be happy to have a discussion with it to ensure that “we fully understand its concerns and that we take whatever steps are necessary in the remainder of the Bill process or in the work that will have to be done after the Bill is enacted”\(^\text{192}\).

155. The Cabinet Secretary accepted that there would always be a small number of people who did not pay, but she hoped that by putting the onus on the landlord to notify the licensed provider when a change of occupancy occurs, the Bill would “make it harder for people to hide behind a lack of knowledge about who should

\(^\text{190}\) Policy Memorandum, paragraph 35.
\(^\text{191}\) Consumer Focus Scotland. Written submission, page 7.
pay and who they should pay, just because the information has not been made clear.”

156. From the evidence it has received, it appears to the Committee that stakeholders are generally content with the proposals. However, it requests clarification from the Scottish Government in response to the point made by COSLA about the potential liability of public sector landlords under the proposed new arrangements.

157. The Committee welcomes the Cabinet Secretary’s commitment to meet with Consumer Focus Scotland to discuss concerns raised about the detail of the deemed contracts scheme.

Part 6 – Sewerage Network

Control of substances

158. Part 6 of the Bill provides for Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network. The Bill proposes the creation of a new offence for people on trade premises who pass fats, oils or greases into the sewer network (Section 32). It also gives Scottish Water powers of entry in relation to inputs into sewers (Section 33).

159. The Policy Memorandum states the intention is to encourage traders to use proper disposal methods and act responsibly, with sanctions following enforcement action including fines or imprisonment (or both) available to the courts.

160. The Committee heard in evidence that there was general support for the proposals in Part 6 of the Bill. UKELA supported it on the basis that it should help to reduce the costs of water treatment and the need for Scottish Water to make special provision for specific difficult substances. UKELA also suggested that the proposals would help to reinforce the principle of producer responsibility. In written evidence, SCDI considered that the proposal to clarify responsibilities in terms of what happens when a customer moves into a property will support efficient operation of the non-domestic retail market. Consumer Focus Scotland also supported the provisions and stated that “more responsible behaviour by traders should result in savings in Scottish Water’s operational costs, which we would expect to see passed on to consumers through lower charges.”

161. In written evidence, Scottish Water confirmed that blockages of the public sewer, caused by fats, oils and grease, require to be removed and that the costs of doing so fall to Scottish Water customers. It welcomed the proposal in the Bill.

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194 Policy Memorandum, paragraph 40.
195 UKELA. Written submission, page 8.
196 SCDI. Written submission, page 5.
197 Consumer Focus Scotland. Written submission, page 8.
“as it will provide a clear message to commercial premises that they must dispose of fats, oils and grease in an appropriate way”\(^{198}\).

162. A number of organisations highlighted concerns in relation to the impact of the proposals on businesses. Whilst the Scotch Whisky Association supported the principle of protecting the sewer network, it called for safeguards to be put in place to ensure Scottish Water was only able to monitor and control substances used by businesses where there was a risk of those chemicals entering the sewerage network. It suggested that “substances which are used in dry processes and pose no risk should not be burdened with excessive legislative control e.g. printing materials where there is no access to drain”\(^{199}\).

163. Glasgow City Council suggested that threshold concentrations should be established, below which the relevant substances or pollutants would be deemed to not interfere with the free flow of the sewer network. It also called for an education campaign and suggested that an “escalation protocol should be established to advise operators at risk of committing the offence of the new provisions”\(^{200}\).

164. A number of organisations referred to the powers of entry that the Bill would grant to Scottish Water to inspect premises. In written evidence, Rio Tinto Alcan suggested that these new powers could be an unnecessary duplication of those currently held by SEPA.\(^{201}\) Scottish Land and Estates felt that “powers of entry should only be used as a last resort in cases where the relevant owner or occupier refuses to co-operate with Scottish Water”\(^{202}\).

165. Other witnesses suggested that the list of premises currently designated as valid for inspection and monitoring (as specified under the Sewerage (Scotland) Act 1968) should be extended. RSPB Scotland\(^{203}\) and Scottish Environment LINK\(^{204}\) called for schools, universities and hospitals to be included as premises where the use of harmful substances could occur. UKELA suggested that the provisions should be extended to address the possibility that some priority substances could emanate from domestic premises.\(^{205}\)

166. In addition, Glasgow City Council referred to the need for education regarding the use and control of substances on trade premises, as well as operating a system of communication and co-operation with the trade owners prior to entering a property.\(^{206}\) It is noted, however, in the Policy Memorandum that Scottish Water already runs educational campaigns to instruct businesses on the appropriate uses and disposal of substances.\(^{207}\)

\(^{198}\) Scottish Water. Written submission, page 5.
\(^{199}\) Scotch Whisky Association. Written submission, page 3.
\(^{200}\) Glasgow City Council. Written submission, pages 2-3.
\(^{201}\) Rio Tinto Alcan. Written submission, page 5.
\(^{202}\) Scottish Land and Estates. Written submission, page 3.
\(^{203}\) RSPB Scotland. Written submission, page 6.
\(^{204}\) Scottish Environment LINK. Written submission, page 6.
\(^{205}\) UKELA. Written submission, page 8.
\(^{206}\) Glasgow City Council. Written submission, pages 2-3.
\(^{207}\) Policy Memorandum, paragraph 43.
167. The Committee considers that the provisions in Part 6 of the Bill are worthwhile and should help to improve management and proper working order of the sewer network. The powers for Scottish Water should assist this.

168. The Committee recommends, however, that the Scottish Government take account of some of the concerns raised in evidence about the details of the operation of the system, particularly from the perspective of businesses, as it develops the regulations. It also recommends that the Scottish Government consider how awareness can be raised amongst those businesses most likely to be affected by the new provisions.

Common maintenance

169. Part 6 of the Bill also makes provision for common owners of private sewage treatment systems, such as septic tanks, to be able to carry out essential maintenance without the consent of all co-owners and to recover the cost from the owners.

170. In order to protect the water environment, the Controlled Activities Regulations (CAR) specify that shared assets such as septic tanks, must be kept to a good standard. However, when more than one household has the responsibility for this, disagreements may result over the arrangements for and the costs involved in carrying out necessary maintenance, causing the work to be delayed and the asset to deteriorate.

171. In the evidence received by the Committee it was generally accepted that the proposals relating to shared septic tanks were beneficial. A number of stakeholders have expressed their approval for the proposal in the Bill. For example, RSPB Scotland welcomed the proposal “on the basis that it will improve protection of the water environment”. It stated that, despite being regulated under the CAR, “pollution from septic tanks remains a pressure on the water environment”.

172. Whilst UKELA welcomed the proposal as “a huge improvement on the existing situation”, it considered that the provision in the Bill was “not ideal”. UKELA highlighted a number of issues including “when groups of householders share a septic tank it is difficult to attribute blame even-handedly” and “that SEPA does not yet know where all the septic tanks in Scotland are” (because the register is not complete). UKELA also noted that the Bill would not resolve a situation where there was not an owner who was willing to pay for and arrange the improvement of a shared septic tank, although it accepted that this may be a circumstance that could be impossible to resolve.

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208 RSPB Scotland. Written submission, page 6.
173. Highland Council also supported the new powers to encourage the better maintenance of poorly performing septic tanks, but suggested that the Bill should go further. It called for the Bill to “support the replacement of poorly performing septic tanks with other private facilities that have greater capacity to accommodate any future development allocated in a Development Plan”\(^{213}\). The Council was concerned that the growth of small villages in Highland was constrained by “reliance on a mix of poorly maintained, small, public and private septic tanks” and that “with Scottish Water’s investment programme unlikely to offer a first time, coordinated public sewerage system for these communities, the option of full Scottish Water specification, private treatment facilities should be encouraged”.\(^{214}\)

174. Similarly, Consumer Focus Scotland supported the proposal in the Bill but called for Scottish Water to investigate low-cost means of connecting appropriate properties with septic tanks to the sewer network. It suggested that “an ambitious Hydro Nation agenda should give due consideration to the longer term desirability, in the interests of public health, to investigate how innovation by Scottish Water could provide efficient and effective means of increasing connections to the sewerage network, balancing the benefits against the costs involved”.\(^{215}\). It did, however, accept that a cost analysis would be necessary before any move to allow replacement of septic tanks was introduced.

175. Scottish Land and Estates, on the other hand, suggested that the Bill should emphasise that in the first instance every attempt should be made to secure the consent of all owners before any works are carried out on a shared septic tank. It considered that, “only if this approach has failed should it be possible for any one proprietor to carry out work without the consent of the other owners and to recover the costs of measures taken”.

176. The Committee heard other evidence indicating that there was a need for greater education and instruction on the maintenance of shared sewerage facilities. For example, RSPB Scotland stated that it would like to see more done to increase public awareness on septic tank maintenance and registration\(^{216}\), and James Hutton Institute suggested that the it would “be good to use a campaign of awareness-raising of tank behaviour including maintenance requirements and general use than to rely solely on enforcement of emptying them with or without consent”.\(^{217}\).

177. Scottish Water said that it considered septic tanks to be “a highly sustainable and efficient way of treating waste water in a rural environment”.\(^{218}\) Whilst it said that it did not have any plans to start a programme of connecting every septic tank to the sewerage network, it explained that it worked with householders, when appropriate, to help them to empty and maintain septic tanks routinely, and gave them advice. If a septic tank were having a huge environmental impact in a

\(^{213}\) Highland Council. Written submission, page 1.
\(^{214}\) Highland Council. Written submission, page 1.
\(^{215}\) Consumer Focus Scotland. Written submission, page 8.
\(^{216}\) RSPB Scotland. Written submission, page 6.
community setting, Scottish Water would, along with SEPA, look at some other solution on which it would work with the community.

178. Scottish Water responded to the calls for an information campaign by confirming that it had held discussions with SEPA on the potential for shared campaigns in relation to septic tanks and the ongoing need for emptying and maintenance. It confirmed that it would be happy to engage in such campaigns.

179. The Cabinet Secretary confirmed that the Bill would not put obligations on people who did not already have them and sought to make it easier for the repair or maintenance of a septic tank to go ahead even when somebody who has part-ownership is not prepared to sign up to that. She accepted that it could mean that an individual might need to arrange to get a necessary repair done and to recoup the cost from the other owners. However, she considered that this was better “than having a lot of septic tanks that cannot be properly maintained and repaired because of the current situation in which everybody signs up or nobody signs up”.

180. In relation to the issue raised by some witnesses about the low registration rate for septic tanks, Scottish Government officials confirmed that an exercise was under way between Scottish Water and SEPA to assess how many septic tanks were not registered. Officials confirmed that septic tanks were being identified and registered during the conveyancing process, but that there remained a substantial amount of work to do given the lower turnover of properties in rural areas.

181. The Committee welcomes the proposals as a first and important step in looking at the improvement of shared septic tanks. It considered, however, that further work may still be required to address the issue of registration of septic tanks as only around 60% appear on the register. The Committee will look forward to hearing the outcome of the ongoing work by Scottish Water and SEPA in this area.

Part 7 – Water Shortage Orders

182. This Part of the Bill makes provision for the management of temporary water shortages by allowing Scottish Water to apply for, and the Scottish Ministers to make, Water Shortage Orders (Sections 35-37). These orders would replace the current Drought Orders and authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures (Section 38 and Schedule 1).

183. The Policy Memorandum states that the intention is to update the law in relation to the management of interruptions to the public water supply by

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streamlining the current process and allowing Scottish Water, SEPA and Scottish Ministers to react swiftly and in a proportionate way to such water shortages.\footnote{Policy Memorandum, paragraph 45.} 

184. It is also anticipated that the overhead costs of administration will be reduced as a result of the better management of abstractions and discharges to the water environment. These proposals aim to provide a saving to consumers and Scottish Water in the event of a shortage. The Policy Memorandum recognises that water shortages in Scotland are rare, however, it stresses the importance of being prepared for all situations.\footnote{Policy Memorandum, paragraph 45.} 

185. Whilst the majority of responses received by the Committee praised the new measures, certain concerns were also been raised. The need for Scottish Water to recognise that access to water resources is a legislative requirement in relation to certain commercial operations, such as food and drink businesses was a key issue. The Scotch Whisky Association mentioned the need for whisky distillers to ensure hygiene throughout production, for which they are reliant on water resources.\footnote{Scotch Whisky Association. Written submission, page 3.} It called for this requirement to be recognised in any restriction on water use, and raised this with the Finance Committee (see also paragraph 195).\footnote{Scotch Whisky Association. Written submission to the Finance Committee, pages 2-3. The submission is available on the Parliament’s website at: \url{http://www.scottish.parliament.uk/S4_FinanceCommittee/Inquiries/Water.pdf}}  

186. Similarly, Rio Tinto Alcan suggested that certain industries, such as those involved in hydro-generation, should be exempt from the effects of a Water Shortage Order.\footnote{Rio Tinto Alcan. Written submission, page 6.} In cases where an organisation feels an Order is inappropriate, Scottish Land and Estates suggested it could be made possible for the body involved to appeal against the decision.\footnote{Scottish Land and Estates. Written submission, page 4.} 

187. From an environmental perspective, Scottish Natural Heritage pointed out that a Habitats Regulation Appraisal (HRA) would need to be undertaken before an Order could be applied to an environmentally sensitive “Natura” site.\footnote{Scottish Natural Heritage. Written submission, page 3.} It suggested that the Bill could usefully include the requirement for an Order, in appropriate circumstances, to be accompanied by an HRA. 

188. In other evidence to the Committee, the importance of providing information and guidance to water users on how to use water more efficiently was also raised. For example, RSPB Scotland urged steps to be taken to encourage household and businesses to improve water efficiency and reduce consumption and urged Scottish Water to “execute an effective strategy that involves working with others to deliver a water efficiency campaign and to undertake retrofitting where appropriate”\footnote{RSPB Scotland. Written submission, page 6.}. 

\begin{footnotesize}
\footnote{222 Policy Memorandum, paragraph 45.}
\footnote{223 Policy Memorandum, paragraph 45.}
\footnote{224 Scotch Whisky Association. Written submission, page 3.}
\footnote{225 Scotch Whisky Association. Written submission to the Finance Committee, pages 2-3. The submission is available on the Parliament’s website at: \url{http://www.scottish.parliament.uk/S4_FinanceCommittee/Inquiries/Water.pdf}}
\footnote{226 Rio Tinto Alcan. Written submission, page 6.}
\footnote{227 Scottish Land and Estates. Written submission, page 4.}
\footnote{228 Scottish Natural Heritage. Written submission, page 3.}
\footnote{229 RSPB Scotland. Written submission, page 6.}
\end{footnotesize}
189. The equality of treatment for domestic and non-domestic users was an issue on which Consumer Focus Scotland\textsuperscript{230} and the Centre for Water Law\textsuperscript{231} expressed views. They indicated support for the provisions ensuring that Orders would apply equally to domestic and commercial water users. Consumer Focus Scotland suggested that the wording in the Bill should be strengthened to make this explicit. Consumer Focus Scotland further recommended that the wording in Schedule 2, which gives Scottish Water and Scottish Ministers power to take “any additional measures they consider necessary”\textsuperscript{232} should be complemented by the requirement for vulnerable groups to be protected. In evidence to the Committee, Scottish Government officials indicated that the Bill envisages a communications and planning framework to ensure that Scottish Water identifies and protects vulnerable consumers in times of water shortages.\textsuperscript{233}

190. In addition, Consumer Focus Scotland commented on the need for Scottish Water to specify that “adequate forward notice”\textsuperscript{234} should be given to the public in advance of an Order being made. It supported the Bill’s proposal for a notice to be published in a local newspaper, but suggested that a local radio announcement should also be required. It also called for all publications relating to an Order to be made available in paper copy as well as electronically, so that water users without internet access could be reached.

191. Scottish Water considered that the proposals in the Bill would enable it to tackle water shortages by “undertaking the activities that are needed to guarantee supplies to customers, through agreements with local landowners and so on, much more readily”\textsuperscript{235}.

192. In evidence to the Committee, the Cabinet Secretary stated that she envisaged that Water Shortage Orders would be used “very rarely”\textsuperscript{236}. She highlighted that “the important point is that we are removing the term ‘drought’ from the legislation, in recognition of the fact that other issues can potentially cause a water shortage”\textsuperscript{237}. The Cabinet Secretary also told the Committee that the aim of the proposals was to ensure that a transparent and easily understood process is laid down in statute for dealing with water shortages.

193. In response to the concern expressed by the Scotch Whisky Association about the extent to which Water Shortage Orders would reflect the interests of businesses that relied upon water for hygiene, the Cabinet Secretary stated that

\textsuperscript{230} Consumer Focus Scotland. Written submission, pages 8-9.
\textsuperscript{232} Consumer Focus Scotland. Written submission, page 9.
\textsuperscript{234} Consumer Focus Scotland. Written submission, page 9.
she would be happy to talk to the Association about the use of Orders. In addition, Government officials confirmed that “whisky distillers or any other business or industry affected by a proposed Water Shortage Order will have the right to make representations about it, and Ministers must consider such representations when deciding to make an Order”.

194. The Committee is of the view that the provisions in this Part of the Bill are sensible and appropriate. It does, however, agree that the provision of adequate notice to the public in appropriate alternative formats should be a fundamental part of the process. It therefore calls on the Scottish Government to commit to the development of appropriate and proportionate communication plans to accompany the water shortage order procedures.

Policy and Financial Memoranda

195. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the Memorandum provides adequate detail on the policy intention behind the provisions in the Bill and explains why alternative approaches considered were not favoured. The Committee was also content with the details of the consultations conducted by the Scottish Government prior to introduction of the Bill.

196. The same rule also requires the lead committee to report on the Financial Memorandum. To assist the lead Committee, the Finance Committee sought written submissions from a range of stakeholders. The Finance Committee also sought clarification from the Scottish Government on a number of issues raised by the Scotch Whisky Association and in relation to the margins of uncertainty regarding Parts 4 and 6 of the Bill. The Scotch Whisky Association raised two primary concerns: possible additional costs for businesses under the proposed abstraction regime; and the extent to which Water Shortage Orders would take account of the water needs of businesses, for example, in relation to hygienic uses. The response from the Scottish Government was forwarded to the lead Committee. As referred to earlier in this report, the lead Committee raised these issues with the Cabinet Secretary (see paragraphs 82 and 192). The Committee welcomes the commitment from the Cabinet Secretary to engage with the Scotch Whisky Association and other organisations that are affected by Parts 2 and 7 of the Bill.

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240 The written submissions received by the Finance Committee are available on the Parliament’s website at: [http://www.scottish.parliament.uk/S4_FinanceCommittee/Inquiries/Water.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/Inquiries/Water.pdf)
Delegated powers in the Bill

197. The Subordinate Legislation Committee (SLC) considered the delegated powers in the Bill and reported to the lead Committee.²⁴²

198. Where the SLC’s comments relate to a single element of the Bill, they have been incorporated at the appropriate part of this report. In addition to those comments, the SLC referred to a number of other issues in its report that deal at the same time with several separate powers in the Bill. These comments are summarised below.

199. The SLC considered that there was an inter-relationship between four of the provisions in the Bill and any successor to the CAR regime. However, the SLC was of the view that sufficient powers already exist to achieve this using subordinate legislation and so reported that it was not clear why the Scottish Government sought the additional powers. The SLC noted that the existing powers are subject to the affirmative procedure, whereas the Bill sought to downgrade the level of parliamentary scrutiny to the negative procedure.

200. In its response to the SLC, the Scottish Government considered that the powers proposed in the Bill are more limited in scope and, as a result, the negative procedure is appropriate for these more minor consequential modifications.

201. However, the SLC was not persuaded by the Scottish Government’s argument and stated in its report that—

“... it is not necessary to confer the further powers proposed. The Committee observes that to do so would authorise a reduction in the parliamentary scrutiny of such provisions from that previously established by the Parliament and does not consider that this is appropriate. It therefore recommends that these unnecessary powers are removed from the Bill.”

202. Generally, the Committee considers that it is not appropriate to downgrade parliamentary scrutiny on the basis that the legislation with its in-built levels of scrutiny had previously been agreed by the Parliament. Given the view of the SLC on this matter and the seriousness of its suggestion, the Committee recommends that the Scottish Government gives careful consideration to whether the four provisions should remain in the Bill.

General principles of the Bill

203. The Committee agrees to recommend to the Parliament that the general principles of the Bill be agreed.

ANNEXE A: REPORTS FROM OTHER COMMITTEES

The lead Committee received the following reports and correspondence from other committees of the Scottish Parliament—

- Report from the Subordinate Legislation Committee
  
  [Link to report]

- Correspondence between the Finance Committee and the Scottish Government
  
  [Link to correspondence 1]
  [Link to correspondence 2]
ANNEXE B: EXTRACTS FROM THE MINUTES OF THE INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

12th Meeting, 2012 (Session 4): Wednesday 20 June 2012

7. Water Resources Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

13th Meeting, 2012 (Session 4): Wednesday 12 September 2012

3. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

Christina Phillips, Bill Manager, Water Industry Team, Bob Irvine, Deputy Director, Climate Change and Water Industry Division, and Stephen Rees, Legal Directorate, Scottish Government.

14th Meeting, 2012 (Session 4): Wednesday 19 September 2012

4. Water Resources Bill: The Committee heard evidence on the Bill at Stage 1 from—

David Harley, Water and Land Unit Manager, SEPA;

Lisa Webb, Water Policy Officer, RSPB Scotland;

Chris Spray, Council Member, Scottish Wildlife Trust;

Andy Myles, Parliamentary Officer, Scottish Environment LINK.

15th Meeting, 2012 (Session 4): Wednesday 26 September 2012

2. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

Trisha McAuley, Depute Senior Director, and Ryan McRobert, Policy Advocate, Consumer Focus Scotland.

16th Meeting, 2012 (Session 4): Wednesday 3 October 2012

2. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

David Crookall, Environmental Specialist Advisor, SSE;

Andy Limbrick, Environment Consultant, Energy UK;

Stephen Freeland, Policy Executive, Scottish Environmental Services Association.
17th Meeting, 2012 (Session 4): Wednesday 24 October 2012

2. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

Dr Sarah Hendry, Lecturer in Law, IHP-HELP Centre for Water Law, Policy and Science;

Adrian Johnston, Technical Director at MWH, Institution of Civil Engineers Scotland;

Marc Stutter, Head of Research - Catchments and Coasts, The James Hutton Institute;

Ian Cowan, Co-Convenor of Water Sub-Group, UK Environmental Law Association (UKELA).

18th Meeting, 2012 (Session 4): Wednesday 31 October 2012

1. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—

Chris Wallace, Director of Communications, and Belinda Oldfield, Regulation General Manager, Scottish Water;

Alan Sutherland, Chief Executive, and John Simpson, Director of Analysis, Water Industry Commission for Scotland.

19th Meeting, 2012 (Session 4): Wednesday 7 November 2012

2. Water Resources (Scotland) Bill: The Committee heard evidence on the Bill at Stage 1 from—


21st Meeting, 2012 (Session 4): Wednesday 21 November 2012

2. Water Resources (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to consider a revised draft, in private, at its next meeting.

22nd Meeting, 2012 (Session 4): Wednesday 28 November 2012

5. Water Resources (Scotland) Bill (in private): The Committee agreed its Stage 1 report.
Annexe C: Oral Evidence and Associated Written Evidence

13th Meeting, 2012 (Session 4): Wednesday 12 September 2012

Oral evidence
Scottish Government Bill Team

14th Meeting, 2012 (Session 4): Wednesday 19 September 2012

Oral evidence
SEPA
RSPB Scotland
Scottish Wildlife Trust
Scottish Environment LINK

Written evidence
SEPA
RSPB Scotland
Scottish Environment LINK

15th Meeting, 2012 (Session 4): Wednesday 26 September 2012

Oral evidence
Consumer Focus Scotland.

Written evidence
Consumer Focus Scotland

16th Meeting, 2012 (Session 4): Wednesday 3 October 2012

Oral evidence
SSE
Energy UK
Scottish Environmental Services Association

Written evidence
SSE
Scottish Environmental Services Association

17th Meeting, 2012 (Session 4): Wednesday 24 October 2012

Oral evidence
IHP-HELP Centre for Water Law, Policy and Science
Institution of Civil Engineers Scotland
James Hutton Institute
UK Environmental Law Association

Written evidence
IHP-HELP Centre for Water Law, Policy and Science
Institution of Civil Engineers Scotland
James Hutton Institute
UK Environmental Law Association

18th Meeting, 2012 (Session 4): Wednesday 31 October 2012

Oral evidence
Scottish Water
Water Industry Commission for Scotland

Written evidence
Scottish Water
Water Industry Commission for Scotland

19th Meeting, 2012 (Session 4): Wednesday 7 November 2012

Oral evidence
Nicola Sturgeon, Cabinet Secretary for Infrastructure, Investment and Cities
ANNEXE D: OTHER WRITTEN EVIDENCE

- Angus Council (180KB PDF)
- Association of Salmon Fishery Boards (195KB PDF)
- Business Stream (127KB PDF)
- IHP-Help Centre for Water Law, Policy and Science (384KB PDF)
- Consumer Focus Scotland (247KB PDF)
- COSLA (166KB PDF)
- Drinking Water Quality Regulator (65KB PDF)
- Glasgow City Council (169KB PDF)
- Highland Council (67KB PDF)
- Institution of Civil Engineers (284KB PDF)
- James Hutton Institute (290KB PDF)
- J. R. Cuthbert and M. Cuthbert (857KB PDF)
- Law Society of Scotland (118KB PDF)
- R S Garrow Ltd. (420KB PDF)
- Rio Tinto Alcan (276KB PDF)
- RSPB Scotland (441KB PDF)
- Scottish Council for Development and Industry (148KB PDF)
- Scotch Whisky Association (156KB PDF)
- Scottish Enterprise (118KB PDF)
- Scottish Environment LINK (329KB PDF)
- Scottish Environmental Services Association (123KB PDF)
- Scottish Land and Estates (138KB PDF)
- Scottish Water (92KB PDF)
- Scottish Environmental Protection Agency (136KB PDF)
- Scottish Natural Heritage (131KB PDF)
- SSE (202KB PDF)
- UK Environmental Law Association (404KB PDF)
- Water Industry Commission for Scotland (205KB PDF)

Supplementary written evidence

- Consumer Focus Scotland (64KB PDF)
- SSE (62KB PDF)
Subordinate Legislation Committee

48th Report, 2012 (Session 4)

Water Resources (Scotland) Bill

Published by the Scottish Parliament on 1 November 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Mike MacKenzie
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 2 October and 30 October 2012, the Subordinate Legislation Committee considered the delegated power provisions in the Water Resources (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Infrastructure and Capital Investment Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM1”).

OVERVIEW OF THE BILL

3. The Water Resources (Scotland) Bill was introduced in the Scottish Parliament on 27 June 2012 by the Scottish Government. This Bill contains a range of measures which generally pursue the aim of enhancing the manner in which Scotland utilises its water resources by encouraging the sustainable development of their value and responsible use.

4. The Bill is split into eight parts. Part 1 supports the overall aim of the legislation by placing a duty on Ministers to take reasonable steps to develop the value of Scotland’s water resources in a way that is both appropriate and sustainable. Importantly, this part of the Bill ensures accountability by including a provision requiring the Ministers to report to the Parliament after three years on how they have fulfilled this duty to promote sustainable development of water resources in Scotland. Powers are given to Ministers to direct public bodies to contribute to the fulfilment of the development duty.

5. Part 2 provides for control by Ministers of large-scale water abstractions, whilst part 3 places a duty on Scottish Water to do all it considers necessary to develop the value of Scotland’s water resources, mirroring the duty placed on...
Ministers. It also places an obligation on Scottish Water to promote the use of its assets for the generation of renewable energy. Parts 4, 5 and 6 deal with the monitoring of the quality of raw water, deemed contracts for water and sewerage services where no such contracts are in place and control of priority substances and pollutants in public sewers respectively. Part 7 brings in a new system for dealing with temporary water shortages by means of “water shortage orders”, replacing the system of “drought orders” under the Natural Heritage (Scotland) Act 1991. Finally, Part 8 provides general provisions relating to matters such as definitions and commencement.

6. At its meeting on 2 October, the Committee agreed to write to the Scottish Government for further information relating to some of the delegated powers in the Bill.

7. This correspondence between the Committee and the Scottish Government is reproduced in the Annex.

Delegated powers provisions

8. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the following sections: 3(2), 7(6), 8(1)(b) and (2), 9(2), 12(1)(b), 16(1) and (2), 26 (substituting new section 14(2) into the Water Services etc. (Scotland) Act 2005), 27 (inserting new section 76R(1) into the Water (Scotland) Act 1980) and 30 (inserting new sections 20C(4) and 20D(4) into the Water Services etc. (Scotland) Act 2005).

Section 2 – Power to direct public bodies

Power conferred on: the Scottish Ministers
Power exercisable by: direction – not an SSI function
Parliamentary procedure: none

9. Section 1 places a duty on the Scottish Ministers to take steps to ensure the development of the value of Scotland’s water resources. Section 2 allows the Scottish Ministers to give any of the “designated bodies” directions as to the exercise of the body’s functions in order to contribute to the delivery of the development duty. Designated bodies are required to comply with any direction made.

10. The designated bodies are listed in section 3(1). They are Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Enterprise and Highlands and Islands Enterprise. Section 3(2) confers power on the Scottish Ministers to add further public bodies to the list of designated bodies or to remove bodies from the list. That power is subject to the negative procedure.

11. The Committee sought further information from the Scottish Government as to why the power to issue directions applied to all functions of designated bodies and why this power is not exercisable in the form of subordinate legislation and therefore subject to publication requirements and parliamentary control.

12. While the power would apply to all of the particular body’s functions the Scottish Government considers that the stated purpose of the power is suitably
narrow. Section 2 limits its exercise to the purpose of securing the body’s participation in development of the value of Scotland’s water resources. It cannot be used for a wider or unrelated purpose. The Scottish Government is also of the view that the power cannot be exercised in a manner which would be inconsistent with the proper exercise of the body’s other functions.

13. The Committee finds the Scottish Government’s comments on the restrictions which would apply to the power of direction helpful and recognises that the subject matter of such directions maybe more amenable to administrative rather than legislative action. However, the Committee notes that the benefits of consultation and publication which are integral to the legislative process would not apply to these directions.

14. Given the public interest in water as a commodity for general use the Committee considers that there is a public interest in the terms of directions to public authorities on how they are to operate with a view to developing the value of Scotland’s water resources. Accordingly the Committee recommends that the Scottish Government considers whether such directions, while not exercisable as subordinate legislation, should be subject to consultation and publication requirements.

Section 14(1)(c) – grounds for suspension and revocation

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

15. Section 14 gives the Scottish Ministers the power to suspend or revoke an approval for large scale water abstraction but only on specified grounds. Various grounds on which they may do so are already set out in section 14. These are if the holder requests them to do so, if there has been a breach of any conditions attached to an approval or if the holder has failed to provide a report on their activities or pay the fee set under section 12.

16. Section 14(1)(c) allows the Scottish Ministers to prescribe other circumstances in which they may suspend or revoke an approval. Regulations which do so are subject to the negative procedure. Given that the power specifies other circumstances in which the Ministers are authorised to deprive persons of water abstraction rights the Committee asked the Scottish Government for further justification for the choice of the negative procedure.

17. The Scottish Government points out that the exercise of the power in section 14(1)(c) would not actually deprive any person of their right to abstract water but would simply set out further circumstances in which the Ministers could do so and that the Ministers would be required to act reasonably in the exercise of their powers. The suspension/revocation process also provides an opportunity for the person affected to make representations to ministers before the suspension or revocation is imposed. Given that the regulations will not themselves deprive any person of abstraction rights the Scottish Government considers that the negative procedure is an appropriate level of scrutiny for the exercise of this power.
18. The Committee recognises that the regulations themselves will not deprive any individual of their rights. Nevertheless the Committee considers that the grounds on which Ministers are empowered to take administrative action to do so are a significant feature of the abstraction licensing regime introduced by the Bill. That this raises an important issue of principle appears to have been recognised by the Government in setting out the initial grounds for suspension or revocation on the face of the bill rather than leaving the matter entirely to subordinate legislation. In so doing it has provided the Parliament with the opportunity to debate the initial grounds fully in the course of the legislative process. It is not clear why subsequent grounds introduced would be of less importance.

19. The Committee is of the view that setting out the grounds on which consents granted for large scale abstraction may be suspended or revoked is a matter of importance in which there is a significant public interest. It therefore recommends that the power to set additional grounds which will empower Ministers to suspend or revoke consents should be subject to the affirmative procedure.

Section 19(4) – control of water abstraction: references to Controlled Activities Regulations

Section 31 – references to priority substances

Section 34 – common maintenance – references to Controlled Activities Regulations

Section 46 – water shortage orders – references to Controlled Activities Regulations

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

20. The Committee considered these four powers together since they all raise the same issue. The impact of water abstraction on the water environment is controlled under the Controlled Activities Regulations (CAR) (SSI 2011/209) made under section 20 of the Water Environment and Water Services (Scotland) Act 2003 (WEWS). The principal objective of these regulations is to implement the requirements of the European Union Water Framework Directive (WFD) which ensures standards of environmental water quality are not prejudiced by water use. Various aspects of water regulation for other purposes which are established or amended by the bill have an interface with the CAR and WFD regime.

21. Section 19(4): The policy objective of the authorisation scheme under the bill is to control qualifying abstraction for the purpose of developing the value of Scotland’s water resources.

22. Large-scale water abstraction is already regulated for the purposes of environmental protection by the CAR regime. Section 7(1) of the bill provides that a qualifying abstraction which is already approved under CAR when section 7(1) comes into force will be exempt from the requirement to obtain Ministers’ consent
under the bill. Subsequent qualifying abstractions which require a CAR consent will also require Ministers’ consent.

23. Consent under this part and consent under CAR are therefore linked although their underlying policy objectives are different. A power is given to Ministers in section 19(4) to modify sections 19(1) to (3) and 7(1) but only if Ministers consider it necessary or expedient to make these modifications in consequence of any revocation or amendment of CAR or any subsequent regulations which replace CAR and are made under section 20 of WEWS. The power is subject to the negative procedure.

24. Section 31 amends the Sewerage (Scotland) Act 1968 to enable new trade effluent consents granted under that Act to include conditions relating to the elimination or diminution of “priority substances” or “pollutants”. New section 29A sets out definitions of “priority substance” and “pollutant” for this purpose. The definitions which currently apply are those set out in CAR and the WFD.

25. Section 29A(2) gives the Scottish Ministers power to change the definitions where they consider it to be necessary or expedient in consequence of any revocation or amendment of CAR, the WFD or any other regulations made under section 20 of WEWS which relates to the same subject-matter as the WFD. The power is subject to the negative procedure.

26. Section 34 introduces new provisions concerning private sewage treatment works into the Sewerage (Scotland) Act 1968. It only affects private sewage treatment works which require authorisation under CAR. New section 38G therefore sets out the link to CAR by setting out various definitions. Section 38G(2) allows the Scottish Ministers to modify the provisions which refer to CAR but only in connection with the revocation or amendment of CAR or regulations made under section 20 of WEWS.

27. Section 46 concerns the relationship between CAR and water shortage orders. The requirement for authorisation under CAR is not affected by a water shortage order but any CAR authorisation is subject to any restriction or prohibition concerning water abstraction which is set out in a water shortage order.

28. The Committee recognises that there is therefore an inter-relationship between the above provisions and any successor to the CAR regime which requires to be maintained over time. The Committee also recognises that subordinate legislation is a suitable mechanism for doing so. However, the Committee was of the view that sufficient powers already exist to achieve this using subordinate legislation. It was therefore not clear to the Committee why the Scottish Government sought additional powers which appeared to be superfluous. The Committee also observed that the existing powers are subject to the affirmative procedure when they modify primary legislation in the manner proposed by these new powers. The Bill therefore sought to downgrade the level of parliamentary scrutiny which would apply.

29. The Scottish Government has confirmed that the existing power in section 20 of WEWS is sufficient to provide vires for what the Scottish Government wishes to achieve here. It seems clear from the Scottish Government’s response that the
only objective in taking the four new powers listed is to allow these modifications to be made using the negative procedure instead of the more onerous affirmative procedure. The Scottish Government considers that the powers proposed in the Bill are more limited in scope and as a result the negative procedure is appropriate for these more minor consequential modifications.

30. The Committee is not persuaded by the Scottish Government’s argument. It notes that the existing power in section 20 of WEWS is sufficient to modify primary legislation in the manner which the Scottish Ministers consider necessary or expedient on account of the CAR regime or implementation of the WFD being amended. The Committee also notes that the circumstances in which the proposed powers would operate are such that new regulations would be being brought forward under section 20. Section 20 is subject to “open procedure” in the sense that when making such regulations the Scottish Ministers can elect to adopt either the affirmative or the negative procedure save where the regulations amend primary legislation. In such cases they are required to use the affirmative procedure.

31. The Committee notes that the powers proposed are more limited than section 20 in that they only permit textual amendments which are necessary or expedient on account of changes to the CAR regime. However, the power is not restricted to maintaining the same form of interface between the two regimes as is currently set out in the Bill. Ministers can alter the manner in which these regimes inter-relate if they consider that necessary or expedient.

32. The Committee also notes that the views expressed here about the procedure applicable to textual amendment of primary legislation are not consistent to the approach adopted in relation to section 49 considered below or those previously expressed by the Parliament in WEWS.

33. The Committee therefore concludes that the existing power in section 20 of the Water Environment and Water Services (Scotland) Act 2003 is sufficient to deliver the Scottish Ministers' policy objective. Accordingly it is not necessary to confer the further powers proposed. The Committee observes that to do so would authorise a reduction in the parliamentary scrutiny of such provisions from that previously established by the Parliament and does not consider that this is appropriate. It therefore recommends that these unnecessary powers are removed from the Bill.

Section 49 – ancillary regulations

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<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<td>Power exercisable by:</td>
<td>regulations</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure if they textually amend an Act; otherwise negative procedure</td>
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34. This power allows the Scottish Ministers to make supplemental, incidental, consequential, transitional, transitory or saving provision which they consider necessary or expedient for the purposes of or in connection with the Act. Such regulations are affirmative if they textual amend primary legislation (including the
Act itself) for these purposes. Otherwise they are subject to the negative procedure.

35. The Committee always gives careful consideration to the parliamentary procedure which applies to the exercise of ancillary powers. It is possible to predict the nature of the provision which will be made through their exercise. However, because of the width of the power, it is not possible to predict the detail of what might be done through their use. There must of course be some connection to the purposes of the Act itself and the exercise of such powers must be consistent with its overall scheme.

36. However at this stage it is not possible for the Committee to identify what provisions of significance could be brought forward under these powers. The level of parliamentary scrutiny which applies to the exercise of such powers and the justification provided for the choice made by the Scottish Government is therefore a matter of some importance in ensuring an appropriate level of parliamentary supervision. The Committee pays particular attention to the power to make supplemental provision since it considers that this has the potential to introduce new provision of a kind which could merit close scrutiny.

37. In this case the DPM justified the application of the negative procedure to instruments which do not textually amend primary legislation on the basis that incidental, consequential, transitional, transitory or savings provisions of this kind are more limited in scope and effect, more minor in nature and therefore should not be subject to a disproportionate level of parliamentary consideration.

38. The Committee observed that supplemental provision was not treated by the DPM as falling into the same category. It noted that the DPM provided no justification at all for the choice of procedure applicable to this power in cases where primary legislation was not being amended. The Committee therefore asked the Scottish Government for justification of the parliamentary control applicable to the power sought.

39. The Scottish Government expresses the view that the negative procedure is always adequate for the scrutiny of ancillary provision. It draws comparisons with other Acts which have adopted this approach and highlights that the power is exercisable only for the purposes of or in connection with the Bill.

40. The Committee does not accept the proposition that the negative procedure is a sufficient level of scrutiny of ancillary powers which do not textually amend primary legislation in all cases. It is evident to the Committee that supplemental provision could quite easily achieve significant effects through standalone provision which would not require the textual amendment of primary legislation. Such provision while connected to the Bill could be such that merited close consideration by the Parliament.

41. The Committee is therefore not able to accept the justification put forward by the Scottish Government for its choice of procedure. However, having considered the nature of the Bill and the likely level of sensitivity which would attach to such provision it is content with the procedure proposed in this case.
42. The Committee is content with the power to make ancillary provision and that the power is subject to the negative procedure save where primary legislation is textually amended in which case it is subject to the affirmative procedure.

Section 51 – commencement

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: section 30 of ILRA applies – laid only

43. Section 51 allows the Scottish Ministers to bring the Act into force by order except for those general provisions which come into force on the day after Royal Assent. Such an order is not subject to any procedure but must be laid before the Parliament. An order can include transitional, transitory or saving provision.

44. Section 51 does not impose any qualifying criteria for the nature of the transitional, transitory or saving provision which can be made in a commencement order. Specifically it does not refer to such provision being connected to or for the purpose of the commencement of provisions by the order and which is often set out in powers of this kind.

45. The Committee asked the Scottish Government for clarification of the effect of the omission of a condition of this nature on the scope of the powers which would be conferred.

46. The Scottish Government does not consider that the presence or absence of qualifying words of this kind is critical to the matter. It considers that where powers of this kind are tied to a power to commence provisions the natural inference is that anything done by way of such provision must relate to the commencement being effected by the particular order.

47. The Committee welcomes this helpful clarification of the intended scope of the power and is content with the scope of the power and that it is not subject to either the negative or the affirmative procedure.
ANNEX

Scottish Government Response to Subordinate Legislation Committee

1. Thank you for your letter of 2 October seeking further information as a result of the Subordinate Legislation Committee’s Stage 1 consideration of the Water Resources (Scotland) Bill.

Section 2: Power to direct public bodies

2. The Committee has asked why the power to issue directions in section 2 of the Bill applies to all functions of the designated authorities, and why the power is expressed as a power to give directions rather than to create subordinate legislation.

3. Part 1 of the Bill is about the development of Scotland’s water resources. This Part concerns the Hydro Nation programme of work. Section 1 places a duty on the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. Section 2 allows the Scottish Ministers to give a designated body directions for the purpose of its participation in the development of the value of Scotland’s water resources as part of that programme. Five public bodies are designated in section 3 and Ministers may alter the list of designated bodies by regulations.

4. It is not uncommon for Ministers to have powers to issue directions to public bodies under statutory provisions. In this context, an example would be the wide-ranging power of direction in relation to Scottish Water in section 56 of the Water Industry (Scotland) Act 2002. The power in section 2 of the Bill is much narrower in that it enables Ministers to direct the specified bodies solely in relation to the purpose stated in that section. As the power is to direct the bodies “as to the exercise of their functions”, any such directions could not be inconsistent with the proper exercise of the body’s other functions and, because the power has a stated purpose, it could not be used for a wider or unrelated purpose.

5. The Scottish Government believes that direction-giving is the appropriate way for Ministers to act administratively if required to secure the involvement of the designated bodies in the Hydro Nation programme (rather than by law-making through subordinate legislation), noting that there must be consultation with any body to which the directions would apply.

Section 14: Grounds for suspension and revocation

6. The Committee has asked whether the affirmative procedure would be more suitable than the negative procedure for regulations made under section 14(1)(c) of the Bill.
7. Section 14 of the Bill concerns the powers of suspension and revocation of Ministerial approval of a qualifying abstraction. Ministers can act at the request of the holder of the approval, if there is a breach of the conditions attached to the approval or if the holder fails to comply with other requirements. Section 14(1)(c) allows Ministers to prescribe other circumstances in which they may suspend or revoke their approval.

8. The prescription of additional grounds upon which an approval may be suspended or revoked does not remove the rights in question, but prescribes the circumstances in which they can be removed. Ministers are bound to exercise all their functions reasonably. Before suspending or revoking an approval, section 14(2) requires Ministers to inform the holder of their intention, give them reasons, and afford them the opportunity to make representations. If, following this, their approval is revoked, the holder has a right of appeal under section 15 of the Bill. Given that the regulations will not directly deprive anyone of an approval, and are subject to the safeguards mentioned, the Scottish Government believes that the negative procedure offers an appropriate level of Parliamentary scrutiny.

Sections 19(4), 31, 34 and 46

9. These powers permit the modification of the Bill, or other provisions in primary legislation being inserted by the Bill, where necessary or expedient in consequence of changes to the Controlled Activities Regulations. The Committee has asked why the existing power in section 20 of the Water Environment and Water Services (Scotland) Act 2003 is not sufficient.

10. Although section 20 of the 2003 Act does give the necessary vires to modify the Bill or other primary legislation in consequence of changes to the Controlled Activities Regulations, it is a very wide power which could potentially be used to make wide-ranging changes to primary legislation for which the affirmative procedure would be appropriate. The powers of modification in the Bill are very limited in scope when compared to the wide powers of section 20 of the 2003 Act. The Scottish Government considers that the affirmative procedure, as required by section 36(6) of the 2003 Act for any regulations under section 20 which modify primary legislation, would be inappropriate for such consequential modifications. As a result, separate enabling powers have been created by the Bill to make minor consequential modifications, subject to the negative procedure.

Section 49: Ancillary Regulations

11. The Committee has asked why the Scottish Government has selected the negative procedure as the appropriate level of scrutiny of regulations which make supplemental provision but do not textually amend primary legislation.

12. The Scottish Government believes that it is appropriate for ancillary provision that amends the text of an Act to be subject to the affirmative procedure, given the importance of primary legislation. In other cases, the Scottish Government believes that the negative procedure allows for adequate scrutiny of ancillary
provision. This approach is intended to strike the right balance in the use of the two procedures, and is consistent with that for ancillary provision under many existing Acts of the Scottish Parliament (in which the use of the negative or affirmative procedure depends upon whether there are textual changes being made to primary legislation). We would also highlight that the power to make supplemental or other ancillary provision is exercisable only for the purposes of or in connection with the Bill.

Section 51: Commencement

13. The Committee has noted that the power to make transitional, transitory or saving provision at commencement is not subject to any qualification by reference to commencement itself and has asked whether that means that the power may be used to make provision which is not connected to the commencement of provisions by the order.

14. While such qualification appears in some Acts of the Scottish Parliament, the Scottish Government does not believe that the presence or absence of qualifying words is critical. As regards the power to make commencement orders – to which the power to make transitional, transitory or saving provision is tied – the natural inference is that anything done by way of such provision must relate to the commencement being effected by the particular order. The Scottish Government would observe that all except one of the current Bills before the Parliament allow for such provision in commencement orders, and none of them has qualifying words by reference to commencement itself.
LETTER FROM THE SUBORDINATE LEGISLATION COMMITTEE TO THE SCOTTISH GOVERNMENT, 2 OCTOBER 2012

Water Resources (Scotland) Bill

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 2 October 2012 and seeks an explanation of the following matters:

Section 2 – Power to direct public bodies

2. The Committee asks the Scottish Government to explain why it is considered appropriate that directions should apply to all functions of current or future designated authorities (including any regulatory or operational functions which are intended to be exercisable without interference by Government) and why it is considered that such directions are not expressed as powers to create subordinate legislation which would improve transparency, offer the opportunity for scrutiny and impose publication requirements?

Section 14 – grounds for suspension and revocation

3. Section 14(1) sets out the circumstances in which the Scottish Ministers may suspend or remove rights to abstract water. Section 14(1)(c) allows the Scottish Ministers to prescribe other circumstances in which they may suspend or revoke an approval. Regulations which do so are subject to the negative procedure. Such rights may be extremely important in practical terms to industry or individuals and determining the circumstances in which such rights can be revoked or suspended is a significant feature of the approval regime.

4. In light of this, the Committee therefore asks the Scottish Government whether the affirmative procedure may be a more suitable level of parliamentary scrutiny?

Sections 19(4), 31, 34 and 46

5. These powers permit the modification of the bill (or other provisions in primary legislation inserted by the bill) where necessary or expedient in consequence of changes to the Controlled Activities Regulations (SSI 2001/209). The Committee asks the Scottish Government why the existing power in section 20 of the Water Environment and Water Services (Scotland) Act to modify or replace the Controlled Activities Regulations is not sufficient for their purposes since it permits the modification of primary legislation in consequence of the exercise of the power so far as Ministers consider necessary or expedient?

6. The Committee also asks the Scottish Government to comment on why it is considered that the negative procedure would be sufficient when the existing power is subject to the affirmative procedure when modifying primary legislation?

Section 49 – ancillary regulations

7. The Committee asks the Scottish Government to explain why it has selected negative procedure as the appropriate level of scrutiny of regulations which make
supplemental provision which do not textually amend primary legislation? The power to make such provision is not described in the Delegated Powers Memorandum as of a more limited character. There is therefore no justification provided for the selection of negative procedure in relation to the use of this power where primary legislation is not being amended.

8. Given that supplemental provision by its nature concerns matters which are untested in the Parliament why is a more detailed level of parliamentary scrutiny not appropriate for provision even where that does not amend primary legislation?

Section 51 – commencement

9. The Committee notes that the addition of the power to make transitional, transitory or saving provision in commencement orders is not subject to any qualification regarding the limits of the ancillary powers in such instruments. Previous bills have specifically limited these powers by reference to a connection to commencement. The Committee therefore asks the Scottish Government whether the omission of any qualifying words in relation to the transitional, transitory or saving provision powers included in section 51 mean that they may be used to make provision which is not connected to the commencement of provisions by the order?
FINANCE COMMITTEE
STAGE ONE CONSULTATION ON THE WATER RESOURCES (SCOTLAND) BILL
SUBMISSION FROM ARgyLL AND BUTE COUNCil

Did you take part in the Scottish Government consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. No. The Bill does not appear to have significant direct cost implications for the Council.

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

2. The Financial Memorandum indicates the Bill does not to have significant direct cost implications for the Council and the Council is content this adequately represents the position.

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

3. Yes.

Costs

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

4. The Bill does not appear to have significant direct cost implications for the Council.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

5. The Bill does not appear to have significant direct cost implications for the Council.

If relevant, are you content that your organisation or members can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

6. Not applicable.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. Not applicable.

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. No comment.

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

9. No comment.
Did you take part in the Scottish Government consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes

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

2. Yes – we previously commented that any direction by Scottish Ministers on public bodies would have to recognise any cost implications on those public bodies. We note the inclusion at section 2 of the requirement on Scottish Ministers to consult with such bodies beforehand.

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

3. Yes

Costs

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

4. We do not see any financial implications for Scottish local authorities as the Bill stands.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

5. N/A

If relevant, are you content that your organisation or members can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

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

7. N/A

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Yes.

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

9. As set out above, we welcome the inclusion in section 2 of the requirement for Scottish Ministers to consult with other public bodies before implementing any direction on them. It is to be expected that any future costs arising from any such direction would be highlighted as part of that consultation.
Introduction

1. The Scotch Whisky Association (SWA) is the industry’s representative body, with a remit to protect and promote Scotch Whisky worldwide. Its member companies, Scotch Whisky distillers, blenders and bottlers, account for over 90% of the industry.

2. Scotch Whisky is Scotland’s leading single product export. Annual shipments in excess of £4.2bn in customs value represent almost 80% of Scotland’s and 25% of the UK’s food and drink exports. Around 35,000 people are directly employed or supported by the industry and exports contribute over £134 per second to the UK balance of trade.

3. As an industry, we have been committed to a far reaching and ambitious environmental strategy since 2009 and have invested over £160 million at five sites alone since 2008 in environmental measures to secure and improve Scotch Whisky’s environmental sustainability.

4. Our high quality reputation and branding are inextricably linked to Scotland’s quality water environment. The majority of water used at distilleries is for cooling purposes and is therefore borrowed and returned to the water environment unchanged.

5. The Association is delighted to have the opportunity to respond to the Finance Committee’s consultation on the Water Resources (Scotland) Bill. We have provided answers to only some of the questions posed by the Committee but wish to ensure that the final legislation does not undermine the existing arrangements regarding private water abstraction on which businesses have built and sustained success.

Costs

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

6. The financial memorandum estimates that on an annual basis, the cost to the Scottish Government to administer the Water Industry in Scotland will be £100,000 for policy implementation and reporting which will come from the existing budget. The SWA would welcome a more detailed explanation on the breakdown of this figure.
If the Bill has any financial implications for your organisation or your members, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

7. We believe there will be costs arising for businesses as a direct result of the Bill via Part 2: Control of Water Abstraction and Part 7: Water Shortage Orders. Companies may have to amend and review both short and long term investment strategies in light of any decisions made in either of these areas.

8. The financial memorandum that accompanies the Bill states that: ‘As a result of growth in the distilling industry and the potential for large water users to be attracted to Scotland, it is estimated that there will be between five to ten applications to Ministers over the next five years for new or increased abstractions.’

9. Although the Scotch Whisky industry uses a significant amount of water, 37,024,340m3 in 2010, the majority is returned to the environment. For example, only 34% of water used in malt distilleries is retained while 66% is returned to the environment. We therefore seek clarification that the water abstraction limit covers actual water consumption, rather than just total water abstraction. We ask that the Scotch Whisky industry is made exempt from the abstraction provisions of the Bill or that the abstraction threshold focuses on consumptive water rather than total abstraction to avoid a financial cost to businesses.

10. With regard to the cost of licenses, the Scottish Government estimates that administration of licences for water abstraction in excess of 10 megalitres per day will cost between £1500 and £3000. The SWA would welcome information regarding whether any comparison has been made against other licence cost frameworks to ensure value for money.

11. In addition, we believe that there will be significant cost to businesses to provide the relevant information for the Scottish Government to assess requests for a water abstraction license. This work will likely require consultancies’ time as the expertise may not be available internally. We would wish any BRIA to take account of these costs.

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

12. The SWA is broadly supportive of the proposals surrounding Water Shortage Orders but it is important that measures are implemented in a phased approach with early engagement with key sectors, including the Scotch Whisky industry, as we are reliant on a constant supply of high quality water.

13. The potential financial cost to the Scotch Whisky industry during a Water Shortage Order is significant given that as a food manufacturer we must comply with European food law at all times and require a minimum level of water to protect both the safety and quality of our products e.g. cleaning equipment and vehicles. We would hope any of the mandatory water saving measures would take cognisance of other legislative requirements e.g. food hygiene. We suggest that the Bill should
include an exemption for activities which take place in compliance with hygiene and/or health and safety legislation, as the financial ramifications of such an event could cause problems for our industry.

Conclusion

14. Thousands of jobs, local economies and exports rely on the ability of our industry to secure good quality water. We are a key water user that can only be based in Scotland and we support policies that will ensure that our national water is fit for purpose, free from pollutants and maintains its reputation for good quality.

15. We are broadly supportive of this Bill but believe that more information is required in a number of areas specified above. We also hope that clarification can be provided regarding water abstraction licenses and whether it covers consumptive use of water rather than just total water abstraction.
FINANCE COMMITTEE

STAGE ONE CONSULTATION ON THE WATER RESOURCES (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH WATER

Consultation

Did you take part in the Scottish Government consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. On 12th March 2012, Scottish Water formally responded to the Scotland The Hydro Nation Prospectus and Proposals for Legislation consultation by Scottish Government. Within this consultation we did not make any comments on the financial implications of the proposals in this response.

2. We did provide additional comments to Scottish Government relating to specific costs after the consultation.

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

3. Yes, where we provided financial information to Scottish Government, the assumptions and comments we made have been included accurately within the Financial Memorandum.

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

4. Yes we had sufficient time to contribute.

Costs

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

5. Where there are financial implications for Scottish Water within the Bill, we are pleased to note that these have been accurately reflected within the Financial Memorandum.

Do you consider that the estimated costs and savings set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?
6. We draw to your attention that where costs arise in relation to Part 3 (Scottish Water’s Functions, specifically relating to developing the value of assets and renewable energy), that we had been exploring new opportunities, as agreed by our Board and with full knowledge of Scottish Ministers, prior to the proposals within the Bill.

If relevant, are you content that your organisation or members can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

7. With respect to core functions (as defined by the Bill), we are content that any costs incurred as a result on the proposals within the Bill can be met by Scottish Water within the regulatory framework established for setting prices to customers.

8. Costs associated with Part 3 of the Bill (renewable generation and development of the value of our assets) will be met by the financial returns gained from making investments of this nature.

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

9. Yes, the Financial Memorandum does accurately reflect cost uncertainties that we are aware of.

10. The most significant element of uncertainty relates to costs arising from Part 6 of the Bill, Sewerage Network, specifically, the actions that we shall take in relation to implementation of the Priority Substances Directive (PSD). The proposals in the Bill ensure that appropriate statutory powers will be in place with respect to trade effluent discharges into the public sewer; this proposal within the Bill ensures that the polluter pays principle is implemented. With respect to wider costs from the PSD, we are actively engaged in further work with SEPA and the water companies in England & Wales to understand our obligations for implementation of this directive.

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

11. Yes, we believe that costs are reasonably captured by the Financial Memorandum.

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

12. We are not aware of there being any future sub-ordinate legislation, hence no costs arising from this
Dear Christina Phillips

**Water Resources (Scotland) Bill: Financial Memorandum**

The Finance Committee recently considered the Financial Memorandum (FM) of the Water Resources (Scotland) Bill. To inform its approach the Committee sought written submissions from a range of stakeholders. In its response to the Committee the Scotch Whisky Association (SWA) raised a number of issues regarding the estimated costs and the Committee agreed to seek clarification directly from the Bill team on these aspects. I have attached the submission from the SWA and I would be grateful for your response to the points it raises.

In addition to the points raised by the SWA, the Committee would welcome your comments on the reference to the margins of uncertainty as set out in the FM. As you are aware, Rule 9.3.2 of the *Standing Orders* states that an FM accompanying a Bill should set out—

> “the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

The Committee would welcome clarification on paragraph 103 of the FM and, specifically, the sentences highlighted in bold (set out below) in the light of the Scottish Government’s own guidance on Financial Memoranda. Paragraph 103 states that—
“Many of the requirements under the Bill will be delivered by the aligning of existing work plans and budgets with the new duties. Other areas of the Bill are enabling in nature and hence do not directly impose costs. As a consequence the concepts of margins of uncertainty does not apply as it would when new costs are imposed. Where new costs are imposed by the Bill, such as the requirement of landlords to notify licensed providers, a range of costs is provided to demonstrate the uncertainty in the estimate.”

Paragraph 12 of the Scottish Government’s guidance on Financial Memoranda that accompany Scottish Government Bills states that—

“Costings should not be omitted because final decisions have still to be made. Where this is the case a range of costs should be provided reflecting the possible options. Where a Bill proposes powers dependent on secondary legislation (or further primary legislation), it may not be possible to be precise. In these cases, the Memorandum should say so. However, this should be supported by an outline of the SG’s current intentions, the financial implications of these intentions, and the effect of varying the major assumptions.”

I would be grateful for a response by Friday 26 October in order that it can be forwarded to the lead committee in time for its evidence session with the Cabinet Secretary.

Kenneth Gibson MSP
Convener

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1 Water Resources (Scotland) Bill. Financial Memorandum, para. 103
Dear Mr Gibson

Thank you for your letter of 8 October about the Financial Memorandum to the Water Resources (Scotland) Bill.

Your letter requested clarification on paragraph 103 of the Financial Memorandum and in particular the following two sentences:

"Other areas of the Bill are enabling in nature and hence do not directly impose costs. As a consequence the concept of margins of uncertainty does not apply as it would when new costs are imposed."

This part of the Financial Memorandum was referring to the provisions of the Bill (contained in Parts 4 and 6) that provide powers for Scottish Water to access premises to inspect and monitor factors that may be affecting the quality of raw water or inputs into the sewerage system. The purpose of these powers is to enable Scottish Water to identify and address pollution at or closer to source where Scottish Water considers that doing so is more cost effective than subsequent treatment, thus allowing it to seek out solutions that allow them to provide services to customers in a more cost effective way. The exercise of these powers is discretionary - Ministers expect that these powers would only be utilised where the benefits exceed the costs involved.

Your letter also requested clarification on the issues raised by the Scotch Whisky Association (SWA) regarding estimated costs. In their response, the SWA requests an explanation of the estimate of £100,000 p.a. on staffing and administration for policy implementation going forwards. This cost has been derived from an analysis of the resource required to deliver the aspects of the Bill that fall to Scottish Ministers and in particular the duty that would be imposed on Ministers by Part 1 of the Bill. The first steps that Ministers intend to take were laid out in the consultation earlier this year, such as setting up and providing secretariat to the Hydro Nation Forum, and it is the implementation of these steps that has been costed.
With regards to the provisions on the control of water abstraction in Part 2 of the Bill, the SWA enquire whether any comparison has been made against other licence cost frameworks to ensure value for money and also request that any BRIA takes into account the consultancy time that may be required to provide relevant information for an application. I can confirm that preliminary work has been carried out to identify the costs of administering renewable energy consents as a comparator for the abstraction licence regime proposed in the Bill. I can further confirm that the BRIA committed to in paragraph 121 of the Financial Memorandum (that will accompany regulations setting out the procedures for applying for a water abstraction above 10 megalitres a day) will capture the costs incurred by applicants, including any consultancy that may be required by them. We will continue to liaise with the SWA and other stakeholders regarding the more general comments they have made about the proposed regime for large water abstractions.

Finally in their submission the SWA highlights that the potential financial cost to the industry during the time a Water Shortage Order is in place is significant. Water Shortage Orders are intended to mitigate the consequences of naturally occurring temporary water shortages, which could potentially be more severe for the industry if not abated by an Order. We of course recognise that any temporary water shortage that is severe enough to impact on the production processes of the Scotch Whisky industry has the potential to have a significant financial cost on the industry and indeed more widely on the Scottish economy. We cannot control the occurrence of such shortages but, as set out in the Policy and Financial Memorandums, the proposed Water Shortage Orders offer a number of improvements over existing arrangements for managing water shortages and these improvements will deliver greater security of supply to Scottish Water’s customers whenever a temporary water shortage occurs. Whisky distillers or any other business or industry affected by a proposed Water Shortage Order will have the right to make representations about it, and Ministers must consider such representations when deciding to make an Order.

I trust this letter provides your Committee with the information it needs to complete its consideration of the Financial Memorandum for the Water Resources (Scotland) Bill but if you have any further queries I will be happy to answer them.

Yours sincerely

Christina Phillips
Meeting continued in public.

Water Resources (Scotland) Bill: Stage 1

The Convener: I welcome everyone back to public session following the committee's discussion with the budget adviser on the themes for our scrutiny of the draft budget 2013-14.

The committee will now hear its first evidence on the Water Resources (Scotland) Bill from the Scottish Government bill team. The aim of the session is to allow the committee to take an overview of the bill's provisions. The committee will have the opportunity to raise more specific issues or political points when it takes evidence from the Cabinet Secretary for Infrastructure, Investment and Cities in November.

I welcome the witnesses: Christina Phillips is the bill manager in the water industry team, Bob Irvine is the deputy director of the climate change and water industry division, and Stephen Rees is from the Scottish Government's legal directorate. Aileen McLeod, would you like to start?

Aileen McLeod (South Scotland) (SNP): Thank you convener, and good morning to the witnesses. I thank you all for coming to the committee this morning.

Paragraph 2 of the bill's policy memorandum, under the heading of "Policy objectives", states that the bill

"sets a framework to develop the value of Scotland's water resources, Scotland's water knowledge and Scotland's water technology. The successful achievement of this vision will be to the benefit of the people of Scotland and more widely will contribute to the better global management of water, the planet's most precious resource. The increase in the value should be measured widely in economic, environmental and social terms."

On the back of that, can you outline briefly the purpose of the bill? Why is legislation necessary to achieve the bill's aims?

Bob Irvine (Scottish Government): Certainly, and thank you for allowing us to come to the committee this morning.

The statement that you just read out summarises an ambitious and long-term agenda that ministers have created and developed during the past year or so. It covers a number of areas of Government activity. Within it there are economic, environmental, social and research agendas, and it contains many strands. The statement also reflects a wider, global sense of the importance of water as a resource as the world changes and as globalisation and population increases continue to put more pressure on the water resource globally.
Ministers recognise that, relatively speaking, Scotland is in a fortunate position in being a water-rich country. They want to ensure that Scotland’s public bodies and private sector come together, properly recognise that fact and work within the developing sense of water as an important resource to maximise our custody and management of water along with the opportunity that it creates. As I said, that is an ambitious and long-term agenda.

Our water environment is very well managed at the moment, and a robust statutory framework provides for that. However, it is not perfect and it needs to be managed, developed and improved. Part of the bill seeks to achieve that.

Scottish Water is very important to the agenda, although not exclusively. During the past 10 years, it has performed very well in its core functions of providing drinking water and managing waste water. We can clarify Scottish Water’s functions in a number of areas and, on the basis of its success in those functions, we can challenge it to develop further into other areas and expand its activity. The bill provides a basis for Scottish Water to do that.

The wider agenda of creating the sense of a hydro nation, which is in the first section of the bill, is perhaps the part of the proposed legislation that responds most directly and critically to the statement of objectives. Why is it necessary for that to be achieved through legislation? Ministers want to heighten the sense of the importance of the agenda and the level of challenge within it. They also want to be able to bring together public agencies and other bodies that have a contribution to make, in order to work very hard to work out how best to take forward the agenda, to develop a plan of action and to identify how we can successfully convert Scotland into something that can credibly be described as a hydro nation.

That is what the first part of the bill does, through giving ministers the obligation to work hard on that objective, through giving them powers to direct relevant public agencies to participate in that activity and—perhaps most importantly—through giving them an obligation to report in a formal sense to Parliament about the progress in the activities on a three-year horizon.

Aileen McLeod: Will you describe the level and nature of the consultation that took place prior to the publication of the bill?

Bob Irvine: As is reported in the policy memorandum and other documents, there were two formal consultations on the development of this agenda. The most recent was in February this year. It set out a more detailed conception of a number of the activities under the hydro nation agenda, and it presented some of the draft sections. The outcome of that consultation is summarised in the policy memorandum.

Broadly speaking, the same representations and comments were gathered in both the consultation exercises. Ministers were encouraged by the number of responses, which were received from more than just the tight set of stakeholders in the water industry, such as Scottish Water and the Scottish Environment Protection Agency. That confirmed to ministers that there was a sense among people of what is trying to be achieved.

The comments that were received broadly supported the general thought that Scotland can make more of being a water-rich or water-fortunate country. There was also a recognition that there is more that Scottish Water can do, and a request that, as Scottish Water pushes into areas of activity beyond its core functions, care must be taken not to compromise the successful operation of those core functions, which are vital to the health and wellbeing of Scotland.

I know that the committee has received a number of comments on the bill, which reflect some of the points that were raised in the Government’s consultation but go into more detail on specific provisions, now that those provisions are available. We are more than happy to discuss some of the implications of those comments if that helps the committee.

Aileen McLeod: You have touched on some of the issues that were raised by respondents. Could you tell us about any other key issues that were raised and state how they were addressed in the bill?

Bob Irvine: One significant comment concerned the definition of value as it is expressed in the bill and whether that is simply about economic and financial value. There was a concern on the part of those who are engaged in environmental activities that such an interpretation of the concept of value would be unnecessarily narrow and might compromise other objectives.

Generally speaking, ministers accept that point and do not see the term “value” in this context as solely limited to financial value. We wish to make it clear that the term embraces the environmental benefits relating to the water environment and the social aspects.

There were issues about the extent to which Scottish Water, as a public body that is supported through Government lending, might be in a preferential position in certain marketplaces, particularly if it goes into renewable energy. We fully recognise that issue. Ministers have no intention or will to put Scottish Water in a preferential market position. Indeed, their expectation is that Scottish Water should make a proper economic return in whatever areas it
engages in. The energy sector is subject to its own form of regulation, so if other players are concerned about Scottish Water's activities they can make appropriate representations. However, ministers are clear in their transactions with Scottish Water that they are not subsidising it to go into other areas.

The other side of that issue is the extent to which customers of Scottish Water might be exposed to risk in the areas of non-core activity. One of the minor provisions in the bill clarifies the distinction between core and non-core activities, with the objective of protecting customers from exposure to such risks. We would not expect Scottish Water to take an unduly risky approach to future activities and investment. Certainly, the present board and executive team are prudent and wise in their approach to commercial activities. It will be for ministers to ensure that Scottish Water maintains that approach.

There were comments on the environmental and business issues. The commentary on the social aspects recognised that Scotland can actually make a contribution in wider areas by supporting places where water is a real problem, particularly in the developing world. Ministers' announcement in June of the climate justice fund begins to enable that. Much of the commentary was about whether we can actually do something, but that does not necessarily affect the way in which the bill is drafted. That issue requires ministers to show what they can do and how they will take forward some of the statements that they have made in relation to the hydro agenda.

Aileen McLeod: Thank you for that detailed response.

Margaret McCulloch (Central Scotland) (Lab): Consumer Focus Scotland has told the committee that the benefits of the proposals in the bill to consumers are unclear. How will consumers actually benefit from the proposals?

Bob Irvine: The first point is to ensure that consumers are not disbenefited or are not exposed to undue risks as a result of Scottish Water going into other areas. A provision in the bill, and ministers' general instructions to Scottish Water, will achieve that.

11:00

A significant distinction is made in the bill between Scottish Water's core activities and its non-core activities. It is not ministers' intention for the non-core activities to be subsidised with profits that are made through the core business. In the fullness of time, if the non-core business is seriously profitable and it delivers significant returns to Scottish Water, that should, in theory, benefit customers as those funds can be made available for Scottish Water to invest in improving its core service. That will largely be for ministers to determine in looking at Scottish Water's improvement needs in its sewerage and water supply networks, and also the financial requirements alongside the determination of charges. If Scottish Water is successful in its non-core activities, it should be equally successful in its core activities and continue to improve both the level of service that it offers customers and value for money.

There is also a slightly more abstract concept about how customers can benefit. If part of the agenda is about raising Scotland's international profile and encouraging Scottish Water to display itself and work abroad in other areas, that should enhance its skills levels and expose it to more innovative pressures and practices, which it can bring back to the running of its business. We hope that there will be an efficiency gain from that. I do not know how big it will be, but it would be interesting for the committee to explore those possibilities with Scottish Water as and when it comes before you later in the process.

Margaret McCulloch: The committee has heard concerns that the duty that is placed on the Scottish ministers in section 1 focuses too much on developing water resources for economic purposes and does not include sufficient mention of environmental and social factors. Will you respond to those concerns?

Bob Irvine: I tried to address that in responding to Aileen McLeod earlier, and I am not sure that I can add to that. To some extent, it is a legal issue about how we describe value. Ministers will declare that their conception of value goes wider than financial value and they will look to secure, through the various activities that they stimulate and facilitate in the agenda, things that are of environmental and social benefit. Stephen Rees might want to comment on the legal aspect of that.

Stephen Rees (Scottish Government): Section 1 provides that ministers are to take steps to ensure the development of the value of Scotland's water resources in ways that are sustainable, and value is defined as “economic and other benefit”, which clearly encompasses social and environmental concerns. The words "environmental" and "social" do not appear in the definition of value, and we could argue about whether those words should appear from a presentational perspective, but the legal effect is clear that value encompasses a broader range of things than purely economic value.

Margaret McCulloch: Does the bill provide that Scottish Water is accountable for adhering to the laws on pollution? An article in The Herald at the weekend stated that, for two years, a number of sewage works and plants and the organic
recycling facility at Cumbernauld have been repeat offenders. Is there anything in the bill that will make Scottish Water accountable and ensure that that stops?

**Bob Irvine:** No, that is not the subject of the bill. Those activities are already subject to close control by SEPA and are all subject to what are known as CAR—controlled activities regulations—licences under the Water Environment and Water Services (Scotland) Act 2003.

The reporting to which you referred notes that there are instances in which things such as allowed emissions are exceeded. Many of those instances are because of reasons that are predicted and understood by Scottish Water and SEPA. Although they are of concern to the environment, they are not a concern from a governance or accountability point of view. Some of them reflect failures of systems or managerial control, and those are pursued. Where it is considered appropriate, SEPA will take enforcement action that can actually lead to prosecution and the involvement of the drinking water quality regulator.

That legislative framework is pretty secure and is continually reviewed. A proposal is emerging about better regulations to tighten up and modernise some aspects of SEPA’s interaction with the parties that it controls. Although some failures are inevitable given the facts of life, we would hope that such failures are not significant in the future. I know that the committee will ask SEPA for evidence, so there might be an issue that you want to explore with it. However, Scottish Water is fully accountable and takes such things extremely seriously.

**The Convener:** We will get into that detail next week when SEPA comes to give evidence.

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** Who owns Scotland’s water?

**Bob Irvine:** Do you want the short answer or the long answer?

**Stephen Rees:** I can try to answer.

**Bob Irvine:** Stephen is itching to answer, but he will have to be very itchy for a moment as I will put the ball in play.

It all depends which water you are talking about and what you mean by ownership. If someone has a bit of land that has something such as a loch circumscribed within it, they would be deemed to own it. Other people may have certain rights in relation to it, whether conferred through a SEPA authorisation or whether the landowner allows people to fish or boat in it. The trickiest question is who owns flowing water. Not even the institutes of Justinian of 2,000 years ago pulled off a conclusive answer to that.

**Stephen Rees:** The position is not entirely clear. As Bob Irvine alluded to, it varies depending on the circumstances. Very broadly, running water is generally not owned but is, as Bob said, subject to rights that prevent people from doing anything that detrimentally affects the water that flows past those people downstream of them.

For other bodies of water, such as stagnant water and lochs, the position depends on the surrounding land ownership. The circumstances where there is ownership as opposed to an exclusive right to use the water are unclear. It is a complex patchwork of legal principles that we have inherited over the centuries. It is probably more properly the subject of a university thesis, rather than a presentation from me just now.

**Adam Ingram:** Can it be regarded as a public good?

**Stephen Rees:** In a sense, the reason why much of the water in the water environment in its natural state is not owned is that it is seen as something that is common to all and for the benefit of all. Therefore, it cannot be appropriated by one person, unless they extract it in a container and take it away.

**Adam Ingram:** I ask those questions because of the definition of value. How we develop the value of Scotland’s water resources is at the core of the bill’s purpose. That value is not, of course, just for this generation; it is for future generations as well.

Perhaps the lack of a definition beyond the water’s economic value concerns, for example, the centre for water law, policy and science, which argues that there should be an overriding concern for the protection of the water environment and that the fundamental underlying principle is that we should take an “ecosystems approach”. Perhaps we should return to that issue in future witness sessions.

**Bob Irvine:** I would certainly encourage you to do that.

In response to your first point, the Water Environment and Water Services (Scotland) Act 2003, which is known to those who like to joke about such things as the WEWS act, applies in all water board areas in Scotland, and ownership is not an issue. The priority of the sustainable management of water bodies in Scotland through that act is clear and cuts across ownership. You might infer from that that water is regarded as a public good. You might also infer from the rights that Scottish Water is given in relation to its ability to abstract and define areas of ground for drinking water and the controls and management systems that have to be put in place as a result that the water in those areas is to be regarded as a public
good—that is, accessible for a defined public purpose.

As Stephen Rees said, many university students are busting their brains on aspects of that issue. I do not know whether you will take evidence from the centre for water law, policy and science, but I am sure that you would have an interesting discussion with it.

If there is a serious point that requires to be addressed and can be addressed only through some legislative means, ministers will be more than willing to consider it seriously. As you say, the issue is very close to the purpose that ministers have set out in the agenda.

Stephen Rees: The bill provides that the value of water resources

"includes the economic and other benefit deriving from the use of (or any activities in relation to) them."

In that, there is the idea of the use of the water, which can be separate from ownership of it. People can have a right to use water without necessarily owning it. Value can accrue in that way.

The Convener: We are taking evidence from the centre for water law, policy and science on 24 October, and we will also visit it in Dundee, probably on 25 September.

Bob Irvine: Excellent.

Adam Ingram: Obviously, we can return to those issues then.

On an unrelated point, section 3 of the bill lists a number of designated bodies that the Scottish ministers may direct to develop Scotland’s water resource. What types of direction could ministers give to the designated bodies? Why would that be necessary?

11:15

Bob Irvine: Directions are used sparingly by ministers, but they are used if it is necessary to define a very specific set of activities or purposes for an agency or body. The point of putting the power in the bill is to confirm ministers’ seriousness of purpose and their serious wish to have a high level of engagement with those bodies.

It could be possible for a direction to say to one or all of the bodies that they have to engage in specific activities and that they have to have a subsidiary that develops experimental prototypes for gizmos or systems that would assist water management. The purpose of doing that would be to put a ring fence around some of the financial risks that we have spoken about. Ministers might also want to direct some or all of the bodies to engage in areas abroad, whether for humanitarian reasons or reasons of profit. Potentially, anything within that ambit could be the subject of a direction, if it were consistent with the overall purpose and the other statutory frameworks around those bodies. Ministers have no specific proposition to make a direction at the moment.

Adam Ingram: Nothing in the bill suggests that those directions would be consulted on prior to being made. Why has that consultation stage been omitted?

Stephen Rees: I am not sure that that is correct. I think that section 3—[ Interruption.]

Sorry, I am incorrect; section 3 is about modifying the list. You are right. My apologies.

Christina Phillips (Scottish Government): We will consider the issue that you raise. We noticed that a few responses to the call for evidence raised the point that some form of consultation would be desirable.

Alex Johnstone (North East Scotland) (Con): Part 2 of the bill concerns control of water abstraction. Why was it felt unnecessary to have a formal consultation on the abstraction proposals?

Bob Irvine: I do not think that it was felt to be unnecessary—it was just that the timescale within which the need for the provision was identified made having a consultation difficult. We engaged with key stakeholders prior to its being developed. From that point of view, it did not come out of the blue. The real answer to the question is that the timetable was against us.

Alex Johnstone: Do you feel that you reached the right stakeholders and that the quality of the interaction was appropriate?

Bob Irvine: I hope that we did. The committee has received additional comments on the provision, and we will consider them carefully. We are interested to hear whether the people from whom the committee will hear in the coming weeks feel that we have that provision in the right space.

We did as much as we could to get the purpose and structure of the provision as clear as possible. From a legal point of view, it is certainly a workable proposition as it stands.

Alex Johnstone: How do the proposed control of water abstraction provisions complement the existing regime under the controlled activities regulations, and why is a new authorisation scheme required for the very large abstractions?

Bob Irvine: The CAR authorisation that is granted by SEPA is narrowly focused on the environmental aspects of any application. “Narrowly” is not quite the right word, but those are the only aspects that SEPA can take into account in awarding an authorisation.
In view of the expanding sense of the importance of the water resource, and given some of the developments that might or might not affect that, ministers wanted the opportunity to consider a wider set of factors in looking at any application for particularly large abstractions. Some of the considerations that they would take into account are listed in the bill.

The aim is to ensure that, if an authorisation for a large abstraction is granted, nothing will be done that would compromise a medium to long-term development that would be difficult to accommodate with that abstraction. That applies particularly if the possibility exists of a developing commodity market in water, in which large amounts might be moved around. There is talk of that, but we shall see whether it is practicable. That is one issue that is at the back of ministers’ minds.

Another factor is the wider impact of a very large-scale abstraction locally. The type of abstraction that we are talking about might cause significant disruption from transport, building of pumping stations or whatever. SEPA would not necessarily consider that. Ministers felt that having the additional power was necessary to give them a wider and slightly longer-term perspective on how the water sector is developing.

**Alex Johnstone:** You have given quite a lot of context for why the provisions are there, but why was the 10 megalitre limit decided on?

**Bob Irvine:** That was set following discussion with SEPA in particular, on the basis of the range of abstractions that take place. Few existing abstractions are above 10 megalitres; such abstractions are exceptional. If a new one came to Scotland, it would be exceptional. The level might not be right for all time, so the opportunity to vary it exists, but given the exceptional nature of larger abstractions, ministers feel that the size is credible to allow the provision to begin its life.

**Alex Johnstone:** The submissions that we have received have raised a couple of issues, one of which relates to the abstraction limit. How do you react to the suggestion that the limit should be based on the level of consumption rather than abstraction?

**Bob Irvine:** We want to look at what people mean by defining the limit through consumption. The exceptions that are given in the bill imply that we are talking about an abstraction that is actually an abstraction and does not involve taking water then spraying it back in. The exemptions provide a way of confirming that. If there is a way of defining a consumptive abstraction beyond that, we would want to look at that. We wish to engage with the representations that have been made on that point in response to the committee’s request for evidence, to see whether there is a better way of dealing with the issue.

**Alex Johnstone:** Our friends in the Scotch whisky industry would like to be exempted from the abstraction consent regime. What are your views on that request?

**Bob Irvine:** Again, we want to discuss with the industry exactly why it feels that. Ministers will, of course, always endorse the value to the Scottish economy of the whisky industry and the importance of the water environment to that industry. Ministers may wish to accede to that request but, before they do so, we need to engage with the industry and discuss exactly why it feels that it should be entitled to such an exemption.

**Adam Ingram:** To follow up on the exemptions, you mentioned the possible development of bulk sales of water, which I think you called commodity trading. Is there anything in the bill that will allow Scottish Water to undertake bulk sales without the say-so of ministers, or is something built into the bill to ensure that that does not happen?

**Bob Irvine:** If Scottish Water wished to do that, that would be outside its core functions, so the abstraction provision would apply if the abstraction was above the threshold. Other than that and the existing governance arrangements for Scottish Water, through which ministers in effect approve the business plans—that would be a pretty significant activity and would therefore probably be included in the business plan—there is nothing specific in the bill that relates to that activity for Scottish Water.

**Adam Ingram:** So, under the new exemption regime, the Scottish ministers would have control of any bulk sale in which water was taken out of Scotland.

**Bob Irvine:** Yes.

**The Convener:** We move on to Scottish Water’s functions.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Can you explain why the provisions in part 3 are necessary when Scottish Water already successfully provides non-core functions through Scottish Water Horizons?

**Bob Irvine:** Those provisions are largely for clarification. Stephen Rees might want to comment on that.

**Stephen Rees:** I am sorry—could you repeat the question, Mr Chisholm?

**Malcolm Chisholm:** The question is about the non-core function work that Scottish Water Horizons already does. Some people are questioning why the provisions are necessary.
Stephen Rees: Under the existing legislative framework, Scottish Water can engage in activities that are outwith its core functions, provided that that does not compromise its core functions. The purpose of part 3 is to go slightly further than that and to place a proactive obligation on Scottish Water to engage in renewable energy and to use its assets. There will be a slight shift from having the ability to do that to having a proactive obligation to do it.

Malcolm Chisholm: To an extent, you have answered my next question in answering Margaret McCulloch’s general question on the issue, but this is specifically about part 3. Will you explain how the provisions in part 3 promote the interests of Scottish Water’s customers?

Bob Irvine: I am not sure that I have anything to add to what I said. I can repeat that, and I will perhaps be a bit more successful in summarising the points.

Malcolm Chisholm: The question relates specifically to part 3, but if you feel that you have already answered it, that is fine.

Bob Irvine: The most important bit for customers is section 24, which tightens the distinction between core and non-core functions, which has implications for charging of customers.

Malcolm Chisholm: How do you respond to concerns that the proposals in the bill will have a negative impact on private sector providers of services, because it will enable Scottish Water to invest in services such as waste management? Concerns have been raised about that by some private sector providers.

11:30

Bob Irvine: As I said earlier, it is ministers’ expectation that Scottish Water will engage in those activities on properly commercial terms. If ministers need to make that more explicit in anything that they communicate to Scottish Water or report elsewhere, they will do that. At the moment, though, Scottish Water’s activities are not compromising or causing concerns in that area. It is a welcome participant, particularly in waste management; indeed, it is leading and stimulating that market. It may have different roles at different times, as those markets develop. However, as I said before, it is not ministers’ intention to subsidise Scottish Water, or for customers to subsidise Scottish Water to engage in markets in which it should be operating on properly commercial terms.

Stephen Rees: Some of those concerns may have arisen because of ministers’ power to lend to Scottish Water at any rate that ministers choose. In practice, however, ministers would ensure that if they were lending for non-core activities, they would do so at a commercial rate so as to comply with European Union state-aid competition law. Although those concerns are not explicitly addressed in the bill, ministers have to comply with European law when lending to Scottish Water.

Malcolm Chisholm: Okay. I understand that.

Finally, what evidence does the Scottish Government have that the provisions in part 3 will benefit the Scottish economy?

Bob Irvine: The evidence is rather contingent, is it not? To the extent that Scottish Water is successful in other areas, it will add to Scottish gross domestic product and raise Scotland’s profile and influence, which will be to the benefit of Scotland and, potentially, Scotland’s customers. Part of the ambition of the hydro nation agenda is to increase the value of the sector to Scotland. It is a sector that is growing in many areas. As we said before, the management of water services is crucial in many developing areas, particularly as populations urbanise. If Scottish Water can contribute to that, and use its expertise and skills, and the skills and expertise that are in our engineering consultancies and many of our academic environments, that will be a significant potential gain for the Scottish economy.

Adam Ingram: We have received evidence criticising Scottish Water in relation to its partnerships with private sector providers. Notably, those submissions argue that by not encouraging Scottish research and development or allowing Scottish expertise to build up, and by going outwith Scotland for research and development and so on, Scottish Water’s activities have impacted negatively on the Scottish economy.

In a paper from the Jimmy Reid Foundation, the Cuthberts argued that the way in which the capital investment is financed is dubious, and the returns on capital too great. I think the argument is about excessive profits being made. In terms of developing the value of Scottish Water resources, to what extent will those issues be taken into consideration in the bill or can we develop that while we consider the bill?

Bob Irvine: The bill touches on neither of those issues directly. Scottish Water’s charges are regulated according to the statutory framework. There is a clear obligation from the regulator to give the lowest reasonable cost to customers. I imagine that the committee will want to interview the Water Industry Commission. It is my view that Mr and Mrs Cuthbert’s concern about the regulatory framework and the regulated asset base does not really apply in Scotland in the terms that they suggest. Scottish Water and the WIC will
be able to give you a more detailed response to that.

On the first point about procurement and so on, the committee will wish to pursue that with Scottish Water. From the minister’s point of view, its procurement activity has been progressive and active and it has developed a commendable structure to ensure that local contractors and the local economic contribution are properly regarded in the process. It is true that when it started, for whatever reason, it lacked a certain number of high-level programme management and design skills in particular, so it had to import them. As I have explained before, part of the process is about learning those skills and beginning to take them into the body.

As always, Scottish Water must behave within the context of its own legislation on securing best value, and under European and United Kingdom competition law, which is fairly tight in terms of process and how a body can engage with potential contractors and tenderers. Scottish Water has developed that process during successive investment rounds so it is now quite sophisticated. Although it is inevitably disappointing that not 100 per cent of the required skills or materials are sourced from down the road, our feeling is that as much as is practically possible and consistent with its frameworks and best-value obligations does actually come from Scotland. Indeed, the Scottish Water investment programme is a significant part of the total business of the Scottish construction and engineering sector and will be for the foreseeable future.

Adam Ingram: Thank you for that. It is something that we can pursue, and there will be a bit of overlap with other work that we are doing on public procurement.

Bob Irvine: That would be very helpful.

Gordon MacDonald (Edinburgh Pentlands) (SNP): The bill allows Scottish Water to enter into agreements with owners or occupiers of land with a view to taking action to prevent the deterioration of raw water quality or removing and reducing the need to treat that water. The written evidence that we have received from Scottish Land and Estates argues that Scottish Water should work in partnership with landowners. Why does Scottish Water need powers of entry and inspection when it could work in partnership with landowners?

Bob Irvine: Scottish Water’s objective would always be to work in partnership but, for whatever reason, a partnership might not be effective or something might happen in the short term, such as a pollutant activity on a premises that causes a dispute about its origins. The power of entry and inspection is a reserved power. There is no intention to turn Scottish Water into a Stalinist organisation that knocks down farmers’ doors at midnight, but the power is reserved.

It is also necessary to ensure that the partnerships are aware of the seriousness of the purpose behind the provisions, because some of the impacts on raw water are very significant as a result of the costs that are imposed on the public networks to remove them. If there is a better way of managing an issue upstream, as it were, it is in everyone’s interest to investigate those options.

This area is developing rapidly and the potential for such an agreement with landowners and land managers or, indeed, other owners of premises is in its infancy. We want to strengthen the ability to develop effective partnerships, new arrangements and new ways of dealing with the issue.

Gordon MacDonald: Are you basically saying that the powers would be used only in the case of emergency when Scottish Water has to get on the ground quickly to resolve a problem?

Bob Irvine: Absolutely. It might help the committee to ask Scottish Water and SEPA—because it is also part of the picture—and the drinking water quality regulator for Scotland about how the partnership approach with landowners is developing and in what circumstances, that they have experienced recently, Scottish Water might want to use the powers.

Gordon MacDonald: It has been argued that SEPA is better placed than Scottish Water to carry out monitoring of raw water quality and that if further monitoring is required, SEPA should have additional resources. Can you explain why the proposed new powers are being given to Scottish Water?

Bob Irvine: It is Scottish Water’s responsibility to provide clean, fresh drinking water to standard, so it should have the incentive to seek the least-cost way of doing that. If the least-cost way of doing it is to engage with a landowner, or landowners in a catchment area collectively, and say, “You can do your business in a different way, which means that the pollutant will not come into the system, so that we will not have to invest in machinery, energy and so on to take it out,” it is best for Scottish Water to have the incentive to do that. SEPA is a passive monitoring and enforcement agency. A different set of relationships is being stimulated through the provision.

Margaret McCulloch: What impact do you hope the proposals in part 5 will have on licensed providers and their customers?

Bob Irvine: The impact should just be to clarify the arrangements, because there may well currently be doubt about whether a provider can
legitimately charge a new customer in those circumstances.

The Convener: We will move on to the sewerage network. The committee received evidence from several witnesses calling for the proposed powers relating to maintenance of septic tanks to be strengthened to allow Scottish Water to take unilateral action and to require replacement of out-of-date equipment. How do you respond to those calls?

Christina Phillips: That provision is one part of a much broader exercise that is under way between Scottish Water and SEPA to find out whether many septic tanks are not registered. We would be happy to share with the committee other pieces of work that address maintenance of septic tanks, what is happening with them and the broader picture of their management.

There is one very small provision on septic tanks in the bill. Where a group of owners discharge into one septic tank it will not now be necessary for all the owners to give their consent for it to be emptied or maintained. That should make for better maintenance and emptying because at the moment if someone withholds their consent that does not always happen.

11:45

The Convener: Has registration of septic tanks not been working satisfactorily?

Christina Phillips: It has worked, but it is still under way. Septic tanks are being identified and registered during the conveyancing process. Turnover of properties might not happen as quickly as we would like in rural areas so there remains a big piece of work with regard to septic tanks.

The Convener: I am someone who falls within that category. We have all received lots of correspondence and we know that if we want to sell our homes we must have a piece of paper to say that the septic tank has been licensed. Are you saying that that has not really worked and that there still remain lots of septic tanks to be licensed or registered?

Christina Phillips: We know that there are still some that need to be registered and located. Some owners are not contactable or cannot be traced. That is a wider piece of on-going work. Our policy document demonstrates the different actions that are being taken in an attempt to address the issue. I know that the septic tank issue is of particular concern to rural communities.

The Convener: Some tanks might be still perfectly efficient, but may be old concrete tanks rather than plastic tanks. I have visions of Scottish Water saying to owners that they must replace out-of-date septic tanks. Scottish Water does not even bother because it is too difficult for them to empty some of these tanks. Could it ask a householder who has a concrete tank to replace it on the ground that they do not know whether it is working efficiently?

Christina Phillips: No. We are not stepping on people’s rights and responsibilities to maintain and upkeep their septic tanks. SEPA becomes involved if a septic tank is having an impact on the environment. We are certainly not planning any draconian measures to insist that everyone must update to new tanks immediately.

Stephen Rees: The provisions are about empowering owners of communal tanks to take action where perhaps one or two owners are a bit more reluctant to take steps. It is a case of empowering one or several of the common owners to take action to maintain their tank in its current form but to the correct standard and according to the correct procedures in order to avoid discharging inappropriate matter into the environment. So long as the basic requirements on discharge from the tank are met, in accordance with the licence or registration under the control of activities regulations, there is no need to upgrade the type of tank so long as it is maintained to the required standards.

The Convener: Thank you. Finally, Aileen McLeod wishes to ask some questions about water shortage orders.

Aileen McLeod: The committee has received evidence highlighting concerns from domestic customers and major water users such as the Scotch whisky industry about the potential impact of water shortage orders. How often would you expect such orders to be used?

The Convener: A weather forecast is involved.

Bob Irvine: Incredibly, neither ministers nor Scottish Water actually control the weather. I do not think anyone can control the weather.

Such circumstances would be very rare. The existing framework of drought orders has been used only once and it began to rain before the process had been completed. Certain areas are subject to some kind of water stress every year. For instance, no one would have predicted this time last year that the Western Isles would be a particular case this year.

Scottish Water employs a range of activities and actions ahead of actually cutting off supplies and providing stand-pipes, for instance. This framework sets those out. The important aspect for Scottish Water and for customers is to have really clear and early communication if it looks as if something is about to happen. If the reservoirs are struggling at some point in the year, Scottish
Water can give those signals and communicate with customers at the earliest point to advise them on aspects of water use. We do not know how often that will happen. Our weather pattern is changing, so we might expect those orders to be used more often than they were in the past.

An important aspect of revising the provisions is the removal of the word “drought” from the statutory framework. It now talks about “water shortage”, which can occur for reasons other than the fact that it has not rained for three or four months. The real difficulty that English companies had was of having drought orders and hosepipe bans in place while it was raining outside this summer. I am not going to say that that would not happen in Scotland, but it is slightly easier, presentationally, to say that we have a water shortage issue even though it is raining, and that we are not responding to an immediate or present drought.

As I say, because of the changing nature of our weather and climate, the procedures may be used more often in the future than they have been used in the past.

Aileen McLeod: What about the impact of any restrictions? How will they be assessed when orders are in force?

Bob Irvine: That will be part of the extended communication between Scottish Water and customers. Knowing where the dialysis patients and the special needs are, and knowing the particular circumstances of industrial or commercial premises and how time sensitive they are to having the water on or off, if that is part of the regime, will be parts of it. Those things do not happen arbitrarily. The point of the statutory framework is to set up a communications and planning framework that will manage such issues.

The Convener: There are no further questions. Thank you very much for the evidence that you have given today. It is very helpful to set the framework for the bill.

I suspend the session briefly to allow a change of witnesses.

11:52

Meeting suspended.
On resuming—

**Water Resources (Scotland) Bill: Stage 1**

The Convener: Item 4 is further stage 1 consideration of the Water Resources (Scotland) Bill. We will take evidence from two panels of witnesses, the first of which is from the Scottish Environment Protection Agency. I welcome to the meeting David Harley, water and land unit manager with SEPA, and thank him for his written submission.

Margaret McCulloch will begin the questioning.

**Margaret McCulloch (Central Scotland) (Lab):** I have two questions. First, what are SEPA’s views on the adequacy of the consultation that took place before the bill was introduced?

**David Harley (Scottish Environment Protection Agency):** We have no particular comments to make about it.

**Margaret McCulloch:** So you were quite content with it.

**David Harley:** Yes.

**Margaret McCulloch:** Secondly, will the bill have a positive net impact on Scotland’s environment, particularly the water environment? Could it have included further safeguards to protect the environment?

**David Harley:** The bill certainly adds to our existing powers to protect the water environment and helps in several key areas. For example, the additional controls on pollutants going into the sewerage system and Scottish Water’s additional powers in taking samples will both be beneficial. The overall hydro nation agenda complements the river basin planning process, on which we are very much a lead authority. In the main, the bill is a good thing and will assist us in our role.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Why does SEPA think that the bill should be amended to require the Scottish ministers to specifically consider social and environmental factors in seeking to develop the value of Scotland’s water?

**David Harley:** Given that the bill specifically mentions “value”, we think that that should include environmental and social elements, which we feel are integral to the value of Scotland’s water. As you can imagine, we are particularly interested in all that.
Malcolm Chisholm: Last week, the officials suggested that such factors were included in the phrase “other benefit”, but you feel that it would be better if they were made explicit in the bill.

David Harley: Yes.

Malcolm Chisholm: In your written submission, you express concern that a direction from Scottish ministers should not “compromise” SEPA’s ability to undertake its “core duties”. I am not going to ask you to explain all your core duties, but it might be useful if you could describe what they are in relation to water. Secondly, should the bill be amended to ensure that a situation does not arise that might threaten those core duties?

David Harley: In terms of scale, water forms probably our largest core duty. About a third of the organisation is involved in protecting and reporting on the water environment and regulating in that respect. When I say “water environment”, I should stress that I am talking not just about Scottish Water’s activities but about all water environment issues, whether they are to do with land use, agriculture or other industries such as distilling or hydro. One of our key objectives is to deliver on the river basin management plans, which report on and set objectives for protecting and improving the water environment. We certainly would not want that work to be compromised in any way; indeed, we want it to be protected.

Malcolm Chisholm: Could the bill be amended to address such concerns?

David Harley: I am not sure how that could be achieved, but we would welcome any additional guarantees with regard to our core duties to protect and improve the water environment.

Malcolm Chisholm: I do not want to put ideas in the Government’s head, but can you think of a direction that it could make that might threaten your core duties?

David Harley: Not in this context. I suppose that we do not want to be distracted from our core duty; if there were too much emphasis on value, we could be. That would not happen if environmental factors were included in the bill—which they should be, given that they are integral to the value of Scotland’s water.

Malcolm Chisholm: You are worried that you might be taken away from your environmental focus.

David Harley: Exactly.

Malcolm Chisholm: Still on the subject of directions, when asked for possible examples of what a direction to a designated body could include, Scottish Government officials indicated that it could include the creation of a subsidiary or a requirement to work abroad. What are your views on those examples? Should the bill set out the potential scope of a direction?

David Harley: As I have said, our core duty is to Scotland’s environment. We would assist in any initiatives to facilitate work that might happen abroad, but we are tasked to protect Scotland’s water environment.

Malcolm Chisholm: Do you think, then, that the bill should restrict the potential scope of a direction in some way?

David Harley: To be honest, I have no comment on that.

Malcolm Chisholm: Thank you.

The Convener: As you will be aware, Scottish Water already works overseas. Are you fully aware of what it is doing and might there be some avenue for SEPA to use its skills to help in other countries, perhaps developing countries, where sewage and so on is a problem? That work has been very beneficial to Scottish Water as it has allowed employees to develop new career avenues. Would SEPA be up for that?

David Harley: Yes, we would be interested in that, but in these constrained days we would have to ensure that we also concentrate on our core duties. However, we would facilitate, assist with and co-operate in those initiatives.

The Convener: As no one else has any more questions on that part of the bill, we will move on to Alex Johnstone’s questions.

Alex Johnstone: I have a couple of questions on abstraction. SEPA indicated in written evidence that it supports the proposed new regime for the control of large-scale abstraction. Could you explain why you consider the new regime to be necessary and what it adds to the current controlled activities regulations regime?

David Harley: The controlled activities regulations deal with environmental issues, and we do not need any further powers in that regard. Further powers may be needed if ministers feel that there is a need to consider wider social or economic issues, but in SEPA’s view the powers that we have are sufficient to protect the water environment.

Alex Johnstone: We have heard evidence from a number of specialist interest groups, including calls for the abstraction regime in future to be based around consumption rather than abstraction. Scottish Government officials indicated that that could be difficult, but they did not reject the suggestion out of hand. What is SEPA’s view on that?

David Harley: In relation to a new regime or to our existing powers?
Alex Johnstone: We are talking about the new regime, but if the suggestion also relates to your existing powers, now is the time to tell us.

David Harley: We are interested in all forms of abstraction. Even if an abstraction returns the water to the water environment, there is a gap, and a stretch of river could be depleted of water. That stretch could be several hundred metres, several miles or tens of miles. In the hydro sector, for example, there are a lot of cross-catchment transfers of water, which can result in localised impacts unless they are properly addressed. From an environmental point of view, it is important that we deal with both consumptive and non-consumptive uses of water.

Alex Johnstone: That is very comprehensive—thank you.

Adam Ingram: We heard evidence from the bill team to suggest that there could be a growing market for Scottish water beyond our boundaries. Do you see any dangers in that prospect that might require you to ensure that environmental protection remains in place?

David Harley: The controlled activities regulations give us the powers to deal with the environmental considerations, whether in relation to an internal abstractor or to somebody beyond Scotland. The same would apply: we would use our powers to ensure that the environmental impact is sustainable and minimised. It does not really make a difference to us who makes that application or comes forward with the proposal.

Adam Ingram: Scottish ministers would consider proposals that may be presented for large-scale transfer of water away from Scotland. What would happen if they approved a proposal that would, in your view, have a negative environmental impact? How do we square that circle?

David Harley: First, the CAR still applies, so we would do our job. I understand that ministers are required to consult us in the process if the new regime comes to pass, so I would hope that our views would be taken into account.

Adam Ingram: But you do not think that anything needs to be written into the bill to guarantee that your advice would be taken.

David Harley: That would be helpful, if extra strength was needed in that regard.

The Convener: I will move on to part 3, on Scottish Water's functions. SEPA states in its written evidence that although it is "fully supportive of Scottish Water being given specific powers to develop its assets to support the generation of renewable energy ... such development of assets should not be at the expense of the environment, or of meeting future environmental objectives".

What do you mean by "future objectives" and how might they impact on the work of Scottish Water?

David Harley: We work very closely with Scottish Water and the Scottish Government on the quality and standards process, which is Scottish Water's investment programme. It deals with improving Scottish Water's assets, sewage works and abstractions and, in essence, with investing in its system. The environmental considerations are extremely important. Scottish Water has many hundreds of abstractions and many thousands of sewage works, all of which have a potential to cause an impact—whether because they are ageing or because they are not working as they were designed to. There is an established and effective investment process, whose prioritisation we influence. We would not want to see any distraction from that process.

The Convener: Could you give an example to make clearer what you mean?

David Harley: One example is that, at the moment, SEPA, the Scottish Government, Scottish Water and representatives from Glasgow are considering how best to deal with Glasgow's sewage, which currently discharges into the Clyde. How we eventually deal with that will take considerable investment. That is a large-scale example. Currently, all around the country various sewage works and Scottish Water assets are being invested in and improved to ensure that the water environment is improved. We must remember that the river basin management plans have very ambitious objectives for Scotland's water environment. The quality and standards process is the means by which we achieve those objectives in terms of water quality—mainly from sewage discharges—but also in terms of abstractions, because some abstractions result in environmental impacts at the point of abstraction.

The Convener: Could that be peatlands, for example, which might dry out because of water abstraction?

David Harley: It is not specifically peatlands. It is generally lochs, rivers and groundwater.

The Convener: Okay.

In response to the Scottish Government's consultation on the legislative proposals, it was suggested by Scottish Land & Estates and the Scottish Anglers National Association that giving Scottish Water new powers to access land to test water would duplicate powers already held by SEPA, and that that would therefore be a poor use of taxpayers' money. Do you regard those powers as duplication and how will you differentiate SEPA's role from that of Scottish Water?

David Harley: Those powers complement SEPA's role. We have a large initiative under way
that is looking at diffuse pollution in 14 priority catchments around Scotland. It is looking at rural diffuse pollution—in essence, pollution that is associated with land management. This is a very challenging area for us and for Scotland to deal with. Diffuse pollution comes from a range of activities and involves a range of pollutants and pollutant pathways. One area of particular concern for Scotland is diffuse pollution that pollutes raw water and causes drinking water problems. The traditional solution for dealing with raw water is to invest heavily in treatment systems, plants and technology to remove pollutants from water, but that is not sustainable. We should be thinking about how best to get the pollutants off the land in the first place and minimise their effect on raw water. It is far, far more efficient to do that.

10:30

In those areas where there are drinking water problems, we feel that it is appropriate that Scottish Water works with us and landowners to assist in mitigating the situation. That is already happening, and we work hand in hand with Scottish Water staff in a number of catchments, in particular the Ugie catchment in the north-east. We also work with land managers to raise awareness, advise them of their obligations and assist them in mitigating the pollutants that affect drinking water. We think that Scottish Water's proposed role is complementary.

The Convener: Are the powers sufficient at present, or do you envisage new regulations being imposed on those landowners in order to safeguard and raise the quality of water before it goes to treatment?

David Harley: We have a series of general binding rules, which set out the baseline requirement on land managers to protect the water environment. We are at an early stage in regulating those general binding rules and in making people in the sector aware of their obligations. It is hard for us at this stage to specify any additional regulations. We need more time on the initiative; when we have gathered data and evidence we can perhaps make the case for further regulations.

The Convener: Are the current initiatives encouraging lands and estates to farm in different ways and to consider when to use fertilisers, or which fertilisers they use? Can you give examples?

David Harley: Yes. In a wider sense, examples include planting buffer strips to allow a strip of wild land between farmed land and a water course, which has major advantages in that it prevents cattle from getting into water courses and prevents application of fertilisers and spreading of slurry close to water courses.

There are specific examples to do with drinking water, and we feel that additional measures are needed to address the use of pesticides. Some of those measures go above and beyond the general binding rules—for example, the use in farmyards of biobeds, which are areas in which one can fill machinery with pesticides and which allow the breakdown of pollutants in the system.

Other examples include safe storage of pesticides and filling with pesticides in the right place, not beside a water course or over a drain—some measures are really quite simple. Another possible measure that is not set out in the general binding rules is to get farmers to replace a damaging or high-risk pesticide with one that may pose less risk to the water environment.

The Convener: I think that Alex Johnstone will want to come in here.

Alex Johnstone: I was not going to ask a specific question, but I want to raise an issue that we discussed when we visited Scottish Water—use of slug pellets. It is a limited practice, but it has contributed greatly to contamination of drinking water. Scottish Water has already been testing and working with farmers to eliminate that pollutant. That is one example of where a lot of positive work is needed to take out very small-use pesticides in order to make a big difference to drinking water.

David Harley: I agree.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Mr Harley indicated in written evidence that SEPA expends considerable effort in dealing with the effects of blockages to the sewer system that are caused by grease, fat and oil. How much does it cost to deal with such incidents? Will the proposed new system of encouraging traders to use proper disposal methods be robust enough to deal with that problem?

David Harley: On the first question, it is difficult to quantify the costs. We have a pollution database that records the nature of pollution across Scotland’s water environment, but it does not go down to the level of specifying pollution by fats, oils and greases, although it does cover pollution from Scottish Water’s assets. Sometimes it is very hard to know exactly what the main cause of pollution is, but it is a significant issue.

Once fats, oils and greases have cooled down, they clog up systems, which can compromise the working of the waste stream and result in overflows from the waste part of Scottish Water’s infrastructure. Blockages can also result from surface water being contaminated with foul, or waste, water. Across the board, a significant
number of pollutions are caused, as a result of that. Therefore we welcome the powers, because it is important that Scottish Water can properly control what gets into its system.

**Gordon MacDonald:** How easy will it be to trace the trade premises that are responsible, bearing in mind that on an average high street there might be three or four premises next to one another that all use fats, greases and oils?

**David Harley:** There will no doubt be challenges associated with that, but Scottish Water has expertise in that—that is its job. We work with it in such matters. Probably today or tomorrow, a SEPA officer will be working in conjunction with Scottish Water officers to try to trace where a problem in a Scottish Water sewer has come from. You are right that, in some cases, that is not straightforward, but in other cases, it might well be. The issue is challenging, but the powers are meaningful.

**Gordon MacDonald:** Why do you consider that the proposed powers to deal with septic tanks that are in multiple ownership do not go far enough? How could the powers be improved?

**David Harley:** As you know, we regulate septic tanks by a system of registration under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. There are two main reasons for the system. One is to ensure that when new septic tanks are proposed, they are sited in the right place and that the right treatment is provided. So the first reason is to do with new development. The second reason is to ensure that we have a good understanding of where septic tanks are situated so that, should there be, in an area, an accumulation of septic tanks, which might cause a problem, we understand the issue and can tackle it.

I am sorry: what was the second part of your question?

**Gordon MacDonald:** Is there any way in which the proposed powers can be improved?

**David Harley:** A particular issue for us is that, when a septic tank that is shared by several householders causes a problem, it is difficult to take enforcement action. Of course we ratchet up the level of interaction with those people, but the difficulty is that although septic tanks individually do not cause a huge impact—they do not cause fish kills or major downgrades of water courses—cumulatively, they cause a problem and, locally, as you can imagine, they can be pretty messy and cause nuisance and amenity problems. It is hard for us to make a case to a procurator fiscal on the back of one person's contribution to a pollution problem. If there is shared ownership and not everybody plays ball, we get stuck and it is hard for us to proceed. Quite often, several people want to proceed and do the right thing by the environment by sorting out or upgrading the system, but we end up in a kind of quagmire. The power in the bill under which not all the owners will have to buy in to an upgrade or investment will assist us.

**Gordon MacDonald:** How is the registration system working? Are all septic tank owners registered and how is the register maintained?

**David Harley:** Not everybody is registered. It is hard to get an exact number, but we think that about 60 per cent of tanks are registered. Until now, we have relied on the house conveyancing system to register septic tanks at the point of sale. That will get us there, but slowly. The register is not complete, which is why the Government has asked SEPA and Scottish Water to work together to try to understand more about the problem and to find out exactly where the unregistered septic tanks are. We will have an awareness-raising and communications initiative to get more people registered. Through that, we will be able to better understand the issue.

**The Convener:** Do you envisage a situation in which many people who have septic tanks that are in multiple ownership will have to replace them?

**David Harley:** There will be a requirement for that, but I do not think that it will be a wholesale requirement. We will target the areas where there are problems. We do not want to be heavy-handed on the issue and knock on all the doors to check all septic tanks, and we certainly do not have the resources to do so. However, where there are problems and known issues, we should direct our resources to those places. If replacement or upgrading is required, we will pursue that. However, I do not envisage there being a nationwide issue involving huge numbers of people. We will work where there are known problems.

**The Convener:** You obviously know where there are problems. Are you pre-warning people that there is a problem in their area with waste water?

**David Harley:** The Scottish Government has asked SEPA and Scottish Water to work on the issue. We need to understand fully and document where the impacts are, although you are right that we have an idea of where some of them are. We then need to carry out awareness raising, get people registered and ensure that they maintain their tanks properly. That is a key issue. Desludging the tank every couple of years is a minimum requirement, but that might not be happening, so we need to ensure that it happens. Only when that sort of level of maintenance is
secured and we still have a problem would we ask for upgrades or other solutions.

The Convener: Do septic tanks need to be desludged every two years? In some cases, people are told that they do not need to do it every two years because the tank is working extremely efficiently.

David Harley: Tanks need to be desludged. That is the sort of awareness raising that we need to do. The solids do not disappear. The idea is that the liquid part overtops and goes into the environment and becomes treated in soakaways or is diluted by discharge into a watercourse, but the solids remain. Therefore, at some point, they will clog up the system. When that happens, the system either overflows into the environment and causes more pollution than is necessary or makes a mess in the garden, which is not pretty.

The Convener: It is smelly, too.

Adam Ingram: SEPA has welcomed the proposed introduction of water shortage orders, but you have highlighted that the water shortage order provisions will not replace the controls that are imposed by the controlled activities regulations on new or altered water abstractions. How do the controls work? Are they compatible with the proposed water shortage order regime?

David Harley: The controlled activities regulations were amended in 2011 to allow us to fast track CAR applications in the event of there being water scarcity for some reason. In that process, it is important that we work with Scottish Water and other water users to ensure that the public supply is secured and that other water users such as industry or fisheries are not impacted on. It is also important that the water environment is protected as far as possible in that challenging circumstance. We have that process already.

The water shortage orders are more to do with Scottish Water having the ability to manage its system and potentially to impose restrictions on water use within its system to facilitate that. The measure gives extra flexibility in those situations.

Adam Ingram: Are the two systems compatible?

David Harley: Yes. That is the short answer.

The Convener: As members have no further questions, I thank David Harley for his evidence and suspend the meeting briefly to allow for a change of witnesses.

10:48

On resuming—

The Convener: We continue to take evidence on the Water Resources (Scotland) Bill at stage 1, this time from a range of environmental organisations. I welcome Lisa Webb, who is water policy officer for RSPB Scotland; Chris Spray, who is a council member of the Scottish Wildlife Trust; and Andy Myles, who is parliamentary officer at Scottish Environment LINK.

Adam Ingram: I thank the witnesses for giving their time to the committee. Were you satisfied with the consultation process on the bill and with the Scottish Government’s response to the concerns that you raised?

Lisa Webb (RSPB Scotland): In general we have been happy with the consultation process. There have been two formal consultations on the hydro nation aspect. However, we are concerned about the part of the bill on large-scale abstractions, which was not mentioned in the consultation responses. We are unclear about the purpose and intention of that aspect of the bill.

Andy Myles (Scottish Environment LINK): LINK’s members have been in contact with the Government for a long time on matters relating to fresh water—our contact goes way back to the days of the Water Environment and Water Services (Scotland) Bill in the first session of the Scottish Parliament. There has been an on-going process, so we are fairly plugged into Government agencies, businesses and consultation with most stakeholders on water issues.

Adam Ingram: You might be plugged in, but are you listened to? Do you get a fair hearing and response?

Andy Myles: I think that we have done, over the years. For example, in the first parliamentary session, LINK organised a trip for members of the Scottish Parliament to Insh marshes, near Aviemore, to look at flood plains. I think that committee members who took part in the visit found it exceptionally useful. They learned about flood plains, which were then included in the definition of “wetland” in the WEWS bill. The civil servants asked whether they could come and see the flood plain, too, and did so. We did not need to take the Scotch Whisky Association, because there is a distillery next to the flood plain.

There is a mutual understanding of many issues, which was reflected in, for example, a meeting that we recently had with SEPA and the Confederation of British Industry Scotland to discuss the better regulation consultation, particularly in relation to water issues. The Scotch Whisky Association was part of the CBI
delegation. The expertise in LINK member organisations is recognised and I think that we have been listened to fairly well, over many years. We have not always got our way, of course.

Chris Spray (Scottish Wildlife Trust): I will add to that, wearing my hat as a trustee director of Tweed Forum, which is one of the most well-known of the catchment organisations that operate in Scotland. We have had fantastic consultation. The previous minister spent a day with us in the Borders, talking about water issues and catchments and listening very well. There has been good input on that side.

Adam Ingram: That is good to hear.

Your organisations expressed concern about the definition of “hydro nation”. Will you talk about your concern and explain what you think a hydro nation should be?

Lisa Webb: Certainly. We are keen that a hydro nation is one in which the water environment is managed at the catchment level, with an integrated approach. Such an approach can deliver a multitude of benefits for Scotland, including improved water quality, flood-risk management, carbon storage and so on. A hydro nation should be mindful that a healthy environment underpins its economy and a range of services.

The rhetoric around some of the hydro nation proposals was all about Scotland having an abundant and clean water resource. It does, but there is still a way to go. Only two thirds of our water bodies have good or better status under water framework directive definitions, so there is a long way to go if we are to improve our water bodies and prevent deterioration. We do not want to be complacent. A lot of the talk around hydro nation is about selling our expertise internationally; we are keen to get things right at home first.

Chris Spray: We welcome the interest in hydro nation, in a catchment approach and in water as a key issue for the Parliament to address. As Lisa Webb said, we start from the position that the environment underpins the economy. The economy is the wholly-owned subsidiary of the environment—it is that way round. We are delighted to see a landscape approach that will tie in nicely with the ecosystem approach of the land-use strategy. We very much welcome the approach and will help to develop it.

Malcolm Chisholm: I will go through the bill section by section. I think that all the witnesses have expressed some concerns about part 1 of the bill. Not surprisingly, you would like there to be an explicit reference to social and environmental factors in section 1(3) of part 1. I will have to be careful as I cannot remember what their exact words were, but the Government officials basically gave the impression that social and environmental factors would be included there. I think that they said “would” rather than “could”.

Do you think that it is just an omission and that the intention of the Government is to include social and environmental factors, or are you more suspicious than that? Are you concerned that a message is being sent that the economic factors are the overriding ones and anything else is a bit subsidiary?

I am not quite clear whether you have a serious concern or whether you just think that the fact that social and environmental factors are not mentioned is an almost accidental omission.

Lisa Webb: It is fair to say that we are somewhat concerned about the omission, especially given the emphasis on sustainable economic growth. We would like to see environmental and social benefits and impacts explicitly mentioned at that point to ensure that they are taken into account.

Andy Myles: We have a broad concern across Scottish Environment LINK about sustainability being defined in terms of sustainable economic growth. Sustainable economic growth can be viewed as a contradiction in terms—economic growth is not necessarily sustainable development.

We tend to adopt the legal definition of sustainable development that is shared and agreed by the UK Government and all three devolved Administrations. We also note that sustainable development is defined in European law and that all our water legislation falls under the European Union water framework directive. Therefore, sustainability is at the heart of the matter and sustainability—within the definitions that all the Administrations in the UK have accepted—is quite clearly a matter that includes respecting environmental limits. However, as Chris Spray said, we think that the different aspects cannot be separated out. We cannot have a bill that is only about the economics of water. If we are to deal with the water environment, we must do so from a sustainable perspective, which includes social, economic and environmental considerations.

We are concerned when legislation appears to be weighted towards the economic and to have left out the social and environmental factors. Our advice, for what it is worth, is that when dealing with matters of sustainability, it is better always to remember that there are three principal parts—environmental, social and economic. It is the relationships between them that are vital.

As Chris Spray said, there is a tendency in much of our media and our public discourse, not just in Scotland but across the western world, to
consider economics as somehow supreme—as having primacy. Our view is that the economy is based in our environment and if we treat the environment badly, we can end up with terrible economic consequences.

We worry about all three parts of the sustainable development definition, not just the environmental part. We are equally concerned that people in Scotland have clean water to drink and to bathe in and for all other social purposes. Our economy and many of our industries are based on clean water. We want those concerns to be remembered just as much as our concerns for biodiversity and wildlife, for which clean water is crucial.

Malcolm Chisholm: That was useful.

The Convener: Can you give some examples of when sustainable economic growth might be in conflict with social and environmental factors?

11:00

Andy Myles: I do not think that sustainable economic growth will end up in conflict with those aspects. I do not tend to see the issue in terms of conflict; we see it in terms of relationships.

Before the meeting, Chris Spray mentioned the possibility of the appearance of parasites. Will he explain that example?

Chris Spray: I will give an example. PricewaterhouseCoopers did work that estimated that the salmon that run up the Tweed are worth roughly £18 million a year and 512 jobs to the local economy. You probably did not know that the water in the jugs here almost certainly comes from the Tweed—the top-of-the-Tweed reservoirs provide Edinburgh with its water. Economic growth that took water from the top of a catchment might have an unknown and unintended effect downstream on other people’s uses. That is an example that we know is important.

Industries such as the whisky industry depend on having a very clean environment. It could be a marketing disaster if a certain parasite came into the country and attached itself to salmon, because getting rid of Gyrodactylus—I think that I have got that right—would be a challenge. That would probably lead us to have to take dramatic and drastic action, which would not fit with the marketing of the countryside in relation to whisky and tourism that trades on how good and clean Scotland’s water and environment are.

A link is inherent. My colleague Andy Myles is right that the issue is not about conflict, but we must recognise the link. Whether the omission from the bill is by accident or design is not for us to comment on or even to worry and wonder about; we just feel that the reference to social and environmental factors must be in the bill. The water framework directive says clearly that

“Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.”

We can—absolutely—have sustainable use, but we need to know the limits.

Malcolm Chisholm: The water framework directive will still apply. Does that reassure you or do you feel that the directive will be diluted by section 1 or by the bill more generally?

Andy Myles: In the last analysis, only the courts can answer that question. You are asking for a legal judgment on whether the bill transposes the water framework directive properly. Our legal expertise across the LINK organisations is considerable, but it is not enough to give you good advice on that subject, because we tend not to be lawyers.

Chris Spray: It is worth saying that Scotland has a good track record of turning European directives into pretty aspirational and holistic legislation. The Water Environment and Water Services (Scotland) Act 2003 and the Flood Risk Management (Scotland) Act 2009 are very good bits of legislation that have the wonderful catchment outlook. We are happy with that, but we are keen to see the follow-up on implementation.

Alex Johnstone: I have had a sudden attack of déjà vu, which has been caused by Andy Myles, who was probably around at the time that I am remembering. About 12 years ago, I was in the process of dropping Conservative opposition to the creation of national parks and becoming a supporter of legislation to create them. Part of the reason for that was that we managed during the passage of the National Parks (Scotland) Bill to enshrine in that bill the balancing of environmental, social and economic issues.

Andy Myles has come right back to that and pointed out that the same thing is required in the Water Resources (Scotland) Bill. After the National Parks (Scotland) Bill was passed, did we put that step of progress on the shelf and have we not done enough with it since then?

Andy Myles: If you will pardon my saying so, that question is broad, because it reflects almost everything that LINK does. We still pursue sustainability. We have produced publications on specific issues in relation to that, and our broader discourse in Scottish public life concerns the fact that sustainability still needs to be pursued. The record of the Parliament and of successive Scottish Governments on making progress towards sustainability has been good, but it would be difficult for me, as the representative of Environment LINK, to say that we have yet achieved sustainability.
On the way to attempting to achieve sustainable development and sustainability, there are brilliant examples of legislation, such as those that Chris Spray has mentioned, or wider legislation such as the Climate Change (Scotland) Act 2009 or the Marine (Scotland) Act 2010. Superb steps have been taken that we, as organisations, have pushed and campaigned for and that the Parliament has dealt with by taking significant steps forward. I would not say that we have lost the edge in that agenda, but it is our job constantly to speak up for environmental concerns within legislation that is passing through the Parliament. That is what we are doing.

There is no suggestion that the Water Resources (Scotland) Bill is a setback for the sustainability agenda. Apart from anything else, as Malcolm Chisholm has pointed out, European law is supranational and would be directly applicable over and above any legislation that is passed in the Scottish Parliament, although that is a broad interpretation of the legal position.

If the Parliament is pushing through legislation that will improve the water environment, it is worth while if it takes all those aspects into account. It is difficult to separate out social, economic or environmental aspects of water and deal with them alone.

Alex Johnstone: Thank you.

Malcolm Chisholm: I have some more specific questions about part 1 of the bill. What benefit would there be in extending the definition of water resources to include peatland habitats? One of the witnesses has already raised that.

Lisa Webb: We did, yes. A recent International Union for Conservation of Nature report has indicated that about 70 per cent of our drinking water comes from peatland-dominated catchments. We are keen to see a sustainable catchment management approach to improving drinking water quality. In doing so, there needs to be recognition that peatland restoration and good peatland management is an integral part of delivering that improvement.

I do not know whether members are aware that when peatlands become badly eroded or damaged, the amount of dissolved organic carbon, which is basically what gives the water its brown peaty colour, increases, and it takes more effort and expenditure at the water treatment works to remove that dissolved organic carbon. Ensuring that peatlands are covered by the definition in the bill could help us to manage peatlands for the benefit of water quality and deliver economic benefits by driving down costs at water treatment works.

Chris Spray: I was at one time the director of a water company just south of the border, and that question of dissolved organic carbon and treatment using trihalomethane, which is a carcinogen, is of increasing interest and is increasing costs to water companies across the UK. However, one of the fundamental points is that by missing peatlands out, we are moving away from the whole catchment approach. One of the delightful things about the proposed legislation is that it talks about a catchment-wide approach, which should include groundwater as well as surface water. It should include water in all its various forms. The idea that we can leave one element out is inherently flawed from the start.

The catchment approach highlights the fact that economic gains are to be made by treating the problem at its source as opposed to treating it with a large new treatment works, or whatever, and those gains continue up to the way in which we manage catchments for flooding. The Flood Risk Management (Scotland) Act 2009, which I mentioned earlier, is a superb act that asks people to treat the problem at source. That is far better because it brings multiple benefits for the environment, wildlife, people and the economy. It is far better than just building a wall downstream.

It is just wrong to leave peatlands out of the bill. It is against the whole approach, which should be catchment-wide. Where the water sits is not relevant; it is the fact that the water moves through the catchment.

Malcolm Chisholm: Thank you. Still on part 1 of the bill, your written submissions ask for additional organisations to be listed as designated bodies in the bill. Can you name some of those bodies? Scottish Canals and the national park authorities were mentioned in one or other of the written submissions. Why should those or other bodies be included in the bill?

Lisa Webb: LINK’s thinking behind that is that the catchment management approach can deliver a multitude of benefits, as Chris Spray mentioned. Partnership is key to that approach. It should involve not just Scottish Water alone, but Scottish Water’s regulators and wider partners including perhaps the Forestry Commission, the national park authorities and non-governmental organisations—although a duty could not be placed on NGOs. We need to see some sort of duty to ensure that a partnership approach is delivered.

Chris Spray: That would follow the Flood Risk Management (Scotland) Act 2009, which has a duty for people to work in partnership and is working very well indeed. We wish for the duty in the bill to recognise that the quality and quantity of our water is fundamentally affected by how we manage our land. For example, planting trees has a huge impact on the water balance, and that involves the Forestry Commission.
It is even more important that Scottish Water and others enter into agreements with NGOs and catchment organisations such as the Scottish Wildlife Trust, which is working in places such as Coigach and Cumbernauld with local communities. They can go places where—with due respect—the SEPA’s of this world cannot go, because they do not go in with a regulatory stick. They can go and talk to land managers in a way that Scottish Water cannot. It is about partnership. To have a duty to work in partnerships and for those partnerships to recognise the value of communities and the third sector is very important. That could be a superb part of the bill.

Malcolm Chisholm: How many extra bodies are we talking about? There are five at the moment. Are we talking about an extra two or three, or are we talking about a lot more than that?

Andy Myles: We suggest that the national park authorities, the Forestry Commission, Scottish Canals and the Water Industry Commission for Scotland be added, but there are other partners with other expertise. Following on from what my colleagues have said, I stress that our view is that the partnership approach allows the elimination of possible conflicts or mistakes at the earliest possible stage.

There will be economic consequences to decisions, which could be got right because there was a duty to seek the opinion of the Forestry Commission, for example, which has a duty under the Government’s proposals to increase considerably the amount of forest coverage in Scotland and to ensure that that increase is achieved in a way that is sensitive to the water environment. If the increase was made by plugging up huge catchment areas with Sitka spruce, that would have a considerable effect on the quality of the water that comes out of those catchments. It therefore makes sense, in our view, to include those public bodies at the earliest stage, so that the benefits of their experience can be reaped and to ensure that problems are not run into down the line. We are arguing for a preventative approach. I substantially agree with what Chris Spray has been saying. The NGOs are happy to play their part in giving their advice—as we do in many other areas of Scottish economic and social life—to try and eliminate problems before they arise, with regard to the way that we develop Scotland together.

Chris Spray: There are some very good examples south of the border and abroad where the critical role of an NGO helps oil the whole process. We are not saying that NGOs should be registered relevant bodies, but that the relevant bodies must work with them. The examples that we have given include United Utilities working with the RSPB and colleagues in the lake district, and South West Water, which, to my knowledge, has given £9 million to the Westcountry Rivers Trust—an NGO—over 30 years to develop a catchment approach. That works out at about 60p or 70p on everyone’s bill and tackles all their water quality and quantity issues at source.

Abroad, there are some fantastic examples. In America, the whole of New York city’s water supply comes from a catchment in the Catskills 135 miles away. Working with the communities through an NGO—a farmers council—in that other area saves the city building a treatment works that would cost several billion dollars. There are good examples elsewhere. We want there to be a wider definition of the appropriate authorities so that it includes land managers, and we want the bill to say that they must work with NGOs, because there are fabulous examples of that being the most effective partnership economically as well as environmentally.

11:15

Malcolm Chisholm: Thank you. We have a disagreement on section 4 between you and SEPA. In your written evidence, you suggest that having to report every three years is not sufficient to ensure that the Scottish ministers are held accountable for meeting their duty, whereas SEPA’s view is that it would be overly onerous to have to report more frequently than that, and that the bill’s chosen reporting period could fit in conveniently with the six-year reporting cycle for river basin management planning. What is your take on SEPA’s view?

Andy Myles: I hesitate to describe the situation as us being in conflict with SEPA, but our view is that, under existing legislation, annual reports have to be presented to the Parliament on a range of environmental matters, and it would seem most appropriate to fit the reporting arrangements under the bill into the same cycle.

In addition, we want to ensure that the Parliament has the ability to hold the executive branch to account. In the overall approach to achieving sustainability, one of our concerns is to ensure that our governance arrangements—the methods and processes of government—are adequate and fit for purpose. We think that an annual reporting requirement would be of great assistance to the Parliament because, once a year, it would give a parliamentary committee a document that it could take up and use in holding the executive branch to account.

There are many such reports. Sadly, quite a few of them simply sit on the shelf once they have been laid before the Parliament—they are not followed up. There are annual reports that the agencies present to the Parliament with which
very little happens. For you, as parliamentarians with the responsibility to hold the Government to account, the more hooks you have, the better. LINK members will continue to campaign to ask parliamentarians and parliamentary committees to use those hooks. If the reporting cycle is only every three years, a precedent might be set for reporting in other areas to occur only every three years. It would obviously be three times as efficient for an organisation such as SEPA for the reporting cycle to be only every three years, but a Government agency should have such matters under consideration all the time.

Frankly, each report will not be completely new. Whether the cycle is every year or every three years, one report will very much follow on from the previous report. We are not asking the Government to do something that is hugely onerous; we are asking it to do something that is sensible and which fits in with the pattern of public scrutiny that we have established in Scotland.

Malcolm Chisholm: Thanks very much.

Alex Johnstone: I will move on to issues of abstraction. Am I right in detecting from your earlier remarks that you feel that you were not consulted appropriately on the development of the control of water abstraction proposals that are in the bill?

Lisa Webb: I think that that would be fair to say.

Alex Johnstone: You seemed to give the impression that you were consulted on other parts of the bill. Is it specifically in the area of abstraction that you feel that you were not adequately engaged with?

Lisa Webb: Yes, because the proposal on large-scale abstractions was a late addition. It was not mentioned during the formal consultation, but it appeared in the bill that was introduced. An explanatory note said that there would be further consultation over the summer recess, but that did not really happen.

Alex Johnstone: I thought that I would clarify that before I moved on to specific questions.

In your written evidence, you indicated your concern that the new regime for authorising large-scale abstractions could be used to allow abstraction to be undertaken solely for economic reasons. Why do you consider that to be a problem? How might the bill be amended to alleviate the situation?

Lisa Webb: It is good to remind everyone that abstraction places unnecessary pressure on freshwater habitats, with consequences for wildlife and biodiversity. In addition, abstraction is recognised in our river basin management plan as one of the most significant pressures on the water environment.

It is not clear to us why the proposals for bringing large-scale abstractions under ministerial control are included in the bill, given that—as we believe—there are already powers under the controlled activities regulations for ministers to call in applications and determine abstraction authorisations. It is not clear to us what the purpose, intention or even the legal need for the proposals is.

Alex Johnstone: Were there any clues in the 10 megalitre per day threshold that has been set in the bill to indicate why that alternative regime was necessary?

Lisa Webb: Not especially. It is a large volume of water, obviously.

Alex Johnstone: In your written evidence, you suggest that you do not see the rationale for that threshold. Do you have an alternative proposal for how the threshold might be set?

Chris Spray: I think that our question would be, “Why a threshold? Why not just build on the controlled activities regulations?” The basis of CAR is simple things that people get on and do. The peak of the triangle, if you like, is very complex licences. This would seem to be a very complex licence, with lots of externalities brought in as well. We are at a loss to understand the threshold, and our uncertainty reflects that.

Andy Myles: I hope that in the passage of the bill—not only in the committee’s stage 1 proceedings, but if the bill proceeds to stage 2 and stage 3—there will be ample opportunity for all committee members and ourselves to get to the bottom of where the 10 megalitre figure came from. We said in our written evidence that we cannot really comment on the appropriateness of the figure because we do not know where it came from and we do not know the evidence upon which it is based.

What we know, and what we said elsewhere in our written evidence, is that there are huge economic savings to be made from tackling issues such as leakages. In the Government’s hierarchy, reducing use and reducing waste would be a far better economic approach than placing the emphasis on an abstraction regime for which we have not really seen the evidence.

Alex Johnstone: You have specifically suggested that Scottish ministers should have to consult SEPA and others when considering applications under the new regime, even though that may result in duplication of effort with SEPA. Is such duplication worth while? What additional benefits would it achieve?

Lisa Webb: Our point was that if part 2 remains in the bill, ministers should have to consult SEPA so that environmental impacts are properly
considered. We think that they should also have to consult Scottish Natural Heritage, where proposed abstractions could have an impact on designated nature conservation sites. At the moment, there is no obligation in the bill for that to happen. I think that the bill says that ministers may consult SEPA, but we would like it to be compulsory for them—

Alex Johnstone: Basically, you are suggesting that the bill is strengthened to ensure that that happens.

Lisa Webb: Exactly.

Andy Myles: CAR and other regulations and regulatory frameworks will still apply. It is strongly to be hoped that if a new part of the regime is added, the evidence suggests that there is no conflict there.

Adam Ingram: We asked a question earlier with regard to appropriate consultation with SEPA, particularly in the area of large-scale abstractions and perhaps with the advent of a new commodity market for Scottish Water elsewhere. As the bill team indicated last week, there is a prospect of Scottish Water resources perhaps being traded south of the border. Would you be concerned about what system of checks will be used? Will it be down to Scottish ministers determining the economic case, or should other checks and balances be put in place?

Chris Spray: If we build on the CAR basis of regulation, there has to be an environmental impact assessment. That is the key aspect.

The economic case is another question. Why would south of the border want to get very expensive water from here when water could be got from much closer, for example from Kielder Water? That is one of western Europe’s largest reservoirs, which sits a bit further south of us and is already connected through to Durham, Teesside and into Yorkshire.

Water is very expensive to move and the energy costs are phenomenal. Scottish Water is already the biggest energy user in the country. There are economic questions, but the environmental issues have to be assessed, too. We do not want to see them being circumvented, hence our concern about the omission—deliberate or otherwise—of environmental and social aspects, which we discussed earlier. Our concern is based on the environmental challenge. We will leave the economics to folk who can work out the economics of—I was going to say, “transferring coals to Newcastle”, but I will stick with transferring water to wherever.

Andy Myles: With regard to the economic facts, I return to the issue of leakages. Many of the areas in England where water shortages are occurring or feared—I would use inverted commas for the word “shortages”—still have significant problems with leakage. Efficiency in the system would be desirable for both economic and environmental reasons. We would like the emphasis to be placed on the proper and efficient use of the water that we extract. We need to make our existing water distribution systems more efficient, rather than looking for water elsewhere.

Jim Eadie: I return to the issue of sustainability that Andy Myles spoke about earlier. He said, rightly, that that goes to the heart of the matter. The submission from RSPB Scotland states:

“We believe that any duty on Scottish Water to develop the value of water resources must ensure that any such development is sustainable ... We would recommend inclusion of wording that is consistent with that in Section 10(1)(c) to strengthen sustainability.”

What would be the benefit in setting out in the bill a requirement for Scottish Water to exercise its non-core functions in a sustainable manner?

Lisa Webb: There would be a lot of value in doing that. We need a really strong and clear sustainable development duty at the forefront of the bill.

Chris Spray: If we are to use Scottish Water as an excellent global example of a very responsible way to manage water resources, showing that we are doing it sustainably has to be one of the key elements of promoting—rather than marketing—that example. Scottish Water is seen as an ideal governance model for many places, and to not require sustainability would be a very odd position to take.

11:30

Andy Myles: It would also run contrary to the clear indication that we have given to the rest of the world of our intention to be world leading in fighting climate change. If we decide that our water industry will not have a duty for sustainable development on non-core issues, we are in danger of looking foolish in the eyes of the world. The cost of abstracting water and transporting it around is extraordinary, and the process uses a vast amount of energy. You move out from the environmental field into the field of full sustainability. I do not want our responsibility in Scotland—freely taken on and unanimously agreed to, by all the parties, in the previous session of Parliament—to take a leading role in fighting climate change to be undermined.

Jim Eadie: There is unanimity across the panel that that is a significant omission from the bill.

Lisa Webb: Yes. The bill needs to be strong and clear, so that is an omission.

Jim Eadie: May I tease out what the omission means in practice? What practical examples do you have of the effect of not having that
requirement in the bill? What would that allow to happen that would not otherwise happen?

Andy Myles: This is another matter that is down to governance. We considered the issue fairly fully in our paper, “Governance Matters”, which we published earlier in the year. We considered the effect of sections in a bill that clearly state that there is a responsibility for sustainable development and asked whether it is worth having them. We believe that the answer is yes, because you are passing the law of the land.

A bill is not a policy statement or a strategy document; it is law and it should be justiciable. Any citizen should be able to take up a matter in a court of law if he believes that it is not being dealt with properly. If it is stated clearly in the bill that there is a sustainability duty, any citizen can do that. I cannot predict the court’s decision, as it would relate to either process or merit, but the matter would be clearly justiciable and someone would not have to go to court to suggest that the Scottish Government has that duty in any case, under international obligations, in the water framework directive. It would be better to include the duty in the bill, and therefore in Scots law, than for someone to have to go to court and say, “It’s in the water framework directive, so you have to do it in any case.”

Chris Spray: With one eye on climate change, we are aware that there are many examples globally of overabstraction from key sources of water supply leading to dramatic economic and environmental damage for the region. Places such as Lake Chad and the Aral Sea have to all intents and purposes shrunk to between 15 and 20 per cent of their original size as a result of economic drivers to produce water for irrigation. That has had a dramatic impact on the environment and the wider economy. I am not suggesting that that large-scale effect is about to happen in Scotland, but there are many examples on that scale and there must also be examples on a smaller scale where there has been such conflict.

Jim Eadie: I welcome the witnesses’ responses. I was trying to tease out what practical and material impact this might have in a Scottish context. Perhaps the RSPB can help us.

Lisa Webb: Sorry, I am not clear about the question.

Jim Eadie: You have set out clearly the principle that sustainability should be a duty in the bill. I am asking what material and practical impact the omission of such a duty would have in a Scottish context. Mr Spray has given an international example. Can you share, either now or on reflection, any examples that are specific to Scotland?

Lisa Webb: Our view is that as this goes forward and Scottish Water is expected to develop the value of Scotland’s water resources, having sustainability as a duty in the bill would instil a sufficient safeguard to ensure that that development is sustainable.

Chris Spray: It is, in a sense, hypothetical, but I go back to the example that I gave earlier of the Edinburgh water supply. The flow of the Tweed and, indeed, the Tay, which is one of Britain’s largest rivers, is heavily controlled by the reservoirs upstream. What is taken out fundamentally affects what is down below. The Tweed is very important for salmon, which, as well as being an iconic fish, is a flagship industry for Scotland, with £18 million and 512 jobs dependent on that one situation. That could be affected by taking water from the upper reservoirs, as that would reduce the ability to release water into the stream.

You are right to challenge us to provide examples. At the moment, the system is working well and we have a lot of water in Scotland, although not necessarily in Buchan and the east side. Scotland is blessed with a very good water resource. Nevertheless, with climate change having dramatic impacts over even small areas, we want to get some assurance built into this.

Jim Eadie: Thank you. I will move on to a slightly different point. Do you have any concerns about the financing that would be required to fulfil the new duties that are being placed on Scottish Water? What impact might that have on the consumer interest?

Chris Spray: I refer you to my earlier example of South West Water putting between 60p and 70p on its bills to release £9 million over 30 years for tremendous work in the catchment that has proven to be fantastically cost-benefit positive. Otherwise, we are not finance experts.

Andy Myles: We are not the greatest experts on finance, but I am not certain that there would be a huge cost to Scottish Water in fulfilling those duties. The general duties regarding sustainable development, in particular, are consistent with other duties that all public bodies in Scotland have under the Climate Change (Scotland) Act 2009. It might be said that the bill would place no additional costs on Scottish Water because, under other legislation, Scottish Water already has duties to be fulfilled.

Lisa Webb: The Scottish Government has estimated that there could be £10 million of savings over 25 years in one large drinking water catchment if the catchment management approach was adopted. Therefore, there is the potential for savings to be made and passed on to customers as well.
Jim Eadie: That is very helpful. Thank you.

The Convener: Let us move on to part 4, “Raw Water Quality”.

Gordon MacDonald: Part 4 provides powers to enable Scottish Water to gain access to inspect and monitor factors that may affect the quality of raw water and to enter into agreements with landowners to implement best practice. Why is it necessary to place a further duty on Scottish Water, SEPA and others to work in partnership to deliver sustainable land management?

Chris Spray: We have already given some examples of huge success being achieved through partnership working, and that is what we are pointing to. We would say that the problem should be treated at the source by working with the people who are at the source—the local communities—finding out how they could benefit and looking for multiple benefits. As I said, there could be flood prevention benefits, wildlife benefits, access benefits and tourism benefits all added together. Our experience of partnership working under the Flood Risk Management (Scotland) Act 2009 has been really good, and non-governmental organisations have been key in delivering that. We stress that this is one of the most positive areas of the bill, and we would like it to be developed to include the NGOs among all the others.

Andy Myles: The argument again relates to consistency. Within the Climate Change (Scotland) Act 2009, Parliament unanimously passed the sustainable land use strategy for the whole of Scotland, which is about multiple uses of land. We cannot extricate the water regime from land use; therefore, it makes sense, for consistency, to put such a duty in the bill. It is possible that the duty already exists under the Climate Change (Scotland) Act 2009, but it would do no harm to clarify the matter.

Chris Spray: The ecosystem approach, which is fundamental to the land use strategy, involves using local knowledge, working at the appropriate local scale and working in partnership with other key organisations. As my colleague said, we would like to see that emphasised. More of the same would be really good news.

The Convener: We move on to questions on the sewerage network from Margaret McCulloch.

Margaret McCulloch: Good morning. You state in your written submissions that you would like further action to be taken to encourage the registration and maintenance of septic tanks. What further action do you seek?

Lisa Webb: I think that we suggested that the development planning process be looked at to see whether there are any stages in it that encourage and incentivise people to register septic tanks. That needs to be looked at. The reason for that suggestion is that there are indications that we do not have a good handle on where septic tanks are and how well they are being maintained, which makes SEPA’s job difficult. Research has indicated that phosphate pollution is arising from septic tanks, but in some cases we are unaware of their exact location. We hope that the bill will plug the gaps by covering the development planning process.

Margaret McCulloch: I think that SEPA says that is happening for new builds.

Lisa Webb: Okay.

Margaret McCulloch: The problem is probably how we can ensure that existing septic tanks are registered.

Lisa Webb: In that case, perhaps there could be awareness-raising campaigns and so on to encourage people to register.

Margaret McCulloch: Will you expand on your suggestions in your written evidence that Scottish Water should develop a strategy to reduce water consumption and improve water efficiency?

Chris Spray: In part, there is an economic case for that. As I said, one of the biggest costs for a water company is the cost of energy for pumps. Water companies pump water up to a treatment works, from the treatment works to the tap, and from the tap to the sewage treatment works, and that is where all the costs lie. If there is a leakage rate of 30 to 40 per cent—I am not sure what Scottish Water’s rate is at the moment, but it will be in that area—an awful lot of energy and carbon will be used to pump water unnecessarily. There is therefore an economic case for improving efficiency.

We need to look at the downside—not the supply end, but the demand end—and promote conservation and education. We are perhaps missing a trick by not doing more to promote education and raise awareness. That is what we are looking for. The issue takes us back to Margaret McCulloch’s good point about septic tanks.

Andy Myles: On the question of leakage, it is safe to say that the environmental organisations have much appreciated the improvements that have been made in the past several years—under Administrations of all colours, through the Scottish Parliament—to reduce leakage. A huge amount of energy and pressure has been put in to reduce wastage, but there is still a long way to go. Again, I do not know the exact percentage, but wastage rates have been coming down. We want that to continue, because it will save energy and costs.
Chris Spray: Eventually, we will reach an economic level of leakage and it will not be worth while to chase further improvements, but we can certainly get the percentage down into the teens, as has happened further south and elsewhere.

Margaret McCulloch: Going back to water consumption, what other things could be done to raise the awareness of individuals, households, businesses and young people in schools of the importance of water and the fact that it should not be wasted?

Chris Spray: It is important to encourage the education end. You are absolutely right—it is about changing individuals’ behaviour, and that is perhaps the part that is missing.

If people go out of their house and leave the gas, electricity and water on, assuming that the house does not either flood or blow up, their bills will be dramatically higher for two of those utilities, but there will be no change in their water bills. That brings us back to one of the key issues around the bill, which is value. Until we individually value water—the word “value” is used at the beginning of the bill—that will continue, and people will not understand that wasting water increases energy costs, pumping costs and waste costs.

Andy Myles: A major part of the journey of Scotland and the rest of the planet towards sustainability is attitudinal change. That is a major part of the Climate Change (Scotland) Act 2009, but it needs to be replicated in the water environment. The Government has been doing good work in the area, but we believe that there is room for improvement. That is the reason for our comments in our submission. The Government should continue in the direction that Scotland is already travelling in, because that will take us further down the road towards sustainability. There are economic, social and environmental benefits to be obtained from going down that road.

Margaret McCulloch: Thank you.

The Convener: As there are no further questions, I thank you for coming along to give us your evidence, which has been very helpful.

That concludes our business for today. Our next meeting will be on 26 September, when we will continue our consideration of the Water Resources (Scotland) Bill and take evidence on the active travel elements of the draft budget for 2013-14.

Meeting closed at 11:46.
WRITTEN EVIDENCE FROM THE SCOTTISH ENVIRONMENTAL PROTECTION AGENCY

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

SEPA would like to reiterate our support for the Scottish Ministers’ ambition to become a Hydro Nation. We believe that placing a duty upon the Scottish Ministers to develop it is vital to its success. We do note that the Bill (1(3)) says “economic and other benefit” whereas the policy memo in paragraph 2 makes it clear that the “value should be measured in economic, environmental and social terms”. SEPA suggests that the Bill is amended to specifically include environmental and social aspects.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

SEPA supports the development of a Hydro Nation. We believe that our core duties to protect and improve the environment are essential foundations to a successful Hydro Nation. We work closely with many other public, private and NGO organisations to develop and implement River Basin Management Plans, which have the ambitious environmental objective (appropriate for Scotland as a Hydro Nation) for 98% of water bodies to be at Good Status by 2027. As a designated body SEPA may be given additional extra duties under the direction of Ministers. Providing these do not compromise our ability to carry out our core duties, or create a conflict of interest, then we are supportive of the duty on Scottish Ministers to direct public bodies to participate in the development of water resources. To this effect we welcome the inclusion of a period of consultation prior to any direction from the Scottish Ministers.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

SEPA has no strong views on the reporting period. Three years would seem a reasonable length of time. Any shorter would perhaps be overly onerous and any longer would be insufficient to ensure a quick response to any particular issue that requires Scottish Parliament input. We would suggest aligning the reporting periods with the River Basin Management Planning (RBMP) cycle which is every six years. This would mean two reports per RBMP cycle and allow the Scottish Parliament to assess progress in meeting objectives.

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland is maximised for the people of Scotland?

SEPA’s main concern would be a conflict with our duty to protect the water environment from abstractions under the Controlled Activity Regulations 2011 (CAR). As the Bill clearly sets out that it does not affect the requirements under CAR then we have no further
comment to make as the issue of water rights is for the Scottish Ministers to determine on behalf of the Scottish people.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

SEPA considers that the threshold is appropriate. This is a very large abstraction volume requiring a large amount of infrastructure and investment, and therefore will only occur in exceptional circumstances.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

SEPA considers the list of possible purposes that may be exempt from requiring approval to be appropriate. Used in conjunction with the abstraction threshold it is unlikely that it will provide any additional regulatory burden for Scottish industry.

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

SEPA is fully supportive of Scottish Water being given specific powers to develop its assets to support the generation of renewable energy. Scottish Water currently transports water and waste water around the country through existing pipework and we believe that there is potential to develop assets to generate energy. Likewise, there are opportunities to utilise waste water as a product with energy production potential. However, such development of the assets should not be at the expense of the environment, or of meeting future environmental objectives. SEPA would still expect Scottish Water to comply with the requirements of the Controlled Activities Regulations 2011.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

SEPA are pleased that Scottish Water's core functions are safeguarded and the new duties will not affect the financial provisions allocated to its core duties.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

SEPA welcomes the proposals to give Scottish Water powers of entry and inspection to premises in order to protect raw water to ensure it is fit for drinking water purposes.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?
SEPA welcomes this proposal and considers it entirely appropriate and necessary. It will help to ensure there is no unnecessary investment in drinking water treatment to deal with poor water quality arising from poor land management. SEPA and Scottish Water are currently working in partnership to work with land managers within a number of catchments to reduce pesticide levels that otherwise would have required expensive treatment to remove.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?
SEPA has no comment.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?
SEPA has no comment.

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?
SEPA welcomes the proposal to grant Scottish Water powers of entry and inspection to prevent certain substances and pollutants entering the sewer network. This is an appropriate step to ensure that the network and treatment systems work efficiently and effectively and that there is no unnecessary investment in end of pipe treatment where sewer catchment management would be the more cost effective solution.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?
SEPA welcomes the proposal to create a new enforcement provision regarding the entry of fat, oil and grease into the sewer. SEPA and Scottish Water put significant effort into responding to pollution incidents as a direct result of blockages to the foul sewer caused by fat or grease, and direct discharges of oil into surface water sewers. Such measures are necessary to act as a deterrent against reckless ‘in-house’ management.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?
SEPA welcomes the proposal to allow one owner to maintain their sewage treatment plant without the consent of the other owner(s). Appropriate maintenance of sewage is essential to ensure the environment is protected. Shared maintenance of small private treatment plants is a long standing problem for SEPA. Often one owner is willing to carry out the necessary measure but cannot get the necessary consent of the others

SEPA would have liked to have seen the Bill expanded to allow Scottish Water to maintain or empty the plant where neither owner would be willing to undertake maintenance with additional provisions to recover their costs. SEPA also believes there should be provision
within the Bill for Scottish Water to require owners of poor private drainage and treatment systems to connect into the foul sewer where it is reasonable to do so.

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

We do consider that these provisions are proportionate and will assist in reducing water demand during water shortage. However they do not remove the requirements (under the Controlled Activities Regulations 2011) for Scottish Water to apply for authorisation (or a variation to an existing authorisation) for a new abstraction or for changes to existing abstractions.

Q17. Do you have any comments on the estimated costs associated with the Bill?

SEPA has no comment on this.
RSPB Scotland welcomes the opportunity to offer views on the general principles of the Water Resources (Scotland) Bill. We outline the aspects of the Bill that we think are positive and offer our comments and recommendations on the aspects that we think could be substantially improved.

In summary:

- The Water Resources Bill must ensure that any development of Scotland’s water resources is sustainable;
- We seek clarity on the intention of the provisions relating to large-scale abstractions and urge that appropriate steps are in place to ensure accountability of abstraction approvals;
- Scotland must lead by example in its management of water resources. Safeguarding the natural environment, meeting Water Framework Directive objectives, cutting water leakage and minimising carbon emissions from water industry operations are all crucial;
- Management of river catchments to improve or maintain water quality must be supported and the importance of peatlands as a water resource must be recognised;
- More must be done to promote water efficiency in order to avoid over-abstraction of water from the natural environment and to reduce the energy use associated with the abstraction, treatment and pumping of water;
- Scottish Water has a range of existing statutory duties in relation to biodiversity, climate change and water efficiency. There must be sufficient Parliamentary scrutiny of how these are being met.

RSPB Scotland’s vision for a Hydro Nation

Scotland’s water resources are essential for providing drinking water, producing food, sustaining world-renowned businesses and supporting native biodiversity, all of which are dependent upon a clean and abundant supply of water that is used sustainably. Native species and habitats are, of course, important in their own right and we have a moral and statutory obligation to protect them, but there is increasing recognition of the contribution that the natural environment makes to social wellbeing and the economy through ecosystem services\(^1\) and wildlife tourism and recreation\(^2\). It would be extremely short-sighted to allow the development of water industry activity to happen at the expense of the resource upon which it depends.

RSPB Scotland believes a Hydro Nation is one where a healthy water environment exists through a sustainable and integrated approach to river catchment management from source to sea. This approach would use land management, such as peatland restoration, to improve raw water quality thus reducing water treatment costs and bringing multiple benefits including wildlife habitat, amenity, flood risk management, carbon storage and climate change adaptation. Scotland’s water industry has a key role to play in achieving this.

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A Hydro Nation must lead by example through the positive management of its own water resources. The River Basin Management Plans\(^3\) indicate that pollution and abstraction remain significant pressures on Scotland’s water environment. Scotland must ensure it can meet Water Framework Directive (WFD) requirements to improve water quality and avoid further deterioration of water bodies if it is to share its expertise on an international scale.

RSPB Scotland believes that more must be done to reduce leakage and increase water use efficiency in Scotland. This would not only reduce pressure on the water environment but would drive down the energy use and greenhouse gas emissions associated with abstraction, treatment and pumping of water. While we acknowledge the progress that Scottish Water has made in reducing leakage in recent years, leakage remains unacceptably high. During 2009-10, 704 million litres of water were lost each day in Scotland through leakage\(^4\) and we think that the target Economic Level of Leakage of 612 million litres per day\(^5\) is still too high. A Hydro Nation should be one that strives to reduce leakage while improving water efficiency in households and industry. It should seek to increase energy generation from renewable sources that are sited in ways that minimise negative impacts on designated sites and native wildlife.

To be a credible Hydro Nation, Scotland must ensure its river basin and water resource management is sustainable and address the issues outlined above. Without doing so, any efforts to promote expertise and policy elsewhere could be perceived as hypocritical.

We set out our views on each part of the bill below and, where appropriate, cross reference to questions in the Infrastructure and Capital Investment Committee’s call for views.

### Part 1 – Development of Water Resources

We feel strongly that any development of water resources must be sustainable and the provisions in Part 1 of the bill must ensure sustainability. The proposed duty “in ways designed to contribute to the sustainable use of the resources” is not sufficiently robust to ensure sustainable development and we believe that this must be strengthened.

We are concerned that the bill is skewed towards economic benefit and there should be specific reference to environmental benefits in s.1(3).

We urge that the bill definition of ‘water resources’ encompasses peatland habitats. Despite the fact that blanket and raised bogs are undoubtedly wetland habitats\(^6\), they are not considered as wetlands for the purposes of implementation of the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act)\(^7\). As we outline below in our comments on Part 4, peatland is a vital part of Scotland’s water resource and must be considered as such. The development of water resources allowed for by Part 1 of the bill must be able to encompass peatland restoration that delivers a multitude of social,

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\(^3\) [http://www.sepa.org.uk/water/river_basin_planning.aspx](http://www.sepa.org.uk/water/river_basin_planning.aspx)

\(^4\) [http://www.scottish.parliament.uk/business/pqa/wa-10/wa0806.htm](http://www.scottish.parliament.uk/business/pqa/wa-10/wa0806.htm)


\(^7\) For example, SEPA ‘Guidance on monitoring and protection of wetlands’ states that protection is restricted to wetlands “directly dependent upon surface or groundwater bodies and does not include rainwater dependent wetlands such as peat bogs”.

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environmental and economic benefits including improved water quality, flood risk management, carbon storage, climate change adaptation and biodiversity.

When designating public bodies to deliver this duty, we agree that Scottish Ministers must consult that particular body (s. 3(3)) but there must also be wider public consultation. Furthermore, we believe that a number of additional public bodies should be included in this bill on the basis that they could contribute to the sustainable development of Scotland’s water resources. We suggest that WICS, the National Parks, FCS and Scottish Canals are all considered.

Adequate parliamentary scrutiny of the implementation of these duties will be critical. Therefore, and in response to Question 3, we do not believe that a reporting period of 3 years is sufficiently frequent to ensure that Scottish Ministers are held accountable for meeting this duty.

Part 2 - Control of Water Abstraction

Abstraction places significant pressure on the water environment and can result in permanent loss of freshwater and terrestrial habitats, drainage of wetlands and peatlands and subsequent loss of biodiversity. A green light must not be given to water-intensive activities without applying all principles of sustainable development. Any abstraction must be undertaken in full compliance with the WEWS Act and give due consideration to climate change predictions of increased drought frequency in parts of Scotland.

This part proposes to bring abstractions over 10 megalitres (Ml) per day under Ministerial control. Certain activities are exempt from this provision including those that already have a Controlled Activities Regulations authorisation when the Act is brought into force, those undertaken by Scottish Water for its core functions, or hydropower, agricultural irrigation, operating a fish farm, quarry or coal mine. It is not clear why the 10Ml per day threshold is proposed. We are concerned that the intention behind this bill is to enable abstractions to be undertaken for economic gain and that this might compromise achievement of Water Framework Directive obligations. It should be remembered that the Directive states “Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such”.

The purpose of this part is not clear, particularly because it would seem there is already scope for Ministers to authorise such abstractions under existing regulations. We recommend that the Committee considers one of two options with regard to this Part:

Option 1 – Part 2 could be omitted from the Bill and all abstractions continue to be authorised under the Controlled Activities Regulations as normal. Regulation 20 of CAR enables Ministers to call in and determine applications, therefore, the need for these provisions in the bill is not entirely clear. Furthermore, s.19(1) of this bill states that CAR authorisation would still be required so it would seem that two different processes would be operating in parallel.

Option 2 – If Part 2 is retained, we think Ministers must be required to seek advice from SEPA rather than this being optional as per s.13(4). There must also be a requirement to consult SNH where an abstraction might impact on a designated site. Any approvals process should be transparent and consultative and allow any decisions to be challenged in
a fair and appropriate manner. Ministers should have to consult SEPA, SNH and any other appropriate persons, and a public inquiry, or other transparent assessment of the evidence, should be initiated if objections arise.

Please consider the above as our response to questions 4-6.

**Part 3 – Scottish Water’s functions**

This part relates to developing the value of water resources and Scottish Water assets, renewable energy generation, and financing and borrowing. We set out our views on these bill provisions, which should be considered as our response to questions 7 and 8.

We believe that any duty on Scottish Water to develop the value of water resources (s.21) must **ensure that any such development is sustainable**. Section 50A does not currently have sufficient provision to ensure that development of assets would have to balance the social and environmental impact. We would recommend inclusion of wording that is consistent with that in Section 10(1)(c) to strengthen sustainability.

RSPB Scotland recognises the importance of renewable energy and its contribution towards mitigating climate change and meeting Scotland’s ambitious carbon emission reduction targets. Therefore, we are supportive of Scottish Water being encouraged to develop renewables but all developments must be sited, constructed and managed to minimise adverse impacts on biodiversity. **The bill must have a clear requirement to ensure that any use of Scottish Water assets for renewable energy generation is sustainable and balances social and environmental impacts.** We would like to see a requirement for Scottish Water to produce a strategy to underpin its development of renewables, including onshore wind and hydropower schemes, in Scotland. Such a strategy must have clear cross-reference to existing duties such as Scottish Water’s biodiversity duty\(^8\) and should be subject to Strategic Environmental Assessment. We wish to see water industry taking an open, transparent and engaging approach to its proposed development of renewables, enabling stakeholders to input at an early stage to help ensure that renewable energy generation is maximised and potential negative environmental impacts avoided.

Section 24 introduces a new definition of core functions. As this will include any functions under this bill ‘so far as relating to the provision of water or sewerage services in Scotland’, this will surely have to be taken into account in the financing arrangements for the next water industry investment period (Quality & Standards IV). Therefore, it is odd that the current Government consultation\(^9\) on Scottish Water investment “does not consider any of the issues covered by the Hydro Nation Agenda or the Water Resources (Scotland) Bill” and “concentrates on the core water and sewerage services provided by Scottish Water to its customers”. **There must be clarity as to how any new duties or functions under this bill will be incorporated into Quality & Standards IV.**

RSPB Scotland believes there must be scrutiny of how Scottish Water is meeting all existing statutory duties connected with its functions, for example those related to furthering the conservation of flora and fauna\(^10\), biodiversity\(^11\) and promoting water

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\(^8\) Nature Conservation (Scotland) Act 2004

\(^9\) Scottish Government consultation on [Investing In and Paying for Your Water Services from 2015](https://www.gov.scot/publications/investing-paying-water-services-2015/)

\(^10\) Water Industry (Scotland) Act 2002
efficiency. As highlighted by LINK’s Governance Matters publication, consideration should be given as to how to improve the capacity for Parliament’s Committees to schedule serious scrutiny work, for example the possibility of setting aside specific time or meetings for the function.

**Part 4 – Raw water quality**

RSPB Scotland wholeheartedly supports a sustainable land management approach to addressing raw water quality issues in catchments. It makes absolute sense for water industry to facilitate positive management of upland and peatland areas, from where approximately 70% of drinking water supply arises. The IUCN UK Commission of Inquiry on Peatlands acknowledged that peatland restoration, in areas previously damaged by drainage for example, can improve raw water quality by addressing the problem of ‘brown water’ caused by the presence of Dissolved Organic Carbon (DOC). The release of DOC is exacerbated through damage and degradation of blanket bogs and is potentially linked to climatic factors. A recent SEPA study indicated that DOC in Scottish rivers has doubled over the last twenty years. Removing DOC is not only costly for water companies but the process to remove DOC from water can result in a chemical reaction that produces trihalomethanes which can be harmful to human health. Therefore, it makes sense on many levels to take action to protect and restore peatlands, something that was recognised by that very commitment in the SNP manifesto. The economic sense of catchment management is apparent with Scottish Water estimating that implementing best practice could save upwards of £10m over a 25 year period in one large drinking water catchment alone. Sustainable catchment management underway in other parts of the UK is already showing positive results for water quality and biodiversity.

In response to questions 9 and 10, we certainly welcome provisions to give Scottish Water power to enter land to assess or monitor the raw water quality and to enter into agreements with the owners or occupiers of land in order to protect and improve raw water quality. While this shift towards a sustainable catchment management approach is extremely positive, there must be safeguards to ensure that land managers are not receiving financial payment from Scottish Water for management that is already required by law. To that end, we believe there should be a duty on Scottish Water and SEPA, and any other appropriate persons, to work in partnership to deliver sustainable land management in ways that delivers multiple benefits and avoids ‘paying the polluter not to pollute’.

The bill definition of raw water is that which is contained in bodies of water used for drinking water abstraction, or water that flows or drains into such bodies of water. As stated above, the majority of drinking water arises from peatland-dominated catchments and arguably most of this water will be draining into other water bodies being used for drinking water abstraction.

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11 Nature Conservation (Scotland) Act 2004
12 Water (Scotland) Act 1980
13 Bain, C.G. et al. (2011) IUCN UK Commission of Inquiry on Peatlands, IUCN UK Peatland Programme, Edinburgh
15 Page 35 of SNP Manifesto 2011
16 Water Resources (Scotland) Bill Explanatory Notes
abstraction. However, we are concerned that if left open to interpretation, the relevance of blanket and raised bogs might be overlooked. Therefore, we seek a strong and explicit reference to peatlands in this definition of raw water, and in the definition of ‘water resources’ in Part 1.

Part 5 – Non-domestic services
We have no comments on this part.

Part 6 – Sewerage network

We welcome the amendment to the Sewerage (Scotland) Act 1968 to bring restrictions on the presence of priority substances and pollutants in trade effluents. The creation of an offence in relation to the passing of fats, oils and grease from trade premises into a public sewer or drain is welcome and we support that Scottish Water would be able to recover any expenses incurred in remediating damage caused by a discharge. However, we query the proposal to use the existing 1968 Act definition of trade premises. We suggest that this definition is expanded to include other establishments that are not currently covered by the 1968 Act. For example, this could include educational establishments with catering facilities, such as schools and universities.

The bill will enable a proprietor of a community-owned septic tank to keep tanks in good working order by enabling them to have works undertaken without consent of other owners, and to give them powers to recoup costs from other owners as necessary. We welcome this on the basis that it will improve protection of the water environment. Despite being regulated under the Controlled Activities Regulations, pollution from septic tanks remains a pressure on the water environment. It is essential that SEPA uses its enforcement powers to bring remediation when a septic tank is identified as causing a pollution problem. Research indicates that phosphorus loading from septic tanks is underestimated and that knowledge on the location and state of septic tanks may be inadequate. We would like to see more done to increase public awareness on septic tank maintenance and registration, for example, campaigns to incentivise registration of existing tanks. Consideration must also be given as to whether the development planning process could be improved to ensure it acquires information on septic tank locations.

Please consider the above as our response to questions 14 and 15.

Part 7 – Water Shortage Orders

We have no objection to water shortage orders being made in times of serious water deficiency. While we agree that these orders are needed to cope with temporary water shortages, we urge that steps are taken to encourage households and businesses to improve water efficiency and reduce consumption at all times, not just during periods of low rainfall. Scottish Water already has a duty under the Water (Scotland) Act 1980 to “promote the conservation and effective use of the water resources”. We believe that more should be done to fulfil this duty and we would like to see Scottish Water execute an effective strategy that involves working with others to deliver a water efficiency campaign and to undertake retrofitting where appropriate. As we state in

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our comments on Part 3, we would like to see Parliamentary scrutiny of how this existing duty is being implemented.

Please consider the above as our response to question 16.

**Part 8 – General Provisions**

This part repeals Section 26 of the WEWS Act which requires an annual report on WFD implementation to be laid before Parliament. It is critical that the implementation of all legislation is scrutinised by Parliament. As outlined by Scottish Environment LINK’s *Governance Matters* publication, there is widespread concern that such scrutiny of implementation of existing legislation is insufficient, partly because Parliament’s time is taken up by passage of new legislation. **In respect of this s.26 repeal, we urge that the Committee considers what steps can be taken to ensure that Parliament adequately scrutinises WEWS Act implementation.**
Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK welcomes this opportunity to offer views on the general principles of the Water Resources (Scotland) Bill.

Summary

• The Water Resources Bill must ensure that any development of Scotland’s water resources is sustainable; LINK is concerned by the emphasis on development for economic gain.

• We seek clarity on the intention of the provisions relating to large-scale abstraction and urge that appropriate steps are in place to ensure full accountability of Ministerial decisions;

• The sustainable management of river catchments to improve and maintain water quality must be supported and the importance of peatlands as a water resource must be recognised;

• Scotland must lead by example in the sustainable management of water resources and must meet Water Framework Directive (WFD) objectives, minimise water leakage, promote water efficiency in households and industry, and reduce carbon emissions from water industry operations;

• Scottish Water has a range of existing statutory duties in relation to biodiversity, climate change and water efficiency. There must be adequate Parliamentary scrutiny of how these are being met.

Questions

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

LINK would like to see a clear definition of the Hydro Nation concept. LINK believes a Hydro Nation should be one where a healthy water environment exists through a sustainable and integrated approach to river catchment management from source to sea. This approach would deliver land management, such as peatland restoration, to improve raw water quality thus reducing water treatment costs and bringing multiple benefits including wildlife habitat, recreational space, flood risk management, carbon storage and climate change adaptation. Scotland’s water industry has a key role to play in achieving this.

A Hydro Nation must lead by example through the positive management of its own water resources and this would include minimising leakage and improving water efficiency in households and businesses. This would not only reduce pressure on the
water environment but would drive down the energy use and greenhouse gas emissions associated with abstraction, treatment and pumping of water.

**LINK is concerned by the bill’s emphasis on maximising economic benefits from Scotland’s water resources.** We feel strongly that any development of water resources must be sustainable and the provisions in Part 1 of the bill must ensure sustainability. The proposed duty "in ways designed to contribute to the sustainable use of the resources" is not sufficiently robust to ensure sustainable development and this must be strengthened. We are concerned that the bill is skewed towards economic benefit and believe there should be specific reference to environmental benefits in s.1(3). It must be remembered that the Water Framework Directive states "Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such".

Scottish Water has existing statutory duties in relation to sustainable development, conservation of flora and fauna\(^1\), biodiversity\(^2\), climate change mitigation and adaptation\(^3\) and water use efficiency\(^4\). Any proposals in this bill must not contradict existing duties. We are concerned by Part 8 of the bill which will repeal Section 26 of the Water Environment and Water Services (Scotland) Act 2003 (WEWS) which requires an annual report on WFD implementation to be laid before Parliament. **If this is repealed, we seek clarity on what steps will be taken to ensure that Parliament adequately scrutinises WEWS Act implementation.** As outlined in LINK’s Governance Matters publication, there is concern that such scrutiny of implementation of existing legislation is insufficient, partly because Parliament’s time is taken up by passage of new legislation. LINK urges that this is addressed.

**Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?**

We agree that Scottish Ministers must consult the body in question but there must also be wider public consultation. Furthermore, a number of additional public bodies should be included in this bill on the basis that they could contribute to a sustainable catchment management approach. We suggest that WICS, the National Parks, FCS and Scottish Canals are all considered.

**Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?**

Adequate parliamentary scrutiny of the implementation of these duties will be critical and LINK does not believe that a reporting period of 3 years is sufficiently frequent. Annual reporting would be more appropriate.

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\(^1\) Water Industry (Scotland) Act 2002
\(^2\) Nature Conservation (Scotland) Act 2004
\(^3\) Climate Change (Scotland) Act 2009
\(^4\) Water (Scotland) Act 1980
Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Abstraction places significant pressure on the water environment and can result in permanent loss of freshwater and terrestrial habitats, drainage of wetlands and peatlands and subsequent loss of biodiversity. Any abstraction must be undertaken in full compliance with the WEWS Act and sustainable development principles, and must have due regard for climate change predictions of increased drought frequency in parts of Scotland. LINK is concerned that the intention behind this regime is to allow abstractions to be undertaken solely for economic gain and that this will compromise achievement of WFD obligations.

It is not entirely clear why the new licensing regime is even necessary because there is already scope for Ministers to call in and determine abstraction applications under the existing Controlled Activities Regulations. Further confusion arises because s.19(1) of this bill implies that CAR authorisation would still be required for such cases so it would seem that two different processes would be operating in parallel.

If Part 2 is retained, we urge that Ministers are required to seek advice from SEPA rather than this being optional as per s.13(4). There must also be a requirement to consult SNH where an abstraction might impact on a designated site. Any approvals process should be transparent and consultative and allow any decisions to be challenged in a fair and appropriate manner. Ministers should have to consult SEPA, SNH and any other appropriate persons, and a public inquiry, or other transparent assessment of the evidence, should be initiated if objections arise.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

It is not clear why the 10Ml per day threshold has been proposed and without knowing the intention of this part, we cannot comment on its appropriateness.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

Please refer to our response to question 4. This whole part is not clear given that such ‘exemptions’ still require an authorisation under CAR and could be called in under Regulation 20 of CAR.

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

It is crucial that any duty on Scottish Water to develop the value of water resources (s.21) ensures that development is sustainable. Section 50A does not currently have sufficient provision to ensure that development of assets would have to balance the social and environmental impact. We would recommend inclusion of wording that is consistent with that in Section 10(1)(c) to strengthen sustainability.
LINK recognises the contribution that renewable energy can make to mitigating climate change and meeting Scotland’s ambitious carbon emission reduction targets. Therefore, we agree that Scottish Water should support the generation of renewable energy but it is critical that all developments are sited, constructed and managed to minimise adverse impacts on biodiversity and the wider environment. The bill must have a clear requirement to ensure that any use of Scottish Water assets for renewable energy generation is sustainable. Scottish Water should be required to produce a strategy to underpin its development of renewables in Scotland. We wish to see water industry taking an open, transparent and engaging approach to its proposed development of renewables, enabling stakeholders to input at an early stage to ensure that renewable energy generation is maximised and potential negative environmental impacts avoided.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

No, we are not certain that the definition does this. As the definition includes any functions under this bill ‘so far as relating to the provision of water or sewerage services in Scotland’, this will surely have to be taken into account in the financing arrangements for the next water industry investment period. Therefore, it is odd that the current Government consultation on Scottish Water investment “does not consider any of the issues covered by the Hydro Nation Agenda or the Water Resources (Scotland) Bill” and “concentrates on the core water and sewerage services provided by Scottish Water to its customers”. There must be clarity as to how any new duties or functions under this bill will be incorporated into Quality & Standards IV.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

We welcome provisions to give Scottish Water power to enter land to assess or monitor the raw water quality. Please also see our comments to question 10 in relation to Part 4 of the bill.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

LINK supports this proposal which will facilitate a shift towards a sustainable catchment management approach to improving raw water quality. While this is extremely positive, there must be safeguards to ensure that land managers do not receive financial payment from Scottish Water for management that is already required by legislation or as a condition of cross-compliance for receipt of Single Farm Payment.

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5 Scottish Government consultation on Investing In and Paying for Your Water Services from 2015
The use of sustainable land management to improve raw water quality in catchments brings social, environmental and economic benefits including flood risk management, carbon storage, climate change adaptation, biodiversity and recreational space. Since 70% of drinking water supply arises in upland peat-dominated catchments, conservation and restoration of peatlands is a vital and integral element of catchment management. The IUCN UK Commission of Inquiry on Peatlands acknowledged that peatland restoration in areas previously damaged by drainage for example, can improve raw water quality by addressing the problem of ‘brown water’ caused by Dissolved Organic Carbon (DOC) from peatlands. Peatland restoration can bring down financial costs associated with DOC removal and alleviate the presence of harmful trihalomethanes which arise as disinfection by-products from the treatment process. Therefore, it makes sense on many levels to take action to protect and restore peatlands, something that was recognised by that very commitment in the SNP manifesto. Given all of the above, it is critical that this bill’s definition of ‘water resources’ encompasses peatland habitats. We are concerned that the definition in Part 1 of the bill relies on WEWS Act definitions because although blanket and raised bogs are undoubtedly wetland habitats, they are not considered to be wetlands for the purposes of WEWS Act implementation. The Part 4 definition of ‘raw water’ is that which is contained in bodies of water used for drinking water abstraction, or water that flows or drains into such bodies of water. As the majority of drinking water arises from peatland-dominated catchments, this definition should encompass peatland habitats. However, we are concerned that if this is left open to interpretation, the relevance of blanket and raised bogs might be overlooked. Therefore, LINK seeks a strong and explicit reference to peatlands in the definitions of water resources and raw water.

It would be appropriate to place a duty on Scottish Water, SEPA and any other appropriate persons, to work in partnership to deliver sustainable land management that is positive for raw water quality while maintaining a healthy environment and the multiple benefits that fully functioning ecosystems provide. The delivery of multiple benefits is entirely consistent with the Government’s Land Use Strategy. This sustainable land management approach has been established in drinking water catchments elsewhere in the UK. Initiatives such as SCaMP with United Utilities and Upstream Thinking with South West Water are demonstrating how water companies, statutory agencies, NGOs and land managers can together deliver catchment management that is positive for water quality and a suite of wider benefits.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

We have no comments on this.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

6 Bain, C.G. et al. (2011) IUCN UK Commission of Inquiry on Peatlands, IUCN UK Peatland Programme, Edinburgh
7 Page 35 of SNP Manifesto 2011
9 For example, SEPA ‘Guidance on monitoring and protection of wetlands’ states that protection is restricted to wetlands “directly dependent upon surface or groundwater bodies and does not include rainwater dependent wetlands such as peat bogs”.

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We have no comments on this.

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

We welcome this proposal on the basis that it should strengthen protection of the water environment.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

LINK welcomes the creation of an offence in relation to the passing of fats, oils and grease from trade premises. However, we query the proposal to use the 1968 Act definition of trade premises and suggest that this definition is expanded to include establishments not currently covered by the 1968 Act. For example, educational establishments with catering facilities, such as schools and universities, could be included.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

LINK supports this proposal on the basis that it will improve protection of the water environment. Despite being regulated under the Controlled Activities Regulations, pollution from septic tanks remains a pressure on the water environment and research indicates that phosphorus loading from septic tanks is underestimated. It is essential that SEPA uses its enforcement powers to bring remediation when a septic tank is identified as causing a pollution problem. We would like to see greater awareness raising on septic tank maintenance and registration, and consideration must be given to whether the development planning process could do more to identify and record septic tank locations.

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

While we agree that these orders are needed to cope with temporary water shortages, we urge that steps are taken to encourage households and businesses to improve water efficiency and reduce consumption at all times, not just during periods of low rainfall. Scottish Water already has a duty to “promote the conservation and effective use of the water resources of Scotland”. More could be done to fulfil this duty and LINK would like to see Scottish Water work alongside others to execute an effective strategy to deliver a water efficiency campaign. As part of this, steps could be taken to ensure water-saving devices are adopted in new developments and that retrofitting measures, such as cistern displacement devices or ‘toilet hippos’, are installed.

11 Water (Scotland) Act 1980
Q17. Do you have any comments on the estimated costs associated with the Bill?
We have no comments on this.
On resuming—

**Water Resources (Scotland) Bill: Stage 1**

The Convener: The next item is further evidence on the Water Resources (Scotland) Bill at stage 1. We are taking evidence from Consumer Focus Scotland. I welcome Trisha McAuley, deputy senior director, and Ryan McRobert, policy advocate, from Consumer Focus Scotland.

Jim Eadie: What is your view of the adequacy of the consultation that took place prior to the introduction of the bill? Are you satisfied with the Scottish Government’s response to the concerns that you raised?

Trisha McAuley (Consumer Focus Scotland): The only issue that we had with the prior consultation was the formal public consultation that took place earlier this year, which was the second of the two hydro nation consultations and lasted for six weeks. We submitted a response to that consultation, but we made it clear in our response that we felt that the consultation period was inadequate. We understood the reasons for the timing—it had to fit into the parliamentary timetable before the summer recess—but we made it clear that we felt that it was insufficient.

We are happy that the Scottish Government has largely considered our concerns. Some of them are clear in the policy memorandum, but I do not think that some of them have been followed through in the wording of the bill. Generally, however, we are happy with the consultation process except for the six-week period in February.

Jim Eadie: We will come on to the specifics during this session. Will the bill and the wider hydro nation agenda have a positive impact on water consumers in Scotland?

Trisha McAuley: A lot of what is in the bill is positive for the better management of our water resource, but the bill and the hydro nation agenda do not make it clear what the benefits to consumers will be. For example, there is very little emphasis on how the economic gains that are outlined in the hydro nation agenda will be passed on to consumers in the form of lower bills, and social justice through the possibility of helping people who cannot afford to pay their bills. That is not clear to us.

We think that the bill focuses too much on the economic gains at the expense of environmental and social impacts. For example, the generation of
renewable energy could bring significant benefits to our rural and remote communities, but there could be significant detriment if those developments are undertaken without proper engagement with the local communities. From that point of view, we can see risks to consumers as well as benefits.

We welcome the international response in terms of helping international development, but we are not clear that there is enough focus on getting things right at home. There has been no real look at the affordability of water bills for some time. We think that now is the time to have another look at the charging system, and we have submitted a detailed response to the recently closed consultation “Investing in and Paying for Your Water Services from 2015”. We are not clear about the extent to which people in Scotland are having real difficulty.

I know that it sounds rather strange, but there are still issues about people in Scotland not having access to a clean and affordable water supply. Some of you may be aware of the recent situation in Bridge of Orchy. By some quirk of administration, the water supply was not transferred from the ownership of Argyll and Bute Council at the time of the establishment of Scottish Water, so the local council has been responsible for that private water supply, as is the case for all private water supplies. Recently, however, the local council determined that it did not own any property in Bridge of Orchy and that therefore it would not support the water supply any more. The drinking water quality regulator for Scotland has been in contact with the council and Scottish Water, so that situation may now be resolved. However, it is a serious situation. We would expect the hydro nation agenda to ensure that problems at home were fixed as well as or before looking further abroad.

Those are just some of our concerns about the bill. It is a well-intentioned bill, but from a consumer perspective there is a bit of an imbalance between some of the social and environmental parts of the agenda and the economic part, which is fine in itself.

Jim Eadie: Clearly, you have an opportunity through the legislative process to inform and influence the development of the bill through its different stages. You provided in your detailed written submission a number of recommendations as to how the bill might be strengthened. Can you highlight for the committee which of those recommendations you think should be given active consideration?

Trisha McAuley: Yes. I have already alluded to the first one, which is about the definition of the value of water, which section 1(3) of the bill states “includes the economic and other benefit”.

We made it clear to the Scottish Government in the consultation that we felt that the definition must be expanded to include reference to environmental and social benefit. The Government’s response was that that was in the policy memorandum. Indeed it is, and we welcome that, but we do not think that the bill’s wording is adequate. We would like to see specific recognition in the bill that economic gains should be placed alongside environmental and social gains.

Jim Eadie: What benefits would that bring for consumers?

Trisha McAuley: I can give you some examples. Obviously, there are three interlinked strains of sustainable development. If we look at renewable energy generation, for instance, for any development on Scottish Water’s land, by itself or other developers, we would be concerned if there were a focus on economic drivers at the expense of the impact on the surrounding environment. We would also be concerned about the social impact if Scottish Water or other developers failed to consult or engage with communities appropriately or, indeed, if communities did not have a voice in what happened. We have been working hard with Scottish Water, which has been improving its community engagement processes. It freely admits that it still has some way to go in that regard, but it is working with us to improve that.

We have all seen the amount of publicity that is given to environmental debates and the profile that they have—for example, the polarised debates about wind farm developments. That could obviously happen in the future with developments on Scottish Water’s land.

We would be concerned if the economic gains agenda bypassed the potential for local renewable energy developments to be used in innovative ways to help our rural and remote communities that are off the gas grid and whose fuel poverty is hard to tackle. We have been doing some work with the energy department in the Scottish Government on community benefit funds and we would like to ensure that Scottish Water’s agenda was joined up so that communities could benefit.

There is also the issue of affordability for current and future consumers. This is the dawn of a new era in water resource management. Scottish Water is working on 25-year projections, while the English and Welsh water agenda, as well as the global water agenda, is concerned about water scarcity. That is obviously not an issue in Scotland at the moment, but our agenda is being set in that context, so we want to ensure that people in Scotland can afford their water bills.
There is not a lot in the bill about conserving or re-using our water, or about managing demand as well as supply. Clearly, there are opportunities for consumers to contribute to the debate. The fact that we spend 30 per cent of our energy bills on heating water means that clear savings are possible for consumers.

There is a host of issues that could be encompassed in the discussion. They will not all be addressed in legislation, but we feel that the hydro nation agenda needs to widen out a bit. I do not know whether you want to talk about governance, but we see the governance aspect as offering one way in which to address that.

**Jim Eadie:** Your submission says:

“The European Commission is currently considering its response to the public consultation on its range of proposals to improve water management in Europe and to safeguard water resources for all users. It would not make sense for either the Water Resources (Scotland) Bill or the wider Hydro Nation agenda to proceed without taking due account of this emerging and important policy context.”

Can you expand on that and explain what implications the consultation could have for Scotland’s water resources and the proposals that are outlined in the bill?

**Trisha McAuley:** The European Commission issued a consultation in March, which closed in June. It is now considering the response to that, which previous experience suggests could take some time.

Our understanding is that it is not going to overhaul the whole policy framework for water because a revision of the water framework directive is due in 2019. However, it wants to put in place a blueprint that it can send to member states with the expectation that they will put it into practice.

I am unclear how that would work in the context of the fact that Scotland is not an independent member state—I deliberately did not comment on that—but I fully expect that the Scottish Government would have to comply with the blueprint. Basically, it is about the better management of water resources; water policy and land use in planning and agriculture; water efficiency and how that can work in relation to building standards; and leakage. It is also about economic instruments that can incentivise the better use of our water, such as charging; metering; and—I have underlined this in my notes—pricing schemes that incentivise water efficiency.

I am unclear about what will come out of the consultation, but we think that it is an issue that should be watched. It does not make sense for us not to take account of the wider policy context of water resources generally.

**Malcolm Chisholm:** We will go through the bill’s parts in order, and I will start by asking about part 1.

You have already answered the question about social and environmental factors. Obviously, various organisations that we questioned last week made a similar demand, so there is a bit of a head of steam behind that issue.

The issue in your submission that is distinctively yours is the call for the bill to impose on ministers a duty to protect the interests of consumers. It is obvious why you think that that is desirable and necessary. It is not up to you to find any problems with that approach, obviously, but I wonder whether you have had any response from the Government on that point. Do you know of any other legislation that contains such a duty? I am trying to think what the objections to it will be.

**Trisha McAuley:** We have not had any response from the Scottish Government on that point. We have shared our evidence with it and had discussions on the issue with officials, who were quite positive about what we were saying. We hope that the Government will do something.

I am not aware of any other legislation that sets out that duty for ministers. We were being consistent with the fact that the bill quotes environmental legislation. In line with our approach to the wider aspects of the issue, we felt that if some aspects of previous legislation were noted in relation to the environment, there was no reason why the bill should not include a general duty to protect customers.

**Malcolm Chisholm:** I am sorry, are you saying that is in the previous water legislation?

**Trisha McAuley:** Maybe I am reading the wrong bit. I thought that you were referring to section 1(2), which says that the Scottish ministers are to act consistently with current legislation in relation to the environment.

**Malcolm Chisholm:** I am asking about the current legislation, which I do not know chapter and verse on. Are you saying that there is a reference in that legislation to protecting the interests of the consumer?

**Trisha McAuley:** No, there is not. We are saying that, under the Water Services etc (Scotland) Act 2005, ministers are under that obligation and that, if the new bill requires ministers to comply with the current environmental legislation, it should also require them to comply with the consumer protection legislation that already exists.
11:45  

**Alex Johnstone**: With previous panels on previous days I have dealt with section 2 of the bill on the abstraction of water. I am heartbroken that you have no opinions on it, but I will move on.

**Trisha McAuley**: That is fine. It is just that other organisations, for example the Scottish Environment Protection Agency, are much more expert on the matter than we are and there are obviously people in the industry who have a clear interest. We are not experts in that area.

**Alex Johnstone**: That being said, I will move on to section 3.

The bill distinguishes between Scottish Water’s core and non-core functions, with the aim of protecting customers who receive core water and sewerage services. Can you explain why, in your written evidence, you consider that the distinction between core and non-core functions does not provide sufficient protection of Scottish Water’s customers?

**Trisha McAuley**: Can you repeat that question?

**Alex Johnstone**: Your submission suggests that the bill does not provide a distinction between core and non-core functions.

**Trisha McAuley**: I thought that we had said that we were happy with that provision.

We stated in our evidence on section 24 that we were happy that the proposals in the bill were sufficient to ensure that core functions were protected. I hung that answer on to your question, so please bear with me.

As I said, there must be a clear proviso that core functions are protected. I am looking for our evidence on section 24. I thought that we had said that we were quite happy with its provisions. Are you referring to a different section of the bill?

**Alex Johnstone**: I am prepared to accept your answer.

**Trisha McAuley**: That is fine. I am trying to look for what I know I have written somewhere.

We are happy that the proposals in the bill protect the core functions, but since we submitted our evidence we have seen what other people have said and it is obvious that others are not so clear about the issue. We are in the middle of the process, as we are engaged with the Scottish Government and statutory stakeholders in the water industry. As we have been part of the discussions we are probably quite clear that core functions will be protected, but we have noted that other people think that the bill should be clearer. If others think that the bill should be clearer, we would go along with that.

**Alex Johnstone**: I have a quote before me, but I will accept your answer and we can clarify the issue later if there are any further concerns.

Your submission sets out three specific recommendations for the effective development of renewable energy resources by Scottish Water. You touched on those previously. Should those be set out in the bill or can they be achieved by other means?

**Trisha McAuley**: We have not thought about that. We felt that if we could get a commitment to ensure that social and environmental benefits were maximised and if such a duty were placed on not only ministers, but Scottish Water’s functions in this part of the bill, that would be a safeguard.

We have not thought about amendments to the bill but, having heard your comments, I am asking myself why we would not ask Scottish Water to ensure that it developed renewable energy resources in ways that reflected the needs of communities. We could easily transpose that into legislation. There could be a duty for Scottish Water to be accountable to communities for what it does or to work with local authorities.

I do not have a specific amendment, but having thought about your proposal that such an amendment could be made, an amendment to the bill to add a responsibility or duty to ensure that communities are involved in the process is one that you could look at. We have submitted our response to the consultation on the community empowerment bill. Such a duty could be part of that process to ensure that it is, for example, wired into community planning. We are not experts on community planning but, as you have raised one way that we might develop a specific amendment, that is another way that it could be done.

**Bob Doris**: Good morning. You state in your evidence that you would like to “Ensure that the opening of the retail market in England brings benefits rather than risks to Scottish Water and to customers in Scotland.”

Can you outline the potential negatives of the expansion of Business Stream’s activity to the retail market in England, and—to balance that out—tell us whether there are any opportunities in that for the Scottish customer?

**Trisha McAuley**: There are risks and opportunities. Ryan McRobert is our expert on the business side of things, so perhaps he can answer that question.

**Ryan McRobert (Consumer Focus Scotland)**: I will give it a go.

The main risk could be that, as the non-domestic market in England is not due to be opened up until 2017, licensed suppliers may in
the meantime come up from England, gain a foothold in the Scottish market, and effectively decrease Business Stream’s amount of business in the Scottish market.

With regard to the risks of going into England, our only concern would be that, in order to develop and build the English non-domestic water market, Business Stream might increase prices for its Scottish customers. However, there will eventually be a joint market in 2017.

**Bob Doris:** I will come back to pricing and charging later.

Is it not the case that Scottish Water will be well placed when the markets open up? It is my understanding that Scottish Water’s charging regime is significantly lower than that of many of the water companies in England. Could that give it a competitive advantage in going into England and getting a potential revenue stream, which could enable it to continue to keep charges lower in Scotland?

I am not trying to put words in your mouth; I am simply trying to analyse where we are with the bill. Does it offer the potential for Scottish Water to increase revenue that the company can reinvest in Scotland? Is that one of the potential positives?

**Ryan McRobert:** At present, Scottish Water is the wholesale supplier to the non-domestic water market in Scotland, and Business Stream is its subsidiary. Business Stream has the largest proportion of the market, and it then feeds into Scottish Water. That will not change: Scottish Water will continue to be the wholesale supplier in Scotland. However, Business Stream might lose some business in the Scottish market in the coming five years until 2017, when a joint market will form with England and parts of Wales.

**Trisha McAuley:** It was originally planned that the market would open in 2015. There are still risks if it is not done properly, although there are possible opportunities too. We know that the Water Industry Commission for Scotland and the Scottish Government are talking to their counterparts south of the border. The process took some considerable time to get right in Scotland, and it is very important that those lessons have been learned.

Business Stream may well generate additional income—Bob Doris is right that it could be well placed to do so. However, there is a bit of an issue in relation to the funding streams, which goes back to what is in the bill. We are closely engaged, and we are clear that the core funding stream—which is paid for by customer charges and borrowing from ministers—is a discrete funding stream from the money that ministers will inject into the hydro nation. None of the Business Stream money is currently reinvested or goes back into the Scottish Water pot, as the companies have entirely separate accounts. Therefore, customers generally do not see the result of Business Stream’s success.

If there is a really competitive market, and more people come north to have licences in Scotland, there will be more competition and more pressure on Business Stream to reduce prices. At present, however, it is benefiting its customers by giving them a better service rather than a cheaper price. The money does not feed through directly into customers’ bills.

I read the *Official Report* of the evidence that Bob Irvine gave to the committee two weeks ago, when one of the committee members—perhaps Malcolm Chisholm—asked where the benefit to consumers is. It seems to me that the economic benefit will be quite indirect: it could be about Scottish Water being more efficient or delivering its investment in the future more cheaply. There was nothing about using any funding to tackle some of the affordability issues that have been mentioned.

Does that answer your question?

**Bob Doris:** I think it does. It also takes me outside my knowledge base, so I feel that I am not able to pry any further. I will have to go back and look at the issue in more detail.

**Trisha McAuley:** You are not prying.

**Bob Doris:** We also wanted to ask about ministers’ ability to allow loans to subsidiaries of Scottish Water and how that may impact on the institution’s overall borrowing. Do you still have concerns about that? On the other hand, are there opportunities for that investment to bring income back?

**Trisha McAuley:** Actually, we do not have concerns. Our understanding of the bill is that it will allow ministers to lend to Scottish Water’s subsidiaries. We had a conversation with the Scottish Government about the provision, and we learned that there will be a distinct funding stream for Scottish Water’s subsidiaries that is entirely separate from the core funding.

The rationale for that is to ensure that the two funding streams are not confused and that funding for core services is protected. We agree with that separation and we are very clear that there should be no cross-subsidy from the core service funding stream to the non-core funding stream.

Conversely, we would like more exploration of why the non-core funding stream should be protected, what will happen to the money when it is in that pot, and why it should not be clear to consumers in Scotland—who will ultimately pay for it—what benefit they will get from it, other than the indirect benefits that Bob Irvine talked about.
Bob Doris: That is interesting. You want the core funding stream to be protected and you are content with the reassurances that you have received on that, but you are saying that you would like more clarity on how Business Stream or other aspects of the business could generate more revenue in the future—the opportunity we talked about. It is not a negative thing; it is just about how the benefits to the consumer can be maximised.

Trisha McAuley: Definitely—and that is not in the bill at the moment.

Bob Doris: That is helpful to know.

In your submission, you referred to water efficiency and the possible better integration with other things such as energy efficiency. Scotland has an energy assistance package that gives a great deal of assistance and was fairly ground-breaking when it was first delivered. You said in your evidence that there may be a way of better integrating water efficiency and energy efficiency. Is the bill an opportunity to do that, or was that point just an add-on to your evidence?

Trisha McAuley: There is a clear opportunity that goes back to one of our first points: if there is reference to the environmental and social impact in the bill, it will be one way of making sure that the wider context is taken into account.

Anything that could strengthen the governance aspects in the bill would be useful. There will be a hydro nation forum and we spoke to the former Cabinet Secretary for Infrastructure and Capital Investment, Alex Neil, who assured us that consumer interests and demand-side interests together with supply-side interests would be represented. However, it would be very useful to have a strategic plan of governance to look at that wider aspect.

The one thing that we will keep doing is to push out with the context of the bill. As you rightly said, there are a host of Scottish Government policies in which we think water and energy should be joined up. I have lists of them, including the sustainable housing strategy, the national retrofit programme and microgeneration building standards.

One way to get people to understand the value of water is to mainstream it into everything else that is going on. There is a national retrofit programme and people will be going out to areas across Scotland, under the new fuel poverty programme, to retrofit energy efficiency measures into our houses. Why do we not put water efficiency measures into those houses at the same time? We will push Scottish Government officials to join up that agenda.

Bob Doris: That was a point well made.

We discussed wholesale charging and how Scotland fares pretty well for the consumer vis-à-vis other parts of the UK. What are your concerns about charging—of course, that is a loaded expression—and what are the opportunities? Does the bill present us with an opportunity to sustain lower charging compared with other parts of the UK, or can we get it lower still?

12:00

Trisha McAuley: We could well make charging lower still if we addressed the points in the conversation that we had a few minutes ago on being clear where the non-core profit or income that is generated will go and what will happen to it. That is a clear opportunity.

There is not much else that we can do in the bill. We are in a much better position with the charging system than we were 10 years ago and compared with organisations, consumers and the water companies south of the border.

Our take is that it is a good time for a review of charging in the context of the hydro nation agenda and the recession. Our charging system might be fit for purpose but we have found that our colleagues in the water industry environment have a bit of a tick-box mentality. There is a consensus, even a small degree of complacency, that we have tackled affordability—that it is done and off the agenda—but no research has been done into it. We would be surprised if prices did not rise during the next regulatory settlement because they have been frozen for four years. No work has been done on affordability and the trade-offs that are being made.

Outwith the bill, we are just asking for there to be a considered review of the charging system. If it changes nothing then it changes nothing. However, we should look back to the conversation about the EU blueprint. Pressure is going to increase on incentivising water use through metering. We have no position on whether metering is the answer because it brings with it benefits as well as risks that all have to be taken into account.

We should not dismantle the current system without looking at it very seriously and seeing the good that it is doing. However, we are saying that we should not just sit back and do nothing about charging and assume that everything is fine. We have had the system since 1993 and Scottish Water is currently planning for the next 25 years, so we should be thinking about the needs of future consumers.

Bob Doris: Thank you.

The Convener: We move on to non-domestic services.

Gordon MacDonald: Part 5 of the bill is intended to clarify the contractual arrangements
between licensed providers and their customers. Your written evidence highlights concerns about disputes between non-domestic customers and suppliers over the provision of services in the energy industry. Can you expand on those concerns and outline how such issues could be avoided in the provision of water services?

**Trisha McAuley:** We run what is called the extra help unit in our office. It is a Great Britain-wide service that provides help to vulnerable consumers and small businesses in the energy market who are being disconnected or are under threat of disconnection. A lack of clarity over what services are provided and whether deemed contracts are actual pieces of paper or things that are arranged during a phone call—or things with no substance to them whatsoever—means that we have found that small businesses, and indeed some large businesses, have been in protracted disputes with energy suppliers. They might maintain that they have had no service because they have not switched on the lights, but the meter and the infrastructure are being supplied to the property. We have found it difficult to get to the bottom of those problems and to achieve resolution. Such problems crop up frequently.

We do not have a lot of experience of the same happening with water suppliers and business because we do not have a mechanism for handling complaints about water. Nothing has come through to us from the ombudsman, but we know that the WIC clearly sees the situation as an issue. It has had feedback from business that it is a problem with the water industry, and we can see how it could happen because of our experience with the energy sector. It is not rocket science to put together clear standard terms and conditions that both parties sign up to, but, in our experience of the energy sector, that has not happened. Of course, the devil will be in the detail.

We are pleased to have been asked to be a statutory consultee, because we will bring in our teams of people who have dealt with the issue in the energy sector, to see whether we can add value. The issue is simple, but it has caused huge problems in the energy market. We need a piece of paper that provides clarity all round.

**The Convener:** We note that you support the proposals on the disposal of oil, fat and grease into the sewer system. You also support the proposals on septic tanks, although you say that Scottish Water should investigate low-cost means of connecting appropriate properties with septic tanks to the sewer network. Will you expand on that?

**Trisha McAuley:** Yes, but I cannot expand on the point much. In quite a lot of properties in Scotland, the costs of such connections would be prohibitive. The emphasis is on clearing up septic tanks, and we welcome the proposals. We know that Scottish Water is developing its 25-year plan for managing itself into the future. That has a big focus on innovation, so we wanted to put up a little health warning.

A lot is going on and some fantastic things are happening. For example, people do not have to go down drains to unblock them and can use all sorts of fancy fibre-optic stuff to do that. I do not have the scientific answer to the question, but we made the point in our submission because we wanted to add something to the mix as Scottish Water has a clear focus on innovation and we are talking about the best use of our water resources in Scotland. I return to a similar point that I made about Bridge of Orchy: we should not lose sight of the need for people to have access to a clean and affordable supply and a proper network, where that is possible. However, we have no answers on how that might happen.

**The Convener:** How do you respond to Highland Council’s suggestion that the bill should go further and support the replacement of poorly performing septic tanks with other private facilities?

**Trisha McAuley:** We thought long and hard about Highland Council’s submission and we looked at the evidence from others. Such replacement would have an impact on or a cost for consumers. The proposal is to empower the owners of septic tanks to take action collectively and not to have that barred by one person. That proposal would be a good thing.

We understand that an application to register for a licence for a septic tank must meet the basic conditions. The problem is that not everyone is registered, that there is a lot of bad practice and that a lot of people who have septic tanks lack education and awareness.

That is our focus. We do not go as far as Highland Council because our understanding—on which we would be prepared to be challenged—is that SEPA has a backstop ability to use its enforcement powers if discharges from septic tanks go above the level in regulations. That is why we would not go down the route that Highland Council has proposed, but we are prepared to be challenged on that. The first thing to do might be to look at the cost impact on consumers in rural areas.

**Malcolm Chisholm:** In your submission, you ask for part 7 to be amended to ensure that water shortage orders apply equally to domestic and non-domestic customers. Will you explain why that is necessary?

**Trisha McAuley:** I am not sure whether you saw the earlier consultation document, to which we responded. It gave a clear gradation for how
water shortage orders would apply. If a water shortage occurred, an order would in the first instance apply to domestic consumers only. If further measures were needed, provisions would apply to commercial consumers. We had a conversation with the Scottish Government about that because, although we understand that there could be an impact on business and that a lot of water use by domestic consumers is for leisure purposes such as hosing the garden and washing the car, we did not think that the case had been made.

We were pleased when the Government said that it had done what we asked for and that the policy memorandum showed that, but the bill is still not clear enough. Schedule 2 talks about water-saving measures, but we would find it helpful if there were a clear statement that the provisions apply to domestic and non-domestic consumers.

Malcolm Chisholm: Thank you for that helpful explanation.

You ask in your submission for the bill to be amended to ensure that consumers are given "adequate forward notice" of the implementation of a water shortage order. Roughly speaking, what would you consider to be adequate notice?

Trisha McAuley: The word "adequate" was used deliberately, because a water shortage can happen at any time, so specifying a period would not be a good idea. The bill contains nothing about giving notice, although service interruptions occur—and can be planned events, too. We do not want a loophole whereby people are not informed of the day when an order will apply before it happens. It is a belt-and-braces approach.

Malcolm Chisholm: People might object to the word "adequate", because there is no way of knowing what it means.

Trisha McAuley: I understand that.

Malcolm Chisholm: However, your substantive point remains.

Trisha McAuley: The point is more about giving notice than adequacy.

The Convener: Thank you very much for your helpful evidence.

That ends our business today. Our next meeting will be on 3 October, when we will continue our consideration of the bill and take evidence on housing aspects of the draft budget.

Meeting closed at 12:11.
WRITTEN EVIDENCE FROM CONSUMER FOCUS SCOTLAND

About Consumer Focus Scotland
Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors’ clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

WATER RESOURCES (SCOTLAND) BILL
SECTION ONE – INTRODUCTION AND BACKGROUND

Consumer Focus Scotland welcomes and supports the overall intention in the Water Resources (Scotland) Bill to set out a framework for making the most of Scotland’s water resources. We remain absolutely clear, however, that there should be no adverse impact on the core services provided by Scottish Water, and no additional costs to its customers.

Our response to the specific questions posed in the Committee’s Call for Views are contained in Section Two of this evidence. However, we believe it is important to view the specific detail in the Bill within the wider context of what the Scottish Government’s Hydro Nation agenda is seeking to achieve. We therefore begin by outlining our policy position on this wider dimension. While we remain supportive of both the broad policy objectives and the detail in the Bill, we identify some key areas where we believe the Scottish Government’s proposals, and the Bill as it stands, miss some important opportunities and contain some inherent contradictions from the consumer perspective. Section Three of our evidence highlights some further issues that we believe are important and relevant to the Hydro Nation agenda and which the Committee may wish to consider as it scrutinises the Bill.

Our broad concerns and our recommendations, in brief, are as follows. These are outlined fully in our response to the Scottish Government’s consultation earlier this year on the Hydro Nation proposals. Generally, we believe that much more needs to be done to explain and make clear how the Hydro Nation agenda will benefit consumers in Scotland. Our focus is on how the proposals may impact on Scottish consumers and we make a

range of recommendations on how they might be strengthened to bring consumer benefit. These are:

- Clarify the benefits, if any, for water consumers. While the proposals are strong on the development of the economic potential of water, it is less clear on how the economic gains and any additional income generated by Scottish Water will be treated and whether any of it would be passed on to consumers. As the ultimate owners of Scottish Water, will its customers benefit from its income generating activities in the form of reduced bills?
- Set the proposals within the wider sustainable development agenda. As well as the economic benefits and gains deriving from the Hydro Nation proposals, there should be an equal focus on addressing social justice issues, as well as the wider environmental impacts, thereby embedding all three strands of sustainable development within the Bill and the ongoing implementation of the Hydro Nation proposals.
- Balance the “International Response” with the need to address outstanding consumer issues at home such as affordability and water debt. We welcome, and fully support, the Scottish Government’s commitment to international development and tackling global water issues. However, it is critical that this agenda is balanced by ensuring that all consumers in Scotland can access and afford a clean water supply. We believe that is a significant omission and that the Hydro Nation agenda should contain a clear commitment to tackling any outstanding affordability and water poverty issues at home.
- Promote stronger linkages within Government, and for water industry stakeholders, consumers and the wider Scottish public, between water efficiency and energy usage. The Hydro Nation agenda and the Bill contain welcome and clear directions and provisions to Scottish Water to maximise the best use of both our water and our renewable energy resources but make no reference to the role of consumers as the end users of both. We make a range of recommendations in section two on how the Scottish Government should create stronger linkages between water efficiency and energy efficiency policy agendas. We would like to see the proposals recognise the clear opportunities, using hydro power and renewable energy generally, to help alleviate fuel poverty, and to go further in relation to energy efficiency and in encouraging consumers to use both water and energy responsibly.
- Recognise that the current system for water and sewerage charging does not incentivise water efficiency as it is linked to Council Tax banding and not related to water usage and that not to have a long term vision for a charging system that takes account of the value of our water resource is a significant omission from the Hydro Nation agenda. This presents a clear opportunity to at least start an informed debate within Scotland and a considered review of alternative options for the longer term.
- Ensure that the opening of the retail market in England brings benefits rather than risks to Scottish Water and to customers in Scotland.
- Establish a Hydro Nation Advisory Board to monitor, at strategic level, progress in developing and implementing the proposals. Once the Bill is in statute, there will be a development agenda for implementing these important proposals. Effective governance of this agenda will be critical. In the light of our comments above, it will be equally critical for any governing structure to
contain a balance of supply and demand side interests, including the consumer interest.

SECTION TWO – RESPONSE TO THE COMMITTEE’S SPECIFIC QUESTIONS

PART 1: DEVELOPMENT OF WATER RESOURCES

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

We believe that the provisions in the Bill should be strengthened as follows:

- There should be an explicit statement about what is meant by “value” in relation to Scotland’s water resources. Section 1 (3) states that the reference to value includes the “economic and other benefit.” Yet the Policy Memorandum and the Explanatory Notes both specify that social and environmental value should be maximised, and in response to this being identified as a key priority by stakeholders, including ourselves, in the consultation. We see no reason why subsection (3) should not be amended to identify “value” as including economic, social and environmental value. Indeed, we consider this to be essential.

- We support the view in 1 (a) that Scottish Ministers must take “reasonable steps” but question whether qualifying this with “as they consider appropriate” would reduce Ministers’ accountability to Parliament.

- Section 1 (2) directs that Scottish Ministers are to act consistently with the proper exercise of their functions under the Climate Change (Scotland) Act 2009 and the Water Environment and Water Services (Scotland) Act 2003. It is equally important that Ministers’ duties to protect the customer interest are included here. We believe that this direction should be extended to include, at least, Ministers’ exercise of their functions under the Water Industry (Scotland) Act 2002 where, for example, in section 49 they “must have regard to the interests of every person who is a customer or potential customer of Scottish Water....”

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

We support the proposal, the selection of the designated five public bodies, the powers to add or remove a body and, importantly, the requirement that Ministers consult with the relevant bodies on modifications to the designated list and on the directions that may be issued to each body.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

In the light of the long term nature of the Hydro Nation agenda, with the emphasis on innovation and change, we agree that Scottish Ministers should report to the Scottish Parliament every three years. However, our reading of the Bill, the Policy Memorandum
and the Explanatory Notes is that there is only a requirement to report on one occasion, three years from the date on which section 1 comes into force. Our understanding could be wrong but, if so, the Bill should be re-drafted for the avoidance of doubt.

We believe that Ministers should report against a strategic delivery plan with short, medium and long term targets and outcome-based success factors. These should be agreed with stakeholders and it is our view that this should be within the remit of a strategic Hydro Nation Advisory Board, similar to the Scottish Energy Advisory Board. This should be the role of the proposed Hydro Nation Forum.

Part 2: Control of Water Abstraction

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

We have no particular comments on Part 2.

Part 3: Scottish Water’s functions

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

We support these proposals with the clear proviso that Scottish Water must not compromise the effective and efficient exercise of its core functions to consumers in Scotland, including customers and potential customers.

In relation to the specific wording in the Bill about powers for Scottish Water, we make similar points to those relating to Part 1 and Ministers’ powers. Section 21 should make clear that the “value” of Scotland’s water resources includes the economic, social and environmental value. In section 22 (1) we question the intention that it is for Scottish Water alone to consider whether its actions are consistent with the exercise of its core functions and suggest that this should be re-drafted to state “Scottish Water must take reasonable steps to develop the value of its assets and expertise while this is not inconsistent with the economic, efficient and effective exercise of its core functions.” The same principle applies to section 23 (1).

Notwithstanding this, we welcome the proposals to develop Scotland’s hydro power potential, to reduce Scottish Water’s carbon footprint and to enable it to use its land assets to generate additional renewable energy.

As one of Scotland’s principal users of electricity, it is important that Scottish Water continues to both seek savings from energy efficiency and invest in renewable energy to drive down costs for water consumers. And it is equally important that any additional
renewable energy capacity is used to the best benefit of consumers and communities in Scotland.

At this stage, we have no specific amendments to the Bill to propose. However, we would welcome the Committee’s consideration of how we could maximise the role of Scottish Water and the synergies between energy and water.

Energy prices for consumers have risen sharply in recent years. Fuel poverty rates in Scotland have also risen, particularly in rural areas, as the increases in costs have outstripped gains made through improved energy efficiency. Projections suggest that there will be further pressure on energy prices, driven by a combination of rising fossil fuel costs and the need to invest in low carbon energy infrastructure. The Scottish Government has a target to eliminate fuel poverty, as far as reasonably possible, by 2016, as well as medium and longer term targets to reduce climate change emissions.

It is against this background that the development of renewable energy is taking place, and it is important to emphasise that the sector is, at present, supported heavily by levies on consumers’ bills. We believe, therefore, that Scottish Water’s work in this area, as a publicly funded body, needs to be developed in a coherent way which explicitly takes account of consumers’ circumstances and experiences, as well as wider opportunities. Three specific recommendations are set out below.

Develop renewable energy resources in ways which reflect the needs of consumers and communities
All forms of energy generation have local and national environmental impacts. The development of any infrastructure over which Scottish Water has influence should reflect best practice in terms of community engagement from the design stage onwards. It should seek to maximise public benefits beyond those required as a minimum by the planning system. Scottish Water has made significant improvements in community engagement processes in recent years. However, it will have to continue to improve on these processes if it is to venture into larger scale renewable energy developments with the prospect of polarised debates on environmental impacts and the need to be seen clearly to be sensitive to the concerns of local communities. Sensitive management of environmental impact should remain firmly part on the Hydro Nation agenda. Consumer Focus Scotland is currently acting as a "critical friend" advising Scottish Water on its statutory Consultation Code and its consultation processes and it will be important for this to be a process of continuous improvement.

Develop hydro power assets in ways that connect with other infrastructure
We believe that Scottish Water should develop hydro power assets in ways that connect with other infrastructure to increase pump-storage capacity across Scotland, where possible. Wind power is, obviously, dependent on the weather, and pump storage provides a means of ‘banking’ electricity which will help smooth out supply and demand fluctuations, and thus also the costs for consumers.

Ensure that all renewable energy developments on Scottish Water land are accompanied by a well managed Community Benefit Fund which maximises public benefit.
Typically, new renewable energy developments are accompanied by a Community Benefit Fund (CBF). Our recent report on CBFs\(^2\) shows that there are opportunities to improve the transparency and consistency of the management of these funds. We also believe that, increasingly, there will be opportunities to use a proportion of each fund to help deliver energy efficiency measures to reduce energy costs and fuel poverty for local consumers, while at the same time also reducing climate change emissions.

Depending on the scale of the fund, there may be a role for local authorities in ensuring that benefits are distributed across a wider area, although the highest level of support should continue to be available to the communities most immediately affected. We believe that a wider debate is needed, as the sums involved in CBFs increase both individually and in aggregate, as the renewable energy industry grows. Scottish Water, as a public sector developer, should have a role in that discussion, not least in identifying ways in which the income gained by Scottish Water can be used in ways to benefit all of its consumers.

**Water efficiency and energy efficiency**

The further development of physical assets by Scottish Water should be balanced with the need to manage our water resources more effectively. Lowering consumer consumption of water through both water efficiency and the development of a strategy on water reuse would require less treatment of water by Scottish Water which would then be reflected in lower operational costs. In turn, these savings could be passed on to consumers through lower charges.

A clear omission, at present, in the Hydro Nation agenda is the role that consumers can play in maximising the value of our water resource through water efficiency and behaviour change. This is an important omission and runs a reputational risk in the international environment if we fail to promote this message domestically.

The Scottish Government has already committed to increasing the awareness of energy efficiency and encouraging behavioural change.\(^3\) We believe that there should be a clear and demonstrable synergy between the Energy Efficiency Action Plan and the Hydro Nation initiative. Water efficiency should be embedded within existing public information channels on energy efficiency. Moreover, the launch of the Hydro Nation agenda and the passage of the Bill, present clear opportunities to roll out new information initiatives to encourage the sensible use of water. Raising awareness of the link between water usage and energy will help all consumers save money on their energy bills and we expect the Scottish Government to demonstrate clear leadership in this important area.

A particular focus on reaching out to low income consumers will help reduce fuel poverty. We recommend that the Scottish Government should integrate advice assistance on water efficiency with its existing and developing programmes on fuel poverty and energy efficiency, including the Energy Assistance Package, the proposed National Retrofit Programme, the Sustainable Housing Strategy, and generally as first tier advice provided by the Home Energy Helpline.

**Charging for water**


\(^3\) [http://www.scotland.gov.uk/Publications/2009/10/07160816](http://www.scotland.gov.uk/Publications/2009/10/07160816)
Of course, the current water and sewerage charging structure in Scotland does not incentivise water efficiency as it is linked to Council Tax banding and not related to water usage. We are not suggesting that, at this stage, the current charging system should be dismantled with the possibility of unintended consequences on bills and existing protection for some consumers. However, not to have a long term vision for a charging system that takes account of the value of our water resource is a significant omission from the Hydro Nation agenda which presents a clear opportunity to at least start an informed debate within Scotland and a considered review of alternative options. At the direction of Ministers, Scottish Water is undertaking a Water Efficiency Trial, which includes an exploration of how a fiscal incentive might bring about behaviour change. This trial should be included as a key feature in the Hydro Nation action plan.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

We are content that section 24 contains an over-arching clause that embraces all legislation relating to the provision of water or sewerage services in Scotland.

Part 4: Raw Water Quality

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We have no particular comments on Part 4.

Part 5: Non-Domestic Services

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

We have no particular comments on Question 11.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

We support the principle that non-domestic customers that are receiving services from a licensed provider should pay for them. However, our experience in the energy sector tells us that lack of clarity and agreement between suppliers and customers on whether, and what services are being provided can cause significant, sometimes intractable, problems. The detail of the proposed scheme for deemed contracts will be critical and we welcome the proposal that the Water Industry Commission for Scotland should be required to consult us in the development of the scheme.
Part 6: Sewerage Network

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

We support these proposals relating to the more proactive management of discharges from trade premises into the sewer network. More responsible behaviour by traders should result in savings in Scottish Water's operational costs which we would expect to see passed on to consumers through lower charges.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

We agree that there is a need to improve public awareness of the importance of managing and maintaining septic tanks. We believe the proposal is acceptable given the detailed safeguards set out in the Bill.

We do believe, however, that an ambitious Hydro Nation agenda should give due consideration to the longer term desirability, in the interests of public health, to investigate how innovation by Scottish Water could provide efficient and effective means of increasing connections to the sewerage network, balancing the benefits against the costs involved.

Part 7: Water Shortage Orders

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

We agree that there is a need to update the law in relation to the management of interruptions to the public water supply. We believe that the proposals should have the desired effect in dealing with temporary water shortages if the Bill is clarified and strengthened as follows:

- We welcome the fact that paragraph 47 of the Policy Memorandum makes it clear that the Scottish Government has listened to concerns expressed by ourselves and others that care should be taken to ensure equity of approach to domestic and non-domestic water users and that the draft provisions were adjusted in light of these concerns. However, we believe that the wording in the Bill is still not explicit enough in this respect and that it should clearly set out that the orders would apply to apply to all domestic and non-domestic customers. Provided this is made clear, then the list of water saving measures set out in Schedule 2 is appropriate, given that it covers non-essential water use. There is, however, a catch-all provision at the end
giving Scottish Water and Scottish Ministers powers to take any additional measures they consider necessary. This seems reasonable but we believe should be accompanied by a requirement to protect vulnerable consumers with special needs who may require above-average water use, together with similar exclusions for premises providing essential services, for example, care homes.

- In the making of an order, under section 37, there should be a requirement on Scottish Ministers to inform the National Consumer Council, as the statutory consumer representative body, that such as order has been made. In section 42, there should be a similar requirement in respect of Scottish Water.

- Section 42 (1) should be strengthened to read that “Scottish Water must take all reasonable steps to bring its recommendation under subsection (1) (b) to the attention of people in the area. In this respect, we believe that section 1 of Schedule 1 should specify that Scottish Water gives adequate forward notice to the public of the proposal to implement a water shortage order. We also welcome the proposal that this should be published in a local newspaper. This should be supplemented by a requirement that this is in a hard copy and not an online version and also that it should be published via local radio. This is because the most vulnerable consumers are least likely to have internet access. Similar provisions should apply when an order is revoked (Schedule 1 section 11).

Q17. Do you have any comments on the estimated costs associated with the Bill?

We have no particular comment on this question.

SECTION THREE – ADDITIONAL ISSUES

This section of our evidence contains some additional issues that we believe are important and relevant to the Hydro Nation agenda and which the Committee may wish to consider as it scrutinises the Bill.

International Response

We welcome, and fully support, the Scottish Government’s commitment to international development and tackling global water issues. However, it is critical that this agenda is balanced by ensuring that all consumers in Scotland can access and afford a clean water supply. We believe that is a significant omission, particularly in relation to maximising the social value of our water, and that the Hydro Nation agenda should contain a clear commitment to tackling any outstanding water debt and affordability issues at home.

The Impact of the UK Water Bill

The UK Government’s proposals to open up the English market to retail competition, contained within the recently published Water Bill, will provide opportunities for Scottish Water’s subsidiary, Business Stream, to secure new contracts. It will be critical that the expansion of Business Stream’s activity and scope does not compromise Scottish Water’s ability to deliver its core service, continue to improve its performance, and keep costs down and consumers’ bills as low as possible. Nor should any additional costs be passed on to Business Stream customers in Scotland.

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However, what is being proposed in the Water Bill will, in effect lead to a UK market, with new entrants operating in Scotland. While this will bring clear opportunities and potential benefits to customers in Scotland, it will present real risks if the new market in England is opened without full and effective preparation. We are aware that the Scottish Government is working closely with EFRA, Ofwat and the Water Industry Commission for Scotland (WICS) to ensure that any risks to the Scottish market are mitigated in advance and we support the recommendations set out by WICS as to how this should be done in the light of the experience of the opening of the retail market in Scotland.\(^5\) This is a key issue which should form part of the action plan for the Hydro Nation.

We would also expect the Scottish Government to consider how any additional profits from new trading activities by Business Stream could be passed on to domestic and non-domestic consumers by way of reduced bills. Profits could also be spent on improving services to consumers, especially within discretionary spend areas such as external sewer flooding and low pressure.

**European Union Blueprint to Safeguard Europe’s Water Resources\(^6\)**

The European Commission is currently considering its response to the public consultation on its range of proposals to improve water management in Europe and to safeguard water resources for all users. It would not make sense for either the Water Resources (Scotland) Bill or the wider Hydro Nation agenda to proceed without taking due account of this emerging and important policy context.

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Water Resources (Scotland) Bill: Stage 1

The Convener: We come to agenda item 2, under which we will hear further evidence on the bill at stage 1 from energy and environmental organisations. I welcome our witnesses: David Crookall, who is an environmental specialist adviser with SSE; Andy Limbrick, who is an environment consultant with Energy UK; and Stephen Freeland, who is a policy executive from the Scottish Environmental Services Association. I thank you all for submitting written evidence, on which some of our questions will be based.

What is your view on the adequacy of the consultation that took place prior to the introduction of the bill? Are you satisfied with the Scottish Government’s response to any concerns that you raised during the consultation phase?

Andy Limbrick (Energy UK): I thought that the level of consultation was very good. We were pleased with the opportunity to submit evidence, and the summary of the consultation responses was good. However, part 2 of the bill, on water abstraction, appears to have come in out of the blue and appears not to have been covered in the consultation. That is an area of some concern to us, which we can pick up later on.

The Convener: Yes, we will come to specific questions on that.

Stephen Freeland (Scottish Environmental Services Association): Yes, I thought that the initial consultation—there were two consultation documents—provided a good opportunity for us to feed back our comments and that the bill broadly reflects what we were expecting.

David Crookall (SSE): I echo what has been said. We were generally pleased with the two rounds of consultation. We provided feedback and I think that there were some small changes in the wording of the bill to reflect some of the concerns that we raised. Obviously, one of the main outstanding issues is part 2 of the bill, which was not part of either of those two rounds of consultation.

The Convener: SSE highlighted its development of “inset” water infrastructure in England and asked that the bill be amended to allow competition for the provision of that type of service in Scotland. Can you explain what inset infrastructure is and why you think competition for the provision of such infrastructure and related services should be allowed in Scotland?

David Crookall: At SSE, we have a small but fairly active part of the business—active primarily in England and Wales—whereby we approach developers who are looking to build a housing estate or business park on a greenfield or brownfield site and offer to provide them with utility services for electricity, gas and water. We can deal with all the pipes and infrastructure on the site, and some developers find that quite an attractive option. We recognise that the provision of such infrastructure was not a key part of the consultation; we just wanted to raise a flag to say that, if that were possible in future, whether through this bill or another bill, then as a commercial organisation we would be keen to be involved in a market across the UK, rather than just in England and Wales.

The Convener: What would be the benefits of that for the Scottish economy and for consumers and customers?

David Crookall: We offer that service to developers, so it would be down to developers whether they wanted to deal with those matters or whether they saw an advantage in having somebody take that work off their hands and do it for them. Generally, the service is provided for small-scale housing or business park developments. I am not particularly expert in the area but, if the committee wants more evidence on that, I am sure that my colleagues would be more than happy to write to you. We are just saying that that part of the business works in England and Wales and would like to work across the UK. However, we recognise that that is not a key feature of the bill.

The Convener: How might the bill be amended to take account of the legislative developments that are currently under way in England and Wales to open the non-domestic water and sewerage market to competition?

David Crookall: Again, I am not expert in that, but I could ask colleagues to write to the committee if that would be helpful. I think that the bill to which you refer is still at the draft stage. There might be provisions that could read across, but I do not know.

The Convener: That would be helpful.

Margaret McCulloch: One main concern that is raised in the evidence from SSE and SESA is that the bill could have a negative impact on private sector energy providers because it encourages Scottish Water to invest in areas such as the generation of renewable energy and waste management. What impact might the bill have on companies that operate in markets that Scottish Water targets as part of its non-core functions?
Stephen Freeland: That is one of our key concerns about the bill. The Scottish Government has just published its zero waste plan and the supporting regulations that go along with it, so there is a drive for the development of infrastructure to treat organic waste, whether that be food waste from domestic properties or organic waste from industrial and commercial premises. If a publicly funded body such as Scottish Water enters that market, it has the potential to distort the market.

Scottish Water would have a number of advantages over SESA members. For example, it could use existing assets such as sewage treatment works, which might now be redundant. It has access to large land banks, whereas a private sector company has to acquire land, which raises costs and then filters down to the company’s charges. The concern is that Scottish Water does not have the same up-front costs and financial constraints as private sector companies have and so would be able to offer its services at below the market rate. In the view of our members, who are competing for the same feedstock, that would be very uncompetitive.

David Crookall: I echo that. There are two issues. Generally, we support anyone in developing renewable energy and using their existing assets in a way that maximises their value and benefit. The issue is about how that is funded and whether preferential treatment is given to any operator, whether it is Scottish Water or anyone else. Although the market is regulated fairly heavily, it is open and competitive. We are just looking for a level playing field.

Another point is that some of the discretionary powers that are to be given to ministers and Scottish Water refer to Scotland’s water resources, which are defined as all inland waters, wetlands and estuaries, so it is not just water where Scottish Water has assets or from which it currently abstracts. The question is whether that affects existing water users and water rights. If Scottish Water saw an opportunity, would those powers give it the opportunity to short circuit legislative requirements with which other people would have to comply? I do not suggest that that is the intention, but the wording of some of the provisions suggests that Scottish Water would have a lot of discretion in that area in relation to all Scotland’s water resources and not just the ones over which it currently has rights.

Andy Limbrick: I echo the previous two speakers’ points about market conditions. We have a highly competitive Great Britain market in electricity. We are certainly looking for a level playing field for the companies of all shapes and sizes that participate in that.

Margaret McCulloch: On non-core activities, the Scottish Government bill team gave an assurance that “it is ministers’ expectation that Scottish Water will engage in those activities on properly commercial terms.” —[Official Report, Infrastructure and Capital Investment Committee, 12 September 2012; c 815.]

How do you respond to that?

Stephen Freeland: We have no objections to Scottish Water entering the market, as long as that is done on a level playing field. However, we see no assurances in the bill to alleviate our concerns. We are looking for evidence of transparency and evidence of the commercial returns that are made on public sector investment.

David Crookall: I agree with Stephen Freeland. Obviously, I welcome that commitment, but the words in the bill matter and they are what will remain for the long term. How those words are interpreted and applied can change over time. If that is the commitment, it would be nice to have it clearly defined in the bill.

Andy Limbrick: I suppose that a question arises about who has the responsibility to review those “properly commercial terms”.

Malcolm Chisholm: I have a couple of questions about SSE’s evidence, although Mr Crookall might have touched on the first one to an extent. First, why might Scottish Water’s status as a designated body that can be directed by the Scottish ministers give it an unfair competitive advantage in undertaking non-core duties? Secondly, you have asked that the ministerial directions should be subject to public consultation prior to being issued. Why do you think that would be beneficial?

David Crookall: On the first point, part 3 of the bill will give Scottish Water a right to do anything that it thinks is necessary. The bill provides “the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources”.

As I said, water resources are defined as all inland, wetland and estuary waters, not just ones to which Scottish Water currently has access. We can interpret that statement in different ways, but it is clearly a broad discretionary power. Whether it has an impact depends on how it is interpreted and applied.

Sorry, but I did not catch the second question.

Malcolm Chisholm: It was about ministerial direction. You say that there should be consultation on such directions and that the power would give Scottish Water an unfair advantage.

David Crookall: Under the bill, ministers, have the power to ensure
“the development of the value of Scotland’s water resources”.

The definition of the term “water resources” means that that applies not just to Scottish Water’s existing assets or areas where it already has water rights, so there could be a direction applying to a water resource anywhere. Whether that is an issue depends on what directions are given.

There are many pieces of legislation under which ministers can give direction to public bodies and we have not really seen an issue with any of them. However, the issue is the breadth of the powers, how they will be applied and how they can be interpreted. The issue is whether the wording in the bill is as tight and as well defined as it could be so that people understand the possible scope of the directions. For example, if a direction might affect third parties that have existing water rights in those areas, it would be nice to think that it would be subject to consultation and discussion with those third parties.

Malcolm Chisholm: So you are thinking about specific consultation with interested or relevant people rather than a general public consultation.

David Crookall: Yes.

Malcolm Chisholm: This question is for everyone. The committee has heard calls that the Scottish ministers should be required to consider social and environmental matters rather than just having an economic focus when developing the value of Scotland’s water resources. What would your view be on that suggestion?

David Crookall: From our perspective, abstraction, control and various other issues are dealt with under planning and the controlled activities regulations, which should pick up most if not all of the social and economic issues. The Scottish Environment Protection Agency has gone on record as saying that it is satisfied that CAR deals with all the environmental issues.

We would want to avoid any duplication or potential confusion with regimes cutting across each other and consents under one regime saying something slightly different from consents under another regime.

If there are areas that CAR and planning do not fully cover, it would be better for any new regime to deal with just those specific areas and not to risk any overlap with existing regimes that are working well.

Andy Limbrick: I see that the word “sustainable” has been introduced into the bill. In my view, sustainability would cover environmental and social aspects as well. The extent to which that happens would need to be teased out, and I say that in recognition of what David Crookall said about overlap with CAR. You might want to take a rather light touch on the environmental side, but the environment has to be taken into account if you are looking at sustainable employment of resources.

The Convener: We can move on to water abstraction. Alex Johnstone has some questions on that.

Alex Johnstone: The convener is laughing because it is my favourite subject.

You have already touched on the fact that the late addition of abstraction to the bill means that you feel that you were not properly consulted on that. What discussions have you had with the Scottish Government about abstraction?

David Crookall: I am not aware that, prior to the bill coming out, there were any. I think that there has since been contact with the bill team, and it is fair to say that we have had a positive response from them and that they are happy to discuss the matter further. However, it was a surprise to see it in the bill.

Alex Johnstone: Can you outline your concerns about the new abstraction rules that have been proposed?

David Crookall: As I said, there is already planning, and there is CAR. There is already legislation in this area.

This is probably a function of the lack of consultation but, in responding to the draft bill, we were not really sure what it was trying to achieve and we did not know the scale of the problem that it was trying to deal with—whether we were talking about a handful of applications that might be a concern or dozens—or what those issues might be. It is difficult to say exactly that planning or CAR already deal with certain issues, as we are not quite sure what the bill is aiming at.

However, any time that you are introducing a new abstraction regime, even with exemptions, on top of existing regulations, you have to ask whether that is necessary to achieve the objective or whether there are other ways of doing it. We have not had enough information to enable us to form a view on that.

Andy Limbrick: From the broader energy sector perspective, there are two big themes in part 2. One is about building and maintaining investor confidence by introducing a reasonable amount of certainty into policy and regulation, and there are a lot of things in part 2 that are quite open ended and which we might explore in more detail.

The second big theme is the implementation of the better regulation agenda and the simplifying of administrative arrangements. On the face of it, part 2 seems almost to double the administrative
burden for businesses that are looking for water abstraction because, once they have gone through the CAR procedure, they must also go through the process of making an application to ministers. That seems to be an additional burden on businesses and there are costs associated with it as well.

11:30

Alex Johnstone: On the specifics in your written evidence, you note that there is an exemption for hydro generation, but you express a fear that ministers may choose to remove that exemption at a later date. What are your grounds for that fear? Is there any indication that that may happen, or is it simply that the bill leaves the possibility open?

David Crookall: It is simply that the bill leaves it open. Who knows how a future Administration might want to use those powers? If there is no intention to remove the exemption, the bill could be worded in such a way as to provide exemptions and to provide that ministers could add to those exemptions. If the bill allows an exemption to be removed—perhaps this is jumping at shadows—that adds to the uncertainty. As Andy Limbrick said, businesses are always looking for as much certainty as possible. If there is no intention ever to remove the exemption, why does the bill allow for it to be removed? If you were a fish farmer or whatever, you might feel the same.

Alex Johnstone: You suggest that the Government should enter into negotiations over that as a matter of urgency. Is that to ensure that we can change the bill before it becomes an act?

David Crookall: We would certainly welcome discussions with the lead people on the bill just to get some confidence about what the bill is trying to achieve. We could then perhaps be more targeted in our responses. Is the wording in the current proposals necessary and appropriate for what the bill is trying to achieve? If it is not and if the wording can be tightened up in a way that still achieves the objective, perhaps it can be changed before the bill goes through. If our concerns are groundless—as I think we would both hope they are—perhaps the wording could just be removed from the bill.

Alex Johnstone: Is that view shared across the panel?

Andy Limbrick: Certainly. I look forward to some constructive dialogue on the detail if that is possible.

Stephen Freeland: Abstraction is not an issue for us.

Alex Johnstone: You are not required to have a view on it.

Finally, the committee has heard suggestions that there should be exemptions in a number of areas, as we have already touched on. Do you have any broader views on the issue of exemptions as raised by other witnesses?

David Crookall: From an energy point of view, the obvious one would be an exemption for cooling water. Hydro generation is exempted, but if someone wanted to build a gas-fired power station or whatever, which is a major investment, that would not be included under any of the exemptions and would therefore be an additional issue. Whether someone can build a new power station is already covered by planning legislation, so it is not necessary to control it through legislation on abstraction control. That is one additional exemption, but Andy Limbrick may have others.

Andy Limbrick: An exemption for thermal power stations is my favourite as well.

Alex Johnstone: We have touched on the issue with other sections of industry and we have further questions about it to ask others.

Andy Limbrick: The use of water for cooling is the best environmental option for reducing carbon emissions. We would support an exemption for thermal power stations as well.

Alex Johnstone: Do you agree with the general view that has been expressed by some that the upper limit should be based on consumption rather than abstraction? That is, if you are taking water out and putting it back immediately in a non-harmful way, that should not count as abstraction.

Andy Limbrick: I think that there is room for improving the terminology and understanding of water use generally in power generation. There are several ways of cooling plants: some involve a once-through use of water, so there is no net use; others involve some evaporative cooling, which leads to the consumption of some water. In terms of valuing water, we are probably moving towards a world where we pay for what we consume rather than for rights to abstract.

The Convener: We move on to consider Scottish Water’s functions.

Bob Doris: A theme that seems to be emerging is Scottish Water’s impact on the commercial market. Will you expand on the concerns that were outlined in written evidence about the Scottish ministers awarding grant and loans directly to subsidiaries of Scottish Water?

David Crookall: Your question takes us back to what we said about open and competitive markets and the need for people to compete on fair terms. That is where our concerns begin and end. If Scottish Water can acquire finance for commercial
investments at lower rates than its competitors can, that will give it an advantage.

What might be appropriate for public investment in Scottish Water's core functions might not always be appropriate when a subsidiary of Scottish Water is investing in a purely commercial venture. We are looking for a level playing field. We are not trying to stop Scottish Water developing its assets or gaining value, but we want to ensure that it does that on the same terms as apply to everyone else.

Stephen Freeland: Some of our members expressed concern about state aid implications. I am not an expert on the matter, so I could not allay their concerns, but I wanted to bring the issue to the committee and ask whether it will be considered as part of the bill process.

Alex Johnstone: I have a very simple solution to the problem, if people want to hear it.

Bob Doris: Perhaps you can ask a simple supplementary question later. Mr Limbrick, do you have a simple solution?

Andy Limbrick: I can imagine what Mr Johnstone’s simple solution is, but I am not sure how politically acceptable it would be.

Bob Doris: Do you have a desirable solution?

Andy Limbrick: Our concern was to raise the spectre of Brussels intervention and ensure that the Scottish Government has given due consideration to the state aid rules.

Bob Doris: There is a difference between Brussels intervention and other players in the market seeking such intervention. I am reminded of the alcohol minimum pricing policy in that regard.

Mr Freeland said that he is not an expert on state aid—nor am I. Despite that, will the witnesses have a stab at this question? Would your organisations consider taking action under state aid rules if the provisions in the bill were enacted and the Scottish Government loaned money directly to Scottish Water Horizons to develop renewable energy or waste management infrastructure? Europe wanting to take an interest in the matter and you guys going to Europe about it are two very different things.

Stephen Freeland: I cannot comment at this stage. The matter would need to be given careful consideration.

Bob Doris: Are there any other takers on that?

David Crookall: The decision would be way above my pay grade, but I think that we would try to avoid getting into that situation. I do not think that anyone wants to go there, given the costs and the political fall-out. No one wants that. I guess that it would depend on how the bill was implemented and whether people felt that they were being severely disadvantaged.

Bob Doris: I commend you on what seems to be a responsible attitude, in contrast to what has been happening in an area that is outwith the remit of the committee.

The Convener: The witnesses have raised a number of issues about which we undertake to ask the cabinet secretary on their behalf when she gives evidence.

Gordon MacDonald: I will ask about the potential for distortion of the market. In its written evidence, the Scottish Environmental Services Association referred to the Office of Fair Trading investigation into

“competition in England between water companies and waste management companies in the treatment of organic wastes.”

What were the results of the inquiry? How might they be relevant to the proposals in the bill?

Stephen Freeland: That was highlighted as an example of work that is going on down south. Last September, the OFT published a report and it is important to flag up the two main recommendations in connection with your consideration of the bill. First, the report noted that waste water authorities have a planning advantage when they compete in the open market with the waste industry, as they have existing land banks and assets to utilise. Secondly, it noted that the economic framework provides another advantage to the waste water authorities over the waste industry.

Gordon MacDonald: In the written evidence, you also indicated that Scottish Water and its subsidiaries are able to

“offer organic waste collection services below the market rate.”

Can you provide any practical examples of that and explain how Scottish Water can undercut commercial rivals?

Stephen Freeland: That probably centres on the fact that Scottish Water has full access not only to anaerobic digestion plants, but to the existing sewer network. For example, when Scottish Water and another company bid for a contract from a producer of organic waste, Scottish Water can make a more competitive bid because it has the back-up of being able to use the sewer network for certain wastes that might not always need to go to an anaerobic digestion plant. The waste management industry does not have the same access to the sewer network; a waste management company would, if it wanted to use the sewer network for any reason, have to pay
a spot price, rather than building that into the overall contract.

**Gordon MacDonald:** Is that not just making efficient use of the sewer network?

**Stephen Freeland:** That would be fine were Scottish Water and the waste management company able to use the sewer network at the same rates.

**Gordon MacDonald:** You have raised concerns that Business Stream’s dominant market position gives it “an almost monopoly status to introduce new organic waste services.” Can you expand on that comment and explain what impact that may have on commercial waste service providers?

**Stephen Freeland:** When Business Stream was set up as a branch of Scottish Water, all the customers, pretty much by default, went to that subsidiary. That makes it hard for a company that wants to be a new entrant to the market.

**The Convener:** New folk are coming into the market and taking customers from Business Stream, so is it not just a question of time before there are new entrants and other competitors?

**Stephen Freeland:** Yes, perhaps that may happen over time, but it is difficult for a company at the outset.

**The Convener:** None of you has provided any written evidence on parts 4 to 7 of the bill. Are there any comments that you want to make about other proposals in the bill?

**Andy Limbrick:** We have covered everything that we wanted to.

**The Convener:** As members have no further questions, I thank the witnesses for attending and providing evidence, and ask them to send us the follow-up material that they promised.

I briefly suspend the meeting to allow the witnesses to leave the room.

11:44

*Meeting suspended.*
WRITTEN EVIDENCE FROM SSE

Background
As you will be aware, SSE owns and operates extensive hydro generation schemes in the North of Scotland. We also have considerable interests in many other forms of renewable generation in Scotland as a whole. Furthermore, we own and operate a competitive and expanding water business. It is against this background that we are responding to this consultation.

Overview
We welcome the strategic vision of the Water Resources (Scotland) Bill and agree that Scotland has much to offer in terms of developing a Hydro Nation that is recognised around the world. SSE’s historic and ongoing interest in hydro generation and associated matters mean that we have much to offer in terms of practical experience and knowledgeable expertise in helping Scotland achieve its strategic vision both directly and through appropriate partnerships. We look forward to playing an important part in this. In creating a legal structure to deliver the strategic vision it is important to ensure that preferential powers and/or commercial advantage are not bestowed to any one party i.e. that a level playing field is maintained at all times. In this regard, some parts of the Water Resources (Scotland) Bill still give us cause for concern. In our previous response to the Water Resources Bill consultation we identified three potential unintended adverse consequences due to the scope of the legal drafting presented being too broad, these were:

- existing hydro generation assets and operations could be at risk;
- an uneven playing field could be created in, what is, a competitive generation market and the provision of energy infrastructure; and
- the proposals to allow Scottish Ministers to lend to Scottish Water’s subsidiaries could be construed as being “state aid”.

After reviewing the new drafting on the Water Resources (Scotland) Bill we were satisfied with changes made to the Bill which addressed some of our concerns, however there are still areas which may have adverse consequences.

A new section has been introduced into the Bill dealing with water abstraction. This has not been subject to consultation and it is not clear what issues it is designed to address leaving the powers for Scottish Ministers very broad and wide ranging. This introduces significant uncertainty and risk not only for new developments but also for existing ones. We have expanded on the above high level points below.

Changes to the Bill which SSE supports
SSE has around 1100MW of established hydro generation capacity and is a major contributor to Scotland achieving its stated renewable generation targets. Accordingly, as we have stated above, we support the principle of advancing Scotland as a Hydro Nation and hence, the high level concept of developing the value of this resource.

We were originally concerned with the inclusion of a duty being placed on Ministers "to take all reasonable steps to develop the value of Scotland’s water resources" in the Bill. We felt that this all encompassing ministerial power could, if unfettered, prejudice the proper efficient and economic operation of existing hydro generation schemes. SSE supports its
removal from the amended Bill as this will eliminate the possible risks to the rights of existing hydro schemes.

SSE supports the duty to "take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources" with an extra caveat stating that they must "do so in ways designed to contribute to the sustainable use of the resource". This caveat will limit the activities which could be undertaken to develop the value of Scotland’s water resources.

A further amendment to this section is also supported by SSE, “So far as it considers is not inconsistent with the economic, efficient and effective exercise of its core functions, Scottish Water must take reasonable steps to develop the value of its assets and expertise”. As this puts caveats on what steps Scottish Water can take in order to develop the value of its assets and expertise, which the previous draft did not. This will therefore further limit the potential consequences of this section of the Bill.

The original consultation document and associated legal drafting specifically sought to clarify that Scottish Water should promote the full utilisation of its assets and to plan and promote renewable generation. We believed that the principle behind this was to clarify that Scottish Water would not be restricted to its “conventional” water and sewerage functions. We still support this principle and believe that maximising the efficient use of potential renewable resources is a laudable aim. We were concerned that the original drafting was too open ended and that the proposed power, if unfettered, could have conferred undue preference to Scottish Water. SSE therefore supports the amendment in Section 21 clarifying that “The power in subsection (1) includes, in particular, the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2012).”, since the removal of “any of Scottish Water’s assets” avoids creating the preferential “rights” afforded to Scottish Water through the previous wording of the section.

Areas of concern that remain in the Bill as published

In our response to the consultation on the first draft of the Water Resources Bill we identified several areas which SSE felt put its operations at risk. Some of these concerns have been addressed, as illustrated above, however some remain.

In order to exercise its function to develop the value of Scotland’s water resources, it is proposed that Ministers could issue directions to a designated body. One such designated body being Scottish Water. If Scottish Water is to develop hydro generation and other renewable assets for commercial purposes as proposed, it will necessarily become a market participant in the established competitive generation market and must be bound by the same requirements as other market participants. We therefore do not believe that it is appropriate for Scottish Water, as a competitor, to be potentially afforded special “powers” that could (by design or default) influence its position in the market. We therefore do not believe that Scottish Water should be given any such directions where a competitive market is impacted, either directly or indirectly (be it electricity generation or an openly competitive water market).

Certainly, prior to any directions being given to any designated body, there should be an open and transparent consultation process to canvas the views of any interested party, not just the proposed designated party as currently proposed.

2
One of the clarifications being sought through the legal drafting is to specifically enable Scottish Ministers to lend directly to Scottish Water subsidiaries. We understand that this is already taking place indirectly and the purpose of the drafting is specifically to enable Scottish Water to receive loans from the Scottish Government to support investment in renewable energy generation and infrastructure on a commercial basis. In our view, given Scottish Water’s particular status, we are concerned that this could be construed as state aid and would have the potential to distort competition and affect trade in the competitive electricity generation market. We also question the appropriateness of Business Stream’s apparent receipt of loans from the Scottish Government for it to operate in competitive water retail market. On this basis alone, if progressed, we believe that this could be challengeable and we do not believe that it is appropriate for this provision to proceed. Furthermore, any current practices that indirectly provide for the same loan facility to Business Stream should be scrutinised to ensure that no inappropriate aid is being provided.

**Competitive framework**

We note that the Water Resources (Scotland) Bill does not make any explicit provision for developing the competitive framework for the water industry in Scotland, as we had suggested in our response to the earlier consultation paper. However, we are also aware that the recently published draft Water Bill for England and Wales has set out the aim of establishing “a seamless cross-border market in water and sewerage retail services”. It is evident that the UK Government is in discussion with the Scottish Government about the possibility of changes to Scottish law to complement the sections of the draft Water Bill that allow Ofwat to cooperate with the Water Industry Commissioner for Scotland in relation to licensing and regulation of retail licences.

As noted in our response to the earlier consultation, SSE has a subsidiary with a growing competitive water business in England and Wales using the “inset” model, whereby last mile infrastructure as well as water supply is provided as an appointed undertaker for a specific greenfield area. The draft Water Bill allows this business model to be pursued in England and Wales by means of retail infrastructure authorisations within the water supply and sewerage services licensing framework. The advantage of this approach for SSE is that, once a supply licence is granted with the relevant authorisations, inset infrastructure can be provided at different sites without the burden of site by site application to Ofwat.

SSE welcomes the joint consideration by the Scottish and UK Governments of legislation to streamline the two water markets, following on from the draft Water Bill. We would welcome the extension to Scotland of the provisions in the draft Water Bill that allow for the “inset” form of competition through additional types of licence authorisations. If the Water Resources (Scotland) Bill cannot be used to further the joint working of the two separate water markets, we hope that separate legislation can be brought forward to address this in the near future.

**New section of the Bill**

SSE seeks clarification regarding Part 2 of the Bill, the Control of Water Abstraction. SSE has several concerns relating to this part of the Bill which have been outlined below:

- The late inclusion of water abstraction to the Bill and the lack of communication with consultees regarding this addition, with inadequate consultation with large
abstractors, such as SSE, despite the explanatory note stating intentions to consult large abstractors over the summer recess.

- The rationale for its inclusion is unclear. Existing legislation, e.g. Controlled Activities Regulation (CAR), already provides a regulatory mechanism for controlling and licensing water abstraction. The justification for its inclusion in the outline document is vague and does not provide an explanation for why this new heavy handed and broad regulation is required. Further to this, the new regulation will increase the regulatory and financial burden placed on water abstractors further. It is not made clear why existing legislation is not sufficient to deal with the potential increase in large water abstraction and why power of approval should be shifted from SEPA to Ministers, as existing legislation allows Ministers to become involved already.

- SSE is supportive of the intention to grandfather existing water abstraction licences which were provided under CAR and the exemption of hydro-generation from requiring a licence under the new regulations. SSE is however, concerned with the omission of other power generation sources and the ability of Ministers to change exemptions in the future with no clause to state whether Ministers would be required to justify these changes to exemptions.

- There is also no information on what reasons Ministers can give for not approving a qualified abstraction.

- The reasoning behind providing Scottish Ministers with the decision on whether a licence can be transferred to another person is not explained, and is contrary to CAR.

We would welcome an early opportunity to participate in industry consultation on these recent changes and to explore how the legislation might be amended to more clearly define and address the issues that have led to the late inclusion of this section and to avoid some of the adverse consequences that would otherwise arise. We are concerned that the lack of consultation on these important changes would otherwise leave the Bill open to legal challenge and the prolonged uncertainty and delay that this could create.

We would also propose further discussion on other sections of the Bill in order to ensure, in a similar way, that the purpose is always clear and that the drafting is tightened up to replace potentially ambiguous wording, e.g. ‘reasonable’, ‘sustainable’ and ‘anything’ with more specific terminology.

We have already contacted the industry trade body, Energy UK and asked them to coordinate industry engagement for these purposes.

Conclusions
While SSE supports the strategic vision of Scotland the Hydro Nation and some of the amendments made to the Water Resources (Scotland) Bill we do have serious concerns with certain aspects of the proposals and legal drafting. We would very much welcome the opportunity to discuss all of these points with you and, in particular as a matter of urgency, the issues we have raised in respect of the proposals for legislation.
WRITTEN EVIDENCE OF THE SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION

The Scottish Environmental Services Association (SESA) is the sectoral trade association representing Scotland’s managers of waste and secondary resources. SESA’s Members seek to align economic and environmental sustainability through delivering compliance with relevant EU waste and environmental law.

SESA’s Members provide local authorities and businesses with services and facilities to enable further progress towards the objectives of Scotland’s Zero Waste Plan. Our sector is fully prepared to continue investing in new state of the art facilities to ensure the management of Scotland’s waste meets exacting environmental standards, and in return, expects the Scottish Government to provide both an enabling policy framework and a level playing field to allow our industry to make the necessary investment.

Bio-waste

A key objective of the Scottish Government’s Zero Waste Plan is to capture the value of organic materials such food and green (garden) wastes and reduce the negative climate change impacts of these materials in landfill. The composting of green waste produces beneficial soil conditioners and nutrient rich products while food wastes can be treated in facilities such as anaerobic digestion plants to produce electricity, heat and fertiliser. Other organic waste streams, such as liquid waste from industrial process are also a suitable feedstock for treatment through anaerobic digestion.

SESA’s Members are committed to further investment in organic waste treatment facilities, essential for diverting this waste stream from landfill and many have already made significant capital investments in this area although delays in the introduction of new legislation has meant that the predicted growth in market availability of materials has yet to be fulfilled.

If, as proposed, the scope of Scottish Water’s commercial activities should be further expanded into the waste management sector, it is essential that Scottish Water’s waste management facilities operate on a fully transparent and competitive basis. However, we are greatly concerned by recent Scottish Water activity – and provisions in the Bill – which directly undermine our industry’s current and future investment in delivering the objectives of the Zero Waste Plan. For Scottish Water to press ahead with further investment in new facilities while the commercial case for such infrastructure remains unproven seems irresponsible given current pressures on public bodies’ expenditure and public accountability.

We are also disappointed that fair competition or state aid implications have not been addressed by the Scottish Government in either of its previous consultations (December 2010 and March 2012).

We offer the following comment on the Water Resources (Scotland) Bill.

Part 3, question 7

SESA remains greatly concerned by proposals in the Bill which would allow Scottish Water to engage in commercial activities beyond its core functions. Clause 23 (amending section
51 of the 2002 Act) enables Scottish Water to develop redundant assets for the generation of renewable energy (i.e. into waste management facilities). However, this clearly has the potential to distort the marketplace by putting private sector waste management companies at a competitive disadvantage compared with Scottish Water.

The potential for such market distortion was noted by the Office of Fair Trading in its 2011 study\(^1\) of competition in England between water companies and waste management companies in the treatment of organic wastes.

The OFT noted that the planning system places water companies at a competitive advantage over waste management companies in the development of waste management facilities. Water companies, with planning consent in place for existing water/sludge treatment facilities could co-locate new waste recycling facilities on existing sites – a considerable advantage in obtaining (and driving down costs of) relevant planning consents.

Economic regulation was also cited by the OFT as an additional means by which organic waste treatment markets could be distorted in favour of water companies. It noted that the economic regulation framework enables water companies to enjoy a capital cost advantage relative to other waste companies.

Whilst the OFT report was limited in scope to England, SESA Members also report distortions in competition arising from Scottish Water’s (and their subsidiaries’) commercial activities. For example, we believe that the development of existing Scottish Water-owned land banks and the use of public money to invest in new waste treatment facilities enables Scottish Water to offer organic waste collection services below the market rate.

SESA Members also report difficulty in competing with Scottish Water Business Stream for liquid waste (a suitable feedstock for anaerobic digestion), as the latter entity appears to have inherited a disproportionately high number of the de-regulated Scottish Water customer base and has in effect been given almost monopoly status to introduce new organic waste services.

Scottish Water – clarifying commercial powers

Notwithstanding SESA’s concerns, if the Scottish Government is minded to allow Scottish Water to develop commercial activities, we seek urgent and strong assurances that any waste facilities owned by Scottish Water will operate fairly on the competitive market with in-built transparency on the level of commercial returns achieved by the use of public assets and resources.

Such clarity and detail is essential in primary legislation to inform the democratic process. However, imprecision in the Bill appears to provide Scottish Water with wide powers where the likely character of their execution remains opaque. Without greater joined-up thinking on Scottish Government policy there is a real risk that elements of private sector investment to support the Zero Waste Plan could be withheld or be diverted elsewhere if there is no confidence that fair market conditions will subsist.

On resuming—

**Water Resources (Scotland) Bill: Stage 1**

**The Convener:** Item 2 is evidence taking for the committee’s stage 1 consideration of the Water Resources (Scotland) Bill from energy and environmental organisations. I welcome to the meeting Dr Sarah Hendry, lecturer in law at the international hydrological programme—hydrology for the environment, life and policy, or IHP-HELP, centre for water law, policy and science, which some of us visited a couple of weeks ago; Adrian Johnston, technical director at MWH, who is representing the Institution of Civil Engineers Scotland; Marc Stutter, head of research: catchments and coasts at the James Hutton Institute; and Ian Cowan, co-convener of the water sub-group in the UK Environmental Law Association. I thank the witnesses for their written submissions and invite Margaret McCulloch to begin the questioning.

**Margaret McCulloch:** What is your view of the Government’s overall ambition for Scotland to become a hydro nation? Does the bill go some way towards achieving that?

**Dr Sarah Hendry (IHP-HELP Centre for Water Law, Policy and Science):** Our centre is very supportive of the Government’s decision to focus policy agendas on water. We are very keen to work with the Government and others on taking the hydro nation concept forward and certainly think that part 1 of the bill is an attempt to give some legislative expression to the ideas underpinning it.

**Marc Stutter (James Hutton Institute):** I second that. As an academic research institution that is tied up with Scotland’s water environment, the James Hutton Institute recognises that this is an important step in firming up some of the hydro nation agenda. Scotland certainly has the ability to sell some of its water expertise under the hydro nation badge and the protection of the economic, societal and environmental benefits in the bill will add to those efforts. It would have been nice to have seen closer links between those elements; after all, the economic relies on the societal, which in turn relies on the environmental, and the bill could have wrapped those things a bit more tightly for important economic and revenue-creating sectors in Scotland such as food and drink, land management, tourism and energy.

**Adrian Johnston (Institution of Civil Engineers Scotland):** The Institution of Civil Engineers Scotland very much agrees. We very much welcome the bill and the part that it will play in pushing forward the hydro nation agenda,
although we recognise that it forms only part of that agenda. The bill and the overall agenda will very much help Scotland to maximise the benefits of what it is already good at doing in the water sector; to continue to build capability in addressing complex sustainable water management issues; and to further increase Scotland’s competitiveness on the world stage in this area.

Ian Cowan (UK Environmental Law Association): UKELA supports the hydro nation agenda and the intention to make the most of Scotland’s water resources and undoubted expertise in water matters. However, we are concerned about certain aspects of the bill.

Margaret McCulloch: How adequate was the consultation that took place prior to the bill’s introduction? Are you satisfied with the Scottish Government’s response to any concerns that you raised during the consultation phase?

Dr Hendry: The consultation was generally good. There were two Government consultations, the second of which ran, I have to say, for a shorter period than we would usually expect. The bill team and officials who were working on the hydro nation agenda and the bill were really helpful and were happy to attend meetings that we organised on hydro nation and the bill. The only thing I would say is that, when the bill was published, part 2 came as a surprise to many of us.

Marc Stutter: The background to the overall hydro nation agenda has been quite good, with public meetings, discussions with the academic and water industry sectors and so on. However, I was more involved in submitting written evidence on specific wording in the bill, which is what we are discussing today, rather than with previous meetings.

Adrian Johnston: Similarly, I was not involved to a great degree in the consultation stage but, certainly, in the preparation of the written evidence and the discussions that we have had, we have found it to be a useful process.

Ian Cowan: I have nothing to add to what Sarah Hendry has said.

Malcolm Chisholm: The committee has heard evidence, mainly from Consumer Focus Scotland, that a recent European Commission consultation on the blueprint to safeguard Europe’s waters might have implications for the development of Scotland’s water resources and for the bill. What is your view on that? Are you satisfied that the bill takes account of the drive at European level in relation to developing water resources?

Dr Hendry: We need to wait and see what the output of the blueprint consultation is. It has been a wide-ranging exercise and I understand that it will feed into a great deal of future work that the Commission will undertake on the issue of water in the medium term.

In the short term, I do not think that anything in the bill will cause a problem with regard to the blueprint. One issue that might arise from the exercise is water efficiency in buildings. The bill does not directly deal with that, but it certainly is not in conflict with that kind of policy step.

Marc Stutter: From my knowledge of the EU proposals going into the blueprint, I believe that some of the pillars involve the water quantity and quality aspects and that there is a desire to unite those with other key areas of policy such as habitat, societal benefits from water recreation and wellbeing. The industrial side is important, too. The fact that those policies act in isolation seems to prevent benefits from being realised in the water sector at times and might create conflicts between, for example, dredging under the controlled activity regulations and achieving flood management, or regulations around, say, a new technique for removing waste from sewage that is going into a water stream and regulations about where that sewage should be directed. Various policy trade-offs need to be considered, and there is an opportunity for the bill to start to unite those policies so that those clashes and trade-offs do not impede some of the more visionary stuff that it is trying to put in place.

Adrian Johnston: Building on that aspect, we think that the hydro nation agenda will need to pursue the best possible collaboration between various institutions and groups across Scotland to ensure that we have a truly integrated approach to the management of Scotland’s water and how we talk to the rest of the world about that. The issue of collaboration and understanding how institutions can act in an efficient way, avoiding duplication and so on, is important.

Ian Cowan: UKELA has emphasised the need for the bill to recognise that water has inherent value on its own, in its place in the water environment. The European water framework directive recognises this by stating:

"Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such."

Malcolm Chisholm: Sticking with the European theme, I have a question that I do not know whether you can answer. Are you aware of any other European countries that are carrying forward similar or parallel legislation with the aim of protecting water resources? Are you aware of any other water policies that are being legislated for by other European countries?

Dr Hendry: As far as I know, no one else is thinking about a hydro nation agenda in that broad
and focused sense—the hydro nation agenda is broad, and the Government is focused on it. Almost all European countries have made substantial changes to their water law and accompanying policy in recent years in order to implement the framework directive and the other EU water legislation that has come along with it, and that will probably continue. They have all been doing that, but not with the same hydro nation focus.

Malcolm Chisholm: Let us turn our attention to England and Wales rather than the whole of Europe. Other witnesses, including Consumer Focus Scotland and SSE, referred to the opening up to competition of the non-domestic water and sewerage market in England and Wales, and there was some discussion of the possible impact of that. How might that impact on the proposals in the bill, and how does the bill anticipate such changes?

Dr Hendry: There will be opportunities for Business Stream in the opening up of the market in England and Wales. There will be opportunities for companies in Scotland to take up the new challenge of a more open market south of the border, and the bill clarifies a number of issues relating to Scottish Water and the subsidiary companies, which will be helpful to that process.

The English bill is at an early stage, and what will happen in England is not wholly clear. It would be nice to think that those working in the water services sector in England are fully up to speed on all the interesting things that have already been done in Scotland to open up the retail market and that they are taking the fullest advice from the Water Industry Commission for Scotland, in particular, about our experiences here.

Adrian Johnston: What has been happening in Scotland is working well, and Scotland can see itself as an exemplar for how that could be progressed in the wider United Kingdom. Overall, however, on the issue of the horizontal layering of the different aspects of water supply and delivery, Scotland needs to—sorry, I will stop there. I will come back to that.

Ian Cowan: I do not really have anything to add, I am afraid. I cannot help you there.

The Convener: Do not worry—we can come back to that.

Adam Ingram: Mr Cowan has touched on the issue of the value of Scotland’s water resource. There has been some criticism that the definition of value in the bill is too narrowly focused and is too much to do with the exploitation of the resource as an economic asset. How would you like the bill to be reshaped by the type of definition that you are looking for? Would other proposals flow from a redefinition?

Ian Cowan: As I said, the first thing that UKELA would like to see is an explicit recognition that water has an inherent value that is not economic but is a wider social and environmental value. The definition of value in the bill includes the phrase “economic and other benefit” and the responses to date have said that the environmental and social aspects are covered by that, but we still feel that the dominant drive is economic. In promoting such a wide agenda as the hydro nation agenda, it is difficult to find the right words to express in legislation what you are trying to do. It occurred to UKELA that legislation might not be the way to address the hydro nation agenda and that there may be other ways of doing it.

Now that a legislative approach has been opted for, it is important that the bill is explicit about the other values that need to be stated to make it clear to anyone reading it that it is not just about development. The words “development” and “value” have connotations, and the word “resource” could be viewed as quite an anthropocentric concept. In all those terms, there is a risk that economic values might be predominant. Rather than saying “economic and other benefit”, we think that it is important explicitly to say “economic, social and environmental benefits”.

11:45

Adam Ingram: I am curious to know other witnesses’ take on that. Would it make any significant difference to the proposals in the bill if we altered the definition along the lines suggested by Mr Cowan?

Marc Stutter: It is a fascinating area. I see the bill as paving the way for lots of future developments by setting out the groundwork for those developments. It already does that—justifiably so—on handling effluents, waste and water abstraction, drought orders and things like that, but you could extend that further so that water can be seen as a test case for the important concept of ecosystem services, which is gaining steam throughout Europe. It is a nice way of uniting the positive and negative aspects of water, and putting the things that are put into water and the things that are taken out of it on a level playing field. If you were to take the ecosystem services approach in the bill, you could bring together the economic, societal and environmental benefits and pave the way for the use of some nice tools, such as payments for ecosystem services.

Adam Ingram: I look forward to your draft amendments.

Dr Hendry: I have a number of thoughts about section 1. On the amended provision about sustainable use, our centre feels that “sustainable
use" is a better term than what was there before, although we still feel that "designed to contribute to" is quite weak.

I agree with Ian Cowan that, at a minimum, the terms “social” and “environmental” should be included in section 1(3), instead of just “other”. We understand that the principal locus for defending the water environment is the Water Environment and Water Services (Scotland) Act 2003. Nonetheless, the focus on development, while important, needs to be balanced.

Another possibility that we suggested is a specific duty to take an ecosystems approach, just as Marc Stutter discussed. However, that still has an anthropocentric element to it—it is still really about human use. A statement that includes the inherent value of water in its natural environment would perhaps be the strongest thing that you could put into the bill. Those are all choices that could be made, but explicit recognition of the social and environmental aspects is certainly necessary.

Adrian Johnston: I very much agree with that. Although the focus on economic benefit is important, we increasingly need to better understand the social and environmental aspects. The area of ecosystem valuation is developing all the time, and more work is being done to understand what the different types of values are in terms of benefits that can be accrued. There needs to be flexibility in the bill to ensure that they are clearly recognised.

Ian Cowan: That development of an ecosystems approach is something that Scotland could export as part of its expertise.

Marc Stutter: What I failed to voice properly was the fact that it would be really nice and quite an exportable and tangible thing to be able to show that we can manage water well in Scotland using a concept such as the ecosystems approach. Water is central to a range of conflicting catchment uses—it is needed for renewable energy, for growing enough food and for providing habitat. Such an approach involves recognising that we have a number of competing users across a wide range of sectors and balancing all that so that we have enough water for all the users and services.

Adam Ingram: There is an issue that arises in relation to climate change. Driving towards an improvement in the standards for water and waste water tends to involve the use of quite a lot of energy. How do we balance the large energy input that is involved in achieving improved water standards with the need to meet our climate change carbon targets? How do we deal with that? There is nothing in the bill that would give you guidance on that, is there?

Dr Hendry: No—other than the requirement for Scottish Water to do more on our renewables agenda. Scottish Water is especially mindful of the difficulties that you talk about. As we move into the next regulatory period, perhaps we will see more emphasis on innovation—that is a word that I try to avoid using—and on solutions that are not low tech but more cognisant of the energy dimension of treatment.

Adam Ingram: I take it that you are looking for such issues to be covered by the bill’s wider approach and that you are not just focusing narrowly on the exploitation of the resource itself. Is that right?

Marc Stutter: Yes. There are two sides to that. There are aspects that are not covered in the bill, such as how we can derive benefits from protecting the water environment through minimising diffuse pollution and by increasing soil carbon in the catchment so that soil erodes less and stores more carbon. There are complex underlying issues that are not dealt with in the bill, but there are aspects that are covered in the bill, such as driving down energy use in water treatment and supply, encouraging water reuse and recovering more resources from what are currently called waste streams. If, as a key player, Scottish Water acts in collaboration rather than in competition with small and medium-sized enterprises in that industry, the bill has the potential to balance that side of things.

Adam Ingram: You also think that the linking of water resource use to the land use strategy is a benefit that could flow from the bill. What is your view on that?

Marc Stutter: It would certainly be good if the two went ahead together. The land use strategy mentions water, so any water strategy should refer to the land use strategy, because it covers broader, competing aspects of habitat and land use that all impact quite heavily on the water environment.

Adam Ingram: What I am driving at is whether we need changes to the bill to create such linkages or to ensure that they happen.

Adrian Johnston: The Institution of Civil Engineers well recognises that sustainable water management is about much more than managing the assets for drinking water separately from doing all the other things. As you know, a lot of progress is being made in integrated catchment management and broadening the boundaries of the way in which we manage water.

I mentioned collaboration. It is necessary to ensure that there is strong collaboration between Scottish Water and its regulators and other stakeholders at a catchment level. Each catchment has different challenges and issues but,
through the river basin planning process and so on, there are opportunities to develop those more cohesive approaches. The bill could do more to underscore the importance of catchment-based approaches.

**Adam Ingram:** I have a couple of more specific questions about the directions that Scottish ministers might issue to the designated bodies. Dr Hendry’s organisation has stated that the directions should be subject to a public consultation. What benefits would that bring? Is the list of designated bodies in the bill appropriate?

**Dr Hendry:** I have no concern about the list of designated bodies or the power of ministers to add to it with consultation. I know that some organisations have already asked whether they can be designated bodies. However, I have a general concern about directions in that, in effect, they have the force of law but they are not always published in the same way as a legal instrument. That is part of the reason why, in the centre’s submission and its response to the Government consultation, we suggested that directions should be consulted on unless they are made in an emergency and there is simply no time to consult—that is different. It should be a public consultation and there should be a commitment to publish the directions. They are usually available somewhere, but they are not always easy to find. The issue that we raised was a general one about transparency in the use of directions.

**Adam Ingram:** Does anyone else have a view on the subject?

**Marc Stutter:** The bodies that are mentioned in the bill seem to be an appropriate group to bring together to try to resolve some of the issues with funding and innovation. It would allow discussion of regulation and the regulatory barriers that might stand in the way of some of that innovation being realised. Scottish Water is in a unique position to lead and flagship that development, and the involvement of SEPA, SNH and Scottish Enterprise would be good. The Forestry Commission should perhaps be represented as it is quite a big landowner, especially in protected source regions.

**Ian Cowan:** I echo what Sarah Hendry said about consultation. It is particularly important to consult the other designated bodies before one of them is directed. The Government does not know everything, and something can always be learned from consultation. I do not see what objection there can be to consultation in cases where there is no urgency.

**Adam Ingram:** There is a proposed reporting period of three years. Some people have said that that is too short and that it should be changed, but others have welcomed it on the basis that it would fit with the six-year reporting cycle for river basin management plans. Do you have a view on the adequacy of the proposed three-year reporting period? What should the reports contain?

**Adrian Johnston:** We are concerned that three years is too long to wait for the reports. Given that the hydro nation agenda is important to Scotland’s ability to make progress towards meeting its objectives, we believe that consideration should be given to more frequent reporting, certainly initially. That would establish momentum, ensure that progress is made and ensure that there is good return on the investment. The period could be reviewed in future.

12:00

**Dr Hendry:** We would like clarification that the reporting will be on-going. On one reading, section 4 could require a single report after three years or thereabouts. We also note that the bill repeals the high-level reporting mechanism under the Water Environment and Water Services (Scotland) Act 2003.

We would like on-going reporting—the periodicity is perhaps less important. We wonder whether an opportunity to coalesce exists, because reporting will still take place under the Flood Risk Management (Scotland) Act 2009. Reporting under WEWS is being removed, but there might be a rationale for having a single form of high-level reporting on the policy and legislative framework for managing water, which could incorporate action under all three acts.

**Marc Stutter:** The hydro nation agenda has built a head of steam in the past few months, and it would be nice to keep that momentum going. With that in mind, and given that the hydro nation is important, I believe that three years is a long time to wait for understanding and analysis of whether we are doing something correctly.

On the realisation of new flows of money into Scotland from European research and design sources, the hydro nation provides a good way for us to align with funds such as the EU framework funding for science and innovation under the horizon 2020 programme. If we are doing that wrong, there will be a big consequence down the line. I would like reporting to be done in stages and a bit earlier, if that is possible.

**Ian Cowan:** It is perhaps wrong to repeal the reporting duty on ministers under the 2003 act. The river basin management plan system has a six-yearly detailed reporting requirement, which serves a different purpose from that in section 26 of the 2003 act, which provides for an annual high-level report to Parliament. The provisions do not serve the same purpose.
Marc Stutter: As has been pointed out, it would be nice to review the bill in line with—and not in isolation from—all the other statutory instruments, as well as other tools for realising water benefits, to ensure that things are on track. That would be beneficial.

Adrian Johnston: A related matter on which we would be interested to see information is the type of reporting that is being talked about. Should particular measures be developed that align with the objective of the hydro nation agenda and which could be reported on in relation to the different aspects that we have discussed? Such measures could concern direct economic benefit or other aspects, such as improvements in employment, education and knowledge development transfer. That would ensure that the reporting system adequately covers the agenda’s aspirations.

Adam Ingram: We will come back to that.

The Convener: I am sure that we will.

Alex Johnstone: I have questions on water abstraction, which was the surprise package in the proposals. Some of you have said that you have substantial concerns about the underlying purpose of—and even the need for—the provisions on abstraction. Will you explain your concerns and tell us how you might prefer the bill to deal with abstraction?

Dr Hendry: Our view—and, possibly more so, that of UKELA—is that a comprehensive set of abstraction controls already applies in Scotland under the controlled activities regulations and we struggle to see the added benefit that the bill will provide. I know that it is argued that ministers are better placed to consider economic and social aspects—UKELA’s submission discusses that more fully—but we see no reason in principle why ministers could not exercise their call-in powers over abstractions that are of certain types and above certain limits.

The CAR regime is well established and works well. It is thorough and has good provision for third-party representation and so forth. We find it difficult to see the added benefit of another layer of regulation.

Alex Johnstone: The late inclusion of the abstraction provisions meant that they were not consulted on. Would there be merit in the Government consulting on them before the bill’s final stages in Parliament?

Dr Hendry: I do not think that I could answer that question. It is clear that a consultation is going on now through the parliamentary committee, and that might be the best approach at this stage. Time constraints might impact on that suggestion.

Alex Johnstone: You should never overestimate the ability of a committee to influence the Government.

Dr Hendry: That is exactly what I meant. The committee is taking the matter forward, and perhaps that is a better place for the discussion at this stage.

Marc Stutter: My point was about how the 10 megalitres of water per day or the defined limit was reached in ministerial deliberation. The figure seems rather arbitrary. Obviously, the abstraction rate should be matched with the size of the water body or the other services that receive damage or losses because water is being abstracted, so it cannot necessarily be applied across the board as a single value. If that is dealt with in the CAR regime already, it will probably suffice, but if it is not, the bill should include something that looks a bit more specifically at where the water is taken from rather than a standard amount.

Adrian Johnston: I very much agree with that. We appreciate that a limit would be wanted for practical purposes, but every catchment is different.

The other issue for us is that we would like a little more understanding of the reasons for the particular exemptions that are identified. There seems to be a wide number of exemptions to the new power, and it is not clear to us why some of those activities would be considered differently from other more general abstractions.

Alex Johnstone: Will Mr Johnston and Mr Stutter say something about the concerns that they have expressed about the regime and the exemption of certain individuals or activities?

Marc Stutter: Obviously, a range of activities require water. I think that it has been discussed in previous evidence that some users or abstractors of water will return it virtually unpolluted, so they are simply temporary borrowers of it. Some may return water heated up, some may return it polluted, and some may evaporate it off to the sky.

Many different things can happen, and the question is whether the matter is dealt with successfully by an older system such as an abstraction licence system or whether it is time to look more at the quality of what is returned and look to consumption-based or usage-based financial schemes. That would take us more into payment for ecosystem services, but the bill could touch on that and make a new and fit-for-purpose scheme work.

Ian Cowan: I agree with that. The controlled activities regulations or the charging scheme that SEPA operates cover those nuances of consumptive and non-consumptive uses of water resources. However, things are not clear in the
regulations because of how they have been drafted.

The issue goes back to the purpose of the proposed new regime. As members know, the controlled activities regulations are required to implement the provisions of the water framework directive. One of the provisions of that directive is that when a proposed abstraction would cause a deterioration in a water body’s ecological status—in other words, if an abstraction was so big that it would downgrade the water body’s status—SEPA must conduct a major balancing exercise that is based on sustainable development principles. It is therefore required to consider economic and social as well as environmental aspects.

SEPA has a well-developed method for dealing with those decisions, which it applies quite frequently. It has also been successfully defended on appeal, so it has been subject to scrutiny by Scottish Government reporters. It is not therefore accurate to say that SEPA only looks at the environmental aspects of major abstractions. I will not question the need for the regime on that ground.

I have some data on the numbers of authorised abstractions under the controlled activities regulations around the 10-megalitre threshold, if the committee is interested. The data that SEPA gave me exclude public water supply because of concerns—well, I will let SEPA explain that if it wants to. Public water supply would be exempt under the proposals anyway.

There are currently 199 authorised abstractions exceeding 10 megalitres per day, of which 177 would be exempt under the proposals. The remaining 22 are for industrial process water, although it is not clear from the data that I have received whether that is for cooling or other industrial uses. Below that threshold, there are about 100 abstractions of between 2 and 10 megalitres per day, so there are more in the higher category. Under the current proposals, we would be looking at 20 abstractions over the five years since CAR came into force.

Alex Johnstone: On a slightly different tack, the centre for water law raised the issue of the ownership of water and the possible bulk sales of water outwith Scotland. Can you expand on those comments and tell us how that might impact on the proposals in the bill?

Dr Hendry: The committee has already had evidence from Stephen Rees. You asked him about ownership and I generally agree with everything that he said.

The history of who owns water in a mixed jurisdiction such as Scotland is very complex. We have our roots in Roman law, which was also very complex. We would generally say that there is no ownership of water as such, at least of running water, but that there are property rights that might amount to or look quite like some elements of ownership in terms of the degree of use that can be afforded.

The Water Environment and Water Services (Scotland) Act 2003 and the controlled activities regulations were not challenged in terms of prior ownership rights over water, which was really heartening. It indicates that users in Scotland are cognisant of the need for a modern water law regime that allocates water under a sensible licensing system.

Ownership is not really an issue for the policy and legislative framework. To be honest, I am not convinced that bulk water supply is an issue either, at least not in the sense of major transfers for public use. There are environmental and engineering issues around the bulk transfer of water. However, as the centre for water law understands it, in many places around the world when bulk transfers out of a jurisdiction are attempted, it triggers a lot of concern among the public and non-governmental organisations. At that point, questions around ownership might become a little livelier.

In our submission, we were just drawing attention to the fact that the position is not wholly clear. In many ways, the question has been overtaken by the current modern statutory framework, but issues might still arise, particularly in the context of bulk supply.

Alex Johnstone: Can you not imagine circumstances during the projected lifetime of the proposed legislation in which, if the bill does not deal with those issues, it will be found to be inadequate?

Dr Hendry: Should the bill deal with ownership? When I am in other countries, I tend to take the view that the best thing that a water resources act or a water code could provide is that water is held in public trust. That answer to the ownership question is generally unobjectionable and hits all the right notes, in that the state has control over water in the public interest and can allocate it for beneficial uses and so on. That would be my preference in the framing of a modern water act.

When WEWS went through, the issue did not really have to be addressed so—perhaps sensibly—it was not. However, the general approach that I would take is that water should be held in public trust.

12:15

Ian Cowan: I support that. There might be an opportunity through the bill to clarify the matter, which, as Sarah Hendry says, is not clear. That
approach would chime with Scottish Water's status in Scotland, which contrasts with the situation in England. Scottish Water is our only public water company, so there is an opportunity to take such an approach.

To return to Alex Johnstone's previous point, it would be a good idea for the Government to consult on the proposed new abstraction regime. That issue deserves wider scrutiny.

Marc Stutter: Perhaps it is more in line with the approach here that people should be regarded not as water owners but as custodians, and therefore as having to act in ways that minimise pollution or waste. People would never have ownership but would be responsible for water while it is on their land.

The Convener: We will move on to Scottish Water's functions.

Through its arm Scottish Water Horizons, Scottish Water is already investing in renewable energy sources and waste management activities. Therefore, is part 3 of the bill necessary?

Dr Hendry: I think that part 3 adds a deal of clarity and makes provision that does not currently exist. There are specific requirements on developing the assets and renewables. Although Scottish Water does those things anyway, the bill perhaps makes it clear that they are part of the hydro nation agenda. We also have a new definition of core functions. Sections 25 and 70 of the Water Industry (Scotland) Act 2002, when read together, are not wholly clear or the easiest provisions to read. Section 24 in the bill is certainly an improvement in that it specifies for the first time that the core functions relate to water and sewerage services.

The Convener: Does that represent an expansion of Scottish Water's core functions?

Dr Hendry: We have reflected a lot on that. Our concern is about the phrase "relating to". Perhaps the issue is more about the policy context rather than the bill, but we wonder what the phrase "relating to the provision of water or sewerage services" means.

If Scottish Water generates renewable energy on-site for use in a treatment facility, that clearly relates to water and sewerage provision and so is core business that is regulated and paid for by the customers. If Scottish Water generates energy that goes solely to the grid through Scottish Water Horizons, that is on the non-core side. However, there could be grey areas where it is harder to draw the line, perhaps if some energy is used in-house and some is exported. Therefore, we need clarity on what is regulated business and what is Scottish Water Horizons business. That is what we are looking for.

The Convener: In written evidence, the James Hutton Institute said that there is a need for "localism' in distribution, water reuse, waste stream separation and treatment."

Will you expand on that and say how it relates to the proposals in the bill?

Marc Stutter: Lots of innovation is needed in the water sector to overcome the status quo of the inherited systems of distribution—particularly in a country such as Scotland that has a fragmented population—and our treatment of what are currently viewed, rather wastefully, as wastes. However, to do that requires infrastructural change on quite a large scale.

The fact that Scottish Water is a public body that is able to act outside the constraints of shareholders and so on puts Scotland and the hydro nation agenda in quite an enviable position, certainly in Europe. If we can capitalise on that and if, with the support of the bill, Scottish Water can take some slightly brave steps towards putting some of the infrastructure in place, we can perhaps do things more innovatively in the future. We can begin to separate wastes locally so that domestic waste is not being mixed with industrial waste and the potential reuse of the resource is not lost because it is contaminated.

If we can get Scottish Water to act a bit more innovatively and implement such local solutions as local water distribution and treatment to drive energy usage down, we can use that as an exportable model of how Scotland is a bit more revolutionary in how it is doing things. I see Scottish Water's role as a pillar in the hydro nation agenda along with the academic part of the hydro nation agenda in quite an enviable position, if we can capitalise on that.

The Convener: Concerns have been raised by the energy and waste management sectors that granting these powers to Scottish Water will give it and its subsidiaries an unfair competitive advantage in the market. Does that concern you? Is that the reality?

Marc Stutter: Yes. We would not want to skew the marketplace against small companies that are trying to act on their own footing. The Parliament should, instead, come up with something whereby Scottish Water is seen as a big player in the hydro nation agenda along with the academic part of the research and development sector. If those two—Scottish Water and the academics—came together for the hydro nation agenda with the Scottish Government as an enabling body, and if Scottish Water was carefully positioned so that it did not act in competition with the SMEs but was a collaborator and enabler, that would hopefully
resolve the issue. It is quite important that it is resolved.

Adrian Johnston: On the flipside, one of the fundamental things to be encouraged, as far as Scottish Water is concerned, is resource efficiency. Whether that involves Scottish Water generating energy, which helps it to reduce its energy use, or making best use of the by-products of water treatment, thereby maximising the recovery of resources, it should be very much encouraged. That, again, could be used as an exemplar for other water companies and organisations that process inputs and produce outputs.

Fundamentally, it is a matter of moving away from the concept of an organisation producing a water and sewerage service and not worrying about everything else towards the maximally efficient use of resources through the operations that the organisation performs.

Gordon MacDonald: Part 4 of the bill allows Scottish Water to enter into agreements with landowners in order to undertake works to prevent deterioration in water quality. Concerns have been raised about the nature of those agreements, and it has been suggested that some clarification is required.

The written evidence from the centre for water law and UKELA asks that linkages between the proposals in part 4 and the existing regulation of raw water quality under the Water Environment and Water Services (Scotland) Act 2003 and the water framework directive be made more explicit. How could that be achieved?

Dr Hendry: We support part 4. We think that there is a great deal that water services providers, when they are vertically integrated, could and should be doing in terms of catchment protection at that scale.

The diffuse pollution regulations have been introduced and are being enforced by SEPA, although we understand that SEPA’s monitoring of water quality has been reducing for various reasons. We want to ensure that there is adequate tying-in of the two sets of activities—certainly, those are things that Scottish Water should be doing. We have suggested that there could be a specific duty on Scottish Water to co-operate with SEPA on processing and perhaps a wider duty of co-operation, such as we see in the Flood Risk Management (Scotland) Act 2009, to ensure that it works with all the key stakeholders when it takes forward the catchment initiatives.

We would be concerned to ensure—as I am sure will be the case—that nobody incentivises a land manager to do something that the criminal law requires them to do anyway.

Gordon MacDonald: Does anyone else want to add anything?

Ian Cowan: Sarah has covered it.

Marc Stutter: I will add one thing. It is a matter of linking the catchment of water source with the water itself. That is key and it brings in all the things that we said earlier about water being a limiting factor for developing other assets, such as renewable energy and food. As it is written, however, the bill is quite vague about that aspect. For example, section 28(2) states that Scottish Water ‘may enter into agreements with ... owners and occupiers of ... land’, as well as with local authorities to carry out ‘activities’. The use of words such as ‘agreements’ and ‘activities’ creates vagueness, compared with specific references in other parts of the bill to, for example, fats going down into the sewer network.

I do not know whether the wording in section 28(2) has been left vague for a purpose, but the issue is clearly important because Scottish Water is undertaking catchment-based solutions for some of their source-water problems—for example, with pesticides in the Ugie. SEPA obviously knows, from its priority catchments, that the issue is important and that it wraps up all the catchment aspects, such as the water blueprint that it is trying to implement. It is a big and important issue.

Gordon MacDonald: We have touched on SEPA. Some of the evidence that we have received has argued that it would be better for SEPA, rather than Scottish Water, to take on the new powers over raw water quality. Can you explain the reasoning behind that view, which I think came from the centre for water law and UKELA?

Dr Hendry: I think that we were making the point that SEPA has traditionally had the expertise in monitoring raw water quality and seeking to manage diffuse pollution. The diffuse pollution regulations in Scotland were quite innovative—very few countries have gone down that particular route—but they have not had a great deal of time to become embedded.

We recognise that the water services provider can play a key role as well, and we understand that there may be situations in which it would be in a better position to come to an agreement with a land manager than the regulator might be. We are not therefore suggesting that Scottish Water should not do such things, but we think that it is important that it co-operate closely with SEPA in particular and with other authorities.
Marc Stutter: SEPA is certainly the best regulatory body for undertaking the monitoring of whether water is fit for purpose. However, until quite recently with its excellent approach to the general binding rules, SEPA did not always make things happen on the ground. It is undertaking the priority catchment actions at the moment, but that work began only quite recently and there should be more of it.

Other bodies can do more of that work, too. Scottish Water is trying to do it in its own way, which appears to be very successful. Other bodies exist in Scotland, such as catchment management partnerships, which include SEPA and designated bodies and which are good models.

Ian Cowan: It is important for the committee to understand, if it does not already, that the diffuse pollution regulations, as part of the controlled activities regulations, involve no contact between individual operators and SEPA. The general binding rules are observed only in their breach, if you like. Basically, if someone complies with the rules, they are authorised and there is no contact with SEPA.

It is therefore important that a partnership approach is used by public bodies and that they share their resources in trying to enforce the regulations, because it is an enormous task. That is also why it has to be done on a priority basis, as Marc Sutter has said. However, it will be a long time before Scotland can say that we know that we have dealt with the diffuse pollution issue.

Marc Stutter: When that work started, the general binding rules were poorly understood, particularly among the farming community. It took SEPA’s wise actions in communicating them in a national campaign and then undergoing demonstrations and catchment walks before the message sunk in. Perhaps the bill could further the enabling of that kind of local, on-the-ground co-ordination.

12:30

Margaret McCulloch: I will ask some questions about septic tanks, if you do not mind. The bill will allow an individual to take action if two, three or four individuals share a septic tank, but at least one person will need to take action to get the septic tank sorted. They would need to pay up front and try to recover the costs from the other owners, which could end in court action. How effective will those provisions be in ensuring that maintenance of septic tanks occurs, taking into consideration that some owners will not want to pay for it? Could such situations be tackled in any other ways?

Ian Cowan: I think that it will be a huge improvement on the existing situation. Currently, even in a situation where one or more willing householders know about a problem and are willing to take action to do something about it, they are stuck. The provisions will at least improve the situation to the extent that one willing owner will be able to force—through legal action, if necessary—their fellow owners to help. The provision is not ideal, but it will be a big step forward.

Of course, SEPA has powers to deal with septic tank problems, but there is a similar enforcement issue. When groups of householders share a septic tank it is difficult to attribute blame even-handedly. Another thing is that SEPA does not yet know where all the septic tanks in Scotland are. The register is not yet complete because of the pragmatic approach that SEPA adopted to the implementation of CAR in the early years. A septic tank is brought to SEPA’s attention when there is a problem. Once people complain, registration happens and action occurs.

I support the measure. I cannot think of how to deal with a situation where there is not a willing owner, unfortunately, unless SEPA comes in. Inevitably, enforcement can require a heavy-handed approach. Perhaps there is no middle way.

Dr Hendry: I agree. We suggested the possibility of Scottish Water having a budget and being more proactive in taking over septic tanks in rural areas. I appreciate that there is a sense that that might interfere with individuals’ property rights, although in many cases if one is unlucky enough to be part-owner of a malfunctioning tank that would be quite welcome. There would certainly be a cost involved. You might say that that was equitable and that those of us who are lucky enough to live in the middle of Scotland get part of our mains drainage funded by Scottish Water, or you might say that it is too high a cost. We accept that that is not what has come forward in the bill.

Given the complexity, I tend to agree with Ian Cowan. The provision will solve the most common situation, where there is perhaps one recalcitrant owner. It will not solve situations where there is a whole group of them and just one person is expected to find the funds.

We also support the provision suggested in the UKELA response that if that part of the bill remains, standard forms should be made available in schedules to the bill. That would be really helpful to owners in those situations.

Marc Stutter: In addressing the regulation of water resources, we need to look at multiple-occupancy septic tanks, which are the next level down from water treatment works, rather than the much more diffuse individual tanks in rural environments. It is worth directing a little resource
spend towards ascertaining whether those tanks are failing, because we can probably get more of a benefit for our money by tackling them rather than putting money into individual household tanks.

There are barriers with regard to some of the eco-innovation aspects of tidying up those effluents—for example, the use of willow biomass treatment beds. Even if the water in the bigger multiple-occupancy tanks is taken to a very clean state by some of those tertiary treatments, the rules say that it still cannot be discharged, so it would need to be piped away. There are some policy regulation clashes in that regard, and it would be sensible to target some actions at resolving those issues.

Margaret McCulloch: I do not have—and have never had—a septic tank, so I do not know what the repair costs might be. However, from a home owner’s point of view, if only one out of four people was willing to pay up front to get the septic tank repaired, there could be a large bill for that person. They may have to take out a personal loan to pay for it, knowing that they will have court costs to pay on top of that. With that in mind, do you think that a lot of people would be proactive in getting their septic tank repaired?

Ian Cowan: I have a septic tank, and I unfortunately had to get repairs done last year, although not to the tank itself. I share not the tank but the soak-away, which is where the effluent from the tank is dissipated into the ground; that is effectively the discharge point.

It cost £2,000 between three households to dig up and replace the whole soak-away, which was malfunctioning. I think that there would be concerns about getting disadvantaged householders to fork out.

Marc Stutter: Coupling the tank to its effluent outflow field is important when we come to deal with the specifics. People often talk about the tank when that is only about a third or a quarter of the treatment, most of which is done by filtration through the soil in the outflow field. In a lot of cases, that is piped directly to a stream when there is no effective treatment through the soil.

Margaret McCulloch: The written evidence that we have received is generally supportive of the proposed water shortage orders. Do you have any concerns about the new orders, particularly with regard to whether they might have a negative impact on businesses that rely on water use?

Dr Hendry: There are two ways in which a business might be affected, one of which is through the water-savings measures in schedule 2, whether they are being recommended as a preliminary stage before an order or accompanying an order. The other relates to businesses whose abstraction rights are affected by the new controls that are brought in. There is not much that we can do about that. If we are going to bring in a water shortage order that allows Scottish Water to make additional abstractions, one consequence will be a reduction in what other people can abstract.

On the water-saving measures, we argued strongly in the second Government consultation that the measures should apply to businesses as well as households in the first place, and I think that that is now the case. Consumer Focus Scotland suggested that that part could be a bit clearer, because it refers to people. It is important on equitable grounds that the measures apply to both domestic and commercial users, and the right balance has now been struck in part 7.

The Convener: As there are no further questions, I thank the witnesses for their evidence. It was very helpful for our consideration of the bill. I ask the witnesses to leave quietly so that the committee can crack on with the rest of our agenda.
WRITTEN EVIDENCE FROM THE IHP-HELP CENTRE FOR WATER LAW, POLICY AND SCIENCE

Firstly, we would like to reiterate our continued support for a political agenda that focusses on water and for most of the provisions in the draft Bill. We will be pleased to work with the Committee and the Government to further that agenda and the successful implementation of the Bill.

Our response below makes some detailed analysis; we would firstly make 6 key points which are of relevance to several parts of the Bill and our response.

- The need to take an ecosystems approach and protect the water environment for its own sake as well as for human uses;
- Clarity around powers and functions, especially regarding the Ministers and Scottish Water;
- Checks and balances on the exercise of powers to ensure transparency and accountability;
- The need for partnership working at a catchment scale;
- Clarity around the definition of Scottish Water's core functions;
- The desirability of Scottish Water playing a more active role in education and awareness-raising in different aspects of water management.

The Water Resources Bill Parts 1 – 3

Part 1 of the Bill restates most of the draft clauses from the proposal in the second consultation. The duty on Ministers remains as it was, to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. Whereas the draft was qualified with the usual formulation of a sustainable development duty in Scotland (ie, “in the way best calculated to contribute to the achievement of sustainable development”) it is now qualified by a requirement to “do so in ways designed to contribute to the sustainable use of the resource”. We would prefer to see a stronger provision to ensure that the ecological impacts of any decisions are taken into account. “Sustainable use” may be more specific, but it still indicates a focus on human uses, and we are unconvinced that “designed to contribute” is an improvement. We would like to see a parallel duty on the Ministers to protect the aquatic resource.

The definition of the “value of water resources” remains unchanged. Whilst it mentions “other benefit” as well as “economic”, we would still like to see some stronger provision recognising the inherent value of the resource, which is quite distinct from any human “uses” or “activities”. We suggest that inclusion of a duty to take an “ecosystems approach” would be helpful here, and that both the ecosystems approach and the land use strategy might be relevant to the supporting policy environment.
Clauses 2-4 also remain unchanged. We would continue to seek some changes here to strengthen accountability and transparency. We would suggest that before directions are given to any designated body, that the Ministers are required to consult all the designated bodies and hold a public consultation. Directions have the force of law and yet they are not always easy to find. A similar requirement should apply to the amendment of the list of designated bodies.

On reporting, we also note the repeal of s.26 of the Water Environment and Water Services (Scotland) Act (2003 asp.3, WEWS). We appreciate that it may be some time before there is a need to report under this legislation and that reporting does take human resource that could be used elsewhere, and we note that reporting under the Flood Risk Management (Scotland) Act (2009 asp.6) is still required. Nonetheless we would like clarity that the three yearly reporting here will be an ongoing requirement. We suggest that early stage reporting is useful regarding the process of implementation, whilst later stage reporting could be used to assess outputs and performance against targets.

Part 2 of the Bill, on a new consenting regime for “qualifying abstractions” is new and it is not wholly clear what is behind these proposals, as there has been no consultation on these. The Policy Memorandum issued with the Bill has several paragraphs addressing these powers, and suggests that the Ministers are better placed to take account of a wide variety of social and economic impacts and consequences – climate change, population change, urbanisation and industrialisation are all mentioned – than SEPA, whose remit under the Water Environment (Controlled Activities) (Scotland) Regulations (SSI 2011/209, CAR) is focused on environmental consequences. This may well be true, and we note that clause 18 clarifies that these approvals do not affect any requirement for a CAR authorisation, so all of the procedural requirements under CAR (eg for third party representations) will still apply to these abstractions.

We also note the caveat (and powers of amendment) relating to this and also appearing in other parts of this Bill, which presumably relate to the current proposals to reform the system of environmental regulation in Scotland. It is especially important in the light of those reform proposals that a “joined up” approach is taken to all consenting regimes impacting on the environment, including all the requirements as to transparency and participation.

The policy memorandum does make clear that this regime will impose criteria wider than the environmental tests in CAR, and therefore we accept that relying on Ministers’ call in powers under CAR might not be able to achieve the same effect without significant revision to CAR. If the intention is to secure additional political control over large scale abstractions for industrial use within Scotland, perhaps by foreign investors, then that is reasonable. Clarification of the resolution of any disagreement between the Ministers and SEPA would be helpful; perhaps a public inquiry would be an appropriate way forward, as on the face of it, the Ministers could simply call in the CAR application and decide it themselves, in line with the consent under this Part. This may be unlikely, but administrative frameworks
should always be designed to limit unfettered discretion even if such is not envisaged in practice.

The Policy Memorandum also says that Ministers might “have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth” (para.24). The implication would seem to be that there is a likelihood of applications to abstract large quantities, possibly for use outwith Scotland, and that SEPA’s powers and environmental focus would not enable SEPA to prevent such use. At the very least, if out-of-Scotland uses are envisaged, the exemptions should specifically not apply outwith Scotland; the Institute of Civil Engineers has recently counselled against complacency in assuming an abundant resource in the longer term.

There seems to be a presumption that the Ministers, and/or SW, hold ownership rights over water in its natural state sufficient to enable that resource to be divested, anywhere and for any purpose. Yet water, running water, has always been a special branch of property law (see, eg, for an early discussion, Magistrates of Linlithgow v Elphinstone (1768) M Dict. 12805). This question was not directly addressed in WEWS when the new comprehensive water use licences were brought in under CAR, and the new licencing regime was never challenged, presumably because those abstracting under the common law recognised that it was proportionate and within the state’s margin of appreciation. That regime enables control of abstractions, and other water uses, for purposes within Scotland but it does not amount to ownership of the water. A better understanding of it might be that the Ministers, and other public authorities, all answerable to Parliament, are exercising some form of public trust, or managing a public good, which enables them to allocate the water. Bulk sale for purposes outwith Scotland is a very different thing. We recognise that SW already has a statutory power to do this under s.13A of the 1980 Act and wonder if this needs to be tied into this new regime in some way.

In terms of the outline of a licensing regime, clauses 9-17, applications may be made to the Ministers, who may make procedural regulations, which in turn may (inter alia) provide for publicity and third party representations (our emphasis). Fees may be levied for administrative costs but these will require regulation. Certain criteria are specified for the Ministers’ decision and conditions can be imposed, but these seem quite broad and general. There is a provision for compensation (cl.11(2)(c) ) and it is not clear if this is financial, or a compensation flow, or potentially both.

There is a duty on the holder to report on their activities – but only to the Ministers and in such form as the Ministers require. We would suggest that such reports should be publicly available. Both SW (unless they are the applicant) and SEPA must give advice on adverse impacts if asked – but the Ministers are not required to ask for advice. We suggest that this should be a requirement. As SEPA will also be determining the CAR application, it should not be unduly burdensome for SEPA to also advise the Ministers. We also wonder if
situations might arise where SEPA was the applicant and whether this should be provided for in cl.13. Suspension and revocation are available at the holder's request, on a breach of condition, or in other circumstances which must be set out in regulation; and the holder must first be informed and allowed to make representations. Appeals may be made to the Sheriff; and the Ministers may make regulations to provide for monitoring, the keeping of records and importantly, the access to such records. We would hope that such records would be made public, and anyway would be covered by either the Freedom of Information (Scotland) Act (2002 asp.13) or (probably) the Environmental Information (Scotland) Regulations (SSI 2004/520). Given the high degree of Ministerial discretion, especially in a unicameral Parliament, we would like to see more detail around publicity, and clarity of roles and functions, to achieve maximum transparency and accountability.

There is a general prohibition on making a qualified abstraction without consent and an offence is committed if this is contravened, or any condition breached, “wilfully or recklessly”, with a fine on summary charge of (only) the statutory maximum. A higher amount in line with environmental permitting offences might be more appropriate. The offence is not strict liability, which makes conviction less likely, but there are no parallel strict liability offences (as under CAR) or any lesser administrative penalties as are under consideration in the new regime for environmental regulation.¹

Part 3 takes forward the proposals for new duties on SW. The new general power (cl.21, adding s.25(1A) to the Water Industry (Scotland) Act 2002 (the 2002 Act) clarifies that in particular, SW’s existing general power extends to “do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources...”. This is certainly specific but does still depend on knowing what that development is likely to mean.

Clause 22 inserts a new s.50A, requiring SW to “[s]o far as it considers it not inconsistent with the economic, efficient and effective exercise of its core functions... take reasonable steps to develop the value of its assets and expertise”; value is (again) stated to include “economic and other benefit” which (again) will stem from “use ... or activities” and assets include “property, rights and ... intangibles”. There is a similar duty (cl.23, s.51A) requiring SW to “take reasonable steps to promote the use of its assets for the generation of renewable energy”. In themselves these are unobjectionable, as any entity would surely wish to maximise their assets and expertise; again though the precise meaning and intent of cl.22 in particular come back to what may be meant by developing value in this context, beyond a clear focus on energy and climate change, and the various activities and plans outlined in the second Hydro Nation consultation.

Clause 24 establishes a new s.70(2) in the 2002 Act to redefine SW’s core functions, but this no longer excludes the exercise of its general powers under s.25(1) and in time, the

proposed s.25(1A). Taken together, it would seem to mean that “hydro nation” activities are no longer excluded from s.70 insofar as they are “relating to the provision of water or sewerage services in Scotland”. If anything, this would seem to potentially widen the definition of the core. Again, this may well depend on the specific activities in question and what is meant by developing the value of the resource. If the intention is to bring these activities, whatever they might be, within the regulatory settlement then that is a significant change that needs to be much more explicit. The current consultation on Investing in Water Services\(^2\) begins by stating that it is not related to the Hydro Nation or the Water Resources Bill, but dividing line is not always easy to draw. If, for example, and given the focus on renewables generation, the intention is to distinguish between generation of power used by SW for its own activities, which would be “relating to”; and “external” generation for supply, through SW Horizons, which would not, then that might be a helpful clarification for the accompanying policy.

The parallel consultation on Investment does mention several “innovations” that may take place in the near future, including catchment protection, managing pollutants at source and customer education, all of which are in the Water Resources Bill in some way. This again indicates the difficulties of segregating the policy environment for SW’s core functions, from its new opportunities.

*The Water Resources Bill Parts 4-8*

Part 4, inserting a new Part VI B (s.76M – 76R) into the 1980 Act, grants broad powers of entry to SW. We note the definition of raw water to include not only water bodies under s.6 of WEWS, but also any other body of water “used for consumption” and designated under this Part, and any water flowing or draining into those waters. We wonder if the intention is that this Part should potentially apply to water for private supply, and suggest this should be clarified. We also note that water “flowing or draining” may emanate from peat bogs. Currently, wetlands are protected under WEWS to a greater extent than under the WFD, but peat bogs are not included in that definition. This might be an opportunity to revise the definition of wetlands to make that inclusion.

We note the new power (new s.68A) for SW to enter into agreements to improve raw water quality. We agree that a water services provider should be a key stakeholder for water resource management – both at large-scale, through river basin planning under the WFD, and through this small-scale, “catchment based” approach that is developing in England as well. We might have expected more references, at least in the accompanying policy documents, to the WEWS Act and the WFD regime as a context for this Bill, as the WFD is a catchment-based instrument, as is the Floods Directive (2007/60/EC) and the Flood Risk Management (Scotland) Act (2009 asp.6, Floods Act). This might in turn address some of the concerns over the new general duties, if the Ministers’ view is that sufficient “protection”

is provided through the general duties in WEWS. It is important that the service provider is involved in the protection of raw water and there is much that the service provider can do. We suggest a duty similar to that in s.1(2)(d) and 1(3) of the Floods Act, requiring SW to work in partnership at a catchment scale with Non-Governmental Organisations as well as statutory agencies and local authorities.

It is arguable that SEPA is better placed than SW to carry out monitoring of raw water quality and that if further monitoring is required, that SEPA should have additional resources here. It is our understanding that currently SEPA is reducing its water quality monitoring network. We accept that it may be that SW’s relationship with landowners could be more conducive to achieving positive behavioural change.

It is also important to maintain a strong regime to control diffuse pollution through the environmental regulator, and that SW is not diverting resources to encourage, persuade or incentivise farmers and land managers to behave in ways that they are already required to do by law. SW should be working closely with SEPA here and a specific duty to coordinate their activities with SEPA’s programmes might help to clarify. We assume that this is a core function, regulated by the Water Industry Commission and paid for by SW’s customers.

This is one of several provisions in the Bill where we think that a requirement for SW to provide information and education around the wise use and management of water, to supplement s.1 of the 1980 Act, might be useful. We identify a number of these opportunities below.

Given the wide powers of entry granted under this Part, there is no specific provision for compensation, though presumably the general provision in s.10 of the 1980 Act will apply.

As the term “premises” is used throughout, but must clearly mean land as well as buildings, it would probably be helpful to provide (as is done later in Part 7) that “premises” includes land and buildings.

We are content with Part 5 on commercial premises and the provision of retail services by licensed providers, including SW Business Stream. We have no specific comments on this proposal.

Part 6 makes amendments to the Sewerage (Scotland) Act (1968 c.47). Clause 31 addresses priority substances and is intended to require industrial operators to eliminate or diminish these substances before they are discharged as trade effluent. We would support this in principle, to reduce the costs of treatment and the need to make special provision for specific difficult substances and also to reinforce the principle of producer responsibility. It does leave open the possibility that if operators install their own pre-treatment then revenue

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3 This proposal looks ahead to the review of the Priority Substances Directive (2008/105/EEC, Annex X to the WFD and see also COM(2011) 876).
to SW from trade effluents will fall, and it does not address the possibility that some priority substances may emanate from private houses or other sources of domestic sewage. This is another area where a requirement for SW to provide education and information might be helpful and relevant.

Clauses 32-33 address substances generally into sewers, and then especially fats and grease. Section 46 of the 1968 Act is already a general offence and on summary charge, that is now subject to an increased penalty of up to 12 months imprisonment as well as the current £40,000 fine. There is then a new s.46A and 46B, creating specific offences for the passage of fats, oils and grease into sewers from trade premises, and enabling SW to recover costs of investigating and remedying the same. Of course the existing general offence covers oil and grease, and the biggest problem is tracing the culprit; also much fat, oil and grease emanates from private houses (and the same difficulty applies). We would support this additional clarification and expansion of the current provisions. We would suggest that a more specific duty on SW to provide information and education would again be useful here. It might be desirable to also consider what information and education provisions could be put in place to assist rural communities with either private water supplies or private sewerage provision, or both. SW, or SW working with SEPA, may be better placed than local authorities to offer such information even if they are not providing the service in these areas.

We welcome clause 34 which makes much needed provision for the maintenance of commonly owned private sewage treatment works (generally, septic tanks). It enables any one owner to carry out the works and then recover the costs from the others, and is based on the sort of scheme that applies under the Tenements (Scotland) Act 2004 (asp.11). Liability to pay, and the right to enforce, are personal and do not lapse when the property is sold; that would probably accord with conveyancing practice. In the policy memorandum, it is stated that a more comprehensive scheme, such as SW to taking over such works, is not acceptable as it would interfere with property rights. It seems likely that cost is a bigger factor here; most owners of a malfunctioning common septic tank would probably be delighted if the public authority took it over. We agree it will be effective for the most common situation, where one part-owner resists and therefore the others will need to pay (only) a proportion of that one share of the cost. If there is resistance from a larger proportion of owners, then much will depend on one person being willing to do the administration, outlay the cost and then go to court to recover payment, so it is only a partial solution.

We wonder if this is another area where a more specific duty on SW to provide education and information would be relevant, perhaps working with SEPA; we are thinking here specifically of phosphates, and more generally of effective maintenance of septic tanks.

We welcome Part 7 on Water Shortage Orders, to apply in the event of a “serious deficiency of water supplies” or threat of the same. We agree with the retention of both
ordinary orders resulting from shortages, and emergency orders where there is also a risk to health, or social or economic well-being.

We also welcome the measures in sch.2, to apply as recommended by SW where there is a threat of shortages, and are pleased to note that these do not apply to domestic users before commercial. It is good to see the opportunity taken to clean up the statute book by repealing and replacing, rather than amending, the relevant parts of the Natural Heritage (Scotland) Act.
WRITTEN EVIDENCE FROM THE INSTITUTION OF CIVIL ENGINEERS

The Institution of Civil Engineers is a UK based international organisation with over 75,000 members ranging from professional civil engineers to students, approximately 8,000 of whom live in Scotland. It is an educational and qualifying body and a registered charity. Founded in 1818, ICE has become recognised worldwide for its excellence as a centre for knowledge transfer.

ICE Scotland would like to thank the committee for the invitation to take part in this consultation and submit the enclosed comments for your consideration.

Summary

ICE welcomes the Water Resources Bill. We welcome the Scottish Government’s efforts to maximise the value of Scotland’s water resources through the Hydro Nation agenda. In scrutinising the Bill we suggest that committee consider the following:

- The Water Resources Bill is only one element of the Hydro Nation agenda. The Committee should consider the bill alongside other initiatives including the establishment of the Hydro Nation Forum and the discussion paper “Paying For Water Services”.

- The bill commits the Scottish Government to reporting on its progress against the duty to promote the value of Scotland’s water on a one off basis in three years. ICE Scotland recommends at least biennial reporting against the duties contained in the Bill.

- Similarly further work is required in identifying metrics and benchmarks against which the success of the Hydro Nation initiative can be judged. Ministers, with input from the Hydro Nation Forum should be asked to publish a transparent reporting framework.

- The licensing regime as envisaged by the Bill at present does not allow for sufficient ministerial oversight of water abstractions. A number of the proposed exemptions from ministerial oversight e.g. irrigation, introduce significant environmental risks and should be subject to scrutiny.

- The legislative distinction between Scottish Water’s core and non core functions is a positive step. ICE Scotland welcomes this separation because we believe it provides Scottish Water with strategic clarity.
• The Hydro Nation agenda provides a platform for further development of the skills and capacity of Scotland’s already world class civil engineering sector, opening up opportunities for the export of high value services. We believe greater emphasis should be placed on this aspect of the Hydro Nation agenda. This will require effective coordination of the resources of stakeholders including the Enterprise Agencies, Scottish Water and the Scottish Funding Council. In addition there would be value in providing greater scope for the Hydro Nation Forum to input into the allocation of the £9b core budget.

Part 1

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

ICE Scotland sees the provisions as sufficient legislatively and recognises that the Water Resources Bill (WRB) is only one part of the broader Hydro Nation agenda. Whilst the locus of the committee in this instance relates to the WRB the Scottish Government has set in motion a number of other work streams including but not limited to the “Paying for Water Services” discussion paper and the establishment of the Hydro Nation Forum (HNF) to advise the Cabinet Secretary. The WRB should therefore be seen in this context and not in isolation. A fully integrated approach to maximising the value of Scotland water resources is essential.

ICE supports the Hydro Nation agenda and the steps the Scottish Government has taken so far. Scotland does have an abundance of water and it would be remiss not to seek to capitalise on a plentiful natural asset whilst continuing to ensure good stewardship of its resources. We see other drivers such as climate change pressures in water stressed areas and the challenges associated with the future global energy mix as further underscoring the need to develop the value of Scotland’s water and expertise in water management.

We look forward to working collaboratively with the Scottish Government and other stakeholders, including parliamentarians, over the coming years to support the Hydro Nation agenda, its internationalisation and the role it will play in supporting the export of Scottish civil engineering expertise and entrepreneurship.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

The water industry in Scotland is highly regulated and largely within public ownership providing ministers with significant powers to direct public bodies. However, by explicitly including these provisions in the WRB the Scottish Government is able to provide clearer strategic leadership whilst providing key agencies such as SEPA and Scottish Water with
unambiguous objectives. ICE sees this leadership as essential to the developing the value of Scotland’s water resources.

ICE is on record as being supportive of the current governance arrangements of the water industry in Scotland, recognising that the regulatory regime has driven significant improvement and investment in tandem. ICE therefore sees reinforcing these arrangements to promote the value of Scotland’s water as key to the success of the Hydro Nation agenda.

ICE is particularly supportive of the provision to separate Scottish Water’s activities between ‘core’ and ‘non core’ business to ensure that the overall standards of the company’s key functions continue to rise as they have done over the past several years. This proposed delineation in law should also be helpful to Scottish Water, ministers and other stakeholders in terms of setting the company’s strategic priorities over the next regulatory period and in achieving those priorities.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

It is the understanding of ICE Scotland that the bill actually requires ministers to report to the Scottish Parliament not every three years but in three years (from the date the duty comes into force). If this interpretation is correct we do not believe that a one off report in three years is sufficient and that a duty should be placed on ministers to report at regular intervals. ICE Scotland recommends an amendment to the bill requiring ministers to report to parliament on a biennial basis with a possible sunset clause to prevent requiring the Scottish Government to report on the development of Scotland’s water in perpetuity.

In relation to reporting progress to the Scottish Parliament ICE would like to understand more about what metrics and benchmarks the Scottish Government will report against. The reporting measures to be used need not be framed in legislation but it is important that some meaningful metrics and benchmarks are identified at an early stage. ICE Scotland therefore recommends that ministers, under advice from the Hydro Nation Forum, be given a duty to develop a clear reporting framework to enable all stakeholders to assess the progress of this initiative. More frequent reporting will also help promote a process of continuous improvement.

Part 2

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?
Please see ICE’s response to question 6; we believe the new regime and the question of exemptions are best responded to jointly.

**Q5.** Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

ICE Scotland sees 10 megalitres as a reasonable de minimus threshold.

**Q6.** Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

ICE Scotland has some reservations in respect of the proposed licensing regime. We believe that a licensing regime is necessary and that all large scale water abstractions i.e. above the de minimus threshold identified in Question 5 should be subject to some level of consistent control and regulation.

ICE understands that in some catchment areas there are concerns that abstraction licences may be allocated but not utilised. The abstraction licence may then become a bankable asset should there be a change in the market e.g. if the area becomes water stressed.

ICE does not see the regime as envisaged by the bill at present as a sustainable approach to water resource management. All abstractions (over and above the 10 megalitres threshold) should be subject to some consistent level of control and regulation. Abstractions for the purposes of generating hydro power, irrigation, fish farming, operating a quarry or coal mine are all explicitly earmarked for exemption from ministerial approval yet all carry environmental impact risks and as such should be subject to ministerial decision.

**Part 3**

**Q7.** What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

ICE is supportive of Scottish Water’s efforts to develop its assets and the generation of renewable energy. The inclusion of specific powers can only help promote this work further.

ICE is clear on the desirability of a significant portion of Scotland’s future energy needs to be drawn from renewable sources as part of the de-carbonisation process and meeting the 2020 Climate Change Scotland Act targets and therefore see additional investment in their development as welcome.
Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

ICE Scotland is particularly pleased to see the Scottish Government give statutory recognition to Scottish Water’s core and non core functions. ICE sees the core and non core functions as equally essential for Scotland’s future. Similarly they are not mutually exclusive and the proposed distinction adequately differentiates between the two categories.

As we have highlighted previously in this evidence this distinction not only provides sufficient safeguards but should in fact give greater strategic clarity to Scottish Water to enable the company to perform both its core and non core functions better in the future.

Part 4

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

ICE Scotland has no comment to make in this regard.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

In principle, ICE supports collaborative arrangements with landowners within a catchment where this helps to deliver water management solutions which are cost beneficial to both society and the environment. For example, an agreement to implement a change in agricultural practice to control pollution at source reduces the need for disproportionately expensive investment in pollution control works elsewhere in the catchment.

Part 5

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

ICE Scotland has no comment to make in this regard.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

ICE Scotland has no comment to make in this regard.
Part 6

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

ICE Scotland has no comment to make in this regard.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

As referenced in our response to question 10 ICE supports arrangements which will help to deliver water management solutions that are likely to provide cost benefits. We consider measures that prevent difficult to treat substances from entering the sewer system in the first place as sensible.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

ICE Scotland has no comment to make in this regard.

Part 7

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

ICE Scotland endorses the Scottish Government’s analysis that it is prudent to plan for the possibility of a drought event. Given the potential impacts climate change and population growth may have on the availability of water for domestic and commercial use this is sensible contingency planning but greater clarity regarding the definition of ‘a drought event’ is required.

Moreover water shortages can be caused by events other than drought for example flooding of water treatment plants. ICE Scotland is firmly of the view that building infrastructure resilience must be a part of a broader programme to ensure the security of water supply which encompasses both quality and quantity.

Financial Implications

Q17. Do you have any comments on the estimated costs associated with the Bill?
The accompanying documentation suggests the Scottish Government has allocated £3m per year for three years to support the development of the value of Scotland’s water. Whilst ICE would like to see a greater investment we recognise that there are currently significant financial constraints on public budgets.

ICE Scotland would like to understand more about how the budget will be spent. Additionally we take the view that greater value to the Hydro Nation agenda will be achieved through effective coordination of the various other resources available from the Enterprise Agencies, Scottish Water and the Scottish Funding Council to drive the Hydro Nation initiative. ICE Scotland is particularly supportive of initiatives to support engineering employment, skills and development and knowledge growth. Whilst ICE Scotland understands that some of the budget is earmarked for funding the Hydro Nation Forum there is utility, above and beyond the WRB, to allow the HNF to input into how the allocated budget is spent.

**Additional Comment – energy and climate change**

ICE Scotland would like to make one further point in respect of the Water Resources Bill. We note that one of Scottish Water’s major drivers is increasing water and waste water quality. Raising standards in this respect is usually achieved through high energy treatment processes which make achieving the 2020 Climate Change Act targets even more challenging. This tension between emissions reduction and driving up standards calls for a more balanced approach from Scottish Water and requires SEPA’s attention. ICE Scotland would see the continued omission of this issue from the Bill as a missed opportunity which we would like to see addressed before the Bill receives assent.
WRITTEN EVIDENCE FROM THE JAMES HUTTON INSTITUTE

Expertise and experience of the James Hutton Institute in relation to the responses below

As Scotland’s largest Institute for water, soils, crops, environment and people, the James Hutton Institute has significant water resources management expertise in the areas of:

- Robust scientific understanding of catchment functioning linking biophysical, social and economic factors.
- Providing the socio economic context and frameworks for water governance, water economics, ecosystem services valuation, and sustainable behaviours.
- Understanding and evaluating the consequences of future change in water resources availability and demand, land use and management, policy and climate change.
- Developing risk-based approaches to whole systems analysis, including life cycle analysis of products and processes, and protection of the food chain.
- Options for new plant varieties and agronomic practices which increase water use efficiency, optimise the use of precious resources, and ensure soil protection.
- Proven ability to understand the tolerance and variability of natural and managed water systems, to help develop smart regulation, and increase resource efficiency.
- Operational experimental platforms and trails from individual plant, to field, to farm, to landscape.

Our answers to the following questions below are shaped by our expertise in the above areas.

Part 1: Development of Water Resources

This places a new duty on the Scottish Ministers to take such reasonable steps as they consider appropriate to ensure that the value of Scotland’s water resources is developed through the Hydro Nation programme. It provides for Ministers to direct designated public bodies as to their involvement in this development. It also places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty. This Part of the Bill is designed to create an explicit focus for the Scottish Ministers on Scotland’s water resources and their potential and the continuing development of the Hydro Nation programme.

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation? The bill as presented is a starting point for a commitment to develop water resources. As such it must lead to further details of the ‘reasonable steps’ within a time frame which allows the progression of actions under the current inertia of the Hydro nation agenda. For example, are the steps limited to the water industry themes in the current bill or is there an intention for wider steps to begin to overlap with developments in environmental (for example water quality and flood management) policy? In this respect it needs to be
recognised that improving the value of the water resource has wide connotations across factors influencing water quality (determining fitness for different uses with different values) and quantity (determining where and when the resource can and cannot be used, or knock on impacts such as flooding). These are issues wider than abstraction and industrial effluent regulation. The term value also has a wide range of meanings that in their broadest sense (as in an ecosystem approach) include habitat, food and energy production, human well being and recreational benefits. Undoubtedly these are all part of the way Scotland should realise the economic/societal benefits of its waters through via tourism, generation of Scotland’s food brands (whisky, beef, cereals, seafood). These are important components of protecting the water asset and the tools the science and regulation communities are developing to address these (and their interactions with the industrial water resource sectors) are themselves saleable assets of Scotland to internationalise under Hydro nation. SEPA and Scottish Water are becoming aware of the benefits of catchment-based source protection of water resources and are developing their own catchment programmes (mostly for issues of pollution/colouration). Increasingly, upcoming issues of resource security, energy and climate/land use change will impact on the availability of water resources for realising economic benefits and an overarching bill could be well placed to include these factors. Strengthening this aspect in the bill would pave the way to unite water, energy and food in a way which would maximise the stated aim of contributing to sustainable use of the water resources. Perhaps some formal linkage with the recent Land Use Strategy (2011) could assist in this respect.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

Bringing the five stated public bodies together is a key action and we agree that some form of ministerial leadership would benefit this. The combination of effective regulation, major public water company with national assets and enterprise links to small businesses (both reliant on clean available water, and those developing technologies to improve water resources) seems potentially powerful. The ability of these bodies to get together and resolve sticking points (for example policy hurdles in new novel water treatment facilities, or small business reluctance to invest in technological development) is crucial to breaking the status quo of inherited systems of water management which may need to be addressed for future policy, economic and societal needs. This resolution of issues between these bodies would benefit from a higher level bill demanding and coordinating new styles of water governance. The ability to increase this list of public bodies as needs arise seems sensible (for example, Forestry Commission, research interests).

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

An analysis of the impact of the bill in terms of better governance and realised value of the water resources should be undertaken to provide evidence of the effects. This should be with a view to whether the stated aspects of the bill are sufficiently wide ranging, concise enough to implement and strong enough to bring effects. We would like to see consideration then, perhaps earlier, of whether there would be benefits to this current bill encompassing the aspects addressed in response to question 1 alongside these industry aspects of water management.
Part 2: Control of Water Abstraction
This part provides for the Scottish Ministers to control large scale water abstractions. It proposes prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers. The policy intention is to ensure that applications for abstractions are considered not only in terms of their environmental impact but also in their broader and long-term impact on the value of the water resources of Scotland.

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?
Higher level control of abstractions seems appropriate.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?
The most important point for abstraction is to match the abstraction rate to the source so to minimise economic and biophysical damage and make it sustainable. The rate should be dependent on waterbody type and resource potential, for example ground waters considering recharge rate, lochs considering volume and inputs, rivers considering flow regime and upstream area. In an ideal situation there would be a simple methodology for assessment of value/benefits gained from the abstraction versus the loss of services from the waterbody. The latter would be highly site specific (for example EU habitat designations) but with a simple tool these important decisions should be made. SEPA would currently do this for smaller abstractions but the same approach should be adopted for larger abstractions otherwise the chosen rate seems arbitrary. It would be interesting to know what abstractions of this size are operating today across Scotland and their national importance to which sectors.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?
The logic behind these possible exemptions should be made clear. The three examples are very different. Hydro-power potentially uses water for energy and returns it unpolluted downstream; it may change flow dynamics but maintains overall discharge. Irrigation tends to indicate a net sink of water as it is lost by plant uptake or evapotranspiration. Fish farms or quarries may abstract water use it and return it to the waterbody likely contaminated in some form. Therefore each situation brings a different impact. The amount, condition and timing of return of water to the system are important considerations of each abstraction case.

Part 3: Scottish Water's functions
This part places a new duty on Scottish Water to develop the value of its assets and expertise and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person. The policy intention is that these new powers will encourage Scottish Water to develop commercially and generally to support the Hydro nation agenda.
Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

Scottish Water as a large consumer of energy for treating and distributing waters is in an ideal position to become a model of renewable energy use and contribute to Scotland’s desire to be seen as a centre for knowledge and engineering on renewable. The situation of Scottish Water in Scotland as a public company looking after national infrastructure assets free of share-holder demands places some freedom on them to pursue this. However, powers for investment in subsidiaries as given by the bill would enable work with industry and research communities to develop the necessary technologies. The great advances in the sustainability of water and energy (which in turn would really mark the Hydro nation as a global leader) may require somewhat radical approaches of 'localism' in distribution, water reuse, waste stream separation and treatment. These are further back in terms of research to marketplace and it is less fair to place cost burdens on consumer bills.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

These aspects are outside of our area of expertise.

Part 4: Raw Water Quality

This part gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” (water that may be used for human consumption) and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of raw water. The policy intention is to safeguard and improve, where possible, the quality of raw water.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

This area actually gets to the core of the aspects we address under question 1. The language used though does not at present draw out enough understanding of the land owner/managers role. There is a large section on rights with respect to ‘premises’ where these are undefined. Only a small section (68A Agreements for Water Quality) looks to unite Scottish Water with the existing powers of SEPA for controlling land based activities. For all the reasons given in response to question 1 these issues are key to current and future water resource management by source protection.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

The exact nature of these ‘agreements’ should be clarified as they sound potentially powerful but unless specified likely to be subject to challenge. If the agreements are intended to formalise an ability for Scottish Water to address source protection problems (such as pesticides from farmland) then the powers and financial backing for the agreements needs to be made clear. SEPA well understand that effective regulation
includes enforcement in combination with awareness and demonstration engagement. The latter has resource implications but is a crucial part of success.

Part 5: Non-Domestic Services
This part introduces measures allowing water providers to demand and recover charges from customers where due, and requires landlords to inform a water provider when there is a change in occupancy in their property (as happens with other utilities). The policy intention is that the measures will help to ensure that the water market is operating efficiently and that those receiving water and sewerage services pay for them.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?
Both questions 11 and 12 are outside of our area of expertise.

Part 6: Sewerage Network
This part allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems, such as septic tanks, to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances. The policy intention is to restrict inputs into the sewer that can cause harm to the water environment and can be costly and difficult to remove.

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?
This seems appropriate. Contamination of sewage materials (through combined industrial and domestic effluents entering the systems) is a major barrier to the recovery of other high value nutrient and energy waste resources (mainly domestic sources). Reducing the contamination via industrial effluents would be a first stage to resource recovery at sewage works.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?
If this has been found to be a specific cause of drain and sewerage blockage then this seems appropriate. However this is very specific when other large issues (for example water quality and land management agreements) are addressed at quite a high level only.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?
Private sewage discharges into the environment are a considerable source of water pollution but vary considerably in terms of their pollutant loads and impacts. This is dependent on condition of the tank, importantly the soak-away quality and behaviour of the
users. The proposed powers appear to apply to multiple occupancy septic tanks greater than two properties. This is the next level of regulatory targeting following larger waste water treatment work discharges and is a considerably easier target than small domestic septic tanks which are largely unregistered. Targeting these is therefore appropriate but it would be better to use a campaign of awareness-raising of tank behaviour including maintenance requirements and general use than to rely solely on enforcement of emptying them with or without consent.

**Part 7: Water Shortage Orders**

This part makes provision for the management of temporary water shortages by allowing Scottish Water to apply for, and the Scottish Ministers to make, Water Shortage Orders. These orders would replace the current Drought Orders and authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures. The policy intention is to update the law in relation to the management of interruptions to the public water supply by streamlining the process and allowing Scottish Water, SEPA and Scottish Ministers to react swiftly and in a proportionate way to such water shortages.

**Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?**

Yes, they should be beneficial. However, to gain public approval (and likely adherence to) they need to be seen as proportionate to other aspects such as the ability of Scottish Water to control leakage and industrial abstractions (especially as earlier text in the bill proposes exemptions for some of these abstractions).

**Financial implications**

The costs implications for the Bill are set out by the Scottish Government in the Financial Memorandum, which accompanies the Explanatory Notes. Additional costs are anticipated in a number of areas in relation to, for example, companies seeking to apply for consent for large-scale water abstractions, co-operation agreements between Scottish Water and landowners to protect drinking water sources, obligation on the part of landlords to inform water providers of any change of occupancy of their property, and regulating the discharge of priority substances into the sewer network. The Bill also creates five new offences, all of which could result in offenders receiving fines. In addition, Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance the development of the Hydro Nation agenda. Whilst this cost is not directly attributable to the Bill, it will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland’s water resources (Part 1 of the Bill).

**Q17. Do you have any comments on the estimated costs associated with the Bill?**

The aspects of costs should be part of a balance of costs versus benefits (and opportunities lost) sought to inform decisions of water management. This needs to be holistic and with consideration of wider implications/costs of environmental and societal benefits/costs. True effectiveness in some of these aspects has considerable resource implications (for example entering into land owner agreements) and these actions need to be made on the basis of holistic cost benefits analysis made open to all the levels of stakeholders so that they remain committed. After all the success of a Hydro nation is also
reliant on a widely accepted ethos for sustainable benefits from our waters, not just a set of technical tools. Communication, especially of cost-benefits is key to this.
WRITTEN EVIDENCE FROM THE UK ENVIRONMENTAL LAW ASSOCIATION (UKELA)

The UK Environmental Law Association (UKELA) is the UK’s foremost membership organisation working to improve understanding and awareness of environmental law, and to make the law work for a better environment. UKELA’s Scots Law Working Group comprises Scottish lawyers, consultants, academics and other professionals with an interest in environmental law in Scotland.

We responded in detail to the consultation on the Bill earlier this year. We welcome the opportunity to provide evidence to the Committee and will be glad to engage in any further discussion that the Committee might wish.

We welcome many of the specific proposals for amending legislation in Parts 4 to 7 of the Bill, but we have concerns about many of the provisions in Parts 1 to 3.

Part 1 of the Bill restates most of the draft clauses from the proposal in that consultation.

Clause 1(1)
The duty on Ministers remains as it was, to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. Whereas this duty was qualified in the draft clause with the usual formulation of a sustainable development duty in Scotland (ie, “in the way best calculated to contribute to the achievement of sustainable development”) it is now qualified by a requirement to “do so in ways designed to contribute to the sustainable use of the resource”. We would prefer to see a stronger procedural provision to ensure that the ecological impacts of any such steps are taken into account. “Sustainable use” may be more specific, but we are unconvinced that “designed to contribute to” is an improvement, and the word “use” (both here and in clause 1(3)) suggests a priority for steps that involve the human use of water, as opposed to letting it flow/sit naturally for the benefit of nature. This could be allayed by clarifying that “use” includes leaving water to fulfil its role in natural ecosystems, not just for direct human benefit. Failing this, we would like to see a parallel duty on the Ministers to protect the aquatic resource.

Clause 1(3)
Related to the above, the definition of the “value of water resources” remains unchanged. Whilst it mentions “other benefit” as well as “economic”, the emphasis is clearly on economic benefit and human use, but we would note that water is essential to support all forms of life on earth. We would still like to see some stronger provision recognising the inherent value of the resource, which is quite distinct from any human “uses” or “activities”. The EU Water Framework Directive (2000/60/EC), for example, acknowledges from the outset that “water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such”.

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Clauses 2-4 also remain unchanged. We would continue to seek some changes here to strengthen accountability and transparency.

Clause 2
We would suggest that before directions are given to any designated body, the Ministers are required to consult all the designated bodies for their views and hold a public consultation, except in emergencies. Directions have the force of law and yet they are not always easy to find, so there should also be a provision requiring their publication.

Clause 3
A similar requirement to consult should apply to any amendment of the list of designated bodies; we note that at least one respondent to the Hydro Nation consultation has asked to be so designated.

Clause 4
We appreciate that it may be some time before there is a need to report under this legislation and that reporting does take human resource that could be used elsewhere. Nonetheless we would like clarity that the three yearly reporting here will be an ongoing requirement, not just a one-off. Also, the report is to be laid “as soon as reasonably practicable”: we consider that a maximum period for laying the report should be stipulated (“as soon as reasonably practicable, and in any event within X months of the end of the reporting period”), otherwise the requirement is effectively open-ended.

Part 2 of the Bill, on a new consenting regime for “qualifying abstractions” is new and was not suggested in either of the consultations; nor did it appear to be suggested by any respondents. As such we consider that it is appropriate to articulate general concerns as well as particular points about individual provisions.

We have a number of general concerns about this Part:

The underlying purpose of and need for the new regime;
Its relationship to existing and future consenting regimes;
The degree of transparency and publicity around the new application process.

We suggest that the policy objectives as stated in the accompanying Policy Memorandum could be achieved by Ministers exercising their current call in powers under the Water Environment (Controlled Activities) (Scotland) Regulations (SSI 2011/209, CAR, Reg.20), for all applications of this type. This would avoid the need for a separate consenting regime and ensure integration if further reforms are made to CAR.

The Policy Memorandum contains several paragraphs addressing these powers, and suggests that the Ministers are better placed to take account of a wide variety of social and economic impacts and consequences – climate change, population change, urbanisation
and industrialisation are all mentioned – than SEPA, whose remit under CAR is focused on environmental consequences. However, CAR (regulation 15) requires SEPA, before determining any application for a new controlled activity such as an abstraction, to apply the requirements of Article 4 of the Water Framework Directive (WFD). This Article sets out the requirements of good ecological status, as well as the circumstances in which deterioration in status may be permitted and the conditions that must be met. If the benefits of a proposal to human health, human safety or sustainable development outweigh the costs of failing to maintain good ecological status, or if the proposal is of overriding public interest, derogation from the requirement of good ecological status may be granted and the proposal can proceed. The balancing exercise required to determine this involves the consideration by SEPA of a wide range of social and economic, as well as environmental factors. A qualifying abstraction under this Bill would, because of its size, almost certainly cause deterioration in ecological status, so before deciding it if could be authorised under CAR, SEPA (and Ministers, if they exercised their call-in powers) would have to consider a much wider range of factors than the direct impact of the abstraction on the water environment. This rather calls into question the policy justification for this separate Ministerial approval regime for qualifying abstractions.

If the intention is to secure additional political control over large scale abstractions for industrial use within Scotland, perhaps by foreign investors, then that is a reasonable policy objective. However the Policy Memorandum also says that Ministers might “have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth” (para.24). The implication would seem to be that there is a likelihood of applications to abstract large quantities, possibly for use outwith Scotland, and that SEPA’s powers and environmental focus would not enable SEPA to prevent such use. Yet currently, proposals for abstraction for export are being raised by the Ministers themselves. Further, it would seem generally likely that the economic, and perhaps the social, factors might support large scale abstractions for many purposes either within or outwith Scotland, whereas the environmental factors would, normally, be those restricting development: under WFD/CAR, the benefits of any large scale abstraction for human health, human safety or sustainable development would have to be huge in order to outweigh the considerable impact on the water environment of such an abstraction. Accordingly, we question whether creating an extra layer of decision-making power for Ministers adds anything to the existing regulatory regime as regards having the policy effect that seems to be intended, of protecting against unsustainable large-scale abstraction for use outwith Scotland.

At the very least, if out-of-Scotland uses are envisaged, the exemptions listed in clause 7(4) should specifically not apply outwith Scotland, in the same way as the exemption for public water supply under clause 7(3) is restricted to Scotland. It is worth noting that the Institute of Civil Engineers has recently counselled against complacency in assuming an abundant resource in the longer term.
There also seems to be an underlying presumption that the Ministers, and/or Scottish Water, hold ownership rights over water in its natural state sufficient to enable that resource to be divested, anywhere and for any purpose. Yet water, running water, has always been a special branch of property law (see, eg, for an early discussion, Magistrates of Linlithgow v Elphinstone (1768) M Dict. 12805). This question was not directly addressed in the Water Environment and Water Services (Scotland) Act (2003 asp.3, WEWS) when the new comprehensive water use licences were brought in under CAR, and the new licensing regime was never challenged as an interference with property rights either at common law or in terms of the European Convention on Human Rights, presumably because those abstracting under the common law recognised that the new regime was proportionate and within the state’s margin of appreciation. That regime enables control of abstractions, and other water uses, for purposes within Scotland but it does not amount to ownership of the water. A better understanding of it might be that the Ministers, and other public authorities, all answerable to Parliament, are exercising some form of public trust, or managing a public good, which enables them to allocate the water. Bulk sale for purposes outwith Scotland is a very different thing.

Our final general concern about this Part is that it runs counter to the general policy drive towards doing away with unnecessary regulation. Any large scale abstraction will almost certainly require planning permission as well as CAR authorisation, and both are subject to Ministerial call-in, so the imposition of a third consenting regime on developers seems excessive as well as unnecessary.

Clause 9
In terms of the outline of a licensing regime, applications may be made to the Ministers, who may make procedural regulations, which in turn may (inter alia) provide for publicity and third party representations (our emphasis). Fees may be levied for administrative costs but these will require regulation. We consider that, if this separate approval regime for large abstractions is deemed necessary (which we have queried above), it should be made subject to a transparent process involving advertising and public participation, given that significant interests will be at stake, as acknowledged in the Policy Memorandum. If the detail of that process is going to be left to secondary legislation, full public consultation will be needed on the proposed regulations.

Clause 11
Conditions can be imposed, but these seem quite broad and general. There is a provision for compensation (cl.11(2)(c) ) and it is not clear if this is financial, or a compensation flow, or potentially both. This should be clarified.

Clause 12
There is a duty on the holder of an approval to report on their activities – but only to the Ministers and in such form as the Ministers require. We would suggest that such reports should be publicly available.
Clause 13
Both Scottish Water (unless they are the applicant) and SEPA must give advice on adverse impacts if asked – but the Ministers are not required to ask for advice. We suggest that this should be a requirement. As SEPA will also be determining the CAR application, it should not be unduly burdensome for SEPA to also advise the Ministers.

Clause 16(2)
Ministers may make regulations to provide for monitoring, the keeping of records and importantly, the access to such records. We would hope that such records would be made public, and anyway would be covered by either the Freedom of Information (Scotland) Act (2002 asp.13) or the Environmental Information (Scotland) Regulations (SSI 2004/520). Given the high degree of Ministerial discretion, especially in a unicameral Parliament, we would like to see more detail around publicity, to achieve maximum transparency.

Clause 17
The offence is not strict liability, which makes conviction less likely. We would recommend that, if a separate approval regime is deemed necessary (which we have queried above), it is subject to strict liability offences (as under CAR) and administrative penalties, as are under consideration in the new integrated framework for environmental regulation. A higher upper limit to the fine (on summary conviction) than the statutory maximum might be more appropriate, in line with environmental offences, where an upper limit of £40,000 is the norm.

Finally, there is no provision for the sequencing of the different approvals, and what might happen if the ministers approve an abstraction but SEPA do not (or the other way round.) If such a conflict arose, we suggest a public inquiry might be the best response.

Part 3 takes forward the proposals for new duties on Scottish Water. Our key concerns here are the additional powers for Scottish Water (SW) and the need to ensure that these are separated from their core functions.

Clause 21
The new general power clarifies that in particular, SW’s existing general power extends to “do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources…”. This is certainly specific but does still depend on knowing what that development is likely to mean, as queried above in relation to Clause 1. We appreciate that many different activities and actions have been put forward under the Hydro Nation consultations, many but not all of which will be relevant to SW.

Clause 22
As in Clause 1, value is stated to include “economic and other benefit” which (again) will stem from “use … or activities”. We consider that, in the context of SW’s assets and expertise (as opposed to water resources), the emphasis on economic (as opposed to
environmental) benefit is more justifiable; again, though, the implications of cl.22 in particular come back to what may be meant by “developing value” in this context.

**Clause 23**
We note favourably that SW is already taking steps to use its assets for the generation of renewable energy, and we welcome the introduction of this new duty for SW to do so.

**Clause 24**
The proposed new s.70(2) in the 2002 Act no longer excludes the exercise of SW’s general powers under s.25(1) and in time, the proposed s.25(1A). Taken together, it would seem to mean that “hydro nation” activities are no longer excluded from s.70 insofar as they are “relating to the provision of water or sewerage services in Scotland”. If anything, this would seem to potentially widen the definition of the core functions. Again, this may well depend on the specific activities in question and what is meant by developing the value of the resource. If the intention is to bring these activities, whatever they might be, within the regulatory settlement then that is a significant change that needs to be much more explicit. The current consultation on Investing in Water Services\(^1\) begins by stating that it is not related to the Hydro Nation or the Water Resources Bill, but the dividing line is not always easy to draw. If, for example, and given the focus on renewables generation, the intention is to distinguish between generation of power used by SW for its own activities, which would be “relating to”; and “external” generation for supply, through SW Horizons, which would not, then that might be a helpful clarification for the accompanying policy.

The Investment consultation does mention several “innovations” that may take place in the near future, including catchment protection, managing pollutants at source and customer education (all of which are in the Water Resources Bill in some way), as well as generating electricity from waste (which is relevant to the Hydro Nation). This again indicates the difficulties of segregating the policy environment for SW’s core functions, from its new opportunities; and the need for clarity.

**Clauses 25 and 26**
The Ministers have stated in the Investment consultation that the total borrowing available for SW will be less than currently in the next price review. We would agree that separate provision for borrowing by SW Horizons in particular will allow the furtherance of the Hydro Nation agenda whilst minimising risk for the core business and its customers, but it is important that any lending to the subsidiaries would not reduce the moneys available to SW. Reforms to SW’s corporate structure were mentioned in the first Hydro Nation consultation but were not taken forward; whilst there may be no need to do so, this again comes back to clarity about the core functions, and the separation required for non-core activities.

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Part 4

Clause 27
Given the wide powers of entry granted under this clause, we would seek clarification that the general provision for compensation in s.10 of the 1980 Act will apply. As the term “premises” is used throughout, but must clearly mean land as well as buildings, it would probably be helpful to provide (as is done later in Part 7) that “premises” includes land and buildings. Also, if the intention is that the new Part VIB of the 1980 Act should potentially apply to raw water for private supply, this should be clarified.

Clause 28
We note the new power (proposed s.68A of the 1980 Act) for SW to enter into agreements with land owners, occupiers or local authorities to do or refrain from doing anything that will impact on raw water quality. A water services provider should be a key stakeholder for water resource management – both at large-scale, through river basin planning under the WFD, and this small-scale, “catchment based” approach that is developing in England as well. We might have expected more references, at least in the accompanying policy documents, to the WEWS Act and the WFD regime as a context for this Bill, and this might in turn address some of the concerns over the new general duties, if the Ministers' view is that sufficient “protection” is provided through the general duties in WEWS. It is important that the service provider is involved in the protection of raw water and there is much that the service provider can do. However it is arguable that SEPA is better placed than SW to carry out monitoring of raw water quality and that if further monitoring is required, that SEPA should have additional resources here. It is our understanding that currently SEPA is reducing its water quality monitoring network.

It is also important to maintain a strong regime to control diffuse pollution through the environmental regulator, and that SW is not diverting resources to encourage, persuade or incentivise farmers and land managers to behave in ways that they are already required to do by law (i.e. the general binding rules relating to diffuse pollution under CAR). SW should be working closely with SEPA here and a specific duty to coordinate their activities with SEPA’s programmes might help to clarify. We assume that this is a core function, regulated by the Water Industry Commission and paid for by SW’s customers.

This is one of several provisions in the Bill where we think that a requirement for SW to provide information and education, to supplement s.1 of the 1980 Act, might be useful. We identify a number of these opportunities below.

We are content with Part 5 on commercial premises and the provision of retail services by licensed providers, including SW Business Stream. We have no specific comments on this proposal.

Part 6
Clause 31
We would support this provision in principle, to reduce the costs of treatment and the need for SW to make special provision for specific difficult substances, and also to reinforce the principle of producer responsibility. It does leave open the possibility that if operators install their own pre-treatment then revenue to SW from trade effluents will fall, and it does not address the possibility that some priority substances may emanate from private houses or other sources of domestic sewage. This is another area where a requirement for SW to provide education and information might be helpful and relevant.

Clauses 32-33
Section 46 of the 1968 Act is already a general offence and it appears to cover oil and grease, but the biggest problem is tracing the culprit; also much fat, oil and grease emanates from private houses (and the same difficulty applies). Nevertheless, we would support this additional clarification and expansion of the current provisions. We would suggest that a more specific duty on SW to provide information and education to domestic customers (and through Business Stream, to business customers) would again be useful here. It might be desirable to also consider what information and education provisions could be put in place to assist rural communities with either private water supplies or private sewerage provision, or both. SW, or SW working with SEPA, may be better placed than local authorities to offer such information even if they are not providing the service in these areas.

Clause 34
We welcome this clause. We would note that the proposals will not address a situation where no one owner is willing to take on the responsibility of coordinating the work, making the expenditure and then having to recover the same. We wonder if this is another area where a more specific duty on SW to provide education and information would be relevant, perhaps working with SEPA; we are thinking here specifically of phosphates, and more generally of effective maintenance of septic tanks and soakaways. We recommend that pro-forma styles of the two types of notice are set out in schedules to the Bill for use by affected property owners, in order to ensure consistency and reduce the risks of legal challenges to notices that are served.

We welcome Part 7 on Water Shortage Orders, and note that many of our concerns in response to the last consultation have been addressed. Perhaps the water-saving measures listed in Sch. 2 could also be tied into stronger provisions on information and education. We wonder if there is scope for an exception for ponds where fish life is at risk.

Part 8
Clause 48 and Schedule 3 repeal section 26 of the WEWS Act, which requires an annual report to Parliament on the operation of that Act. This reporting is high level, in contrast to the river basin management plans, but contains a useful overview of activities, and we
caution against repealing it without good reason. We note that reporting under the Flood Risk Management (Scotland) Act (2009 asp.6) is still required.
Scottish Parliament
Infrastructure and Capital Investment Committee
Wednesday 31 October 2012

[The Convener opened the meeting at 10:00]

Water Resources (Scotland) Bill: Stage 1

The Convener (Maureen Watt): Good morning, everyone, and welcome to the Infrastructure and Capital Investment Committee's 18th meeting in 2012. I remind everybody to turn off their mobile phones and BlackBerrys, because they affect the broadcasting system.

Agenda item 1 is further evidence on the Water Resources (Scotland) Bill at stage 1. We will hear first from Scottish Water. Before we begin, I would like to record the whole committee's condolences on the sudden death of the Scottish Water chief executive, Richard Ackroyd. Naturally, our thoughts are with his family, friends and colleagues at this very sad time. It is also fitting to highlight the committee's recognition of the hugely significant role that Mr Ackroyd played in the growth and development of Scottish Water in recent years.

I welcome our witnesses from Scottish Water, who are Chris Wallace, director of communications, and Belinda Oldfield, regulation general manager. Adam Ingram will begin the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): The committee has heard many calls for the definition of the value of Scotland's water resource to include not just economic value but environmental and social aspects. What is Scottish Water's view on that discussion that we have been having?

Belinda Oldfield (Scottish Water): Scottish Water welcomes the proposals that are laid out before the Scottish Parliament in the bill, which provide a strong statutory basis for developing Scotland's water resources in the interests of Scotland. Our belief is that there are economic, societal and environmental benefits, so we see the value as covering all the pillars of sustainability.

Adam Ingram: Would it be helpful to spell that out in the bill, rather than having what has been taken to be a narrow definition of the value?

Belinda Oldfield: That might provide useful clarification. We have certainly always interpreted the value in the wider sense.

Adam Ingram: Several witnesses have called for ministerial directions to designated bodies to be subject to consultation with other designated bodies and, possibly, the wider public prior to coming into force. What is Scottish Water's view on that suggestion? Would it bring any benefits?

Belinda Oldfield: As one of the designated bodies, we do not have strong views on that. We are fairly clear that we are designated in the bill. It might be appropriate to consult other bodies more widely should they become designated, and to have wider discussion, but we do not have strong views on that.

Adam Ingram: I ask Mr Wallace, as director of communications, whether it would be useful to consult the wider public on such issues.

Chris Wallace (Scottish Water): Our philosophy is to be as open and transparent as possible. We are answerable to the Parliament. Any channel that broadens the possibility of engagement with our public and stakeholders has to be welcomed.

Adam Ingram: We will take that as a yes.

The committee has heard suggestions that the requirement for Scottish ministers to report to the Scottish Parliament on the exercise of their functions under the bill after three years should be aligned with reporting requirements under other water-related legislation. What is your view on that suggestion? Witnesses have suggested that the bill requires not a rolling three-year report but simply one report after three years. What is your interpretation of that and what is your view on the reporting structure as laid out in the bill?

Belinda Oldfield: It is fair to say that the bill is a little ambiguous in that respect. We have interpreted it as providing for a duty to report every three years. That seems reasonable. Reporting over a longer period would not be effective, and a shorter period might be too short for there to be anything of substance on which to report. It might be useful if the bill clarified whether the requirement is to report every three years or just once.

Adam Ingram: What should be included in reports?

Belinda Oldfield: We have not thought through, but I guess that it would be helpful for the public to understand what the Government has done, what activities have taken place during the three years and what benefits activity is bringing to the economy and the environment. We envisage an overarching report on what has been done and how much progress has been made.

The Convener: Part 2 of the bill is on control of water abstraction.
Alex Johnstone (North East Scotland) (Con): We heard from a number of witnesses that part 2 came as something of a surprise and that there was limited or no consultation on its provisions prior to the introduction of the bill. Was Scottish Water consulted on the proposed new abstraction rules?

Belinda Oldfield: I think that we were aware that there would be abstraction rules. We are a major abstractor, and I think that we were consulted.

Alex Johnstone: You are here now. What is your view of the proposals?

Belinda Oldfield: It is quite reasonable for abstractions at the level that is envisaged—which are perhaps exceptional; there are not a load of abstractions at that level in the country—to come to the attention of the Scottish ministers. We are quite comfortable with that.

Alex Johnstone: Do you have a view on the logic behind the 10 megalitre limit?

Belinda Oldfield: No. I cannot comment on that, I am afraid.

Alex Johnstone: What about the exemptions in the bill?

Belinda Oldfield: The exemptions are proper. There is a question as to whether they are sufficiently comprehensive. One or two sectors might well have been missed out and it would be worthwhile clarifying whether that is the case. Scottish Water is an exempted organisation, because we abstract for the purposes of providing drinking water to protect public health.

Alex Johnstone: Abstraction will be exempt “if it is carried out for the sole or principal purpose of the exercise by Scottish Water of its core functions”.

Do you anticipate that qualifying abstractions will be undertaken in relation to Scottish Water’s non-core functions?

Belinda Oldfield: It is clear to us that if we wanted to abstract on the non-core side of our business, we would have to come through the Scottish ministers. Indeed, we would have to come through the controlled activities regulations with the Scottish Environment Protection Agency. The exemption does not cover non-core activities.

Alex Johnstone: You would be treated in the same way as anyone else would be treated if you wanted to abstract on that basis.

Belinda Oldfield: Yes.

The Convener: Scottish Water said in written evidence that it supports the proposals in part 3. Some witnesses expressed concern that Scottish Water Horizons might have an advantage over its commercial rivals in the fields of waste management and renewable energy. Did you have a role in the development of the proposals in part 3?

Belinda Oldfield: We were consulted on aspects of the bill relating to the separation of core and non-core activities. Our view is that the bill offers a helpful clarification that our core business is to provide water and waste water services for customers in Scotland. It is helpful to understand that the charges that those customers pay are only for water and waste water services. The bill helps clarify that non-core activities will not be financed by customers and must be financed by other means. I am sure that the Water Industry Commission for Scotland will be happy to elaborate on that.

The Convener: I understand that, through Scottish Water Horizons, you are already investing in renewable energy generation and undertaking waste management activities. How will this part of the bill benefit Scottish Water in how it carries out its existing activities?

Belinda Oldfield: What is helpful is that the bill places a proactive duty on us to fully utilise, where we can, assets on the non-core side of the business for the benefit of Scotland. That might seem like a very slight and subtle movement, but the bill makes that a proactive duty instead of something that falls naturally out of our core business.

The Convener: Is that the only route to achieving that, or could other options, such as formal directions from Scottish ministers to Scottish Water in its role as a designated body, be considered?

Chris Wallace: The bill sets out a statement of ambition and expectation about how ministers want us to develop and grow our business. As you rightly point out, we are already involved in these commercial activities, but the bill provides, if you like, a formal green light and will make it much more publicly known and transparent that we are expected to move in this direction.

Relating that back to your previous question, I think that, if people are concerned about unfair advantages in a competitive market, making all this transparent and bringing it out into the open that we are expected to develop in this area will lead to more scrutiny, which can only be a good thing. There is nothing to hide here. We keep these two bits of the business absolutely separate and I am sure that, as Belinda Oldfield suggested, the Water Industry Commission for Scotland will be able to provide reassurance on the way we are regulated.

We probably would not welcome direct ministerial guidance on commercial matters,
because the market is more fluid, dynamic and competitive. Either you are a business or you are not, and part of our philosophy is that we should be given a free hand in that respect. It might be interesting to discuss the attitude to risk in the public sector, because that, too, plays into this issue. If we are acting and trying to make headway as a business—which is the expectation that is clearly indicated in the bill—it might be worth having a debate not just with the committee but more widely on the public’s expectations of us, how we are to perform, how we manage risk and what is and is not acceptable. We have taken very small and careful steps into these markets; after all, given that Scottish Water Horizons has only a very small amount of share capital to invest, we have to be careful. However, now that we have been given a signal saying, “Can we have more of the same please? Can you accelerate all this?” we have to juggle that risk and, if we are going to take bigger steps, we must examine how we mitigate risk, what we need to offload and how we make our owners aware of the dangers as well as the opportunities.

**The Convener:** Do you share the concerns expressed by the centre for water law that the wording of the section defining core functions means that certain hydro nation-related activities such as the generating of electricity by Scottish Water Horizons for use by Scottish Water could fall within the definition of a core function?

**Chris Wallace:** No. As a regulated business, we are absolutely transparent. Scottish Water Horizons makes commercial decisions. I see no conflict in that respect; everything is audited and open to scrutiny.

**Jim Eadie (Edinburgh Southern) (SNP):** I want to return to the suggestion that the convener has mentioned and which you have partly addressed, which is that Scottish Water Horizons enjoys an unfair competitive advantage because it can access not only loans at favourable rates but Scottish Water’s substantial facilities and land banks. You have said that you keep the different parts of your business separate and that you are happy for the issue to be subject to maximum scrutiny and transparency, but it is only fair to give you the opportunity to put on record at the committee your fullest possible response to the suggestion that you have an unfair advantage. I would certainly welcome your views on the matter.

10:15

**Chris Wallace:** I think that we would need more specific instances of what you are referring to.

**Jim Eadie:** As the convener has pointed out, the Scottish Environmental Services Association and SSE have suggested that you enjoy an unfair competitive advantage with regard to your waste management and renewable energy activities. Could you address that point?

**Belinda Oldfield:** I can understand how that might be the perception of those organisations, but the reality is that the non-core business is financed at commercial rates and not at any Scottish Government-subsidised rate. We and indeed the Government have to be very careful of European Union state aid rules. For the record, Scottish Water Horizons does not enjoy any beneficial financing rate from the Scottish Government; everything is carried out on a proper commercial basis.

**Jim Eadie:** You are very clear that there is no breach or potential breach of EU state aid rules in this regard.

**Belinda Oldfield:** Indeed, and I also point out that we are routinely subject to scrutiny by WICS through the reviews that it undertakes as part of its auditing of transfer pricing. There is protection both for customers and for the Government in ensuring that we have no cross-subsidies between our core and non-core activities or with regard to financing from outside Scottish Water.

**Jim Eadie:** So you are not expecting a legal challenge any time soon.

**Belinda Oldfield:** No.

**The Convener:** Part 4 relates to raw water quality.

**Margaret McCulloch (Central Scotland) (Lab):** I have three questions. First, how will the bill’s provisions allowing Scottish Water to enter into agreements with land managers assist in improving raw water quality? Is there anything to prevent Scottish Water from entering into such agreements at present?

**Belinda Oldfield:** The bill proposes powers for Scottish Water to enter land, if needed, to protect raw water. We do not have those powers at the moment.

We have a duty to provide customers with drinking water that is fit for consumption. However, a lot of the difficulty in treating water arises from things that happen in the catchment such as farmers’ animals breaching fences and entering and putting faecal matter in a watercourse, the use of particular pesticides on crops and so on, and we are actively working with land managers, farmers and landowners on behavioural changes to ensure that, for example, there are properly fenced-off buffer zones. We would also talk to land managers and farmers to make them aware of the difficulties that their activities were causing the water environment.
There are, therefore, a number of strands to this issue, including educating and raising the awareness of the farming community. For example, we are having on-going discussions with farmers about switching the pesticides in use and encouraging them to use pesticides that have less impact on raw water. If we can manage the raw water problem at source and increase the quality of the raw water that comes into treatment works, we will be able to reduce the cost of treatment, which in turn will reduce charges to customers. Indeed, at the moment, we are working actively with a lot of land agents, land managers and farmers in the Ugie and Deveron catchments.

In any case, we think that the proposed powers will be used very judiciously and that they will give our catchment liaison officers legitimacy as they walk the catchments and build relationships with farmers.

Margaret McCulloch: Is that not part of SEPA’s role?

Belinda Oldfield: As a monitoring and enforcement agency, SEPA walks a number of what it regards as priority catchments for the environment. The proposed powers are very complementary, but I note that our focus is different and relates to the protection of raw water for consumption and public health reasons.

Margaret McCulloch: Evidence has highlighted the importance of a catchment-wide approach to managing Scotland’s water resources and suggested that Scottish Water must work in partnership with land managers, local river basin management teams, and other bodies such as the Royal Society for the Protection of Birds to ensure that the quality of raw water is managed properly. To what extent do you work in partnership at local level? Could the bill do more to emphasise that type of catchment-wide approach?

Belinda Oldfield: We are currently working in partnership with SEPA and NFU Scotland, we are involved with the voluntary initiative in the River Ugie and we are about to start conversations with the RSPB. Certainly, our approach is highly collaborative with stakeholders in the environment. We have also been working with SEPA on shared training initiatives in which Scottish Water staff are being trained by SEPA, so that we can dovetail our activities and work collaboratively. The bill proposals are quite extensive in that regard and they are sufficient; my personal view is that they could not be reinforced further.

Margaret McCulloch: The centre for water law is concerned that Scottish Water may end up entering into agreements that support land managers simply to meet their legal requirements. Can you give any assurances that that will not occur?

Belinda Oldfield: Absolutely. We are very clear that, first and foremost, farmers’ activities must comply with the general binding rules that have been set out in Scotland, which SEPA enforces. That is the baseline, but we enter into activities and agreements with farmers beyond that. Such activities and agreements include the provision of biobeds, which are biological beds that take away pesticide run-off when farmers fill up sprayers, and working with farmers to encourage them to fill up pesticide sprayers far from watercourses. We provide advice and finance to help farmers to put in place biobeds and extend buffer strips. We also help farmers to switch pesticides, in circumstances where it is beneficial for them to cease using chemicals such as metaldehyde and switch to some other pesticide. Those activities are beyond the general binding rules, and we are very clear about that.

We have been in discussion with the Scottish Government state aid department. Our schemes have been through the European Commission to ensure that we do not infringe state aid rules.

The Convener: There are no questions about part 5, so Gordon MacDonald will ask about part 6.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I want to ask about the sewer networks. I understand that Scottish Water supports most of the proposals in part 6. In its written evidence, Scottish Water indicated that those proposals will support the development of a catchment management approach to the urban drainage network. What does an urban catchment management approach involve and how do the proposals in the bill assist in its development?

Belinda Oldfield: That goes back to the earlier conversation on powers of entry. We currently have catchment liaison officers out in the environment who walk rivers that are of particular interest to us because we are aware of pollutants coming into the sewer system, which is essentially an open system. With the powers that are proposed in the bill, we could have liaison officers or catchment inspectors who would be able to enter premises if we found significant inputs of something in the sewer system that should not be there. We would then work in collaboration with SEPA and its enforcement powers to make sure that that activity ceased.

Gordon MacDonald: Would private owners be expected to bear the cost of any improvement work?

Belinda Oldfield: In all likelihood, yes. It is very difficult to say in the absence of specifics, but it is probable that they would be infringing a particular aspect of their licence. The proposals in the bill
would give us the power to undertake active monitoring to check that.

**Gordon MacDonald:** We have heard evidence that Scottish Water should investigate innovative ways of connecting properties that are served by septic tanks to the sewer network. Does Scottish Water have any long-term plans to connect such properties to the public network?

**Belinda Oldfield:** As a general comment, no. Septic tanks are a highly sustainable and efficient way of treating waste water in a rural environment. It would not be cost effective for the generality of customers for us to start on a programme of connecting every septic tank to the sewerage network. There may be circumstances in which environmental issues arise and it becomes important that some other solution is found. Connection to the public network is absolutely a last resort. We work with householders, when appropriate, to help them to empty and maintain septic tanks routinely, and we give them advice. If a septic tank were having a huge environmental impact in a community setting, we would look, along with SEPA, at some other solution on which we could work with the community.

**Gordon MacDonald:** You said that septic tanks work well, but we have had evidence that only around 60 per cent, or two thirds, of all septic tanks are registered. The bill includes proposals whereby a proprietor could take responsibility for maintaining and emptying a shared septic tank without the consent of other owners. Given that we do not know about the ownership of a third of septic tanks, and that some owners may not be willing to take responsibility for maintaining their tanks, should Scottish Water have a role to play in taking over ownership or maintenance of those tanks in the interests of public health?

**Belinda Oldfield:** In response to your first question, we have certainly had discussions with SEPA about shared communication campaigns on septic tanks and the on-going need for emptying and maintenance. We would be happy to engage in such campaigns.

As far as your suggestion about addressing specific issues in the interests of public health is concerned, we would have to look at that.

**The Convener:** Malcolm Chisholm has some questions on water shortage orders.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** In your submission, you indicate that water shortage orders are likely to be used only infrequently, with voluntary arrangements between Scottish Water, SEPA and land managers being the usual method for dealing with shortages. How do such voluntary arrangements currently operate? Have there been any recent water shortage incidents during which the powers in the bill would have proved useful?

**Belinda Oldfield:** It is fair to say that in Scotland, unlike in the south-east of England, large-scale water shortages have not happened for some time. However, we experience short-term, smaller-scale water shortages. We had shortages in Dumfries and Galloway in 2010, following periods of oddly dry weather. The fact that our storage facilities in that area are not large led to shortages. We worked collaboratively with all the stakeholders to ensure that a supply was maintained to customers during that period.

The proposals in the bill will modernise all the legislation to do with water shortages. What happened in Dumfries and Galloway highlighted the fact that the timescales under the existing legislation are such that there was a lack of responsiveness. The proposals in the bill will enable us to tackle water shortages by undertaking the activities that are needed to guarantee supplies to customers, through agreements with local landowners and so on, much more readily.

**Malcolm Chisholm:** That was helpful.

In the event that water shortage orders are issued, does Scottish Water intend to treat certain non-domestic consumers differently, depending on what they require water resources for?

**Belinda Oldfield:** I think that that would depend on the area that the water shortage was in and the types of non-domestic user that were in that area.

**The Convener:** As we have no further questions for the witnesses, I thank them very much for their evidence.

10:30

Meeting suspended.

10:32

On resuming—

**The Convener:** We continue with our evidence-taking session on the Water Resources (Scotland) Bill by hearing evidence from the Water Industry Commission for Scotland, commonly known as WICS. I welcome the witnesses from WICS—Alan Sutherland, the chief executive, and John Simpson, the director of analysis—and thank them for their written evidence.

**Adam Ingram:** What impact, if any, will the implementation of the proposals in the bill have on the price review for the period after 2015?

**Alan Sutherland (Water Industry Commission for Scotland):** The impact will be marginal, I think. To be clear, we are the economic...
regulator for the core functions of Scottish Water. We have no involvement in any of its non-core activities, with the exception of its retail activity, in relation to which we have general responsibility for the licensing framework that allows Scottish Water Business Stream to compete alongside other retailers for non-household customers.

Adam Ingram: Will the proposals in the bill have any impact on price or customer service for Scottish Water’s customers?

Alan Sutherland: The prices paid by Scottish Water’s core customers—households and the retailers that pay wholesale charges to Scottish Water—will be at the lowest level that is consistent with the delivery of the objectives that the Scottish Government sets out. In essence, our job is to take the Government’s objectives for the industry and its principles for charging and calculate the lowest reasonable overall cost of delivering them. We will keep that number as low as we can reasonably keep it, consistent with a sustainable industry, which we all want.

Adam Ingram: There is nothing intrinsic to the bill that would create upward pressure on prices, for example.

Alan Sutherland: No. Some of the things that you have discussed around catchment management and the like would push the other way and help us to keep bills down. The better regulation of fats and greases in the sewer system would clearly help to keep costs down. Such measures ought to help but, in the great scheme of things, they are relatively marginal to the overall impact on the end customer.

Adam Ingram: In terms of customer relations and customer service, you have heard some arguments about the need for wider public consultation on certain issues. Are you satisfied with Scottish Water’s claims to be open and transparent? Is it consulting the public to a good standard, or could that be improved?

Alan Sutherland: It is always possible to improve communication and interaction with customers and stakeholders generally. However, within the core activities that we observe, Scottish Water is very active in communicating both at a local level and more generally about where it is going as a business.

Alex Johnstone: In your opinion, is the way in which the bill separates Scottish Water’s core and non-core functions robust enough to ensure that we do not end up with customers paying extra to finance non-core activities?

Alan Sutherland: It is our job to ensure that they do not.

Alex Johnstone: Is the bill strong enough in its definition to avoid that?

Alan Sutherland: Yes, I think that the bill is strong enough—absolutely.

On a fairly regular basis, every two or three years—although, given other witnesses’ comments, we will start again—we look very hard at how Scottish Water allocates its costs in order to ensure that there is no question of households or business customers picking up the costs of commercial activities. Although they do not pick up any of those costs, it is for the Scottish Government to decide where any benefits that accrue get allocated. It may choose to leave some of them in the business for households, or it may choose to use them for alternative purposes. What cannot happen is that customers get any of the benefits but bear none of the costs—that would not work in a rational commercial world. If we want Scottish Water to compete in its non-core activities, we must allow it to behave like a business.

John Simpson (Water Industry Commission for Scotland): Each year, we collect detailed accounting information that contains Scottish Water’s allocations of costs between the core business and the non-core business so that we know what is going on. In addition, each year, we get a list of the transactions that have taken place between the core and non-core parts of Scottish Water, so that we know what is going on there, too. From time to time, we also carry out a detailed review, looking behind that information at the detailed paper trail within Scottish Water. We are very aware of the importance of ring fencing the core business from the non-core business, and it is a matter of our being on the ball, year on year, in ensuring that things are as they should be. We think that we have the necessary powers and procedures to do that.

Alex Johnstone: The bill places a duty on Scottish Water to pursue a number of non-core functions. Are you satisfied that that change will not impact on Scottish Water’s pursuit of its core functions? Might we be diluting—a dangerous word, which I was trying to avoid—Scottish Water’s pursuit of its core functions?

Alan Sutherland: Certainly we will have no regard to that in the efficiency challenge that we set before Scottish Water. Scottish Water will have the same regulatory settlement that it would have had irrespective of what it does in non-core areas of activity. It is for Scottish Water to find a way of justifying that. If Scottish Water needs extra resources in the non-core area in order to pursue those activities, that will be a commercial decision for Scottish Water and, frankly, that is not something that we will take much interest in. We are focused on ensuring that the core business performs in absolutely the very best way that it can to the benefit of customers in Scotland. In
Scotland, we have the lowest average household charges and, going forward, we see no particular reason for increases beyond the rate of inflation.

Alex Johnstone: If Scottish Water fails to get on with its core business, such as making sure that its pipes do not leak, you will be the first to point it out.

Alan Sutherland: We will indeed. You can rest assured of that.

Malcolm Chisholm: Given that Scottish Water is already investing in renewable energy generation and waste management activity, is part 3 of the bill necessary? Will it benefit Scottish Water in carrying out such activities?

Alan Sutherland: I suppose that it is worth making a clear distinction here. Scottish ministers place on Scottish Water certain obligations within the core business, such as using certain proportions of green energy. Those are strategic decisions that have been made by Government and, as such, we ensure that those activities are funded at the lowest reasonable overall cost along with everything else. Where Scottish Water goes beyond that, it becomes a non-core activity. Some renewables activities are core because they are part of the defined objectives that have been set out by the Scottish Government; other renewables activities are not part of what has been defined by the Scottish Government but are at Scottish Water’s discretion. I guess that the bill is trying to provide much greater clarity around those activities by drawing a very clear distinction between them and what is required by ministerial objective.

Malcolm Chisholm: In practice, is there not a clear distinction at present?

Alan Sutherland: On the margin, it can always be questionable how much comes from one source versus another. Things such as wind energy are very variable in the amounts that they put into the grid, so you will get slightly different answers depending on the time period that you look at. I think that it is just worth having the clarity there.

Malcolm Chisholm: Will it help your work to have that clarity?

Alan Sutherland: I suspect that it is one of those additional things that John Simpson mentioned. We get lists of transactions and this is another thing that we can add to that list to ensure that we get greater clarity.

John Simpson: On the margins, it can only help. As and when the activity increases in size, it becomes more material and more important that we have clarity at the boundaries.
unclear that any of the specific projects in which Scottish Water would be involved are big or substantial enough to be caught by that. That does not mean that the Government does not want to be careful on the issue. It certainly does not want to be cavalier and it wants to ensure that the financing is not overtly generous.

The Convener: The bill allows the Scottish ministers to make loans and grants directly to subsidiaries of Scottish Water as part of the total annual Scottish Government finance that is provided to Scottish Water. What is your view on that proposal? Could such additional funding deplete the available resources for Scottish Water’s core water and sewerage functions?

Alan Sutherland: It certainly would not be desirable if it impacted in any way on the levels of borrowing that were made available to Scottish Water for its core functions. We consider the borrowing carefully in relation to Scottish Water’s on-going financial sustainability. We want to ensure that we do not delay expenditure that will ultimately put up bills just to keep bills a bit lower than they otherwise would be today. We want to create a financial regime for Scottish Water in which we can look ahead confidently, as we can now, and we see no particular reason why bills need to go up in the foreseeable future, which includes beyond 2015, when the next regulatory period kicks in.

If someone decided that no borrowing at all was going to be available to Scottish Water because the money was all going into its non-core activities, there would clearly be an impact on household bills. We would no doubt want to say something about that, but I suspect that quite a lot of MSPs might want to say something about that as well.

The Convener: I am sure that they would.

Margaret McCulloch: The committee has also heard calls for Scottish Water to promote water efficiency among its customers with a view to reducing costs. What are your views on that?

Alan Sutherland: Scottish Water is already required to give advice to customers on water efficiency. On the non-household side, Business Stream has set up a whole new business activity—it is irritating because I want to call it a business stream—that provides advice to non-household customers to save them money. However, the truth of the matter is that saving water does not reduce costs very much, at least not in the short run. Until the next asset replacement cycle, when the size of the assets can be reduced, customers are just reducing the amount of water that they consume. That literally saves them the cost of the energy to pump the water and the cost of the chemicals that go into it, which would be about 2 or 3 per cent of costs. Is that right, John?

John Simpson: It is about 3 or 4 per cent.

Alan Sutherland: It is just not that big a deal. Yes, it is desirable—anything that allows us to reduce abstraction and leave the environment in a better state is a good thing—but it is not a big deal from the standpoint of reducing costs to customers.

Gordon MacDonald: Consumer Focus Scotland expressed concerns about the operation of the deemed contract system in the energy supply industry. It said in its evidence:

“our experience in the energy sector tells us that lack of clarity and agreement between suppliers and customers on whether, and what, services are being provided can cause significant, sometimes intractable, problems.”

Can you explain what WICS is doing to learn the lessons of how the deemed contract system has operated in other industries in order to prevent such issues from arising in the water industry?

Alan Sutherland: It is not entirely clear what Consumer Focus Scotland is saying in that regard. Deemed contracts are about introducing clarity as to the responsibility of each particular customer behind a particular meter. The likelihood is that we will keep it as simple as we possibly can, so if there are six customers behind a meter, they are each going to be liable for one sixth of the total bill—it is not going to be any more complicated than that.

The difficulties arise when we start trying to put in exemptions for this or that or adjust for the number of rooms here or say that that customer is on the top floor so their water pressure is not quite so good. Once we get into that territory, we introduce complexity. The art is to get something that is simple and clear—the responsibilities need to be clear. That is certainly our starting point. Clearly we will consult on the proposal and we will see what the responses are, but I suspect that we will get some people who desire a bit more complexity and who will argue for that because they think that they might be best served by it. However, if we are going to solve the problem, keeping the responsibilities as simple as humanly possible is the key.

Jim Eadie: Good morning, gentlemen. Your written evidence raises the issue of non-domestic customers who are connected to shared supplies but do not contribute to the operation and maintenance of the public water and sewerage network. I am keen to understand the scale of that problem. Will you please enlighten us on how big the problem is? Can you quantify the number of non-domestic customers who benefit from the network but do not contribute to it? Do we know
what the loss of income is and what it means for suppliers?

Alan Sutherland: At one level, the figure is very small. Business Stream’s entire bad debt charge—this relates to non-payers and people whom we know are liable but who are not paying—was about 0.7 per cent the last time that I looked. That has come down considerably since Business Stream was set up.

Jim Eadie: Will you put a figure on that?

Alan Sutherland: The figure is 0.7 per cent.

Jim Eadie: What does that mean in terms of income?

Alan Sutherland: Sorry—that is 0.7 per cent of about £300 million, which is £2.1 million.

Jim Eadie: Not insignificant sums are involved, although the percentage of the overall business is small.

Alan Sutherland: That is the entire bad debt charge, which does not relate just to the issue that you raise.

Jim Eadie: I am trying to quantify the extent of the problem. We will discuss your suggested solution, so I want to understand the problem.

Alan Sutherland: The issue forms a small part of the £2.1 million of debt.

Jim Eadie: After the meeting, could you provide the committee with the information that I am asking for, so that we can better understand the issue?

Alan Sutherland: We can certainly provide the information that we have—that is not a problem. However, a problem is that we do not necessarily know the position. I will try to explain that.

When an occupier leaves premises, they call up to have the electricity or gas disconnected. When someone else moves into those premises, someone has to flick a switch. Suppliers of gas, electricity, telecoms and other things can easily disconnect services temporarily and then reconnect them.

The only way of definitively disconnecting someone from water services is to cut a pipe, which is a radical solution. We do not do that. We can turn a stopcock or whatever, but someone can turn that on without telling anyone.

The water industry has more of a problem when the tenancy of household or non-household premises changes, because someone has to tell us and admit that they have moved in and are now liable for the bill. Some businesses—and, for that matter, some householders—are less scrupulous than others are in admitting exactly when they moved in and became liable. Part of the issue is that such use is going on when we do not know that it is going on. We are trying to get as much clarity about that as we can.

Jim Eadie: We are looking for clarity and I am grateful for your explanation. It is clear that the situation is not straightforward; otherwise, you would have more information to provide to the committee.

Jim Eadie: We are looking for clarity and I am grateful for your explanation. It is clear that the situation is not straightforward; otherwise, you would have more information to provide to the committee.

You ask us to consider a solution—the incorporation of a new provision in the bill—but we do not know the extent of the problem. Is that an accurate summation of what you are saying?

Alan Sutherland: We know that the issue causes frictions, which are identified by retailers that are competing for customers. Before there was a contestable market on the non-household side, Scottish Water worried about whether the right amount of revenue was coming in from its non-household customers to cover the costs that it allocated to those customers. It did not worry about whether properties A, B and C were paying exactly the right amounts. In a contestable world, that changes. If someone wants to switch a customer but finds that that customer has not been paying, it is clear that that customer is exempt from the market.

When you start to discover that someone is getting a service and not paying for it, everyone else’s bill is marginally increased as a consequence. There is a need to ensure that that sort of friction is addressed as proactively as possible.

11:00

Jim Eadie: Just to be clear, the amount involved would be a very small percentage of the £2.1 million that you mentioned.

Alan Sutherland: Yes.

Jim Eadie: Really, the principle is that all non-domestic customers should contribute towards the network rather than possibly help to bankrupt the company.

Alan Sutherland: Yes, absolutely.

The Convener: Environmental groups have suggested that WICS be added as a designated body. What is your view on that?

Alan Sutherland: My personal view of the way in which we do our job is that we take strictly the objectives and principles of charging that we are given by Government and then calculate the lowest reasonable overall cost from those. We have no remit to say, “This does not seem to be value for money, so why are we doing it?” In many cases, these are essentially political or national state obligations, and it is not really for us, as the bean counters of how much money Scottish Water
should be given, to have a view on such things. That is what the Government does and that is what the Government is accountable to the Parliament for. I do not think that, as a matter of practice, involving us in conversations about environmental value for money would be a particularly useful step forward.

One of the real strengths of the governance framework that was created for the industry in Scotland is the fact that everyone’s role is very clear: the Government has a very clear role in setting objectives and the principles of charging; we have a clear role in counting up how much that should cost households and non-household customers; Scottish Water has a very clear delivery role; and then there are the two quality regulators in the form of SEPA and the drinking water quality regulator. Everyone’s role is very clear. Anything that confuses that, changes responsibilities or blurs accountabilities would not, I think, be a very good idea.

The Convener: There are no more questions, so thank you very much, gentlemen, for your evidence today. I briefly suspend the meeting to allow the witnesses to leave the room.

11:03

Meeting suspended.
WRITTEN EVIDENCE FROM SCOTTISH WATER

Overview

Scottish Water welcomes the opportunity to provide views and comments to the Infrastructure and Capital Investment Committee on the Water Resources (Scotland) Bill.

Overall, Scottish Water welcomes the proposals that are laid before the Scottish Parliament in the Bill. Specifically we see that Parts 1 and 2 provide a strong statutory basis for developing Scotland’s water resources in the interests of Scotland. Scottish Water intends to play its part in the future development of the Hydro Nation agenda, and the Bill will enable us to fully take on this role.

We welcome the proposals to modernise some existing areas of statute relating to the management of water shortages. The proposals are progressive as they link the requirement to provide drinking water supplies and protect the water environment through practical and flexible statutory arrangements.

The clarification of Scottish Water’s core functions will provide a useful separation of our activities and ensure that services to water and wastewater customers are maintained at the highest levels, whilst other business interests are allowed to develop. Scottish Water is fully committed to implementing Scottish Ministers’ wider Hydro Nation agenda through development or our assets, investment in renewable energy and developing new business ventures.

Part 5 is welcomed as it will ensure that the commercial retail market is able to operate efficiently in Scotland.

We welcome the proposals in Parts 4 and 6 of the Bill, as these additions provide the missing part of the legislative framework that will enable Scottish Water to actively engage in catchment management in rural and urban drainage catchments. We see the move towards catchment management as a better way to manage diffuse inputs of pollution. While we see the powers in Parts 4 and 6 as discretionary and to be used most judiciously, we favour their inclusion in statute as all powers relating to core activities benefit from this.

Detailed Response

Q1 - Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

We welcome the proposals to place this duty on Scottish Ministers. We see that the statutory requirement provides a clear basis for the aspirations of the Scottish Government to build a Hydro Nation.

Q2 - What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

This proposal will help to ensure that public bodies take an active role in the Hydro Nation agenda. As such, we welcome this element of the Bill.
Q3 - Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

Given that many of the aspirations under the Hydro Nation agenda are of a longer-term nature, a 3 year reporting period seems appropriate.

Q4 - In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

The proposed licensing regime will ensure that significant applications that result in water being taken for use outwith Scotland will come to the attention of Scottish Ministers directly. We welcome this approach and acknowledge the practical exemption in relation to abstractions that Scottish Water makes in relation to the core function of supplying drinking water to the people of Scotland.

Q5 – Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

We consider that the proposed threshold is appropriate.

Q6 - Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

We welcome the inclusion of exemptions, particularly in relation to Scottish Water’s core functions.

Q7 - What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

We welcome the inclusion of these clear powers within the Bill as they align our work with the wider Hydro Nation agenda and encourage innovation.

We are taking steps to generate renewable energy from our assets and we welcome the powers that will support the further development of this activity.

Q8 - Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

We are content with definition of core powers proposed within the Bill. The creation of core functions sets down some clear principles of operation, namely: that customers for water and wastewater services are at the heart of our business; that the charges paid by customers are for services in relation to water and wastewater services; that all other activities require to be financed through alternative routes.
Q9 - Do you have any views about the proposal to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

We welcome the proposal to introduce powers to allow Scottish Water to enter and inspect premises in relation to protecting raw water quality. We see these powers as being part of a package of arrangements that allow us to conduct catchment management to protect sources of drinking water and ensure that customers receive wholesome drinking water at reasonable cost (as required by the Water (Scotland) Act 1980).

Catchment management is concerned with identifying and reducing pollution at source, and working in partnership with land owners and land managers to find ways to manage these low levels of diffuse pollution.

The powers of entry are discretionary and we only intend to use these powers where we have evidence to suggest that catchment management might provide a sustainable solution to the protection of a drinking water source. Having the powers will avoid doubt about Scottish Water’s role and activity on land; they will legitimise the activity of our catchment liaison officers on the ground. We see these arrangements as complementary to treatment methods that are available to us to ensure that customers receive the quality of water they are entitled to.

Q10 - Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We welcome the proposals in the Bill to allow Scottish Water to enter into agreements with land owners and occupiers to undertake measures on the ground.

We favour having the vital components of catchment management (entry to land and ability to enter into agreements with 3rd parties) laid out in statute, as this is consistent with other actions we take in relation to our core functions.

After finding sources of pollution, and the pathways that allow pollutants to enter drinking water sources, the next step is mitigation measures. Such measures could be education and awareness of best practice, through to implementation of new hard measures on the ground.

Q11 - Are the new duties to be placed on landlords appropriate and do they raise any concerns?

Scottish Water is the wholesaler of water to the commercial sector. In this capacity, we note that the retail market for water and wastewater services needs to operate efficiently and that the Licensed Providers must be able to collect revenue for water and wastewater services.

Placing new duties on landlords to inform their Licensed Provider of changes in occupancy ensures that bills can be correctly raised and charges collected. We support these changes as it will enable the retail market to operate efficiently. It will also ensure that all customers are contributing fairly to the costs of service provision.
Q12 - Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

Our view is that having a general set of terms and conditions that apply to all deemed contracts is appropriate and ensures that, where specific contracts do not exist, all parties are treated in the same manner. We agree that the Water Industry Commission for Scotland (WICS) should set this scheme out.

Q13 - Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

As noted in our answers to questions 9 and 10 above, we welcome the proposals to have powers of entry to investigate the passing of substances and pollutants directly to the sewer network.

Our reasons for supporting these proposals are that we need new and innovative ways of ensuring that substances that enter the public sewerage network can be monitored and traced, so that ultimately they can be managed.

In-line with our answers above, we believe catchment management can also be applied to the urban drainage environment. We see the proposed powers as discretionary powers that can be used in a catchment management context.

Tracing the sources of Priority Substances and other pollutants that enter the sewerage network may help address the inputs where loads are significant. Without the knowledge from the drainage catchment itself, we cannot take a catchment approach.

For example, a catchment approach could be applied where SEPA identifies that a water course is down-graded due to urban pollution. The new powers of entry would allow Scottish Water to investigate the sewer network inputs to the river, right up into the urban catchment. Where pollution is associated with the sewerage network, action could be taken to resolve the problem e.g. correcting cross-connections (which is enabled under the existing Sewerage (Scotland) Act 1968) or improving unsatisfactory discharges through our investment programme.

It should be noted that Scottish Water cannot act alone to control all inputs to what are effectively open systems, and that this approach would help identify operators within a catchment to support actions being taken. We believe this will help inform SEPA’s river basin planning function.

The new powers of entry to investigate and trace pollution are welcomed as they are complementary to existing powers and allow Scottish Water to undertake urban catchment management. The benefit is improvements to the water environment, avoidance of costly end-of-pipe treatment and maintaining charges to customers at a sustainable level.

Q14 - Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?
Blockages of the public sewer, caused by fats, oils and grease, require to be removed. The costs of doing so fall to Scottish Water customers. We welcome this proposal as it will provide a clear message to commercial premises that they must dispose of fats, oils and grease in an appropriate way.

We see these new powers as complementary to other powers under waste regulation, ensuring a full package of incentives and enforcement arrangements to encourage best practice for disposal of fats, oils and grease. The benefit will be that sewers should experience fewer blockages and that the fats, oils and greases are controlled at source.

Q15 - Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

We welcome the proposals to allow proprietors to initiate and take maintenance actions on privately owned sewerage system. These proposals close a gap in the existing legislative framework and will help owners who wish to undertake maintenance to take action.

Q16 - Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

We welcome the proposals within the Bill as they provide a modern framework for the management of water shortages which is relevant to Scotland’s situation.

Within Scotland, large-scale water shortages due to lack of rain are a rare event. However, localised shortages do occur on a fairly regular basis. (For instance, during the summer of 2012, mainland Scotland experienced lots of wet weather in May and June, but on the western isles there were localised water shortages as the weather was unusually dry.) The framework laid out within the Bill is flexible and will deal with both small scale and larger scale events and we welcome the emphasis on communications with water users as an essential step in the process.

Our view is that many water shortage events will not result in requests for Water Shortage Orders where Scottish Water is able to work with SEPA and local landowners to secure alternative supplies. However, where there are more serious shortages, or where 3rd party interests are significant, then a statutory framework with involvement of Scottish Ministers is an appropriate approach.

The approach to water saving measures seems appropriate and proportionate. We welcome the emphasis upon communication with those affected by water saving measures and whenever water shortages arise we will work with customers to make them aware of water saving measures.

Q17 - Do you have any comments on the estimated costs associated with the Bill?

We consider that there are few new costs arising for Scottish Water as a result of the Bill. Our comment is that the proposals within the Bill may enable us to be more efficient in the management of water and wastewater services.
We note, specifically in relation to having a legislative framework to support catchment management, that the Bill may allow us to avoid or minimise the increasing costs of “end-of-pipe” treatment.
The Commission welcomes the proposals in the Water Resources (Scotland) Bill regarding non-household water and sewerage customers. In Scotland, non-household customers have been benefiting from the competitive retail services market since its opening in 2008. Two-thirds of these customers have already benefitted by switching supplier or renegotiating with their current supplier. Customers are seeing lower prices, better, more tailored services or, more often the case, a combination of both price and service.

The Bill’s proposals will help ensure that non-household customers continue to benefit from the competitive market while offering additional protections by making provision for deemed contracts to exist between owner/tenants of non-household premises and a licensed provider for water and wastewater services, where no formal contract exists.

We agree that the contractual relationship between non-household customers and their licensed provider must be clear to both parties. The introduction of deemed contracts is a legal and administrative tool to ensure that the legal relationship between the licensed provider of water and wastewater services and non-household customers is clear.

A scheme that sets out the terms and conditions to be incorporated into any deemed contract will allow customers to take advantage of the market’s existing customer protection measures, such as the default tariffs and service levels, as well as avoiding unnecessary duplication.

We also welcome the new provisions that would require landlords to notify licensed providers when the occupancy status of their property changes. Effective record management is vital to ensuring that charges can be collected effectively for the benefit of all water and wastewater customers. The licensed providers have told us that maintaining accurate information about non-household occupancy is one of the most difficult data issues for them.

Section 45 of the Floods Management Act 2010 in England requires household landlords to notify water companies with certain information about their tenants. We welcome the proposal to introduce a similar provision in the Bill for non-household landlords in Scotland. Such a provision would greatly assist licensed providers in Scotland when recovering charges as it would reduce the likelihood of ‘gaps’ in customer details. Such gaps can often result in tenants in rental premises receiving unexpected or backdated bills.

Based on the experiences of customers and licensed providers of the non-household market, we would recommend including an additional measure in the Bill that will help ensure that all customers who are receiving water and wastewater services contribute towards the cost of operating and maintaining the public water and sewerage network. This measure would be an assumption that each customer takes an equal share of the water and sewerage services from the supply in question in situations where:

- more than one customer is connected to the same supply; and
- individual meters have not been fitted that would allow each connected customer’s consumption
- to be calculated separately; and
- there is no specific agreement otherwise.
At present, customers who are on a shared supply that is not metered in a way that allows the consumption for each of them to be calculated separately cannot be disconnected. This is because disconnection that would adversely affect another customer is prohibited. Non-household customers who are on shared supplies and refuse to pay are therefore subsidised for the services they use by those customers who do pay.

If such a provision was included in the Bill it would allow charges to be recovered from non-paying customers by allocating them an equal share of the total consumption. It should also incentivise non-household customers on shared supplies to adopt meters or reach an agreement with their neighbours about how the supply should be allocated between them.
On resuming—

Water Resources (Scotland) Bill: Stage 1

The Convener: We come to agenda item 2, our final evidence session on the bill. I welcome Nicola Sturgeon back. She is supported by Scottish Government officials Christina Phillips, bill manager with the water industry team; and Stephen Rees from the legal directorate. Do you wish to make a brief opening statement, cabinet secretary?

Nicola Sturgeon: I will make a very brief one. Thank you for the opportunity to discuss the bill.

In Scotland, we have a relative abundance of water. We have a beautiful water environment and, in Scottish Water, a highly successful public corporation. The bill seeks to acknowledge the importance of water as a natural asset; to put a duty on ministers and others to develop Scotland as a hydro nation, which means a nation that utilises its water resources to the fullest potential; and to further improve our management and protection of the water environment.

That is an ambitious agenda. It goes without saying that the work of building Scotland into a hydro nation is not only down to legislation that we pass: it is also about the programme of work that we are developing alongside the bill. When we say that water is a precious resource, it is important to emphasise that we are referring to not just the physical liquid, but the expertise on water governance in Scotland and our academics who have specialist knowledge of global water issues and management. We also have a track record of developing new and innovative technologies in the sector. Taking all that into account, it is clear that we have a thriving and dynamic water sector. The Government’s role, helped by the bill, is to encourage collaboration, support innovation and find fresh approaches to ensure that we maximise the potential.

The Convener: We have heard in evidence concern about the extent to which the bill and the hydro nation agenda will benefit customers in Scotland. Specifically, it has been questioned whether any economic gains will be derived from better management of the water resource and, if so, whether those will be passed on to customers in the form of lower bills.

Nicola Sturgeon: I have read all the oral evidence that has been given to the committee, so I know that you have discussed that issue with witnesses. The bill has the potential to deliver tangible and perhaps more intangible benefits to customers. In the tangible category, in the longer
term it would be open to ministers, subject to future ministerial decision making, to utilise or allow to be utilised any profits that derive from Scottish Water’s commercial activities in its non-core business to benefit the customers and consumers of its core business products. That is certainly possible although, as I say, it would be down to decisions of ministers.

The next issue is more in the intangible or less tangible column. If we encourage Scottish Water and place duties on it—to the extent that the bill does—to maximise the full potential of its resources, to innovate and to become even more expert and even more willing to use and even develop the latest technologies and the latest thinking, that will cross over into how it does its business in its core functions, which will benefit customers.

It benefits us all in some way if we develop Scotland as a global leader on the hydro nation front. Being recognised as a leader on the use of water and sharing expertise on water management and governance with other parts of the world will benefit us all.

The Convener: At the same time as we are considering the bill, the European Union is consulting on a blueprint to safeguard Europe’s waters. How has the Scottish Government taken account of the developing EU policy and any UK policies that might affect the bill?

Nicola Sturgeon: The question is important, because the two agendas run to an extent in parallel. You will be aware that the European consultation closed recently. My officials are keeping a close eye on progress as we await the blueprint’s publication.

Our hydro nation agenda in general and the bill in particular are consistent with the priorities across Europe on the good stewardship of water. The principles that are involved in the European work concern improving the implementation of current EU water policy by making full use of the opportunities in the current framework. We believe very much that what we are doing is consistent with European developments, but we will continue to monitor and track that carefully, to ensure that alignment exists.

The Convener: Have your officials flagged up any inconsistencies that might arise?

Nicola Sturgeon: We are mindful that there might not be immediate alignment on one issue—metering—but we are pretty comfortable that what we are doing is aligning closely with the principles, the thrust and the objectives of EU developments. We will keep a close eye on that.

Once the blueprint has been published, the committee might want to take evidence on the interaction between that and our work. I would be happy to speak to the committee at that time.

The Convener: The James Hutton Institute and the IHP-HELP centre for water law, policy and science highlight the benefits of linking the bill’s proposals with the land use strategy and wider climate change ambitions. How do you respond to that suggestion? Could such links be beneficial in fostering a more holistic approach to developing Scotland’s water resource?

Nicola Sturgeon: Yes. We should look to make links between all the areas of our policy. It is absolutely correct that there are obvious links between water policy, planning and climate change. We must understand those links and take a joined-up approach.

I return to a point that I made in my opening remarks. The bill is only one part of the hydro nation agenda, which encompasses all the other strands of work that you are talking about.

The Convener: We have heard calls from environment and consumer groups for Scottish Water to educate its customers more on water-saving measures. Do you intend to require Scottish Water to undertake such an education campaign?

Nicola Sturgeon: Scottish Water is already engaged in trial work on that issue. We will discuss with it the evidence that the committee has heard and ensure that it factors that into the work that it has planned or which it might plan for the future.

11:45

Malcolm Chisholm: One of the issues with the bill is what is required to be in legislation as distinct from what the Government can do already or what the Government will progress—as you have just indicated—as part of the wider hydro nation agenda. Can you outline the benefits of the proposals in part 1? Given that the Scottish ministers can already require public bodies to work together and can already require a focus on the development of water resources, what are the benefits of part 1 and which aspects of it are required to be in legislation?

Nicola Sturgeon: I understand that you are asking specifically about part 1, but my answer applies, to some extent, to different parts of the bill—for example, part 3—as well. The difference is between what can be done just now and what the bill says should be done through the placing of a duty on ministers and, in a later part of the bill, on Scottish Water. It is important that we move from a more permissive approach to clear and explicit duties.
Part 1 imposes a duty on ministers to take steps to ensure the development of the value of Scotland’s water resources, which is a pretty strong duty to place on ministers. It is much more powerful and meaningful than simply saying that there is nothing preventing ministers from doing that already. It highlights the importance of water as a national resource and the importance of our realising the potential of that resource both domestically and internationally. It is a duty under which we are accountable to the Parliament on the issue, and ministers will be required to report to the Parliament on what has been done to carry out that duty.

Malcolm Chisholm: That is helpful. Thank you.

The committee has heard numerous calls for the definition of the value of Scotland’s water resource to be broader than the definition that is currently in part 1. In particular, it has been suggested that there should be a reference to social and environmental factors in the bill. How do you react to that suggestion, which has come from quite a few different groups?

Nicola Sturgeon: It has come from a lot of groups, and I have been mindful of that as I have read the evidence. However, it is my clear understanding and interpretation of the definition as it is currently drafted that although it indicates the importance of economic value, it does not do so to the detriment of other factors, such as environmental or social benefits. Members will be aware that, separately, ministers are tasked to act in a way that ensures the sustainable use of resources. It is worth bearing that in mind as well. That said, I was struck by the near unanimity of that view and, as we proceed to stage 2, we will certainly give consideration to whether we want to respond to that by lodging amendments.

Malcolm Chisholm: That is helpful, too, thank you.

The centre for water law, policy and science and SSE suggested that any direction issued by the Scottish ministers to a designated body should first be subject to a public consultation. I think that the centre for water law, policy and science also said that there should be a requirement to consult the designated bodies as part of that. Do you support that proposal and can you give an indication of the type of directions that might be issued?

Nicola Sturgeon: I envisage the power of direction being used sparingly. It is hard to isolate individual examples, as we are dealing with a number of organisations that are listed in the bill. We could give a direction for an organisation to ring fence a particular aspect of its activity in order to focus on the issues in the bill, but I do not expect the power to be used overly liberally.

I have looked carefully at the evidence that has been submitted on the specific point about consultation, and we will reflect on all the evidence that has been submitted. On balance, however, my view at the moment is that the issuing of a direction of this nature should not require a public consultation or a wider consultation, although it would clearly require consultation with the body that was subject to the direction.

As a former minister, Malcolm Chisholm will know that ministerial directions are often given for specific reasons in specific circumstances. Having in the bill a requirement to carry out wider consultation would limit the ability of ministers to use the power of direction quickly and flexibly. At the moment, my view is that I would not be sympathetic to making a change in that direction, but we will continue to consider the evidence.

Malcolm Chisholm: Okay. That is fair enough. A compromise might be consultation with one or possibly all of the designated bodies. I am sure that we will return to that issue in the report and perhaps—who knows?—in amendments.

My final question is about the reporting requirements. There is some concern about the fact that section 26 of the Water Environment and Water Services (Scotland) Act 2003—which relates to reporting—is being repealed and some confusion about what the new process will be. Ministers will be required to report on the exercise of their functions under the bill, but people are not clear whether they will have to do so every three years or whether it is a one-off requirement that they will have to fulfil after three years. Could you clarify that and comment on the concerns about the repeal of the requirement in the 2003 act?

Nicola Sturgeon: In relation to the three-year provision, we must recognise that we are talking about a long-term agenda. My judgment would certainly be that, given that it is a long-term agenda, three years is a reasonable period after which to expect a progress report. That is my first answer.

I should say—this forms part of my answer to the second bit of your question—that the Parliament can ask ministers for an update at any time. A minister can be asked to come to a committee at any time. The fact that there is a statutory requirement for a report after three years does not in any way limit the ability of the Parliament to hold ministers to account and to scrutinise progress at an earlier stage.

I have noted the desire of stakeholders—which you hinted at—for greater clarity on a regular timetable for the submission of reports. The bill is drafted in such a way that it says that “a report” must be submitted after three years. I will look to see whether we should introduce amendments at
stage 2 to make it clear that there is a requirement to report regularly after the first report.

As far as the repealing of the provision in the WEWS act is concerned, the information that was required is readily available. As I said, MSPs can ask for an update at any time, so I am not sure that we should continue to have the burden of annual reporting on what is a long-term agenda, unless there is a good reason to do so. I think that the three-year period that we are moving to in the bill—bearing in mind my comments about the possibility of amendments to the bill to ensure that what happens on a regular basis—is the right balance to strike.

Malcolm Chisholm: Thank you very much.

The Convener: We move on to the control of water abstraction.

Alex Johnstone: Water abstraction has become my favourite subject in the bill.

The part of the bill on abstraction did not form part of the consultation. A number of witnesses expressed concern about that. Why did you not consult on the abstraction rules prior to the bill’s introduction?

Nicola Sturgeon: That was not because we did not want to consult; it was simply down to the fact that the part of the bill on abstraction was developed at a relatively late stage of the process. In other words, it was a timing issue. We developed part 2 of the bill after the two consultation exercises had already been undertaken. The abstraction provisions—the substance of which I am sure we will come on to talk about—are about highlighting the value of the resource that we have in Scotland and how we ensure that we safeguard it for the future. I recognise that there was not the same level of consultation on part 2 as there was on other parts of the bill.

However, my officials will continue to talk to stakeholders about the provisions in question. We will pay particularly close attention to the comments that have been made to the committee in oral and written evidence on part 2 to inform any changes that we might want to introduce at stage 2.

Alex Johnstone: A small number of specialist interest groups have suggested that it might be appropriate for the Government to conduct a formal consultation on the abstraction proposals before stage 3. Do you feel that that is necessary, or do you feel that you are doing such work in the interim?

Nicola Sturgeon: As we are already going through a fairly well-established consultation process, I am not convinced of the need for more formal consultation. We are talking to—any group or stakeholder interest with particular concerns that might want to persuade us to introduce stage 2 amendments, and are happy to continue that open dialogue as we approach stage 2 and move into stage 3. Obviously, the committee’s report will also be important in our considerations.

Alex Johnstone: A number of witnesses have suggested that the policy intention behind the bill’s abstraction provisions is unclear, particularly given that water abstraction is already controlled by the Water Environment (Controlled Activities) (Scotland) Regulations 2011. What will the new system achieve that the current system does not?

Nicola Sturgeon: A lot, in my view. This is not a criticism, but the fact is that the CAR system is restricted to environmental factors. Members will know this, but it is worth putting on record that the bill does not interfere with that particular process and that people who want to abstract water will still have to go through the CAR process. However, if they go over the threshold that is set in the bill, they will have to go through the additional process. As the bill makes clear, in considering applications ministers will be able to have regard to factors, such as the social and economic value of the activity, the applicant’s financial circumstances and the overall effect of the abstraction, that they are unable to have regard to under the CAR process. Unlike an approach that simply looks at environmental impacts, that kind of approach allows us to take an overall view of the value of the resource and, bearing in mind that value, to make judgments as to whether large-scale abstractions allow us to safeguard that resource properly and appropriately.

Alex Johnstone: Some key stakeholders have expressed concern about activities that have been exempted from the new consent regime for large-scale water abstractions. How did the Government arrive at the list of exemptions in the bill?

Nicola Sturgeon: Exemptions from the abstraction regime largely cover activities that are for the most part non-consumptive of the water abstracted and which confer wider public benefit, such as Scottish Water’s activities in providing drinking water. I should again point out for the record that Scottish Water’s non-core activities would not be exempt from the regime. On the other hand, the generation of electricity by hydro power, irrigation and so on are considered to fulfil a social benefit as well as being generally non-consumptive of water. Those were the general rules and criteria applied in deciding on the initial list of categories of exemption, which, of course, can be changed at any time if we think it appropriate.

Alex Johnstone: Why did you choose a limit of 10 megalitres a day?
Nicola Sturgeon: Given that, like you, I have had to learn a lot about this issue in a relatively short time, I should perhaps respond by using a non-technical term: 10 megalitres a day is a lot of water. I also point out that the threshold applies only to future abstractions and not to current ones.

We chose the limit simply because it is a significant volume of water. As I understand it, the vast majority of abstractions in Scotland currently fall beneath that threshold, so the regime is not likely to have a massive impact on those who use water. However, I guess that it all comes back to the bill’s original purpose of recognising the value of water and our obligation to sustainably safeguard that resource and its value for the future. In that respect, it is right to set a fairly high threshold, given that big abstractions will be more likely to jeopardise that kind of sustainable safeguarding. Like the list of exemptions, the threshold can be changed if reasons for doing so emerge and the regulations that we would introduce would be subject to the affirmative procedure and the associated level of parliamentary scrutiny.

Alex Johnstone: Finally, the new abstraction regime might impose additional costs on businesses. Are you able at this stage to indicate the possible scale of charges for the new regime?

12:00

Nicola Sturgeon: That will be set out in the regulations that we will be required to introduce and on which we will consult properly and listen to stakeholder views before reaching any decision. However, I repeat that we do not expect many to be affected by the abstraction regime. I have just been informed that the estimate is that it might affect five to 10 applications over the next decade, so it is not going to put significant burdens on people who are using water.

The Convener: Jim Eadie will ask about Scottish Water’s functions.

Jim Eadie: Witnesses expressed concern that, because of its access to Scottish Government finance and Scottish Water land and facilities, Scottish Water Horizons might be at a competitive advantage to what we might call its commercial rivals. When asked about that, Scottish Water made it very clear that that was not the case, but will you put on record your views on the matter and assure us that that is not happening?

Nicola Sturgeon: I am very clear, first, that that should not be the case and, secondly, that it is not the case. Scottish Water’s non-core activities operate fairly and on a level playing field. For example, lending to Scottish Water Business Stream happens at a commercial rate that is determined by the economic regulator; similarly, any future lending to any Scottish Water subsidiary would also take place at a commercial rate. That is very important for state aid reasons, which I know is another issue that has been raised with the committee. We expect Scottish Water to earn a fair economic return from all its non-core commercial activities. I do not believe that it is able to operate at an unfair advantage, and nor should it be.

Jim Eadie: Thank you for that.

With regard to the assessment and management of benefit and risk by ministers and officials with regard to Scottish Water’s exercising of its non-core functions, you have suggested that profits from the non-core business could be used to support core services and possibly to reduce customers’ bills. I am interested in hearing your views not only on that but on the other side of the coin, which is how the Government might cope with potential losses in Scottish Water’s non-core services.

Nicola Sturgeon: On the first part of your question, I cannot say much more than I said earlier. It might be a possibility in the future, but the question whether non-core profits could be used for the benefit of consumers of core services would be subject to ministerial decision making.

As for the other side of the coin, the bill and indeed Scottish Water’s regulatory regime are very clear about the protection of core services and stipulate that nothing in the non-core part of Scottish Water’s services should be subsidised by the money that people pay for water and sewerage services. As the Water Industry Commission for Scotland made clear when it outlined its approach to its regulatory function, it ensures that the system is transparent and that people can be assured in that respect. It also sets charges at the lowest reasonable level for customers, taking into account all of Scottish Water’s investment requirements. Government lending and so on. Obviously, any Scottish Water subsidiary such as Horizons has to make decisions to ensure that it is operating in a sustainable way, but the function of the Government is to ensure that the law is designed and the regulatory system works to protect consumers of core services.

Jim Eadie: So Scottish Water Horizons would have to take the hit on any loss it made in its non-core services.

Nicola Sturgeon: Yes, and it would not impact on its core business.

Jim Eadie: That is helpful.

You said that any lending to Scottish Water subsidiaries would be at a commercial rate. Can you envisage a situation in which the lending to
those subsidiaries could have an impact on the total funding that is available to Scottish Water?

Nicola Sturgeon: The bill states that all lending has to be within limits that are set in budgets, so there is an upper limit that will apply year on year.

I cannot sit here and look years ahead and say what the division will be between the different aspects of the overall business. However, going back to your earlier question, I think that it is the responsibility and the priority of the Government to ensure that the core business takes priority and that any decisions that we make on lending to or otherwise funding Scottish Water reflect that priority.

Gordon MacDonald: Part 4 of the bill concerns raw water quality. The centre for water law argues that it would be better if the Scottish Environment Protection Agency, rather than Scottish Water, took on the new powers regarding raw water quality as it is already involved in raw water quality monitoring. Why do you consider Scottish Water to be the appropriate organisation to take on the new powers?

Nicola Sturgeon: My answer will be similar to the answer that I gave Alex Johnstone earlier about why we have put the abstraction regime in the bill instead of just relying on the CAR process. There is an overlap between the organisations’ roles, but the issue comes back to the difference between SEPA’s narrow focus on the environment versus the broader focus that Scottish Water is able to take through the provisions in the bill.

SEPA’s focus—which is important—is on protecting the environment. Scottish Water’s concern, with regard to the provisions that we are discussing, is the raw water that will be treated and put into the distribution network.

The roles will overlap, but it is right and proper that Scottish Water has the ability to find out what might be undermining the raw water quality, so that it can decide what the most effective solution to that is and find a solution in a way that benefits customers. I am quite clear that that is an appropriate function for Scottish Water, but I am equally clear that it is a function that Scottish Water has to deliver in partnership with other agencies—perhaps chief among them being SEPA.

Gordon MacDonald: You have suggested that there is an overlap between SEPA and Scottish Water with regard to the water monitoring network, but the centre for water law suggests that the existing SEPA network is being reduced. How do you foresee that working out in the future?

Nicola Sturgeon: It is important that everyone who is working in this area—Scottish Water, SEPA, farmers, organisations such as RSPB Scotland and others who have an interest in ensuring that the work is carried out properly—continue to work together in a joined-up and complementary way. There are opportunities—not specifically in the bill but through what we are doing in the bill—to ensure that that kind of partnership working works even better than it does already.

Gordon MacDonald: Scottish Water indicated in evidence that it already works in partnership with other statutory bodies and land managers to protect raw water quality. What do the provisions in part 4 provide that cannot be achieved on a voluntary basis?

Nicola Sturgeon: I think that—as I believe Scottish Water said in evidence—partnership working will continue to operate on a voluntary basis and that the powers that are being given in this part of the bill would need to be used only in extremis and in rare circumstances. However, we all know that, in the real world, those voluntary partnerships do not always work as effectively as we would want them to. In those circumstances and given the importance of the quality of raw water, it is important that Scottish Water has the power to do what is envisaged in the bill. It is not intended that the powers will become the default way of operation. They will be used sparingly, as a last resort. The partnership approach will continue to be the preferred approach, but the provisions in the bill give Scottish Water the backstop powers that it is appropriate for it to have.

Gordon MacDonald: In relation to the new power of entry and inspection, the UK Environmental Law Association was concerned that the term “premises” was unclear and asked whether it included land and buildings or just buildings. Can you provide a clear definition of “premises”?

Nicola Sturgeon: It does not include houses—that is the easy bit of the answer. It is envisaged that it includes land and buildings. However, given that concern about a potential lack of clarity in the bill, I am happy to go away and look at whether we need to make any changes at stage 2 just to put matters beyond doubt.

Gordon MacDonald: Finally, the committee has heard concerns that allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality may result in land managers being subsidised to comply with the law. In fact, in its written evidence the Scotch Whisky Association asked for safeguards to be put in place to ensure that landowners are not being paid to comply with the law—for example, in the construction of slurry storage. What assurances can you give that such a situation will not arise?
Nicola Sturgeon: It is certainly not the intention to do that. As I said in response to previous questions, I am happy to see whether we need to do more to clarify that in the bill. This is a point that I will no doubt also make on the section on the sewerage network: it is not the intention to remove the responsibility of private owners of land or of septic tanks, which later sections of the bill deal with; it is very much about encouraging owners to take responsibility and to fulfil their responsibilities.

The Convener: We move on to non-domestic services.

Adam Ingram: We have not had much by way of comment on part 5 of the bill, but Consumer Focus Scotland raised concerns about the system of deemed contracts and particularly highlighted concerns about experiences of such systems in the energy industry. What assurances can you give us that such concerns will not arise in the water industry?

Nicola Sturgeon: I read Consumer Focus Scotland’s evidence. I would be keen to understand a bit more about what lies behind its concerns, as I am sure the WICS would be, because I think that the bill’s provision is a commonsense and important one. I have constituency experience, as I am sure others around the table have, of the problems that arise when there is no clarity about the contract between who supplies the water and who benefits from the supply. Such circumstances can arise regularly if water providers are changing. I therefore believe it to be a commonsense proposal to put in place the deemed arrangements if no arrangement exists. The WICS obviously has a part to play in the detail of that scheme. However, I would be happy to have a discussion with Consumer Focus Scotland to ensure that we fully understand its concerns and that we take whatever steps are necessary in the remainder of the bill process or in the work that will have to be done after the bill is enacted.

Adam Ingram: I have had difficulties with my constituency office in that regard, but we will not go into that.

Are you confident that the proposals in part 5 will prevent the problem of bad payers that is currently caused when new occupiers fail to inform the licensed provider when they have entered a property?

Nicola Sturgeon: I am not sure that any legislative system in any area where people get billed and are required to pay will deal with every instance of bad payers. There will always be a small number of people who do not pay or do not pay on time and who create issues in that way. By putting the onus on the landlord to notify the licensed provider when there is a change of occupancy, the bill will make it harder for people to hide behind a lack of knowledge about who should pay and whom they should pay, just because the information has not been made clear. The bill will help in that regard, but whether it will completely solve the problem is another question.

The Convener: Margaret McCulloch has questions on the sewerage network.

12:15

Margaret McCulloch: Witnesses universally supported the proposals relating to passing pollutants and fat into the sewer network. However, several stakeholders have recommended that the list of premises that are to be inspected by Scottish Water and SEPA could be expanded from trade premises to include places such as schools and hospitals. Could that be revised?

Nicola Sturgeon: It is certainly possible to revise it. I will not give a commitment today to expand the list, but because careful consideration must be given to the types of organisations and bodies that it is appropriate for the bill to cover. However, I am happy to consider any specific suggestions that have been made as we go through the next part of the process.

Margaret McCulloch: Issues have been raised about septic tanks. The provisions relating to the maintenance and repair of septic tanks could have implications for less well-off people who are connected to communal septic tanks, who might have to pay for repairs that they cannot afford. How will people be protected from being landed with substantial bills for septic tank repairs?

Nicola Sturgeon: The bill does not put obligations on people who do not already have them. It makes it easier for the repair or maintenance of a septic tank to go ahead even when somebody who has part-ownership is not prepared to sign up to that. That is a bit like the way in which individuals who live in tenements are responsible for the maintenance of their property. Nobody who currently does not have responsibility for the maintenance of a septic tank will be given that responsibility under the bill. The bill simply makes it easier to get repairs done even when not everybody signs up in advance. Again, that is a commonsense proposal.

Margaret McCulloch: We have heard from witnesses on that issue. The concern is that, for example, four households could share a tank that is broken, but only one person might be prepared to get the repair done. It would then be up to that individual to get the repair done, pay for it and, if the other three owners do not agree to pay, take them to court to recoup the money and so incur
court costs. That is a concern. Could you take those issues into consideration?

**Nicola Sturgeon:** Sure, but in a sense that is what the bill tries to do. It aims to enable one owner to comply with their statutory duties by getting repairs or maintenance done even when co-owners are not prepared to do that. I accept that that creates the scenario that you have talked about, but the only alternative to that is the current situation in which, because not every owner signs up in advance, a repair cannot be done. That is the problem with the current system.

It is important to stress that nobody who does not already have responsibilities and obligations for the maintenance of a septic tank will acquire those by virtue of the bill. The bill simply puts in place a system that allows repairs to be done by one or more owners, even when others stand in the way, and then to recover that cost. I think that that is better than having a lot of septic tanks that cannot be properly maintained and repaired because of the current situation in which everybody signs up or nobody signs up.

**The Convener:** Finally, we turn to water shortage orders. How often do you expect those orders to be used? Might their use increase in the future given the growing number of extreme weather conditions?

**Nicola Sturgeon:** I am not sure that my ability to see into the future is quite as well developed as that.

To give a serious answer to the question, I hope and envisage that the orders will be used very rarely, but if we thought that the orders would never ever have to be used, there would be no point in making statutory provision for them. They will be used sparingly and rarely. As the bill sets out, the case has to be made and the requirements that are set out in the bill must be met. We are setting out a robust process. The important point is that we are removing the term “drought” from the legislation, in recognition of the fact that other issues can potentially cause a water shortage. It is about bringing the language up to date and ensuring that a transparent and easily understood process is laid down in statute.

**The Convener:** It has been suggested that a water shortage order might have serious implications for vulnerable groups and for businesses that are dependent on water. What protection does the bill offer to those groups?

**Nicola Sturgeon:** If such an order was introduced, Scottish Water would have obligations to ensure that vulnerable people were catered for, as is the case just now if there are water shortages in an area. I think that the way in which Scottish Water currently operates covers that point, but I am happy to look at the drafting of the bill on that, as with other aspects, to see whether that point might be made clearer.

On checking with my officials, I understand that we will also have a consultation, which will be another opportunity to look at that point.

**The Convener:** And what about businesses?

**Nicola Sturgeon:** In what context?

**The Convener:** For example, I think that the Scotch Whisky Association, whose representative I recognise in the public gallery today, might have some concerns about water shortage orders.

**Nicola Sturgeon:** We will be happy to talk to the Scotch Whisky Association about any concerns on the use of water shortage orders as well as about abstractions, which we considered earlier. We will need to ensure that, where the orders are used, the vulnerabilities and interests of individuals and businesses are properly catered for.

**The Convener:** If members have no further questions, that concludes our evidence at stage 1 of the Water Resources (Scotland) Bill. We will consider our draft report at a meeting in the very near future. I thank the cabinet secretary and her officials for their evidence this morning. I will briefly suspend the meeting to allow them to leave the room.

12:22

Meeting suspended.
WRITTEN EVIDENCE FROM ANGUS COUNCIL

Part 1 – Development of Water Resources

Q1
Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

Angus Council considers the proposals outlined in the bill will ensure the promotion of Scotland as a Hydro Nation, provided that Scottish Ministers under their duties under section 1(1) of the Bill maintain adequate controls on Scottish Water in the proposed new power to “do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources” under section 21 of the Bill.

Q2
What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

Angus Council considers that this is a positive step, which will contribute to the promotion of Scotland as a Hydro Nation.

Q3
Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every 3 years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

Angus Council considers that requiring the Scottish Ministers to report to the Scottish Parliament in this manner is a positive, transparent requirement which will enable progress towards the development of Scotland as a Hydro Nation to be measured and reported.

Part 2 – Control of Water Abstraction

Q4
In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Yes, Angus Council considers that the new licensing regime is necessary to ensure that the positive contribution that Scotland’s water resources can make in respect of renewable energy targets is developed in a controlled and sustainable manner that benefits the people of Scotland now and in the future.

Q5
Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

No comment.
Q6
Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydropower appropriate?

Yes. It is clear that a qualifying exemption would be subject to separate assessment under other legislation e.g. the Water Environment (Controlled Activities) (Scotland) Regulations 2011 or ‘CAR’, and consequently Angus Council considers that the list of activities which may be subject to exemption is appropriate.

Additional Comment: Section 7(1) Part 2 of the Bill as drafted includes a reference to the ‘Controlled Activities Regulations’ but does not define the Water Environment (Controlled Activities) (Scotland) Regulations 2011 as per other parts of the Bill.

Part 3 - Scottish Water’s Functions

Q7
What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

Angus Council is of the opinion that this is a positive step which will contribute positively to Scotland’s renewable energy targets.

Q8
Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

Yes. Provided Scottish Water’s proposed new power to “do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources” under section 21 of the Bill is subject to adequate controls by Scottish Ministers under their duties under section 1(1) of the Bill.

Part 4 – Raw Water Quality

Q9
Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

Angus Council is supportive of these proposals.

Q10
Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners and occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

Angus Council believes that this is a necessary step which will contribute to general water quality improvements across Scotland.
Part 5 – Non Domestic Services

Q11
Are the new duties to be placed on landlords appropriate and do they raise any concerns?

Angus Council considers that the new duties to be placed on landlords are appropriate.

Q12
Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which deemed contract for the provision of water is to exist?

No comment.

Part 6 – Sewerage Network

Q13
Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

Angus Council consider that this is a positive step in line with the powers granted to other agencies which are tasked with enforcing legislation.

Q14
Do you have any comments about the creation and enforcement of a new offence of passing or permitting to be passed, fat, oil or grease into the public sewer network?

Angus Council considers that this is a positive step which will improve the operation of the public sewer network which could contribute to water quality improvements.

Q15
Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the owners?

The Bill introduces the requirement in the circumstances described above for a proprietor to serve notice on the other occupiers prior to carrying out improvement works under a revision to the Sewerage (Scotland) Act 1968 This is an improvement on the current situation which could contribute to the reduction of environmental impact from private sewerage treatment systems which are not being maintained.

Part 7 – Water Shortage Orders

Q16
Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?
Angus Council is of the opinion that this proposal will enable water shortage orders to be dealt with in a more efficient and effective manner than at present and that this is a positive proposal.

Q17
Do you have any comments on the estimated costs associated with the Bill?

Angus Council is content that the introduction of this Bill as currently drafted will have minimal additional costs for the council.
Introduction
The Association of Salmon Fishery Boards is the representative body for Scotland’s 41 District Salmon Fishery Boards (DSFBs) including the River Tweed Commission (RTC), which have a statutory responsibility to protect and improve salmon and sea trout fisheries. The Association and Boards work to create the environment in which sustainable fisheries for salmon and sea trout can be enjoyed. Conservation of fish stocks, and the habitats on which they depend, is essential and many DSFB’s operate riparian habitat enhancement schemes and have voluntarily adopted ‘catch and release’ practices, which in some cases are made mandatory by the introduction of Salmon Conservation Regulations. ASFB creates policies that seek where possible to protect wider biodiversity and our environment as well as enhancing the economic benefits for our rural economy that result from angling. An analysis completed in 2004 demonstrated that freshwater angling in Scotland results in the Scottish economy producing over £100 million worth of annual output, which supports around 2,800 jobs and generates nearly £50 million in wages and self-employment into Scottish households, most of which are in rural areas.

We welcome the opportunity to comment on the general principles of the Water Resources (Scotland) Bill.

Part 1: Development of Water Resources

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

We are unclear as to the precise definition of the term ‘Hydro Nation’. Our belief is that a hydro nation is one where a healthy water environment is maintained through a catchment based approach to water management, and those aspects of the water environment which are not currently in good health are improved and restored (as required by the Water Framework Directive). Scotland’s water resources are vital for the provision of drinking water, food production, sustaining business and supporting the diversity and abundance of our native species, including Atlantic salmon and sea trout, all of which rely on a clean and abundant supply of water. Such species are extremely important from a social, environmental and economic perspective. We would be extremely concerned if the development of the value of Scotland’s water resources occurred to the detriment of the underlying resource on which it depends. We need to value the wider ecosystem services arising from all aspects of the water environment, not just the subset of economic benefits that can be gained from the exploitation of the resource.

The importance of the water resource is so fundamental that the primary driver in the development of the value of Scotland’s water resources must be the environmental sustainability of the activity in question. With that in mind we believe that:

- The proposed duty should be strengthened to ensure sustainable development
- Section 1(3) should make specific reference to environmental benefits
Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

We believe that any such direction should be subject to wider public consultation, in addition to consultation with the body in question.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland's water resources?

We do not believe that a reporting period of 3 years is sufficient to ensure that Scottish Ministers are held accountable by Parliament. We also believe that it is important to ensure that Scottish Ministers report on the environmental sustainability of any such steps taken in fulfilment of the duty. As the Bill currently stands we are concerned that there is too much emphasis on economic benefit, as opposed to environmental benefits (which in many cases can be complimentary).

Part 2: Control of Water Abstraction

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Water abstraction has the potential to place significant pressure on the water environment, to the detriment of our native biodiversity. In many catchments across Scotland, this is already a serious and significant issue for migratory salmonid fish. On that basis, it is entirely appropriate that all abstraction should be undertaken in full compliance with the WEWS Act and the Controlled Activities Regulations (CAR). The proposed licensing regime has the potential to compromise the achievement of our International obligations under the Water Framework Directive. We therefore believe that Part 2 should be omitted from the Bill, and all abstractions should continue to be authorised by SEPA under CAR. It is worth noting that under the existing regulatory framework, Scottish Ministers are already able to call in and determine applications. At the very least, Scottish Ministers should be required to seek advice from SEPA – this is currently optional under section 13(4).

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

We are unable to answer this question as we do not understand the basis for the figure used.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

We agree that it is appropriate that activities already authorised by CAR, hydropower, agricultural irrigation, operating a fish farm, quarry or coal mine are excluded from being authorised by Scottish Ministers.
Part 3: Scottish Water’s functions

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

ASFB recognise the importance of renewable energy generation and the Scottish Government’s generation targets. However, we would be concerned if such powers resulted in Scottish Water being diverted from their core functions (see below). If designed and located properly and if proper care and attention is taken during construction renewable developments need not be incompatible with a high quality freshwater environment. However, there is also the potential for significant impacts on biodiversity. The Bill should therefore include a clear requirement to ensure that the development of renewables by Scottish Water is sustainable and compatible with Scottish Water’s existing biodiversity duty under the Nature Conservation (Scotland) Act. On that basis Section 21 should be amended to read ‘sustainable development’ rather than ‘development’.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

Such core functions should be the primary driver for investment in Scotland’s water environment. We are unclear as to where the finance for such new functions will be derived, since the current consultation on Scottish Water investment specifically excludes the issues covered by the Hydro Nation agenda or the Water Resources (Scotland) Bill. With that in mind, we consider it unlikely that core water and sewerage functions will be adequately safeguarded.

Part 4: Raw Water Quality

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

No Comment

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We support this proposal. Such agreements might be appropriate if they facilitate land management (over and above existing regulatory requirements such as Good Agricultural and Environmental Condition (GAEC) and General Binding Rules (GBRs)) for the purpose of enhancing water quality and delivering favourable habitat for Atlantic salmon and sea trout as part of a catchment based approach.

Part 5: Non-Domestic Services

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

No Comment
Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?
   No Comment

Part 6: Sewerage Network

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?
   No Comment

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?
   We believe that this new offence, if properly enforced, has the potential to improve the protection of the water environment.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?
   We believe that this has the potential to improve the protection of the water environment. However, such activities are already regulated under CAR and we would highlight the importance of SEPA using its existing powers to deal with septic tanks identified as causing a pollution issue.

Part 7: Water Shortage Orders

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?
   Whilst we agree with this proposal in principle, we would highlight that Scottish Water already operates under a duty to promote the conservation and effective use of the water resources. We believe that the situation in England, where the privatised water companies are required to prepare and publish a drought plan, following a period of public consultation, is a good model here. This would allow detailed discussions/consultations to take place, in respect of knowing what will happen to the river/ water body if additional water is taken in times of critical low flow, without the potential backdrop of a crisis situation.

Financial implications

Q17. Do you have any comments on the estimated costs associated with the Bill?
   No Comment
WRITTEN EVIDENCE FROM BUSINESS STREAM

About us

1. This evidence is submitted by Business Stream, the leading water retailer in Scotland. Business Stream was created in 2006 in response to the Water Services etc (Scotland) Act 2005. It is a wholly owned subsidiary of the Scottish Water Group, a public corporation. At the time of market opening Business Stream was separately financed, governed, operated and managed, this remains the case.

Introduction

2. The intention of the Bill is to set a framework to make the most of Scotland’s water resources. The call for evidence notes the bill makes provisions for a range of changes and topics within the water and sewerage industry in Scotland.

3. Many of the changes which involve Scottish Water investing in their estates and renewable energy will not have an immediate or direct impact on customers.

4. The focus of our response is on the issues which will directly impact on non-domestic customers and the non-domestic competitive retail market. Many of the proposals contained in the document may eventually impact on customer charges but we have not commented on these in detail.

5. Where appropriate we have cross referenced our response to the questions raised in the Call for Evidence published by the Scottish Government.

General comments on expanding the core activities of Scottish Water

6. Our customers would want to ensure that new activities do not increase price volatility or adversely impact on stable pricing. (QUESTIONS 7 & 8)

7. In representing customers we would welcome regular updates on the success of the Hydro Nation vision to understand the benefits of investment. An annual update could be provided in addition to the Ministerial monitoring after three years. (QUESTION 3)

Abstraction – Proposals / Enhanced powers

8. The proposals give powers for Ministers and Scottish Water to control large scale abstractions from the environment. (QUESTIONS 4, 5 & 6)

9. There should be an obligation for Scottish Water to agree any changes to abstraction rights through consultation with customers and their Licensed Provider. We consider that criteria should include a requirement that customer charges do not increase as a result of these powers and that the customers business is not otherwise negatively impacted. (QUESTIONS 4, 5 & 6)
10. The impact assessment suggests that these powers could impact on a further 10 customers over the next five years. Again these customers should be informed and consulted as appropriate. (QUESTIONS 4, 5 & 6)

Proposals that will impact directly on the non-domestic competitive market

11. Some proposals will directly impact on business customers or the competitive retail market. We believe that the draft bill provides a positive framework. However, implementation will ultimately determine the success of the proposals.

Deemed Contracts

12. This is a positive change and will ‘tidy up’ existing legislation. Deemed contracts will ensure that customers are protected by a set of standard Terms and Conditions (T&Cs) which fall under a legal framework as soon as they enter the competitive market and regardless of which Licensed Provider they are allocated to.

13. The successful implementation of this process will rely on T&Cs being fair and representative of existing Licensed Provider T&Cs. Taking an alternative approach would increase the regulatory burden in the market and increase costs to customers. We would be happy to work with the Water Industry Commission for Scotland to implement changes in a manner which maximises the benefits of the proposals. (QUESTION 12)

Landlord / Tenant information

14. This is a positive addition to existing legislation and may mitigate the need to introduce more onerous approaches suggested in the 2015-20 Price Review consultation.

15. A similar addition was included in the Flood and Water Management Act 2010 in England. We believe this could be an extremely useful tool for managing debt in the industry and ensuring that customers who ‘wont pay’ do not create cross subsidies for customers who do pay. Ultimately landlords are best placed to know when tenants move in to properties and therefore when they should start paying for water charges.

16. We are committed to educating customers and we believe that groups such as the Scottish Property Federation and Commercial Agents should be consulted on how these changes are implemented and how education can be best delivered. This consultative process can inform the timescales for ‘bedding in’ the proposals and help understand how quickly they can begin to work effectively.

Pre-treatment of effluent

17. The policy memorandum discusses requiring customers in some circumstances to deliver pre-treatment on their sites in order to satisfy the conditions of trade effluent consents.

18. Care must be taken not to interfere with activities which can already be delivered via existing routes within the retail market. We therefore recommend that the
implementation of this proposal is delivered in conjunction with Licensed Providers who help customers apply for and manage their consents.
Part 1 – Development of Water Resources

Q1 Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

COSLA Comment – the emphasis seems to be balanced between economic benefit and environmental sustainability and consistent with Hydro Nation aspirations. Ministers will need to ensure that effective controls and oversight are maintained on Scottish Water’s activities given the proposed power to ‘do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources’.

Q2 What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

COSLA Comment: Although this proposal does not currently include local government, given the power of Ministers to modify the list and add other public bodies, COSLA would wish for guarantees that any proposal to include local government in future would be subject to specific negotiation and agreement as appropriate. COSLA would not support any power for Ministers to direct local government to participate in the development of water resources.

Q3 Do you have any comments on the requirements for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

COSLA Comment: Steps taken towards the development of Scotland’s water resources should be regularly measured and reported to the Scottish Parliament. Regarding frequency, in some instances more frequent reporting that the 3-yearly proposal, may be appropriate, for example where water shortage orders were introduced, unless this can be addressed via alternative resilience reporting regimes?

Part 2 – Control of Water abstraction

Q4 In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

COSLA Comment: Any new licensing regime in relation to the role of Scotland’s water resources in renewable energy must align with existing regulatory frameworks, for example planning, as appropriate.

Q5 Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

No comment

Q6 Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?
COSLA Comment: Note that ministers are able to modify these exemptions by regulation. Such exemptions would still require some degree of public oversight, under other legislation as appropriate.

Part 3 – Scottish Water’s functions
Q7 What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

COSLA Comment – Provided that this is consistent with the economic, efficient and effective exercise of Scottish Water’s core function and any renewable application conforms to the appropriate planning regime, this is an acceptable proposal.

Q8 Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core activities?

COSLA Comment: see comment at Q 1 above on the need for appropriate oversight by Ministers.

Part 4 – Raw Water Quality
Q9 Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

COSLA Comment – This proposal seems appropriate given it still requires due legal process to be followed.

Q10 Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

COSLA Comment: This proposal seems appropriate and consistent with maintaining water quality.

Part 5 – Non-Domestic Services
Q11 Are the new duties to be placed on landlords appropriate and do they raise any concerns?

COSLA Comment – This duty is consistent with practice in relation to other utilities and seems appropriate. A concern may be in relation to public sector landlords such as local authorities and we would wish to seek assurances that liability does not extend to the point where ‘recalcitrant’ non-domestic tenants’ charges will need to be met from the public purse where relevant occupier information has been supplied in good faith, as presumably this is not the intention of the Bill.

Q12 Do you have any comment on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

No comment
Part 6 – Sewerage Network

Q13 Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

COSLA Comment: This proposal is appropriate and consistent with powers granted to other public agencies to maintain public health.

Q14 Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, far, oil or grease into the public sewer network?

No Comment.

Q15 Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

COSLA Comment: This proposal is appropriate in order to achieve environmental improvements.

Part 7 – Water Shortage Orders

Q16 Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

COSLA Comment – The proposal is appropriate. Only monitoring and review will confirm whether they achieve the desired effect. Link to Q3 response about the potential need for more regular reporting on activities than the three-yearly cycle proposed.

Financial implications

Q17 Do you have any comments on the estimated costs associated with the bill?

COSLA Comment – Financial Memorandum (Paragraph 111 - Costs to Local Authorities) states that local authorities are not given any specific role or responsibility in the Bill. There are therefore no direct costs arising from the Bill. However Local Authorities are named as a party that SW may enter into agreements with (see response to question 10). We note that although it is not possible at this stage for any specific impacts on specific councils to be quantified there may be potential future costs for local authorities.

Additionally, submit any issues relating to the Bill not covered by the questions above.

No comment
WRITTEN EVIDENCE FROM THE DRINKING WATER QUALITY REGULATOR FOR SCOTLAND

I welcome the introduction of this Bill which is intended to set a framework for making the most of Scotland’s water resources.

The provision of an adequate supply of raw water which is of acceptable quality is an essential part of the process of supplying safe, clean drinking water to the public of Scotland and I support proposals to give Scottish Water new powers of entry to safeguard and improve, where possible, the quality of raw water.

I also support the proposal to streamline the process for dealing with water shortages so that these can be dealt with swiftly to allow Scottish Water to continue to supply wholesome drinking water to its customers.

The definition of core powers should provide sufficient safeguards to protect Scottish Water’s core customers from the risk that its management will have its attention diverted from the primary task of providing them with a wholesome drinking water supply of sufficient quantity.

An area that is not highlighted in this current proposal but that will be considered at Stage 2 of the Bill, we understand, is in relation to section 75 of the Water (Scotland) Act 1980. This section provides for the offence of polluting a “spring, well or adit” which is used or likely to be used for human consumption. This definition of a drinking water source is too narrow in my opinion and would benefit from being more general in nature so that it includes all sources of water which are used or likely to be used for human consumption.
WRITTEN EVIDENCE FROM GLASGOW CITY COUNCIL

Q1. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

GCC The phrase ‘drive forward’ suggests an aspiration for quicker progress than the phrase ‘ensuring the development’ used in the Bill.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

GCC Any direction by the Scottish Ministers should take recognisance of the cost implications of meeting any additional obligations in terms of staff and other resources and the potential impact on the core services delivered by those public bodies.

Q3. Do you have any comments on the requirements for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

GCC Whilst a formal three year reporting cycle is reasonable, there would be merit in the progress towards the desired objectives being visible through publication of an annual statement.

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

GCC The burden of requiring to obtain a CAR authorisation and Scottish Minister approval appears to be unnecessary particularly as the CAR process is protracted and complex. If the CAR process is considered as not providing sufficient protection to Scotland’s water resources, the CAR process should be modified rather than introducing a second level of regulation.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

GCC The appropriate threshold level may vary between river catchments.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

GCC An alternative approach would be to specify the criteria that have to be met to qualify for an exemption rather than providing a specific list of activities.
Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

GCC  Scottish Water has expertise and resources that have the potential to deliver added value and help reduce the significant carbon footprint of the water industry.

Q8. Are you content that the definition of core powers and will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

GCC  Yes

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

GCC  Best value will be achieved by protecting raw water quality at source and therefore the proposals will enable Scottish Water to operate more effectively and thereby free up resources to tackle issues such as sewer flooding and water main leakage.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

GCC  As per the answer to Q9 above, this proposal provides the opportunity for Scottish Water to provide best value.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

GCC  The new duties are considered to be reasonable.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

GCC  No

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

GCC  As per the answer to Q9 above, this proposal provides the opportunity for Scottish Water to provide best value.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

GCC  Threshold concentrations should be established below which the relevant substances are deemed to not interfere with the free flow. In parallel, an education
campaign and escalation protocol should be established to advise operators at risk of committing the offence of the new provisions.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

GCC The proposals are considered to be reasonable.

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

GCC The proposals are considered to be reasonable.

Q17. Do you have any comments on the estimated costs associated with the Bill?

GCC No
WRITTEN EVIDENCE FROM THE HIGHLAND COUNCIL

Thank you for the invitation to comment on the Bill. Highland Council would offer the following officer comments.

The overall purpose of the Bill is welcomed, in both recognising the economic potential of Scotland’s water resources whilst also adding some environmental safeguards. In particular, Highland Council welcomes the emphasis on and further encouragement of hydro renewables which accords with the Council’s own policy on this issue.

In relation to Part 2 we would ask for further clarification on the criteria for prohibiting abstractions from the water environment. For example, we will be continuing to work closely with Scottish Water to examine the implications and water-related infrastructure requirements associated with emerging and future Local Development Plans. The proposed measures explained in Part 2 may have implications for the delivery of water-related infrastructure to support new development. Therefore, we would like to better understand the possible impact of these measures.

The Council has one specific comment in response to Question 15 of the Call for Views. We fully support the proposed new powers to encourage the better maintenance of poorly performing, shared septic tanks. There are several of these in Highland and the repair & maintenance of these facilities would benefit from the proposed change whereby one owner of a co-owned tank could take necessary remedial action and bill the other co-owners for their share of the work. The current need for unanimity does deter action. Ideally, the Bill should go further and support the replacement of poorly performing septic tanks with other private facilities that have greater capacity to accommodate any future development allocated in a Development Plan. The growth of many small villages in Highland is constrained by reliance on a mix of poorly maintained, small, public and private septic tanks. With Scottish Water’s investment programme unlikely to offer a first time, coordinated public sewerage system for these communities, the option of full Scottish Water specification, private treatment facilities should be encouraged.
We refer to the call for views on the Water Resources (Scotland) Bill which the Committee issued on 6th July 2012. This is our response. We only have comments on specific aspects of the Bill and these are as follows.

Question 2
The stated purpose of the Bill is that it should set a framework for making the most of Scotland’s water resources. In this context, it is relevant to consider some historical evidence which indicates how Scottish Water has acted in the past in a way which has a significant adverse impact on Scotland’s economy. This evidence is as follows:

Scottish Water has a substantial investment programme (which runs at about £500 million per annum). To deliver this, Scottish Water has formed long term partnerships which involve handing over a large part of its capital investment programme to the private sector. The first, to cover 2002-06, was Scottish Water Solutions (SWS) a partnership between Scottish Water, and two other companies. The partner companies were themselves owned by major players in the utilities and construction fields, none of which is headquartered in Scotland. This type of partnership, albeit with different private partners, has continued to the present day. In other words, Scottish Water has handed over responsibility for large parts of its civil engineering programme, as well as management and R&D, to a partnership of large construction firms. For the remaining part of its investment programme, Scottish Water has appointed what are called construction delivery partners (CDPs). Of the 16 CDPs, three are Scottish companies.

It is, of course, the case that many of these companies will employ substantial numbers in Scotland. They may even have been Scottish companies in origin bought over by multinationals a number of years ago. It is also the case that some of the skills they provide may not be available in Scotland. It is not ownership per se which needs to be questioned: it is a system of procurement where management skills and R&D seem to be almost completely derived from outside Scotland. A random search of companies involved in supplying Scottish Water with high tech products and services shows a heavy preponderance of firms from outside Scotland.

Further, Scottish Water’s bringing in of external partners has enabled it to undertake a significant degree of internal downsizing, with large chunks of its design, R&D, and specialist tendering expertise, as well as maintenance and construction capabilities, being outsourced. Scottish Water might argue that this approach has resulted in cost and efficiency savings such that it has been able to provided water and sewerage services more cheaply than would otherwise have been possible. But on the other hand, the specific method they have used to improve efficiency, the outsourcing of high value functions like research and development, has almost certainly meant that the Scottish economy now has a reduced capacity in these functions. We would argue that Scottish Water, as a publicly owned corporation, could have approached its remit with a focus which was not so single-mindedly on short term cost reduction but one which also focused on the long term benefits to its own operation and to Scotland of adopting a procurement policy aligned with sustainable economic development. Such a policy could have assisted real growth in the Scottish economy by encouraging research and development, innovation, new business, and employment.
The above evidence indicates how past actions taken by Scottish Water have indeed had adverse impacts on the wider Scottish economy. We would suggest that the present Bill needs to be strengthened to minimise this kind of adverse impact in future.

Specifically, in relation to Question 2 of the Consultation, we would suggest that a duty should be laid upon both Scottish Water and the WICS to consider the wider impact of their actions on the Scottish economy. It is relevant to note that when we raised these issues with an earlier Water Industry Commissioner, he said that he had no responsibility to take such wider economic impact issues into consideration, because he had had no instruction from Ministers so to do.

Further, we suggest that a proposal made in our paper on Procurement published by the Jimmy Reid Foundation should be implemented: namely, that the public sector undertakes a forward procurement function, whereby the water industry makes known in advance its future requirements, thus allowing Scottish companies, possibly with the help of Scottish Enterprise, to develop so that they can bid effectively to be suppliers.

Question 6
As regards the list of exemptions in Section 7 of the Bill, we question whether it is appropriate to give blanket exemptions from control of abstraction in relation to the quoted list of activities: namely, electricity generation, agricultural irrigation, fish farming, and quarrying/mining. Ministers may well wish to operate light touch control in respect of certain specified activities like these: but it would seem to be a hostage to fortune to remove such activities completely from control under the Act.

Question 7
Developing the physical assets of Scottish Water will inevitably involve capital investment: and there are important links between capital investment, and the pricing model used by the regulator. In fact, the pricing model used by WICS is the same as that used by the regulators of the other UK utilities, namely, the current cost Regulatory Capital Value or Regulatory Asset Base (RAB) model. There are, however, significant problems with this pricing model: we attach as evidence a recent paper by one of us, published by the Jimmy Reid Foundation (annexe), which identifies a number of errors with the pricing model.

The implication of the flaws in the RAB pricing model is that customers will be significantly overcharged for capital investment undertaken by a utility: and the pricing model also gives the utility operator perverse incentives, which are likely to distort the nature of the utility’s capital investment programme. This overcharging will not merely impact adversely on customers: in the context of water it will mean that Scotland is unlikely to reap the full economic advantages which it should from its relatively plentiful water resources. We therefore argue that it is imperative that the problems with the pricing model identified in the Reid Foundation report are addressed.

While we have made the above comment on utility pricing in the specific context of the Water Resources Bill, the topic is potentially of much wider relevance to the Infrastructure Committee. To what extent, for example, was the specific solution advanced for the Beauly

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to Denny power transmission connector influenced by the windfall profits which will accrue from investment funded using the RAB model? Or what will the implications be if, as the Scottish government proposes, the upgrade of the Glasgow Edinburgh rail link is financed through the RAB approach: there are potential implications both for customer fares, and for the nature of the investment that might be undertaken. (And, as the Reid Foundation paper shows, the specific version of the pricing model used in relation to rail investment has particularly adverse consequences.) We would therefore urge the Committee to consider the question of utility pricing for capital expenditure not just in the context of the Water Resources Bill and the water industry, but in relation to utilities generally.
Summary by the Reid Foundation

Electricity, gas, water, transport: these services are central to modern life and none of us can survive without them. But all of these services are now privatised and because of their necessity this makes them either monopolies or virtual monopolies. The only thing stopping them from unrestricted exploitation of their market position is regulation. Which is to say that the only protection the consumer has in many instances is the action of the regulator.

And yet many of these services are more expensive in Britain even than the privatised equivalents in other countries. This implies that some part of the regulatory system is failing. It is: the mechanism through which regulators allow privatised utilities to charge customers for investment in capital infrastructure. The result is that Britain allows utilities to make profit from financial speculation in a way other countries don’t. The result is that customers pay more for their utilities than they should and the extra goes straight into investors’ pockets. And since this financial speculation is based on how much the companies spend on infrastructure, it gives them an incentive to make infrastructure investment as expensive as they possibly can, all to be paid by the customer.

The problem is straightforward: the formula used by regulators to allocate the cost of investing in infrastructure to customers greatly overestimates the cost to the utility company of financing that infrastructure. This has led to windfall profits for the utility operators on the capital investment they undertake: it also means that utilities are under an incentive to manage infrastructure investment to maximise their benefit from the unfairness faced by the customer.

This means that equity investors in the utilities companies are making an grotesquely high return on their investment. In the case of the English water companies it is estimated that returns on equity invested are running at over 20 per cent per annum. This is coming straight out of the pockets of the customers and straight into the pockets of financing consortiums etc.

The process works as follows:

- The regulator calculates the cost of delivering services to customers and of investing in infrastructure for the future. It then restricts how much profit beyond these costs utilities are allowed to make from their customers. The regulator does a reasonable job of restricting profiteering in service delivery.

- The regulator estimates the finance costs of infrastructure investment on the basis of assumptions on the real rates of interest the company will have to pay for its debt and equity finance, and an assumption about the proportions of the overall finance package coming from debt and equity.

- The assumptions are then fed into a model, the output of which then determines the maximum amount the utilities companies can charge customers to cover the costs of infrastructure investment borne by the companies.
But the regulator has consistently overestimated the cost of infrastructure investment and allowed the companies to pass this cost on to consumers. The companies then pocket the difference between the inflated costs they pass on to consumers and the real costs they actually pay.

This is because a number of key errors have been made in this process. These occur in the way the regulatory model has been conceived, in the assumptions made in its application, and in the way the effects have been presented. The paper uses OFWAT’s record of setting water prices in England and Wales as a case study to illustrate these points.

To give some specific examples:

- There is a mismatch between the timescales under which costs are passed on to the customer and the timescales and ways utilities actually pay financing costs in reality (this is known as the ‘profile’ of repayments). Section 4.4 demonstrates this and Section 3 explains the consequences. One of the implications is that the indicator the regulator uses to work out how the utility company funds investment is no longer reliable. Using this indicator, the “gearing ratio”, Ofwat has significantly overestimated the percentage of capital investment financed by equity. Since companies are allowed to charge the customer a higher rate for equity finance than for debt finance, this contributes to a significant overestimation of the true cost of capital.

- Ofwat has consistently overestimated the cost of debt finance to the utility companies (see Section 4, paragraph 2). Again, this contributes to a significant overestimate of the true cost of capital.

- To make matters worse, the regulator fails accurately to report the actual returns on capital invested made by the companies (what it rescribes as “the overall return on capital that investors and lenders received”). Because its reporting methods are flawed, the excess profits the utility companies make are concealed - profits arising from Ofwat’s inaccurate assessment of the true cost of financing capital investment. (More detail on the flaws in the mechanism is available in Section 4, paragraphs 11 and 12 and in Annex 5.)

- As the report shows, it is not merely the specific mistakes in applying the model which result in customers being overcharged. The underlying philosophy of the regulatory model applied in the UK means that customers are charged for the use of utility infrastructure assets as if they were paying a rent for the asset, a rent which is continually uprated in line with inflation. This in itself results in customers being overcharged in the long term.

- If in doubt, one report points out: “Profit margins in the UK [water industry] are typically three or even four times as great as the margins of water companies, private and public, in France, Spain, Sweden or Hungary. The profit margins of the greatest water multinationals – Suez-Lyonnaise and Vivendi – worldwide, also show a much lower return than enjoyed by the UK companies.” Water is expensive in England and Wales because it is a front for financial speculation not permitted in other countries.

That all almost all these regulators use the same formula is bad enough; that the one that uses a variation (the rail regulator) uses one that is even worse is an even greater scandal. It helps to explain why investment in UK rail infrastructure appears to be so expensive. This in turn helps to explain why train travel in Britain is so prohibitively expensive – because the customer is paying
through the nose to fund what amounts to a financial scam which is not improving infrastructure in the right way.

For many years people have asked the question ‘why are UK privatised utilities so expensive for customers?’ and ‘why is it so expensive to upgrade infrastructure in the UK?’ This report reveals the answers for the first time.

This is a national scandal that must be addressed; reform must become a priority. The first thing to be done in sorting out this mess is to involve customers in rethinking the philosophy of the basic charging model: and then to make sure that the resulting charging model is indeed applied correctly.

Excessive Profits and Overcharging

Multiple Errors in the UK’s Model for Setting Utility Prices

Jim Cuthbert, July 2012

1. Introduction

1. When the major utility companies in the UK were privatised, as part of the Thatcherite revolution, one of the problems was how customer charges should be set. The approach to price setting used in the first privatisation, that of British Telecom in 1984, was devised by a Treasury economist, Stephen Littlechild, in a report he published in 1983: (Littlechild, 1983, discussed in Stern, 2003): this was the so-called RPI-X approach, where the regulator would specify the maximum price increase that could take place as X percentage points less than the increase in RPI.

2. The Littlechild report, however, which was produced at great speed, and which did not envisage that regulation of prices for BT would extend much beyond a five year period, did not provide an adequate basis for setting prices in the utilities that were privatised next. In particular, in an industry like water (privatised in England and Wales in 1989) which is a natural monopoly, regulatory price control would be a long term feature: and there was also the problem of how to compensate the utility owner appropriately for the very large scale capital investment which the industry would require. So while RPI-X was the price setting technique which came to be applied to all UK utilities, it had to be supplemented by the development of appropriate methods for handling the costs associated with capital expenditure. These methods were articulated in particular by OFWAT, the regulator of the newly privatised water industry in England and Wales, and have come to be applied as the price setting orthodoxy in all UK utilities: (with the exception that a slightly modified method is applied in the rail industry.)

3. The purpose of this paper is to examine in detail the operation of the capital element of the UK utility pricing approach. As will be demonstrated, there are fundamental flaws, in the way the model has been conceived, in the assumptions made in its application, and in the way in which the effects of the model have been presented. The overall results have been grossly excessive windfall profits for the utility equity owners: and significant over-charging of customers. While the findings of this paper are illustrated with particular reference to the water and sewerage industry in England and Wales, similar effects will apply more generally: (and, as will be seen, the variant of the model applied to the rail industry has particularly pernicious effects).
4. It is appropriate to say a little at this stage about the approach adopted in this paper. The basic concepts involved are not difficult: nevertheless, there are dangers in attempting to handle the discussion at too superficial a level. This is, indeed, a trap into which the regulators have fallen: they tend to justify their approach in terms of statements like “we are assuming a z% return on capital” – whereas, as will be demonstrated, it is not just the percentage return which plays a crucial role, but also the way in which the payments of interest and repayments of capital are scheduled through time. So to understand fully what is going on, and how the current regulatory approach has gone wrong, a certain level of technical detail is unavoidable. The approach adopted here is to confine such detail to technical annexes. The main text is self-standing, and can be read on its own by those who are not technically minded.

5. The structure of the report is as follows:
   - Section 2 describes the basic pricing model as it relates to capital expenditure.
   - Section 3 deals with the important implications of the way payment profiles are scheduled through time.
   - Section 4 discusses how current cost charging has performed in the E. and W. water industry.
   - Section 5 considers the implications of the particular variant of the charging model used by the Office of Rail Regulation.
   - Section 6 considers implications: and what should be done.

2. The Basic Pricing Model as it Relates to Capital Expenditure

1. In many utilities – like water, electricity, gas, and rail – the delivery of the product depends on a highly capital intensive distribution system. The owner of this system (for example, the water supply and distribution network, the system of rail track and signalling, etc.) is therefore placed, almost inescapably, in a quasi-monopolistic situation. This means that there is no competitive market to determine what price customers should pay for the use of the distribution network. A standard solution to this problem is for a state appointed regulator to be given responsibility for determining the maximum price which the utility operator can charge.

2. The utility regulator therefore has the problem of how to set prices so as to cover both the day to day costs of running the network, and also the cost of the capital expenditure necessary to replace and enhance the network. The problem of setting prices to cover operating expenses is relatively straightforward: the regulator will typically set prices (or the maximum allowable increase in prices) so as to make what it judges is a reasonable allowance to cover operating expenses including some level of profit on operating activities, but probably with some degree of abatement to encourage operational efficiencies.

3. The problem of setting price to cover capital expenditure is much more difficult. The approach adopted for the privatised water and sewerage industry in England and Wales (and which as has been noted is now applied in all UK regulated utilities, including the publicly owned water industry in Scotland) is as follows:
   - First of all, the regulator determines how much capital investment is required – this is the amount of capital investment which will be reimbursed by the pricing system.
b. The regulator also determines a target real rate of return, at which capital investment will be reimbursed.

[See OFWAT’s regular Final Determinations on setting prices for further details (OFWAT 1994, 1999, 2004): plus technical details on the OFWAT model can be found in OFWAT’s financial model rule book: (OFWAT 2006)].

When a utility operator invests in a capital asset which has been approved at stage (a) above, then this results in customers being charged each year, through the life of the asset, an amount which in real terms is equal to

i. a depreciation charge, equal to the capital cost of the asset, divided by the life (in years) of the asset: plus

ii. an interest charge, equal to the target rate of return at (b) above, applied to that portion of the original capital value which has not yet been paid off through the annual payments at (i).

Note that this series of customer charges relating to the asset terminates at the end of the assumed asset life, since by then the original capital asset has been completely depreciated. The depreciation and interest charges at (i) and (ii) are in real terms: what is actually included in customer prices are these amounts after being uprated to current prices by cumulative inflation since the original investment was made. Since depreciation and interest, when they are included in customer charges, are calculated at current prices, this method of setting charges is known as current cost pricing.

4. It is a standard result of investment theory that, if inflation is running at a constant rate per annum, then the series of charges determined by the current cost pricing rules yields, over the lifetime of the asset, a nominal annual return on the original investment equal to the real target rate of return plus the rate of inflation. This result is proved in Annex 1. (Strictly, if the target rate of return is \( r \), expressed as a fraction: and the annual rate of inflation is \( i \), again expressed as a fraction, then the nominal annual rate of return is \( r + i + ir \). So if the target real rate of return is 3% (that is, \( r = 0.03 \)) and the rate of inflation is 2.5% (\( i = 0.025 \)) then the nominal rate of return is \((0.03 + 0.025 +0.025\times0.03) = 0.05575\), or 5.575% per annum.)

5. The principle OFWAT adopted when adopting this pricing model was that it should set its target real rate of return to reflect the cost to the utility of raising capital. However, OFWAT had to recognise that a privatised utility could fund its investment from two sources. One would be conventional debt or loan finance: the other would be equity. In setting its rate of return on equity, OFWAT stated that it believed “that the returns allowed should provide shareholders with sufficient incentives to commit additional funds, either in the form of retained earnings, or new equity injections where this is appropriate, to enable companies to make new investment” (OFWAT 2004, p 41). Since greater risk typically attaches to equity investment, the target rate of return on equity will be somewhat higher than the return on debt financed capital.

6. So in arriving at an assumption about the overall target real rate of return it would allow, OFWAT had in fact to make three underlying assumptions:

- About the real rate of return it should allow on debt financed capital, reflecting the cost to the utility of borrowing in the debt market.
- About the real return it should allow on equity financed capital.
- About what proportion of capital investment would be financed by debt, and what by equity.
7. Clearly, if the regulator pitches the cost of debt too high, or assumes that a higher proportion of capital is financed by the more expensive equity route than turns out to be the case, then this opens up the possibility of more revenue coming in to the utility operator by way of reimbursement than it actually needs. In these circumstances, the utility would be making a windfall profit (over and above the level of profit the regulator had intended) on the capital investment.

8. It is obvious, therefore, that the three assumptions in paragraph 6 are critical assumptions. But in fact, there is another assumption implicit in the OFWAT model, which is much less obvious, but no less critical. This relates to the way in which payments are scheduled through time. Even if the regulator makes the correct assumption about, say, the interest rate on loan finance, windfall gains or losses for the utility can still occur if the phasing of the payments which the utility makes on its loan finance differs from the phasing of the payments which the utility will receive from customers through the operation of the pricing model. Since this is not an obvious point, it is one that will be examined in detail in the next section.

9. Before considering the effect of different payment profiles, it is appropriate to conclude this section by introducing some relevant definitions. An equivalent way at looking at the rules of current cost pricing is to regard the utility’s customers as paying, each year, a depreciation charge equal to current cost depreciation on the value of allowable capital assets, plus an interest charge equal to the target real rate of interest applied to the current cost value of the allowable capital stock. The current value of the capital stock on which this return is earned is known as the Regulatory Capital Value (RCV) or Regulatory Asset Base (RAB): and the pricing method is also known as RCV or RAB pricing. The RCV in any given year is obtained from the RCV of the previous year by uprating the previous year’s RCV for inflation, adding on allowable investment, and subtracting off current cost depreciation. An important statistic related to RCV is that of the gearing of a utility company. Using the same definition as employed by OFWAT, the gearing of a utility is defined as the ratio of net debt to RCV, and is usually expressed as a percentage.

3. Why Payment Profiles Matter

1. The easiest way to demonstrate the critically important role which the actual profile of payments plays is to consider the simplified example of an imaginary utility where capital expenditure is entirely funded through debt. (That is, it is assumed that there is no equity finance.) In deciding how prices should be set to reimburse the utility for capital expenditure, the regulator has only one decision to make – namely, the real cost of debt for the utility. Let’s assume the regulator gets this decision absolutely right: so that the real rate of return \( r \) which the regulator assumes in determining prices by the RCV model is the real rate at which the utility can borrow in the market. And again for the sake of simplicity, it is assumed that inflation is running at the same, constant rate \( i \) per annum. (So the nominal rate at which the utility can borrow is \( r + i + ir \).)

2. Then if this utility invests in an approved asset, what it will receive by way of reimbursement via the charging mechanism is a stream of payments over the lifetime of the asset, as determined by the current cost RCV pricing rules. More precisely, if it invests in year zero in a capital asset of worth \( K \), which it is assumed has an asset life of \( n \) years, then in year \( j \) (\( j = 1 \) to \( n \)) it will receive through the pricing mechanism an amount

\[
\frac{K}{n} \left[ 1 + r(n - j + 1) \right] (1 + i)^j
\]  

(1)

This will equate to a nominal rate of return of \( r + i + ir \) on the original investment (as proved in Annex 1.)
Suppose, however, that the utility has funded the investment by borrowing from the market, at the same nominal rate of interest \((r + i + ir)\) but by means of a conventional fixed interest (also known as historic cost) loan, where the borrower pays back each year \(1/n\) of the original loan, plus interest on the outstanding debt.

Then the payment the utility will make in year \(j\) will be

\[
\frac{K}{n} \left[ 1 + (r + i + ir)(n - j + 1) \right]
\]

(2)

3. While the interest rates associated with the current cost stream of reimbursements (1) and the historic cost stream of loan charges (2) are exactly the same – namely \((i + r + ir)\) – the actual profiles of payments are quite different. This is illustrated in the following chart, in the case of \(r = 0.03\), and \(i = 0.025\), and assuming an asset life of 35 years. (For the purposes of this chart, \(K = 1\)).

Note how the payments are much more weighted towards the later years of the asset’s life for the current cost as opposed to the historic cost profile. This is in fact a feature which gets much more marked, the higher the rate of inflation.

![Historic cost and current cost payment profiles: real rate of return 3%, inflation 2.5%: 35 year asset life](chart)

4. If there is a difference in payment profiles between the reimbursement stream, and the funding costs stream, then this potentially has a number of profound implications.

5. Consider first of all the question of gearing. Let’s continue with the simple example in the above chart, of a utility which makes a single investment of \(K\) in year 0, reimbursed by current cost charging at real rate of return \(r\), and with inflation at \(i\) per annum: and which funds the investment by a historic cost loan, at interest rate \((i + r + ir)\).

Then in year \(j\) the RCV of the utility will be

\[
K \frac{(n - j + 1)}{n} (1+i)^j, \quad j = 1, \ldots, n.
\]

But the outstanding debt of the utility in year \(j\) will be

\[
K \frac{(n - j + 1)}{n}.
\]
So the gearing of the utility in year $j$, which, it will be recalled, is defined as the ratio of debt to RCV, will be $(1 + i)^j$.

In other words, the gearing of the utility will decrease exponentially over the life of the asset: and the higher the rate of inflation, the more rapid the decline in gearing.

6. This example, of a utility with just a single investment, is perhaps a little artificial. So let’s consider the case of a utility which actually makes the same amount of real investment every year. (This, for example, is quite like a large utility such as Scottish Water, which has an annual investment programme of £500 million in real terms). If such a utility was funding its entire investment programme by historic cost borrowing, then the gearing of the utility would eventually settle down to a steady state, depending only on asset life and the rate of inflation. The steady state gearing ratios for such a utility are shown in the following table: (the formula used in calculating the values in the Table is derived in Annex 2.)

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<thead>
<tr>
<th>Inflation (as fraction)</th>
<th>Asset life (years)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>0.005</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>0.01</td>
<td>98</td>
<td>96</td>
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<tr>
<td>0.015</td>
<td>94</td>
<td>90</td>
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<tr>
<td>0.02</td>
<td>92</td>
<td>87</td>
</tr>
<tr>
<td>0.025</td>
<td>91</td>
<td>84</td>
</tr>
<tr>
<td>0.03</td>
<td>89</td>
<td>81</td>
</tr>
<tr>
<td>0.035</td>
<td>87</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>0.04</td>
<td>86</td>
</tr>
<tr>
<td></td>
<td>0.045</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>0.05</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td>0.055</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>0.06</td>
<td>80</td>
</tr>
<tr>
<td></td>
<td>0.065</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>0.07</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td>0.075</td>
<td>76</td>
</tr>
</tbody>
</table>

7. What are the implications of this? Well, this depends on what use is being made of gearing as an indicator. If you were to use the gearing ratio of this utility as an indicator of how much of its capital investment was being funded by debt, and how much by equity, then you would be going badly wrong. In this example, all of the capital expenditure of the utility is actually funded by debt. But if inflation was running at 5%, and if asset life was thirty years, an observer who used the observed gearing ratio of the company (63%) as a guide would mistakenly conclude that more than a third of the investment of the company was actually funded from equity. In other words, such an observer would be grossly overstating the contribution made by equity to funding the capital investment of the company.

8. The crucially important point is that, if the profile of payments by which a utility funds its capital stock differs from the profile on which it is reimbursed through the current cost charging mechanism, then the observed gearing of that utility cannot be used as an indicator of what percentage of its capital investment is funded by equity. Unfortunately, as will be seen later, this is precisely a trap into which OFWAT, and the other UK regulators, have fallen.

9. Now let’s look at another impact of differing payment profiles between reimbursement and funding streams. Let’s go back to the simple example of a utility making a single investment of
\( K \) in year 0, as considered in paragraph 2. If we take the specific example illustrated in the chart in paragraph 3 \((r = 0.03, i = 0.025, \text{and an asset life of 35 years})\) then it turns out that, over the lifetime of the asset, the utility will actually receive, under current cost pricing, a total reimbursement of \(2.357^*K\); but it will pay out, in loan charges, a total of \(2.004^*K\). So the customer will be paying out, by way of charges, \(0.353^*K\) more over the lifetime of the asset than the utility pays out by way of funding costs. It must be stressed that this overall difference between what the customer pays, and what the utility pays, is not in itself evidence that the customer is being overcharged. Funding streams which take place over a number of years cannot just be added up and compared: the correct approach is to compare the Net Present Values (NPV) of the two payment streams, where the NPVs are calculated using an appropriate discount rate to encapsulate the time preference for money of the person or other agent who is making the valuation. (For a definition of NPV and related concepts, see Annex 1). If the current cost reimbursement stream, and the historic cost funding stream, are discounted at the discount rate \((i+r+ir)\) then they both have the same NPV, namely \(K\): (which is just another way of saying that the interest rate implicit in both streams is \((i+r+ir)\)). So for an agent for whom the appropriate discount rate to express their time preference for money is \((i+r+ir)\) the value of the current cost reimbursement equals the value of the funding cost: and such an agent would not regard there as being either over or under charging.

10. A discount rate of \((i+r+ir)\) is an appropriate way of expressing the time preference of money for the utility operator, since that is the interest rate at which they can borrow money in the market. However, another key agent in the process is the customer – that is, the general public. From the customer’s perspective, what is appropriate when it comes to comparing the values of the reimbursement and funding cost payment streams is to calculate NPVs using a discount rate which would represent the time preference of an individual member of the public for money. And since an individual, nowadays, cannot invest his or her money in a way which yields any significant real return, it is quite inappropriate to regard a nominal discount rate of \((i+r+ir)\) which is equivalent to a real return of \(r\), as expressing the time preference for money of the general customer. It would be much more appropriate to take, from the view point of a rational customer, a nominal discount rate of \(i\), corresponding to a zero real return on savings. (In fact, given the effect of tax, a negative real return would probably be more accurate: but a zero rate is considered here in order to be conservative.)

11. Calculating NPVs at a discount rate of \(i\), the NPV of what the customer pays by way of current cost charges is significantly greater than the NPV of what the utility pays out, by way of funding costs. The following table illustrates this, for \(r = 0.03\), and different combinations of \(n\) and \(i\).

<table>
<thead>
<tr>
<th>Ratios of NPVs of Current Cost to Historic Cost Charges.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NPVs calculated at discount rate equal to rate of inflation.</td>
</tr>
<tr>
<td>Real rate of return 3%</td>
</tr>
<tr>
<td>Asset life (years)</td>
</tr>
<tr>
<td>Inflation(as fraction)</td>
</tr>
<tr>
<td>0.01</td>
</tr>
<tr>
<td>0.02</td>
</tr>
<tr>
<td>0.03</td>
</tr>
<tr>
<td>0.04</td>
</tr>
<tr>
<td>0.05</td>
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<tr>
<td>0.06</td>
</tr>
<tr>
<td>0.07</td>
</tr>
<tr>
<td>0.08</td>
</tr>
<tr>
<td>0.09</td>
</tr>
<tr>
<td>0.1</td>
</tr>
</tbody>
</table>

In other words, from the point of view of a rational customer, if a utility is being reimbursed by current cost charging, but funding its investment by historic cost borrowing at the same interest
rate, then the customer would regard what he or she has to pay to the utility as being more expensive than what the utility pays out by way of funding costs. Such a customer could reasonably regard themselves as being overcharged: note how, when asset lives are long, the degree of such overcharging, as perceived by the customer, increases rapidly as inflation increases.

12. In fact, there is a neat relationship between the above table, and the steady state model of a utility which undertakes a constant real amount of investment, $K$, each year. Under the same assumptions as paragraph 6 above, where such a utility is operating in a steady state, then the ratio of how much money the utility will receive as reimbursement for capital expenditure each year, to how much it will pay out in funding costs, will settle down to precisely the figures in the above table: (a proof of this is given in Annex 3.) So in the long run, if, for example, inflation was 5% per annum, if the target real rate of return set by the regulator was 3%, and if the length of asset life was 40 years, then customers would pay the utility each year 19% more than the utility needed to pay out in funding costs.

13. What this section has demonstrated is the crucial importance of the actual profile of payments a utility is making when it funds its capital investment. In particular, when the profile of payments differs from the profile of reimbursements under the current cost pricing model, then:

- the gearing of the utility cannot be used as an indicator of what proportion of new capital investment is funded by debt or equity.
- customers may regard themselves as being significantly over-charged, if the appropriate real discount rate for assessing the time preference for a rational customer is less than the target real rate of return set by the regulator.

[Just to avoid any doubt: it is not being argued in this last point that the regulator should reduce its target real rate of return to equal the time preference rate of the customer: if the regulator did this, the utility would not be able to fund its investment. What is being argued is that, when there are profiling differences, what the customer pays under current cost pricing may well cost more (in terms of the customer’s NPV) than what the utility itself pays out by way of funding costs.]

14. In the previous section, three key assumptions were identified, which underlie the current cost charging method: namely, the cost of debt, the cost of equity, and the proportion of capital formation funded by equity. In the light of the analysis in this section, a fourth critical factor must now be added to this list: namely, how well the profile of payments made by the utility in funding its capital investment corresponds to the profile of reimbursements implied by current cost pricing. The next section will consider the extensive experience of the application of current cost pricing in the water industry in England and Wales, to see how well the pricing model has performed in relation to these four critical factors.


1. The regulator, OFWAT, has applied current cost charging to the privatised water industry in England and Wales since 1994. OFWAT has published regular reports (OFWAT, 1994, 1999, 2004) on the assumptions it has made in setting price caps for the industry. OFWAT has also published regular, and detailed, reports on the financial performance of the water industry: (OFWAT, annual). These reports provide a good deal of factual information, which enables the performance of the pricing model to be assessed. (Incidentally, and regrettably, the 2010 financial performance report is the last which OFWAT proposes to publish.)
2. The financial performance reports publish information on the net debt of the industry in each year, and also on the interest payments made on that debt. From this information, it is possible to calculate the average rate of interest being paid by the industry for its debt finance – both in nominal and real terms. (Annex 4 sets out the approach taken on the relevant calculations.) On the basis of these calculations, it is estimated that, over the period 1990 to 2009, the water and sewerage companies in England and Wales have been paying a real rate of interest of between 2.45% and 3.41% per annum for the loan finance they have raised. In contrast, the assumptions on the real, post-tax cost of debt in OFWAT’s periodic pricing reviews are as follows:-

- 1994 review (covering years 1995 to 2000): 4% to 5%.
- 1999 review (covering years 2000 to 2005): 2.8% to 3.5% (plus a premium for debt acquired before 2000).
- 2004 review (covering period 2005 to 2010): 3.3% to 4.4%.

In other words, on the first critical assumption, the cost of debt, OFWAT consistently, and significantly, overstated what utility companies would be paying for loan finance: commonly by one percentage point or more in real terms.

3. The fact that water companies expect to be able to borrow in the debt market at real interest rates significantly lower than those assumed by OFWAT is confirmed by the following quotation from United Utilities 2011 Report and Financial Statement:

“The aim is to raise future financing, as required, at interest rates that will deliver further outperformance when compared with OFWAT’s allowed cost of debt of 3.6 per cent real. UUW has recently agreed a new £200 million index-linked loan with the European Investment Bank at an average real interest rate of 1.2 per cent, ...”

4. Next, what about payment profiles. Information relevant to this question is contained in the annual reports and accounts published by each of the privatised water and sewerage companies. These accounts give information on whether the debt finance of the company is in the form of a fixed interest or index linked loan. What the accounts show is that a substantial proportion of debt is indeed fixed interest debt. For example, the accounts of Anglian Water for 2011 indicate that almost half of their debt is fixed interest: 74% of Northumbrian water debt is fixed interest (2011 Accounts): as is 56% of Severn Trent debt (2010 Accounts): 58% of Thames water debt (2011 Accounts): 34% for Southern Water (2011 accounts): and 41% for Yorkshire Water (2010 Accounts). Moreover, the accounts indicate that a substantial proportion of the fixed interest debt is typically of a fairly long maturity. Most utilities, therefore, raise a substantial proportion of their debt on a fixed interest basis. But, as has been seen in the previous section, fixed interest debt will have a quite different payment profile from the profile of reimbursements companies will receive under current cost charging. So the problems identified in the previous section are indeed likely to arise: that is, the companies’ observed gearing ratios will be a misleading indicator of the proportion of funding actually raised by equity: and (relative to the time preference for money of a rational customer) current cost charging is likely to involve overcharging the customer for the capital actually raised.

5. Next, let’s look at the question of gearing. The following table, calculated from the figures on net debt and RCV in OFWAT’s reports on the financial performance of the industry, shows the industry gearing (defined as the ratio of net debt to RCV) from 1990 to 2009, and also the reverse percentage, based on the ratio (RCV – net debt)/RCV.
As can be seen, gearing ratios start very low (since the companies were essentially debt free on privatisation, as a result of the debt commutation that took place before privatisation) but gearing ratios then increase steadily throughout the period, to over 70%. It is not clear what gearing ratio OFWAT assumed when they were working out their assumed overall cost of capital in their 1994 review. But in their 1999 review, they assumed a gearing ratio of 50%, and they assumed 55% in their 2004 review. That is, when setting the assumed cost of capital in 1999, they were effectively assuming that 50% of new investment would be funded by equity, and that 45% would be funded by equity in the 2004 review period. It is immediately apparent that OFWAT’s assumed equity percentages are high, relative to the figures in the final column of the table. But the implication of the preceding section, together with the information in the preceding paragraph on the amount of capital which utilities funded through fixed interest debt, is that the figures in the final column of the table are in any event likely to substantially overstate the amount of new capital investment actually funded by equity. The combined effect is that OFWAT will have very substantially overstated the percentage of new investment actually funded by equity.

6. That this is indeed the case can be seen directly, by looking at another set of figures drawn from OFWAT’s financial performance reports: namely, figures for the aggregate of called up share capital plus share premium. These figures represent the cumulative amount of capital which has actually been made available from shareholders to the companies (and which might then be used for investing in capital assets or other purposes). These figures are shown in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Gearing</th>
<th>100-gearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>4.0</td>
<td>96.0</td>
</tr>
<tr>
<td>1991</td>
<td>18.0</td>
<td>82.0</td>
</tr>
<tr>
<td>1992</td>
<td>25.8</td>
<td>74.2</td>
</tr>
<tr>
<td>1993</td>
<td>26.4</td>
<td>73.6</td>
</tr>
<tr>
<td>1994</td>
<td>23.4</td>
<td>76.6</td>
</tr>
<tr>
<td>1995</td>
<td>28.0</td>
<td>72.0</td>
</tr>
<tr>
<td>1996</td>
<td>29.1</td>
<td>70.9</td>
</tr>
<tr>
<td>1997</td>
<td>37.1</td>
<td>62.9</td>
</tr>
<tr>
<td>1998</td>
<td>42.6</td>
<td>57.4</td>
</tr>
<tr>
<td>1999</td>
<td>44.8</td>
<td>55.2</td>
</tr>
<tr>
<td>2000</td>
<td>47.3</td>
<td>52.7</td>
</tr>
<tr>
<td>2001</td>
<td>51.4</td>
<td>48.6</td>
</tr>
<tr>
<td>2002</td>
<td>58.6</td>
<td>41.4</td>
</tr>
<tr>
<td>2003</td>
<td>60.9</td>
<td>39.1</td>
</tr>
<tr>
<td>2004</td>
<td>62.0</td>
<td>38.0</td>
</tr>
<tr>
<td>2005</td>
<td>60.0</td>
<td>40.0</td>
</tr>
<tr>
<td>2006</td>
<td>64.7</td>
<td>35.3</td>
</tr>
<tr>
<td>2007</td>
<td>68.1</td>
<td>31.9</td>
</tr>
<tr>
<td>2008</td>
<td>71.2</td>
<td>28.8</td>
</tr>
<tr>
<td>2009</td>
<td>71.3</td>
<td>28.7</td>
</tr>
</tbody>
</table>
What is relevant in interpreting these figures are the changes from year to year- representing the amount of capital raised from shareholders. It is clear that, after the initial purchase of shares on the privatisation of the companies, only relatively small amounts of new capital have been raised from shareholders by the issue of shares– in fact, fairly trivial amounts compared with the aggregate of around £52 billion of gross investment the companies have undertaken over the period. Of course, a portion of new investment each year will also have been financed from retained profits – which could also be regarded as a form of equity contribution. But given that, over the period 1991 to 2009, the increase in net debt each year has averaged 66% of gross investment each year, the OFWAT assumption that 50% (or 45%) of new investment would be financed from equity represents a gross overestimate of the true percentage. OFWAT has well and truly fallen into the trap identified in the previous section, of using gearing as an indicator of the amount of capital raised from equity, when this indicator has been rendered valueless for this purpose because of profiling effects.

7. Given that OFWAT has typically assumed a 2% to 3% real, post tax premium on the cost of equity capital relative to debt finance, the gross overestimation of the true contribution of equity to the funding of capital will have been a further contributor to very significant overestimation of the overall cost of raising new capital. But that is not the end of the story. As the OFWAT 1999 price review states,

"Returns have been modelled on a post-tax basis, and the companies’ projected tax costs added to the revenue required to allow them to earn an adequate pre-tax return to enable them to finance their functions."

In other words, as regards the assumed equity element of capital finance (the costs of which are paid out of company profits after tax) customer charges have been further increased to recoup the tax element of these costs. So if the equity element of capital finance is overestimated, this tax compensation element of customer charges will be overestimated too.

8. What the evidence points to, therefore, amounts to a shocking position. OFWAT has consistently overestimated the cost of debt: has greatly overestimated the contribution of equity (so further overestimating the post-tax cost of capital): and there will be a further overestimation of the tax element of charges, because the equity element is overestimated. All of these effects mean that customers will have over-paid, hugely, for the capital element of water charges. The resulting excess profits will have been available to take as dividend returns for the equity owners.

<table>
<thead>
<tr>
<th>Year</th>
<th>Called up Share Capital plus Share Premium (£million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>5153.7</td>
</tr>
<tr>
<td>1996</td>
<td>5189.9</td>
</tr>
<tr>
<td>1997</td>
<td>6159.0</td>
</tr>
<tr>
<td>1998</td>
<td>6284.0</td>
</tr>
<tr>
<td>1999</td>
<td>6387.0</td>
</tr>
<tr>
<td>2000</td>
<td>6229.0</td>
</tr>
<tr>
<td>2001</td>
<td>6229.0</td>
</tr>
<tr>
<td>2002</td>
<td>6226.0</td>
</tr>
<tr>
<td>2003</td>
<td>6587.0</td>
</tr>
<tr>
<td>2004</td>
<td>6596.0</td>
</tr>
<tr>
<td>2005</td>
<td>6557.0</td>
</tr>
<tr>
<td>2006</td>
<td>6557.0</td>
</tr>
<tr>
<td>2007</td>
<td>6536.0</td>
</tr>
<tr>
<td>2008</td>
<td>5510.0</td>
</tr>
<tr>
<td>2009</td>
<td>5473.0</td>
</tr>
</tbody>
</table>
And indeed, and not surprisingly, confirmation of this can be seen in the rate of return earned on the equity capital invested in the industry. Annex 5 outlines the approach adopted here in estimating this figure, based on the figures published in OFWAT’s reports on financial performance. The bottom line is that, relative to the equity capital actually invested in the industry, the dividends paid represent an annual nominal return of 20.0%: an eye watering return, and surely much more than even the most rabid free market proponents of privatisation envisaged.

9. Another, independent, source on the returns received in the water industry in England and Wales was a report produced by the Public Services Research Unit in 2001: (Lobina and Hall, 2001). Lobina and Hall identify what they describe as excessive profit margins for UK water companies by international standards. To quote from their report:-

"Profit margins in the UK are typically three or even four times as great as the margins of water companies, private and public, in France, Spain, Sweden or Hungary. The profit margins of the greatest water multinationals – Suez-Lyonnaise and Vivendi – worldwide, also show a much lower return than enjoyed by the UK companies."

10. The conclusion is clear: the water and sewerage companies in England and Wales have proved to be extremely, indeed excessively, profitable.

11. It might be objected that a very different picture of the returns on equity would be obtained if dividend returns were related to equity as defined by (RCV-net debt). In fact, over the period, the estimated return on equity measured in this sense was 10.1% per annum in nominal terms, and 6.6% in real terms: much lower than the 20.0% nominal return earned on the equity capital actually raised from shareholders. However, there are two very good reasons why measuring dividend returns relative to (RCV-net debt) is a misleading approach:

- because, as noted in the previous section, when a substantial proportion of capital funding is raised on the basis of fixed interest debt, then (RCV-net debt) is likely to substantially overstate the true contribution towards funding capital investment made by share capital raised plus retained profits.

- and also because, insofar as part of the growth of (RCV-net debt) is due to the investment of retained profits, then to give a fair assessment of the true return on equity, an adjustment should be made for such retained profits. See Annex 5 for an example illustrating this point: as this example shows, without such an adjustment the ratio of reported dividends to the size of the asset base can seriously underestimate the scale of return actually being earned.

For both of these reasons, the figure of 20.0% is a much better indicator of the return earned relative to the equity invested, as against estimates derived from relating reported dividend returns to (RCV-net debt).

12. The technical points raised in the previous paragraph are important in another context as well. In its regular reports on the financial performance of the water industry, OFWAT provides information on what it describes as “the overall return on capital that investors and lenders received.” this is defined as dividends plus interest as a percent of RCV. But the technical points identified in the preceding paragraph also apply to this measure: and mean that it will give a misleadingly low indication of the actual return being earned on capital invested. It is yet another criticism of OFWAT that it publishes this faulty measure, without any recognition of the potential pitfalls surrounding its interpretation. The effect has been to camouflage the excessive returns actually being made in the industry.
5. A Short Trip into a Siding: the Office of Rail Regulation Model for Utility Pricing.

1. This section represents a brief diversion from the main thrust of the report: but one that is very important nevertheless, particularly in the context of current plans for massive capital investment in the rail network. In the introduction, it was mentioned that the rail regulator, the Office of Rail Regulation (ORR) uses a variant of the standard current cost RCV charging model, in working out how much customers should pay, via their rail tickets, or via state subsidy, for rail capital investment. As an indicator of just how significant rail capital investment is, it is worth remembering that a single project, the upgrade of the West Coast mainline, cost some £8-10 billion.

2. The way the ORR variant of the charging model works is as follows. The regulator adopts the same initial approach as the other utility regulators – setting an approved level of capital investment and a target real rate of return (r) and making an assumption about the length of asset life (typically 25 years in the case of rail investment). The regulator then works out what constant annual payment over the life of the asset would repay the initial capital investment, and give the rate of return \( r \). That is, the regulator does the appropriate calculation for a mortgage style repayment at interest rate \( r \) – rather than an equal repayment of principal loan like the standard RCV model. What is included in customer charges each year is this annual mortgage payment, uprated to the current prices of that year by the rate of inflation: (ORR, 2010). Technically, in terms of the notation used previously, if the utility company makes a capital investment of \( K \) in year 0, then in year \( j \) it will receive a reimbursement of

\[
Kr (1+i)^j / [1 - (1+r)^{-n}] , \quad j = 1, \ldots, n.
\]

(A proof of this is given in Annex 6.) In fact, the investor, typically Network Rail, has the choice of whether they are reimbursed by the standard RCV method of charging, or the ORR mortgage variant. In practice, for reasons which will now become apparent, the investor always chooses the ORR variant.

3. The seemingly innocuous variation implicit in the ORR method in fact has a very significant effect. If the previous chart (see section 3) is repeated, but now with the ORR variant added, then the picture is as follows:

![Historic cost, current cost and ORR variant payment profiles: real rate of return 3%, inflation 2.5%: 35 year asset life](image)
(Here \( r = 0.03 \), and \( i = 0.025 \), so all three profiles imply the same rate of return of 5.575%).

4. What is immediately apparent is that the ORR variant implies a further significant rightward shift in the profile of payments. This means that the ORR approach will even less attractive to a rational customer, whose time preference is expressed by a real discount rate less than \( r \). Similarly, the ORR approach will involve a higher level of charges each year in the long run, for an industry operating in a steady state of a constant real amount of investment each year. Both effects are illustrated in the following table, which shows the long run ratio of ORR charges to conventional RCV charging, and to historic cost loan finance, for a variety of combinations of target real rate of return and inflation, and for an asset life of 25 years.

| Ratio of ORR variant Steady State Charges, to Historic Cost and Current Cost Charges |
|-----------------|-----------------|-----------------|
|                 | HC              | CC              |
| \( r = 0.03 \)  |                 |                 |
| 2.50\% inflation | 1.085           | 1.033           |
| 5\%              | 1.126           | 1.033           |
| 7.50\%           | 1.159           | 1.033           |
| \( r = 0.05 \)  |                 |                 |
| 2.50\% inflation | 1.152           | 1.075           |
| 5\%              | 1.217           | 1.075           |
| 7.50\%           | 1.27            | 1.075           |

Using the result already proved in Annex 3, the table also shows the relative costs as perceived by a rational customer with time preference expressed by the nominal discount rate \( i \).

5. The results are revealing. In the long run, the ORR variant is significantly more expensive than conventional current cost charging: by some 3.3% if the regulator sets a 3% real target rate of return, and by some 7.5% at a 5% real target rate of return. Note also how the excess over current cost charging does not vary with inflation. The ORR variant is, of course, even more expensive relative to historic cost charging: and in this case, the excess cost of the ORR variant increases markedly as inflation rises.

6. Given this, it is no surprise that the ORR variant is the method of choice for virtually all rail capital expenditure. Nor is it surprising how, when each round of rail fare increases is announced, there is general bewilderment how rail fares in the UK are so much more expensive than international comparators.

6. Implications: and What Should Be Done

1. What has been demonstrated so far, therefore, is that there have been a number of gross errors in the approach to price setting adopted post-privatisation by UK utility regulators – errors which, in the case of the water industry in England and Wales, have demonstrably resulted in overcharging, and in grotesquely high returns for the equity investors. Nor are the effects confined to water: the same techniques are applied in all other UK utilities (including airports) – with the exception of rail, where the variant approach which has been adopted is even worse.

2. The effects, however, go beyond overcharging and excess profits. The charging mechanism for capital expenditure means that it is by undertaking capital investment that utilities make a large part, and indeed probably most, of their profits. Regulators are, presumably, good at controlling
the reimbursement which utilities receive for their ongoing operations, and hence ensuring that they only earn reasonable profit on this aspect of their activities. The road to profit for a utility is to undertake capital expenditure reimbursed through the current cost pricing mechanism. In other words, there is an incentive for the utility to seek out projects for which it can get regulatory approval – and then to get the most expensive and capital intensive versions of these projects past the regulator’s scrutiny. Hence the pricing mechanism has almost certainly thoroughly distorted the whole thrust and nature of the capital investment undertaken on our utility infrastructure.

3. This was a complaint which was indeed made by Michael O’Leary, the boss of Ryanair, when in 2006/2007 he complained about the “gold plated Taj Mahal” airport investment projects undertaken by BAA “at excessive cost”. O’Leary, in that quotation, accurately put his finger on the symptom of the disease. What this paper explains is the cause.

4. So what should be done? It is not the purpose of this paper to put forward alternative pricing mechanisms: the appropriate way to develop alternatives is by an informed process of democratic consent, where the final decisions are made by the body of customers, who, after all, end up paying for all of this.

5. Before the process of democratic consent can begin, however, it is necessary to be absolutely clear as to why the present system has gone so badly wrong. What will be argued here is that mistakes have been made at three fundamental levels – and that the mistakes made at each of these levels have been disastrous. The three levels relate to accuracy of assumptions: appropriateness of model: and basic philosophical concept. Each of these levels is now examined in more detail.

**Accuracy of assumptions**

6. This is the most basic level. Clearly, if you are using a model to work out customer prices, a fundamental requirement is to estimate the parameters in that model correctly. But as has been seen, regulators have failed badly even at this most basic level. OFWAT, for example, overestimated the cost of debt by one percentage point or more in real terms: and it has also grotesquely overestimated the actual contribution of equity to funding investment in the water industry.

**Appropriateness of model**

7. It is not enough, however, just to get the basic parameter estimates right, if the underlying model does not describe the real world accurately enough. As has been seen above, if the profile of payments made by the utility operator when it is funding its capital expenditure differs from the reimbursement profile in the charging model, then all sorts of problems arise. First of all, the statistic which the regulator uses to estimate the proportion of new capital investment funded from equity (based upon the gearing of the company) ceases to be an accurate estimator. Secondly, there is the potential for a long term excess between what the utility operator gets in by way of reimbursement, and what goes out by way of funding costs. Thirdly, it can no longer be assumed that there is an equivalence between the way a rational customer would value what he or she is being charged for the service of a capital asset, compared with the way the same customer would value what the utility is paying by way of funding costs for the asset: so the charging system may no longer be fair from the customers’ viewpoint.

**Basic philosophical concept**

8. So let’s suppose that the real world does correspond to the regulator’s model: (for the sake of simplicity, let’s assume that all utilities have moved over to funding their debt through index linked borrowing). And let’s also suppose that the regulator has correctly estimated the basic parameters (cost of debt and equity, and proportion of new capital expenditure financed
from equity). Would that be all right, then? Well, actually, the answer is no. The reason is that, implicit in the current cost pricing approach, is a basic view about the relationship between the customer, and the infrastructure capital assets on whose services he or she depends. And the customer may well not be happy with the underlying philosophy involved in this relationship.

9. To see why this is the case, it is useful to think of housing as an analogy. If we buy a house on a mortgage, we may pay more initially than if we rented, but in the long run we can expect the real value of our mortgage payments to be eroded by inflation – and we will end up paying less than someone who rents, and whose rental values will continually be uprated in line with inflation. In the case of utility pricing, the decision to implement current cost pricing was equivalent to the decision to convert the customer from someone who paid for the capital element of their utility service as if they were owner occupiers, to someone who paid as if they were a renter. This imposes a significant long term cost penalty on the unfortunate customer: (the scale of this penalty has already been illustrated: see the table in para 3.11 above.)

10. Nobody consulted the customer about this change in any meaningful sense, at the time when Thatcher was privatising the utilities: indeed, they couldn’t – because the detail of the current cost pricing mechanism had not been worked out at the time of the major privatisations. This is an important point: because it means that the excess profits implicit in current cost pricing (and also in the particular way it has been implemented) were not part of the original privatisation prospectus, but were an additional bonus for the utility operators, which they received after the event because of regulatory slackness. And if customers had been properly consulted about what was in store for them, it seems inconceivable that they would have agreed.

11. In outline terms, it is now clear what needs to be done. What is required is to work back through the three different levels identified above, and put things right. First of all, we need to be clear about philosophy: are we, as customers, content to be placed in the position of quasi-renters of the nation’s infrastructure assets, where the utility companies gain continuing windfall benefits from the effects of inflation: or do we want to secure these benefits for ourselves? It is important to remember that we can change the present system if we want: there is nothing in privatisation in itself which dictates that we have to pay for infrastructure assets as if we were renting them. (And in the case of Scottish Water, which we still own, the present system is even more ludicrous, and easy to change.) Having agreed on the correct philosophy, we then need to sort out a pricing model which delivers this: and then we need to estimate the relevant parameters accurately.

12. This is all fairly simple: but not with the current regulatory system. We have been cursed, since privatisation, with a group of regulators who have conducted a masterclass in how not to deliver a price setting model. They have been unclear (whether deliberately, or through genuine ignorance) about philosophy: they have set up inappropriate models: there have been gross errors in the estimation of key model parameters: and the way the results have been presented has obscured the resulting excessive returns being earned by equity investors. We have all suffered as a result. One paradox of privatisation is that we need regulators to protect us from being exploited by the natural monopolies which occur in network utilities. In setting up the regulatory system we have, in fact, established another monopoly – the monopoly of the regulator. And we have been defenceless in the face of this new monopoly, which we created ourselves.
References


ORR: “Investment Framework Consolidated Policy and Guidelines”: (the sample calculation to which a link is given at Annex A of the ORR document is also relevant.) Office of Rail Regulation, October 2010:

Annex 1: Definition of NPV and IRR: derivation of IRR of current cost payment scheme.

**Definition of NPV and IRR.**

1. Let \( a = (a_0, a_1, ..., a_n) \) be a sequence of payments, where the individual terms may be positive or negative. Then the Net Present Value, (NPV), of the payment stream, calculated at discount rate \( \sigma \) \((\sigma > -1)\), and with year zero reference date, is defined as

\[
NPV(a, \sigma) = \sum_{j=0}^{n} a_j (1 + \sigma)^{-j}
\]  

(1)

The NPV can be taken as representing the value at time zero of the payment stream \( a \), to an agent whose time preference for money is expressed by the discount rate \( \sigma \).

2. An important special case occurs where \( a \) represents the stream of payments associated with an investment, (or a loan). Here negative terms represent investment of capital, (or lending of money), and positive terms represent returns to the investor, (or to the lender). For such a payment stream \( a \), which will contain both positive and negative terms, an Internal Rate of Return, (IRR), of \( a \) is defined to be any discount rate, \( \mu \), for which

\[
NPV(a, \mu) = 0
\]  

(2)

IRRs are not necessarily unique: but there is an important special case, when the negative terms in the payment stream precede the positive terms: in this case, every payment stream has an IRR, and it is unique.

**Historic Cost Borrowing Formula**

Suppose that there is an initial loan of 1 in year 0, \((a_0 = -1)\), and for the next \( n \) years there is a repayment of \( 1/n \) of the original principal, plus interest calculated at rate \( r \) on outstanding debt:

then \( a_j = \frac{1}{n} [1 + r(n - j + 1)] \), for \( j = 1, ..., n \).

This is the historic cost, equal repayment of principal, borrowing formula. The IRR of this payment stream, in terms of the definition at (2) above, is \( r \), as would be expected: this is a standard result, but nevertheless it is worth giving a proof here, for completeness. To prove this, it is necessary to establish that

\[
\sum_{j=0}^{n} a_j (1 + r)^{-j} = 0;
\]

In other words, it is necessary to prove that

\[
\sum_{j=1}^{n} \frac{1}{n} [1 + r(n - j + 1)](1 + r)^{-j} = 1.
\]

This can be established by the following iterative argument.

Let \( d_j = \) outstanding debt at beginning of period \( j \):

So \( d_j = \frac{(n - j + 1)}{n} \):

Then the following relationship holds: namely

\[
d_{j+1} = (1 + r)d_j - a_j , \text{ for } j = 1, ..., n,
\]  

(3)

since the right hand side of this expression
\[
(1 + r)\frac{n - j + 1}{n} - \frac{1}{n}[1 + r(n - j + 1)]
\]
\[
= \frac{(n - j + 1)}{n} + r\frac{(n - j + 1)}{n} - \frac{1}{n} - r\frac{(n - j + 1)}{n}
\]
\[
= \frac{(n - j)}{n}\cdot d_{n+1}.
\]
So, applying (3) recursively, it follows that
\[
0 = d_{n+1} = (1 + r)d_n - a_n
\]
\[
= (1 + r)[(1 + r)d_{n-1} - a_{n-1}] - a_n
\]
\[\vdots\]
\[
= (1 + r)^n d_1 - \sum_{j=1}^{n} (1 + r)^{n-j}a_j
\]
\[
= (1 + r)^n - \sum_{j=1}^{n} (1 + r)^{n-j}a_j.
\]
Dividing through by \((1 + r)^n\), it follows that
\[
\sum_{j=1}^{n} a_j(1 + r)^{-j} = 1,
\]
Thus establishing that the IRR of the historic cost loan scheme is indeed \(r\).

**IRR of Current Cost Formula.**

Under the current cost charging formula, \(a_0 = -1\), and
\[
a_j = \frac{1}{n}[1 + r(n - j + 1)](1 + i)^j, \quad j = 1, \ldots, n.
\]
In the previous section of this annex, it was proved that
\[
\sum_{j=1}^{n} \frac{1}{n}[1 + r(n - j + 1)](1 + r)^{-j} = 1:
\]
it therefore follows that
\[
\sum_{j=1}^{n} \frac{1}{n}[1 + r(n - j + 1)]\frac{(1 + i)^j}{(1 + i)^j(1 + r)^j} = 1:
\]
that is
\[
\sum_{j=1}^{n} a_j[(1 + i)(1 + r)]^{-j} = 1,
\]
that is
\[
\sum_{j=1}^{n} a_j[(1 + i + r + ir)]^{-j} = 1,
\]
Hence establishing that the IRR of \(a\) is \((r + i + ir)\).
Annex 2: Formula for Gearing in Steady State Model.

It is assumed that inflation $= i$, and asset life $= n$: it is also assumed that the utility makes a constant real amount of investment each year. Specifically, investment in year $t = (1+i)^t$.

And it is assumed that the utility funds this investment entirely by historic cost borrowing.

In deriving the formula for the gearing of this utility when operating in a steady state, (that is, when $t > n$), the following fact will be used:

$$\sum_{j=1}^{n} jx^{j-1} = \frac{(n+1)x^n}{(x-1)} - \frac{(x^{n+1}-1)}{(x-1)^2}.$$ (1)

The RCV of the utility in year $t$ is the sum of contributions made by the investments in each of the preceding $n$ years, and is equal to

$$\sum_{j=1}^{n} (1+i)^{-j} \frac{n-j+1}{n}(1+i)^j
= \frac{(1+i)^t}{n} \sum_{j=1}^{n} (n-j+1)
= \frac{(n+1)}{2} (1+i)^t.$$  

Historic cost debt in year $t$ is, similarly, the sum of contributions from investments made in each of the preceding $n$ years, and is equal to

$$\sum_{j=1}^{n} (1+i)^{-j} \frac{n-j+1}{n}.$$  

Therefore,

gearing = \frac{\text{debt}}{\text{RCV}}
= \frac{2}{n(n+1)} \sum_{j=1}^{n} (n-j+1)(1+i)^{-j}
= \frac{2}{n} \sum_{j=1}^{n} (1+i)^{-j} - \frac{2}{n(n+1)(1+i)} \sum_{j=1}^{n} j(1+i)^{-j+1}
= \frac{2}{n} \left[ 1 - (1+i)^{-n} \right] - \frac{2}{n(n+1)(1+i)} \left[ \frac{(n+1)(1+i)^{-n}}{[(1+i)^{-1} - 1]} - \frac{[(1+i)^{-n-1} - 1]}{[(1+i)^{-1}-1]^2} \right],$$  

on using the formula at (1) above in the second summation,

$$= \frac{2}{ni} [1 - (1+i)^{-n}] + \frac{2}{ni} (1+i)^{-n} + \frac{2(1+i)}{n(n+1)i^2} [(1+i)^{-n-1} - 1]
= \frac{2}{ni} [1 - \frac{(1+i)}{(n+1)i} (1 - (1+i)^{-n-1})].$$
Annex 3: For a Utility Operating in a Steady State, the Real Value of Steady State Charges is Equal to the NPV of the Payment Stream Relating to the Initial Investment, at a Discount Rate Equal to the Rate of Inflation.

Suppose that a utility is operating in a steady state: so that, if investment is 1 in year 0, and the rate of inflation is \( i \), then investment in year \( j \) will be \( (1 + i)^j \).

Suppose also that, for an investment of \( K \) in a given year, the resulting stream of payments relating to that investment, in each of the succeeding \( n \) years, will be \( Ka_1, Ka_2, ..., Ka_n \) : (this covers both cases, where the payments are customer charges paid to the utility, or funding costs paid out by the utility.)

Then, when the utility is operating in the steady state, (that is, for \( t > n \)), the total payment in year \( t \) will be the sum of contributions from the investments made in each of the preceding \( n \) years.

Therefore,

\[
\text{Nominal payment in year } t = \sum_{j=1}^{n} (1 + i)^{-j} a_j \\
= (1 + i)^{-t} \sum_{j=1}^{n} a_j (1 + i)^{-j} \\
= (1 + i)^{-t} \text{NPV}(a, i), \text{ where } a = (a_1, a_2, ..., a_n).
\]

Hence,

\[
\text{Real payment in year } = \text{NPV}(a, i).
\]

1. The problem is to estimate the IRR of loan finance from series of debt and interest payments: the approach adopted is to work back from the figures for debt and interest to the stream of payments, \( \mathbf{a} \) in the notation used in this paper, and then estimate the IRR by solving equation (2) in Annex 1 above. To obtain an estimate of real IRR, the appropriate approach is to derive the nominal stream of payments, \( \mathbf{a} \), then to deflate this to constant prices, and then to estimate the real IRR by again applying formula (2) in Annex 1.

3. There is a further difficulty, because the figures for net debt and interest published in OFWAT’s Financial Reports on the water industry are truncated: figures for net debt and interest are available from 1990 to 2009; but obviously, the loans in existence at 2009 will continue, in many cases, for many years thereafter. This problem of truncation can be handled as follows.

Let \( \mathbf{a} \) be a payment stream with IRR \( \mu \):

let \( d_j \) denote the outstanding debt at the beginning of period \( j \):

so \( d_j = -a_0 \), and \( d_{j+1} = (1+\mu)d_j - a_j \), \( j = 1, \ldots, n \).

(that is, outstanding debt at beginning of period \( j+1 \) = outstanding debt at beginning of period \( j \), increased at rate \( \mu \), less payment made in period \( j \).)

By the definition of IRR, the IRR \( \mu \) of \( \mathbf{a} \) satisfies

\[
0 = \sum_{j=0}^{n} a_j (1+\mu)^{-j} = \sum_{j=0}^{n-1} a_j (1+\mu)^{-j} + d_n (1+\mu)^{-n+1}, \text{ since } a_n = (1+\mu)d_n,
\]

\[
= \sum_{j=0}^{n-2} a_j (1+\mu)^{-j} + [(1+\mu)^{-1}(a_{n-1} + d_n)](1+\mu)^{-n+2}
\]

\[
= \sum_{j=0}^{n-2} a_j (1+\mu)^{-j} + d_{n-1}(1+\mu)^{-n+2}
\]

[...]

\[
= \sum_{j=0}^{M} a_j (1+\mu)^{-j} + d_{M+1}(1+\mu)^{-M}, \text{ for any } M < n.
\]

So, for any \( M < n \), if \( (a_0, \ldots, a_M) \) are known, and also \( d_{M+1} \), then the IRR of \( \mathbf{a} \) is equal to the IRR of the payment stream \((a_0, \ldots, a_M, a_M + d_{M+1})\).

4. Let \( b_j \) denote the interest payment in period \( j \); so \( b_j = \mu d_j \).

then, since \( d_{j+1} = (1+\mu)d_j - a_j \), it follows that \( a_j = d_j - d_{j+1} + b_j \), and \( d_{j+1} + a_j = d_j + b_j \).

So, if what is known are \((d_1, \ldots, d_M)\) and \((b_1, \ldots, b_M)\), what is required is to find the IRR of the payment stream

\[
(-d_1, d_1 - d_2 + b_1, d_2 - d_3 + b_2, \ldots, d_{M-1} - d_M + b_{M-1}, d_M + b_M).
\] (1)
5. The estimates quoted in Section 4, para 2, for the real cost of debt were obtained as follows. Annual figures for net debt and interest payments were taken from the appropriate volumes of OFWAT’s annual Financial Performance reports for the industry, to give current cost figures for each year in question, with the exception of six initial years, where figures at current prices were not available, and the constant price figures in the Financial Performance reports were converted to current prices using the RPI. These nominal series for debt and interest were then substituted into expression (1) in the preceding paragraph, to give a nominal payment stream. This payment stream was then deflated to constant prices, using RPI as deflator. The real return on debt was then estimated, as the IRR for this real payment stream, by solving equation (2) in section (1). This procedure was, in fact, repeated, first under the assumption that the reported debt figures were close to debt at beginning year, and then under the assumption that the reported debt figures were close to debt at end year: this gives the range of values for real IRR quoted in the paper.
Annex 5: Notes on Calculation of Nominal IRR on Equity.

1. The estimate of the nominal IRR on the equity invested in the industry was calculated by applying formula (2) in Annex 1 to a payment vector, \( a \), representing the net financial flow to/(from) equity investors and the utility. This payment vector \( a \) was calculated as the sum of equity drawdowns plus dividends. In the first year, (1999), the initial equity drawdown was taken as the initial share capitalisation of the utility at offer prices, (£-5239 million). For each succeeding year, the equity drawdown was taken as the change from the previous year in the aggregate of share capital plus share premium, (increases counted as negative.) These figures were taken from the appropriate volumes of OFWAT’s annual Financial Performance reports for the industry, to give current cost figures for each year in question. Dividends were also taken from the appropriate volumes of OFWAT’s annual Financial Performance reports for the industry, to give current cost figures for each year in question, with the exception of six initial years, where figures at current prices were not available, and constant price figures were converted to current prices using the RPI. In the final year, (2009), a figure of £13975 million was added to the final term in the payment stream. This is the value of (RCV-net debt) in that year, and represents equity investors continuing stake in the industry. (In fact, the estimated IRR is not at all sensitive to the value of this final year adjustment.)

Why retained profits mean that it is not possible to calculate an equity IRR from \((RCV – debt)\).

2. In Section 4, paragraph 11, it was stated that it is inappropriate to measure the return on equity by relating dividends to \((RCV – net debt)\), where an element of the company’s capital investment has been funded by retained profits.

To see why this is so, consider the following example. (This example is simplified by assuming there is no inflation: no tax effects: and that the companies involved are investing in a long lived asset, for example, land, on which there is no depreciation.) Consider two companies, A and B, which are essentially identical. In both companies, there is an initial investment of 10 units of equity in year zero. This capital is invested in assets which yield 15% per annum. Each year, 10% of this return on capital is reinvested, while 5% is taken as profit by the equity holders. At the end of year 10, the companies are sold, for an amount equal to the cumulative total of the capital which has been invested: and the equity owners take the sale value as profit.

The only difference between the two companies is the way they fund their annual reinvestments: in company A, the total of the 15% return on capital is taken as dividend, and then the equity holders reinvest two thirds of this in the company through the issue of share capital. In company B, the annual dividend is 5%, and the 10% reinvestment is achieved by retention of profits.

The following table shows the relevant details for company A.
The column headed \( a \) shows the net flow of payments between the equity holders and the company: and the IRR of this payment stream, (on solving equation (2) in Annex 1), is, indeed, 15%. The final column shows the ratio of dividend payments each year to the value of the company’s asset base: again, this is 15%.

The next table shows the corresponding details for company B.

The growth in the asset base of company B, and the payment stream \( a \) showing net payments between the equity owners and the company, are identical to company A. Calculation of the IRR of equity based on this payment stream therefore correctly shows the return on the capital invested in the company as 15%. However, for all but the final year of operation, the ratio of dividend to asset base for the company is only 5%. If this figure was used as a means of estimating the actual return being earned on capital it would thus give a completely misleading underestimate of the true return. This illustrates the point made in the text of the paper: that where investment is being funded in part from retained profits, the relationship between reported dividends and asset base cannot be used to estimate the true return on capital.
Annex 6: The IRR of the Office of Rail regulation Variant.

Under the ORR variant, \( a_0 = -1 \), \( a_j = \frac{r}{[1-(1+r)^{-n}]} (1+i)^j \).

Therefore,

\[
\sum_{j=1}^{n} a_j (1+r+i+ir)^{-j} \\
= \frac{r}{[1-(1+r)^{-n}]} \sum_{j=1}^{n} (1+r)^{-j} \\
= \frac{r}{[1-(1+r)^{-n}]} \frac{1}{(1+r)} \sum_{j=0}^{n-1} (1+r)^{-j} \\
= \frac{r}{[1-(1+r)^{-n}]} \frac{1}{(1+r)} [1-(1+r)^{-n}] \frac{1}{[1-(1+r)^{-1}]} \\
= 1,
\]

which establishes that the IRR of \( a \) is indeed \( (r+i+ir) \).
WRITTEN EVIDENCE FROM THE LAW SOCIETY OF SCOTLAND

INTRODUCTION

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession.

Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Law Society of Scotland’s Environmental Law Sub Committee (the Sub Committee) welcomes the opportunity to comment upon the general principles of the Water Resources (Scotland) Bill which was introduced into the Scottish Parliament on 27 June 2012 and has the following comments to make upon its terms.

SPECIFIC COMMENTS

Part 1 – Development of Water Resources

Section 1 – Duty of Scottish Ministers

In taking such reasonable steps as Scottish Ministers consider appropriate for the purpose of ensuring the development or the value of Scotland’s water resources, they must do so in ways designed to contribute to the sustainable use of the resources. The Society is concerned that this provision does not fully take into account the environmental impact of this duty and that a proper balance between development and environmental impact is required. For example, there may be circumstances where water as a resource should not be “used” at all.

The failure of economic impact is again reflected in Section 1(3) of the Bill.

Part 2 – Control of Water Abstraction

Section 6 – Prohibition Arising

The Society notes that at present Scottish Ministers have powers under the Water Environment (Controlled Activities) (Scotland) Regulations (SSI 2011/209, CAR Regulation 20) for such applications and questioned the requirement for a separate consensuary regime in terms of this part of the Bill.
WRITTEN EVIDENCE FROM R S GARROW LTD

3rd September 2012

Water Resources (Scotland) Bill – Infrastructure and Capital Investment Committee invites written submissions

I am Bob Garrow a director of R S Garrow Ltd. I trust this response will inform and assist the Committee in its consideration of this Bill.

A copy of our response to the Water Resources Consultation in March 2012 is at Appendix V, pages 11-17, for convenience should you wish to refer to it.

Executive Summary

We agree with the aspiration that Scotland become “a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. A”

“The single most difficult thing in any area of public service reform is to bring in innovation and change” . Tony Blair, ex Prime Minister, page 16. “Monopolies in any walk of life rarely deliver either operational efficiency or customer responsiveness.” Alan Milburn, health secretary under Tony Blair, page 17.

To offset these public sector and monopoly characteristics, in our responses we suggest ways to involve the private sector and to remove the accumulated regulatory and other barriers currently blocking their newer technology innovations from being available for better management of Scotland’s water environment and Scottish Water’s assets.

These include a certification undertaking, perhaps Scotland All Regulations Verification “(SARV)” whose type approvals would meet all Scottish regulations, guidance, policy notes, etc. By offloading the innovation risk, from public and private sectors, large and small, and meeting all Scottish regulations, SARV approval would encourage the early adoption of newer technology based drinking water and waste water processors.

We highlight potential conflicts between powers in the Bill for Scottish Water to do anything it considers appropriate and powers for Ministers to give directions to bodies including Scottish Water.

Because of the material affect their operations have on the water environment we suggest upgrading Scottish Water’s reporting to quoted company standards, extending similar reporting to other Bill activities and synchronising all with Scottish Water reporting.
The probability of newer technology derived obsolescence hitting Scottish Water’s assets would suggest caution in enhancing their asset development powers.

We favour Scottish Water being a willing customer for renewable energy and willingly offering rental or sale of their assets with renewable energy potential to experienced renewable energy developers. Rather than them entering this area and funding developments directly with public funds.

We suggest that the enhanced reporting already mentioned will provide safeguards to core drinking water and waste water processing.

We suggest that newer technologies drinking water processing may have overtaken the need or reason for expending resources improving raw water quality in catchment areas. We suggest powers enabling point of use conditioning units to be placed on water services customers’ premises and land.

We suggest that deploying in the sewer infrastructure newer technology units that comfortably process fat, oil and grease is preferable to creating and policing an offence.

We suggest that failing shared septic tank provisions should extend to and encourage the replacement of such septic tanks with environmentally better package waste water treatment units.

The outcomes from successfully opening paths to market for existing drinking water and waste water processing products could include more and cheaper house sites in rural Scotland, ten to twenty times as much development from an amount of natural raw water extracted, manufacture of these units and export trade in them.

**Introducing R S Garrow Ltd and our Involvement in Water Resources**

Our innovation company found a shortage of housing sites in the Highlands was attributed to the difficulty and high costs in providing water and waste water capacity. So we went and found technologies to fill this gap.

We found an award-winning drinking water processor and a range of package waste water treatment plants already operating in sensitive environments in the UK and around the world. These are able to provide water and waste water services capacity at a 20th of the cost per person of the traditional methods schemes currently being built in Scotland and with better environmental signatures.

In Scotland, nature delivers abundant natural water. These technologies enable people to take, clean and use it and then return it to nature cleaner than the way they got it.

Built infrastructure assets are no longer needed to bring in clean water and take away waste water. Large infrastructures and large processing plants are obsolescent.

Scottish Government regulations - regulations mostly imported from England at devolution and reflecting English factors - prevent people using newer technologies. Freeing up Scots to use natural water and modern processing technologies would make many more pieces of land viable for housing and economic development.

These game changing technologies also enable portable and temporary drinking water supply and waste water water cleaning.

My responses to your questions below try to identify how to facilitate adoption of these new technologies and the implications of their adoption on the question responses.

**Q1.** The Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?
To ensure development of the value of Scotland’s water resources we suggest the Bill specifies: -

- enabling private sector and particularly SME (Small and Medium Enterprise) participation.

- creating a commercial classification and certification undertaking, perhaps Scotland All Regulations Verification “(SARV)”, to test and nationally type-approve the now available and future modular drinking water and waste water processors. (For the avoidance of doubt SEPA have said type approval is beyond their current remit and they would not want this added.)

- legislation that SARV approval in Scotland should satisfy or “trump” all current regulations, planning advice notes, building standards, water utility standards, local plans etc. rather than having to await these and others being updated to recognise modern technologies.

- provision in the Bill to at least allow, and perhaps encourage, people, businesses and public undertakings, and water service delivery contractors to them, to buy and operate SARVed kit, where this would result in at least as good quality water services as Scottish Water deliver or plan to deliver.

- introducing a concept of “net abstraction” where water is taken from nature, cleaned and used and then returned to nature close to from where it was taken and at least as clean as when it was taken from nature. As 95% of water taken in comes out as waste water net abstraction volumes (5%) used in abstraction consents could bring many developments below environmentally significant formal consent thresholds.

- powers for water operators and utilities to place supply conditioning units at point of use on users’ premises, similar to those of gas or electricity utilities.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

In principle we agree that Scottish Ministers should be able to direct public bodies, which include Scottish Water, in this area.

We express concern about how Ministers’ directions might conflict with Scottish Water’s power at Section 21 of the Bill B “to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources.”

We suggest Scottish Water’s, £5,196.1 million of Property Plant & Equipment at book value on 31st March 2012 C, representing 29,762 miles of water pipes, 31,477 miles of sewer pipes, 1,863 waste water treatment works and 266 water treatment works, plus their staff skillset and so on, will influence Scottish Water’s consideration towards scenarios that continue to utilise their infrastructure networks and large centralised treatment works.

Ministers might incline more to decentralised processing water services using commercially available modular units. Decentralised processing needs very limited distribution and collection networks as for most places in Scotland nature brings in adequate raw water and the water environment can accept used water which has been treated until cleaner than the natural water into which it is going. The implications are lower cost, lower environmental impact and swifter construction.

We suggest the Bill needs to state what prevails when differing and conflicting views about best managing Scotland’s water environment occur between Ministers and Scottish Water.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?
With the dominant effect of billion pound a year turnover business Scottish Water’s operations on the management of our water environment, we suggest applying the tried and tested Stock Exchange reporting model to them. Scottish Water would report as if it were a quoted private sector PLC, thus keeping the Scottish public fully informed at all times. Broadly this reports significant events as they happen, quarterly results, subdivisions by operational areas, splits out new and discontinued activities, etc, statutory audited accounts and so on.

synchronised with Scottish Water’s periodic reports and in similar detail could be

Scottish Ministers’ report to the Scottish Parliament on Scottish Water’s annual audited results

progress on the SARV activities in our Q1 submission

before it is put into effect a report on the £44m Growth Plan already in hand and financed from internal resources as revealed in the Explanatory Notes to the Bill

a report on the £44m internal resources which will be applied to the Growth Plan

The Explanatory Notes reveal that Scottish Water is predominantly financed by customer charges. Scottish Water’s Annual Report and Accounts 2011-12 reveal that 70% of customer charges are domestic customers.

Scottish Water’s Annual Report and Accounts 2011-12 and earlier years reveal cash and short term bank deposits have built up to £355 million pounds over three years. Figure 1. We presume this £355m predominantly raised from domestic customer charges supplies the Growth Plan internal resources.

<table>
<thead>
<tr>
<th>Short-term bank deposits</th>
<th>31st March</th>
<th>31st March</th>
<th>31st March</th>
<th>31st March</th>
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<tr>
<td></td>
<td>2009</td>
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<td>2011</td>
<td>2012</td>
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<td>Cash at bank and in hand</td>
<td>37.0</td>
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<td>204.2</td>
<td>286.9</td>
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<td></td>
<td>38.2</td>
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<td>68.3</td>
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<tr>
<td></td>
<td>75.2</td>
<td>218.5</td>
<td>339.4</td>
<td>355.2</td>
</tr>
</tbody>
</table>

Figure 1

Scottish Water Group Cash and Cash Equivalents

<table>
<thead>
<tr>
<th>Millions of Pounds</th>
<th>£millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>50.0</td>
</tr>
<tr>
<td>2010</td>
<td>150.0</td>
</tr>
<tr>
<td>2011</td>
<td>250.0</td>
</tr>
<tr>
<td>2012</td>
<td>350.0</td>
</tr>
</tbody>
</table>
Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

Most of Scottish Water’s £5.2bn of assets are specific to traditional technology built infrastructure based water services. As explained above in our introduction and in our Q2 response, traditional technology may no longer be the best management of the water environment. We suggest specific powers to develop Scottish Water’s assets, when there is the prospect that technologies may make them obsolescent shortly, are not advisable.

We suggest the strategy to support the generation of renewable energy from Scottish Water related assets should be specific powers in the Bill to make Scottish Water’s assets available by rental with a sale alternative to third parties experienced in renewable energies and by Scottish Water willingly buying at market rates and using renewable energy generated locally by third parties.

These powers impose no costs on Scottish Water, require no additional public capital committed or put at risk and avoid Scottish Water having to expend resources to skilling staff in renewable energy.

Rental or sale of assets will bring in finance to Scottish Water while the renewable energy they buy in will displace less sustainable energy bought at similar price.

We suggest that these directions will encourage and facilitate the private sector to develop renewable energy generation from Scottish Water’s assets where this is commercially sensible.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

We suggest that the £355m cash build up shown in our Q3 submission and Figure 1 above may indicate ongoing overcharging for core functions by Scottish Water. We acknowledge that the Water Industry Commission for Scotland has responsibilities in this area and that these may be outside the scope of this Bill.

We suggest our Q3 submission on Scottish Water’s reporting and Scottish Ministers reporting to the Scottish Parliament, if adopted, would provide a timely and detailed information flow into the Scottish public domain. Public, academic and media monitoring of this information should provide sufficient future safeguards for core water and waste water functions and the related user charges.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

The newer technologies water processing kit referred to in our introduction includes a modular drinking water works that removes from poor quality raw water all parasites such as cryptosporidium, all viruses and all bacteria using no consumables, to produce WHO quality drinking water.

We suggest that this ability to clean even poor quality raw water to wholesome drinking water at point of use makes obsolescent and wasteful the traditional approach of:

- employing resources to maintain the natural water quality of a large volume of water over a large geographic catchment area
- from which a small proportion becomes raw water taken into a central water works and treated water distribution infrastructure delivering about half this treated water to a point of use
maybe ten percent of this delivered water being used for purposes requiring wholesome
drinking water.

The powers and agreements in Q9 & Q10 are only required while we continue to use the traditional
approach.

We suggest for the future in Scotland powers for all water utilities similar to those of gas or
electricity utilities to place supply conditioning units at point of use on users’ premises.
Powers enabling decentralised SARV approved units at point of use would be more appropriate and
more certain to deliver improvements than powers relating to expending resources on catchment
areas.

Q11 - Q13

No comments

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be
passed, fat, oil or grease into the public sewer network?

Fat, oil and grease are so common that enforcing a ban on them might be as effective as the USA
prohibition on alcohol in the early twentieth century.

The newer technologies water processing kit referred to in our introduction above includes compact
modular package waste water treatment plants which readily process grease, oil and fat. Deploying
these non smelling non sedimenting units as decentralised processing units on the sewer network
upstream of points which have previously blocked with fat, would reduce the fat blockage problem.

A ban adds enforcement costs and may only move the fat, oil and grease and related issues and costs
elsewhere.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage
treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of
the other owners?

The prospectus to the Water Resources Consultation in March 2012, as quoted in Appendix V Page
5, page 14, “Septic tanks are widely used across Scotland for the collection and treatment of
household waste water in rural areas, …and …Research suggests that the contribution from sewage
discharges in rural areas to total pollutant loadings can be as much as 10%. It can be difficult to
establish hard evidence that individual septic tanks are causing pollution as they rarely cause
deterioration at a water body scale.”

Septic tanks, technology brought to Britain by the Romans, need suitable land for soakaways,
drainage mounds, dilution and dispersal outflows, foul tanker access, etc. They accumulate sediment
which progressively reduces performance until failure unless emptied regularly. Tolerance and
acceptance of their features has built up over the two millennia when septic tanks were the best and,
until recent decades, the only solution available.

Amongst the waste water processing kit referred to in our introduction above are compact package
units from 20 person capacity upwards. These do a better processing job than a septic tank and will
work happily virtually anywhere as they do not require soakaways, etc., do not smell, do not
accumulate sediment meaning no need for foul tanker access and no off site processing of the tanker
contents.

We suggest the one proprietor provisions in the Bill, relating to maintaining a shared and troublesome
or under performing septic tank set up, should extend to and perhaps encourage the one proprietor to
replace failing septic tanks with a SARV approved package waste water treatment unit. This
eliminates previous pollutant loading on the environment from that sewage discharge, whereas
servicing the septic tank merely reduces the environmental loading to a less critical level.
With SARV approval, as our Q1 response, neutralising any technical risk to early adopter users and clearing a route through regulatory tangles, standard mass manufactured units will quickly come down in price as purchases increase. From single household units through community owned septic tanks to the 75% of Scottish Water’s rural waste water treatment works that are septic tanks, all could be upgraded to discharge non polluting water, suitable for many reuses.

Q16

No comment.

Q17. Do you have any comments on the estimated costs associated with the Bill?

In the Financial Memorandum

“Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance these steps. …. Key expenditure items ….will include up to £1 million per annum for international development grants for water related projects in developing nations under the Climate Justice Fund. The remaining £2 million will support delivery of Hydro Nation Saltire fellowships and post-graduate posts. It will also allow the development of water technology innovation facilities to accelerate water technologies to market and support a range of events and projects including establishing the Hydro Nation Forum to bring together key players to shape the water resources agenda in Scotland. “

We suggest a more cost effective route than fellowships and post graduate studies and which would deliver earlier returns on resources would be the SARV scenario, as in our Q1 response above.

We would anticipate early SARV fast tracking of the award winning German tested and certificated to EU, USA and WHO standards, man portable drinking water works and for a range of package waste-water treatment plants with more than a decade of operation in sensitive environments in the UK and around the world.

If the Bill provides that SARVed approved products meet all Scottish regulatory requirements everywhere in Scotland we would have ourselves a safe, quick and effective solution to updating rafts of regulations, many dating from pre devolution and reflecting English factors and long established technologies, akin to applying horse welfare regulations to motor lorries.

Within months of the Bill becoming law a SARV could be operational and SARVed units contributing to managing our water environment better than we are now.

Private sector users, teams advising Ministers, environmental regulators and water services operators, including Scottish Water, would benefit from innovation risk factors being centralised and removed to an appropriately experienced team based SARV.

If we are the first jurisdiction to set up SARV type approval for complete (modular) drinking water works and (modular) waste water treatment works SARV might become a first mover leading classification and certification authority for European and world markets. International inventors and innovators might bring their new technology water and waste water units to SARV in Scotland after the style of Det Norske Veritas, TuV, American Bureau of Shipping, etc in their technical expertise areas.

This SARV certification traffic would benefit the Scottish economy and water knowledge base. Manufacturers of newer technology based modular units might seek to manufacture them here handy to the certification unit and potential early adopter clusters of users.

Individuals, architects and developers could plan and cost works knowing that specifying SARVed drinking water supply and waste water treatment would meet all necessary approvals throughout Scotland.
New development financial viability assessment becomes a desk or computer exercise taking hours, rather than commissioning site investigations, approaching local authorities and other regulatory local offices and so on over many months. Later if the development goes ahead the promoter may explore whether traditional water services options exist for that site and if so whether they would be cheaper.

Rock or low lying and boggy sites, unsuitable for septic tanks, become developable, increasing the supply and reducing the cost of development land, allowing developments to be hidden from view in landscapes, etc.

Ready to hook up modular products with SARV certification would be suitable for export, to England, where the rural population is many times the 5 million people in Scotland, and further afield.

**Conclusion**

I hope that this response will inform and assist the Committee in its consideration of this Bill.

Should you or anyone wish clarification of any points we are happy to provide this.

Yours sincerely,

Unsigned as submitted by electronic means

R S Garrow
Director

**EndNotes and References**

A

http://scottish.parliament.uk/S4_Bills/Water%20Resources%20Scotland%20Bill/b15s4-introd-pm.pdf

B


Page 7 PART 3 – SCOTTISH WATER’S FUNCTIONS Section 21 – Value of water resources 34. This section amends section 25 (Scottish Water’s general powers) of the Water Industry (Scotland) Act 2002 to clarify that the power in section 25(1) of that Act includes the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources. Scottish Water’s powers under section 25(1) of the 2002 Act are wide (it may engage in any activity which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions), but this section puts the matter beyond doubt.

C

http://www.scottishwater.co.uk/business/about-us/publications/key-publications/annual-report-201112

Scottish Water Annual Report and Accounts 2011/12 Page 44 Financial Statements Balance Sheets
Page 22 125. In response to the Hydro Nation agenda, and to deliver the new functions imposed by this Part of the Bill, Scottish Water has developed a Growth Plan. The 2012 version of this plan anticipates £44 million of direct investment over 2012/13 and the following two years primarily in renewable energy and financed from internally generated resources.

Page 18 104. Scottish Water features in several parts of the Bill. It is predominantly financed by customer charges, the levels of which are set by the Water Industry Commission for Scotland. The Scottish Government also provides loan financing to support an element of the capital investment programme.

Page 25 Regulated revenue Regulated revenue for the year totalled £1,045.8 million (2011: £1,049.8 million) and is analysed by category in the table below:

<table>
<thead>
<tr>
<th>Regulated revenue</th>
<th>2011/12 £m</th>
<th>2010/11 £m</th>
<th>Change £m</th>
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<tr>
<td>Household</td>
<td>745.6</td>
<td>743.5</td>
<td>2.1</td>
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<td>Wholesale</td>
<td>294.7</td>
<td>302.4</td>
<td>(7.7)</td>
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<tr>
<td>Other</td>
<td>5.5</td>
<td>3.9</td>
<td>1.6</td>
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<tr>
<td>Total regulated revenue</td>
<td>1,045.8</td>
<td>1,049.8</td>
<td>(4.0)</td>
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Page 60 Note 13 Cash and cash equivalents

<table>
<thead>
<tr>
<th>Group</th>
<th>2012 £m</th>
<th>2011 £m</th>
<th>Company</th>
<th>2012 £m</th>
<th>2011 £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash at bank and in hand</td>
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<td>134.6</td>
<td>Cash at bank and in hand</td>
<td>20.1</td>
<td>84.5</td>
</tr>
<tr>
<td>Short-term bank deposits</td>
<td>286.9</td>
<td>204.8</td>
<td>Short-term bank deposits</td>
<td>220.9</td>
<td>167.8</td>
</tr>
<tr>
<td>Cash and cash equivalents per the statement of cash flows</td>
<td>355.2</td>
<td>339.4</td>
<td>Cash and cash equivalents per the statement of cash flows</td>
<td>241.0</td>
<td>252.3</td>
</tr>
</tbody>
</table>

The fair values of cash and cash equivalents are not different from those disclosed above.

At Page 19
COSTS ON THE SCOTTISH GOVERNMENT

105. Part 1 of the Bill places a duty on Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. In February 2012 the Scottish Ministers published Scotland The Hydro Nation Prospectus and Proposals for Legislation, which set out the first steps they intend to take to deliver this duty. These steps cover economic development, international action and research excellence. Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance these steps. This expenditure, which is already planned, supports the Hydro Nation agenda and is not directly attributable to the Bill. However, following the passage of the Bill, this expenditure will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland’s water resources. Key expenditure items to support these steps will include up to £1 million per annum for international development grants for water related projects in developing nations under the Climate Justice Fund. The remaining £2 million will support delivery of Hydro Nation Saltire fellowships and post-graduate posts. It will also allow the development of water technology innovation facilities to accelerate water technologies to market and support a range of events and projects including establishing the Hydro Nation Forum to bring together key players to shape the water resources agenda in Scotland.
Water Industry Team  
Scottish Government  
Water Resources Consultation  
1 H North  
Victoria Quay  
Edinburgh  
EH6 6QQ

submitted by e mail to :- waterresourcesbill@scotland.gsi.gov.uk

Dear Team,

Response to  
Scotland a Hydro Nation Consultation Prospectus and Proposals for Legislation

I am pleased to offer you this response to your latest consultation on Scotland a Hydro Nation.

Our innovation company found a shortage of housing sites in the Highlands was attributed to the difficulty and high costs in providing water and waste water capacity. So we went and found technologies to fill this gap.

There are an award-winning drinking water processor and a range of package waste water treatment plants already operating in sensitive environments in the UK and around the world. These are able to provide water and waste water services capacity at a 20th of the cost per person of the traditional methods schemes currently being built in Scotland and with better environmental signatures.

In Scotland, nature delivers abundant natural water. These technologies enable people to take, clean and use it and then return it to nature cleaner than the way they got it.

Built infrastructure assets are no longer needed to bring in clean water and take away waste water. Large infrastructure processing plants are obsolescent.

Scottish Government regulations - regulations mostly imported from England at devolution and reflecting English factors - prevent people using newer technologies. Freeing up Scots to use natural water and modern processing technologies would make many more pieces of land viable for housing and economic development.

This would increase the supply of land and reduce the cost of houses. Tourist amenity businesses with low environmental loading become possible and viable.

These game changing technologies also enable portable and temporary drinking water supply and waste water water cleaning.
On Page 10 of your Prospectus (PDF file Pg 12)
The Scottish Government has commissioned a Centre of Expertise on Water (CREW). This virtual Centre will bring together the best available expertise in Scotland, to provide advice and information on the management of water. The Centre is led by the James Hutton Institute in partnership with a wide range of Scotland's research organisations and universities.

We suggest that a Centre of Expertise leadership should also incorporate groups with water and environmental interests such as the Scottish Environmental Technology Network, the Scottish Malawi Partnership Water Forum, the Scottish Innovators’s Network and private sector businesses.

On Page 11 of your Prospectus (PDF file Pg 13)
Identify of any barriers to innovation and commercialisation in Scotland including a feasibility study of an Innovation Park to test new products, facilitate proof of concept, EU accreditation and climate change resilience.

Tony Blair’s view, as highlighted in Appendix P is “The single most difficult thing in any area of public service reform is to bring in innovation and change," Our water utility being public service is a structural barrier to innovation.

The view of another MP with ministerial experience, highlighted in Appendix Q is “Monopolies in any walk of life rarely deliver either operational efficiency or customer responsiveness.” The statutory monopoly status of our water utility is another barrier.

Also on Page 11 of your Prospectus (PDF file Pg 13)
Identify key innovation opportunities with Scottish Water working with research institutes and Scottish universities …

We suggest a similar wider experience grouping to that proposed above for the Centre of Excellence.

on Page 20 of your Prospectus (PDF file Pg 22)
**Overarching Principle**
The essential services provided by Scottish Water in the delivery of clean fresh drinking water and the collection and treatment of sewage must not be compromised. Scottish Ministers will expect Scottish Water to deliver its core functions with increasing efficiency and at a standard comparable to the best providers elsewhere. Independent quality and economic regulation will continue to be essential to achieving this.

It is difficult to see how a public sector regulator can provide independent quality regulation of a fellow public body reporting to the same government.

WaterWatch Scotland, which has effectively disappeared into a general customer interest watchdog with little staff continuity, after issuing a critical report in response to a member of the public’s complaint about Scottish Water at Campbeltown, is perhaps indicative of the conflicts.

A further illustration is a regulatory body local officer stating at a Planning Appeal hearing that he had little option but to pass Scottish Water’s plans following their assertion that they were carrying out the Scottish Government’s orders.
on Page 20 of your Prospectus (PDF file Pg 22)

**Principle Two**

Scottish Water should develop new activities and take on new functions where these are aligned to its existing activities or where Scottish Water demonstrably has the expertise and resources to do so.

This Principle Two could encourage Scottish Water to employ extra staff and accumulate resources beyond those needed to fulfil its essential water services.

---

**Figure 1**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Short-term bank deposits</td>
<td>37.0</td>
<td>173.0</td>
<td>204.8</td>
<td></td>
</tr>
<tr>
<td>Cash at bank and in hand</td>
<td>38.2</td>
<td>45.5</td>
<td>134.6</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>75.2</td>
<td>218.5</td>
<td>339.4</td>
<td>0</td>
</tr>
</tbody>
</table>

**Scottish Water Group Cash and Cash Equivalents**

Source Scottish Water Annual Reports and Accounts

Figure 1 shows Scottish Water building up cash between 31st March 2009 and 31st March 2011. The build up rate is about of 12% of annual revenues. By value 70% of these revenues are domestic users with water charges collected through the council tax system. This gives them a very stable and predictable cash income.

If the cash build up trend has continued the total will be over £400 million now in March 2012. With private and public finances both squeezed by external events this increasing amount of idle cash is curious. We suggest an investigation into why a return of this surplus cash to the public purse or customers has not happened.
on Page 21 of your Prospectus (PDF file Pg 23)

insert -

"(1A) The power in subsection (1) includes, in particular, power to do anything that Scottish Water considers will assist in the development of Scotland’s water resources or any of Scottish Water’s assets."

Scottish Water’s existing exemptions from requiring planning permission to build water and sewer infrastructure, have been and are being used to construct collection systems over private and public land accumulating sewage from a wide area at a community. The community is then dismayed to be told by their council’s planning department that the council have no powers or standing to influence what is in progress or will happen.

Regulatory authorities’ local staff on environment, heritage, etc. then have Scottish Water presenting completed or in progress infrastructure with a demand that they give their organisation’s consent as a matter of routine as Scottish Water are carrying out the Scottish Government’s orders, much money has already been spent, etc. This happened at North Ballachulish and is happening at Ardersier.

We suggest that additional power to do anything solely based on internal consideration within Scottish Water is misguided and that prior written external consents should be required. Notwithstanding our objection on all areas we further suggest that, if any such additional power is legislated, it should not extend to "any of Scottish Water's assets.”

on Page 27 and following of your Prospectus (PDF file Pg 29 ….)

**Septic Tanks**

**Current Position**

Septic tanks are widely used across Scotland for the collection and treatment of household waste water in rural areas. ....

and

Research suggests that the contribution from sewage discharges in rural areas to total pollutant loadings can be as much as 10%. It can be difficult to establish hard evidence that individual septic tanks are causing pollution as they rarely cause deterioration at a water body scale. ....

and

There are a number of ways to tackle problems relating to septic tank management, not all of which require legislation. We will therefore work with SEPA and Scottish Water to take a joined up approach, particularly around raising public awareness of the importance of maintaining a septic tank, how it can be emptied, and how to register a tank with SEPA.

and

**Proposed way forward**

We want to emphasise prevention rather than remediation, and the challenge is to change our approach from one which is essentially enforcement-based to one which addresses pollution at source.

Since the septic tank arrived here with the Roman empire more modern technologies have become available. Modular, relocate-able, non smelling, waste water treatment plants, do not sludge up, do not require sludge removal, maintain performance and can be specified to clean waste water to meet EU standards for discharges into shellfish growing waters. Naturally in any location the requirement is only for the discharge to be cleaner than the natural environmental water at the location receiving the discharge.
In this as in other fields such new technologies often mean reduced or vanishing roles and profits for the incumbents. For the existing water industry players, SEPA, Scottish Water, their infrastructure and treatment plant builders and suppliers of septic tanks, soak away surveyors, etc., these and similar more modern plants are disruptive game changing technologies.

Understandably, affected corporate bodies and individuals tend to defend their diminishing patches.

Were small scale simpler, but still far outperforming septic tanks plus reed beds, versions of these modern plants mass manufactured, we would have an economic way to end pollution from septic tanks. From single household units through community owned septic tanks to the 75% of Scottish Water’s rural waste water treatment works that are this technology, all could be upgraded.

As sludge tankers employed on emptying septic tanks and works processing the collected septic tank sludge reduce, environmental quality gains.

We believe that a licence to manufacture these units in Scotland could be negotiated. This would provide cleaner jobs for the people relocating from septic tank activities. Once Scottish re-equipment was under way these units could be rolled out from Scottish manufacturers to South of the border and worldwide markets.

We suggest that private sector businesses and water interest business groupings, such as those within the Scottish Environmental Technology Network, the Scotland Malawi Partnership, the Scottish Innovators’ Network for example, should be invited to become part of the joined up approach.

The illustrative scenario outlined above shows how close we in the private sector are to delivering a solution to eliminating septic tank pollution at source. In this knowledge we suggest this legislation require failing septic tanks to be replaced with units meeting higher environmental standards than septic tank and reed bed combinations. The threatened upheaval of having to upgrade a neglected and failing septic tank might serve as a stick incentive encouraging maintenance of existing septic tanks.

We suggest this legislation might be as simple as that future waste water treatment units discharge water quality must match the quality of the natural local water body receiving the discharge. As SEPA already has a duty monitoring these the quality of natural local water bodies is readily available on the internet.

SEPA tell us that their current remit is limited to a local case by case approach matching the need to assess whether site conditions permit use of a septic tank. We suggest that now we have modern modular units which are independent of site conditions, SEPA’s remit be extended by legislation to include national type approval given to manufacturers’ ranges of standard model units.

**Conclusion**

I hope that our response will inform and stimulate this consultation.

Should you or anyone wish clarification of any points we are happy to be asked to provide this.

Yours sincerely,

Unsigned as submitted by electronic means

R S Garrow
Director
Editorial

MR GOVE DOES BATTLE WITH THE UNIONS

You might think, from the response of the teaching unions, that Michael Gove was proposing the return of birching or perhaps a little light caning. Plans unveiled by the education secretary a few days ago were attacked by the unions as "a bully's charter".

Mr Gove was simply proposing to make it easier for head teachers to get rid of bad teachers in a way that does not merely pass the problem on to another school. The plans will allow bad teachers to be removed within a term rather than a year as at present, and for the sacked teachers to have their dismissal reported on their record. Most parents would say these are long overdue reforms.

Tony Blair, in an interview to mark the 10th anniversary of the Teach First scheme for graduates, acknowledged yesterday that he should have gone "further and faster" in improving teaching standards. The former prime minister, who pushed through academies and other reforms against the protests of the unions and the educational establishment, regrets that he did not do enough.

"The single most difficult thing in any area of public service reform is to bring in innovation and change," Mr Blair said. "We did that but the quality of teaching was an issue all the way through."

Raising the standard of teaching by getting rid of bad teachers should be uncontroversial. Too often under Labour we saw what Joel Klein, the former New York schools supremo, memorably described as "the dance of the lemons", whereby bad teachers are sent on their way with a glowing reference to inflict damage elsewhere.

Chris Woodhead, the former chief inspector of schools, incurred the profession's wrath by declaring in the 1990s there were 15,000 incompetent teachers. The situation, as he has made clear in columns for this newspaper, has not improved. Between 2001 and 2011 only 17 of 400,000 teachers in England were barred by the General Teaching Council from applying for another job because of incompetence.

Yet, as Mr Gove puts it: "You wouldn't tolerate an underperforming surgeon in an operating theatre, or an underperforming midwife at your child's birth. Why is it we tolerate underperforming teachers? Teachers themselves know if there's a colleague who can't keep control or keep the interest of their class, it affects the whole school."

The victims in all this, as the education secretary rightly points out, are the children. A wasted year with a bad teacher can set back a pupil's education and risks putting them on the slippery slope to long-term underachievement. Young minds are precious. Bad teachers should not be allowed to wreck them.
It doesn't help that Lansley is friendless. Harry Truman, the American president, was fond of saying that there is no limit to what you can achieve as long as you don't care who gets the credit. That's a big ask for any ambitious politician but cabinet ministers who respect that wisdom go far. Take Michael Gove, the education secretary. Every week he praises his Labour predecessors to better discomfort the opposition today. He was at it again on Friday, writing an open letter to Andy Burnham, his shadow: "It was a courageous decision by Labour politicians to establish the first academies in the face of resistance from the 'forces of conservatism' in the education sector. I am for you now to embrace the coalition's rapid expansion of these reforms." He can claim Tony Blair's implicit blessing for his radicalism.

Look at welfare, too. Iain Duncan Smith has invested more than a decade into studying the causes of poverty and fecklessness. Yet Britons would rather queue for health than risk any sweeping change. The American health system that supposedly lets poor men die in the streets is the bogeyman.

The NHS needs a doctor, not a priest

Having successfully campaigned in poetry for a no vote in the referendum on electoral reform, David Cameron must go back to governing in prose. A series of exciting rows about proposed changes to dull National Health Service bureaucracy have stalled his health reforms. That's what you get when you mix religion with politics.

Cameron, like many a Conservative leader before him, must wrestle with the truth of Nigel Lawson's observation that "the NHS is the religion of the British people"; but unlike his agnostic predecessors, he is a true believer. The prime minister has showered his "love" on the health service and ringfenced its finances against the cuts. As a moderniser, too, he believes that if the public come to believe the NHS is safe in his hands, the Tories will no longer be considered the "nasty" party.

Despite his religious convictions, the rational part of the prime minister's brain also tells him the NHS could be improved. The doubling of health spending under Labour saw a huge drop in productivity, only partly mitigated by belated reforms. The World Health Organisation judges that Holland and France do better by relying on mixed systems of private, public and charitable money.

Despite their fine showing in the polls 10 days ago, these are supposed to fix. There is, of course, a strong political case for cowardice in the face of change. The American health system that supposedly lets poor men die in the streets is the bogeyman. Yet Britons would rather queue for health than risk any sweeping change. The American health system that supposedly lets poor men die in the streets is the bogeyman.

In the public's eyes neither Lansley nor Cameron — as mere politicians, and worse, members of "the nasty party" — is entitled to speak on the health service's behalf. Only doctors and nurses are supposed to fix. There is, of course, a strong political case for cowardice in the face of the enemy. With satisfaction ratings for the NHS at an all-time high, voters can't understand what problem it is that the reforms are supposed to fix.

Despite their fine showing in the polls 10 days ago, these are dangerous times for the Tories. George Osborne has taken a gamble on wiping out the budget deficit in the lifetime of this parliament. That involves cuts to public spending while trying to avoid unnecessary cuts to public services. The coalition is advancing on a broad front — welfare, education and policing are all to be overhauled. Chaos in the health service could tarnish the whole programme.

Monopolies in any walk of life rarely deliver either operational efficiency or customer responsiveness. Competition into the provision of hospital care will be restricted — though commonplace in continental Europe.

Is this a sign of things to come? Last week a memo of a meeting between Francis Maude and the CBI, the employers' federation, was leaked, revealing that the government did not want private-sector companies to take over any public services. Gove has also forbidden his innovative free schools to be run for profit. A white paper on opening up the public services has been postponed yet again, to July.

It is good politics for the Camerons to worship at the shrine of the NHS. But the nasty old Tories had a point about the benefits of markets and competition. If Dave gives up on that entirely, it would be apostasy indeed.
Part 1: Development of Water Resources

This places a new duty on the Scottish Ministers to take such reasonable steps as they consider appropriate to ensure that the value of Scotland’s water resources is developed through the Hydro Nation programme. It provides for Ministers to direct designated public bodies as to their involvement in this development. It also places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty. This Part of the Bill is designed to create an explicit focus for the Scottish Ministers on Scotland’s water resources and their potential and the continuing development of the Hydro Nation programme.

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

Rio Tinto Alcan agrees that it is important for the Scottish Government to ensure the development of the value of Scotland's water resources. However, any steps to achieve this should take cognisance of the importance to Scotland’s economy, energy mix and efforts to reduce CO2 emissions of enabling companies to economically abstract water for the production of hydro power. Rio Tinto Alcan Lochaber uses its water catchment for the production of hydro power, which is wholly used to provide energy for its aluminium smelting business in Fort William. The use of its own renewable energy source makes the Lochaber business economically viable and also enables the company to work towards its target of becoming the world’s first carbon neutral smelter.

The current wording of the Bill appears to give a far reaching general powers to Ministers to develop the value of water resources in the future. For instance in Part 1 the Bill states that Ministers may: “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources, ……and do so in ways designed to contribute to the sustainable use of the resources.” And it goes on to say that: “(3) In subsection (1), the reference to the value of water resources includes the economic and other benefit deriving from the use of (or any activities in relation to) the resources.”

The Bill also makes provision for Ministers to modify exemptions. RTA would be concerned if the intention of these sections was to give Ministers powers to introduce new charging mechanisms further down the line, or any measures which would make the production of hydro power more onerous or less cost effective.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

This proposal seems reasonable as long as the different roles of the public bodies are respected. The responsibilities of the agencies listed are very diverse and in some cases, such as with SEPA and Scottish Natural Heritage, the bodies currently act as Government advisers as well as enforcers of policy. It is not clear how these roles will sit with the new power of Ministers to direct these bodies in the area of the development of water resources and the current proposals leave this very much open to interpretation. It also appears that
Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland's water resources?

It is appropriate that Ministers should regularly report to the Parliament on these activities every three years. What isn't clear is whether or not Minister can then gain additional powers under the Bill to introduce further measures or what measures Parliament can take if it is not happy with progress or how the activities are being implemented.

Part 2: Control of Water Abstraction

This part provides for the Scottish Ministers to control large scale water abstractions. It proposes prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers. The policy intention is to ensure that applications for abstractions are considered not only in terms of their environmental impact but also in their broader and long-term impact on the value of the water resources of Scotland.

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Rio Tinto Alcan feels that the Controlled Activities Regulations (CAR) introduced to implement the Water Framework Directive could be used as the mechanism to deliver much of what is contained in the Bill and is not clear why a completely new regime is needed.

The Bill's policy memorandum talks about the need for Ministers to consider water use in future years given “the significant changes in the economic factors affecting the use and management of water resources on a global level”. It goes on to say that Ministers will “wish to develop a view as to whether the overall water resources of Scotland are being used to the best advantage of Scotland's people. It might therefore be that they would have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth. Similarly, they may use the new powers to consider competing applications relating to one water body or with reference to the overall availability of water resources across Scotland”. Some of the wording within the Bill and the memorandum appear to leave the future of large scale abstractions under some uncertainty. RTA's concern is that these wide ranging statements could be used further down the line to introduce charging mechanisms or restrictions on abstractions from water catchments that could make RTA's and other businesses have to rethink their current business model in the Highlands.

The new regime understandably has provisions for conditions of approval, restrictions and additional requirements. If for any reason RTA came under the scheme (for instance if
small scale hydro fell below large scale abstractions or Ministers decided to exclude some businesses from exemption), then we would have concerns about some of these conditions, such as imposing restrictions on the rate of which water may be abstracted; the purposes for which water may be used; how activities are to be reported to Ministers and the provisions on payment of fees. However, we assume that these conditions will be the subject of discussion by the Committee and the Parliament and that their implementation will take on board consultation and the concerns of potential licensees.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

Yes.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

Yes, as a hydro-electric power producer we absolutely agree with Section 7 cl.4a. of the Bill. As set out in our answer to Question 1, Rio Tinto Lochaber uses its water catchment for the production of hydro power which is used to provide energy for its aluminium smelting business in Fort William. The use of its own renewable energy makes the small operation economically viable and also enables the company to work towards its target of becoming the world’s first carbon neutral smelter.

Without the economic use of our water catchment, the viability of the Lochaber operations could be called into question. However, the Bill makes provision for Ministers to modify exemptions and this causes concern for all the above reasons. The long term future of the Lochaber aluminium smelter is dependent on the ability of the company to abstract water from its catchment without additional charging. The wording of the current Bill as set as below is therefore of some concern:

“(6) The Scottish Ministers may by regulations—
(a) modify any of the exemptions under this section
(b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.”

We also have concerns that in the policy memorandum the proposed regime is described as one which “allows Ministers to ensure that large-scale abstractions from the water environment in Scotland are only carried out where they are sustainable and where the use of the resource is in the general interest of the people of Scotland, with Ministers required to consider both adverse impacts and social and economic benefits.”

This working seems vague and there is no guidance given for what might be considered in the future to be “in the general interest of the people of Scotland”. This as previously stated gives rise to uncertainty about any future regime.

Part 3: Scottish Water’s functions

This part places a new duty on Scottish Water to develop the value of its assets and expertise and to promote the use of its assets for the generation of renewable energy.
Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person. The policy intention is that these new powers will encourage Scottish Water to develop commercially and generally to support the Hydro nation agenda.

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

No views

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

No views

Part 4: Raw Water Quality

This part gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” (water that may be used for human consumption) and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of raw water. The policy intention is to safeguard and improve, where possible, the quality of raw water.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

No views as we have no problems with the powers being proposed for Scottish Water other than concerns if there is duplication. We would want to avoid unnecessary duplication and additional time demands if these are not necessary. We would also be concerned if there were costs passed onto businesses associated with the new powers.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We have no problem with Scottish Water entering into agreements with owners or occupiers to undertake works to prevent deterioration of water quality, on the understanding that, if required, any cost is borne by Scottish Water. Again, we would also be concerned if there were costs passed onto businesses associated with the new powers.

Part 5: Non-Domestic Services

This part introduces measures allowing water providers to demand and recover charges from customers where due, and requires landlords to inform a water provider when there is
a change in occupancy in their property (as happens with other utilities). The policy intention is that the measures will help to ensure that the water market is operating efficiently and that those receiving water and sewerage services pay for them.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

No views

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

No views

Part 6: Sewerage Network

This part allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems, such as septic tanks, to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances. The policy intention is to restrict inputs into the sewer that can cause harm to the water environment and can be costly and difficult to remove.

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

These powers seem to be very similar to those already bestowed on SEPA at present. Will SEPA lose this power of entry and inspection status or is Scottish Water going to have a dual role in this area? We would want to avoid unnecessary duplication and additional time demands if these are not necessary. We would also be concerned if there were costs passed onto businesses associated with the new powers.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

No views

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

No views

Part 7: Water Shortage Orders
This part makes provision for the management of temporary water shortages by allowing Scottish Water to apply for, and the Scottish Ministers to make, Water Shortage Orders. These orders would replace the current Drought Orders and authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures. The policy intention is to update the law in relation to the management of interruptions to the public water supply by streamlining the process and allowing Scottish Water, SEPA and Scottish Ministers to react swiftly and in a proportionate way to such water shortages.

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

Rio Tinto Alcan believes that water catchments used for hydro-generation would need to be exempt from being a source of abstraction for Scottish Water at times of Water Shortage orders.

Financial implications

The costs implications for the Bill are set out by the Scottish Government in the Financial Memorandum, which accompanies the Explanatory Notes. Additional costs are anticipated in a number of areas in relation to, for example, companies seeking to apply for consent for large-scale water abstractions, co-operation agreements between Scottish Water and landowners to protect drinking water sources, obligation on the part of landlords to inform water providers of any change of occupancy of their property, and regulating the discharge of priority substances into the sewer network. The Bill also creates five new offences, all of which could result in offenders receiving fines.

In addition, Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance the development of the Hydro Nation agenda. Whilst this cost is not directly attributable to the Bill, it will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland’s water resources (Part 1 of the Bill).

Q17. Do you have any comments on the estimated costs associated with the Bill?

RTA’s view is that any charging for licensees should be proportionate and not exceed the administrative functions required by Government. We would caution against introducing any new charging regime which is onerous on business and could jeopardise operations in Scotland.
WRITTEN EVIDENCE FROM THE SCOTTISH COUNCIL FOR DEVELOPMENT AND INDUSTRY

1. SCDI is an independent membership network that strengthens Scotland’s competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI’s membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

2. SCDI has responded to the consultations on Building a Hydro Nation and Scotland the Hydro Nation Prospectus and Proposals for Legislation. SCDI has also participated in a Scottish Government workshop on Realising the Benefits of the Water Sector for the Scottish Economy. We are discussing with the Scottish Government, Scottish Water and Highlands and Islands Enterprise how we can support the Hydro Nation agenda which we strongly believe has significant opportunities for the Scottish economy, especially to increase Scottish exports.

Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

3. Global population growth, badly run infrastructure requiring investment, higher standards for water quality and climate change are shaping the development of the global water market. An estimated 1 billion people lack access to an improved water supply and 2.6 billion people lack access to improved sanitation. With population growth concentrated in India, the rest of Asia, the Middle East and Africa, the demand for water is projected to outstrip supply by 40% by 2030 and an estimated half the world’s population are likely to live in areas of high water stress by the same year. A number of reports have forecast that the global water market, which is currently worth $300 billion, will continue to grow strongly.

4. This is a market in which Scotland should be able to develop and capitalise on competitive advantages and increase the relatively modest exports of its sector. This would build on and promote partnerships between the research excellence of Scottish academia, the engineering consultancy strengths and innovative technologies of the Scottish-based supply chain, and Scottish Water’s growing global reputation for water management, following the relatively small-scale contracts which it has recently secured. Scotland will need to identify its competitive advantages in technology subsectors and markets. SCDI believes that an early priority for the Hydro Nation agenda should be to analyse the international activity, strengths and opportunities of the Scottish water sector.

5. These proposals appear to be sufficient to drive forward the public sector and public funding to deliver the Hydro Nation programme. However, developing a strong partnership approach with the private sector will be essential to the delivery of the economic benefits envisioned in the Hydro Nation agenda. A
number of businesses in the water sector have previously commented to SCDI that the earlier consultations lacked detail about the economic development strategy - especially of those areas of potential competitive advantage and opportunities on which the Scottish Government plans to focus - and about how they could become involved. However, following engagement by the Scottish Government and Highlands and Islands Enterprise, the awareness of the Hydro Nation agenda in the private sector appears to be increasing and the launch of the Hydro Nation Forum this month will be a further important step forward.

6. Clearly, the development of the value of Scotland’s water resources will depend on a range of factors, some of which are outwith the powers of the Scottish Government. From an economic perspective, the ability of Scottish SMEs to capitalise on global opportunities in the water sector is key. SCDI strongly supports the development of water technology innovation facilities funded by the Scottish Government as an early priority. However, to bring these technologies to global markets, improving the access to finance for SMEs will also be necessary.

What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

7. SCDI believes that it is right that Scottish Ministers should have this power in order to ensure that the potential of the Hydro Nation agenda to deliver economic benefits is maximised. From the discussions which SCDI has had with public bodies - particularly Scottish Water and Highlands and Islands Enterprise - it is clear that they are already developing a high-level commitment to participation.

8. The Scottish Government intends that the Hydro Nation agenda will be delivered by designated bodies through aligning of existing budgets and work plans. The water sector is not, at present, one of those sectors specifically identified by Scottish Enterprise or Highlands and Islands Enterprise, and there is no Scottish Enterprise Industry Leadership Group responsible for developing and delivering a forward looking industry strategy and advising the public sector. SCDI understands that the Hydro Nation Forum will not be part of this structure. It will be important that, in overall terms, these existing budgets are sufficient to continue to support the Government Economic Strategy and all the sectoral strategies, while allowing for realignment around the Hydro Nation agenda; and that the decision that the expert input to shape the delivery of the programme will not be part of the existing Industry Leadership Group structure does not result in a lower priority for it in the budgets and work plans of the enterprise networks.

Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

9. SCDI would imagine that, in addition to this formal requirement for a report every three years, the Committee and the wider Parliament will also take advantage of
opportunities to ask about progress with the Hydro Nation agenda and its targets as part of their rolling scrutiny of the Scottish Government’s policy and funding.

In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

10. In SCDI’s Blueprint for the Scottish economy, we highlighted that Scotland could, in the future, attract industries based on the availability of low carbon water supply. It is clear that businesses are beginning to consider the long-term impact of climate change for their operations and the implications for their locations. We welcome the incorporation of this idea into the Hydro Nation agenda and the Scottish Government’s plan to establish the size of the opportunity and prioritise promotion of this to potential investors. There has also been increasing interest in moving water from water-rich to water-starved areas. Over the long-term, the incremental development of a national water grid in the UK may become a realistic proposition and one that could attract investment from those who would value the secure financial returns. If climate change has very severe impacts in drier areas of southern Europe, it may even become economic to ship large supplies of water from Scotland to cities and regions at times of serious drought.

11. With this long-term opportunity for sustainable economic development in mind, SCDI agrees that there is a case for a new licensing regime. However, SCDI believes that further information is required from the Scottish Government on its policy intentions and on the likely impact, particularly on existing key industries. The financial memorandum identifies the growth of the distilling industry as likely to drive applications for new or increased abstractions in the short-term, but it is unclear whether the new licensing regime is being proposed at this stage specifically in view of these investments and what effect it may have on them.

Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

12. SCDI is not aware of why it is proposed to set this threshold. It may be more appropriate to define large scale use of water based on consumption rather than abstraction. Abstracted water may be returned to the environment unharmed.

Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

13. SCDI is not clear what criteria have been used for the exemptions. It considers that each of the activities proposed for exemptions can be justified based on their existing large scale abstraction and their importance to the Scottish economy, but that this would also apply to the Scotch whisky industry. Given that the investment plans of the industry very obviously support the maximisation of the value of the water resources of Scotland for the Scottish people and the fact that
two-thirds of the water it abstracts is returned to the environment unharmed, SCDI believes that there is a strong case for an exemption for the industry.

**What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?**

14. The water industry is the largest single energy user in Scotland and has a higher carbon intensity of wastewater treatment than in England. Scotland’s topography and population density, particularly the number of rural and remote communities, mean that its water and wastewater infrastructure are more energy intensive, but also that Scottish Water has greater opportunities to develop renewable energy generation and raise revenues by taking advantage of UK Government incentives. The potential to create innovative solutions in rural and remote areas could benefit these communities and be exported to similar locations globally.

15. SCDI strongly supports the Scottish Government’s view that Scottish Water’s assets base can be used to generate significantly higher renewable electricity. SCDI welcomes the progress that Scottish Water has already made in this area and any clarity and certainty which it considers necessary to develop its capacity. It has been concerned that sources of finance to expand commercial activities by Scottish Water have not yet been clearly identified by the Scottish Government.

16. Scottish Water will only be able to maximise its potential for renewable energy and revenue generation over a long period. SCDI believes that it will need to continue to work with renewable energy developers, accepting an appropriate degree of shared risks and shared benefits. While clarity and certainty over its powers to operate beyond its core functions may be helpful, developments may be hamstrung by the years which projects can languish in the planning system and the regulatory framework, for example around anaerobic digestion, and these need to be addressed if Scottish Water is to be able to pick up the pace.

17. Innovative, community-based solutions to water and wastewater infrastructure in rural and remote areas - which potentially could involve renewable energy generation - is one niche in which Scottish Water and Scottish business could develop a competitive advantage. It will therefore be important to join-up the renewable energy and international dimensions of the Hydro Nation agenda and that, where appropriate, Scottish Water seeks to stimulate and utilise innovative Scottish renewable energy technologies for which there may be export markets.

**Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?**

18. Scottish Water’s performance in water services and infrastructure investment has been outstanding. SCDI would be seriously concerned if Scottish Water lost focus on the outcomes generally sought by its customers for its core water and
Are the new duties to be placed on landlords appropriate and do they raise any concerns?

19. The proposal to clarify responsibilities of what happens when a customer moves into a property will support efficient operation of the non-domestic retail market.

Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

20. These proposals appear to be proportionate, but they would need to be introduced in a way which was sensitive to the particular requirements of industry sectors for water, whether for their products or to comply with specific regulatory regimes, such as hygiene, and allowed them time to find alternative sources. SCDI would support the suggestion that there should be planning exercises.

Do you have any comments on the estimated costs associated with the Bill?

21. SCDI welcomes the funding which the Scottish Government is allocating to support the Hydro Nation agenda through the creation of the new Centre of Expertise and the Climate Change Justice Fund. SCDI considers that, depending on the outcome of the feasibility study into water technology innovation facilities - including whether this should be one centre or a hub-and-spoke structure - it may become necessary to increase the funding for this project as it is widely-regarded as an early priority and a key to the sustainable economic development potential of the agenda. It takes time to bring technologies to market and investment in these facilities would need sustained funding over at least a 5-10 year period.

22. The Scottish Government should provide more information in a Business Regulatory Impact Assessment on its estimates of potential costs for businesses. It is important that the costs of the new consents and regulations are minimised.
WRITTEN EVIDENCE FROM THE SCOTCH WHISKY ASSOCIATION

Introduction
0.1 The Scotch Whisky Association (SWA) is the industry’s representative body, with a remit to protect and promote Scotch Whisky worldwide. Its member companies – Scotch Whisky distillers, blenders and bottlers – account for over 90% of the industry.

0.2 Scotch Whisky is Scotland’s leading single product export. Annual shipments in excess of £4.2bn in customs value represent almost 80% of Scotland’s and 25% of the UK’s food and drink exports.

0.3 The SWA works closely with the Scottish Government, SEPA and other relevant Government Agencies to ensure compliance with a wide range of environmental standards and limits across the industry. Our sector takes its environmental responsibilities seriously as we are heavily reliant on having access to a secure supply of high quality water from Scotland’s water environment. In addition, our high quality reputation and branding are inextricably linked to Scotland’s pristine water environment. The majority of water used at our malt distilleries is for cooling purposes and is therefore borrowed and returned to the water environment unharmed. Protection of Scotland’s environment is fundamental to ensuring the long-term sustainability of our industry.

0.4 Only three ingredients can, by law, be used to make Scotch Whisky – water, yeast and barley. Abundant, good quality water is critical for our production process. As a food manufacture we must comply with European Food Law at all times and require a minimum level of water to protect both the safety and quality of our products. During the progress of this Bill, the needs of the Scotch Whisky industry must therefore be considered and protected.

0.5 The Association is delighted to have the opportunity to respond to the Infrastructure and Capital Investment Committee’s stage one consultation on the Water Resources (Scotland) Bill. The SWA would be happy to provide additional information or oral evidence to this Committee and/or any other supporting committees if required.

Part 1 Development of Water Resources
1.1 The SWA supports the relevant Government department in delivering a progress report through the provision of data/case studies and would be keen to be involved in the deliberation or review of such a report where appropriate.

1.2 The Scotch Whisky industry is an essential sector for Scotland. Around 35,000 people are directly employed or supported by the industry and exports contribute over £134 per second. Given that Scotch Whisky relies on our nation’s good quality water, it is essential that our industry’s needs are considered during the progress of this Bill.

Part 2: Control of Water Abstraction
2.1 The SWA seeks further information surrounding the proposals for Scottish Ministers to control large scale water abstractions. The SWA is also keen to better understand what activities Scottish Ministers are trying to control with a threshold of 10 megalitres of water per day and the criteria for which certain exemptions were granted.
2.2 The policy intention appears to be to ensure that applications will be considered on their long term impact on the value of the water resource (including economic & social elements). Existing arrangements regarding private water abstraction on which businesses have built and sustained success should not be impacted by the introduction of this Bill. Scotch Whisky is a significant current key water user and we ask for our industry to be considered for an exemption, along with the other organisations that are currently exempt and classed as key to Scotland (Scottish Water, agriculture and Hydro power electricity generators).

2.3 The financial memorandum, that accompanies the Bill states that: As a result of growth in the distilling industry and the potential for large water users to be attracted to Scotland, it is estimated that there will be between five to ten applications to Ministers over the next five years for new or increased abstractions. We seek clarification that this part of the Water Resources Bill is not a direct attempt to restrict, or control the growth of the Scotch Whisky industry, or to capitalise on our success - a success that puts Scotland on the international stage. Although the Scotch Whisky industry uses a significant amount of water, 37,024,340m3 in 2010, the majority is returned to the environment. For example, only 34% of water used in malt distilleries is retained while 66% is returned to the environment.

2.4 If the Government does not wish to acknowledge the importance of the Scotch Whisky industry by granting an exemption, we seek clarification that the proposed control of water abstraction focuses on the consumptive element of water abstraction rather than total abstraction of the raw water. Clarification is also sought that it will be per site, not per organisation. The SWA would also welcome a definition of the actual policy intention to attain a better understanding how this is to be delivered.

Part 3 Scottish Water’s function
3.1 The Scotch Whisky sector is a valuable customer of Scottish Water and we would wish that both our taxes and customer charges are used in the most effective and efficient way for Scotland.

3.2 As a responsible business, we broadly support any changes to policy which allows Scottish Water and its subsidiaries to work more effectively and support investment into renewables. As an industry, we have been committed to a far reaching and ambitious environmental strategy since 2009 and have invested over £160 million at five sites alone since 2008 in environmental measures to secure and improve Scotch Whisky’s environmental sustainability.

Part 4: Raw Water Quality
4.1 We broadly support the policy intention to allow Scottish Water to protect raw water via catchment planning measures. As an industry, Scotch Whisky producers commit a significant amount of both financial and human resources to ensuring that we comply with all environmental regulations. We therefore call for safeguards to be put in place to ensure land owners are not being paid to comply with the law e.g. construction of slurry storage. Payments should be given to measures which go above and beyond CAP requirements and should also deliver multiple benefits and be in line with Scottish Water’s Sustainability Duty.

Part 5: Non-Domestic Services
5 The SWA has no comments on this section.

**Part 6: Sewerage Network**

6.1 The SWA is supportive of Scottish Water being given additional powers to ensure the organisation is able to protect the sewerage network from both priority substances and fats, grease and oils.

6.2 As stated previously, good quality water is a critical resource for our industry and it is important for Regulators to have the correct tools to protect these resources. However, safeguards need to be put in place to ensure Scottish Water is only able to monitor and control substances which businesses use where there is a risk of these chemicals entering the sewerage network. Substances which are used in dry processes and pose no risk should not be burdened with excessive legislative control e.g. printing materials where there is no access to drain.

**Part 7: Water Shortage Orders**

7.1 The SWA is broadly supportive of the proposals surrounding water shortage orders but it is important that measures are implemented in a phased approach with early engagement with key sectors, including the Scotch Whisky industry.

7.2 As we have stated previously, our industry is reliant on a constant supply of high quality water. A sufficient lead in time is therefore critical to allow our sites to adapt and implement alternative arrangements to a change in either quantity or quality of available water.

7.3 In addition, as a food manufacturer we must comply with European Food Law at all times and require a minimum level of water to protect both the safety and quality of our products e.g. cleaning equipment and vehicles. We would hope any of the mandatory water saving measures would take cognisance of other legislative requirements e.g. Food Hygiene and we would like to propose the Bill should include an exemption for activities which ensure compliance with Hygiene and / or H&S legislation.

7.4 We would also like to encourage Scottish Water to work in partnership with key stakeholders including the Scotch Whisky industry to undertake planning exercises to better understand how the proposed measures will work in practice.

8.1 **Part 8: Financial Implication**

It is estimated that on an annual basis, the cost to the Scottish Government to administer the Water Industry in Scotland will be £100,000 for policy implementation and reporting which will come from the existing budget. A more detailed explanation on the breakdown of this figure would be appreciated.

8.2 Section 109 identifies the distilling sector and our current expansion as possible future activities where large scale water abstractions may require approval by Scottish Ministers. The paragraph also mentions 20 existing abstractions which are greater than the threshold and we would be keen to understand which activities are covered. As stated previously we would wish to see our sector gain an exemption, or for the abstraction threshold to focus on consumptive water rather than total abstraction.
8.3 Section 109 also highlights that both new and increased abstractions will be covered by this section and we would like clarification if the increased volume needs to meet the 10 megalitre threshold or if the increase volume brings the total abstraction volume to above 10 megalitres.

8.4 The Scottish Government estimates that administration of these licences will cost between £1500 - £3000. Has any comparison been made against other licence cost frameworks to ensure value for money? There will be significant cost to businesses to provide the relevant information for the Scottish Government to assess and will likely require consultancies’ time as the expertise may not be available internally. We would wish any BRIA to take account of these costs.

8.5 We believe there will be costs arising for businesses as a direct result of the Bill via the control of water abstraction and the Water shortage orders. Companies may have to amend and review both short and long terms investment strategies in light of any decisions made in either of these areas.

Conclusion
9.1 Thousands of jobs, local economies and exports rely on the ability of our industry to secure good quality water. We are a key water user that can only be based in Scotland and we support policies that will ensure that our national water is fit for purpose, free from pollutants and maintains its reputation for good quality.

9.2 We are broadly supportive of this Bill but believe that more information is required in a number of areas specified above. We would also welcome a commitment from the Scottish Government to grant our industry an exemption relating to water abstraction given the importance of Scotch Whisky to Scotland.
WRITTEN EVIDENCE FROM SCOTTISH ENTERPRISE

Scottish Enterprise welcomes the opportunity to provide input to the Committee’s deliberations on the Water Resources (Scotland) Bill at stage one.

We support the general principles of the Bill. Water is of fundamental importance for Scotland’s economy, health, social wellbeing and environment. All businesses rely on the water environment in some way or another and water plays a prominent role in the success of many of Scotland’s growth sectors such as chemical sciences, tourism, food and drink manufacturing and renewable energy generation. The Scottish Government’s transition to a low carbon economy promotes the sustainable and efficient use of resources, including water.

As Scotland’s main economic development we are keen to continue working collaboratively with the Scottish Government and other partners to assist in the development of the economic and environmental benefits from the water resources in Scotland. We highlight below those areas where we have been engaged in the development of water resources in Scotland, and would expect to be so in the future.

Scotland performs very well in the Technology, Research, Development and Consulting, as well as the Education and Training sub sectors of the water supply and wastewater treatment sector and has over 20% of the UK market value; with engineering having 14%. This is supported by research provision in the academic establishments including Universities such as Heriot Watt, Glasgow, Strathclyde, Dundee and Abertay.

As part of the Environmental & Clean Technology (ECT) Partnership (Scottish Enterprise, Highlands & Islands Enterprise, SEPA, Scottish Funding Council) we are undertaking research to further determine the size of the economic opportunity in Scotland, as well as identify Scotland’s key strengths and competitive advantage within the water sector. We will continue to work with partners to fully realise the economic opportunities from water in Scotland and abroad.

We are working with Scottish Water to help maximise the benefit of its expertise, assets and water resources in developing Scotland as a Hydro Nation. We believe that Scottish water has a key role to play, and has the potential to stimulate innovation in the business base in Scotland in its role as a major customer for new and innovative solutions. We look forward to continue working closely with them in the future.

Globally there exists growing opportunities for exporting technologies and services in the water sector, as the demands of an increasing global population puts pressure on existing water supplies and on the treatment of wastewater. This is reflected in the relatively strong exporting position of Scottish companies with 13.4% of the overall market value being exported. Scottish Development International will continue to identify areas where Scottish companies could increase their exports. Scottish Development International will also continue to work with Scottish Water International to develop an international strategy which will assist in knowledge exchange between nations and stimulate innovation in water management abroad.

Scottish Enterprise and Scottish Water have worked together to identify partners for an EU FP7 project, and Scotland Europa together with Scottish Enterprise and Highlands and
Islands Enterprise assisted 3 Scottish companies to submit concept notes for projects in Angola and Ethiopia under the 10th European Development Fund the ACP-EU Water Facility call. We are committed to continuing work with Scottish Water, Scotland Europa, the Technology Strategy Board, Scottish companies and others to identify opportunities for UK/EU funding to aid research and development in the water sector in Scotland.
Scottish Land & Estates welcomes the opportunity to provide comments to the Infrastructure and Capital Investment Committee on the general principles of the Water Resources (Scotland) Bill. Landowners, land managers and farmers in Scotland all have an important role to play in managing Scotland’s water resources, therefore this consultation is of interest to the organisation.

**Part 1: Development of Water Resources**

1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

   It is difficult to ascertain whether or not placing this duty on Scottish Ministers will be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro nation. What would ‘such reasonable steps’ actually entail and what would the implications of these steps be on land managers in Scotland?

2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

   In order for Scotland’s water resources to be successfully developed it will be essential that the relevant public bodies are fully engaged in the process. Therefore, the proposal that Scottish Ministers should be able to direct them to participate in the development of water resources is appropriate.

3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources?

   Scottish Land & Estates considers that three year reporting intervals would be adequate. Annual reporting by Ministers would be excessive and would probably not allow sufficient time for developments to proceed. Whereas longer time intervals would fail to ensure that Scottish Ministers are held accountable for meeting the duty placed upon them to ensure the development of Scotland’s water resources.

**Part 2: Control of Water Abstraction**

4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

   Scottish Land & Estates has concerns about the new licensing regime. The organisation recently responded to a Scottish Government / SEPA consultation on proposals for an integrated framework of environmental regulation in which it was proposed that the four main environmental protection regimes (for water, pollution prevention and control, waste...
and radioactive) be integrated into a single permissioning structure. The introduction of a new licensing regime would appear to run contrary to the desire to decrease complexity and bureaucracy. Instead of introducing a new regime it would be better to amend the Water Environment (Controlled Activities) (Scotland) Regulations 2011 by permitting them to take social, economic and other benefits and impacts into consideration when deciding whether or not to approve an abstraction.

5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

If the proposal to introduce a new licensing regime does go ahead, Scottish Land & Estates notes that there are currently less than twenty inland water abstractions over the proposed threshold of 10 megalitres. Furthermore, we are aware that it is anticipated that as a result of growth in the distilling industry and the potential for large water users to be attracted to Scotland, there will be between five to ten applications to Ministers over the next five years for new or increased abstractions. Consequently we consider that the threshold is appropriate because it will encompass only the very large abstractions that would have the greatest potential impacts. Scottish Land & Estates notes that Scottish Ministers may specify other thresholds by regulations. We believe that it is important that clear reasons and calculations should be required for any divergence from the 10 megalitres per day threshold.

6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

If the proposal to introduce a new licensing regime does go ahead, Scottish Land & Estates agrees with the current list of exemptions but considers that dairy farms should also be included in this list.

Part 3: Scottish Water’s Functions

7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

Scottish Water is one of the largest energy users in Scotland and therefore it is appropriate for them to investigate their potential to become a renewable energy generator.

8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

It is essential that the core functions of Scottish Water are maintained and also improved, where necessary, before any non-core functions are pursued. The proposed definition should provide sufficient safeguards to ensure that this position is maintained.

Part 4: Raw Water Quality
9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

Scottish Land & Estates considers that Scottish Water should not be given new powers of entry and inspection of premises in relation to the quality of raw water. It is essential that Scottish Water works with land managers in order to rectify problems rather than acting in a top down fashion. By granting Scottish Water these new powers, this objective would not be achieved.

10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

Scottish Land & Estates considers that this proposal could potentially allow a more proactive approach to be adopted within a catchment and would promote joint working between landowners, farmers, SEPA and Scottish Water. However, it is important that appropriate safeguards are put in place to ensure that the owners or occupiers of land can disagree, when appropriate, with suggestions put forward by Scottish Water. Agreements must be amicable to the owner or occupier rather than merely forced upon them.

Part 5: Non-Domestic Services

11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

It is appropriate that the owner of any premises should have to provide information to the water provider in respect of any change in occupancy.

12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

Scottish Land & Estates agrees with the proposal to introduce deemed contracts between a licensed provider and the occupier when, for whatever reason, no contract exists.

Part 6: Sewerage Network

13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

Scottish Land & Estates considers that it would be better if Scottish Water could establish contact with the relevant owner or occupier rather than using powers of entry. Powers of entry should only be used as a last resort in cases where the relevant owner or occupier refuses to cooperate with Scottish Water.
14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

This proposal is appropriate.

15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

Scottish Land & Estates considers that in the first instance every attempt should be made to secure the consent of all owners before any works are carried out. Only if this approach has failed should it be possible for any one proprietor to carry out work without the consent of the other owners and to recover the costs of measures taken.

Part 7: Water Shortage Orders

16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

The proposal outlined in the Bill to introduce both ordinary and emergency water shortage orders is appropriate. It gives recognition to the fact that not all water shortages are caused by droughts and therefore, the previous concept of ‘drought orders’ is no longer relevant. It is important that the ability to appeal against an order is established for those who may be unhappy with proposed water shortage orders.

Financial Implications

17. Do you have any comments on the estimated costs associated with the Bill?

No comments.
WRITTEN EVIDENCE FROM SCOTTISH NATURAL HERITAGE

Part 1: Development of Water Resources

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland’s water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government’s aim of making Scotland a Hydro Nation?

We welcome the wording of the draft Bill which requires Ministers to develop the value of Scotland’s water resources in ways designed to contribute to the sustainable use of the resources. The Explanatory Note and Policy Memorandum refer to Scotland’s abundant water resources. However, even in Scotland we can face periods of drought. Climate change also means greater uncertainty over the level of resource that will be available to Scotland in the future (especially in the east). Scotland’s water is currently used for a wide variety of purposes from provision of drinking water, irrigation for agriculture, renewable energy generation, other industrial uses, recreation and tourism, to sustain biodiversity including internationally important habitats and species and as a vital facet of many of Scotland’s iconic landscapes. The capacity for greater use of Scotland’s water is not uniformly distributed across Scotland and any future development of the resource needs to take into account all these needs and balance the social, economic and environmental costs and benefits, in a clear and transparent manner.

Subsection 3 of this section seeks to clarify what is meant by the ‘value’ of water resources but only refers to ‘the economic and other benefit’ of using water resources. For the avoidance of doubt and in order to be consistent with contributing to the sustainable use of resources, it would be more appropriate for this section to refer to ‘the economic, social and environmental benefit’. This would also ensure that Scottish Water’s powers to develop the value of Scotland’s water Resources (in Part 3, section 21) were also framed in terms of sustainable use rather than the very broad power ‘to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources’.

It is also important that management of water resources embraces both demand-side and supply-side measures. Reducing demand is a key way to reduce the need for supply (and associated infrastructure, treatment etc). The issues and challenges parallel those for energy conservation.

Part 2: Control of Water Abstraction

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

From the draft Bill and accompanying Policy Memorandum and Explanatory Note, it is not entirely clear what the intended consequence of this new control is. We would welcome clarification of the types of activities that Ministers consider might fall under this new control and further detail about how decisions will be reached. Because decisions need to be made balancing social, economic and environmental costs and benefits, it is important that everyone is clear about how the process of reaching these decisions will operate, what criteria will be used to make decisions, what recourse to appeal is available and how the costs and benefits are likely to be distributed.

Abstraction is currently regulated using the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR). These regulations transpose the European Water Framework Directive. Under this Directive, Ministers already have powers to allow for deterioration of status of a water body, provided that the benefit to human health, human safety or sustainable development outweigh their costs to the environment and to society; that there are no significantly better alternative means of providing the benefits; and that all practicable mitigation measures are taken to minimise adverse
effects on the water environment. Such decisions need to be reported in River Basin Management Plans.

The Policy Memorandum states that eligible applications will require a CAR licence and Ministerial approval. If the power is to be used to ensure that only the applications with the greatest economic and social benefit are authorised, then it is unclear what criteria will be used to determine this, what opportunity other stakeholders will have to contribute to this determination and how an existing application can be compared with other future possible opportunities. The Policy Memorandum says the process will be separate from the CAR licensing regime but they will be inextricably linked. A developer already faces separate systems for dealing with planning permission and for CAR licensing. This new control introduces another system.

The development planning system is a well established method for trying to balance present and future competing resource requirements. It has the benefit of being developed at a local scale and being subject to public scrutiny and consultation. There is also a clear process for dealing with applications and appeals. If Ministers consider that there needs to be some further control over large abstractions to ensure the greatest economic and social benefit, whilst being environmentally sustainable, then perhaps they should consider a framework akin to the planning system. Such a system could allow for these decisions to be informed by national priorities, made in a clear and transparent manner, alongside the related control regimes and incorporating local accountability.

If permission for large scale abstractions is only to be given if they are also environmentally sustainable, then the River Basin Management planning process is a means of showing the current usage of water bodies and what capacity for future resource use remains. SEPA's regulatory process already seeks to protect environmental status and regulate other uses within the remaining capacity of water bodies and catchments. Ministers are responsible for approving these plans and ensuring an appropriate balance between environmental, social and economic interests.

It is not clear from the Bill or accompanying documents what the intention is behind the introduction of this new control or whether Ministerial control is the most appropriate way forward.

Part 4: Raw Water Quality

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

We welcome the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to prevent deterioration of water quality. In many cases, working to ensure pollutants don’t enter the water environment in the first place can be cheaper than putting in place treatment processes to remove the pollutants and it also reduces Scottish Water’s energy demand. In some instances there may be no treatment process available that allows Scottish Water to remove a pollutant and therefore taking steps to ensure such a pollutant does not reach the water environment at all is the only practical option. Scottish Water is already exploring opportunities to encourage or incentivise changes in land management practice to improve water quality. As well as economic benefits for water treatment this approach also leads to biodiversity benefits associated with improved water quality or with the land management measures that are put in place e.g. riparian buffer strips.

There is a need, however, to ensure any land management agreements do not conflict with any existing agreements under other legislation eg management agreements on sites designated for nature conservation purposes. There are also issues of State aid to consider, given that Scottish Water is publically owned.

Part 6: Sewerage Network
Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

We welcome the proposal to allow one proprietor to ensure a septic tank is emptied, where it is a shared asset. Recent research suggests that septic tanks contribute more than was previously thought to diffuse pollution in rural areas. Any approach to improving water quality in rural areas needs to address the contribution from septic tanks. It is important that owners of septic tanks maintain and empty these tanks in order to protect water quality.

The draft Bill says that this part only applies to private sewage treatment works the discharge of the contents of which is authorised under CAR. The Controlled Activities Regulations were introduced in 2006 and septic tanks authorised under previous legislation were deemed to be authorised under CAR. New septic tanks are required to be authorised under CAR and older systems are required to be authorised under CAR if a property is sold. SEPA have also, in the past, encouraged owners to register older septic tanks under CAR by waiving the registration fee. However, there will still be many septic tanks that have not been authorised under CAR but are deemed to be authorised under CAR. Are the conditions attached to a CAR authorisation applicable to a sewage treatment works that is deemed to be authorised under CAR rather than directly authorised by CAR? If not, it would seem that this part of the Bill would not be applicable to these tanks and there may still be no route for owners to ensure maintenance of the shared system. Alternatively, is one owner allowed to apply for a CAR authorisation of a shared system in order for the measures in this part of the Bill to apply to the shared treatment works?

Part 7: Water Shortage Orders

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

In relation to this part of the Bill, it should be noted that a Habitats Regulation Appraisal (HRA) would need to be undertaken if a proposal for an order was on or likely to affect a Natura site. The draft Bill lists the information that needs to accompany any proposal for an order submitted to Ministers by Scottish Water. This includes submitting a copy of any associated application made by Scottish Water under CAR. The Bill could also therefore list the requirement for an HRA to accompany the proposal to Scottish Ministers.

Financial implications

Q17. Do you have any comments on the estimated costs associated with the Bill?

SNH provided costs to the Water Industry team in Scottish Government on SNH involvement in freshwater issues and hydro developments for the Financial Memorandum. We note that this memorandum says it is intended that the Hydro Nation agenda will be delivered by designated bodies (of which SNH is one) through aligning of the existing budgets and work plans with the Hydro Nation agenda. We recognise that this is the political and financial reality we work in but it should be noted that SNH already commits considerable resources to working to ensure that renewable energy developments are appropriately located and that they minimise impacts on the natural heritage. This inevitably leads to reduction in resource available for other SNH work.

We would welcome working with Scottish Water on taking a strategic approach to the development of its assets for renewable energy. This would be a more efficient and cost effective approach than piecemeal consideration of individual applications. We would also wish to see the approach of generation of energy from renewables for water treatment to be considered alongside opportunities to reduce energy requirements for treatment and reduce demand for water. This could be done
through a range of measures such as: catchment approaches to reducing diffuse pollution and therefore reducing the need for treatment; energy efficiencies in treatment processes; leakage reduction – ensuring more of the treated water reaches customers; demand reduction – water efficiency measures for businesses and domestic users; recycling of rainwater and routing of rainwater away from sewers.
Supplementary written evidence has been received from Consumer Focus Scotland, following the Committee’s meeting on 26 September 2012. They have provided the below clarification, regarding the points raised in relation to the organisations’ satisfaction with the distinction between core and non-core services.

“As discussed yesterday, I'm just emailing to clarify a point made by Alex Johnstone with regards to our satisfaction with the distinction between core and non-core services. We are satisfied that the Bill adequately distinguishes between core and non-core services.

The quote from our response which the member was referring to and wanted clarification on was from page 6 of our response. We state that: "In section 22(1) we question the intention that it is for Scottish Water alone to consider whether its actions are consistent with the exercise of its core functions and suggest that this should be re-drafted to state "Scottish Water must take reasonable steps to develop the value of its assets and expertise while this is not inconsistent with the economic, efficient, and effective exercise of its core functions." The same principle applies to section 23 (1).

As it currently is, Section 22 (1) states that "So far as it considers is not inconsistent with the economic, efficient, and effective exercise of its core functions, Scottish Water must take reasonable steps to develop the value of its assets and expertise. Section 23(1) is similar in wording and could also be amended.

Although this is a minor amendment that we are proposing, we feel it would strengthen the wording of the bill and remove any subjectivity that could be attached to Scottish Water's 'consideration' of its core services. This would provide clearer guidance on Scottish Water's responsibilities to its core functions when developing assets or supporting renewable energy."
SUPPLEMENTARY WRITTEN EVIDENCE FROM SSE

Water Resources (Scotland) Bill
I am writing in response to questions about competitive water matters from the Infrastructure and Capital Investment Committee that were posed when SSE gave oral evidence on the above Bill on 3 October.

SSE recognises that water competition and market matters are not the main focus of this Bill but we had made comments in response to earlier consultations on the Bill about the possible extension to Scotland of a competitive business model that we have developed within the legislative framework for water in England and Wales.

SSE is also aware that, following publication of the UK Government’s draft Water Bill in July, there is liaison between the Scottish and UK Governments in order to promote a more streamlined approach to licensing of competitive water service suppliers that could serve business customers throughout Great Britain. The expectation is that such supply licences issued in Scotland would be recognised by the regulator Ofwat in England and Wales and conversely, that supply licences issued by Ofwat would be recognised by the Water Industry Commission for Scotland.

Against this background, SSE welcomes the Committee’s interest in the comments we have made about competition in water and sets out below further information to address the Committee’s questions. In England and Wales, SSE has developed a small competitive water business using a subsidiary known as SSE Water. On a site by site basis, SSE Water can apply to Ofwat to replace the incumbent water company (or companies) at a greenfield development site. This is known as an “inset appointment”; once granted, SSE Water provides water and sewerage infrastructure for that site and provides the water and sewerage services to all the properties on that site with the same powers and duties as an incumbent water undertaker. SSE Water contracts with the incumbent water company for the connection and wholesale services necessary to support its retail services to the properties on the site.

In the draft Water Bill, the intention of the UK Government is to reinvigorate the current supply licensing regime that has been little used in England and Wales by introducing different types of supply licence “authorisation”. New entrants will be able to specialise in the services they wish to provide and these could include – for both water and sewerage: retail supply to non domestic customers1 (as already exists in Scotland); and provision of retail or “last mile” infrastructure. The intention is to replace the inset appointment site-by-site route to competition with national licence authorisations for the relevant types of activity. It is recognised that new entrants will have to be supported by a framework of market codes that Ofwat will have a duty to develop under the draft Bill. Scotland has already successfully introduced the ability for business customers to shop around for the water supply and sewerage services within a competitive supply market, supported by a framework of market codes. However, it is not possible for any party other than Scottish Water to provide any public water infrastructure in Scotland. This means that the “inset” model does not work in Scotland and it is not clear that the planned cross border water retail market resulting from the aspirations in the draft Bill would necessarily encompass competitive provision of last mile infrastructure unless specific provision for that was made in Scottish law. We imagine that amendments would be needed to the Water Services etc. (Scotland) Act 2005 to extend the types of licensing available if this was to be pursued.

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Following the Cave Review of competition and innovation in water markets, the UK Government was persuaded of the need to encourage innovation and dynamism in the water sector in order to help it cope with the many challenges the sector faces. Part of the solution is seen to be making the market attractive to new entrants in order to harness the innovation that new players bring to a market. Competition in a market is felt to bring benefits to businesses and customers in that market as suppliers seek ways to better meet their customers’ needs in order to retain those that can seek services elsewhere. In the particular case of competition in the provision of last-mile infrastructure, this might empower property developers, who provide some stimulation for economic growth, to obtain cheaper and more innovative solutions to the infrastructure they need; this, in turn, could feed through to customers in terms of lower priced housing and/or developments going ahead that might otherwise not be economic.

SSE Water is at an early stage of its development and continues its business against a background of prospective changes in water legislation in England and Wales. Overall, these changes, which have yet to be confirmed with the enactment of the draft Water Bill, signal a greater opportunity and enhanced framework for new entrants in the water market from about 2017 onwards. SSE Water’s focus is very much in England and Wales currently but, just as business customers will look forward to the benefits of a streamlined cross-border water retail market, SSE Water would in principle be interested in the possibility of extending its business model of last mile water infrastructure provision to Scotland in due course. Other potential new entrants may also be interested in additional scope for competitive activity along the lines we have suggested.

SSE recognises that water competition and market matters are not the main focus of the Water Resources (Scotland) Bill. However, we are aware that discussion between the UK and Scottish Governments is taking place about a joint water retail market. We have therefore taken the opportunity to mention a particular type of extension to competition in the water market in Scotland that would mirror what is currently possible in England and Wales and is also provided for in the draft Water Bill. Without being able to suggest detailed changes to Scottish legislation at this stage, we hope that the idea presented could be considered in the appropriate forum within the Scottish Government.
Section 2 – Power to direct public bodies

Given the public interest in water as a commodity for general use the Committee considers that there is a public interest in the terms of directions to public authorities on how they are to operate with a view to developing the value of Scotland’s water resources. Accordingly the Committee recommends that the Scottish Government considers whether such directions, while not exercisable as subordinate legislation, should be subject to consultation and publication requirements.

Scottish Government response

We are not minded to accept. We agree that there could be public interest in the terms of directions issued to public authorities about this agenda. However, the power to direct the bodies concerned is only “as to the exercise of their functions”. As such, any direction issued under this power must be consistent with the proper exercise of the functions of the designated body concerned. We think that it would be unduly burdensome to require such directions to be the subject of public consultation. However, any designated body which is to be the subject of such a direction will be consulted in advance of a direction being made.

Section 14(1)(c) – grounds for suspension and revocation

The Committee is of the view that setting out the grounds on which consents granted for large scale abstraction may be suspended or revoked is a matter of importance in which there is a significant public interest. It therefore recommends that the power to set additional grounds which will empower Ministers to suspend or revoke consents should be subject to the affirmative procedure.

Scottish Government response

We are minded to accept this recommendation, as we accept that varying the grounds on which consents for large scale abstraction may be suspended or revoked would be of sufficient public interest to merit Parliamentary scrutiny by the affirmative procedure.
Section 19(4) – control of water abstraction: references to Controlled Activities Regulations

Section 31 – references to priority substances

Section 34 – common maintenance – references to Controlled Activities Regulations

Section 46 – water shortage orders – references to Controlled Activities Regulations

The Committee … concludes that the existing power in section 20 of the Water Environment and Water Services (Scotland) Act 2003 is sufficient to deliver the Scottish Ministers’ policy objective. Accordingly it is not necessary to confer the further powers proposed. The Committee observes that to do so would authorise a reduction in the parliamentary scrutiny of such provisions from that previously established by the Parliament and does not consider that this is appropriate. It therefore recommends that these unnecessary powers are removed from the Bill.

Scottish Government response

We do not agree this recommendation. We believe that the additional powers conferred by the provisions of sections 19(4), 31, 34 and 46 provide the level of Parliamentary scrutiny which is appropriate in the specific circumstances of requiring to make minor amendments to primary legislation consequential on changes to the Controlled Activities Regulations. Although the much wider powers of section 20 of the Water Environment and Water Services (Scotland) Act 2003 could be used for this purpose, we do not think that it would be an appropriate use of Parliament’s time to scrutinise purely consequential amendments through the affirmative procedure that section 20 attracts. We therefore have therefore created a new power in the Bill, which attracts the negative procedure, to make such consequential amendments.
SUBORDINATE LEGISALTION COMMITTEE

EXTRACT FROM THE MINUTES

30th Meeting, 2012 (Session 4)

Tuesday 18 December 2012

Present:

Nigel Don (Convener)       Jim Eadie
Mike MacKenzie            Hanzala Malik
John Pentland             John Scott
Stewart Stevenson (Deputy Convener)

**Water Resources (Scotland) Bill:** The Committee noted the Scottish Government’s response to its Stage 1 report.
Water Resources (Scotland) Bill: The Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-05229—That the Parliament agrees to the general principles of the Water Resources (Scotland) Bill.

After debate, the motion was agreed to (DT).

Water Resources (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-04853—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Water Resources (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Water Resources (Scotland) Bill: Stage 1

The Deputy Presiding Officer (John Scott):
The next item of business is a debate on motion S4M-05229, in the name of Nicola Sturgeon, on the Water Resources (Scotland) Bill.

15:12

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon):
I am very pleased to open the debate on the general principles of the Water Resources (Scotland) Bill. During its consideration of the bill, the Infrastructure and Capital Investment Committee took written and oral evidence. At the outset, I thank the committee for the work that it has done. I also thank everyone who gave evidence to the committee, as well as those who responded to the Scottish Government consultations.

I have had the opportunity to read the committee’s report on its findings, and I am pleased to note that the committee agrees that the bill’s principles are sound. We all appreciate that Scotland’s water resources are a precious commodity that should be protected and enhanced, not just for the here and now but for the benefit of future generations.

The committee has made a number of extremely helpful recommendations about the bill. I make it clear at the outset that I will give each and every one of those points serious consideration. I will, of course, respond fully to the committee in due course. I am considering amendments that might be lodged at stage 2. I note the considerable weight of opinion among stakeholders that in part 1 of the bill the value of our water resources should be expressed not solely in economic terms, but in terms of the social and environmental benefit that derives from them. Our intention was never to drive economic benefit to the detriment of social or environmental factors, as those always need to be weighed up and balanced, but I have decided that I will lodge an amendment in that area at stage 2 to make that absolutely clear.

In Scotland, we are very fortunate that we have a relative abundance of water. We have a beautiful water environment and, in Scottish Water, we have a highly successful public corporation. We are fortunate in that regard, but others around the globe are not so fortunate and we have a responsibility to help them.

The bill acknowledges the importance of water as a natural asset and it places a duty on ministers and others to develop Scotland as a hydro nation,
which is one that utilises its water resources to their fullest potential. The bill also aims to further improve our management and protection of the water environment. It is a deliberately ambitious agenda, and it is important to be clear that the work of building Scotland into a hydro nation will not be achieved through legislation alone, important though the bill is.

It is also important that we progress the programme of work that is being developed alongside the bill. In that regard, I was pleased to address the hydro nation, global ambitions conference earlier this month, which also saw the hydro nation forum convened for the first time. The event was hosted by the Scottish Council for Development and Industry, which demonstrates that the business community recognises the importance of the agenda and also that the business community has an important part to play in the success of the agenda.

The hydro nation forum brings together a high-calibre group of water experts to give new insights and impetus to the hydro nation programme of action. The forum will provide a place for debate and knowledge exchange, helping us to shape the hydro nation programme of work.

Water is an essential component of every national economy and its good management is critical to the delivery of the sustainable low-carbon future that we all aspire to. However, we have to be mindful that one in eight of the world’s population does not have access to clean water, and 2.5 billion people live without basic sanitation. As the population continues to grow and with the impact of climate change, water availability will become even more critical. Scotland clearly has a responsibility to bring our expertise to bear for the benefit of the global community. We have built up knowledge and expertise that I believe can be beneficial elsewhere.

Neil Findlay (Lothian) (Lab): I cannot disagree with what the minister has said so far. I am sure that she will agree that the fact that many people in the world do not have access to water concerns people around the globe. There is also a concern that many transnational corporations see the provision of water and the control of that essential resource as a tremendous business opportunity in the developing world. I am sure that the minister will join me in trying to ensure that there is no exploitation of such countries when they are trying to provide clean water for their people.

Nicola Sturgeon: I take that point. Perhaps when I come on to the section on the abstraction of water, Neil Findlay will see that, in how we intend to manage our own resources, we seek to show a good example to others around the globe.

I hope that we can all agree that we have a responsibility to use the resource that we have, as well as the expertise that flows from having that resource, to help people around the world. To give a specific example of how we are doing that, Scottish Water, the Scottish Environment Protection Agency and the James Hutton Institute are already working with the Government of Malawi. Those water experts are discussing the management and governance of water and waste water and they have the full support of the Scottish Government in that endeavour.

In addition to offering support to developing nations, there are commercial opportunities for Scotland to develop in this sector—I say that deliberately but, in so doing, I am mindful of Neil Findlay’s point. We have expertise in water governance; we have academics with specialist knowledge of global water issues; and we have a track record of developing new and innovative technologies in the sector. Scottish Water, for example, is providing technical advice to the water industry in Qatar. We have a number of enterprises providing water services, for example Biomatrix Water in Moray. Those enterprises are also operating internationally, delivering ecological engineering services. We have a responsibility to encourage collaboration, support innovation and encourage fresh approaches.

To turn back to the bill, the committee commented in its report on the importance of partnership working. I thoroughly agree with that—partnership and collaboration are key themes running through this work and the broader hydro nation programme.

Although part 1 lists as key organisations Scottish Water, Scottish Enterprise, Highlands and Islands Enterprise, Scottish Natural Heritage and the Scottish Environment Protection Agency, that list is not exclusive or exhaustive. Those organisations are important to the development of the value of our water resources, so the provision enables ministers to direct them in relation to that agenda. However, the hydro nation agenda covers such a broad range of activities that it would clearly not be possible to list all the participants. From academics to engineers, from those involved in the industry to individual land managers and farmers, there are diverse roles and different types of partnerships.

Bringing together those different organisations across sectors will be challenging, but it is vital to ensure that we invigorate new relationships, encourage different working practices and foster the sharing of experience. The bill seeks to encourage partnership working across different sectors and within communities. There is no wish to impact on existing local partnerships or agreements where those are working well. For
example, good work is already under way on sustainable approaches to land management and in many other areas.

In addition to helping others, of course we must manage our resources wisely. That is why the bill gives Scottish Water the power to take steps to investigate and locate the source of issues that have an impact on its raw water quality. Drinking water quality and public health are critical issues, and it is vital that our water is of the highest quality. Our very clear expectation is that Scottish Water will work with the owner of land to agree access for monitoring purposes. Ultimately, if something is entering the water supply that should not be there, removing it at source is far more efficient than resorting to treatment further along the network.

The committee has also commented on the bill’s provisions on the abstraction of water, which I mentioned earlier. Abstraction—the process by which water is taken from a river or other water body for a specific purpose—is regulated by SEPA using the controlled activities regulations. When an application for an abstraction is made, SEPA will consider the request and the impact of the abstraction on that water body from an environmental perspective and then decide whether to grant a licence. We have taken the view that that environmental focus, although important, is not sufficient, and that is why we have inserted the abstraction provisions in the bill.

I appreciate that the late inclusion of the abstraction regime in the bill meant that it did not form part of the formal consultation process. However, officials have been in discussion with stakeholders to explain the background and to provide reassurance about the intention behind the provisions. I want Scotland to continue to be a great place to do business and we want new enterprises to be attracted to Scotland. As a relatively water-rich country, we may well increasingly see businesses that are heavy users of water wanting to move into Scotland, and we want to encourage that business growth.

Mary Scanlon (Highlands and Islands) (Con): Given that part 2 was not consulted on and is a late addition to the bill, will the cabinet secretary also take into account the fact that 66 per cent of the water abstracted by the Scotch whisky industry goes back into the environment within a matter of hours? Will the abstraction regime measure consumption, as opposed to total abstraction?

Nicola Sturgeon: As I said, there has been ongoing discussion with stakeholders including the Scotch Whisky Association—I have personally discussed the issue with the SWA—and we will continue to seek to give them reassurance that nothing in the bill is intended to, or will, compromise their ability to continue to grow the sector. I am sure that we will come back to that issue at stages 2 and 3.

As I said—this relates to Mary Scanlon’s point—we want both indigenous businesses and new businesses coming into Scotland to grow, but we also have a duty to protect our natural resources for the long term. An important point is that the threshold in the bill is 10 megalitres of water per day. An application will be required to be made only where the abstraction is greater than 10 megalitres per day, which is the level at which ministerial consent will need to be sought. That is precisely to enable ministers to consider whether the abstraction is in our wider and longer-term interests and whether it is in the right location, with the right infrastructure, business and other support. That will not alter SEPA’s role as the environmental regulator—a controlled activities licence will need to be sought in the usual manner—but it will enable ministers to take a broader view and look to the future, which is a future where our water assets will be increasingly valuable in a world of growing water scarcity.

In my remaining time, I will briefly mention Scottish Water, which, as we all know, is a highly performing public sector organisation, and we intend to ensure that it continues to be that. The challenge for Scottish Water is not just to maintain high standards but to continue to drive forward with efficiency and to improve water quality and waste water infrastructure. The current programme of investment runs until 2015, but Scottish Water as a business must look far ahead, anticipating risks and opportunities for its business. Changing weather patterns and population and climate change will all impact on its network. Scottish Water must ensure the resilience of the infrastructure and build new capacity where it is needed. Resilient infrastructure is vital. Part 7 therefore deals with water shortage situations.

As I said at the outset, I appreciate the report that the Infrastructure and Capital Investment Committee has prepared at stage 1. A number of issues were raised, all of which I will consider. I mentioned one amendment that I intend to lodge at stage 2, but I will listen carefully to points that are made in the debate and feed those into the further consideration of our approach to stage 2. I look forward to the debate that will follow.

I move,

That the Parliament agrees to the general principles of the Water Resources (Scotland) Bill.

The Deputy Presiding Officer: We are tight for time so, to protect speakers in the open debate, I ask members to stick to their times, including interventions.
Maureen Watt (Aberdeen South and North Kincardine) (SNP): The Infrastructure and Capital Investment Committee welcomes the introduction of the Water Resources (Scotland) Bill and has agreed to recommend to the Parliament that the general principles be agreed to. Our stage 1 report sets out how we arrived at that conclusion. The committee received evidence from a wide range of water interests, including domestic and commercial water users, environmental and energy bodies, industry specialist engineers and academics plus, of course, Scottish Water. I thank all those who gave written and oral evidence, those who hosted our visits to their premises and the clerking team, for their sterling support.

The evidence supported the basic premise of the bill that, although we are fortunate to have such an abundant water resource in Scotland, we must recognise more fully the value of that resource and learn to make more efficient use of it. As the committee heard in evidence, the bill, together with the Scottish Government’s hydro nation agenda, will put Scotland at the forefront of water policy making in the developed world. The benefits for Scotland could be substantial. In the global context, growing stress is being placed on the world’s water supply, due to an ever-increasing global population. As a result, many countries are becoming more and more interested in finding ways to make better use of what water they have.

The committee has heard about the work that Scottish Water is already doing through its international operations. It has won consultancy and training contracts in Canada, Ireland and, more recently, Qatar. To respond to Neil Findlay’s point, I say that he will find that the United Nations Educational, Scientific and Cultural Organization centre for water law, policy and science at the University of Dundee is, for example, working with countries along the River Euphrates to get some agreement on water abstraction. Scotland’s expertise in water matters is clearly in demand. There is an opportunity for Scotland to develop what it is already good at doing in the water sector, to continue to grow its expertise in sustainable water management and to increase its competitiveness on the world stage.

Neil Findlay: I welcome what the member says, but the main point that I made was that, although we should go abroad and help countries to develop their infrastructure, we should not be complicit in any moves by private companies to exploit those countries by privatising their water systems.

Maureen Watt: Scottish Water is helping overseas countries with precisely that, although it is not so much about infrastructure and more about how countries determine the governance of their water supply. That is part of what Scottish Water is doing.

Given the abundance of our resources, it is probably fair to say that Scotland is the envy of the world. After all, we tend to be good at managing our liquid resources. Other countries just seem to bottle it, but we bottle it and export it, and we do lots of other things with our water.

The committee agrees that the bill will go some way towards establishing a framework that will allow us to make the most of our water resources. The message that we received from witnesses is that there is strong support for that direction.

In addition to the positive comments that we heard, I will talk about some of the concerns that were raised with the committee. Although the committee’s view is that the negative comments do not call into question the general principles of the bill, our report makes recommendations that are aimed at improving it.

As the cabinet secretary said, the almost unanimous view of witnesses was that the bill places too much emphasis on developing the economic value of water and does not say enough about environmental and social considerations. From the evidence that the committee received, it seems to be widely accepted that the three pillars of sustainability—economic, environmental and social—need to be given equal weight when we are seeking to develop the value of our water resources. The committee agreed that, if the bill is to specify economic value, there is no reason why it should not also include environmental and social considerations. I welcome the commitment that the cabinet secretary has given today to lodge an amendment on that point.

Part 2 deals with water abstraction. Alex Johnstone took a lead in questioning on that part of the bill, so I will not steal his thunder and will leave him to cover that in detail. That said, I draw the Parliament’s attention to the evidence that the committee received that reflected a general lack of understanding on the part of witnesses about the intended purpose of the new abstraction regime. It appeared to the committee that that was due, in large part, to a lack of consultation on that element of the bill because it was added just prior to the introduction of the bill. It is also fair to say, however, that some witnesses were confused about whether the new regime would add anything, given that the current CAR system already includes some abstraction control. As our report says, we felt that it was necessary for the cabinet secretary to engage directly with organisations to discuss the intended purpose and effect of the proposed abstraction regime. We called for a programme of engagement to be
carried out prior to stage 2, and I welcome the cabinet secretary saying that such a programme is already being undertaken.

Other concerns were raised with the committee about the proposal that would actively encourage Scottish Water to develop its commercial activities in, for example, the renewable energy market. Serious concerns were raised with the committee by businesses that operate in the renewable energy and waste management sectors. They feared that the bill would give Scottish Water an unfair commercial advantage, based on its status as a Government-funded public body. The committee examined the issue in detail and questioned the Water Industry Commission for Scotland, the water industry regulator, as well as the cabinet secretary, about the proposals in the bill. We are content with the assurances that we received. It seems clear to us that the intention is that Scottish Water’s non-core activities will be entirely separate from the core services for which it receives public funding. Thus, there is no question of public funding being used to support Scottish Water’s commercial activities. Of course, it is the WICS’s responsibility to regulate Scottish Water’s activities, and the Parliament will have a continuing scrutiny role in ensuring that the regulator continues to do its job properly.

Finally, I will touch on the bill’s wider context and the hydro nation agenda. In considering the bill, particularly the expansion of Scottish Water into commercial and international markets, we must have regard for the interests of water customers in Scotland. We must ensure that water customers are protected. There is also scope to go further by, for example, enabling benefits that are derived from the development of Scotland’s water resources to be passed on to customers in the form of lower bills. The cabinet secretary has indicated that the bill and the hydro nation agenda should bring positive benefits for customers directly and indirectly. The committee will wish to focus on the interests of customers, and we have an ideal opportunity to do so as we move towards the next water regulatory period, which will run from 2015.

The objectives that are set out in the early part of the bill and in the hydro nation agenda are ambitious and require substantial co-ordinated action by the Government and other public bodies in order to achieve them. If the bill is passed, my committee will take a close interest in these activities. The committee’s wish is that the new prominence given to water environment issues must have substantial gains for the Scottish people.

Today’s debate coincides with moves at European Union level to encourage greater efficiency in water use. The European Commission’s water blueprint has just been announced amid disappointing results for the implementation of river basin management plans, which have been implemented by only 53 per cent of member states. Europe needs to do more to use its water resources sustainably and efficiently, and if Scotland plays its cards right, it can show the way for the rest of Europe.

When the bill was published under the previous cabinet secretary, there was great media interest in the idea of exporting water by pumping it south or tanking it abroad. That issue did not greatly exercise us but, as the Presiding Officer knows, our food and drink exports such as beef and lamb require rich grassland, and salmon, whisky, beer and other such products require a lot of water. As a result, we actually export a great deal of virtual water—it is amazing what one can learn in this place.

On behalf of the committee, I recommend that the bill’s general principles be agreed to.

15:36

Richard Baker (North East Scotland) (Lab): I congratulate the committee on its work on the bill. As is evident from the convener’s speech and from the report itself, the committee has been diligent in its scrutiny and has highlighted the key issues, including those that require more work from ministers and those that have been the subject of dispute in what is a largely uncontroversial bill. I believe that the committee has reached the right conclusion that we should support the bill’s general principles and, although there are issues to resolve, we agree that the legislation will have a largely positive effect.

It is fair to say that the bill does not live up to the expectations that there might have been about its significance. Given the language used by the First Minister when the bill was first announced, many people will have expected something a bit more momentous. Ministers argued that the legislation would have a transformational effect on Scottish Water, its impact on our economy and the way in which we protect and promote Scotland’s huge natural water resource. We were told that ministers had increased their ambition for the bill and, in June, The Times reported that the First Minister had decided that Scottish Water should be run as a public benefit corporation along the lines of Network Rail.

However, none of that has come to pass. Ministers have rafted back from such indications and, indeed, have been wise to do so. Although other parties have argued—and might well argue again today—that changing Scottish Water’s structure and ownership will release significant funds for the Scottish Government—[Interruption.]
I hear Mr Johnstone already commenting on that from a sedentary position, but I have to say that it is far from clear that that would be the case, or what impact it would have on the block grant under Treasury rules.

Although the hydro nation policy itself might be described as ambitious, I am not sure that the terminology is right for the bill. What we have is a bill that places a duty on the Scottish ministers to take reasonable steps to progress the hydro nation agenda. I remain to be convinced that legislation is really necessary in that regard and, indeed, the committee’s report notes that the specific duty on the Scottish ministers to develop the value of Scotland’s water resources does not actually place new powers or responsibilities on them.

That said, we broadly support the hydro nation agenda. It is right that we take steps to maximise the economic and environmental potential of the management of our water resources and to promote internationally our expertise in those respects. The cabinet secretary’s predecessor was given to making rather overblown claims about exporting massive amounts of our water south of the border—the convener touched very diplomatically and very well on that point in her speech—but nevertheless there are many other areas in which Scottish Water has the capacity to expand its business and boost our economy. It is right that we focus on such opportunities. In recent years, Scottish Water has had considerable success in many areas, one of which is its increasing international activity. I also welcome the cabinet secretary’s comments on Scottish Water’s work in Malawi; it is good to hear that its expertise is being used to good effect beyond simply its business ambitions.

On the economic contribution to Scotland that is made by Scottish Water, Jim and Margaret Cuthbert made an interesting submission to the committee on Scottish Water’s approach to outsourcing activities and procurement, which they say has resulted in a situation in which management skills and research and development seem to be almost completely derived from outside Scotland.

They advocate Scottish Water adopting a procurement policy that is aligned with sustainable economic development. That is in line with the proposals in the excellent paper on procurement that they produced for the Jimmy Reid Foundation. Although I have debated other matters with the Cuthberts, I say to the cabinet secretary that their paper on procurement should be required reading ahead of the publication of the long-awaited procurement bill early next year.

There has also been discussion of the definition of the value of water in the bill and the committee has made the case that adding environmental and social elements would provide clarity and balance to the definition. I was therefore pleased to hear the cabinet secretary say that she accepts that point and will make the appropriate amendments at stage 2. The committee also asked the Scottish Government for clarity on whether peatland habitats are covered by the reference to water resources in the bill. I know that environmental groups were concerned about that and I would be interested to hear the cabinet secretary’s comments on the matter.

In terms of the economic focus of Scottish Water, we acknowledge the broad welcome that there has been for the clarity that has been brought to the definitions of core and non-core services, and it is right that the Scottish Government should be able to lend directly to Business Stream. There is clear logic behind the new powers to enable licensed water and sewerage service providers to demand and recover charges from non-domestic customers in situations in which payment is due. All of those kinds of provision are right and sensible.

However, in a number of other areas of the bill, there are further questions to be asked about the purpose of the legislation. There are laudable intentions behind many of the provisions, such as those on the maintenance and improvement of water quality and the protection of the sewerage network by ensuring that businesses that are responsible for the blockage of the network are responsible for those costs. However, some people, including people from business organisations who contributed evidence to the committee, have asked whether there is really a need for Scottish Water to have those new powers, given that in a number of areas there are already regulatory regimes operated by SEPA and others. If new powers are addressing a problem that exists in the current set-up, then of course they are required. If that is not the case, then it is right to ask whether there is a need for new legislation.

Part 2 of the bill, on abstraction, is a case in point. As the proposals on abstraction were not part of the consultation process, the committee was right to ask the minister to undertake further consultation on the issue before reporting back ahead of stage 2.

It is right that there should be oversight of major industrial and commercial abstraction of water, but ministers need to make a stronger case for the need for additional powers beyond the controlled activities regulations licensing regime that is operated by SEPA, to which the convener of the committee referred earlier. More consideration also needs to be given to the list of exempt organisations. Mary Scanlon pointed to the
example of the Scotch Whisky Association, which has made strong representations on the issue. The committee also reported that there was little understanding of why 10 megalitres of abstraction had been set as the threshold for ministerial approval. Further clarification of that will be useful.

Other provisions, such as those on water shortage orders and common maintenance of private sewage treatment systems, are sensible, and seem to improve on the regulations that are already in place. However, as I have said, there are a number of areas that require further reflection, particularly as some of them will mean new regulatory regimes where there is already a regime in place, and potentially new costs to businesses that are in challenging economic conditions. If the regulations are necessary, then of course they have to be there, but we need to be sure that they are indeed required.

I hope that the cabinet secretary will reflect on some of the points that have been made in the course of the stage 1 consideration and we look forward to her engaging with the committee on them at stage 2.

In general terms, the bill is beneficial. In some cases, that benefit is only marginal, but where it will make it easier to pursue the hydro nation agenda, that is welcome.

We agree that Scottish Water and our natural water resources represent an area of significant potential for Scotland, and ministers are right to bring a focus to that work. That is why we will support the general principles of the bill.

15:44

Alex Johnstone (North East Scotland) (Con):
I will start with something that Richard Baker has raised already. The hydro nation agenda was introduced with a great deal of high-profile publicity and hyperbole. However, at the end of the day, we got a rather more down-to-earth approach to the objectives that lie behind the bill. Although some members may view that as a criticism, I assure them that, coming from me, it is praise that the Government got down to its job and tried to do it correctly.

The bill comes in a great many parts—eight in total. Members will forgive me if I do not address them all individually during the next six minutes, but I will try to deal with those that concern me most.

Part 1 contains the vision. It might have been rather larger had the Government wished to take the hyperbolic approach. However, it sets out the vision in fairly plain language, allows us to understand what the objectives behind the bill are and introduces a number of additional responsibilities in terms of activity by ministers and reporting on that activity.

It has already been mentioned that, during the committee inquiry, I took most interest in part 2, on abstraction. Although I will pass on to my colleague Mary Scanlon the responsibility to talk about most of the abstraction issues, I repeat the accusation that has already been made and will be made again in the debate that there was a lack of consultation in the build-up to the bill’s introduction. It came as a surprise to many that abstraction was addressed in the bill and it remains a concern that a full consultation exercise did not take place. I fully accept the answer that ministers gave to the committee and that the cabinet secretary gave again in her opening speech that a dialogue continues with the industry. However, that is no substitute for a formal consultation exercise. Many of the misunderstandings that the committee came across during its inquiry were the results of a failure to consult adequately at the appropriate stage. There are still challenges ahead of us in relation to that.

Part 3 is the most important and I will spend the most time on it.

When Scottish Water was created, it replaced a Scottish water industry that was difficult to manage and was succeeding or failing in various degrees. It was important that we had a structured approach to dealing with the industry’s problems.

Ten years down the line, Scottish Water is a success story. The company has a collection of individuals in management and a collection of skills that are far greater than the sum of their parts. As a result, there is a great deal of opportunity to exploit the assets, both people and property.

The Conservatives have suggested on many occasions that the best way to release Scottish Water is to allow it to become a private company so that it can become yet one more Scottish success story.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Will Alex Johnstone give way?

Alex Johnstone: No, not at this stage.

Unfortunately, it is unlikely that we will command the majority in the Parliament required to change Scottish Water into a private company. However, the changes that are taking place as a result of the bill in effect give the company the opportunity to do many of the things that it could do in the private sector but permit it to do so within a public sector model.

Bruce Crawford (Stirling) (SNP): Will Alex Johnstone give way on that point?
Alex Johnstone: I am about to take a step back from my previous argument and examine the changes that are proposed in the bill. I welcome them, as far as they go.

The issues raised during the committee inquiry concern the way in which Scottish Water will function in relation to private sector companies and the existence of competition.

The separation of core and non-core activities is critical to the success of the changes that the bill will introduce.

It is essential that we are confident that private companies will not suffer as a result of unfair competition from a company that the Scottish Government supports. I was significantly reassured by the answers that the committee got a number of times in taking evidence that suggested that the separation will be defined enough to ensure fair competition.

Scottish Water has a strong opportunity to exploit resources for the provision of renewable energy. Of course, it is one of the major energy consumers in Scotland. It is vital that it can exploit that opportunity.

Stewart Stevenson: Will the member take an intervention?

The Deputy Presiding Officer: Alex Johnstone is in his last minute.

Alex Johnstone: I do not get much time in debates and I need to finish my points.

I will deal briefly with other parts of the bill. The changes that are taking place are largely justified and we will be happy to support them.

The Deputy Presiding Officer: You have 20 seconds.

Alex Johnstone: It is perhaps ironic that part 7 relates to water shortage orders. At some point in the distant future, there might be days when Scotland experiences a water shortage again, but that is certainly not happening at the moment. I hope for and dearly look forward to the day when we can test such provisions.

The Deputy Presiding Officer: You must close, please.

Alex Johnstone: However, I do not see that day happening.

15:51

Jim Eadie (Edinburgh Southern) (SNP): In a nation that is blessed with as many natural resources as Scotland has, water has a special place as perhaps our most precious and important natural resource. Scotland’s relationship with water is deeply ingrained in our national psyche.

The resource provides us with our drinking water, is home to our fish and sustains our rich and varied natural habitat. It provides a focus for leisure and recreation activities and it is vital to life, our environment and our economy.

The Scottish Government’s ambition to make Scotland a hydro nation reflects the importance that we place on our water resources. As Scotland seizes the opportunity to lead the world in tackling climate change, we also have an opportunity to demonstrate leadership in meeting the challenges that the management of water resources presents around the world.

The bill will place a clear and explicit duty on the Scottish Government to develop the “value of Scotland’s water resources”.

To do that, the Scottish ministers will have additional responsibilities to “take such reasonable steps as they consider appropriate”, as the Deputy First Minister said. The bill will help to ensure that Scotland’s water has a sustainable future and will underline the worldwide contribution that Scotland has to make—which previous speakers have outlined—in areas such as water technology, governance, management and regulation. The bill will also play an important role in cementing Scottish Water’s international profile as a leading player in the water sector.

Notwithstanding specific concerns that I and other members have about the need for infrastructure investment in our communities, Scottish Water delivers one of the United Kingdom’s largest investment programmes for the lowest household bills. It will remain a successful and innovative public corporation.

The bill confers on Scottish Water the ability to do anything that it “considers will assist in the development of the value of Scotland’s water resources” and proposes a new duty on Scottish Water to take reasonable steps to develop its property, assets and expertise to promote the next generation of renewable energy. The bill will ensure clear and adequate separation between Scottish Water’s core and non-core functions, which will protect customers from increased bills.

During the Infrastructure and Capital Investment Committee’s consideration of the bill at stage 1, we heard evidence that profits from the non-core business could subsidise Scottish Water’s core functions and possibly reduce customers’ bills. However, it is vital that the customer does not pay higher bills as a result of any shortfall in any of the functions of Scottish Water’s non-core business. When I questioned the cabinet secretary on that point, I was pleased to receive her assurance that
“Scottish Water’s regulatory regime” is “very clear about the protection of core services and” stipulates “that nothing in the non-core part of Scottish Water’s services should be subsidised by the money that people pay for water and sewerage services.”—[Official Report, Infrastructure and Capital Investment Committee, 7 November 2012; c 1094.]

Rather, Scottish Water’s commercial activities should support the Scottish Government’s overall purpose of increasing sustainable economic growth and the strategic objective of making Scotland greener.

In the evidence, a number of key stakeholders raised concerns about Scottish Water’s environmental impact. That point was well made by the committee’s convener earlier.

RSPB Scotland pressed the importance of creating in the bill “a clear requirement to ensure that any use of Scottish Water assets for renewable energy generation is sustainable and balances social and environmental impacts.”

That point was echoed by Scottish Environment LINK, which stated that it is crucial that any duty on Scottish Water to develop the value of water resources ensures that development is sustainable and includes sufficient provision for the development of assets to achieve the correct balance between the social and environmental impact. Again, the cabinet secretary said in evidence to the committee that the current definition of value notes the importance of the economic contribution, but that it should not be “to the detriment of other factors, such as environmental or social benefits.”—[Official Report, Infrastructure and Capital Investment Committee, 7 November 2012; c 1089.]

The Scottish ministers will expect Scottish Water to deliver its core functions with increasing efficiency, as was stated earlier, and at a standard that the people of Scotland expect and deserve. That impacts on every aspect of Scottish Water’s business, from corporate governance and accountability right down to the infrastructure that serves our local communities.

I have been contacted by constituents of mine from the Shandon area who have suffered no fewer than four serious flooding incidents with sewage-soiled water in the past 16 years. Those floods have arisen because of limitations in the physical capacity of the existing infrastructure. Scottish Water admitted in an email to me this week that it “would require to carry out a capital investment project to provide additional storage or upsize the existing sewer.”

However, as yet, Scottish Water has refused to place those properties on the internal flood register. It stated that in order to qualify for inclusion on the register, a property must be assessed as being at risk of flooding during a “1 in 10 year storm event.”

A previous event in July 2011 was assessed as being a one in 331-year event. Given that the flooding has happened four times in the past 16 years, that is understandably difficult for my constituents to accept. I am sure that other members of the chamber face similar issues.

There are therefore issues for Scottish Water regarding accountability. I am concerned that Scottish Water is the judge and jury in its own court when it comes to investment decisions. Is there no place for independent scrutiny of its assessments? I am sure that further clarification on that point would be welcomed by MSPs and the people we represent. As Scottish Water takes on new and onerous challenges to develop our most precious natural resource, it must not be allowed to forget its obligation to customers and people in my constituency and across the country.

15:57

Margaret McCulloch (Central Scotland) (Lab): Water is more than a prized natural resource; it is an essential that we cannot do without and a resource on which key industries such as agriculture, food and drink, manufacturing and the energy sector all depend. We should never underestimate the value of our water; equally, its value should not simply be measured in pounds and pence or even just in terms of what it can contribute to the economy. The sound management of Scotland’s water resources brings social and environmental benefits that are not easily quantified but which are nonetheless important to who we are and how we live.

Too many people around the world confront barriers that prevent them from accessing clean drinking water, let alone water for any other purpose. Those barriers are heightened by climate change, rising global demand and globalisation. Even here in the United Kingdom, there are parts of these islands where demand outstrips supply. Scotland is water rich, but, because of their high population density, our nearest neighbours in England and Wales face water scarcity not unlike that experienced by some Mediterranean countries. Drought occurs on average every seven years in England and Wales, especially after the country goes through a dry winter, as it has now done for two or three years in a row.

That is the backdrop against which the bill is being taken forward, which is why the decisions that we take about our water in the next few weeks
and about the stewardship of that resource in future are so important.

The bill should lead to a framework not just for managing our water, but for realising the full value of the resource—for the benefit of Scotland. In that context, the bill refers to “economic and other benefits”. I support calls for greater clarity on that point, so I appreciate the cabinet secretary’s earlier remarks and I look forward to the amendment.

If by “other benefits” the Government means social and environmental benefits, as the cabinet secretary indicated, it should be explicit about that in the bill. Innovation and creativity in how we manage our water can not just contribute to the economy but improve our environment and communities. The committee will welcome that simple but significant amendment to the bill.

I associate myself with members who have welcomed new rights for people who seek to repair septic tanks in common ownership, new access rights for people who monitor water quality and new offences in relation to the illegal passing into the sewer network of substances such as fats and acids.

The Scottish Government must clarify what it means by economic benefit and how it expects Scottish Water and the Scottish ministers to secure such benefit. We all agree that Scottish Water should be an efficient, competitive and high-performing organisation, but if we are serious about an all-Scotland recovery and about pulling together to build up our shared prosperity, we must examine Scottish Water’s role in the wider economy.

Scottish Water is a publicly owned corporation and I do not accept that it can contribute to the nation’s economic success only if it is privatised. If it has an ambitious framework and there is the possibility of further reform in the new year, Scottish Water can make its considerable budget go further and treat public procurement as a way of delivering jobs and new opportunities in Scotland, rather than just a transaction.

In response to the consultation on the bill, Jim and Margaret Cuthbert pointed out that of the 16 partners who deliver Scottish Water’s capital investment programme, only three are Scottish firms. Even if firms employ people in Scotland, the involvement of foreign-owned firms, along with the outsourcing of key Scottish Water functions such as R and D and design and construction, is stripping skills and experience out of the Scottish economy. As we await the introduction of the procurement bill in the new year, we should reflect on what “economic benefit” means and on how a new framework for Scottish Water will help Scotland to retain its world-leading position in the field.

Many responses to the consultation and submissions to the committee were thoughtful and helpful. I hope that the Government will continue to take on board the points that have been made, particularly in relation to the meaning of “value” and “economic benefit”. Scotland’s water is one of our greatest and most abundant natural resources. Precisely because that resource is so crucial, I reiterate to the cabinet secretary the need for clarity and caution as the bill proceeds through the Parliament.

16:02

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): It is fair to say that the Water Resources (Scotland) Bill is not the most controversial bill that the Parliament and its committees have considered. That is not to say that making the most of Scotland’s water resources, as the bill seeks to do, is not vital.

Scotland is a lucky country when it comes to natural resources. We have a superabundance of fresh water. Indeed, I am told that the volume of water in Loch Ness is nearly twice that of all the standing waters of England and Wales combined—that is fascinating fact number 1.

What is more, our water quality is among the best in the world. In Europe, Scotland is recognised as a leading nation in achieving the standards that are required under the European water framework directive.

We also have a high-performing water industry, led by our publicly owned Scottish Water, which supplies high-quality water and waste water services, supporting economic growth while protecting our health and environment, at much better value for the customer than is the case with Scottish Water’s privatised rivals down south—Alex Johnstone, please take note.

Given the Liberal Democrats’ position on Scottish Water, I am a little surprised and disappointed that no Liberal Democrat MSP saw fit to participate in the debate.

In addition to the growing excellence of Scottish Water, we have a strong academic base and innovative small and medium-sized enterprises. Therefore, in an increasingly water-stressed world, Scotland is well placed to develop into a world-leading hydro nation, as the cabinet secretary ably showed in opening the debate.

From the evidence that the committee gathered, it is fair to say that there is broad consensus among all stakeholders on the desirability of pursuing the hydro nation agenda, and broad support for the bill’s intention of doing so. That is
reflected in the committee’s recommendation to the Parliament that the general principles of the bill be agreed to. That is not to say that there are no areas of contention that the Scottish Government will need to address at further stages of the bill. The most prominent of those areas relate to the provisions in parts 1 and 2 of the bill, to which I will confine my remarks.

Part 1 places a duty on the Scottish ministers to take all reasonable steps to develop the value of Scotland’s water resources. In itself, that will, of course, sharpen the Parliament’s focus on holding ministers to account. There is a strong case for consolidating annual reporting to Parliament on the hydro nation agenda and incorporating scrutiny of not only the bill, when it has been enacted, but the implementation of other relevant water-related legislation, such as the Water Environment and Water Services (Scotland) Act 2003 and the Flood Risk Management (Scotland) Act 2009. We look forward to the cabinet secretary’s proposals in that regard.

The main point at issue relates to the definition of the value of water. The bill emphasises the development of the economic value of the resource and does not refer explicitly to the social and environmental elements of value. I agree with the witnesses who argued that the legislation must ensure that any future development of Scotland’s water resources is entirely sustainable and must seek to protect and improve the natural environment. In its briefing for the debate, the RSPB suggested adding in a sustainable development duty akin to that in the Marine (Scotland) Act 2010, which should reinforce that intention. I look forward to discussing such an amendment at stage 2. Similarly, the bill and the hydro nation agenda need to link in with other policies, such as those in our climate change legislation, and the EU’s blueprint to safeguard Europe’s water resources, which recommends efficiency measures to save water and energy.

The Government will need to clear up the current confusion about the purpose of part 2, which will introduce ministerial control of large-scale water abstraction. As members have mentioned, the provisions were a late addition to the bill and were not consulted on. They also relate to an activity that is already subject to the controlled activities regulations licensing regime that is operated by SEPA in circumstances in which a proposed abstraction may have a practical impact on the environment.

Members have been made aware that the Scotch Whisky Association has expressed concern that the 10 megalitres per day threshold that is set out in the bill may be reduced in future and that the industry’s growth could be constrained unless it is exempted from that provision. Dealing with the Scotch Whisky Association and its concerns will be familiar territory for the cabinet secretary.

The Deputy Presiding Officer (Elaine Smith): I would be grateful if you could come to a conclusion.

Adam Ingram: Yes, Presiding Officer.

Notwithstanding those issues of detail, which can be addressed at later stages, I am pleased to support the principles of the bill and the Government’s ambition to build Scotland into a hydro nation.

16:09

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Presiding Officer, as I stand before you, I am a mixture of natural chemicals. The most important of those, without which I would have no existence, is formed by two atoms of hydrogen in close embrace with one atom of oxygen: H₂O or water. That constitutes some 57 per cent of my body—of all the chemicals that make up the essential me.

We can survive without food for many weeks, but we can survive without water for only a very few days. We can choose, but people in areas of substantial aridity have no choice whatsoever.

I am lucky so far: my body receives water of adequate quality, processes it with other inputs, retains enough for its needs and discharges water waste, all with adequate efficiency. That is a model for Scottish Water.

A key part of the bill relates to those who are less lucky. We need to embed the domestic success of Scottish Water—which is cheap, cheerful and effective in comparison with companies elsewhere in these islands—in the wider world. The bill addresses the hydro nation agenda, and we should ensure that, through our expertise, others gain the type of skills that we have in Scotland.

I have no objection whatsoever to a state-owned company in Scotland helping with and engaging in commercial and social activities in countries elsewhere. Alex Johnstone may care to consider whether DB Schenker should be thrown out of the rail network in the UK, or whether the Dutch post office should not get to undermine Royal Mail, but I suspect that that is not where he was going with his remarks.

Providing commercial services through Scottish Water’s expertise and working in conjunction with the 300 or so companies that constitute Scotland’s water industry is important in engaging internationally.
I particularly welcome the duty that the bill places on ministers at section 1(1)(b) in relation to ways that
“contribute to the sustainable use of”
water
“resources”.

The wider sustainability agenda is progressed through the climate justice fund, with which I have been pleased to be associated. Those two elements—economic and sustainable futures—march together. As the bill says, our water resources are to be used not just for economic benefit but for any other benefit, and I particularly welcome the cabinet secretary’s plans to make that much clearer.

I will focus a little on the international activities relating to water in which we can be involved. When I was in Rio as the Minister for Environment and Climate Change, I was pleased to meet a number of international organisations for which water was a key issue. While we have—too often, perhaps—a surfeit of water, increasing numbers of people around the world are in water deficit. Meeting people from around the world who come from countries that are in water deficit, and who have to deal with those problems from day to day, is a graphic way of engaging attention and making real what are otherwise only words on paper.

I am pleased that we have been able to work with Mary Robinson and others to create the climate justice fund and, through that, to support water initiatives. The Government has said—and I support this—that it wants to be “the helpdesk to the world on water governance”;

which is very important.

Water and energy are closely connected. What do members think a tonne of water looks like? The answer is a cubic metre. Moving water around involves moving a heck of a lot of weight, and I welcome the fact that Scottish Water is now engaging in producing green power on its own estate. The bill gives certainty to Scottish Water’s ability to profit from doing that and to produce an economic and environmental benefit, rather than simply to use such activity for its own purposes.

That builds further expertise at the join between the economy and the environment, which I welcome. It is another opportunity for countries to learn from the developed world, and for us to support countries that are in greatest need where they cannot afford to pay for such skills as we have.

There have already been border disputes over water around the world, and it is not unlikely that, in the next 100 years, skirmishes and perhaps even wars will be fought over water. No asset in the modern world will be more important. We can contribute to world peace—and what higher objective could we serve?—by engaging with countries around the world whose populations are in water deficit. We must allow Scottish Water and other companies with expertise in the water industry in Scotland to engage internationally, to support those in greatest need and to contribute to world peace.

That is a pretty good day’s work. I congratulate the committee and the Government on what they have done so far, and I look forward to more of that in future.

16:15

Duncan McNeil (Greenock and Inverclyde) (Lab): If Scotland has lots of water, Greenock and Inverclyde is blessed with an abundance of water, which the bill recognises as a real resource.

In Greenock history, water was long ago recognised as a resource. Loch Thom is an internationally renowned engineering marvel designed by the Scottish civil engineer Robert Thom who used water assets to address public health issues through the provision of clean drinking water for the town while, at the same time, fuelling the industrial revolution by providing water power for our mills and refineries.

Although those mills and refineries may now be gone, the good-quality water that I drink at home every day has been sustained—a core responsibility delivered by a public company, Scottish Water, that is clearly valued in that context and supported by the Scottish public. Whatever the recognised benefits of the bill, there are clear responsibilities, of which the provision of clean, good-quality water should remain a priority.

If the bill can achieve the worthy aims and outcomes of Robert Thom’s invention and engineering skills, it will have achieved what it sets out to achieve—the greater good and impressive outcomes for social, business and other interests. I welcome the cabinet secretary’s announcement today, in response to the committee, that the Scottish Government recognises the importance of our water resource in the widest possible terms—in terms of the environment and the social benefits as well as any financial benefit that may accrue to Scottish Water and its customers.

Although the ambitions are clear and worthy, we need to recognise that questions remain. Who will ensure that the environmental and social considerations are given equal weighting in any discussions? Who will make the decisions? There is a genuine worry that, although it is worthy to see the benefit of water as a resource and to have the commercial development associated with that, that
may divert Scottish Water away from its core principles.

These questions need to be asked. Who will ensure that the partnership working that happens now will continue and that the views of those partners will be respected? What of the community planning process, involving public bodies, that takes place now? How will that be recognised in the bill? What requirements will be placed on Scottish Water to work effectively with other public bodies—as happens now—and communities, particularly in the area of renewables?

Those questions are important to my constituency and its community, which wishes to be a full member of the Scottish hydro nation. We want to use to the full the infrastructure that has been bequeathed to us—Loch Thom, the Greenock Cut and all the infrastructure that is on the hills that stretch along the Greenock to Port Glasgow waterfront. We want to be able to use that effectively and to good purpose, particularly to develop the ideas that have come from the community and been taken up by the local authority about how we can best develop a renewable electricity supply from those resources and the natural environment.

I believe that the bill moves us in the right direction. Nevertheless, given the cabinet secretary’s opening remarks, I am sure that she recognises that there are still more questions to be answered and much more work to be done if we are to realise our ambitions both in the Greenock and Inverclyde area and for our nation to be a hydro nation. I welcome the bill.

16:20

Gordon MacDonald (Edinburgh Pentlands) (SNP): As others have said, Scotland is in an enviable position. As a country, we can sustain ourselves as a net exporter of food, we have around 90 per cent of North Sea oil and gas, we have the renewables industry and we have, of course, an abundance of water.

Most of the planet’s surface is composed of water, but freshwater is believed to be only 3 per cent of the total amount available. In many areas of the world there are severe water shortages, and the report “The Global Water Crisis: Addressing an Urgent Security Issue” highlights that “sub-Saharan Africa or West Asia and North Africa ... are already facing critical water shortages.”

The report also states that expected water demand in India and China will exceed supplies in less than 20 years.

According to a statement on the Department for Environment, Food and Rural Affairs website:

“In 2012, a drought developed in much of England as a result of two winters with below average rainfall. By April 2012 river flows and groundwater levels were exceptionally low and temporary use bans were introduced by seven water companies.”

Scotland, with its vast water resource, has an economic opportunity and a responsibility to safeguard our water supply for generations to come.

The Scottish Government has a vision of Scotland as a world-leading hydro nation, and the Water Resources (Scotland) Bill will support that goal. The hydro nation agenda will deliver economic gain to Scotland, help tackle climate change, raise Scotland’s international profile and share our knowledge on water issues.

Part 1 places a duty on the Scottish ministers to develop the value of Scotland’s water resources. Many organisations favour that approach, including the IHP-HELP centre for water law, policy and science, the James Hutton Institute and Scottish Water.

Scottish Water welcomed the proposals and stated that they “provide a strong statutory basis for developing Scotland’s water resource in the interests of Scotland.”—[Official Report, Infrastructure and Capital Investment Committee, 31 October 2012; c 1027.]

Part 3 is concerned with Scottish Water’s functions and its exercise of those functions. The bill aims to protect customers who receive the core services of water and waste water services, but it also allows Scottish Water to “do anything that it considers will assist in the development of the value of Scotland’s water resources”.

That includes using its assets for the generation of renewable energy and, with an investment of £44 million, to deliver the new functions imposed by part 3.

Scottish Water, through its subsidiary Scottish Water International, will be able to offer services internationally using the world-class expertise of its engineers, scientists and managers and, with their ability to help the world harness its water resources most effectively, assist countries to tackle the effects of climate change.

As the Institution of Civil Engineers suggested in its evidence, the bill would help Scotland to maximise the benefits of what it is already good at doing in the water sector; to continue to build capability in addressing complex sustainable water management issues; and to further increase Scotland’s competitiveness on the world stage in this area.
Part 2 relates to the control of water abstraction. I said earlier that we have an abundant water supply, but we also have a responsibility to ensure that the plans proposed in the bill are sustainable in the long term. The bill provides for the Scottish ministers to control large-scale water abstractions and requires ministerial approval before an abstraction above 10 million litres per day can take place. There are exemptions in place for those generating electricity from hydro power and for agricultural purposes, fish farming, quarrying or mining. However, there was one surprising omission from the exemptions: the whisky industry.

I should, at this stage, declare my interest in that omission as I have the Scotch Whisky Research Institute in my constituency. In addition, I have a modest collection of malt whisky and I am, of course, a consumer of the product.

I am well aware that the whisky industry is very important for the Scottish economy, as it provides thousands of jobs, many of which are in rural areas, thereby sustaining local communities. It also accounts for 80 per cent of Scotland’s food and drink exports. Therefore, it is a vital part of our economy.

In its written evidence, the Scotch Whisky Association said that the industry uses more than 37 billion litres of water per annum at current production rates, although two thirds of that is returned to watercourses after being used for cooling purposes. Whisky production has more than doubled since 1983. Although that is a fantastic economic good-news story for Scotland, it is more important for the Scottish economy, as it provides thousands of jobs, many of which are in rural areas, thereby sustaining local communities. It also accounts for 80 per cent of Scotland’s food and drink exports. Therefore, it is a vital part of our economy.

In its written evidence, the Scotch Whisky Association said that the industry uses more than 37 billion litres of water per annum at current production rates, although two thirds of that is returned to watercourses after being used for cooling purposes. Whisky production has more than doubled since 1983. Although that is a fantastic economic good-news story for Scotland, we must be aware of potential problems if that growth rate continues.

The James Hutton Institute highlighted the difficulty of setting a threshold when every catchment area is different. It said that it is more important to measure the impact on a particular area than it is to apply a figure across the board. As well as safeguarding our natural resources, we must support our key industries. As the committee’s report states in paragraph 95:

“In order to provide greater clarity, the Committee considers that the Scottish Government should include discussion on the threshold limit when it engages with stakeholders on the wider policy intention of Part 2 of the Bill.”

Water scarcity and access to clean water and sanitation are a global concern. Scotland can and should play a leading role in tackling the problems.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Let me begin by stating the obvious: water is a basic commodity that is perhaps taken for granted by most residents in Scotland. I certainly have the expectation that, when I turn on the tap, water will flow.

There are some people whom I know who take the view that water, by its very nature and origin, should be free and that the imposition of charges by Scottish Water is somehow immoral or improper. However, the water still has to be piped to our houses, the network of pipes and pumping stations has to be maintained, and sewage needs to be piped and treated. None of that would happen without our paying for it to happen.

We are fortunate that our major water supplier remains in public ownership, unlike the situation south of the border. It is my belief that that represents a distinct advantage to the residents of Scotland, given the anecdotal evidence that I read about shortages and the failures of the privatised industry in England.

The introduction of the bill will help to develop and strengthen Scottish Water’s position as our major supplier of residential and commercial water and the provider of sewage services, and the bill’s vision of Scotland as a hydro nation is an inspirational one. Scottish Water already delivers one of the UK’s biggest investment programmes, against a background of charging the lowest household bills. I am very happy with the Scottish Government’s commitment to keeping this successful and innovative corporation firmly in public ownership.

It is worth considering some of the scale and background to the bill. More than 300 companies support the sector in Scotland. In 2008-09, the water supply and waste sub-sector in Scotland was estimated to have a market value of £709 million and to employ 6,200 people. Every day, Scottish Water provides 1.3 billion litres of drinking water through 29,762 miles of pipes and takes away about 839 million litres of waste water through 31,477 miles of sewer pipes—imagine all those pipes under our feet. Scottish Water serves 2.4 million households and 152,000 business premises across Scotland.

It must be clear that Scottish Water is a high-performing business by anyone’s standards. That is not a statement that can often be made with confidence in relation to utility companies. It is worth looking at some of the key indicators that support that statement.

Drinking water quality is at its highest-ever level—99.86 per cent of samples comply with strict quality standards. Leakage has been reduced by 70 million litres of water a day. Real operating costs have been reduced by 40 per cent since 2002. Can any other company in the water industry approach that? In 2011-12, Scottish Water achieved the highest-ever customer satisfaction score of 83 per cent.
In 2011-12, Scottish Water delivered £491 million of investment and, over the past 10 years, £5.5 billion has been invested across Scotland. In 2012-13, the average household annual charge, at £324 per annum, will be £52 lower than the average in England and Wales. That is quite a turnaround—and an improvement on 2002-03, when the average charge was £30 higher than in England and Wales.

Those are achievements to applaud and the proposed bill must—and does—support the development of Scottish Water across a number of critical areas. Importantly, the bill places a general duty on the Scottish ministers to actively ensure the development of our water resources. It gives Scottish Water power to control large-scale water abstractions and an obligation to develop its assets, including the generation of renewable energy.

The bill allows Scottish Water to place conditions on trade effluent consents, which should improve and control the quality of trade effluent. The bill prohibits the dumping of fat, oil or grease into the public sewer system—we would think that that would be fairly obvious—and it gives additional powers to monitor raw water quality. It allows the Scottish ministers to lend money directly to subsidiaries of Scottish Water or for them to borrow from other sources. It also creates a new system for dealing with temporary water shortages. Those points and the other content of the bill are key to the continued development of a vigorous and modern Scottish Water.

I will return to the hydro nation concept that I touched on previously. Scotland could play an increased role internationally. Water scarcity and access to clean water and sanitation are matters of global concern: people in China and India alone make up 50 per cent of the global population without sanitation facilities. The Scottish Government has launched a £3 million climate justice fund to support nations that contribute the least to climate change but feel the worst of its effects. That is all part of our increasing international engagement.

In considering all the aspects of the bill, it is clear that the Scottish National Party Government has the vision to make Scotland an effective player on the world stage by using innovation and the resources that our nation has available. This Government extracts the maximum value from our resources while still ensuring that the environment is protected and that individual consumers receive the high-quality service that they have come to expect.

We have a beautiful natural heritage, which will be preserved by this Government. Scottish Water has faithfully served consumers as a publicly owned corporation since 2002, lowering the cost to my constituents and the rest of the nation of clean water provision and sewage disposal.

The bill better prepares us for the future. Although there were floods in Musselburgh in my constituency last year, I am grateful for the provisions in this bill that will help to manage droughts and water shortages. We never know what the future will bring, but this bill is focused on the future and, most importantly, it ensures that we get the most out of one of our most valuable resources.

The Deputy Presiding Officer: We turn to closing speeches, and I remind members who participated in the debate that they should be in the chamber for closing speeches.

16:33

Mary Scanlon (Highlands and Islands) (Con): I thank the Infrastructure and Capital Investment Committee for its stage 1 report, under the able leadership of Maureen Watt. Listening to Colin Beattie reminded me that my son often tells me that engineers save more lives than doctors because they provide clean water. I thought that was an appropriate point to make after Colin Beattie’s speech.

In this fourth session of the Parliament, I would have thought that the lessons from the past in bringing forward legislation would have been learned. The SNP and the Conservatives were vocal in opposition when measures were brought forward by the previous Liberal-Labour Scottish Executive with no consultation—rightly so.

I was therefore shocked to see that the sections of the bill on abstraction—part 2—was added with no consultation whatsoever. Neither does it seem to be clear to the many witnesses how the proposed abstraction application process will be separate from the current controlled activities regulations licensing regime—otherwise known as CAR—that is operated by SEPA. It is not surprising that the committee report states in paragraph 74:

“The Committee has been made aware in evidence of a number of concerns in relation to the proposal to introduce the new abstraction regime”

particularly when CAR

“was considered to be working well”

and

“Ministers already had the power to call in abstractions”

under the current system.

I hope that that potential duplication will be addressed so that we have some clarity, which is, from my reading of the bill, much needed.
Even SSE stated, in respect of the new abstraction regime, that
“it did not have enough information to form a view on it”—that is mentioned in paragraph 75. The Centre for Water Law—which I did not know existed—considered that
“the CAR system worked well and found it difficult to see the added benefit of another layer of regulation”.
Therefore, it is not surprising that the committee’s report points out that
“Energy UK considered that Part 2 of the Bill was not in keeping with the better regulation agenda.”
As Alex Johnstone said, continuing to talk to stakeholders is a world apart from a thorough and considered consultation process, especially when the Government occasionally has a different interpretation from some of the rest of us about what constitutes consistent dialogue.
I also share the committee’s doubts in paragraphs 84 and 85. The committee acknowledged
“the ... concerns that ... questioned whether there is a need for the new abstraction regime”
and noted that
“it might be better to enhance the Controlled Activities Regulations”.
That suggestion makes much more sense to me. The committee’s disappointment
“that the Government did not manage to include the abstraction proposals in either of its two previous consultations”
is perfectly understandable. To be fair, such an omission is not conducive to good and effective legislation.
As I raised earlier with the cabinet secretary, and as others have mentioned, the Scotch Whisky Association makes the point—this would have been raised in a consultation process—that the threshold should specify the volume of water consumed rather than the amount abstracted, particularly as only one third of the water that the industry takes from the environment is used for distillation and two thirds of it is returned.
I note that paragraph 92 highlights SEPA’s concerns about the gap between the abstraction and the water being returned to the environment. When I asked plenty of people about that at the Scotch Whisky Association event in the main hall last night, I was told that the timeframe for that gap is between two and 12 hours. I cannot see burns running dry, despite the scaremongering from SEPA, so I am not sure whether SEPA is totally aware of the timeframe. As convener of the cross-party group on Scotch whisky, I also point out that the industry has done more than most to address energy use, pollution, recycling and environmental issues.
Paragraphs 94 and 95 seek clarity on
“the rationale for the abstraction threshold of 10 megalitres per day”
and point to a
“lack of understanding on the part of stakeholders about the policy intention”.
At this stage, the policy intention should be known. Once more, I say that that is why this Parliament, with no revising chamber, places so much emphasis on pre-legislative scrutiny to allow the committees the opportunity to do the work that they are tasked to do.
Although no distillery currently uses more than 10 megalitres per day, that time could come—Gordon MacDonald also alluded to this—given the increasing demand for whisky exports in China, Brazil, India and many other countries worldwide. Any limit on water use could be potentially damaging to the industry, which is perhaps the only industry in Scotland whose production is restricted to our country by law. Given the contribution that the whisky industry makes to our economy and the fact that two thirds of the water that it abstracts is returned to the environment within hours, I hope that even at this stage the Government will consider—I felt that the cabinet secretary was listening when I raised the issue earlier—an exemption on abstraction for the whisky industry.
I have not mentioned the leakage rate. Alex Johnstone has told me not to worry about that, because Scottish Water is making good progress and has reduced the leakage rate from about 1,200 million litres every day to 700 million litres a day. I do not know about other members, but I think that that is still a huge amount.
I fully commend the Infrastructure and Capital Investment Committee. Its work has been thorough and its report is excellent. We will support the general principles of the bill.

16:40

Elaine Murray (Dumfriesshire) (Lab): The debate has been mainly consensual, even though we have been invited to envisage Stewart Stevenson discharging water, and despite the fact that the Conservatives take a different view from other members on the value of retaining Scottish Water in the public sector.
It makes sense for Scotland to make the most of a resource that it possesses in abundance. As members have said, at times we have an overabundance. Water shortages are a concern throughout the world, as climate change and
increasing global population take effect, while in Scotland we often complain about the amount of water with which we are blessed. The effect of global warming on us is that the resource is likely to increase, as is the severity with which it is deposited on our land. Clearly, we should turn that to the country's advantage whenever possible.

Like other members, I am not sure that the statutory designation of Scotland as the first "Hydro Nation" is absolutely necessary to enable us to do all the things that we want to do. I must say in passing that I have an aversion to the appearance of capital letters in the middle of a sentence when not attached to a proper noun—that annoys me almost as much as the intrusive apostrophe, but I will let it pass. I am not convinced that some of the provisions in the bill are absolutely necessary and that we could not do some things anyway.

I think that, technically, I am now a member of the Infrastructure and Capital Investment Committee, but I was not a member during stage 1 consideration. I therefore read the policy memorandum and the committee's report with considerable interest, and I look forward to stage 2. Despite the uncertainty about whether the ministerial duty is necessary, it appears to have received support from witnesses, although Consumer Focus Scotland wanted more clarity on the benefit of the bill to Scottish Water customers. Consumer Focus and the RSPB felt that the bill should not divert effort from improving the water resource and preventing its deterioration. For example, the amount of leakage of water from the system in 2009-10 was 704 million litres a day.

Maureen Watt, Margaret McCulloch and Duncan McNeil expressed concern about the meaning of the term "value of water" and that point was also made by witnesses to the committee, many of whom suggested that the bill should be amended to reflect the three pillars of sustainability, rather than simply the economic value. I am therefore sure that they and others will welcome the cabinet secretary's announcement that she intends to lodge an amendment at stage 2 to make that clear. The environmental law sub-committee of the Law Society of Scotland was concerned that the provisions do not take the environmental impact fully into account.

I was interested to read in paragraph 49 of the committee's report that RSPB Scotland, Scottish Environment LINK and the Scottish Wildlife Trust called for a wider range of bodies to be included in the list of designated bodies, in order to promote a partnership approach similar to that which applies to catchment management, legislation on which went through the Parliament in a previous year. Duncan McNeil highlighted areas of existing partnership that it is important not to interfere with.

Witnesses referred to the duty in the Flood Risk Management (Scotland) Act 2009 and said that it is working well. As Adam Ingram pointed out, the RSPB referred in its briefing for the debate to the sustainability duty in the Marine (Scotland) Act 2010. I was a member of the Rural Affairs and Environment Committee during the passage of both those acts, and I can well remember the discussions that we had on the duties that ought to be placed on ministers, responsible bodies and partners. Therefore, I was pleased to read that those acts are now being cited as good practice. I hope that we can learn from them. There might be parallels with the bill, so perhaps we can reflect the good practice that seems to have been brought in through those other pieces of legislation.

I will mention an issue that has not so far been raised in the debate, although I am sure that, if Rob Gibson or Claudia Beamish were present, it definitely would have been. The RSPB also urges us to explicitly include peatland habitats—blanket and raised bogs—in the definition of water resources, so that peat bog management and restoration can be pursued under the bill's purpose of developing Scotland's water resources.

Peatland, like water, is an abundant resource in Scotland, and it can play an extremely valuable role as a carbon reserve. It can help to contribute to our climate change targets, so it is well placed to deliver a better water supply and I hope that we will go along with the RSPB's suggestion that we should amend the bill to include peatland habitats, as defined as a water resource, so that they can be covered by the provisions in the bill.

Margaret McCulloch noted the important role of procurement policy in the future development of Scottish Water, which will obviously overlap with the forthcoming procurement bill.

The bill provides for ministers to control large-scale water abstractions, as many members said, and there is some doubt that that is absolutely necessary as the CAR licensing regime could be extended to include that provision. The RSPB, for example, noted that ministers already have the power to call in abstractions. I know that the cabinet secretary disagrees with that point, because she said that CAR is restricted to environmental issues.

Mary Scanlon and Gordon MacDonald mentioned the concerns of the Scotch Whisky Association. I should declare an interest, but only as a consumer, although I would not like to see the industry's future damaged. The Scotch Whisky Association has asked for the industry to be included in the list of exemptions.

Finally, many members who spoke in the debate thought that the issue of water shortages was a bit
of a fantasy. However, it is only two or three years since Pinneys of Scotland in Annan, which is a big food processing company in my constituency, was beginning to get worried because we were facing water shortages that could have affected its commercial production. We must be concerned about potential water shortages and we need to consider the concerns of the food and drink industry regarding the proposals in the bill. We should also take on board Consumer Focus Scotland’s suggestion about protecting vulnerable people at times of water shortages, because—who knows?—such times might come back.

Nicola Sturgeon: This has been a good debate. Adam Ingram said that the bill might not be the most controversial that Parliament will ever debate, and I guess that he is right. Nevertheless, it covers an interesting subject and I have thoroughly enjoyed the debate this afternoon.

There have been some extremely good contributions. The highlight of the debate for me has to have been the revelation that the bill is about the “essential” Stewart Stevenson. Like Elaine Murray, I could probably have lived without the rest of the explanation about how he processes the precious commodity, and I was becoming rather alarmed by how much he was drinking in the chamber in case we had to face a physical demonstration of what he was trying to describe. Notwithstanding all that, Stewart Stevenson’s speech was excellent, and many of the other contributions, including that of Maureen Watt as lead committee convener, were of a very high standard.

Many members spoke about the importance of water to our environment, our society and our economy. Colin Beattie was right to say that water is a commodity that most of us take for granted—probably because we regularly get soaked to the skin when we go outside. Nevertheless, we should remind ourselves how important the commodity is. Gordon MacDonald spoke eloquently about the big and serious responsibility that comes to us because of our relative abundance of a commodity in a world in which its scarcity will become a concern.

Duncan McNeil’s comments on the importance of water to Inverclyde give me the opportunity to tell the chamber that this week I had my own close contact with Port Glasgow water when I launched MV Hallaig, the world’s first sea-going roll-on/roll-off hybrid ferry, which was built at Ferguson Shipbuilders Ltd’s yard. With Stuart McMillan piping the guests as we performed the ceremony it was, all in all, a tremendous occasion and a great day for Ferguson’s, for Port Glasgow and for Inverclyde.

Many members mentioned the Government’s ambition—although I note that one or two referred to it in what appeared to be almost derogatory terms. We are unashamedly ambitious about the hydro nation agenda. It is right that when we in Scotland have an abundance of water and of the associated skills and expertise, we are being serious not only about making the most of those resources for our own benefit but about sharing them for the benefit of the world that we all inhabit.

Although I welcome what I thought was a good speech from Richard Baker, I have to point out to him that in my opening remarks I said explicitly that I do not think that the bill is the sum total of the hydro nation agenda—and nor should it be. I also went into some detail about the agenda in its widest sense. That said, although the bill is not the be-all and end-all, it fulfils an important function in the wider agenda, and I am glad that it has attracted support today.

I want to go through thematically some of the key points in the debate. I characterise the first set of points as being about the importance of striking the right balance. The bill is, to an extent, about competing interests. It is important to strike the right balance with regard to the interests of consumers and the importance that they attach to quality of service and fair water charges; to the interests of our businesses and the importance of supporting and encouraging them; and to doing what we can to support the interests of those who want to support developing nations, while all the time ensuring that we protect the vital resource for the benefit of future generations.

We have also to strike a balance with regard to economic, environmental and social factors, and I hope that an amendment to part 1—which I said at the outset I intend to lodge at stage 2—will assure people that the Government is serious about striking the right balance in that respect. Some favourable comments have been made about our intention; Maureen Watt’s remarks about it were particularly important.

The next set of comments relates to part 2, which deals with water abstraction. Maureen Watt, Mary Scanlon, Richard Baker, Alex Johnstone and Adam Ingram—among others—commented on part 2, and I want to address some of their points. First, with regard to the relationship with the controlled activities regulations, I do not see the provisions in the bill as being duplication. I say that as a minister who came to the bill at a late stage in the development of its draft form.

I see a very clear relationship between CAR and the bill’s provisions. As I said in response to Mary Scanlon, CAR focuses only on environment factors, whereas the bill is designed to take a much wider view and to consider a wider set of circumstances, such as whether the location of
abstraction is appropriate, whether the right infrastructure is in place and whether we are taking adequate account of long-term interests with regard to safeguarding the resource. As a result, I think that it is right for those two systems to sit in parallel.

However, it is also right that the system is proportionate and I believe that a threshold of 10 megalitres a day strikes the right balance. That is a significant volume of water and the majority—perhaps the vast majority—of current abstractions in Scotland fall below that level.

Mary Scanlon and others mentioned the Scotch whisky interest in this issue. The bill’s exemptions principally cover non-consumptive activities that deliver a wider public benefit but I will, as I have said, look at the comments that have been made. I take Mary Scanlon’s point about the non-consumptive nature of the Scotch whisky industry’s abstractions, and we will consider such points carefully. Even if we do not agree to amend the bill in that respect, I hope that we can satisfy the concerns of interests including the whisky industry.

The next area that I want to deal with is the distinction between core and non-core Scottish Water services, and the concern that was expressed, certainly at an earlier stage of consideration, that Scottish Water might be given an unfair commercial advantage. I was pleased to hear Maureen Watt say that the committee was satisfied with the assurances that were given on that point, and I want to repeat those assurances today. No unfair advantage is being conferred on Scottish Water in terms of its commercial activities. For example, lending to Business Stream is done at a commercial rate, and it will continue to be the case that future lending to subsidiaries will be on that basis.

The split between core and non-core business is of huge importance, as Alex Johnstone said. The core business will continue to be a priority and will not subsidise the non-core activity.

Alex Johnstone: I apologise for returning to an issue that was raised earlier, but is not actually relevant to what the minister is currently saying.

During the debate, it was suggested—I forget by whom—that where Scottish Water’s expertise is made available across the world, as it already is and will be to a greater extent in the future, the dispersal of that expertise should be conditional on Scottish Water’s organisational model also being promoted. I am concerned about that level of political interference. Would the minister perhaps take the opportunity to dissociate herself from an idea that might have an impact on Scottish Water’s activity?

Nicola Sturgeon: To be fair, I think that Alex Johnstone is mischaracterising what was said. I am about to characterise what somebody else said.

Neil Findlay raised a concern about assisting in privatisation of water resources in other countries. Maureen Watt made the perfectly valid point that there is an opportunity for Scottish Water to show leadership, because the success of its ownership structure and model of governance—it is an extremely successful public corporation—shows that the model works. That is part of the leadership that Scottish Water can show and that is a perfectly valid point to make. If I have missed part of what Alex Johnstone was talking about, I would be happy to deal with the remainder in writing.

I want, in the time that remains to me, to deal specifically with Scottish Water, which is a success story. Some members raised particular constituency issues, which I will ensure are drawn to Scottish Water’s attention and are responded to.

Scottish Water is in its 10th year and has a record of which we should be proud. It has delivered significant efficiencies, with average household water charges that are lower than those in England and Wales. As Mary Scanlon said, leakage has been reduced and new infrastructure has been built, but that is not the end of the story, because the business has to continue to drive forward with efficiency while ensuring that its assets are resilient and are meeting the needs of customers. I am sure that Scottish Water will rise to that challenge.

Some members in the debate—not the Liberal Democrats, who did not contribute, but the Tories—put forward what they consider to be the case for privatisation. The question that people such as Alex Johnstone have to answer is this: why on earth, when Scottish Water is operating so successfully in the public sector, would we want to change that and put at risk the success that it is enjoying?” This Government will not do that.

As Jim Eadie said, the bill challenges us to show leadership and to develop the value of our massive water resources. When we talk about the value of those resources, we are talking about more than the water in the rivers, lochs and canals; we are also talking about the work of land managers, regulators, industry experts, academics and the volunteers who spend a lot of time protecting our environment.

Water underpins our economy. Given our relative abundance of water, it is right that we have a positive and ambitious vision for the future. We are very fortunate, and it is right that we share that good fortune with others.
I look forward to discussing with the committee the points that have been raised today, and I invite members to support me in agreeing to the principles of the Water Resources (Scotland) Bill, so that we can move on to the detailed scrutiny of stage 2.

**Water Resources (Scotland) Bill: Financial Resolution**

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-04853, in the name of John Swinney, on the Water Resources (Scotland) Bill financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Water Resources (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.—[Nicola Sturgeon.]

The Presiding Officer: The question on the motion will be put at decision time.
I am writing in response to the Infrastructure and Capital Investment Committee’s Stage One Report on the Water Resources (Scotland) Bill. I was pleased to note that the Committee recommended to the Parliament that the general principles of the Bill be agreed and this was confirmed following the debate in the Chamber on 19 December. In my response I shall cover each part of the Bill in turn.

Part 1: Development of the Value of Scotland’s Water Resources

The Committee has asked whether peatland habitats are covered by the reference to water resources in the Bill. For consistency with existing legislation, we have taken the definition of water resources to be that used by the Water Environment and Water Resources (Scotland) Act 2003 which does not cover peatland habitats. However whilst not defined as water resources that is not to suggest that peatlands are not an important part of Scotland’s natural resources. The Scottish Government is committed to supporting peatland and the 2012 Budget has provided additional funding for peatland restoration work.

As I indicated when I gave evidence to the Committee, I am aware that a number of concerns have been raised about the thinking behind the development of the value of Scotland’s water resources and whether economic benefit would be given precedence over environmental matters for example. When making any decision in this area, Ministers would consider environmental, social and economic factors in addition to any other relevant matters that would inform their consideration. There is always a balance to be made in such decisions, and I agree that this could be more clearly expressed in the Bill. I therefore intend to bring forward an amendment at Stage 2 so that environmental, social and economic considerations are explicitly recognised.
Designated bodies and directions

The Committee agreed that full public consultation on proposed directions would be unnecessary but suggested that consultation with all designated bodies would be worthwhile as it might provide an opportunity for advice and assistance to be shared. As set out in the response to the Subordinate Legislation Committee on this issue, this power to direct the bodies concerned must be consistent with the proper exercise of the functions of the designated body. By their nature some directions may have to be given in very short timescales. We therefore think that it would be unduly burdensome to require all such directions to be the subject of consultation beyond the body affected. However, any designated body which is to be the subject of such a direction will be consulted in advance of a direction being made. In addition, I would be happy to ensure that such directions were published on the Scottish Government's website.

The Committee has also commented on the list of designated bodies and made some suggestions for additions to the list. I agree that this list is not exhaustive but it simply highlights the bodies that Ministers believe have a primary role in the development and delivery of this agenda, and allows that Ministers might in the future wish to suggest alterations the list. Partnership working is crucial to this work, and a great many organisations are already working together on various aspects of the hydro nation programme. Given the universal nature of water every individual, business and public body will have some role to play in the good stewardship of the resource. It will be for Government to lead that stewardship process involving relevant parties every step of the way.

Reporting period

I have reflected on the Committee's comments that a single report to Parliament after 3 years on progress is insufficient. While Parliament can choose to seek an update from Ministers at any point, I recognise that this is a long term agenda and our reporting framework should take account of that. I intend to bring forward an amendment to this Bill that will suggest a first report be made to Parliament after 3 years and at regular intervals after that to be determined by Ministers. This will ensure regular and consistent reporting without imposing an unduly onerous requirement. This would allow for example for reporting to be co-ordinated with other areas, such as River Basin Management Plans, as the Committee has suggested. I also note the Committee's intention to undertake annual scrutiny of the impact of this legislation and will support that in whatever way I can.

Part 2: control of water abstraction

As the Committee has noted, this Part of the Bill was developed at a relatively late stage and therefore did not form part of the two public consultation exercises. However, my officials have been and continue to be in dialogue with a number of organisations about the Bill, to explain the policy intention and reassurance that their views will be taken into account. Stakeholders include the Scotch Whisky Association, RSPB, Energy UK, Scottish and Southern Energy, Scottish Canals, Defra, the Water Industry Commission and Consumer Focus Scotland.
As you are aware, it is only the largest new abstractions from the water environment that will require this ministerial consent, and then Ministers intend to take a number of factors into consideration when deciding whether the abstraction should receive approval. Ministers can make regulations about the procedure in relation to making an application and in particular the information that should be provided. My officials will work with stakeholders in developing such regulations, to ensure that all relevant information can be included. This could include the amount of water that is returned to the water environment (for example after it has been used in a process such as cooling) and any specific legislation that the body is bound by when making such abstractions.

This new regime is separate from the Controlled Activities Regulations (CAR) process for which SEPA is responsible. CAR is working well and it would not be appropriate to make alterations to it or to SEPA’s role as environmental regulator. This new regime will ensure that Ministers are able to take a broader and more strategic view of proposed large scale abstractions from Scotland’s water environment.

Exemptions

The exemptions from the abstraction regime cover activities which are for the most part non-consumptive of the water abstracted and confer wider public benefit, such as the functions of Scottish Water to provide drinking water, the generation of electricity by hydro power and irrigation. It should be borne in mind that approval will only be required for the largest of abstractions in the future and is not intended to prevent abstractions above that level, but to allow Ministers to ensure that they are in Scotland’s interests.

Part 3: Scottish Water’s functions

The Committee has asked for clarification on the types of renewables activities that would be classed as part of core Scottish Water services. As a large energy user, Scottish Water has a clear incentive to reduce its energy use and therefore costs wherever this is possible. An example of how it can do this is by installing turbines within its pipes to generate electricity as water passes through. Following discussion with the Water Industry Commission we have agreed that such activities where renewable energy contributes directly to or is derived from the delivery of Scottish Water’s core services of delivering water and sewerage should be regarded as within its core business. This can be differentiated from other activities such as the building of wind turbines on Scottish Water land where the generation is not integrated with the management of its core services in the same way.

As I set out when I gave evidence to the Committee, non-core commercial activities are deliberately separate from Scottish Water’s core business in order to protect consumers from risk. It is for Ministers in their ownership role to determine the use of any profits arising from non-core activities and they would take Scottish Water’s customer interests carefully into account. I also note the concern that some stakeholders have raised that Scottish Water might operate at a commercial advantage over competitors. I am confident this is not the case. Scottish Water is required to operate in properly commercial terms in any such activities. Any organisation or individual that had concerns in this regard, could raise them with the competition authorities.
Part 4: Raw water quality

I note the concerns raised around the definitions of "premises" in the Bill and am considering an amendment in this regard. In particular I will want to make clear the extent of the powers that Scottish Water will be allowed to ensure they can carry out monitoring and sampling and the extent to which provisions on water shortage orders will apply.

I agree with the Committee's comments on the importance of partnership working to protect and manage the water environment, and would highlight that excellent collaboration is already underway between land managers, NGOs, SEPA and Scottish Water in this regard. This Bill seeks to build on that work and encourage joined up working. The wider hydro nation programme has already brought together academics, industry, communities and public bodies and there will be many opportunities to get involved and help to develop the value of Scotland's water resources over the coming years.

Part 5: Non-domestic services

My officials have held further discussions with Consumer Focus Scotland about their comments on deemed contracts, to ensure their experience of such contracts in the energy sector is taken into account. Consumer Focus Scotland is content with the proposal in the Bill, and it will be important that customers understand their rights and responsibilities in this area.

Part 6: Sewerage Network

As the Committee has highlighted, the proposal in relation to shared septic tanks in the Bill is one part of a much broader programme of work. The work plan agreed between Scottish Government, Scottish Water and SEPA around improving data and registration of septic tanks is underway, and officials would be happy to update the Committee on that activity.

Part 7: Water Shortage Orders

I agree that communication will be for the success of any water shortage order and that information should be given to the public in a way that is appropriate to them and their community. I am considering a number of technical amendments to this part of the Bill following further discussions with stakeholders, and my officials will be developing communications plans once the Bill is passed to ensure individuals and businesses are aware of the changes.

Delegated powers in the Bill

I note the Committee's comment that the Subordinate Legislation Committee's recommendation be accepted and the four relevant provisions removed from the Bill. I remain of the view that the additional powers conferred by the provisions of sections 19(4), 31, 34 and 46 provide the appropriate level of Parliamentary scrutiny for these

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specific circumstances, where minor amendments to primary legislation are required, being consequential on changes to the Controlled Activities Regulations. Although the wider powers of section 20 of the Water Environment and Water Services (Scotland) Act 2003 could be used for this purpose, I do not think that it would be an appropriate use of Parliament’s time to scrutinise purely consequential amendments through the affirmative procedure that section 20 attracts. I would be happy to discuss this, or any other matter further.

I hope this is helpful.

Best Wishes

NICOLA STURGEON
Water Resources (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 39  Schedule 1
Sections 40 to 44  Schedule 2
Sections 45 to 48  Schedule 3
Sections 49 to 52  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Jim Eadie

53 In section 1, page 1, line 14, leave out <designed to contribute to the sustainable use of the> and insert <best calculated to further the achievement of sustainable development, including the protection and, where appropriate, recovery of water>

Nicola Sturgeon

12 In section 1, page 1, line 21, leave out <and> and insert <, social, environmental or>

Elaine Murray

1 In section 1, page 1, line 24, after <means> insert <-

( ) all peatlands, and

( )>

Section 3

Elaine Murray

2 In section 3, page 2, line 16, at end insert—

<( ) a subsidiary of Scottish Water,>

Jim Eadie

54 In section 3, page 2, line 20, at end insert—

<( ) the Forestry Commissioners, in relation to their activities for Scotland,

( ) each National Park authority,

( ) the Water Industry Commission for Scotland.>
Nicola Sturgeon

13  In section 3, page 2, line 23, at beginning insert <updating or>

Elaine Murray

3  In section 3, page 2, line 26, at end insert—

<( ) In this section, “subsidiary” has the meaning given by section 1159 of the Companies Act 2006.>

Section 4

Nicola Sturgeon

14  Leave out section 4 and insert—

<Report on steps taken

(1) The Scottish Ministers—

(a) must prepare an initial report on how (and the extent to which) they have fulfilled the duty under section 1(1) during the period of 3 years beginning with the date on which section 1(1) comes into force,

(b) from time to time as they consider appropriate, may prepare a further report on how (and the extent to which) they have fulfilled the duty under section 1(1) during any subsequent period of at least 3 years.

(2) A report may include such additional information as the Scottish Ministers consider appropriate.

(3) A report is to be laid before the Scottish Parliament as soon as reasonably practicable after the end of the period to which the report relates.>

Jim Eadie

14A As an amendment to amendment 14, line 4, leave out from <prepare> to end of line 6 and insert <, as soon as practicable after the end of each year in the 3 year period beginning with the date on which section 1(1) comes into force, prepare a report on how (and the extent to which) they have fulfilled the duty under section 1(1) during that year,>

Jim Eadie

14B As an amendment to amendment 14, line 7, leave out <from time to time as they consider appropriate, may> and insert <must>

Jim Eadie

14C As an amendment to amendment 14, line 9, leave out <any> and insert <each>

Jim Eadie

14D As an amendment to amendment 14, line 9, leave out <at least>
Jim Eadie

14E As an amendment to amendment 14, line 13, at end insert—

<( ) A report under this section may, where practicable, be combined with a report under section 26 of the 2003 Act.>

Section 5

Alex Johnstone

58 Leave out section 5

Section 6

Alex Johnstone

59 Leave out section 6

Section 7

Nicola Sturgeon

15 In section 7, page 4, line 1, leave out <(ii)> and insert—

<( ) maintaining>

Alex Johnstone

60 Leave out section 7

Section 8

Nicola Sturgeon

16 In section 8, page 4, line 13, leave out from <(including)> to end of line 14 and insert—

<( ) Regulations under subsection (2) may (in particular) include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.>

Alex Johnstone

61 Leave out section 8

After section 8

Nicola Sturgeon

17 After section 8, insert—

<Consultation on changes

Before making regulations under section 7(6) or (8)(1)(b) or (2), the Scottish Ministers must consult—>
(a) Scottish Water,
(b) SEPA,
(c) Scottish Natural Heritage,
(d) such other persons as they consider appropriate.

Section 9

Elaine Murray
4  In section 9, page 4, line 19, leave out <may> and insert <must>

Elaine Murray
5  In section 9, page 4, line 21, leave out <may> and insert <must>

Alex Johnstone
62  Leave out section 9

Section 10

Alex Johnstone
63  Leave out section 10

Section 11

Alex Johnstone
64  Leave out section 11

Section 12

Alex Johnstone
65  Leave out section 12

Section 13

Elaine Murray
6  In section 13, page 6, line 2, leave out <(3) and (4)> and insert <(1A) to (1D)>

Elaine Murray
7  In section 13, page 6, line 6, leave out subsections (2) to (6) and insert—
   <(1A) The Scottish Ministers must seek advice from the bodies listed in subsection (1B)
   concerning any adverse impact that may arise if the qualifying abstraction in question
   were to be carried out.>
(1B) The bodies are—
   (a) the Scottish Environment Protection Agency,
   (b) Scottish Water,
   (c) Scottish Natural Heritage,
   (d) any local authority for an area likely to be affected,
   (e) any National Park Authority for an area likely to be affected.

(1C) The Scottish Ministers must take into account any advice received under subsection
(1A) in determining any such application.

(1D) The Scottish Ministers are not required to seek advice under subsection (1A) from a
body listed under subsection (1B) where that body is the applicant.

Alex Johnstone
66 Leave out section 13

Section 14

Alex Johnstone
67 Leave out section 14

Section 15

Alex Johnstone
68 Leave out section 15

Section 16

Alex Johnstone
69 Leave out section 16

Section 17

Alex Johnstone
70 Leave out section 17

After section 17

Nicola Sturgeon
18 After section 17 insert—

Corporate offending

(1) Subsection (2) applies where—
   (a) an offence under section 17 is committed by a relevant organisation, and
(b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.

(2) The responsible official (as well as the organisation) commits the offence.

(3) “Relevant organisation” means—
   (a) company,
   (b) limited liability partnership,
   (c) ordinary partnership,
   (d) other body or association.

(4) “Responsible official” means—
   (a) in the case of a company, director, secretary, manager or similar officer,
   (b) in the case of a limited liability partnership, member,
   (c) in the case of an ordinary partnership, partner,
   (d) in the case of another body or association, person who is concerned in the management or control of its affairs,
   but in each case also includes person purporting to act in such a capacity.

Section 18

Nicola Sturgeon

19 In section 18, page 7, line 34, leave out <or 8(1)(b) or (2)> and insert <, 8(1)(b) or (2) or 14(1)(c)>.

Alex Johnstone

71 Leave out section 18

Section 19

Alex Johnstone

72 Leave out section 19

Section 20

Nicola Sturgeon

20 In section 20, page 8, line 23, at end insert—
   <“premises” includes any land, building or other place,>.

Alex Johnstone

73 Leave out section 20
Section 22

Jim Eadie

In section 22, page 9, line 6, after <economic> insert <, social, environmental>

Jim Eadie

In section 22, page 9, line 9, at end insert—

<( ) In fulfilling its duty under subsection (1), Scottish Water must do so in ways best calculated to further the achievement of sustainable development.”.>

After section 22

Elaine Murray

After section 22, insert—

<Sustainable catchment management

In section 51 (sustainable development) of the 2002 Act, after subsection (3) there is inserted—

“(4) In this section, “sustainable development” includes sustainable catchment management.

(5) The Scottish Ministers must, within 12 months of this subsection coming into force, issue guidance under subsection (3) setting out how Scottish Water should best contribute to the achievement of sustainable catchment management.”.>

After section 26

Nicola Sturgeon

After section 26, insert—

<Other matters

Errors in metering

In section 54 (register of meter to be evidence) of the 1980 Act—

(a) in subsection (3), for the words “five per cent” there is substituted “the relevant percentage”,

(b) after subsection (3) there is inserted—

“(4) In subsection (3), “the relevant percentage” means—

(a) in the case of a high flow rate, 2.5%,

(b) in the case of a low flow rate, 6%.

(5) The Scottish Ministers, by regulations—

(a) must define “high flow rate” and “low flow rate” for the purpose of subsection (4),

(b) may amend a percentage figure appearing in subsection (4).”.
Section 27

Nicola Sturgeon

22 In section 27, page 11, line 36, at end insert—

<(6) But excluded from the definition given by subsection (5) is any water that is used or available as or for a private water supply within such meaning as the Scottish Ministers may by order prescribe for the purpose of this subsection.>

Nicola Sturgeon

23 In section 27, page 13, line 8, at end insert—

<( ) inspecting or measuring any water found there,>

Nicola Sturgeon

24 In section 27, page 13, line 11, after <any> insert <measuring,>

Nicola Sturgeon

25 In section 27, page 13, leave out line 36 and insert—

<76S Orders under this Part

An order under section 76M(6) or 76R(1) is subject to the negative procedure.”.>

Section 28

Elaine Murray

10 In section 28, page 14, line 27, at end insert—

<( ) In this section, “the purpose of protecting or improving the quality of any raw water” may include—

(a) meeting environmental objectives under the Water Environment and Water Services (Scotland) Act 2003,

(b) meeting sustainable flood management objectives under the Flood Risk Management (Scotland) Act 2009, or

(c) the development of water resources under the Water Resources (Scotland) Act 2013.”.>

Section 32

Nicola Sturgeon

26 In section 32, page 18, line 26, at end insert—

<(2A) But no offence is committed under subsection (1) if the relevant substance is passed in accordance with the provisions of Part II of this Act.>
Nicola Sturgeon
27 In section 32, page 18, line 27, leave out <and (2)> and insert <to (2A)>

Nicola Sturgeon
28 In section 32, page 19, line 4, at end insert—

<(2A) But subsection (4) does not apply if the relevant substance is passed in accordance with the provisions of Part II of this Act.>

Nicola Sturgeon
29 In section 32, page 19, line 5, leave out <subsection (1)> and insert <subsections (1) and (2A)>

After section 33

Elaine Murray
9 After section 33, insert—

<Definition of “trade premises”

In section 59(1) (interpretation) of the 1968 Act, in the entry for “trade or industry”, after the word “include” where it second appears there is inserted “premises used or managed by a public body or office holder (within the meaning of section 58 of the Nature Conservation (Scotland) Act 2004) and”.

Section 34

Nicola Sturgeon
30 In section 34, page 19, line 33, at end insert—

<38AA Other rules

(1) This Part prevails over any rule of law or real burden—

(a) requiring the agreement, of any owner of common property, to the carrying out of maintenance of the property, or

(b) concerning the recovery, by any owner of common property from another owner of the property, of the cost of such maintenance, so far as the rule or burden is applicable in connection with measures of the kind to which section 38B relates.

(2) In subsection (1), “real burden” is to be construed in accordance with the Title Conditions (Scotland) Act 2003.

Elaine Murray
11 In section 34, page 22, line 15, at end insert—

<38FA Public awareness

The Scottish Environment Protection Agency must prepare and publish a strategy for securing improved public understanding of the requirements under any enactment for the registration, care and maintenance of septic tanks.
Section 37

Nicola Sturgeon
31 In section 37, page 24, line 26, at end insert—

<( ) premises of such types, or other types of property, as are specified in the order.>

Schedule 1

Nicola Sturgeon
32 In schedule 1, page 29, line 7, at end insert <, and

( ) in such other manner as it thinks fit.>

Nicola Sturgeon
33 In schedule 1, page 29, line 17, after <made> insert <by any person>

Nicola Sturgeon
34 In schedule 1, page 29, line 20, after <published> insert <under this paragraph>

Nicola Sturgeon
35 In schedule 1, page 29, line 27, after <must> insert <(so far as reasonably practicable)>

Nicola Sturgeon
36 In schedule 1, page 29, line 32, leave out <manner> and insert <way>

Nicola Sturgeon
37 In schedule 1, page 29, line 34, after <made> insert <by the person concerned>

Nicola Sturgeon
38 In schedule 1, page 29, line 36, leave out <notification is given> and insert <notice is given to that person>

Nicola Sturgeon
39 In schedule 1, page 30, line 17, after <made> insert <by the person>

Nicola Sturgeon
40 In schedule 1, page 30, line 19, leave out <notification is given> and insert <notice is given to the person>

Nicola Sturgeon
41 In schedule 1, page 31, line 2, after <made> insert <by the person>
Nicola Sturgeon
42 In schedule 1, page 31, line 3, leave out <notification is given> and insert <notice is given to the person>

Nicola Sturgeon
43 In schedule 1, page 31, line 30, leave out <that fact> and insert <it>

Nicola Sturgeon
44 In schedule 1, page 31, line 36, leave out <that fact> and insert <it>

Nicola Sturgeon
45 In schedule 1, page 32, line 1, leave out <two newspapers> and insert <one newspaper>

Nicola Sturgeon
46 In schedule 1, page 33, line 13, leave out <two newspapers> and insert <one newspaper>

Nicola Sturgeon
47 In schedule 1, page 33, line 16, after <such> insert <further>

Nicola Sturgeon
48 In schedule 1, page 35, line 30, leave out <in connection with the purposes in paragraph 12(1)> and insert <there>

Nicola Sturgeon
49 In schedule 1, page 35, line 32, after <any> insert <measuring.>

Nicola Sturgeon
50 In schedule 1, page 36, line 36, at end insert—
References to publication etc.
18 (1) A relevant requirement is to be fulfilled without undue delay.
(2) In sub-paragraph (1), “relevant requirement” means requirement—
(a) to publish or give notice of something (or otherwise bring attention to it), and
(b) imposed on Scottish Water or the Scottish Ministers by paragraph 6, 7, 9 or 11.
19 (1) A reference in this Part to the day on which a notice is published under paragraph 1, 6 or 9 is to the earliest day when the notice has been so published in each manner mentioned in sub-paragraph (2).
(2) That is, published by Scottish Water—
(a) in at least one newspaper circulating in the relevant area, and
(b) on its website.
(3) The operation of sub-paragraph (1) is not affected by additional publication of the notice in any manner at any time.

After section 41

Nicola Sturgeon

51 After section 41, insert—

<Corporate offending

(1) Subsection (2) applies where—

(a) an offence under section 41 is committed by a relevant organisation, and

(b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.

(2) The responsible official (as well as the organisation) commits the offence.

(3) “Relevant organisation” means—

(a) company,

(b) limited liability partnership,

(c) ordinary partnership,

(d) other body or association.

(4) “Responsible official” means—

(a) in the case of a company, director, secretary, manager or similar officer,

(b) in the case of a limited liability partnership, member,

(c) in the case of an ordinary partnership, partner,

(d) in the case of another body or association, person who is concerned in the management or control of its affairs,

but in each case also includes person purporting to act in such a capacity.>

Section 47

Nicola Sturgeon

52 In section 47, page 27, line 7, leave out <or building> insert <, building or other place>

Schedule 3

Jim Eadie

74 In schedule 3, page 38, leave out line 9

Long Title

Jim Eadie

57 In the long title, page 1, line 1, after second <the> insert <sustainable>
Alex Johnstone

75 In the long title, page 1, line 2, leave out <to bring large-scale water abstraction under Ministerial control;>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Part 1: duty of the Scottish Ministers**

53, 12, 1, 57

**Part 1: designation of bodies**

2, 54, 13, 3

**Reporting on Scottish Ministers’ duty under Part 1**

14, 14A, 14B, 14C, 14D, 14E, 74

**Control of water abstraction: removal of Part 2**

58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75

**Control of water abstraction: miscellaneous**

15, 16, 17, 18, 19, 20

**Control of water abstraction: applications**

4, 5, 6, 7

**Scottish Water’s functions**

55, 56, 8

**Errors in metering**

21

**Raw water quality: miscellaneous**

22, 23, 24, 25

**Agreements for water quality**

10

**Discharge of fat, oil or grease from trade premises**

26, 27, 28, 29
Definition of “trade premises”
9

Private sewage works
30, 11

Water shortage orders
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52
INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

EXTRACT FROM THE MINUTES

2nd Meeting, 2013 (Session 4)

Wednesday 23 January 2013

Present:

Jim Eadie     Adam Ingram (Deputy Convener)
Alex Johnstone    Gordon MacDonald
Margaret McCulloch    Elaine Murray
Maureen Watt (Convener)

Also present: Nicola Sturgeon, Cabinet Secretary for Infrastructure, Investment and Cities

Water Resources (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 12, 13, 14, 15, 16, 17, 4, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52.

The following amendments were disagreed to (by division)—

1 (For 2, Against 5, Abstentions 0)
58 (For 3, Against 4, Abstentions 0)

Amendments 53, 2, 14A, 55, 10 and 9 were moved and, no member having objected, withdrawn.

The following amendments were not moved: 54, 3, 14B, 14C, 14D, 14E, 59, 60, 61, 5, 62, 63, 64, 65, 6, 7, 66, 67, 68, 69, 70, 71, 72, 73, 56, 8, 11, 74, 57, and 75.

The following provisions were agreed to without amendment: sections 2, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 33, 35, 36, 38, 39, 40, 41, 42, 43 and 44, schedule 2, sections 45, 46 and 48, schedule 3, sections 49, 50, 51 and 52 and the long title.

The following provisions were agreed to as amended: sections 1, 3, 4, 7, 8, 9,18, 20, 27, 32, 34 and 37, schedule 1 and section 47.

The Committee completed Stage 2 consideration of the Bill.
Water Resources (Scotland) Bill: Stage 2

10:01

The Convener: Agenda item 2 is stage 2 consideration of the Water Resources (Scotland) Bill. We will consider a number of Government and non-Government amendments, and the intention is to complete stage 2 today.

I welcome to the meeting Nicola Sturgeon, the Cabinet Secretary for Infrastructure, Investment and Cities, and her supporting officials: Christina Phillips, bill manager; Stephen Rees, from the legal directorate; and Alex Gordon, from the office of the Scottish parliamentary counsel.

Before we start, it might be helpful in speeding along proceedings if I point out a few things. If a member does not wish to move his or her amendment, he or she should simply say so. In that event, any other member can move the amendment, but I will not specifically invite other members to do so. Assuming that no other member moves the amendment, I will simply move to the next amendment on the marshalled list. If anyone wishes to withdraw an amendment, I will put the question, “Does anyone object to amendment X’s being withdrawn?” If any member objects, I will immediately put the question on the amendment.

Section 1—Duty of the Scottish Ministers

The Convener: Amendment 53, in the name of Jim Eadie, is grouped with amendments 12, 1 and 57.

Jim Eadie (Edinburgh Southern) (SNP): Amendments 53 and 57 are probing amendments aimed at exploring ways of strengthening the bill further to allow the views of stakeholders expressed during stage 1 to be taken on board, to reflect the committee’s recommendations in its stage 1 report and to build on what is already a worthwhile piece of legislation. I am grateful to the Royal Society for the Protection of Birds Scotland for its engagement on and discussions with me about the bill and its help in taking forward my amendments.

As members have received a helpful briefing from RSPB Scotland, I will come straight to the point. Amendment 53 seeks to address criticisms made by a range of witnesses at stage 1, including the UK Environmental Law Association, the IHP-HELP centre for water law, policy and science and Scottish Environment LINK, that the sustainable development duty in part 1 is not sufficiently robust. It is also consistent with the committee’s recommendation in its stage 1 report that...
“all three pillars of sustainability”
deserve the same emphasis.

The amendment seeks to provide a stronger
duty and is drafted in a way that is consistent with
provisions in other Scottish legislation such as the
Marine (Scotland) Act 2010. Under section 3 in
part 2 of that act, Scottish ministers and public
authorities are required to
“act in the way best calculated to further the achievement of
sustainable development, including the protection and,
where appropriate, enhancement of the health of that area,
so far as is consistent with the proper exercise of that
function.”

The amendment is also consistent with section
44(1) in part 4 of the Climate Change (Scotland)
Act 2009.

Similarly, amendment 57 is designed to make
clear in the bill that the development of our water
resources must be carried out sustainably. As the
RSPB has pointed out, a similar amendment led to
the word “sustainable” being included in the long
title of the Flood Risk Management (Scotland) Act
2009. The amendment makes it clear that the bill
gives consideration to all three pillars of
sustainability—that is, the economic, social and
environmental aspects. The amendment is
therefore entirely consistent with the committee’s
recommendations at stage 1 and the cabinet
secretary’s statement in the stage 1 debate that
“Our intention was never to drive economic benefit to the
detriment of social or environmental factors, as those
always need to be weighed up and balanced”. — [Official
Report, 19 December 2012; c 14948.]

Although it is of limited legal effect, the long title
acts as a description of the bill’s purpose and
should reflect our strong desire to ensure that
development is sustainable.

I move amendment 53.

The Deputy First Minister and Cabinet
Secretary for Infrastructure, Investment and
Cities (Nicola Sturgeon): I will deal with each
amendment in turn.

I thank Jim Eadie for lodging his amendments,
as they give us the opportunity to discuss issues in
more detail.

Amendment 53 seeks to alter the duty on
ministers under part 1 of the bill so that, in taking
the steps that they consider appropriate for the
purpose of ensuring the development of the value
of our water resources, they will be required to do
so in a way that is
“best calculated to further the achievement of sustainable
development”.

That would expressly include
“the protection and, where appropriate, recovery of water”

resources.

I have no difficulty with the first part of the
revised formulation of the sustainability duty that
Jim Eadie proposes—that is, with the reference to
ways that are
“best calculated to further the achievement of sustainable
development”
rather than
“ways designed to contribute to the sustainable use of the
resources”,

which is what is currently stated in the bill. However, I have more difficulty with the second
part of the amendment, which provides that
sustainable development includes
“the protection and, where appropriate, recovery of water”.

The reason for that is that water resources are
already protected under the Water Environment
and Water Services (Scotland) Act 2003, and
ministers and the Scottish Environment Protection
Agency are already obliged, when they exercise
their functions under that act and under related
legislation, to act in the way that is best calculated
to contribute to the achievement of sustainable
development. Section 22 of the 2003 act also
includes provision for ministers to make provision
by regulations for the remediation or restoration of
the water environment.

I am not clear about what gap in the existing
legislation the second part of the amendment is
intended to fill, so I ask Jim Eadie to seek to
withdraw the amendment. However, I would be
happy to discuss with him an amendment for
stage 3 that covers the first part of amendment 53.
If we could come to an agreement on that, I would
be happy to consider supporting such an
amendment at stage 3.

My amendment 12 also relates to part 1 of the
bill, in which the duty that is placed on ministers is
to
“take such ... steps as they consider appropriate for the
purpose of ensuring the development of the value of
Scotland’s water resources”.

The amendment is intended to clarify that the
concept of the value of Scotland’s water resources
includes not only the economic benefit, but the
social and environmental benefit. That informs
what is to be regarded as the value of water
resources, to avoid limiting that to their inherent
value.

As I indicated during the stage 1 debate last
month, I have listened carefully to the comments
that a range of stakeholders have made on that
point, and I am pleased to have lodged an
amendment that confirms that ministers must
weigh up social and environmental benefits
alongside economic benefit when they take steps
to develop the value of Scotland’s water resources. The amendment goes some way towards addressing the points that Jim Eadie made in speaking to his amendments.

I do not support amendment 1, which would include “peatlands” in the definition of water resources, although I understand why it was lodged. The addition of the word “peatlands” to the definition of water resources does not help to support the purpose of the bill. Part 1 of the bill is about water resources in the conventional, commonly understood sense; it is not about bogs, fens or any other type of land. In my view, adding “peatlands” to section 1 would go beyond the intended ambit of part 1. The amendment seeks to protect peatlands by artificially stretching the definition of water resources in a way that is not appropriate.

That said, the Government is committed to supporting peatlands for the many multiple benefits that they provide, such as biodiversity and potential carbon sequestration. A further Government contribution to peatland restoration was announced in the 2012 budget, and the Government and its agencies are working actively to support the protection and maintenance of those valuable lands.

The Government is committed to working with Scottish Natural Heritage and others to develop a peatland plan that recognises the valuable multiple benefits that peatlands provide. That will not only consider how we can restore damaged peatland but focus on how we can protect and are protecting the good-quality peatland that we have. That will consider all peatland across Scotland. In short, the Government is taking action to protect and maintain peatlands, but amendment 1 would not provide an appropriate way of furthering that aim.

Amendment 57 would alter the bill’s long title to refer to the “sustainable” development of Scotland’s water resources. Amending a long title does not affect a bill’s content and would have no practical effect. As I have just described, sustainability is adequately provided for in the bill. Development of any kind is covered by the long title as it stands and the addition of the proposed adjective would be an embellishment that gave perhaps undue emphasis to one strand of development.

What counts is the meaning and effect of part 1, taken overall. The long title is simply a formal element of the bill that introduces the main topics that are included in it. As I said, amendment 12, which is in my name, will ensure that value is understood in its widest sense, so I ask Jim Eadie not to move amendment 57.

Elaine Murray (Dumfriesshire) (Lab): I support all the amendments in the group. I heard what the cabinet secretary said about aspects of amendment 53, but I strongly support the policy intention of all the amendments.

Peatlands and particularly peat bogs are important water resources. The inclusion of peatlands through amendment 1 would ensure that peat bog management and restoration were part of the bill’s main purpose of developing Scotland’s water resources to deliver environmental and socioeconomic benefits to Scotland—that is the point of the amendment.

Sustainable land management in drinking water catchments provides one example of a benefit. The report of the International Union for Conservation of Nature UK commission of inquiry on peatlands said that, when drinking water supplies arise in peatland-dominated catchments, peatland restoration can improve raw water quality, which reduces the cost of water treatment downstream.

RSPB Scotland, which was also instrumental in developing my amendments, has expressed concern that using the definition of wetlands in the 2003 act will mean that peatland habitats are not considered to be water resources. There is no doubt that peatlands—including blanket bogs, raised bogs and fens—are wetlands; they are considered as such in the Scottish Environment Protection Agency’s wetland typology for Scotland, and the Ramsar convention on wetlands of international importance includes peatlands in its definition of wetlands.

Despite that, a strict interpretation of the 2003 act’s definition has led to the most abundant peatlands and peat bogs being discounted as wetlands in that act’s implementation. That is one reason why we are trying to ensure that the definition is okay in the bill. The situation is a consequence of the initial proposed definition of wetlands being considered too broad during the parliamentary process for what became the 2003 act. The wetlands definition was revised to become narrower and more specific but, unfortunately, that led to ambiguity about whether the definition covered all peatland types.

Amendment 1 would not change the implementation of the 2003 act, since the definition of wetlands in that act would remain unchanged. However, the amendment would ensure that sustainable management of Scotland’s peatlands would be taken forward as part of the bill’s purpose of developing Scotland’s water resources. That would deliver great economic, environmental and social benefits for Scotland.

In paragraph 29 of its stage 1 report, the committee sought
“a response from the Scottish Government on whether peatland habitats are covered by the reference to water resources under the Bill.”

Amendment 1 would clarify that peatland habitats, including blanket and raised bogs, were considered to be water resources under the bill.

The cabinet secretary said that the Government is taking forward work on peatland resources, but there is still a long way to go to restore all Scotland’s peatlands. Having a clear reference to peatlands in the definition of water resources would ensure that they could not be discounted in the development of the value of Scotland’s water resources.

Peatland restoration is valuable on many grounds, such as water quality, biodiversity, carbon storage and climate change adaptation. The IUCN UK commission of inquiry on peatlands recognised that peatland restoration in catchments where drinking water supplies arise can improve raw water quality and reduce the costs of water treatment downstream.

The Convener: As no one else wants to comment, I ask Jim Eadie to wind up and say whether he wishes to press or withdraw his amendment.

Jim Eadie: I thank the cabinet secretary for her explanation in relation to my amendment 53. I acknowledge what she said—that no problems exist with the first part of the amendment—and I welcome her offer to give the matter further consideration with a view to lodging an amendment at stage 3. I am therefore content not to press amendment 53 to a vote. I look forward to the discussions that will take the matter forward.

I also thank the cabinet secretary for her explanation in relation to amendment 57. I will—along with other members of the committee, I am sure—reflect on the points that she made and have further discussions with stakeholders on the issue. I am therefore content not to move amendment 57.

Amendment 53, by agreement, withdrawn.

Amendment 12 moved—[Nicola Sturgeon]—and agreed to.

Amendment 1 moved—[Elaine Murray].

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McCulloch, Margaret (Central Scotland) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
The Convener: I ask the cabinet secretary to speak to amendment 13 and the other amendments in the group.

Nicola Sturgeon: I will come to amendment 13 shortly, convener. I will start with amendments 2 and 3.

I do not think that it is appropriate for subsidiaries of Scottish Water to be included in the list of designated bodies as the amendments propose. Scottish Water has deliberately set up subsidiaries to undertake commercial projects that are separate from the core business of Scottish Water. That ensures that a clear distinction is drawn between the water and sewerage services that Scottish Water undertakes as a public utility and the commercial operations such as Scottish Water Horizons.

Scottish Water carries the primary responsibility for the exercise of the function concerned, so I believe that ministers should direct themselves to Scottish Water for the achievement of any outcome. It is for the management of Scottish Water to decide whether a subsidiary is the best place to secure the desired outcome, and ministers wish to give the board the freedom to do that and to manage its affairs. The ability to direct subsidiaries would constitute undue interference in the operation of the group and, perhaps more important, it would potentially be a recipe for confusion. I therefore ask Elaine Murray to withdraw amendment 2 and not to move amendment 3.

I have a great deal of sympathy with the points that Jim Eadie made in speaking to his amendment 54. The designated bodies that are listed in section 3 are the organisations that ministers feel have a key role in participating in the development of the value of our water resources and that it might be appropriate for ministers to direct in that regard. Although the forestry commissioners and the national park authorities might well have an important role, it is not thought likely that they will require directions from ministers in that regard.

My main comment relates to the Water Industry Commission for Scotland. Ministers currently have no power to direct the commission on policy matters. I believe that it would be inconsistent with the objectives of the legislation that established the commission as an independent economic regulator if ministers were to seek such powers of direction.

Additionally, not being on the list of designated bodies is no barrier to participation in the broader hydro nation programme. Partnership working is crucial to the success of much of the agenda, and many organisations from across the sectors are already participating. Given the universal nature of water, everyone has a role, to an extent, in contributing to the good stewardship of that resource. For those reasons—particularly my point about the Water Industry Commission—I ask Jim Eadie not to move amendment 54.

As I said at the outset, however, I have sympathy with Jim Eadie’s general argument. The fact that the situation is not static and that the agenda is evolving is the reason why it is important for ministers to have the ability to add or remove organisations from the list, should it become apparent that that would be helpful. The bill provides that opportunity, and amendment 13 will extend the opportunity by allowing ministers not just to add or remove a body but to update the list if, for example, a body that is added to the list at a later date changes its name. The bill as it stands, with amendment 13, provides flexibility for organisations to be added in future should that be felt to be appropriate or necessary.

Elaine Murray: I am slightly puzzled by the cabinet secretary’s explanation in relation to my amendment 2. I thought that it would be helpful to state explicitly that subsidiaries are covered by section 1.

Some of Scottish Water’s subsidiaries will be instrumental in taking forward the development of Scotland’s water resource, which is the purpose of the bill. For example, Scottish Water Horizons describes itself as using “innovative ideas, knowledge and assets to encourage growth and renewable technologies”.

To me, that fits with the aspirations of the bill and the hydro nation agenda to project Scotland as a global leader in water resources, management and expertise. Therefore, I am slightly confused as to why the cabinet secretary does not seem to want subsidiaries of Scottish Water to be covered by section 1. However, I will not press amendment 2, because I want to look into the issue in a bit more detail.

Nicola Sturgeon: I am happy to discuss the matter further with Elaine Murray. Subsidiaries of Scottish Water are covered by part 1, as they are part of Scottish Water. The point is that the ministerial direction would be to Scottish Water and that it would then be for Scottish Water to determine whether the best way to fulfil the content of the ministerial direction was through its core function or one of its subsidiaries. It is not as though subsidiaries are not covered; it is simply that we see the route for direction of the subsidiaries by ministers being through Scottish Water as the overall body. However, I am happy to discuss the matter further.

Elaine Murray: I will not press amendment 2, and we can think about the issue.
Amendment 2, by agreement, withdrawn.
Amendment 54 not moved.
Amendment 13 moved—[Nicola Sturgeon]—and agreed to.
Amendment 3 not moved.
Section 3, as amended, agreed to.

Section 4—Reporting after 3 years

The Convener: Amendment 14, in the name of the cabinet secretary, is grouped with amendments 14A to 14E and amendment 74.

Nicola Sturgeon: Amendment 14 relates to the requirement for ministers to report to Parliament on how they have fulfilled their duty under section 1 to ensure “the development of the value of Scotland’s water resources”.

I have listened to the comments that have been made about the reporting period and, while I agree that there should be a requirement for ministers to report on progress, I am not sure that producing a formal annual report is appropriate or proportionate. I therefore propose an amendment that commits to producing one report within three years, after which ministers will determine the reporting periods. That will give us flexibility to consider whether there are efficiencies to be made in joining up reporting—for example, around flood risk and river basin management planning. I welcome the committee’s intention to undertake annual scrutiny of progress following commencement.

I welcome amendments 14A to 14E, introduced by Jim Eadie, because I think that they give us an opportunity before we get to the final stage of the bill to discuss whether we have the right balance of reporting. I agree that a long-term agenda needs a long-term framework that must include reporting on progress made. As I have already said, I am not yet convinced that that is always best achieved through the laying of an annual report or having a duty that exists in perpetuity. Equally, though, I think that there is a discussion to be had to see whether we have the right balance. If Jim Eadie was not to press the amendments today, I would be very happy for my officials to discuss with him further amendments that he or the Government could introduce at stage 3 to shift the balance in favour of having a regular reporting regime.

I move amendment 14.

The Convener: I ask Jim Eadie to move amendment 14A and speak to the other amendments in the group.

Jim Eadie: I welcome the cabinet secretary’s amendment 14, the positive comments that she made about the need for appropriate and regular reporting mechanisms, and the offer of discussions to take forward suggestions on how best to implement that in the bill.

I lodged the amendments in this group to see whether we could add a few extra teeth to procedures for monitoring progress. Amendment 14A’s proposal to require an annual progress report, as this committee recommended in recommendation 68 of our report on the bill, would assist our committee to undertake its annual scrutiny of the eventual act.

Amendments 14A to 14D would impose a more rigorous requirement to report every three years instead of from time to time. Amendment 14E seeks to build on our committee recommendation that thought is given to how we can integrate reporting under the eventual act with reporting on the river basin management plans under the Flood Risk Management (Scotland) Act 2009.

Amendment 74 is consequential. In view of the positive contribution from the cabinet secretary, though, I am happy not to press the amendments today.

I move amendment 14A.

The Convener: Cabinet secretary, do you wish to wind up?

Nicola Sturgeon: I do not think that I need to add anything.

Amendment 14A, by agreement, withdrawn.
Amendments 14B to 14E not moved.
Amendment 14 agreed to.
Section 4, as amended, agreed to.

Section 5—Qualifying abstraction

The Convener: Amendment 58, in the name of Alex Johnstone, is grouped with amendments 59 to 73 and 75.

10:30

Alex Johnstone (North East Scotland) (Con): Amendment 58 is grouped with a rather long list of similar amendments, the net purpose of which would be to remove part 2 of the bill completely.

During stage 1, the RSPB and other witnesses highlighted a lack of clarity around the purpose of part 2 of the bill. Indeed, many witnesses—perhaps all those who had an opinion—were concerned that there had been no formal consultation on the proposals, which were a late addition to the bill.
Alex Johnstone that part 2 should be removed.

In their stage 1 evidence, the UK Environmental Law Association and the Law Society of Scotland questioned the need for part 2, given the existing powers under CAR.

The Scotch Whisky Association brought to my attention the fact that regulation 15 of those regulations already requires SEPA to consider any likely social and economic impacts or benefits that are associated with a controlled activity such as an abstraction. Fears that rivers would run dry without the bill’s abstraction limit are misplaced, since abstractions that damage the environment would contravene licence conditions and, as a result, bring about a fine or at least a court appearance.

Similar views have been shared by organisations such as the Association of Salmon Fishery Boards.

It is my view that stakeholders are unclear about the policy intention behind the new abstraction regime. They believe that the controlled activities regulations are preferable to the creation of an additional regulatory and cost burden on businesses. There is a deep-seated concern about the lack of consultation prior to the introduction of the bill, and the Government did not include any abstraction proposals in either of its two previous consultations. Finally, there is a general lack of understanding of the rationale behind the abstraction threshold limit of 10 megalitres a day and the list of exemptions.

There has been inadequate consultation, and part 2 has perhaps been rushed to legislation. Consequently, the best action would be to remove part 2 from the bill completely.

I move amendment 58.

Elaine Murray: I support Alex Johnstone’s amendment, for many of the reasons that he has outlined. It is unusual to find the RSPB, the Scotch Whisky Association and the Association of Salmon Fishery Boards on the same side on a particular issue. I think that the main issue is the lack of consultation rather than the fact that people’s interests are exactly the same.

Last week, one of my amendments was criticised for a lack of consultation, but here we have a whole section of a bill that has been introduced with a lack of consultation. I agree with Alex Johnstone that part 2 should be removed.

The Convener: My understanding is that the Scotch Whisky Association was not concerned enough to call for the removal of the section. Over to you, cabinet secretary.

Nicola Sturgeon: Alex Johnstone’s amendments seek to remove the whole of part 2. At the outset, I say that this part of the bill is arguably the most challenging element of the legislation, so it is understandable that some people, as Alex Johnstone said, might not have fully understood its purpose.

I have commented previously on the issue of consultation. The fact that the proposal was not included in previous consultations is the reason why we have continued to speak to the interested organisations. Of course—this might be the difference between part 2 and Elaine Murray’s amendment last week—the proposal has gone through stage 1 of the process, and people have had the opportunity to comment in that regard.

This part of the bill has a very important purpose. As we know, we in Scotland are fortunate to have high-quality water resources in abundance. As we live in a world of increasing water scarcity, it is prudent and appropriate that we take steps to protect that resource to ensure that its value to Scotland and the wider world can continue to be developed over the longer term.

Part 2 does that by requiring ministers’ approval for future very large-scale abstractions. The idea is to give ministers the opportunity to ensure that large water abstractions that draw heavily on Scotland’s water resources are in Scotland’s sustained best interests. We believe that the issue will grow in importance over time as both pressures and opportunities for Scotland created by increasing international water scarcity emerge, and proposals for individual abstractions need to take account of that developing context. In future, therefore, someone who wants to undertake a large water abstraction—in other words, one that is over 10 megalitres per day—will be required not only to seek authorisation from SEPA under CAR but to make an application to ministers to set out their proposals.

Some have suggested—and Alex Johnstone has repeated these points this morning—that the CAR regime is sufficient for this purpose, but I strongly disagree. It works well for the purpose for which it was designed, which is to assess the impact of and to control abstraction on activities liable to adversely affect the water environment, but it focuses—rightly so—on environmental concerns. What about abstractions that do not have an adverse environmental impact but which might have other implications for, say, communities near the water body? Furthermore, we might need to make a determination between competing alternative demands for water that...
might develop as a result of the changing views on water scarcity.

If SEPA does not consider an abstraction to have an adverse impact on the water environment, it will generally be approved under CAR. However, although SEPA can take account of wider social and economic factors in determining an application for an abstraction, it cannot set conditions on those wider social and economic issues. When granting CAR authorisations, SEPA is confined to imposing conditions it considers necessary to protect the water environment. Part 2, sitting alongside CAR, will allow us to take that wider social and economic perspective as well as the environmental perspective that SEPA is able to take under the CAR regime.

I understand the worries raised by some stakeholder groups that we are seeking to limit or curtail certain activities. I make it very clear that that is not the case: ministers will look at each application on its own merits. Ministers want—and, indeed, are obliged by part 1—to develop the value of Scotland’s water resources. I expect that, as long as large-scale abstractions are sustainable and provide a sustained benefit to Scotland, ministers will grant their approval.

In deciding whether to grant permission and what conditions should be set, ministers will consider Scotland’s best interests in the longer term and what represents good sustainable use of our water resources. We have also stated that ministers will bring forward regulations on the information that will accompany an application. My officials will continue to work with stakeholders as those regulations are drafted.

Later amendments will cover some of these issues but, for the purposes of this group, I ask Alex Johnstone not to press amendment 58. If he is minded to do so, I ask the committee to reject it.

Alex Johnstone: The inclusion of part 2 was not expected by many key stakeholders. I believe that the lack of understanding to which the cabinet secretary alludes and which I concede exists might be a direct result of the lack of consultation and the speed with which this part of the bill was introduced without the prior knowledge of many who are directly affected by it.

The general principles in part 2 cover areas that I admit will require further fine-tuning over time, but I believe that, although not perfect, the CAR regime could have been adjusted in the meantime to achieve additional objectives. That would have given us more time to consider the overall issue of abstraction and perhaps to legislate on it in future if required.

The committee requires to discuss the principle of whether section 5 should be in the bill. I have enabled that by lodging amendment 58 and it is my intention to press it to a vote.

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)
McCulloch, Margaret (Central Scotland) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)

Against
Eadie, Jim (Edinburgh Southern) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 58 disagreed to.

Section 5 agreed to.

Section 6—Prohibition arising

Amendment 59 not moved.

Section 6 agreed to.

Section 7—Exemption from approval

The Convener: Amendment 15, in the name of the cabinet secretary, is grouped with amendments 16 to 20.

Nicola Sturgeon: These amendments all relate to part 2, which, I am glad to say, is still in the bill and concerns control of water abstraction.

Amendment 15 is a minor technical amendment that clarifies that abstractions connected with the maintenance of mines and quarries are exempt from the part 2 regime, regardless of whether the mine or quarry in question is in operation.

Amendment 16 arose as a result of some of the comments that were made at stage 1. It seeks to clarify, and emphasises that ministers, when making regulations about the method of calculation of the amount abstracted, can make provision for all or some of the water to be left out of account. The intention is that ministers will take into consideration the use of the water and, in particular, whether a significant proportion of it is returned to the water environment—for example, cooling water that is used in distillation processes. That should address the concerns of some stakeholders that large-scale but predominantly non-consumptive users of water might be unnecessarily subjected to the requirement for ministerial approval.
Amendment 17 will require ministers to consult the specified organisations, and any others that they think appropriate, about any proposal to alter the details of the abstraction consent regime, such as reducing the volume threshold above which consent is required. It is lodged in recognition that consultation is helpful for transparency and that it is helpful for stakeholders to have the opportunity to comment on a proposal to alter the regime that could affect them.

Amendment 18 inserts into the bill provisions related to corporate offending. It will mean that, where an offence is committed by a company or other corporate entity in relation to the abstraction control regime, and that offence is attributable to a corporate official such as a director or manager, that official—as well as the company itself—can be prosecuted. Abstractions subject to the part 2 regime will predominantly, if not exclusively, be made by corporations. Therefore, the possibility of personal prosecution will encourage compliance with the regime. There are examples of such provisions in other legislation.

Amendment 19 is proposed in response to comments from the Subordinate Legislation Committee. It provides that regulations prescribing additional circumstances in which ministerial approval of a qualifying abstraction may be suspended or revoked will be subject to the affirmative procedure.

Amendment 20 defines what is meant by “premises” as that term is used in part 2, which concerns the control of water abstractions. The term is used in relation to the advice that ministers receive from Scottish Water about the effect of an abstraction on its core services to premises in Scotland. It is also used in relation to Scottish Water’s exemption from the new approval regime. In both cases, the concept of premises ought to be as wide as possible, as ministers want to receive advice from Scottish Water in relation to the effects of a proposed abstraction on all premises that Scottish Water serves and want to fully exempt Scottish Water from the abstraction regime in relation to its core services.

I undertook to revisit the references to premises throughout the bill to check that they were appropriate. Amendment 20 provides an appropriate definition of premises for part 2 of the bill.

I move amendment 15.

Amendment 15 agreed to.

Amendment 60 not moved.

Section 7, as amended, agreed to.

Section 8—The relevant threshold

Amendment 16 moved—[Nicola Sturgeon]—and agreed to.

Amendment 61 not moved.

Section 8, as amended, agreed to.

After section 8

10:45

Amendment 17 moved—[Nicola Sturgeon]—and agreed to.

Section 9—Application for approval

The Convener: Amendment 4, in the name of Elaine Murray, is grouped with amendments 5 to 7.

Elaine Murray: Section 9 concerns the procedure that would have to be followed when applying to the Scottish ministers for approval for a qualifying abstraction. Section 9(2) states that ministers “may ... make provision about the procedure” for applications. That is too ambiguous. There needs to be a clear duty on ministers to set out the procedures so that applicants are clear about what is expected of them. Section 9(3) states that “the regulations may” have to include a number of requirements relating to the process but, again, there should be a clear requirement for the regulations to set out those requirements.

Section 13 places a requirement on Scottish Water and on SEPA to give the Scottish ministers advice on any adverse impacts that might arise from the abstraction in question. However, Scottish Water and SEPA would only have to provide advice if ministers sought it. As the bill is currently drafted, ministers do not have to seek advice on the potential adverse impacts of every abstraction that qualifies under part 2. Amendment 7 requires ministers to seek advice when relevant.

At the moment, the advice will be sought only from SEPA and from Scottish Water. A wider list of relevant bodies should be included in the bill so that they are obliged to give evidence if a minister requests it. Such bodies should include Scottish Natural Heritage for advice relating to impacts on designated sites and protected species, and national park authorities and local authorities for advice on impacts relating to proposed abstractions within their administrative boundaries. Amendment 7 also requires ministers to take account of such advice when determining an application.

I move amendment 4.

Nicola Sturgeon: Amendments 4 and 5 would require ministers to make more detailed provision
by regulations regarding the application procedure for an abstraction approval and would also require them to ensure that all the elements listed at section 9(3) were included in the regulations. Although I agree that ministers should—and fully intend that they will—make regulations about the abstraction application process, I do not believe that reducing the flexibility over its content is sensible. I am therefore minded to support amendment 4, but not amendment 5.

Amendments 6 and 7 also seek to alter the position in the bill that ministers may seek advice about an application for abstraction consent from SEPA in relation to the environmental impact and from Scottish Water in relation to its core functions. The amendments would require ministers to seek advice from a greater number of organisations. I believe that that would hamper the application process by adding in bureaucracy that is not helpful. Ministers will of course be free to consult SNH and other bodies informally in relation to any particular application, should they consider it appropriate.

I therefore ask Elaine Murray not to move amendments 5, 6, and 7, but I indicate my support for amendment 4.


Amendment 4 agreed to.
Amendments 5 and 62 not moved.
Section 9, as amended, agreed to.

Section 10—Factors as to approval
Amendment 63 not moved.
Section 10 agreed to.

Section 11—Conditions of approval
Amendment 64 not moved.
Section 11 agreed to.

Section 12—Additional requirements
Amendment 65 not moved.
Section 12 agreed to.

Section 13—Advice from other bodies
Amendments 6, 7 and 66 not moved.
Section 13 agreed to.

Section 14—Suspension and revocation
Amendment 67 not moved.
Section 14 agreed to.

Section 15—Appeal against decision
Amendment 68 not moved.
Section 15 agreed to.

Section 16—Monitoring and records
Amendment 69 not moved.
Section 16 agreed to.

Section 17—Abstraction-related offence
Amendment 70 not moved.
Section 17 agreed to.

After section 17
Amendment 18 moved—[Nicola Sturgeon]—and agreed to.

Section 18—Procedure for regulations
Amendment 19 moved—[Nicola Sturgeon]—and agreed to.
Amendment 71 not moved.
Section 18, as amended, agreed to.

Section 19—Controlled Activities Regulations
Amendment 72 not moved.
Section 19 agreed to.

Section 20—Other definitions for Part
Amendment 20 moved—[Nicola Sturgeon]—and agreed to.
Amendment 73 not moved.
Section 20, as amended, agreed to.
Section 21 agreed to.

Section 22—Development of assets
The Convener: Amendment 55, in the name of Jim Eadie, is grouped with amendments 56 and 8.

Jim Eadie: I do not wish to add much to what I said on the first group of amendments. Amendments 55 and 56 are suggested in light of the recommendation in paragraph 40 of the committee’s stage 1 report, which calls for “a deserved equality of emphasis to all three pillars of sustainability”.

That is about ensuring that we develop our water resources with due consideration to not just economic benefit, but environmental and social aspects. I look forward to hearing the Government’s view on the amendments.

I move amendment 55.
Elaine Murray: Part 4 makes provisions to enable Scottish Water to enter into management agreements with land managers to protect and improve raw water quality. The inclusion of sustainable catchment management in the definition of "sustainable development" would help to take forward a sustainable catchment management approach that addresses water quality problems at source rather than relying solely on expensive end-of-pipe treatment solutions to treat water. The approach can deliver a range of benefits, including reduced water treatment costs and associated energy use and improved water quality, as well as benefits for biodiversity, climate change adaptation and recreation.

The committee’s stage 1 report made two recommendations in relation to catchment management. At paragraph 149, the committee welcomed

"the emphasis on partnership working and its reference to catchment management initiatives together with the non-legislative work that the Scottish Government intends to undertake to accompany the Bill."

The committee stated that it would also welcome

"further details of what the non-legislative work will include, and also how the Scottish Government intends to engage with those groups that have concerns about this Part of the Bill to explain the rationale behind the provisions and their practical effect."

In paragraph 150, the committee called on the Scottish Government

"to consider whether NGOs and catchment management groups should be specifically included in the Bill and to what extent it will include them in its non-legislative activity that will be conducted in parallel with the Bill."

Amendment 8 would require ministers to provide guidance that sets out how Scottish Water can best take forward the sustainable catchment management approach. That should address the points that the committee raised in paragraphs 149 and 150 by clarifying how partnerships might be developed and how the relevant bodies and organisations could work together to take forward that approach.

Nicola Sturgeon: Amendment 55 aims to define value in the context of Scottish Water’s duty to develop the value of its assets and expertise as expressly including environmental and social benefits as well as economic benefits. That duty is in proposed new section 50A of the Water Industry (Scotland) Act 2002. The amendment would place particular emphasis on those further aspects of value. That is appropriate in the context of the duty on the Scottish ministers in part 1 of the bill to develop the value of Scotland’s water resources, but I am not so sure that it is suitable in the context of Scottish Water’s assets and expertise. Those contexts are quite different.

Scottish Water’s core functions are protected to some extent by proposed new section 50A of the 2002 act, but there could be adverse consequences from the amendment. As drafted, the amendment could distort the way in which Scottish Water should properly use and develop its assets and expertise. The resulting risk is that Scottish Water could end up with commercial disadvantages if it is forced to use and develop its assets and expertise in a particular direction. In particular, the amendment would affect the commercial operations of Scottish Water and its subsidiaries, which, given that they act in a competitive market, are understandably and properly driven by economic benefit to a large extent.

That said, the amendment has prompted us to think about the section again. Even as it stands, the reference to “other benefit” might need to be further qualified. Therefore, on reflection prompted by the amendment, we intend to look at the matter again before stage 3.

I thank Jim Eadie for lodging the amendment, but ask him to withdraw it for the reasons that I have given, on the understanding that the matter will be revisited before stage 3 and with the undertaking that I am happy to discuss further with him our developing thinking on the matter.

Amendment 56 would add a reference to achieving sustainable development to Scottish Water’s duty to develop its assets and expertise. Scottish Water’s functions are covered by section 51 of the Water Industry (Scotland) Act 2002, which already requires it, in exercising its functions, to act in the way that is best calculated to contribute to the achievement of sustainable development. The amendment is therefore not necessary and I ask Jim Eadie not to move it.

On amendment 8, Scottish Water has begun to pilot aspects of sustainable catchment management and is working in partnership with other agencies and those who live and work in particular catchments to explore the potential of a range of interventions. Scottish Water is, of course, concerned with developing all sustainable techniques to support water treatment processes and compliance with drinking water quality standards. The bill seeks to provide Scottish Water with the powers that it needs to support the sustainable management of our water resources, and it would be disproportionate to highlight one aspect of that wider sustainable approach. Sustainable catchment management will develop in importance over time and will gain definition, and I expect Scottish Water to play its part in that, but I do not consider that placing additional reporting burdens on just one of the many partners that are involved in the process to be particularly helpful. I understand Elaine Murray’s motivations
in lodging the amendment, but ask her to consider what I have said and to not move it.

Jim Eadie: I thank the cabinet secretary for her explanation and clarification. In particular, I understand the distinction that she has highlighted between the duty that is placed on ministers and the requirement that may be placed on Scottish Water. I welcome her commitment to revisit at stage 3 the issues that amendment 55 raises and am therefore content not to press the amendment to a vote.

Amendment 55, by agreement, withdrawn.
Amendment 56 not moved.
Section 22 agreed to.

After section 22
Amendment 8 not moved.
Sections 23 to 26 agreed to.

After section 26

The Convener: Amendment 21, in the name of the cabinet secretary, is in a group on its own.

Nicola Sturgeon: Amendment 21, which Scottish Water suggested, will insert a new section into the bill. Scottish Water brought to my attention an apparent inconsistency in relation to the permissible tolerances for water meter accuracy between section 54 of the Water (Scotland) Act 1980 and UK weights and measures legislation. I therefore agreed to lodge this technical amendment, as it is sensible to have consistency in such matters. For completeness, I should mention that what constitutes high and low flow rates is highly technical and unsuitable for primary legislation, so those terms will be defined in subordinate legislation. Amendment 21 expressly requires that to be the case.

I move amendment 21.
Amendment 21 agreed to.

Section 27—Steps for sake of quality

11:00

The Convener: Amendment 22, in the name of the cabinet secretary, is grouped with amendments 23 to 25.

Nicola Sturgeon: These amendments seek to make changes to part 4, which is about raw water quality. The intention is to allow Scottish Water to take a proactive approach to investigating the raw water within a catchment and determining any factors that might be impacting on its quality. Scottish Water has to treat raw water so that it meets drinking water quality standards when it becomes part of the public water supply. In some instances, it might be cheaper to address the causes of upstream pollution through subsequent treatment. Part 4 of the bill is about empowering Scottish Water to be able to gather the information that it needs to make that assessment.

Amendment 22 will provide that raw water that forms part of a private water supply is excluded from these provisions. It would not be appropriate or necessary for Scottish Water to be able to take steps to investigate raw water that was part of a private supply, as its interest is only in water that is intended to become part of the public supply. What constitutes a private supply is to be defined in subordinate legislation, as it is likely to be done by reference to how a private supply is defined in other subordinate legislation, to which it would not be appropriate for primary legislation to refer.

Amendments 23 and 24 provide clarification that, in undertaking investigations into raw water quality, an approved person may use equipment that measures the water as well as take samples or install equipment to do so. Measurement of water will often be a necessary element of assessing raw water quality.

Amendment 25 confirms that regulations defining private water supplies for the purposes of part 4 are subject to the negative resolution procedure. I believe that that is the appropriate level of scrutiny for such orders. The amendment will bring the procedure for the two types of order that relate to the raw water provisions into a single new section in the Water (Scotland) Act 1980, into which the provisions on raw water quality will be inserted.

I move amendment 22.
Amendment 22 agreed to.
Amendments 23 to 25 moved—[Nicola Sturgeon]—and agreed to.
Section 27, as amended, agreed to.

Section 28—Agreements about activities

The Convener: Amendment 10, in the name of Elaine Murray, is in a group on its own.

Elaine Murray: The bill’s provisions would enable Scottish Water to enter into agreements “for the purpose of protecting or improving” raw water quality. That is obviously a good thing, and management agreements will contribute to sustainable catchment management by addressing drinking water quality issues at source.

However, the provisions fail to provide the opportunity for management in drinking water catchments to deliver wider benefits and to meet in an integrated way other statutory duties—for example, those relating to the water framework
directive and sustainable flood management. The intention behind amendment 10 is to ensure that the meeting of environmental objectives under the Water Environment and Water Services (Scotland) Act 2003 and sustainable flood management objectives under the Flood Risk Management (Scotland) Act 2009 is included when management agreements are entered into.

I move amendment 10.

**Nicola Sturgeon:** Section 28 will insert new section 68A into the Water (Scotland) Act 1980, enabling Scottish Water to enter into agreements with landowners or local authorities to carry out activities that Scottish Water considers necessary to protect or improve raw water quality.

Amendment 10 would enable Scottish Water to enter into agreements with landowners or local authorities in order also to carry out activities that Scottish Water considers necessary to meet objectives under the Water Environment and Water Services (Scotland) Act 2003 and the Flood Risk Management (Scotland) Act 2009, and for the purposes of the duty in the bill to develop the value of Scotland’s water resources.

The 2003 act objectives referred to in paragraph (a) of the proposed new subsection that the amendment would insert in section 28 are set by the Scottish Environment Protection Agency in accordance with the water framework directive. Scottish Water is not obliged to meet those objectives. I do not think, therefore, that there is anything to be gained by empowering Scottish Water to enter into voluntary agreements with landowners to try to achieve those objectives.

Section 28 is about agreements to improve raw water quality; it is not about flood risk management. I consider that the extensive duties in the Flood Risk Management (Scotland) Act 2009 are already sufficient, and I would argue that paragraph (b) of the proposed new subsection is unnecessary.

On paragraph (c), Scottish Water is already empowered by section 21 of the bill

“to do anything that”

it

“considers will assist in the development of the value of Scotland’s water resources”.

That power is broad and, although this is not explicit, it encompasses the ability to enter into agreements with landowners, occupiers or local authorities. As such, paragraph (c) of the proposed new subsection is unnecessary.

I do not consider any of the three elements of amendment 10 to be necessary. Furthermore, I do not consider that they belong in new section 68A of the 1980 act, which concerns agreements for raw water quality. The water framework directive and flood risk management issues have nothing to do with raw water quality. Furthermore, the amendment would not add anything to the duty that is already placed on Scottish Water under the Flood Risk Management (Scotland) Act 2009 to work with other responsible authorities

“with a view to reducing overall flood risk”.

All of that said, I would welcome further discussion with Elaine Murray on the matter ahead of stage 3 to see whether there are any issues that are worthy of further exploration. However, for now, and for the reasons that I have stated, I ask her to withdraw the amendment.

**Elaine Murray:** A primary issue in the bill is around Scottish Water’s core functions regarding raw water quality. Amendment 10 was intended not to take anything away from that core responsibility, but to try to ensure that Scottish Water considered the opportunities to deliver other statutory duties, such as those under the 2003 act or the 2009 act, alongside delivery of the core function of improving raw water quality. I am prepared to withdraw the amendment on the basis that it is perhaps not the most appropriate way of achieving that objective, and that we might be able to consider some further refining before stage 3.

Amendment 10, by agreement, withdrawn.

Section 28 agreed to.

Sections 29 to 31 agreed to.

**Section 32—Substances generally**

**The Convener:** Amendment 26, in the name of the cabinet secretary, is grouped with amendments 27 to 29.

**Nicola Sturgeon:** This group of amendments relates to part 6 of the bill, which deals with the sewerage network and any discharges into the public sewer. Under the provisions that part 6 inserts into the Sewerage (Scotland) Act 1968, an offence is committed if a person

“passes, or permits to be passed,”

fat, oil or grease into the public sewer network from trade premises.

Substances such as fats cause Scottish Water a great deal of difficulty, as they can block pipes and reduce flow rates, and they are time consuming and costly to remove. However, there are situations where a person may be permitted under part II of the 1968 act to pass fat, oil or grease into the network. It goes without saying that a person should not be committing an offence by doing that when they are permitted to do so. Although the competing rules would fall to be reconciled in practice, amendment 26 makes it explicitly clear that no offence is committed when the act in
question is done with the relevant permission. That is consistent with a similar offence already in the 1968 act. Amendment 27 is a technical change consequential to amendment 26.

Amendment 28 provides that, where Scottish Water has given its consent to the discharge, it cannot recover its costs for repairing any damage that has been caused. Amendment 29 is a technical change consequential to amendment 28.

I move amendment 26.

Amendment 26 agreed to.

Amendments 27 to 29 moved—[Nicola Sturgeon]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

After section 33

The Convener: Amendment 9, in the name of Elaine Murray, is in a group on its own.

Elaine Murray: The purpose of amendment 9 might have been incorporated through amendment 20; I am sure that the cabinet secretary will be able to advise us whether that is the case. Amendment 9 would clarify the definition of trade premises by inserting the words

"premises used or managed by a public body or office holder (within the meaning of section 58 of the Nature Conservation (Scotland) Act 2004)".

The bill creates an offence in relation to

"the passing of fat, oil or grease from trade premises into a public sewer or a drain"

and uses the definition of trade premises in section 59(1) of the 1968 act, which is

"any premises used or intended to be used for carrying on any trade or industry",

which

"shall include premises used or intended to be used in whole or in part for carrying on agriculture, horticulture or scientific research or experiment, or as a hospital or ... as accommodation provided by a care home service".

Many public sector premises, such as local authority offices, schools and further education establishments, are not covered by the 1968 act’s definition. Given the scale of catering facilities in some public sector premises, it would be sensible for the provisions on the discharge of fats, oils and grease into the sewerage network to cover them. However, as I said, amendment 9 might have been overtaken by amendment 20.

I move amendment 9.

Nicola Sturgeon: I thank Elaine Murray for outlining the reasons behind amendment 9. The issue is different from the one that we previously debated, so it is fair to debate the amendment on its own merits.

Amendment 9 would bring premises that are used by certain public bodies or office-holders within the scope of the new offence that relates to the discharge of fat, oil and grease from trade premises and the new power for Scottish Water to recover expenses for any damage that is caused to sewers or drains as a result. With the exception of hospitals and care homes, premises that public bodies use are generally excluded from the new provisions and from the trade effluent consent regime in part II of the 1968 act.

The amendment raises the question whether the trade effluent consent regime would be extended to cover premises that public bodies use because, at first sight, they would be brought into that regime as a result of changing the meaning of “trade premises”. On the other hand, the definition of trade effluent would not be expanded to include waste from such premises.

The 1968 act regime works well and will be further improved by the addition, through the bill, of the provisions that expressly prohibit the discharge of fats, oils and grease into the public sewer. Those provisions complement provisions that are in the 1968 act, and I am not aware of any concerns on the part of Scottish Water because the provisions do not extend to premises that are used by public bodies generally.

I urge Elaine Murray to withdraw amendment 9, but I would be happy to discuss the issue before stage 3, in case there is a particular reason for the amendment that we have not encapsulated in the response that I have just given.

Amendment 9, by agreement, withdrawn.

Section 34—Common maintenance

The Convener: Amendment 30, in the name of the cabinet secretary, is grouped with amendment 11.

Nicola Sturgeon: Amendment 30 relates to the provisions in part 6 of the bill on the maintenance of private sewage treatment works, which most commonly take the form of a septic tank. When such works are owned in common, the consent of all proprietors to any maintenance is normally required, either by title conditions or at common law. That can result in a minority blocking their fellow owners’ attempts to empty a tank or maintain it properly, which could damage the water environment and place all proprietors in breach of conditions that are imposed under CAR.

The bill seeks to address that problem by allowing any owner of works that are owned in common to undertake necessary maintenance without the consent of all the other owners and to
recover their shares of the costs from those owners. It is implicit that the provisions are intended to override any contrary common-law rules and any alternative provision in the title deeds of properties, but it is prudent to put that beyond doubt. Accordingly, amendment 30 clarifies that the provisions take precedence over any contrary rule of law or real burden.

Amendment 11 would require SEPA to publish a strategy to secure better public understanding of the statutory requirements on the registration, care and maintenance of septic tanks. The amendment aims to address concerns that have been raised about the lack of awareness of how best to maintain a septic tank, which I agree is an issue.

I understand that SEPA, Scottish Water and my officials have agreed a work plan on the subject, which has been published on the Scottish Government’s website. That work plan aims to address various issues that relate to septic tanks, such as increasing the number of tanks that are registered with SEPA, sharing data on their locations and increasing public awareness of responsibilities to maintain and empty them. I am sure that SEPA and Scottish Water would be happy to provide an update on that programme of work to the committee or individual members to reassure them that the work is under way. In light of that, I ask Elaine Murray not to move amendment 11.

I move amendment 30.

11:15

Elaine Murray: Amendment 11 seeks to include in the bill provision on septic tank maintenance, in particular by requiring SEPA to produce

"a strategy for securing improved public understanding of the requirements ... for the registration, care and maintenance of septic tanks."

Despite a requirement under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 for all septic tanks to be registered with SEPA, it is known that the register of septic tanks in Scotland is incomplete. A recent policy statement on rural waste water treatment recognised that

"around 40% of all tanks remain unregistered."

That policy statement made recommendations on the better management of septic tanks, including that SEPA should raise awareness of the legal obligations on septic tank owners. It may be that the planned work to which the cabinet secretary referred is part of that awareness-raising process. Amendment 11 would take that forward by requiring SEPA to produce a strategy setting out how it will improve awareness about the registration, care and maintenance of septic tanks in Scotland. The bill already includes provisions to improve septic tank management; the aim of amendment 11 is to build on that by including the requirement for such a strategy.

However, I understand from the cabinet secretary’s remarks that a work plan is already under way, so I will not move amendment 11.

Alex Johnstone: I want to say a few words in support of amendment 11, although Elaine Murray has made it clear that she does not intend to move her amendment. My experience on the ground is that there is a great deal of confusion and misunderstanding surrounding the issue of registration and maintenance of septic tanks. The issue appears sporadically but quite often in my mailbag, perhaps largely due to the fact that I represent a rural area where there are a lot of private septic tanks and sewage works. The proposal may well be covered by existing regulation, but the implementation of that is not as perfect as it might otherwise be. Elaine Murray has correctly identified an issue that needs work, and I would be very supportive of any improvement in the position in future.

Nicola Sturgeon: I agree with Alex Johnstone that it is helpful to have the issue highlighted. That lack of awareness and understanding has prompted the work to which I referred. In asking for amendment 11 not to be moved, I recognise the issue that has been raised, but I think that it is being dealt with through the work that I described. As I said, I am sure that Scottish Water and SEPA would be happy to brief the committee further on that.

Amendment 30 agreed to.
Amendment 11 not moved.
Section 34, as amended, agreed to.
Sections 35 and 36 agreed to.

Section 37—Content of order

The Convener: Amendment 31, in the name of the cabinet secretary, is grouped with amendments 32 to 52.

Nicola Sturgeon: Amendments 31 to 52 refine the operation of water shortage orders, the detail of which is set out mainly in schedule 1 to the bill. The amendments have been developed following discussion with Scottish Water and SEPA on the anticipated practical operation of the provisions. Although we do not expect to have to make water shortage orders in Scotland frequently, we want the provisions to be clear and unambiguous so that they provide a clear set of actions and a timescale for the process, including a straightforward process by which people can make representations to ministers, so that the orders are able to achieve the right result.
Amendment 31 makes it clear that a water shortage order may impose water-saving measures in relation to particular premises or property or types of premises or property. For example, the measures might apply only to premises used for particular purposes or only to particular types of buildings.

Amendment 32 provides that Scottish Water may publicise proposed water shortage orders, in addition to on its website or in a newspaper, “in such other manner as it thinks fit.”

Amendments 33 and 34 will make minor drafting clarifications. Amendment 35 provides that Scottish Water need notify affected owners about a proposed order only “so far as reasonably practicable”.

That will avoid issues that might otherwise arise if Scottish Water cannot identify a particular owner despite its best efforts to do so.

Amendments 36 to 44 are technical amendments that clarify but do not significantly change certain details regarding the notice and representation provisions of schedule 1.

Amendments 45 and 46 will reduce from two to one the minimum number of newspapers in which Scottish Water must publish notice of a water shortage order or the extension of such an order. Those are minimum requirements, and Scottish Water may publish more widely if it thinks it appropriate to do so. In practice, I think that we can expect the national media to play their part in publicising the fact that a water shortage order has been made.

Amendments 47 and 48 are drafting clarifications.

Amendment 49 ensures that measuring equipment can be installed in premises as part of a water shortage order, where Scottish Water needs to take measurements.

Amendment 50 will ensure that, whenever Scottish Water or ministers are obliged to publish or give notice of something in connection with water shortage orders, they do so without undue delay. That reflects what is likely to be the relatively urgent context of a water shortage order and will ensure that each stage of the process is progressed promptly.

Amendment 51 adds a corporate offending provision in relation to the section 41 offence of failure to comply with a water shortage order. In a similar manner to the corporate offending provision amendment that was discussed earlier in relation to the abstraction control regime in part 2, that will allow corporate officials to be prosecuted where corporate behaviour is properly attributable to them, which will encourage compliance.

Finally, amendment 52 broadens the definition of “premises” as it applies in part 7, so that a water shortage order may apply to as broad a range of premises as possible. In the case of a shortage in the public supply, everyone, from businesses to householders, could be asked to do their bit to help reduce demand on the network, and this amendment seeks to clarify that every conceivable type of premises may be the subject of a water shortage order.

In summary, although these amendments are mainly technical in nature, they are all important to ensure the proper and effective functioning of the new system of water shortage orders that is being introduced by the bill.

I move amendment 31.

Amendment 31 agreed to.

Section 37, as amended, agreed to.

Sections 38 and 39 agreed to.

Schedule 1—Water shortage orders

Amendments 32 to 50 moved—[Nicola Sturgeon]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 40 and 41 agreed to.

After section 41

Amendment 51 moved—[Nicola Sturgeon]—and agreed to.

Sections 42 to 44 agreed to.

Schedule 2 agreed to.

Sections 45 and 46 agreed to.

Section 47—Other expressions in Part

Amendment 52 moved—[Nicola Sturgeon]—and agreed to.

Section 47, as amended, agreed to.

Section 48 agreed to.

Schedule 3—Repeal of enactments

Amendment 74 not moved.

Schedule 3 agreed to.

Sections 49 to 52 agreed to.

Long title

Amendment 57 not moved.

The Convener: Amendment 75 is in the name of Alex Johnstone.
Alex Johnstone: Unfortunately, due to my failure to persuade the minister earlier, there is no need for this amendment.

Amendment 75 not moved.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for their attendance.

11:24

Meeting suspended.
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Water Resources (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

PART 1
DEVELOPMENT OF WATER RESOURCES

1 Duty of the Scottish Ministers

(1) The Scottish Ministers must—

(a) take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources,

(b) do in ways designed to contribute to the sustainable use of the resources.

(2) In fulfilling the duty under subsection (1), the Scottish Ministers are to act so far as is consistent with the proper exercise of their—

(a) functions under the 2003 Act and the 2009 Act,

(b) other functions (whether or not relating to water resources or environmental matters).

(3) In subsection (1), the reference to the value of water resources includes the economic, social, environmental or other benefit deriving from the use of (or any activities in relation to) the resources.

(4) In this section—

“the 2009 Act” means the Climate Change (Scotland) Act 2009,

“water resources” means wetland, inland water and transitional water as defined by section 3 of the 2003 Act.
2 Involvement of public bodies

(1) For the purpose of securing its participation in development of the kind mentioned in section 1(1), the Scottish Ministers may give a designated body directions as to the exercise of its functions.

(2) Directions under subsection (1) may be—
   (a) of a general or specific character,
   (b) for collective or individual application.

(3) Before giving directions under subsection (1), the Scottish Ministers are to consult each body to which they would apply.

(4) A body must comply with directions under subsection (1) applying to it.

(5) Directions under subsection (1) may vary or revoke earlier such directions.

(6) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to a designated body.

3 Designation of bodies

(1) In section 2, the references to a designated body are to any of the following—
   (a) Scottish Water,
   (b) the Scottish Environment Protection Agency,
   (c) Scottish Natural Heritage,
   (d) Scottish Enterprise,
   (e) Highlands and Islands Enterprise.

(2) The Scottish Ministers may by regulations modify the list in subsection (1) by—
   (a) adding a public body,
   (b) updating or removing an entry.

(3) Before making regulations under subsection (2), the Scottish Ministers are to consult each body to which the modification would relate.

(4) Regulations under subsection (2) are subject to the negative procedure.

4A Report on steps taken

(1) The Scottish Ministers—
   (a) must prepare an initial report on how (and the extent to which) they have fulfilled the duty under section 1(1) during the period of 3 years beginning with the date on which section 1(1) comes into force,
   (b) from time to time as they consider appropriate, may prepare a further report on how (and the extent to which) they have fulfilled the duty under section 1(1) during any subsequent period of at least 3 years.

(2) A report may include such additional information as the Scottish Ministers consider appropriate.

(3) A report is to be laid before the Scottish Parliament as soon as reasonably practicable after the end of the period to which the report relates.
PART 2

CONTROL OF WATER ABSTRACTION

Introduction

5 Qualifying abstraction

(1) In this Part, “qualifying abstraction” means abstraction of water by any person—
   (a) from a particular body of inland water within Scotland, and
   (b) at a rate above the relevant threshold.

(2) In this Part, “abstraction” in relation to a body of inland water has the same meaning as
   in section 20(3)(b) of the 2003 Act in relation to a body of water of the sort to which
   that section relates (see section 20(6) of that Act).

(3) In this Part, “inland water” is as defined by section 3 of the 2003 Act.

6 Prohibition arising

(1) A qualifying abstraction is prohibited if it is not—
   (a) approved as described in subsection (2), or
   (b) exempt by virtue of section 7.

(2) It is approved if—
   (a) it has been approved by the Scottish Ministers under this Part, and
   (b) their approval has not ceased to have effect by reason of—
      (i) the expiry of any period specified under section 11(1)(a) (including where
          extended), or
      (ii) the imposition of a suspension or revocation under section 14(1)(a) to (c).

7 Exemption from approval

(1) A qualifying abstraction is exempt if, on the day on which this subsection comes into
    force, it is subject to an authorisation under the Controlled Activities Regulations.

(2) The exemption under subsection (1) comes to an end if the authorisation subsequently—
   (a) is varied so as to relate to a greater rate of abstraction than that to which it relates
       on the day mentioned in that subsection, or
   (b) ceases to have effect for any reason, except temporarily.

(3) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of
    the exercise by Scottish Water of its core functions in relation to premises in Scotland.

(4) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of—
    (a) generating electricity by hydro-power,
    (b) irrigating agricultural or horticultural land,
    (c) operating a fish farm,
(d) maintaining a quarry or a coal or other mine.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) The Scottish Ministers may by regulations—

(a) modify any of the exemptions under this section,
(b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.

8 The relevant threshold

(1) In this Part, “the relevant threshold” means—

(a) the rate of 10 megalitres of water per day, or
(b) such other rate as the Scottish Ministers may by regulations prescribe.

(2) The Scottish Ministers may by regulations prescribe a method of calculation for the purpose of subsection (1).

(3) Regulations under subsection (2) may (in particular) include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.

8A Consultation on changes

Before making regulations under section 7(6) or (8)(1)(b) or (2), the Scottish Ministers must consult—

(a) Scottish Water,
(b) SEPA,
(c) Scottish Natural Heritage,
(d) such other persons as they consider appropriate.

Role of Ministers

9 Application for approval

(1) Any person may apply to the Scottish Ministers for their approval of a qualifying abstraction.

(2) The Scottish Ministers must by regulations make provision about the procedure in relation to an application under subsection (1).

(3) In particular, the regulations may—

(a) specify the form in which it is to be made,
(b) fix a reasonable fee for making it,
(c) describe the information that is to accompany it,
(d) require the applicant to give public notice of it,
(e) allow interested persons to make representations about it.
10 Factors as to approval

(1) In deciding whether to approve a qualifying abstraction, the Scottish Ministers must have regard to—

(a) the applicant’s financial position,

(b) the proposed use of the water to be abstracted,

(c) any—
   (i) social, economic or other benefit that may arise in Scotland (or an area within it) in consequence of the abstraction,
   (ii) adverse impact of any kind that may arise in Scotland (or an area within it) in consequence of the abstraction,

(d) such additional factors as they consider to be relevant.

(2) If the Scottish Ministers do not approve a qualifying abstraction, they must give the applicant their reasons.

11 Conditions of approval

(1) If the Scottish Ministers approve a qualifying abstraction, they may—

(a) specify the period for which their approval has effect,

(b) attach conditions to their approval.

(2) Conditions under subsection (1)(b) may—

(a) impose restrictions on—
   (i) the rate at which water may be abstracted (above the relevant threshold),
   (ii) the purposes for which the water may be used,

(b) require that particular steps be taken in relation to the abstraction or any associated operations,

(c) relate to compensation for any adverse impact of a specific kind caused by the abstraction,

(d) concern such other matters as the Scottish Ministers consider to be relevant.

(3) It is the holder who is subject to any conditions attached under subsection (1)(b).

(4) Except with the Scottish Ministers’ prior consent, their approval of a qualifying abstraction is not transferable by the holder to another person.

(5) After consulting the holder, the Scottish Ministers may—

(a) under subsection (1)(a), extend any period specified under that subsection,

(b) under subsection (1)(b)—
   (i) vary or remove any conditions attached to their approval, or
   (ii) attach new conditions to their approval.

12 Additional requirements

(1) The holder must—
(a) at such times and in such form as they may require, give the Scottish Ministers a report on the holder’s activities in carrying out (or in relation to) the abstraction or any associated operations, and

(b) pay the Scottish Ministers such reasonable fee as they may by regulations fix in accordance with subsection (2)(a) (and do so as required by virtue of subsection (2)(b)).

(2) Regulations under subsection (1)(b)—

(a) must relate to costs attributable to the exercise of the Scottish Ministers’ administrative functions under this Part,

(b) may require payment of the fee annually or otherwise.

(3) In the application of subsection (2)(a), no account is to be taken of costs to which a fee fixed by virtue of section 9(3)(b) relates.

13 Advice from other bodies

(1) Subsections (3) and (4) apply where the Scottish Ministers are considering—

(a) an application under section 9(1),

(b) what period (if any) should be specified under section 11(1)(a), or

(c) what conditions (if any) should be attached under section 11(1)(b).

(2) Subsection (3) does not apply if Scottish Water is the applicant.

(3) Scottish Water must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the exercise of its core functions in relation to premises in Scotland.

(4) SEPA must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the environment in Scotland.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) In subsections (3) and (4), the references to impact are to impact that may arise if the qualifying abstraction in question were to be carried out.

14 Suspension and revocation

(1) The Scottish Ministers may suspend or revoke their approval of a qualifying abstraction—

(a) if the holder requests that they do so,

(b) if the holder—

(i) breaches any conditions attached under section 11(1)(b), or

(ii) fails to comply with section 12(1), or

(c) in such other circumstances as they may by regulations prescribe.

(2) Before imposing a suspension or revocation under subsection (1)(b) or (c), the Scottish Ministers must—

(a) with reasons, inform the holder of their intention to do so,

(b) allow the holder to make representations.
Appeal, monitoring and offence

15 Appeal against decision

(1) For the purpose of subsections (2) to (4), a relevant decision is one—
   (a) following an application under section 9(1), not to approve a qualifying abstraction,
   (b) to specify a period under section 11(1)(a),
   (c) to attach any conditions under section 11(1)(b), or
   (d) to impose a suspension or revocation under section 14(1)(b) or (c).

(2) The applicant or (as the case may be) holder may appeal to the sheriff against a relevant decision, if aggrieved—
   (a) in the case to which subsection (1)(a) or (d) relates, by the making of the relevant decision,
   (b) in the case to which subsection (1)(b) relates, by the shortness of the period so specified,
   (c) in the case to which subsection (1)(c) relates, by the nature or terms of the conditions so attached.

(3) An appeal under subsection (2) must be made—
   (a) by way of summary application,
   (b) within the period of 21 days beginning with the day on which the relevant decision is duly intimated.

(4) In the appeal, the sheriff may uphold, vary or quash the relevant decision.

16 Monitoring and records

(1) The Scottish Ministers may by regulations make provision about the monitoring of—
   (a) an abstraction of water from a body of inland water that is, or is suspected of being, a qualifying abstraction,
   (b) any activities appearing to relate to such an abstraction of water or any associated operations.

(2) The Scottish Ministers may by regulations make provision about—
   (a) the keeping of records in connection with this Part, or
   (b) the extent to which such records are to be made available to them, SEPA or other interested persons.

(3) Regulations under subsection (1) or (2) may confer functions on the Scottish Ministers, SEPA or other specified persons.

17 Abstraction-related offence

(1) A person commits an offence if the person wilfully or recklessly—
   (a) contravenes the prohibition constituted by section 6(1), or
(b) breaches any conditions to which the person is subject by virtue of section 11(2)(a).

(2) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to a fine.

17A Corporate offending

(1) Subsection (2) applies where—
   (a) an offence under section 17 is committed by a relevant organisation, and
   (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.

(2) The responsible official (as well as the organisation) commits the offence.

(3) “Relevant organisation” means—
   (a) company,
   (b) limited liability partnership,
   (c) ordinary partnership,
   (d) other body or association.

(4) “Responsible official” means—
   (a) in the case of a company, director, secretary, manager or similar officer,
   (b) in the case of a limited liability partnership, member,
   (c) in the case of an ordinary partnership, partner,
   (d) in the case of another body or association, person who is concerned in the management or control of its affairs,

   but in each case also includes person purporting to act in such a capacity.

Regulations etc.

18 Procedure for regulations

(1) Regulations under section 7(6), 8(1)(b) or (2) or 14(1)(c) are subject to the affirmative procedure.

(2) Other regulations under this Part are subject to the negative procedure.

(3) Regulations under this Part may make different provision for different purposes.

19 Controlled Activities Regulations

(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.

(2) An authorisation under the Controlled Activities Regulations is subject to approval of a qualifying abstraction by the Scottish Ministers under this Part, so far as relevant in relation to the activities to which the authorisation relates (except where the authorisation exempts the abstraction under section 7(1)).
(3) In this Part—
   (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
   (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations.

(4) The Scottish Ministers may by regulations modify—
   (a) subsections (1) to (3),
   (b) section 7(1).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
   (a) the Controlled Activities Regulations, or
   (b) any subsequent regulations made under section 20 of the 2003 Act.

20 Other definitions for Part

In this Part—
   “holder” means person in whose favour the Scottish Ministers’ approval under this Part has effect for the time being,
   “premises” includes any land, building or other place,
   “SEPA” means the Scottish Environment Protection Agency.

PART 3

SCOTTISH WATER’S functions

Exercise of functions

21 Value of water resources

In section 25 (Scottish Water’s general powers) of the 2002 Act, after subsection (1) there is inserted—

“(1A) The power in subsection (1) includes, in particular, the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2012).”.

22 Development of assets

After section 50 of the 2002 Act there is inserted—

“50A Development of assets

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its core functions, Scottish Water must take reasonable steps to develop the value of its assets and expertise.

(2) In subsection (1), the reference to the value of assets and expertise includes the economic and other benefit deriving from the use of (or any activities in relation to) them.
(3) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.

23 **Supporting renewable energy**

After section 51 of the 2002 Act there is inserted—

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“51A Supporting renewable energy

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its core functions, Scottish Water must take reasonable steps to promote the use of its assets for the generation of renewable energy.

(2) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.
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(6) This section does not apply where the subsidiary is an undertaking established under section 13(1) of the Water Services etc. (Scotland) Act 2005.

(7) In this section and section 42B(1), “subsidiary” is as defined in section 1159 of the Companies Act 2006.

42B Borrowing: Budget Acts

(1) In any financial year, the net amount of sums borrowed by Scottish Water and any subsidiary of Scottish Water in pursuance of sections 42 and 42A (taken together) must not exceed the amount specified for that year for the purposes of this section in a Budget Act.

(2) In subsection (1), “net amount” means amount of sums borrowed in the financial year less—

(a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and

(b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.”.

(2) In section 42 (financing and borrowing) of the 2002 Act, subsections (4) and (5) are repealed.

(3) The title of section 42 of the 2002 Act becomes “Financing and borrowing: Scottish Water”.

Water and sewerage undertaking

(1) Section 14 (financing, borrowing and guarantees) of the 2005 Act is amended as follows.

(2) For subsection (2) there is substituted—

“(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking may borrow—

(a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,

(b) money from any other person, whether—

(i) in sterling or otherwise,

(ii) the person is in the United Kingdom or elsewhere.

(2A) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).”.

(3) In subsection (3), for the words “(2)(a)” there is substituted “(2)”.

(4) In subsection (6), after the word “subsection” there is inserted “(2)(b) or”.

Other matters

26A Errors in metering

In section 54 (register of meter to be evidence) of the 1980 Act—
(a) in subsection (3), for the words “five per cent” there is substituted “the relevant percentage”,

(b) after subsection (3) there is inserted—

“(4) In subsection (3), “the relevant percentage” means—

(a) in the case of a high flow rate, 2.5%,

(b) in the case of a low flow rate, 6%.

(5) The Scottish Ministers, by regulations—

(a) must define “high flow rate” and “low flow rate” for the purpose of subsection (4),

(b) may amend a percentage figure appearing in subsection (4).”.

PART 4
RAW WATER QUALITY

27 Steps for sake of quality

(1) In section 38 (entry of premises) of the 1980 Act, after subsection (8) there is inserted—

“(9) This section does not apply in relation to the purposes mentioned in section 76M(1).”.

(2) After Part VIA of the 1980 Act there is inserted—

“PART VIB
RAW WATER QUALITY

76M Power to enter

(1) Scottish Water may—

(a) enter any premises for the purposes of—

(i) assessing or monitoring the quality of any raw water, or

(ii) investigating or isolating anything that appears to be affecting, or may affect, the quality of any raw water,

(b) take any steps at the premises which are reasonably required for those purposes.

(2) Subsection (1)—

(a) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes,

(b) does not authorise entry into a house.

(3) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

(4) In subsection (1), the reference to affecting the quality of the water is to affecting its quality adversely (directly or indirectly).

(5) In this section, “raw water”—

(a) means water contained in any bodies of water—
(i) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003, or
(ii) specified by an order made under section 76R(1),
(b) also includes water that flows or drains into any bodies of water so identified or specified (or is capable of doing so).

(6) But excluded from the definition given by subsection (5) is any water that is used or available as or for a private water supply within such meaning as the Scottish Ministers may by order prescribe for the purpose of this subsection.

76N Entry warrants

(1) Scottish Water may apply to the sheriff for a warrant authorising it to—
(a) enter particular premises for the purposes mentioned in section 76M(1),
(b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—
(a) that there are reasonable grounds for entering the premises for those purposes, and
(b) that—
(i) the first and second conditions are met, or
(ii) the third condition is met.

(3) The first condition is that—
(a) admission to the premises has been refused,
(b) the taking of steps at the premises has been obstructed, or
(c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) A warrant under subsection (1)—
(a) remains valid until the purposes mentioned in section 76M(1) are fulfilled,
(b) allows the use of reasonable force (if required),
(c) does not authorise entry into a house.

(7) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

76O Approved persons

(1) Subsection (2) applies to the authority conferred on Scottish Water by—
(a) section 76M(1), or
(b) a warrant under section 76N(1).
(2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in section 76M(1).

76P Taking steps

(1) Subsections (2) to (6) apply in relation to the exercise of the authority mentioned in section 76O(1)(a) or (b).

(2) An approved person must, if required by the occupier of the premises—
   (a) produce evidence of the approved person’s identity (and approval), and
   (b) explain the nature of the authority by (as the case may be)—
      (i) reference to section 76M, or
      (ii) showing a copy of the warrant.

(3) An approved person may take onto the premises—
   (a) other persons acting under the approved person’s direction,
   (b) such equipment as is necessary in connection with the steps that may be taken there.

(4) The steps that may be taken by an approved person at the premises include—
   (za) inspecting or measuring any water found there,
   (a) carrying out tests on or taking samples from any soil, water or other substance found there,
   (b) installing or maintaining any measuring, testing or sampling equipment for use there.

(5) An approved person may enter the premises only at a reasonable time.

(6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.

(7) In subsections (2) to (6), “approved person” means person approved as mentioned in section 76O(2).

76Q Obstruction offence

(1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in section 76O(1)(b).

(2) In subsection (1), “approved person” means person approved as mentioned in section 76O(2).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

76R Specifying bodies of water

(1) For the purpose of section 76M(5)(a)(ii), the Scottish Ministers may by order specify any bodies of water that are—
   (a) used for the abstraction of water intended for human consumption, or
   (b) intended to be used as mentioned in paragraph (a).
(2) An order under subsection (1) may specify any bodies of water by reference to a map prepared in connection with the order (and laid along with it).

(3) The Scottish Ministers must send to the Scottish Environment Protection Agency a copy of—

(a) an order made under subsection (1), and

(b) any map prepared in pursuance of subsection (2).

76S Orders under this Part

An order under section 76M(6) or 76R(1) is subject to the negative procedure.”.

28 Agreements about activities

(1) In section 68 (agreements as to drainage) of the 1980 Act, in subsection (1), for the words “collecting, conveying, or preserving the purity of,” there is substituted “collecting or conveying”.

(2) After section 68 of the 1980 Act there is inserted—

“68A Agreements for water quality

(1) With respect to the matters mentioned in subsection (2), Scottish Water may enter into agreements with—

(a) the owners and occupiers of any land (in so far as their interest enables them to bind it), or

(b) a local authority.

(2) The matters are—

(a) the carrying out by a party to the agreement of such activities as Scottish Water considers necessary for the purpose of protecting or improving the quality of any raw water,

(b) the refraining by a party to the agreement from such activities as Scottish Water considers detrimental to the purpose of protecting or improving the quality of any raw water.

(3) In subsection (2), the references to protecting or improving the quality of water include—

(a) preventing any deterioration in the quality of the water,

(b) reducing or eliminating the amount of any treatment that the water requires in order to be wholesome.

(4) Section 68(2) applies to an agreement under this section as it applies to an agreement to which that section relates (if the agreement under this section is with the owners of the land).

(5) In this section, “raw water” has the same meaning as in section 76M.”.
PART 5

NON-DOMESTIC SERVICES

29  Deemed contracts

After section 20 of the 2005 Act there is inserted—

“Contractual matters

20A  Deemed contracts

(1) Subsection (4) applies as respects the circumstances specified in subsection (2) or (3).

(2) The circumstances are that water is supplied to eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—

(a) a water services provider, and

(b) the occupier of the premises.

(3) The circumstances are that sewerage is provided to, or sewage is disposed of from, eligible premises by Scottish Water otherwise than in pursuance of arrangements made between—

(a) a sewerage services provider, and

(b) the occupier of the premises.

(4) The relevant parties are deemed to have made arrangements with each other for the provision to the premises of the services to which subsection (2) or (as the case may be) (3) relates.

(5) The terms and conditions set by a scheme made under section 20B are incorporated into the arrangements—

(a) as if they were agreed by the relevant parties, and

(b) so far as they are relevant having regard to the purposes or areas to which they extend.

(6) The arrangements are effective as from the later of—

(a) the day on which the premises began to receive those services,

(b) the day on which the occupier acquired the premises,

(c) the day on which section 29 of the Water Resources (Scotland) Act 2012 came into force.

(7) Sections 16 to 20 have effect in relation to the arrangements as if they were made ordinarily between the relevant parties.

(8) In this section—

(a) the references to the relevant parties are to—

(i) the water services or (as the case may be) sewerage services provider that is designated in accordance with a scheme made under section 20B, and

(ii) the occupier of the premises,

(b) the references to the occupier of premises are, if the premises are unoccupied, to be construed as references to the owner of the premises.
20B Commission’s scheme

(1) The Commission must make a scheme setting out the terms and conditions to be incorporated into any arrangements deemed by section 20A(4) to have been made.

(2) A scheme under this section may—

(a) specify the basis on which a particular water or sewerage services provider is to be designated in connection with section 20A(8)(a)(i),

(b) in respect of the services to which section 20A(2) or (as the case may be) (3) relates—

(i) fix the maximum charges that may be recovered by the water or sewerage services provider so designated,

(ii) allow the water or sewerage services provider so designated to set the particular charges that are to be recovered by it.

(3) A scheme under this section may—

(a) make different provision for different purposes or areas,

(b) for future application, revise an earlier such scheme.

(4) Before making a scheme under this section, the Commission must consult—

(a) every water or sewerage services provider,

(b) Scottish Water, and

(c) the National Consumer Council.

(5) As soon as practicable after the Commission makes a scheme under this section, it must—

(a) in a manner appropriate for bringing the scheme to the attention of persons likely to be affected by it, publish a notice stating its effect,

(b) send a copy of the scheme to—

(i) every water or sewerage services provider,

(ii) Scottish Water, and

(iii) any other person who requests it.”.

30 Notification of occupancy

(1) In section 34 (orders and regulations) of the 2005 Act, after subsection (2) there is inserted—

“(2A) Regulations under section 20C(4) or 20D(4) are subject to the negative procedure.”.

(2) After section 20B of the 2005 Act there is inserted—

“20C Notification of occupancy

(1) Subsection (2) applies to any premises—

(a) to which water is supplied under section 16(2), or
(b) to which sewerage is provided, or from which sewage is disposed of, under section 16(5).

(2) The owner of the premises must give the water or sewerage services provider the required information if there is a change in occupancy because they—

(a) are occupied by a new occupier, or

(b) have fallen vacant.

(3) In subsection (2), “required information” means—

(a) the address of the premises,

(b) the identity of the new occupier or (as the case may be) the fact that the premises have fallen vacant,

(c) the day on which the change in occupancy occurred.

(4) The Scottish Ministers may by regulations—

(a) make rules for timing and procedure in connection with subsections (1) and (2),

(b) by addition, modify the list in subsection (3).

20D Liability for charges

(1) Subsection (2) applies if, without reasonable excuse, an owner of any premises to which section 20C(1) relates fails to comply with section 20C(2) (except where the new occupier is the owner or the premises have fallen vacant).

(2) The new occupier’s liability (if any) to the water or sewerage services provider for the relevant charges becomes shared jointly and severally with the owner.

(3) In subsection (2), “relevant charges” means charges arising by virtue of any arrangements to which section 16(1) or (as the case may be) (4) relates.

(4) The Scottish Ministers may by regulations make rules for—

(a) timing and procedure in connection with subsections (1) and (2),

(b) exempting an owner from liability under subsections (1) and (2) where, although information supplied by the owner is inaccurate or incomplete, the owner has taken prescribed steps to ensure its accuracy or completeness.”.

PART 6

SEWERAGE NETWORK

Discharge into public sewer

31 Priority substances etc.

(1) In section 29 (decision on application for trade effluent consent) of the 1968 Act, after paragraph (o) of subsection (3) there is inserted—

“(p) the elimination from or diminution in any trade effluent of any priority substance or pollutant.”.

(2) After section 29 there is inserted—
“29A  Priority substances etc.
(1)  In section 29(3)(p)—
“pollutant” has the meaning given by regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
(2)  The Scottish Ministers may by regulations modify the definitions in subsection (1).
(3)  Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of (as the case may be)—
(a)  the Regulations or Directive mentioned in subsection (1), or
(b)  any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003 or directive concerning the same subject-matter as that Directive.
(4)  Regulations under subsection (2) are subject to the negative procedure.”.

32  Substances generally
(1)  In section 46 (certain matter not to be passed into drains) of the 1968 Act—
(a)  in subsection (2), for the words “a fine not exceeding £40,000” there is substituted “imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both)”,
(b)  after subsection (2) there is inserted—
“(3)  This section does not apply in relation to the passing of fat, oil or grease from trade premises into a public sewer or a drain connecting with such a sewer.”.
(2)  After section 46 there is inserted—
“46A  Offence as to fat, oil or grease
(1)  A person commits an offence if—
(a)  the person passes, or permits to be passed, any relevant substance from trade premises into—
(i)  a public sewer, or
(ii)  a drain connecting with such a sewer, and
(b)  the condition in subsection (2) is met.
(2)  The condition is that the relevant substance (alone or in combination with any matter with which it comes, or may come, into contact)—
(a)  interferes with, or is likely to interfere with, the free flow of the contents of the sewer, or
(b)  adversely affects, or is likely so to affect, the treatment or disposal of the contents of the sewer.
(2A) But no offence is committed under subsection (1) if the relevant substance is passed in accordance with the provisions of Part II of this Act.

(3) In subsections (1) to (2A), “relevant substance” means fat, oil or grease.

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

46B Damage caused by fat, oil or grease

(1) Subsection (4) applies if—

(a) an owner or occupier of trade premises passes, or permits to be passed, any relevant substance from the premises into—

(i) a public sewer, or

(ii) a drain connecting with such a sewer, and

(b) the condition in subsection (2) is met.

(2) The condition is that, as a result—

(a) the sewer or drain is damaged or blocked, or

(b) the free flow of the contents of the sewer is otherwise interfered with.

(2A) But subsection (4) does not apply if the relevant substance is passed in accordance with the provisions of Part II of this Act.

(3) In subsections (1) and (2A), “relevant substance” means fat, oil or grease.

(4) Scottish Water may recover, from the owner or (as the case may be) occupier, any expenses that it reasonably incurs in investigating or remedying the damage, blockage or interference.”.

33 Powers of entry

In section 48 (powers of entry) of the 1968 Act, in subsection (1)—

(a) in paragraph (f), at the beginning there is inserted “monitoring, inspecting, testing or”,

(b) after paragraph (f) there is inserted—

“(g) installing or maintaining any monitoring, testing or sampling equipment for use on the premises,

(h) investigating the source of any matter or substance (other than sewage) which is passing from the premises into—

(i) public sewers, public SUD systems or public sewage treatment works; or

(ii) sewers, SUD systems or sewage treatment works not vested in Scottish Water but forming (or forming part of) any such system as is mentioned in the said section 46(1)(b)(ii).”.
Private sewage works

34 Common maintenance

After Part II of the 1968 Act there is inserted—

“PART IIA

PRIVATE SEWAGE TREATMENT WORKS

38A Application of Part

(1) This Part applies to any private sewage treatment works if the discharge of their contents is subject to an authorisation under the Controlled Activities Regulations.

(2) In this Part, “private works” means private sewage treatment works to which this Part applies.

38AA Other rules

(1) This Part prevails over any rule of law or real burden—

(a) requiring the agreement, of any owner of common property, to the carrying out of maintenance of the property, or

(b) concerning the recovery, by any owner of common property from another owner of the property, of the cost of such maintenance,

so far as the rule or burden is applicable in connection with measures of the kind to which section 38B relates.

(2) In subsection (1), “real burden” is to be construed in accordance with the Title Conditions (Scotland) Act 2003.

38B Common maintenance

(1) Subsection (2) applies where two or more persons own any private works in common.

(2) Any of the persons may take (or cause to be taken) any measures that the person considers necessary for ensuring that the works are properly maintained so that they comply with any applicable conditions under the Controlled Activities Regulations.

(3) Subsection (2) is subject to section 38C.

(4) In subsection (2), the reference to being properly maintained includes being emptied as required from time to time.

38C Notice and effect

(1) Before taking (or causing to be taken) any measures under section 38B(2), a person must serve on each of the other owners a notice—

(a) giving the person’s name and address,

(b) specifying the private works in question,

(c) in addition to describing the measures to be taken, stating—

(i) why the measures are to be taken,
(ii) when the measures are to be taken,
(d) containing—
(i) an estimate of the cost of the measures,
(ii) a note showing the proportion of that cost for which each owner
would be liable (along with their names and addresses),
(e) directing the reader to this Part.

(2) The measures described in the notice may be taken under section 38B(2) at any
time after the end of the period of 28 days beginning with the day on which it
is duly served (or, if it is so served on different days, the last of those days).

(3) Unless the notice has expired, the measures may be so taken—
(a) with or without the agreement of any or all of the other owners,
(b) subject to any review or appeal under section 38D.

(4) The notice expires—
(a) at the end of the period of 12 months beginning with the day on which it
is duly served, or
(b) if it is extended in any review or appeal under section 38D, at the end of
the period of extension.

(5) A notice under subsection (1) may be served by two or more persons acting
together.

38D Review of notice

(1) A person on whom a notice is served under section 38C(1) may apply to the
sheriff for a review of the notice, if aggrieved by the serving of the notice or its
terms.

(2) An application under subsection (1) must be made—
(a) by way of summary application,
(b) within the period of 28 days beginning with the day on which the notice
is duly served.

(3) In the application, the sheriff may—
(a) uphold, vary or quash the notice,
(b) make any further order necessary.

(4) The sheriff’s decision in the application may be appealed to the sheriff
principal, but only on a point of law.

(5) The sheriff principal’s determination of the review is final.

(6) An application under subsection (1) may be—
(a) made by two or more persons acting together,
(b) heard by the sheriff along with another such application relating to the
same notice.
38E Recovery of cost

(1) Where measures have been taken under section 38B(2)—
   (a) each of the owners of the private works is liable for a proportion of the actual cost of taking them, and
   (b) any of those owners is entitled to recover from any of the other owners the proportion of that cost for which the other owner is liable.

(2) Subsection (1) is subject to subsections (3) to (8).

(3) The proportion of the cost mentioned in subsection (1)(a) for which each owner is liable is the equivalent to the owner’s pro indiviso share of the ownership of the private works.

(4) Liability accrues to an owner under subsection (1)(a) only when there has been duly served—
   (a) a notice under section 38C(1) relating to the measures, and
   (b) a notice under subsection (5) relating to the measures.

(5) Before exercising the entitlement to make recovery under subsection (1)(b), an owner must serve on each of the other owners a notice containing—
   (a) a statement of the cost mentioned in subsection (1)(a),
   (b) a note confirming the proportion of that cost for which each owner is liable in accordance with subsection (3) (along with their names and addresses).

(6) The entitlement of an owner to make recovery under subsection (1)(b) is not—
   (a) established unless the owner has—
      (i) incurred the cost mentioned in subsection (1)(a), and
      (ii) duly served a notice under subsection (5),
   (b) exercisable until after the end of the period of 30 days beginning with the day on which the notice under subsection (5) is duly served (or, if it is so served on different days, the last of those days).

(7) A notice under subsection (5) is valid only if it is accompanied by an invoice or other clear evidence of the cost mentioned in subsection (1)(a).

(8) Section 38D applies in relation to a notice under subsection (5) as it does in relation to one under section 38C(1), except that in relation to a notice under subsection (5) a review under section 38D is competent only if the actual cost of the measures grossly exceeds the estimate of the cost of them contained in the notice under section 38C(1).

38F Liability of owner

(1) Subsection (2) applies to a person who is liable under section 38E(1)(a).

(2) The person does not stop being so liable merely because the person ceases to be an owner of the private works.

(3) Subsection (4) applies to a person who is entitled to make recovery under section 38E(1)(b).
(4) The person does not stop being so entitled merely because the person ceases to be an owner of the private works.

38G Controlled Activities Regulations

(1) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,

(c) a reference to any conditions under the Controlled Activities Regulations is to any conditions of an authorisation under those Regulations.

(2) The Scottish Ministers may by regulations modify—

(a) subsection (1),

(b) sections 38A(1) and 38B(2).

(3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003.

(4) Regulations under subsection (2) are subject to the negative procedure.”.

PART 7

WATER SHORTAGE ORDERS

Main provisions

35 Proposal for order

(1) Scottish Water may propose to the Scottish Ministers that they make a water shortage order if it believes that there is—

(a) a serious deficiency of water supplies in an area, or

(b) a threat of a serious deficiency of water supplies in an area.

(2) A proposal must include—

(a) a draft water shortage order,

(b) details of—

(i) the deficiency or threat as respects the water supplies,

(ii) the steps that Scottish Water has taken to abate the deficiency or threat,

(iii) the steps (other than steps in accordance with the draft order) that Scottish Water intends to take in order to abate the deficiency or threat,
(iv) how Scottish Water considers that the taking of those steps will abate the deficiency or threat,

(v) any prior communications about the proposal between Scottish Water and persons likely to be affected by the draft order,

(c) such other information as the Scottish Ministers may reasonably require.

(3) A proposal must be accompanied by—

(a) a map or plan showing the location of—

(i) any source from which Scottish Water proposes to abstract water,

(ii) any place to which Scottish Water proposes to discharge water,

(iii) any works which Scottish Water proposes to carry out,

(iv) any premises at which Scottish Water proposes to take any other steps in order to abate the deficiency or threat,

(b) a copy of any associated application made by Scottish Water under the Controlled Activities Regulations,

(c) such other documents as the Scottish Ministers may reasonably require.

(4) The Scottish Ministers may instruct Scottish Water about the form in which a proposal is to be presented to them.

36 Making of order

(1) The Scottish Ministers may make an ordinary water shortage order in relation to an area if the first and second conditions are met.

(2) The Scottish Ministers may make an emergency water shortage order in relation to an area if the first, second and third conditions are met.

(3) The first condition is that Scottish Water has made a proposal.

(4) The second condition is that the Scottish Ministers are satisfied that the deficiency or threat in question exists.

(5) The third condition is that the Scottish Ministers are satisfied that there is a risk to the health, or social or economic well-being, of people in the area.

(6) The function of making a water shortage order is not exercisable by Scottish statutory instrument.

37 Content of order

(1) A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate—

(a) a serious deficiency of water supplies in an area, or

(b) a threat of a serious deficiency of water supplies in an area.

(2) In particular, a water shortage order may—

(a) permit Scottish Water to—

(i) abstract water from any source specified in the order,

(ii) discharge water to any place specified in the order,
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(iii) carry out and maintain works on any premises specified in the order for any purpose specified in the order,

(b) impose conditions or restrictions on any abstraction or discharge of water so permitted,

(c) relax any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) restrict or prohibit the abstraction of water by any person from any source specified in the order,

(e) impose such water saving measures as are specified in the order in relation to—

(i) persons of such descriptions as are specified in the order,

(ia) premises of such types, or other types of property, as are specified in the order,

(ii) such circumstances as are specified in the order.

(3) An emergency water shortage order (but not an ordinary water shortage order) may permit Scottish Water to supply water by means other than through pipes.

38 Abstraction and discharge

(1) Permission as mentioned in section 37(2)(a)(i) or (ii) allows Scottish Water to abstract or (as the case may be) discharge the water even if—

(a) it is not otherwise entitled to do so,

(b) the abstraction or discharge would interfere with any right of any other person in the water.

(2) A restriction or prohibition as mentioned in section 37(2)(d) restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

39 Further provision

Schedule 1 makes further provision in relation to water shortage orders.

Appeal and offence

40 Appeal against order

(1) A person who is aggrieved by a water shortage order may appeal to the sheriff against—

(a) the making of the order,

(b) the terms of the order.

(2) An appeal under subsection (1) must be made—

(a) by way of summary application,

(b) within the period of 14 days beginning with the day on which notice of the order is published under paragraph 6 of schedule 1.

(3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.
(4) In the appeal, the sheriff may—
   (a) affirm the order,
   (b) direct the Scottish Ministers to—
       (i) amend the order in a specified manner,
       (ii) revoke the order wholly or partly.
(5) The sheriff’s determination of the appeal is final, except on a point of law.

41 Non-compliance offence
(1) A relevant person commits an offence if the person, without reasonable excuse, fails to comply with—
   (a) a water saving measure imposed by a water shortage order, or
   (b) a restriction or prohibition on the abstraction of water imposed by such an order.
(2) In subsection (1), “relevant person” means person who is, or ought to be, aware of the order.
(3) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to a fine.

41A Corporate offending
(1) Subsection (2) applies where—
   (a) an offence under section 41 is committed by a relevant organisation, and
   (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.
(2) The responsible official (as well as the organisation) commits the offence.
(3) “Relevant organisation” means—
   (a) company,
   (b) limited liability partnership,
   (c) ordinary partnership,
   (d) other body or association.
(4) “Responsible official” means—
   (a) in the case of a company, director, secretary, manager or similar officer,
   (b) in the case of a limited liability partnership, member,
   (c) in the case of an ordinary partnership, partner,
   (d) in the case of another body or association, person who is concerned in the management or control of its affairs,
   but in each case also includes person purporting to act in such a capacity.
Recommendations and directions

42 Recommendations issuable
(1) If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area, it must—
   (a) publicise the threat in the area, and
   (b) recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat.
(2) Scottish Water must take such steps as it considers appropriate to bring its recommendation under subsection (1)(b) to the attention of people in the area.

43 Directions on functions
(1) The Scottish Ministers may give Scottish Water directions as to the exercise of its functions under a water shortage order.
(2) Scottish Water must comply with directions given to it under subsection (1).
(3) Directions under subsection (1) may vary or revoke earlier such directions.
(4) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to Scottish Water.

Definitions etc.

44 Water saving measures
In this Part, “water saving measures” means measures listed in schedule 2.

45 Serious deficiencies
The references in this Part to a serious deficiency of water supplies (whether actual or threatened) are to an insufficiency of water supplies available to Scottish Water to enable it to carry out its functions under Part II of the 1980 Act.

46 Controlled Activities Regulations
(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.
(2) An authorisation under the Controlled Activities Regulations is subject to any restriction or prohibition as mentioned in section 37(2)(d), so far as relevant in relation to the activities to which the authorisation relates.
(3) In this Part—
   (a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),
   (b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,
   (c) a reference to an application under the Controlled Activities Regulations is to an application in accordance with regulation 11 (including as applied by regulation 24) of those Regulations.
(4) The Scottish Ministers may by regulations modify—
   (a) subsections (1) to (3),
   (b) section 35(3)(b),
   (c) in schedule 1, paragraphs 2(5)(b)(iii), 3(2)(b)(iii) and 7(b)(ii).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—
   (a) the Controlled Activities Regulations, or
   (b) any subsequent regulations made under section 20 of the 2003 Act.

(6) Regulations under subsection (4) are subject to the negative procedure.

47 Other expressions in Part

In this Part—
   “emergency water shortage order” means one under section 36(2),
   “ordinary water shortage order” means one under section 36(1),
   “premises” includes any land, building or other place,
   “proposal” means proposal under section 35(1) (relating to a water shortage order),
   “water shortage order” means emergency water shortage order or ordinary water shortage order.

PART 8

GENERAL PROVISIONS

48 Repeal of enactments

Schedule 3 makes minor and consequential repeals.

49 Ancillary power

(1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.

(2) Regulations under this section—
   (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
   (b) otherwise, are subject to the negative procedure.

50 Key definitions

In this Act—
   “the 1968 Act” means the Sewerage (Scotland) Act 1968,
“the 1980 Act” means the Water (Scotland) Act 1980,
“the 2002 Act” means the Water Industry (Scotland) Act 2002,
“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003,
“the 2005 Act” means the Water Services etc. (Scotland) Act 2005.

Commencement and short title

51  Commencement
(1) Except section 48 (and schedule 3), this Part comes into force on the day after Royal Assent.
(2) The other provisions of this Act (including that section (and schedule)) come into force on such day as the Scottish Ministers may by order appoint.
(3) An order under subsection (2) may include transitional, transitory or saving provision.

52  Short title
The short title of this Act is the Water Resources (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 39)

WATER SHORTAGE ORDERS

Notice of proposal

1 (1) Scottish Water must publish notice of a proposal—
   (a) in at least one newspaper circulating in the area to which the proposal relates,
   (b) on its website, and
   (c) in such other manner as it thinks fit.

(2) A notice under sub-paragraph (1) must contain details of—
   (a) Scottish Water’s reasons for making the proposal,
   (b) the nature of the proposal, and the general effect that it would have (if implemented),
   (c) any premises that Scottish Water would intend to enter in connection with the proposal (if implemented).

3 A notice under sub-paragraph (1) must also—
   (a) name a place where a copy of the proposal, and any map or plan which accompanies it, may be inspected free of charge at all reasonable hours,
   (b) state that representations about the proposal may be made by any person—
      (i) in writing to the Scottish Ministers,
      (ii) within the period of 14 days beginning with the day on which the notice is published under this paragraph.

Notifying owners etc.

2 (1) Sub-paragraph (2) applies where—
   (a) a draft order would permit Scottish Water to—
      (i) carry out and maintain works on any premises, or
      (ii) take any other steps on any premises, and
   (b) Scottish Water would not otherwise be entitled to do so.

(2) Where this sub-paragraph applies, Scottish Water must (so far as reasonably practicable) give every owner, lessee and occupier of the premises—
   (a) a copy of the proposal containing the draft order,
   (b) a notice—
      (i) explaining the nature and general effect of the draft order,
      (ii) specifying the premises and the way in which they would be affected by the draft order,
      (iii) stating that representations about the proposal may be made by the person concerned in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to that person,
(c) either—
   
   (i) a map or plan showing the location of the premises, or
   
   (ii) details of the place where such a map or plan may be inspected.

(3) Scottish Water must make such a map or plan available for inspection at all reasonable times and free of charge.

(4) Sub-paragraph (5) applies where a draft order would restrict or prohibit the abstraction of water by any person.

(5) Where this sub-paragraph applies, Scottish Water must give the person—
   
   (a) a copy of the proposal containing the draft order,
   
   (b) a notice—
   
      (i) explaining the nature and general effect of the draft order,
      
      (ii) explaining the effect of the draft order in relation to the abstraction of water by the person,
      
      (iii) explaining the effect of the draft order in relation to any associated authorisation under the Controlled Activities Regulations,
      
      (iv) specifying the period for which the restriction or prohibition is likely to have effect,
      
      (v) stating that representations about the proposal may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

(6) In this paragraph, reference to the effect of a draft order (including something permitted or otherwise done under it) is to the effect that a water shortage order would have if it were made in the same terms as the draft order.

(7) In this paragraph and paragraphs 3 to 5, “draft order” means draft water shortage order included in a proposal.

Additional notice

3 (1) Sub-paragraph (2) applies where—

   (a) the Scottish Ministers intend to make a water shortage order that would restrict or prohibit the abstraction of water by any person, and
   
   (b) because the restriction or prohibition is not mentioned in the draft order, the person has not been given a notice under paragraph 2(5).

(2) Where this sub-paragraph applies, the Scottish Ministers must give the person—

   (a) a copy of the proposal containing the draft order,
   
   (b) a notice—

      (i) explaining the nature and general effect of the draft order,
      
      (ii) explaining the effect that the restriction or prohibition would have on the abstraction of water by the person,
      
      (iii) explaining the effect that the restriction or prohibition would have on any associated authorisation under the Controlled Activities Regulations,
(iv) specifying the period for which the restriction or prohibition is likely to have effect,
(v) stating that representations about the proposal, and the restriction or prohibition, may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

SEPA’s advice

4 (1) The Scottish Ministers must seek SEPA’s advice in relation to—
(a) any adverse impact on the water environment that may arise if a water shortage order were made in the same terms as the draft order,
(b) the need to restrict or prohibit the abstraction of water by any person, by reason of any such adverse impact.
(2) SEPA must give the Scottish Ministers advice sought under sub-paragraph (1).
(3) In this paragraph—
“SEPA” means the Scottish Environment Protection Agency,
“water environment” is as defined by section 3 of the 2003 Act.

Representations and decision

5 (1) The Scottish Ministers must not decide whether to make a water shortage order until—
(a) the period for making representations under paragraphs 1 to 3 has expired, and
(b) they have received advice under paragraph 4.
(2) Before deciding whether to make a water shortage order, the Scottish Ministers must consider—
(a) any representations timeously made,
(b) the advice so received.
(3) The Scottish Ministers may decide to—
(a) make a water shortage order in the same terms as the draft order,
(b) make such an order in such other terms as they consider appropriate,
(c) refuse to make such an order.
(4) The Scottish Ministers must notify Scottish Water of their decision under sub-paragraph (3).

Publication of order

6 (1) Where the Scottish Ministers make a water shortage order, Scottish Water must publish notice of it—
(a) in at least one newspaper circulating in the area to which the order relates,
(b) on its website, and
(c) in such other manner as it thinks fit.
(2) Where the Scottish Ministers make a water shortage order that imposes water saving measures, Scottish Water must—

(a) publish notice of it—

(i) in at least one newspaper circulating in the area to which the order relates,

(ii) on its website, and

(iii) in such other manner as it thinks fit, and

(b) take such steps as it considers appropriate to bring the order to the attention of persons who are subject to the water saving measures.

(3) A notice under sub-paragraph (2) must specify—

(a) the water saving measures that are imposed by the order,

(b) the persons in relation to whom the measures are imposed,

(c) the circumstances (if any) that are specified in the order in relation to the measures.

(4) If sub-paragraph (2) applies, sub-paragraph (1) does not apply.

Notice regarding abstraction

Where the Scottish Ministers make a water shortage order that restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person—

(a) a copy of the order,

(b) a notice—

(i) explaining the effect of the order in relation to the abstraction of water by the person,

(ii) explaining the effect of the order in relation to any associated authorisation under the Controlled Activities Regulations,

(iii) specifying the period for which the restriction or prohibition has effect.

Effect of order

(1) An ordinary water shortage order—

(a) has effect from the day 3 days after the day on which notice of it is published under paragraph 6,

(b) ceases to have effect on the day falling 6 months after the day on which it first has effect.

(2) An emergency water shortage order—

(a) has effect from the day after the day on which notice of it is published under paragraph 6,

(b) ceases to have effect on the day falling 3 months after the day on which it first has effect.

(3) The Scottish Ministers may extend the period for which a water shortage order has effect—

(a) on the application of Scottish Water,
(b) on more than one occasion.

(4) The period for which a water shortage order has effect may be extended (in total) by a period of not more than two months from the day on which the order would otherwise cease to have effect under sub-paragraph (1)(b) or (as the case may be) (2)(b).

Notice of extension

9 (1) This paragraph applies where the Scottish Ministers extend the period for which a water shortage order has effect under paragraph 8(3).

(2) Scottish Water must publish notice of the extension—
   (a) in at least one newspaper circulating in the area to which the order relates,
   (b) on its website, and
   (c) in such other manner as it thinks fit.

(3) Where the order imposes water saving measures, Scottish Water must—
   (a) publish notice of the extension—
      (i) in at least one newspaper circulating in the area to which the order relates,
      (ii) on its website, and
      (iii) in such other manner as it thinks fit, and
   (b) take such further steps as it considers appropriate to bring the extension to the attention of persons who are subject to the water saving measures.

(4) A notice under sub-paragraph (3) must specify—
   (a) the water saving measures that are imposed by the order,
   (b) the persons in relation to whom the measures are imposed,
   (c) the circumstances (if any) that are specified in the order in relation to the measures.

(5) If sub-paragraph (3) applies, sub-paragraph (2) does not apply.

(6) Where the order restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person notice of the extension.

Appeal against extension

10 (1) A person who is aggrieved by the extension of the period for which a water shortage order has effect under paragraph 8(3) may appeal to the sheriff.

(2) An appeal under sub-paragraph (1) must be made—
   (a) by way of summary application,
   (b) within the period of 14 days beginning with the day on which notice of the extension is published under paragraph 9.

(3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

(4) In the appeal, the sheriff may—
   (a) affirm or quash the extension,
(b) direct the Scottish Ministers to amend the order in a specified manner.

(5) The sheriff’s determination of the appeal is final, except on a point of law.

Review and revocation of order

11 (1) The Scottish Ministers may review a water shortage order at any time.

2 Following such a review, the Scottish Ministers may revoke the order wholly or partly.

3 Where the Scottish Ministers revoke the order (whether wholly or partly), Scottish Water must publish notice of that fact—

(a) in at least one newspaper circulating in the area to which the order relates,

(b) on its website, and

(c) in such other manner as it thinks fit.

4 Where the revocation of the order (whether wholly or partly) removes a restriction or prohibition on the abstraction of water by any person, the Scottish Ministers must give the person notice of the revocation.

Power to enter

12 (1) Scottish Water may—

(a) enter any premises for the purposes of—

(i) assessing whether there is a serious deficiency, or threat of a serious deficiency, of water supplies in an area,

(ii) carrying out its functions under a water shortage order,

(iii) carrying out its functions under Part 7,

(iv) determining whether a water saving measure, or restriction or prohibition on abstraction, imposed by a water shortage order is being complied with,

(b) take any steps at the premises that are reasonably required for those purposes.

2 Sub-paragraph (1) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes.

Entry warrants

13 (1) Scottish Water may apply to the sheriff for a warrant authorising it to—

(a) enter particular premises for the purposes mentioned in paragraph 12(1),

(b) take any steps at the premises which are reasonably required for those purposes.

2 The sheriff may grant the warrant sought if satisfied—

(a) that there are reasonable grounds for entering the premises for those purposes, and

(b) that—

(i) the first and second conditions are met,

(ii) the third condition is met, or

(iii) the fourth condition is met.
(3) The first condition is that—
   (a) admission to the premises has been refused,
   (b) the taking of steps at the premises has been obstructed, or
   (c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) The fourth condition is that the case is one of urgency.

(7) A warrant under sub-paragraph (1)—
   (a) allows the use of reasonable force (if required),
   (b) remains valid until the purposes mentioned in paragraph 12(1) are fulfilled.

Approved persons

14 (1) Sub-paragraph (2) applies to the authority conferred on Scottish Water by—
   (a) paragraph 12(1), or
   (b) a warrant under paragraph 13(1).

15 (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in paragraph 12(1).

Taking steps

15 (1) Sub-paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in paragraph 14(1)(a) or (b).

(2) An approved person must, if required by the occupier of the premises—
   (a) produce evidence of the approved person’s identity (and approval), and
   (b) explain the nature of the authority by (as the case may be)—
      (i) reference to paragraph 12, or
      (ii) showing a copy of the warrant.

(3) An approved person may take onto the premises—
   (a) other persons acting under the approved person’s direction,
   (b) such equipment as is necessary in connection with the steps that may be taken there.

(4) The steps that may be taken by an approved person on the premises include—
   (a) carrying out any inspection or test, or taking any measurement, there,
   (b) installing or maintaining any measuring, testing or sampling equipment for use there.

(5) An approved person may enter the premises only at a reasonable time.

(6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.
(7) In sub-paragraphs (2) to (6), “approved person” means person approved as mentioned in paragraph 14(2).

Obstruction offence

16 (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in paragraph 14(1)(b).

(2) In sub-paragraph (1), “approved person” means person approved as mentioned in paragraph 14(2).

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Compensation

17 (1) Scottish Water must compensate any person who has sustained loss or damage in consequence of—

(a) the abstraction or discharge of water by Scottish Water in accordance with a water shortage order,

(b) a restriction or prohibition on the abstraction of water imposed by such an order,

(c) the exercise by an approved person of the authority mentioned in paragraph 14(1)(a) or (b).

(2) Sub-paragraph (1) does not apply to loss or damage that is attributable to—

(a) the fault of the person who sustained it,

(b) the imposition of a water saving measure by a water shortage order,

(c) the relaxation by such an order of any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) the supply of water by Scottish Water by means other than through pipes, in accordance with an emergency water shortage order,

(e) a serious deficiency of water supplies that the provisions of a water shortage order are intended to abate.

(3) A claim for compensation under this paragraph must be given to Scottish Water—

(a) by notice in writing,

(b) within the period of 6 months beginning with the day on which the water shortage order to which the claim relates expires.

(4) A notice under sub-paragraph (3) must state—

(a) the grounds of the claim,

(b) the amount of compensation claimed.

(5) Any question of disputed compensation under this paragraph is to be determined by the sheriff.

(6) In sub-paragraph (1)(c), “approved person” means person approved as mentioned in paragraph 14(2).
References to publication etc.

18 (1) A relevant requirement is to be fulfilled without undue delay.

(2) In sub-paragraph (1), “relevant requirement” means requirement—

(a) to publish or give notice of something (or otherwise bring attention to it), and

(b) imposed on Scottish Water or the Scottish Ministers by paragraph 6, 7, 9 or 11.

19 (1) A reference in this Part to the day on which a notice is published under paragraph 1, 6 or 9 is to the earliest day when the notice has been so published in each manner mentioned in sub-paragraph (2).

(2) That is, published by Scottish Water—

(a) in at least one newspaper circulating in the relevant area, and

(b) on its website.

(3) The operation of sub-paragraph (1) is not affected by additional publication of the notice in any manner at any time.

SCHEDULE 2
(introduced by section 44)

WATER SAVING MEASURES

The following are water saving measures—

(a) refraining from using a hosepipe or sprinkler to water a garden or plants,

(b) refraining from using a hosepipe or pressure washer to clean—

(i) a private motor vehicle,

(ii) a private leisure boat,

(iii) a domestic path, patio or other artificial outdoor surface,

(c) refraining from using a hosepipe to—

(i) draw water for domestic recreational use,

(ii) fill or maintain a domestic pond,

(iii) clean the exterior of domestic premises,

(d) refraining from filling or maintaining—

(i) a swimming pool,

(ii) a paddling pool,

(iii) an ornamental fountain,

(iv) a non-domestic pond,

(e) refraining from watering—

(i) outdoor plants on commercial premises,

(ii) a fairway on a golf course,
(f) refraining from using water to clean—
   (i) a vehicle or boat (other than a private motor vehicle or private leisure boat),
   (ii) an aircraft or railway rolling stock,
   (iii) non-domestic premises,
   (iv) industrial plant,

(g) refraining from operating—
   (i) a mechanical vehicle washer,
   (ii) a cistern in an unoccupied or closed non-domestic building,

(h) refraining from using water to suppress dust at non-domestic premises,

(i) such other measures as Scottish Water or (as the case may be) the Scottish Ministers consider to be necessary or expedient to abate a serious deficiency, or threat of a serious deficiency, of water supplies.

SCHEDULE 3
(introduced by section 48)

REPEAL OF ENACTMENTS

1 (1) Section 69 of the 1980 Act is repealed.

(2) In the Natural Heritage (Scotland) Act 1991—
   (a) Part III is repealed,
   (b) section 24 is repealed,
   (c) Schedules 7, 8 and 9 are repealed.

2 Section 26 of the 2003 Act is repealed.
Water Resources (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

Introduced by: Alex Neil
On: 27 June 2012
Supported by: Keith Brown
Bill type: Government Bill
WATER RESOURCES (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Water Resources (Scotland) Bill (introduced in the Scottish Parliament on 27 June 2012) as amended at Stage 2. Text has been added as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelined in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government 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.

THE BILL – OVERVIEW

4. This Bill takes forward the Scottish Government’s wish to ensure that Scotland makes every effort to utilise fully its abundant water resources. The Government has set out its vision of Scotland as a Hydro Nation – the first such nation in the world – a nation that manages its water environment to the best advantage, employing its knowledge and expertise effectively at home and internationally. It is developing a wide ranging programme of work to achieve this vision – the Hydro Nation agenda.

5. The Bill makes provision in relation to Scotland’s water resources. It provides for the Scottish Ministers and Scottish Water to further the sustainable development of the value of Scotland’s water resources, and for Ministers to control large-scale abstractions from the water environment. It places new duties upon Scottish Water to develop its assets and support renewable energy, and allows its subsidiaries to borrow money directly, rather than through Scottish Water. It gives Scottish Water powers to monitor and manage the quality of water in the water environment that is likely to be used for human consumption. It provides a new
mechanism for Scottish Water to deal with temporary shortages of water supplies, replacing the system of drought orders under the Natural Heritage (Scotland) Act 1991 with a new system of water shortage orders. It also allows Scottish Water to protect the public sewerage network from certain substances and facilitates the maintenance of communal private sewage treatment works, as well as making minor changes to the functioning of the retail market for non-domestic water and sewerage services. It also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003.

6. The Bill is in eight Parts:

- Part 1 places a general duty on the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. It provides for Ministers to direct designated public bodies as to their involvement in this development. It places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty.

- Part 2 provides for the Scottish Ministers to control large-scale water abstractions. It does so by prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers.

- Part 3 amends the Water Industry (Scotland) Act 2002 to alter Scottish Water’s powers and duties. It clarifies that Scottish Water has the power to do anything that it considers will assist in the development of the value of Scotland’s water resources and places a duty on Scottish Water to develop the value of its assets and expertise, and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person. It also alters the water meter error threshold in section 54 of the Water (Scotland) Act 1980.

- Part 4 gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of “raw water” in the water environment that may be used for human consumption and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of any such raw water.

- Part 5 provides for deemed contracts for water and sewerage services in certain circumstances and requires the owners of commercial properties to notify licensed providers of water and sewerage services of changes in the occupancy of the premises.

- Part 6 allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems such as septic
tanks to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances.

- Part 7 makes provision for the management of temporary water shortages. It allows Scottish Water to apply for, and the Scottish Ministers to make, water shortage orders. These orders may, among other things, authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures.

- Part 8 contains general provisions such as key definitions and repeals.

THE BILL – SECTION BY SECTION

PART 1 – DEVELOPMENT OF WATER RESOURCES

Section 1 – Duty of the Scottish Ministers

7. This section places a duty upon the Scottish Ministers to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. Value in this context includes economic, social, environmental or other benefits deriving from the use of the assets. The steps that Ministers take must be designed to contribute to the sustainable use of Scotland’s water resources.

8. Ministers are to act so far as is consistent with the proper exercise of their functions under the Water Environment and Water Services (Scotland) Act 2003 (which concerns protection of the water environment) and the Climate Change (Scotland) Act 2009 (which concerns the reduction of greenhouse gas emissions) and any other functions (whether or not relating to water resources or environmental matters).

9. By Scotland’s water resources is meant wetland, inland water and transitional water as those terms are defined by section 3 of the Water Environment and Water Services (Scotland) Act 2003. Broadly, this means all standing or flowing water on the surface of the land and all groundwater, and includes partly saline water in the vicinity of river mouths.

Section 2 – Involvement of public bodies

10. This section enables the Scottish Ministers to give the bodies listed in section 3(1) directions as to the exercise of their functions for the purpose of securing their participation in the development of the value of Scotland’s water resources. Ministers must consult each body which will be subject to the directions before they are made.

Section 3 – Designation of bodies

11. This section lists the bodies to which Ministers may issue directions for the purpose of securing their participation in the development of the value of Scotland’s water resources. Ministers may alter the list by regulations, after consultation with each body to which the alteration relates.
Section 4 – Report on steps taken

12. This section requires the Scottish Ministers to report to the Scottish Parliament after three years from the date on which section 1 comes into force on how they have complied with their duty to take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources. Ministers may prepare further reports on their compliance with the duty in section 1, covering subsequent periods of three years or more, as they consider appropriate.

PART 2 – CONTROL OF WATER ABSTRACTION

Section 5 – Qualifying abstraction

13. Part 2 of the Bill establishes a requirement for Ministerial approval for abstractions from the water environment in Scotland that are above the specified rate threshold, and are not exempt under section 7.

14. Section 5 sets out the abstractions to which the provisions of Part 2 apply (“qualifying abstractions”). The requirement for Ministerial approval applies to an abstraction from any body of inland water in Scotland that is above the threshold rate set in section 8.

15. Inland water is defined by the Water Environment and Water Services (Scotland) Act 2003 as all standing or flowing water on the surface of the land (other than partly saline water in the vicinity of river mouths) and all groundwater within the landward limits of coastal water.

Section 6 – Prohibition arising

16. This section prohibits abstractions from inland water in Scotland above the specified threshold rate that are not approved by the Scottish Ministers or exempt from the requirement for their approval under section 7.

Section 7 – Exemption from approval

17. This section sets out which abstractions are exempt from the requirement for Ministerial approval. The following abstractions are exempt:

- abstractions authorised under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209) on the day on which section 7(1) comes into force;
- abstractions by Scottish Water for the purpose of the exercise of its core functions (see section 70(2) of the Water Industry (Scotland) Act 2002, as amended by section 24 of the Bill) in relation to premises in Scotland; and
- abstractions for the purposes listed in subsection (4). Those purposes are generating electricity by hydro-power, irrigating agricultural or horticultural land, operating a fish farm and maintaining a quarry or mine.
18. Ministers may by regulations modify an exemption, or provide for an exemption in other circumstances.

Section 8–The relevant threshold

19. This section sets out the rate threshold above which abstractions from inland water in Scotland are subject (unless otherwise exempt) to the approval of the Scottish Ministers. The rate threshold is 10 megalitres per day, although Ministers may alter that threshold in future by regulations. One megalitre contains one million litres.

20. In addition to their ability to alter the rate threshold, the Scottish Ministers may by regulations prescribe a method of calculation of the rate of abstraction, and in doing so may provide for some or all of the water abstracted to be left out of account in specified circumstances. Those circumstances could include, for example, where the water abstracted is returned to the water environment unaltered and within a defined period of time.

Section 8A–Consultation on changes

21. Before making regulations altering certain details of the abstraction control regime under sections 7 or 8, the Scottish Ministers must consult Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage, and such other persons or organisations as they think appropriate.

Section 9 – Application for approval

22. This section provides that any person may apply to the Scottish Ministers for approval of a qualifying abstraction. The details of the procedure for making such an application must be set out by the Scottish Ministers in regulations.

Section 10 – Factors as to approval

23. This section sets out the factors to which the Scottish Ministers are to have regard when deciding whether to approve a qualifying abstraction. In contrast to the determination by SEPA of applications for the authorisation of abstractions under regulation 15 of the Water Environment (Controlled Activities) (Scotland) Regulations (S.S.I. 2011/209), which focuses on mitigating any adverse impacts on the water environment, Ministers can consider a broad range of social, economic and other benefits and impacts when considering whether to approve a proposed abstraction. Ministers are required to give their reasons for not approving an application.

Section 11 – Conditions of approval

24. This section allows the Scottish Ministers to attach conditions to their approval, and vary such conditions. Conditions may, in particular, impose an upper limit on the rate at which water may be abstracted, and restrict the purposes for which the abstracted water may be used. The section also provides that the holder of an approval cannot transfer it to another person without the Scottish Ministers’ prior consent.
Section 12 – Additional requirements

25. This section requires the holder of an approval to report, if required, to the Scottish Ministers on activities in relation to the abstraction or any associated operations. It also obliges the holder to pay any administrative subsistence fee, whether annual or otherwise, that the Scottish Ministers may fix relating to the costs of operating the abstraction control regime (other than costs relating to applications for approval, in respect of which a separate fee may be fixed under section 9). The fee fixed under this section might cover, for example, the cost of monitoring qualifying abstractions or suspected qualifying abstractions in accordance with regulations made under section 16.

Section 13– Advice from other bodies

26. This section allows the Scottish Ministers to request from Scottish Water and the Scottish Environment Protection Agency, and requires those bodies to give, advice concerning any impact of the proposed abstraction upon, respectively, Scottish Water’s core functions and the environment.

Section 14– Suspension and revocation

27. This section provides for the suspension and revocation of Ministers’ approval if the holder requests it, or if the holder of the approval breaches conditions of or related to the approval. The holder must be informed of the reasons for an involuntary suspension or revocation and be given the opportunity to make representations before it is imposed.

Section 15 – Appeal against decision

28. This section provides for persons who are unhappy with the refusal of the Scottish Ministers’ approval, with the period for which it has effect, with the conditions attached to it, or with a suspension or revocation of an approval, to appeal to the sheriff for review of that decision. The sheriff may uphold or quash the decision, or vary it (by, for example, substituting a different period of validity of the approval, or removing or altering a condition attached to it). Any such appeal must be made within 21 days of the decision being intimated.

Section 16– Monitoring and records

29. This section provides for the Scottish Ministers to make regulations about the:

- monitoring of any qualifying abstraction, or an abstraction that is suspected of being a qualifying abstraction, and related activities and associated operations, and
- keeping of records, and the extent to which records must be made available to the Scottish Environment Protection Agency and other interested persons.

Section 17 – Abstraction-related offence

30. This section provides that it is a criminal offence wilfully or recklessly to make a qualifying abstraction that is not approved or exempt, or wilfully or recklessly to breach any
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conditions which Ministers have attached to an approval as to the rate at which water may be abstracted, or the purposes for which the water may be used.

31. The maximum prescribed penalty for committing the offence is a fine not exceeding the statutory maximum (for which, see the prescribed sum in section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46) – currently £10,000) on conviction under summary procedure, or an unlimited fine where the person is convicted on indictment.

Section 17A – Corporate offending

32. This section provides that, where an organisation such as a company or partnership commits an offence under section 17, and the commission of the offence is attributable to a responsible official within the organisation such as a director or partner, that official may be prosecuted for the offence, in addition to the organisation itself.

Section 18 – Procedure for regulations

33. This section provides that regulations made under this Part are subject to the negative procedure (for which, see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) with the exception of regulations which modify the list of exempt abstractions or which modify the relevant threshold, or which prescribe additional circumstances in which the Scottish Ministers may suspend or revoke their approval of an abstraction, which are subject to the affirmative procedure (for which, see section 29 of the 2010 Act).

Section 19 – Controlled Activities Regulations

34. This section provides that nothing in this Part of the Bill affects any requirement for authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It clarifies that an abstraction may require both an authorisation under those Regulations and approval under this Part.

35. As it is possible that the 2011 Regulations might be altered or replaced in future, the section also enables the Scottish Ministers by regulations to modify this section and section 7, should that prove necessary as a result of the 2011 Regulations being revoked or amended or new regulations be made regarding the same subject-matter.

PART 3 – SCOTTISH WATER’S FUNCTIONS

Section 21 – Value of water resources

36. This section amends section 25 (Scottish Water’s general powers) of the Water Industry (Scotland) Act 2002 to clarify that the power in section 25(1) of that Act includes the power to do anything that Scottish Water considers will assist in the development of the value of Scotland’s water resources. Scottish Water’s powers under section 25(1) of the 2002 Act are wide (it may engage in any activity which it considers is not inconsistent with the economic, efficient and effective exercise of its core functions), but this section puts the matter beyond doubt.
Section 22– Development of assets

37. This section inserts a new section 50A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to develop the value (in respect of both economic and other benefits) of its assets and expertise, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions. Scottish Water’s core functions are defined by section 70(2) of the 2002 Act (which is amended by section 24 of this Bill) but are essentially the provision of water and sewerage services in Scotland.

Section 23– Supporting renewable energy

38. This section inserts a new section 51A into the Water Industry (Scotland) Act 2002 which places a duty on Scottish Water to take reasonable steps to promote the use of its assets (both tangible and intangible) for the generation of renewable energy, although only insofar as is not inconsistent with the economic, efficient and effective exercise of its core functions (for which see section 70(2) of the 2002 Act, as amended by section 24 of the Bill).

Section 24– Meaning of core functions

39. This section amends the definition of Scottish Water’s core functions in section 70 (interpretation) of the Water Industry (Scotland) Act 2002. Currently, Scottish Water’s core functions are its functions under or by virtue of the Sewerage (Scotland) Act 1968, the Water (Scotland) Act 1980, the 2002 Act, and any other enactment (with the exception of its functions under section 25(1) and (2) of the 2002 Act). This section of the Bill alters the definition of core functions so that it is confined to the provision of water or sewerage services in Scotland under all enactments (including the 2002 Act).

Section 25– Subsidiaries of Scottish Water

40. This section inserts new sections 42A and 42B into the Water Industry (Scotland) Act 2002. The new section 42A allows the Scottish Ministers to pay grants directly to, or lend directly to, a subsidiary of Scottish Water (and not only to Scottish Water itself). It also allows a subsidiary of Scottish Water to borrow from any other person. However, Scottish Water’s consent is required to any borrowing from the Scottish Ministers or any person other than Scottish Water itself. The section does not, however, apply to the water and sewerage undertaking established by Scottish Water under section 13 of the Water Services etc. (Scotland) Act 2005, even if that entity is a subsidiary of Scottish Water.

41. Section 42(4) and (5) of the 2002 Act provide that Scottish Water’s net borrowings in each financial year must not exceed the limit to be set in a Budget Act. In light of the fact that, under new section 42A, subsidiaries of Scottish Water may now borrow, new section 42B provides that the net amount of sums borrowed by Scottish Water and any subsidiary of it must not exceed the amount specified in a Budget Act. Section 42(4) and (5) of the 2002 Act are repealed by this section.

42. What is a “subsidiary” for the purposes of new sections 42A and 42B of the 2002 Act is defined by reference to section 1159 of the Companies Act 2006, which provides that a company
is a subsidiary of another company if that other company (a) holds a majority of the voting rights in it, (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it (or is a subsidiary of a company that is itself a subsidiary of that other company).

Section 26 – Water and sewerage undertaking

43. This section amends section 14 of the Water Services etc. (Scotland) Act 2005. The amendments will allow the business undertaking established under section 13 of the 2005 Act (Scottish Water Business Stream Limited) to borrow money from persons other than Scottish Water and the Scottish Ministers, although the consent of Scottish Water will still be required to any borrowing other than from Scottish Water itself.

Section 26A – Errors in metering

44. This section amends section 54 of the Water (Scotland) Act 1980, which makes provision regarding water meter accuracy, to alter the error threshold above which Scottish Water must refund any overpayments (or the customer make up any underpayments) resulting from the inaccuracy. The amended section provides that where a water meter registers incorrectly to any degree exceeding 6% (for high flow rate) or 2.5% (for low flow rate), a refund or payment (as appropriate) must be made. Those rates are substituted for the existing error threshold in the 1980 Act of 5%. The Scottish Ministers are required through regulations to define what constitutes high and low flow rates (and regulations may also amend either of the percentage figures).

PART 4 – RAW WATER QUALITY

Section 27–Steps for sake of quality

45. This section inserts a new Part VIB into the Water (Scotland) Act 1980. The new Part gives Scottish Water powers of entry to premises (other than a house) for the purposes of assessing or monitoring the quality of raw water, and investigating or isolating anything that appears to be affecting, or may affect, the quality of such water.

46. “Raw water” is defined by new section 76M(5) of the 1980 Act. It includes water:
   (a) identified in an order made under section 6(1) (identification of bodies of water used for the abstraction of drinking water) of the Water Environment and Water Services (Scotland) Act 2003 (see the Water Environment (Drinking Water Protected Areas (Scotland) Order 2007 (S.S.I. 2007/529)); or
   (b) specified in an order made under new section 76R of the 1980 Act.

Essentially, raw water is water in the water environment that is intended to be abstracted for human consumption, excluding private water supplies (see new section 76M(6)).

47. Scottish Water must give at least 24 hours’ notice of the intended entry to the occupier (if any) of the premises and, if entry is refused, the taking of steps at the premises is obstructed (or
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refusal or obstruction is reasonably anticipated), or the premises are unoccupied, it can apply to the sheriff for a warrant authorising entry.

48. It is an offence under new section 76Q of the 1980 Act to intentionally obstruct a person approved by Scottish Water under new section 76O of that Act in exercise of the authority to enter premises conferred by a warrant.

Section 28– Agreements about activities

49. This section inserts a new section 68A into the Water (Scotland) Act 1980 which enables Scottish Water to enter into voluntary agreements with the owners and occupiers of land, or with local authorities, for the carrying out of activities which Scottish Water considers will help protect or improve the quality of raw water. Scottish Water may also enter into agreements whereby one party agrees to refrain from carrying out activities which Scottish Water considers detrimental to the quality of raw water.

50. As new section 68A of the 1980 Act makes provision for Scottish Water to enter into agreements with owners or occupiers of land and local authorities regarding works to protect or improve raw water quality, there is no longer any need for agreements made under section 68 of that Act to concern works for the purpose of preserving the purity of water (purity being one aspect of water quality). As a result, section 28 of the Bill amends section 68 of the 1980 Act so that agreements under section 68 may only concern drainage or the more effectual collection or conveyance of water which Scottish Water is authorised to take.

PART 5 – NON-DOMESTIC SERVICES

Section 29– Deemed contracts

51. The Water Services etc. (Scotland) Act 2005 established a framework whereby non-domestic customers could receive water and sewerage services from any one of a number of licensed providers operating in a competitive market, with Scottish Water effectively acting as the wholesale provider of the services. This section inserts into the 2005 Act new sections 20A and 20B, which address situations where customers are receiving services without being in a contract with a particular licensed provider.

52. New section 20A of the 2005 Act provides that where water or sewerage services are provided to premises by Scottish Water as wholesale provider but, for whatever reason, there is no contract in place between a licensed provider and the occupier, a deemed contract shall exist between the occupier and whichever licensed provider is designated by the Water Industry Commission for Scotland.

53. New section 20B of the 2005 Act provides for the basis on which a provider is designated for the purposes of new section 20A, and the terms and conditions of the deemed contract, to be set out in a scheme which is to be prepared by the Water Industry Commission for Scotland.
Section 30– Notification of occupancy

54. This section inserts new sections 20C and 20D into the Water Services etc. (Scotland) Act 2005.

55. New section 20C of the 2005 Act requires the owner of premises to which water or sewerage services are provided by a licensed provider (i.e. a provider licensed under section 6 of the 2005 Act) to provide information to the provider in respect of any change in occupancy. The Scottish Ministers may by regulations add to the information to be provided, and make rules on the timing of and procedure for the provision of information.

56. New section 20D of the 2005 Act provides that if the owner fails without reasonable excuse to advise the provider that a new occupier has taken occupancy, then the owner becomes jointly and severally liable with the new occupier for relevant charges. The Scottish Ministers may by regulations make rules on the timing of when joint liability arises and associated procedures, and for exempting from liability owners who have taken prescribed steps to ensure the accuracy and completeness of information provided by them.

PART 6 – SEWERAGE NETWORK

Section 31–Priority substances etc.

57. This section inserts a new paragraph (p) into subsection (3) of section 29 (decision on application for trade effluent consent) of the Sewerage (Scotland) Act 1968. The new paragraph allows Scottish Water to impose conditions as to the elimination or diminution of any priority substance or pollutant contained in trade effluent in a trade effluent consent granted under section 26 of the 1968 Act. Any occupier of trade premises who discharges trade effluent into the sewers of Scottish Water contrary to conditions imposed under Part 2 of the 1968 Act commits a criminal offence under section 24(2) of that Act.

58. The section also inserts a new section 29A into 1968 Act which defines the terms “priority substance” and “pollutant” for the purposes of new section 29(3)(p) of the 1968 Act. “Priority substance” is defined by reference to Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy, and “pollutant” is defined by reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). The Scottish Ministers may make consequential modifications of those definitions by regulations where the Directive or Regulations are modified.

Section 32– Substances generally

59. This section inserts a new section 46A into the Sewerage (Scotland) Act 1968 which creates a new offence of passing, or permitting to be passed, fat, oil or grease into a public sewer or connected drain where it is liable to interfere with the free flow of the sewer’s contents or adversely affect the treatment or disposal of its contents. The offence only applies to the passing of such matter from trade premises (defined by section 59(1) of the 1968 Act as any premises used or intended to be used for carrying on any trade or industry). It does not apply in
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circumstances where Scottish Water has given its consent for the substance to be passed into the
sewerage network under Part II of the 1968 Act.

60. The section also inserts a new section 46B into the 1968 Act, which allows Scottish
Water to recover the cost of investigating or remedying any resulting damage to or blockage of
the sewer or drain, or interference with the free flow of the sewer’s contents, from the owner or
occupier responsible, unless Scottish Water has given its consent to the discharge under Part II of
the 1968 Act.

61. The section amends section 46 (certain matter not to be passed into drains) of the 1968
Act to bring the maximum penalties applicable to that offence on summary conviction into line
with the maximum penalties provided for in the new section 46A(4).

Section 33– Powers of entry

62. This section amends section 48 (powers of entry) of the Sewerage (Scotland) Act 1968 to
provide that Scottish Water’s powers of entry under that section extend to taking entry for the
purposes of:

- monitoring, inspecting, and testing sewage (in addition to taking samples away for
  analysis, which is already provided for by section 48 of the 1968 Act);
- installing or maintaining monitoring, testing or sampling equipment on the premises; and
- investigating the source of any matter or substance (other than sewage) which is
  passing from the premises into the public sewerage network.

Section 34– Common maintenance

63. This section inserts a new Part IIA into the Sewerage (Scotland) Act 1968. The new Part
applies to private sewage treatment works which are owned in common by two or more persons
and the discharge of the contents of which are authorised under the Water Environment
(Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). Private sewage treatment
works such as septic tanks will usually involve some discharge to the water environment and that
discharge will almost always require authorisation under the 2011 Regulations.

64. The term “private sewage treatment works” is defined in section 59 of the 1968 Act as
meaning any works, apparatus or plant used for the treatment or disposal of sewage that is not
vested in Scottish Water. It includes a septic tank, but not a SUD (Sustainable Urban Drainage)
system.

65. At common law, where property is owned in common, the consent of all pro indiviso
owners is generally required before any alterations, non-essential repairs or other works can be
carried out upon it, although the grant of ownership (as recorded in the title to the property) may
make different arrangements. The new Part sets out new rules regarding the maintenance of
private sewage treatment works owned in common that override any conflicting provision of the
common law or any contrary provision that may exist in the title deeds of the properties
concerned.
66. The new Part provides that, where works need to be carried out to private sewage treatment works that are owned in common in order to comply with conditions of the works’ authorisation under the 2011 Regulations, any one proprietor may carry out (or instruct) those measures without having to secure the consent of all (or a certain proportion of) the other co-proprietors. Before doing so, the owner(s) wishing to carry out the measures must serve a notice under new section 38C of the 1968 Act upon each of the other owners, who may apply to the sheriff under new section 38D for review of the notice if they are unhappy with the measures proposed.

67. The new Part also makes provision for each of the owners of the works to be liable for a share of the cost of measures taken under new section 38B(2) of the 1968 Act, based on the same proportion that each owner’s pro indiviso share of the property bears to the whole. Provision is made for an owner to recover the cost of measures taken, subject to the cost having been incurred and to the service of a notice under new section 38E.

68. Provision is made in new section 38F of the 1968 Act for liability for the cost of measures to continue notwithstanding a change in ownership of any property connected to the private sewage treatment works.

69. New section 38G of the 1968 Act provides for a definition for the 2011 Regulations and related matters. The Scottish Ministers may make consequential modifications of that definition by regulations.

PART 7 – WATER SHORTAGE ORDERS

Section 35– Proposal for order

70. This section makes provision for Scottish Water to propose to the Scottish Ministers that they (the Scottish Ministers) make an administrative water shortage order. Scottish Water may only make such a proposal if it believes that there is a serious deficiency (or threatened serious deficiency) of water supplies in an area. The section sets out the information that must be included in and accompany the proposal.

71. The provision for water shortage orders replaces the provision for drought orders in the Natural Heritage (Scotland) Act 1991 (the relevant provisions of which are repealed by section 48 and schedule 3).

Section 36– Making of order

72. This section enables the Scottish Ministers to make two different types of water shortage order: an ordinary water shortage order and an emergency water shortage order. In order for Ministers to make an ordinary water shortage order, Scottish Water must have made a proposal and Ministers must be satisfied that the deficiency or threat in question exists. In order to make an emergency water shortage order, Ministers must, in addition, be satisfied that there is a risk to the health, or social or economic well-being, of people in the area affected. The differences in the effect of an ordinary water shortage order and an emergency water shortage order are that an emergency water shortage order may permit Scottish Water to supply water by means other than
through pipes (see section 37(3)), and an emergency water shortage order comes into force more quickly after it is made and is of shorter duration (see paragraph 8 of schedule 1).

Section 37– Content of order

73. This section sets out what a water shortage order may contain. A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate a serious deficiency (or threatened serious deficiency) of water supplies in an area. Examples of what a water shortage order may do are given. Subsection (3) provides that an emergency water shortage order may permit Scottish Water to supply water by means other than through pipes (which an ordinary water shortage order may not do).

Section 38– Abstraction and discharge

74. This section clarifies that where the Scottish Ministers through a water shortage order permit Scottish Water to abstract water from or discharge it to a particular place, that permission gives Scottish Water legal entitlement to do so, even if, for example, a person has exclusive rights to abstract from the water body in question. It does not, however, override any requirement for an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (see section 46(1)), so Scottish Water will still require to apply for and obtain authorisation from the Scottish Environmental Protection Agency under the 2011 Regulations, if those regulations so require it.

75. The section also clarifies that a restriction or prohibition on the abstraction of water under a water shortage order restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

Section 39 – Further provision

76. This section introduces schedule 1, which makes more detailed provision in relation to procedural and other matters concerning water shortage orders.

Section 40– Appeal against order

77. This section enables a person who is unhappy with a water shortage order to appeal to the sheriff, who may affirm the order or direct the Scottish Ministers to amend or revoke it. Any appeal must be made within 14 days from the day on which notice of the order is published. The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

Section 41– Non-compliance offence

78. This section makes it an offence to fail, without reasonable excuse, to comply with a water saving measure imposed by a water shortage order, or a restriction or prohibition on the abstraction of water imposed by such an order.
Section 41A – Corporate offending

79. This section provides that, where an organisation such as a company or partnership commits an offence under section 41, and the commission of the offence is attributable to a responsible official within the organisation such as a director or partner, that official may be prosecuted for the offence, in addition to the organisation itself.

Section 42 – Recommendations issuable

80. This section obliges Scottish Water to publicise the fact that it considers there to be a threatened serious deficiency of water supplies in an area and to recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat. Unlike water saving measures imposed by a water shortage order, it is not a criminal offence to fail to comply with water saving measures recommended under this section.

Section 43 – Directions on functions

81. This section provides for the Scottish Ministers to be able to give directions to Scottish Water regarding the exercise of its functions under a water shortage order.

Section 44 – Water saving measures

82. This section introduces schedule 2, which lists the water saving measures that may be recommended under section 42, or imposed in a water shortage order under section 37(2)(e).

Section 45 – Serious deficiencies

83. This section defines a serious deficiency of water supplies by reference to there being insufficient water to enable Scottish Water to carry out its functions under Part II of the Water (Scotland) Act 1980, which concern the supply of wholesome water for domestic and non-domestic purposes.

Section 46 – Controlled Activities Regulations

84. This section makes it clear that, although Ministers may permit Scottish Water to make an abstraction or take other measures in connection with a water shortage order, that permission does not absolve Scottish Water of the need to separately obtain any authorisation required under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209). It also provides that Scottish Ministers may make consequential modifications of that definition by regulations.

85. Scottish Water will need to apply separately for any authorisation that it may need under the 2011 Regulations, and is required by section 35(3)(b) to provide a copy of any associated application under those Regulations to Ministers when proposing a water shortage order.
86. This section confirms that any restriction or prohibition on the abstraction of water imposed by a water shortage order overrides any authorisation of that abstraction under the 2011 Regulations, while the water shortage order is in effect.

PART 8 – GENERAL PROVISIONS

Section 48 – Repeal of enactments

87. This section introduces schedule 3 which makes minor and consequential repeals.

Section 49 – Ancillary power

88. This section allows the Scottish Ministers by regulations to make supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Bill.

SCHEDULES

Schedule 1 – Water shortage orders

89. Paragraph 1 requires Scottish Water to publish a public notice of a proposal for a water shortage order. The notice must state that representations about the proposal may be made in writing to the Scottish Ministers within 14 days of publication of the notice.

90. Paragraph 2 makes provision for owners, lessees and occupiers of premises upon which a water shortage order would permit Scottish Water to carry out works to receive notice of the proposal. It also requires Scottish Water to give notice to a person whose right to abstract water would be restricted or prohibited by the order. Such persons may make representations about the proposal in writing to the Scottish Ministers within 14 days of notification being given.

91. Paragraph 3 requires the Scottish Ministers to give a person notice of a proposal where they intend to make a water shortage order that would restrict or prohibit the abstraction of water by that person, but the person has not already received notice because the restriction or prohibition was not included in the draft order.

92. Paragraph 4 makes provision for Ministers to seek SEPA’s advice in relation to adverse impacts upon the water environment and the need, if any, to restrict or prohibit the abstraction of water by any person.

93. Paragraph 5 requires the Scottish Ministers to consider representations made and advice received before making their decision. It also provides that they may make a water shortage order in the same terms as the draft order contained in Scottish Water’s proposal, make an order in different terms to the draft order, or refuse to make an order.

94. Paragraph 6 provides for publication of the order. Where the order imposes water saving measures, the publication requirements are more onerous in order to increase the likelihood of bringing the measures to the attention of those liable to be affected by them.
95. Where a water shortage order restricts or prohibits the abstraction of water by a person, paragraph 7 provides for direct service of notice of the water shortage order upon the abstractor affected.

96. Paragraph 8 makes provision for the coming into effect and duration of water shortage orders. Ordinary water shortage orders come into effect 3 days after notice of them is published under paragraph 6, and have effect for 6 months. Emergency water shortage orders come into effect on the day after notice of them is published, and have effect for 3 months. The Scottish Ministers can extend the duration of both types of order by up to two months.

97. Paragraph 9 makes provision for the publication of notice of any extension of a water shortage order, with more onerous publication requirements where the order extended imposes water saving measures. Where the order extended restricts or prohibits the abstraction of water by a person, the Scottish Ministers are required to give individual notice to that person.

98. Paragraph 10 provides for anyone aggrieved by an extension of a water shortage order to appeal to the sheriff.

99. Paragraph 11 allows Ministers to review a water shortage order at any time and, if they consider it appropriate following such a review, to revoke it in whole or in part. Provision is made for public notice of the revocation to be given, and for the giving of individual notice to any persons who were subject to a restriction upon, or prohibition from, abstracting that has been wholly or partly removed by the revocation.

100. Paragraphs 12 to 16 give Scottish Water powers of entry, by court warrant if necessary, in relation to assessing the need for water shortage orders, implementing them, and enforcing them. It is an offence to obstruct a person who is exercising authority to enter conferred by a warrant.

101. Paragraph 17 provides for Scottish Water to pay compensation to anyone who has sustained loss or damage as a result of measures undertaken, or restrictions or prohibitions imposed, in accordance with a water shortage order, or entry onto premises by an authorised person. Compensation is not payable if the loss or damage is caused by the fault of the person who sustains it, if it results from the imposition of a water saving measure, if it results from changes (sanctioned by the order) in the way Scottish Water supplies water, or if it is caused by the deficiency of water supplies that the order is intended to abate. If the parties cannot agree whether compensation is payable or the appropriate amount of compensation, the dispute can be determined by a sheriff.

102. Paragraph 18 requires Scottish Water and the Scottish Ministers to act without undue delay when required to serve or publish notices in connection with water shortage orders.

103. Paragraph 19 provides that any reference to a day on which a notice is published under paragraphs 1, 6 and 9 is to the day on which both the requirement to publish it in a newspaper and the requirement to publish it on Scottish Water’s website have been met.
Schedule 2 – Water saving measures

104. Schedule 2 lists the water saving measures that may be recommended by Scottish Water under section 42, or imposed by a water shortage order under section 37(2)(e).

Schedule 3 – Repeal of enactments

105. This schedule repeals section 69 (power to restrict use of hosepipes) of the Water (Scotland) Act 1980 Act and certain provisions of the Natural Heritage (Scotland) Act 1991 which concern drought orders. The provisions of the 1991 Act regarding drought orders are replaced by the provisions of this Bill regarding water shortage orders.

106. The schedule also repeals section 26 of the Water Environment and Water Services (Scotland) Act 2003, which requires the Scottish Ministers to report to the Scottish Parliament annually regarding compliance with the Water Framework Directive (2000/60/EC) and regarding progress towards achieving the environmental objectives for water status that member states are required to set under that Directive.
WATER RESOURCES (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Water Resources (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

3. The new or amended delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

Section 3(2) – Designation of bodies

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

4. Section 3(2) allows the Scottish Ministers, by regulations, to modify the list of designated bodies in section 3(1). Designated bodies can be subject to direction from the Scottish Ministers for the purpose of securing their participation in the development of the value of Scotland’s water resources, although only as regards the exercise of their functions. The bodies currently listed in section 3(1) are Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage, Scottish Enterprise, and Highlands and Islands Enterprise.
5. Section 3(2) was amended at Stage 2 so that the Scottish Ministers may by regulations modify the list in subsection (1) not only by adding or removing an entry, but also by updating an entry.

Reason for taking power

6. The reason for taking the power as introduced was to allow Ministers to secure the participation of public bodies other than those specified in section 3(1), allowing flexibility to bring other public bodies within the scope of Ministers’ direction-giving power in future.

7. The amendment will allow the Scottish Ministers to update the list of designated bodies where, for example, a body on the list changes its name.

Choice of procedure

8. Such regulations remain subject to negative procedure, for the reasons given in the original Delegated Powers Memorandum.

Section 8(1)(b) and (2) – Relevant threshold

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure</td>
</tr>
</tbody>
</table>

Provision

9. Section 8(1)(a) sets the relevant threshold, above which an abstraction is a “qualifying abstraction” (and therefore prohibited unless approved by the Scottish Ministers or exempt) at a rate of 10 megalitres of water per day. Section 8(1)(b) allows Ministers to prescribe a different rate. Section 8(2) allows Ministers, by regulations, to prescribe a method of calculation for the purposes of subsection (1).

10. Section 8(2) was amended at Stage 2 and a new section 8(3) added. The new provisions, although not significantly different in substance, place greater emphasis upon the fact that regulations under subsection (2) may include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.

Reason for taking power

11. As before, Ministers wish to be able to prescribe technical details of how to calculate whether the threshold rate has or has not been exceeded in certain circumstances. It is not considered appropriate to include such technical detail on the face of the Bill.

Choice of procedure

12. This is unchanged.
Section 9(2) – Application for approval

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

13. Section 9(2), as introduced, allowed the Scottish Ministers, at their discretion, to make provision by regulations about the procedure in relation to an application for approval of a qualifying abstraction. An indicative list of the procedural matters such regulations may address is provided in section 9(3), and includes (among other things) the form of application, the fixing of a reasonable application fee, and the information that is to accompany it.

14. Section 9(2) was amended at Stage 2 to provide that Ministers must make regulations about the application procedure, removing Ministers’ discretion to do so.

Reason for taking power

15. Although the exercise of the delegated power is now mandatory, the reason for taking the power remains the same, namely that procedural matters relating to the form of the application for Ministers’ approval of a qualifying abstraction are technical in nature, and not considered appropriate for primary legislation. Ministers had fully intended to make regulations under section 9(2) of the Bill, as they will need to establish the application procedure and set out clearly what information applicants must supply, and in what format. However, making such regulations mandatory will give added comfort to potential applicants that the details of the application process will be set out in due course.

Choice of procedure

16. This is unchanged.

Section 14(1)(c) – Suspension and revocation

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

17. Section 14(1)(a) and (b) allow the Scottish Ministers to suspend or revoke their approval of a qualifying abstraction if the holder of the approval requests it, if the holder breaches any conditions attached to the approval, or fails to comply with any reporting or fee-paying requirements. Section 14(1)(c) allows the Scottish Ministers, by regulations, to prescribe other circumstances in which they may suspend or revoke their approval.
The Bill was amended at Stage 2 so that the affirmative procedure applies to regulations made under section 14(1)(c), rather than the negative procedure. That was done by amending section 18(1).

Reason for taking power

19. As previously, in order to achieve their policy aim of controlling large-scale abstractions from the Scottish water environment, the Scottish Ministers may wish to prescribe additional circumstances in which they may suspend or revoke their approval of an abstraction. It is not, however, considered appropriate to provide that Ministers may suspend or revoke an approval on such grounds as they think fit, as that would not provide sufficient transparency and certainty to abstractors. It is therefore considered appropriate to take a power to prescribe such additional circumstances in subordinate legislation.

Choice of procedure

20. The Scottish Government recognises that there may be significant stakeholder interest in any changes to the circumstances in which Ministers may suspend or revoke their approval of a qualifying abstraction. On reflection, it considers that the additional Parliamentary scrutiny afforded by the affirmative procedure is appropriate for regulations making such changes.

Section 26A – Errors in metering

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

21. Section 26A of the Bill was added by amendment at Stage 2. It amends section 54 (register of meter to be evidence) of the Water (Scotland) Act 1980 (“the 1980 Act”). Section 54 of the 1980 Act makes provision about water meter accuracy. It provides that, where a water meter, on being tested, is proved to register incorrectly by more than 5%, it is deemed to have registered incorrectly to that degree since the last occasion but one before the date of the test on which Scottish Water read the meter. The section provides that Scottish Water must refund any resulting overpayment to the consumer, or the consumer must pay any shortfall to Scottish Water, as the case may be.

22. The Bill amends section 54 to substitute “the relevant percentage” in place of the 5% error threshold referred to above. The amended section defines “the relevant percentage” as being 2.5% in the case of a high flow rate, and 6% in the case of a low flow rate. The Scottish Ministers must by regulations define “high flow rate” and “low flow rate” for that purpose. They may also, by regulations, amend the percentage figure in either case.
Reason for taking power

23. The purpose of the amendment made by section 26A of the Bill is to align the error threshold in section 54 of the 1980 Act with the maximum permissible error limits for cold water meters in use for trade set out in the Measuring Instruments (Cold-water Meters) Regulations 2006 and the Measuring Equipment (Cold-water Meters) Regulations 1988. Those UK regulations specify different error rates for high flow rates and low flow rates, and define those concepts. Ministers intend to replicate the definitions of those concepts from the UK regulations in regulations made under this section. However, the manner in which the concepts are defined in the UK regulations is lengthy and highly technical. It would not be appropriate to replicate such lengthy and highly technical definitions in primary legislation. Nor would it be appropriate to define the terms by reference in the Bill to the UK regulations, changes to which are outwith the control of the Scottish Parliament. Accordingly it is considered appropriate to take a regulation-making power for this purpose.

24. It is conceivable that the percentages for maximum permissible error rates in the UK regulations may change. To allow for this, Ministers also require the power to amend the percentage figures in section 54(4) of the 1980 Act.

Choice of procedure

25. Under the existing section 101 of the 1980 Act, the negative procedure will apply to regulations under amended section 54 of that Act as it applies to any other regulations under that Act. The definition of what constitutes a “high flow rate” and “low flow rate”, and the percentage figures for the meter error rate, are largely technical matters for which the negative procedure is considered appropriate.

Section 27 – Steps for sake of quality

Power conferred on: the Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

26. Section 27 inserts a new Part VIB into the 1980 Act. The new Part gives Scottish Water certain powers of entry into premises for the purposes of assessing or monitoring the quality of “raw water” and investigating anything that may be affecting its quality. “Raw water” is defined by newly inserted section 76M(5) of the 1980 Act as being water contained in bodies of water (a) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003 or (b) specified in an order made under newly inserted section 76R(1) of the 1980 Act. Section 76R(1) of the 1980 Act enables the Scottish Ministers, for that purpose, to specify by order any bodies of water that are used (or intended to be used) for the abstraction of water intended for human consumption.

27. At Stage 2 section 27 of the Bill was amended to insert a new section 76M(6) into the 1980 Act. That new subsection excludes from the definition of “raw water” water
used or available as or for a private water supply, within such meaning as the Scottish Ministers may by order prescribe.

Reason for taking power

28. Ministers wish to exclude private water supplies from the scope of Scottish Water’s powers of entry under new section 76M of the 1980 Act. What constitutes a private water supply is currently defined by the Private Water Supplies (Scotland) Regulations 2006. It would not be appropriate to define private water supply for the purposes of new section 76M by reference to the 2006 regulations, as they may change. However, Ministers do wish to align the concept of a private water supply as used in the Bill with the concept as used in other Scottish legislation. In order to do so, without referring to subordinate legislation in the Bill, an order-making power is considered appropriate.

Choice of procedure

29. Such an order will be subject to the negative procedure by virtue of new section 76S of the 1980 Act, inserted by section 27 of the Bill (as amended at Stage 2). If the Scottish Parliament agrees to the principle that private water supplies should be excluded from the scope of Scottish Water’s powers of entry under this Part, the precise definition of what constitutes a private water supply for that purpose will be a technical matter for which the negative procedure is thought to offer an appropriate level of Parliamentary scrutiny.
Subordinate Legislation Committee

13th Report, 2013 (Session 4)

Water Resources (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 19 February 2013
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) 
   (i) subordinate legislation laid before the Parliament;
   
   (ii) any Scottish Statutory Instrument not laid before the Parliament but
classed as general according to its subject matter;

and, in particular, to determine whether the attention of Parliament should be
drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other
proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)  
Jim Eadie  
Mike MacKenzie  
Hanzala Malik  
John Pentland  
John Scott  
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee  
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Subordinate Legislation Committee

13th Report, 2013 (Session 4)

Water Resources (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 19 February 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the Water Resources (Scotland) Bill¹, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. This Bill contains a range of measures which generally pursue the aim of enhancing the manner in which Scotland utilises its water resources by encouraging the sustainable development of their value and responsible use.

3. The Scottish Government has provided a supplementary delegated powers memorandum² (SDPM) setting out the need for the powers as amended, how they may be exercised and the choice of procedure applicable to their exercise.

Delegated Powers Provisions

4. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers in the following sections 3(2), 7(6), 8(1)(b) and (2), 9(2), 12(1)(b), 16(1) and (2), 26 (substituting new section 14(2) into the Water Services etc. (Scotland) Act 2005), 27 (inserting new section 76R(1) into the Water (Scotland) Act 1980) and 30 (inserting new sections 20C(4) and 20D(4) into the Water Services etc. (Scotland) Act 2005), Section 49 (ancillary regulations) and Section 51 (commencement).

5. At stage 2, a number of the delegated powers have been amended and two new powers have been added. The Committee’s consideration of these powers is detailed below.

¹ Water Resources (Scotland) Bill, as amended, available here: http://www.scottish.parliament.uk/S4_Bills/Water%20Resources%20(Scotland)%20Bill/b15as4-amend.pdf

² Water Resources (Scotland) Bill Supplementary Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Water_Resources_SDPM_Final.pdf
Section 3(2) – designation of bodies

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: negative procedure

6. Section 2 allows the Scottish Ministers to give “designated bodies” directions as to the exercise of the body’s functions in order to contribute to the delivery of the development duty. The designated bodies are listed in section 3(1). Section 3(2) has been extended at stage 2 to allow the Scottish Ministers to update an existing entry. Before exercising their power to do so Ministers must consult a body affected by the proposed change.

7. The Committee is content that the change to the power is not significant and considers that the power remains appropriate in principle and that the negative procedure is an appropriate level of scrutiny.

Section 8(1)(b) and (2) – relevant threshold

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: affirmative procedure

8. Qualifying abstractions are identified by reference to “the relevant threshold”. Section 8(1)(a) states that the initial relevant threshold is 10 megalitres of water per day. Section 8(1)(b) allows the Scottish Ministers to set a different rate as the relevant threshold. Section 8(2) allows the Scottish Ministers to prescribe a method of how the relevant threshold is to be calculated, including the ability to leave an amount of water out of account.

9. The power has been amended slightly. Ministers may make provision for all or some of an amount of water abstracted to be left out of account for the purpose of calculating the threshold in specified circumstances.

10. The Committee is content with the power as amended and that it remains subject to the affirmative procedure.

Section 9(2) – application for approval

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by SSI
Parliamentary procedure: negative procedure

11. At introduction section 9(2) permitted the Scottish Ministers to make provision about the procedure for an application for approval of a qualifying abstraction. The power has been amended to make its exercise mandatory rather than permissive. The SDPM explains that making such regulations mandatory will give added
comfort to potential applicants that the details of the application process will be set out in due course.

12. The Committee is content with the power as amended and that the power remains subject to the negative procedure.

**Section 14(1)(c) – grounds for suspension and revocation**

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** regulations made by SSI
- **Parliamentary procedure:** affirmative procedure

13. Section 14 gives the Scottish Ministers the power to suspend or revoke an approval for large scale water abstraction. Various grounds on which they may do so are set out in section 14. Section 14(1)(b) allows the Scottish Ministers to prescribe other circumstances in which they may suspend or revoke an approval. Regulations which do so were subject to the negative procedure in the Bill as introduced. The Committee was not content with this at stage 1 and recommended that the power should be subject to the affirmative procedure. The Scottish Government has accepted the Committee’s recommendation that the power should be subject to affirmative procedure.

14. The Committee is content with the power as amended.

**Section 26A – Errors in metering**

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** regulations made by SSI
- **Parliamentary procedure:** negative procedure

15. Section 26A was added at stage 2. It amends section 54 of the Water (Scotland) Act 1980 which makes provision about water meter accuracy. The current tolerance for accuracy stated in that Act is 5%. The Bill proposes to change this tolerance to the “relevant percentage” which is to be 2.5% in the case of a high flow rate and 6% in the case of a low flow rate. The section gives the Scottish Ministers the power to define what high flow rate and low flow rate means and also to amend the relevant percentage.

16. The Committee is content with the power to modify provisions relating to water meter accuracy and that the power is subject to the negative procedure.

**Section 27 – Steps in relation to water quality**

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** order made by SSI
- **Parliamentary procedure:** negative procedure

17. Section 27 inserts a new part VIB into the Water (Scotland) Act 1980 which gives Scottish Water certain powers of entry into premises for the purposes of
assessing or monitoring the quality of “raw water” and investigating anything that may be affecting its quality. At stage 2 section 27 was amended to insert a new section 76M(6) into the 1980 Act. This excludes from the definition of “raw water” water used or available as or for a private water supply, within such meaning as the Scottish Ministers prescribe.

18. The Committee is content with the power to specify private water supplies excluded from the definition of raw water and that the power is subject to the negative procedure.
Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 52  Schedules 1 to 3
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Jim Eadie

25 In section 1, page 1, line 14, leave out <contribute to> and insert <promote>

Nicola Sturgeon

6 In section 1, page 1, line 20, leave out <includes> and insert—

<(  ) means the value of the resources on any basis (including their monetary or non-monetary worth),
(  ) extends to>

Nicola Sturgeon

7 In section 1, page 1, line 21, leave out <(or any activities in relation to) the resources> and insert <the resources (or any activities in relation to them)>

Elaine Murray

1 In section 1, page 1, line 25, after <means> insert <—
(  ) all peatlands, and
(  )>

Section 3

Elaine Murray

2 In section 3, page 2, line 16, at end insert—

<(  ) a subsidiary of Scottish Water,>

Elaine Murray

3 In section 3, page 2, line 26, at end insert—

<(  ) In this section, “subsidiary” is as defined in section 1159 of the Companies Act 2006.>
Section 4A

Jim Eadie

26 In section 4A, page 2, leave out lines 29 to 31 and insert—

<( ) for each successive period of 12 months within the 3 years beginning with the date on which section 1(1) comes into force, must prepare an annual report on how (and the extent to which) they have fulfilled the duty under that section during the relevant period,>

Section 10

Nicola Sturgeon

8 In section 10, page 5, line 7, leave out <social, economic> and insert <economic, social>

Nicola Sturgeon

9 In section 10, page 5, line 10, at end insert—

<( ) any relevant advice given under section 13(3) or (4),>

Section 16

Nicola Sturgeon

10 In section 16, page 7, line 33, at end insert—

<( ) Regulations under subsection (1) or (2) may include provision—
(a) allowing entry onto premises under a warrant or otherwise,
(b) about the steps that may be taken at premises so entered,
(c) for summary offences and penalties as respects—
   (i) failure to comply with requirements imposed by the regulations, or
   (ii) obstruction of persons exercising functions conferred by the regulations.>

Section 18

Nicola Sturgeon

11 In section 18, page 8, line 26, leave out <or 14(1)(c)> and insert <, 14(1)(c) or 16(1) or (2)>

Section 21

Nicola Sturgeon

12 In section 21, page 9, line 25, leave out from <The> to <Water> in line 26 and insert <Subsection (1) extends to allowing Scottish Water to engage in any activity that it>
Section 22

Nicola Sturgeon
13 In section 22, page 9, line 33, leave out <core>

Nicola Sturgeon
14 In section 22, page 9, line 34, after <the> insert <commercial>

Nicola Sturgeon
15 In section 22, page 9, line 34, at end insert—

<( ) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.>

Nicola Sturgeon
16 In section 22, page 9, leave out lines 35 to 37

Section 23

Nicola Sturgeon
17 In section 23, page 10, line 7, leave out <core>

Nicola Sturgeon
18 In section 23, page 10, line 8, at end insert—

<( ) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.>

Section 28

Elaine Murray
4 In section 28, page 15, line 32, at end insert—

<( ) In entering into agreements under this section, Scottish Water must have particular regard to how such agreements will contribute to compliance with its duties under—

(a) the Water Environment and Water Services (Scotland) Act 2003,
(b) the Nature Conservation (Scotland) Act 2004,
(c) the Flood Risk Management (Scotland) Act 2009,
(d) the Climate Change (Scotland) Act 2009,
(e) the Water Resources (Scotland) Act 2013.>
After section 33

Elaine Murray

5 After section 33, insert—

<Definition of “trade premises”>

In section 59(1) (interpretation) of the 1968 Act, in the entry for “trade or industry”, after the word “include” where it second appears there is inserted “premises used or managed by a public body or office holder (within the meaning of section 58 of the Nature Conservation (Scotland) Act 2004) and”.

Section 37

Nicola Sturgeon

19 In section 37, page 26, line 10, leave out from <such> to end of line 14 and insert <one or more water saving measures in relation to—

( ) persons of such descriptions as are specified in the order,
( ) premises of such categories as are so specified,
( ) other property of such types as are so specified,
( ) such purposes or circumstances as are so specified.>

Nicola Sturgeon

20 In section 37, page 26, line 14, at end insert—

<( ) A water shortage order may include—

(a) provision by way of exceptions or exemptions,
(b) different provision for different purposes in any respects.>

Before section 48

Nicola Sturgeon

21 Before section 48, insert—

<Crown application>

(1) No contravention by the Crown of any provision made by or under Part 2 or 7 makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing such a provision, declare unlawful any act or omission of the Crown which constitutes a contravention by the Crown of such a provision.

(3) Despite subsection (1), any such provision applies to persons in the public service of the Crown as it applies to other persons.

(4) Schedule (Crown land) makes further provision about the application to the Crown of Parts 2 and 7.>
Schedule 1

Nicola Sturgeon

22 In schedule 1, page 33, line 33, leave out <it> and insert <the order>

Nicola Sturgeon

23 In schedule 1, page 34, line 3, leave out <it> and insert <the order>

After schedule 2

Nicola Sturgeon

24 After schedule 2, insert—

<SCHEDULE
(introduced by section (Crown application))

CROWN LAND

1 A power of entry conferred by or under Part 2 or 7 is exercisable in relation to Crown land only with the consent of the appropriate authority.

2 (1) In paragraph 1, “Crown land” means land an interest in which—

(a) belongs to Her Majesty—

(i) in right of the Crown, or

(ii) in right of Her private estates,

(b) belongs to—

(i) an office-holder in the Scottish Administration, or

(ii) a Government Department, or

(c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department.

(2) In paragraph 1, “appropriate authority” in relation to land—

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(b) in the case of other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or (as the case may be) Government Department having the management of the land,

(c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(d) in the case of land—

(i) belonging to an office-holder in the Scottish Administration or to a Government Department, or

(ii) held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department,
means the relevant office-holder or (as the case may be) Government Department.

3 (1) In paragraph 2—

(a) “Government Department” means department of the Government of the United Kingdom,

(b) the references to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

(2) It is for the Scottish Ministers to determine any question that arises as to who in accordance with paragraph 2 is the appropriate authority in relation to any land (and their decision is final).>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Part 1: duty of the Scottish Ministers
25, 6, 7

Group 2: Part 1: reference to peatlands
1

Group 3: Part 1: designated bodies
2, 3

Group 4: Reporting on Part 1 duty
26

Group 5: Water abstraction under Part 2
8, 9, 10, 11

Group 6: Scottish Water’s functions
12, 13, 14, 15, 16, 17, 18

Debate to end no later than 50 minutes after proceedings begin

Group 7: Agreements for water quality
4
Group 8: Sewerage network: “trade premises”
5

Group 9: Water shortage orders
19, 20, 22, 23

Group 10: Crown application
21, 24

Debate to end no later than 1 hour 20 minutes after proceedings begin
Water Resources (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 25, 6, 7, 26, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

The following amendments were disagreed to (by division)—

1 (For 35, Against 82, Abstentions 0)
2 (For 36, Against 82, Abstentions 0)
5 (For 55, Against 62, Abstentions 0)

Amendment 4 was moved and, with the agreement of the Parliament, withdrawn.

Amendment 3 was not moved.

Water Resources (Scotland) Bill: The Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon) moved S4M-05711—That the Parliament agrees that the Water Resources (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
The Deputy Presiding Officer (Elaine Smith):
The next item of business is stage 3 proceedings on the Water Resources (Scotland) Bill.

In dealing with the amendments, members should have before them the bill as amended at stage 2, the marshalled list and the groupings—documents SP bill 15A, SP bill 15A-ML and SP bill 15A-G, respectively.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

I remind members to speak through the chair, by referring to other members by their full names and not as "you".

Members should refer to the marshalled list of amendments.

Section 1—Duty of the Scottish Ministers

The Deputy Presiding Officer: Group 1 is on part 1 of the bill, on the duty of the Scottish ministers. Amendment 25, in the name of Jim Eadie, is grouped with amendments 6 and 7.

Jim Eadie (Edinburgh Southern) (SNP): I am pleased to begin with amendment 25, which I am proposing as a refinement to an amendment that I lodged at stage 2.

I want to place on record my appreciation to RSPB Scotland for its support in working with me on the issue.

Part 1 of the bill is about the development of Scotland’s water resources. It places a duty on ministers to ensure the development of the value of those resources. That is to be welcomed because it will facilitate new and innovative ways of working as a hydro nation, an ambition that is shared by members across the chamber and that has the potential to bring significant benefits for Scotland’s people, environment and economy.

It is important, however, that the use of the resources is sustainable, which means that no development must be allowed to damage that precious resource. The duty is qualified in the bill by stating that minister must fulfil it "in ways designed to contribute to the sustainable use of the resources."

My amendment strengthens that important element by stating that ministers must fulfil the duty in ways designed “to promote” the sustainable use of our water resources. The requirement “to promote” gives greater emphasis than the requirement to “contribute to”. It places a greater onus on ministers to advance that aspect of sustainability than were they merely to “contribute to” it.

The amendment is consistent with recommendation 40 of the Infrastructure and Capital Investment Committee’s stage 1 report, which calls for a “deserved equality of emphasis to all three pillars of sustainability”.

It also reinforces the Deputy First Minister’s clear statement during stage 1:

“Our intention was never to drive economic benefit to the detriment of social or environmental factors, as those always need to be weighed up and balanced.” —[Official Report, 19 December 2012; c 14948.]

Overall, the amendment strengthens the duty of ministers under part 1 of the bill. It recognises the importance of the agenda in the long term and that value cannot be driven at the expense of the sustainable use of water resources. We are custodians of our environment and are responsible for securing its long-term sustainable use for the benefit of future generations. I am pleased to have worked collaboratively with the Deputy First Minister and her officials to reach this position, and I hope that she will be able to accept amendment 25.

I support the two other amendments in the group, as they help to explain fully what is meant by “the value of Scotland’s water resources”.

I look forward to hearing the Deputy First Minister speak to the amendments.

I move amendment 25.

14:45

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I thank Jim Eadie for lodging amendment 25, and I confirm to the chamber that I am happy and willing to accept it.

Part 1 of the bill places a duty on ministers to develop “the value of Scotland’s water resources”.

In developing that value, ministers will, of course, have to weigh up all the factors that are involved when they decide how best to proceed. Jim Eadie
suggests that ministers must develop the value of water resources in ways that are designed to “promote” the sustainable use of resources. I very much agree with Jim Eadie that that represents a strengthening of the provision but, rightly, it does not prevent ministers from taking account of other considerations. I believe that that strikes the right emphasis in the context of part 1, and I am sure that we can all agree that we wish to make use of our resources in a way that is valuable but also sustainable in the longer term. I am happy to support amendment 25.

Amendment 6 was developed following further reflection by me on how part 1 falls to be read. I want to ensure that it is clear on the face of the bill that the meaning of “the value of Scotland’s water resources” is very broad. With that in mind, I think that it helps to state explicitly that that means “the value of the resources on any basis (including their monetary or non-monetary worth)”. Amendment 6 seeks to put that beyond any doubt.

In addition, amendment 6 keeps—within the meaning of the value of water resources—the current extension, which covers any “economic, social, environmental or other benefit deriving from the use of ... the resources” or associated activities.

Amendment 7 is a simple drafting adjustment of some wording that relates to amendment 6.

As well as being an economic asset for Scotland, our water resources have a great deal of worth that can be described or measured in other ways. Water plays a vital role in our nation’s industrial and domestic life and we must ensure that we conserve and protect it, while being creative and innovative in developing the full potential of what is, after all, our most fundamental resource.

I hope that, in addition to supporting my amendments, all members will support Jim Eadie’s amendment 25.

Elaine Murray (Dumfriesshire) (Lab): At stage 1, many of us expressed concern about the fact that the bill did not give environmental and social benefits the same weighting as commercial benefits. Therefore, I welcomed the amendments that the Infrastructure and Capital Investment Committee agreed to at stage 2. I was also supportive of the amendment that Jim Eadie lodged at stage 2, but which he did not press, so I very much welcome amendment 25, which will further clarify and strengthen the consideration of environmental and social benefits. I am happy to say that Labour members will support it.

The Deputy Presiding Officer: I invite Jim Eadie to wind up and to indicate whether he intends to press or withdraw amendment 25.

Jim Eadie: I am delighted by the constructive approach that the Deputy First Minister has taken to amendment 25. She has not only listened to but acted on the representations that I, other MSPs and stakeholder organisations made at stage 2. I appreciate Elaine Murray’s support for my amendment.

I am delighted to press amendment 25.

Amendment 25 agreed to.

Amendments 6 and 7 moved—[Nicola Sturgeon]—and agreed to.

The Deputy Presiding Officer: We come to group 2, which is on part 1 of the bill, with reference to peatlands. Amendment 1, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray: I suspect that the consensus is about to break down.

When I lodged this amendment at stage 2, the cabinet secretary argued that the inclusion of peatlands in the bill was artificially stretching the definition and that including them did not support the bill’s purposes. Having reflected on that, I note that the bill uses the definition of “water resources” set out in the Water Environment and Water Services (Scotland) Act 2003, which does not cover peatland habitats. Indeed, the strict interpretation of the 2003 act has already led to peat bogs being discounted as wetlands in Scotland.

As a result, in bringing back this amendment, I do not propose to introduce any changes to the implementation of the 2003 act. However, I feel that the amendment would ensure that the sustainable management of Scotland’s peatlands could be taken forward under the bill’s purpose of developing Scotland’s water resources, which would deliver great economic, environmental and social benefits.

The cabinet secretary’s argument that amendment 1 would artificially stretch the definition of water resources is, in my view, inconsistent, given that the second report on proposals and policies and RPP1 both recognise that peatland and wetland management are, in fact, the same thing. RPP2 states that “incorporation of wetland management data into the net Scottish emissions account” will enable “peatland restoration to be counted towards Scotland’s climate change targets”.

Elaine Murray (Dumfriesshire) (Lab): At stage 1, many of us expressed concern about the fact that the bill did not give environmental and social benefits the same weighting as commercial benefits. Therefore, I welcomed the amendments that the Infrastructure and Capital Investment Committee agreed to at stage 2. I was also supportive of the amendment that Jim Eadie lodged at stage 2, but which he did not press, so I very much welcome amendment 25, which will further clarify and strengthen the consideration of environmental and social benefits. I am happy to say that Labour members will support it.
Moreover, given RPP2's recognition of the importance of peatlands in retaining and filtering water, they ought to be included in the definition of “water resources”.

I move amendment 1.

Nicola Sturgeon: I thank Elaine Murray for outlining the reasons behind amendment 1. However, although I fully understand the points that she is making, it will come as no surprise to her that I do not support it for the same reasons that I did not support it at stage 2.

In my view, the addition of the word “peatlands” to the definition of “water resources” in part 1 artificially stretches that definition. I understand and am not unsympathetic—in fact, I am very sympathetic—to the importance of caring for our peatlands and the Government is committed to doing that. For example, the 2012 budget announced a further contribution of £1.7 million to peatland restoration and the Government and its agencies are actively working together to support the protection and maintenance of those lands. The agenda’s significance is indeed highlighted in the draft RPP2, which is being considered by a number of parliamentary committees.

The addition of the word “peatlands” to the definition of “water resources” does not help to support the bill’s purpose. Part 1 is about water resources in the conventional, commonly understood sense; it is not about bogs, fens or any other type of land. The amendment seeks to protect peatlands by artificially stretching the definition of water resources in a way that I do not think appropriate or helpful in pursuing the bill’s aims and objectives.

With those comments, I ask Elaine Murray—

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Will the cabinet secretary give way?

Nicola Sturgeon: Yes—if I am able to.

The Deputy Presiding Officer: Malcolm Chisholm.

Malcolm Chisholm: I am finding it slightly difficult to follow the cabinet secretary’s train of thought. RPP2 acknowledges the importance of peatlands in retaining and filtering water, but that particular aspect of Government policy seems to go against what the cabinet secretary is saying. I find it difficult to understand the strength of her objection to what is a very reasonable and modest proposal.

Nicola Sturgeon: I am not saying that the amendment is not reasonable—I am not even saying that there is no argument to it. I am simply pointing out that the bill’s point and objective is to look at water resources in the traditional, conventional, commonly understood sense. The member is right to highlight aspects of other Government policies that focus on peatlands; indeed, I suggest that that underlines and strengthens my argument. In rejecting amendment 1, I am not rejecting the importance of peatlands but saying very clearly that the issue is being dealt with and catered for not just through budgetary decisions but through other policies. Going back to the previous group of amendments, I repeat that the bill’s purpose is to ensure that we develop our water resources in the widest possible sense, but I do not think it appropriate for peatlands to be specifically included within its ambit.

For those reasons, I ask Elaine Murray to withdraw amendment 1. If, as I suspect, she will not do so, I ask the chamber to vote against it.

The Deputy Presiding Officer: I had another request to speak on my screen, but I am afraid that it came too late for me to call the speaker.

I call Elaine Murray to wind up and indicate whether she wishes to press or withdraw amendment 1.

Elaine Murray: In his intervention, Malcolm Chisholm illustrated the difference in views: I believe that peatland is a water resource because of its function in improving the quality of our water. I will therefore press the amendment and go for the division.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a 30-second division, but only after a five-minute suspension.

14:54  
Meeting suspended.

15:00  
On resuming—

The Deputy Presiding Officer: We come to the vote on amendment 1. This will be a 30-second division.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
I argue that giving ministers the power to issue directions through subsidiaries does not require them to use that power, but enables them to use it if an issue is sufficiently important that that is the best way of delivering the Government’s intention.

Amendment 1 disagreed to.

Section 3—Designation of bodies

The Deputy Presiding Officer: Group 3 is on part 1 of the bill, on designated bodies. Amendment 2, in the name of Elaine Murray, is grouped with amendment 3.

Elaine Murray: Amendments 2 and 3 are also a rehash of amendments that were lodged at stage 2. At that time, the cabinet secretary said that it was not appropriate for subsidiaries of Scottish Water to be included in the list of designated bodies, which is the purpose of amendments 2 and 3. She also said that it would be for Scottish Water to decide how to fulfil ministers’ directions, whether that be through its core functions or whether that be through its subsidiaries.

I argue that giving ministers the power to issue directions through subsidiaries does not require them to use that power, but enables them to use it if an issue is sufficiently important that that is the best way of delivering the Government’s intention. Indeed, it could be advantageous for ministers to have those powers to, for example, issue
directions to Scottish Water Horizons, which is a wholly-owned subsidiary of Scottish Water that is described as a commercially sustainable, standalone business that uses innovative ideas, knowledge and assets to encourage sustainable growth and renewable technologies. Those are high priorities for the Scottish Government and ministers could need to use their powers of direction for those purposes.

The fact that Horizons is a stand-alone business might make it more complex for directions to be cascaded down from ministers via Scottish Water than its receiving ministerial directions without Scottish Water acting as an intermediary.

I move amendment 2.

The Deputy Presiding Officer: If members wish to conduct conversations, could they please do so outwith the chamber?

Alex Johnstone (North East Scotland) (Con): The changes in part 3 of the bill do not go as far as I would like. I would prefer Scottish Water to become a private company and be freed in that respect. However, the changes in part 3 have the effect of giving Scottish Water many of the opportunities that it would have if it were in the private sector. Consequently, the opportunity to work in partnership and in conjunction with many other companies, and to operate those partnerships as if they were in the private sector, is a vital freedom granted by the bill. This amendment to an earlier part of the bill would have the effect of placing restrictions on those opportunities that I am not prepared to accept. I will oppose the amendment.

Nicola Sturgeon: There are some fundamental disagreements about Elaine Murray’s amendments. First, although I understand that Alex Johnstone and his colleagues will support the Government, I fundamentally disagree with him about the privatisation of Scottish Water. I also disagree with Elaine Murray’s amendments.

Amendment 2 would add subsidiaries of Scottish Water to the list of designated bodies to which ministers could issue directions in relation to participation in activity to develop the value of our water resources. Amendment 3 defines subsidiaries as set out in the Companies Act 2006.

As I said at stage 2, when Elaine Murray lodged similar amendments, it is inappropriate to include subsidiaries of Scottish Water in the list. I stress that that is not because subsidiaries are or should be excluded from the agenda but because the extent of subsidiaries’ involvement is properly a matter for Scottish Water, as the parent company, to determine. The relationship between the Scottish ministers and Scottish Water is clear and ministers expect Scottish Water’s board to manage its affairs. The issuing of directions by ministers directly to a subsidiary would circumvent the agreed lines of communication and accountability that exist between ministers and Scottish Water and could cause confusion around responsibilities and priorities.

Part 1 of the bill ensures that Scottish Water will play its part in the development of our water resources, as Scottish Water is listed as one of the designated bodies to which ministers may give directions for the relevant purposes.

I therefore ask Elaine Murray to withdraw amendment 2 and not to move amendment 3. If the amendments are pressed, I ask members to reject them.

The Deputy Presiding Officer: I remind members that there are strict rules on the use of electronic equipment in the chamber.

Elaine Murray: The short debate that we have had on amendments 2 and 3 illustrated fundamental differences of opinion. Alex Johnstone will not be surprised to hear that I completely disagree with him. Scottish Water is a public company, which displays excellence and which is responsible to the Scottish ministers. Subsidiaries that are wholly owned by the company should be capable of direction by the Scottish ministers, when such direction would be in the best interests of encouraging sustainable growth and renewable technologies.

I press amendment 2.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Mr Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adams, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burges, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenney (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnsfiirth and Buchanan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Walker, Bill (Dunfermline) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 36, Against 82, Abstentions 0.

Amendment 2 disagreed to.
Amendment 3 not moved.

Section 4A—Report on steps taken

The Deputy Presiding Officer: Group 4 is on reporting on the part 1 duty. Amendment 26, in the name of Jim Eadie, is the only amendment in the group.

Jim Eadie: It gives me pleasure to speak to amendment 26, which was developed after consideration of points that I made at stage 2.

The bill provides for ministers to report to the Parliament on how they have fulfilled their duty under section 1(1) within the first three years from commencement of the section. A more regular reporting regime in the first few years of implementation of the legislation would help to focus activity and ensure that steady progress is made. Amendment 26 therefore requires ministers to report annually for the first three years but does not affect their ability to report to the Parliament over a longer term after the end of that period.

Amendment 26 ensures that the right balance is struck on what is required by way of reporting under section 4A. I know that the activity is long term and that the bill is just one part of the aspiration of ministers—and indeed the whole Parliament—to develop Scotland as a hydro nation. I hope that regular parliamentary scrutiny will be helpful in shaping that agenda. As the Deputy First Minister has stated, collaboration is crucial, and we are all committed to maximising
the development of Scotland’s water resources for the benefit of the people of Scotland.

I hope that the Deputy First Minister will welcome my amendment and support its inclusion in the bill.

I move amendment 26.

Nicola Sturgeon: I thank Jim Eadie for lodging amendment 26, and I am happy to accept it.

At stage 2 we discussed the importance of scrutiny and checking for the implementation of part 1 of the bill, but without having a reporting burden so onerous that it diverted resources from advancing the primary agenda. I am grateful to Jim Eadie for his work at committee and for proposing an amendment that gives certainty and reassurance to stakeholders that ministers will provide an annual report in the first three years, but which allows for flexibility after that initial implementation period.

Parliament can, of course, ask ministers for an update at any time, and I welcome the Infrastructure and Capital Investment Committee’s comments about undertaking scrutiny of the legislation. As Jim Eadie has stated, the bill has benefited greatly from collaboration, and implementation will require joint working between many different organisations and agencies. Nevertheless, regular reporting in the early stages will help to give impetus to the hydro nation agenda.

I hope that everyone in the chamber will join me in supporting Jim Eadie’s amendment.

Jim Eadie: I thank the Deputy First Minister for her response and assurances. As with the undertaking of any new or innovative activities such as those that are provided for in the bill, it is important that the success of those activities is effectively monitored. At section 4A, the bill places a duty on the Scottish ministers to report every three years. My amendment 26 strengthens that duty, and I am delighted to have proposed it.

Amendment 26 agreed to.

Section 10—Factors as to approval

The Deputy Presiding Officer: Group 5 is on water abstraction under part 2. Amendment 8, in the name of the cabinet secretary, is grouped with amendments 9 to 11.

Nicola Sturgeon: Part 2 of the bill provides for ministerial control of very large abstractions from our water environment. It is fair to say that this has been the most controversial area of the bill. An abstraction will be subject to control if it qualifies as being above the threshold—which, as members will be aware, is currently set at 10 million litres per day—and if it is not otherwise exempt.

Amendment 8 is a minor drafting change so that the reference to “economic, social or other benefit” in part 2 is the same as elsewhere in the bill. The revised word order does not, of course, alter the effect of the relevant provision, being section 10(1)(c)(i). Ministers will still have to weigh up all the same factors when deciding whether to approve a qualifying abstraction.

Amendment 9 relates to the process under part 2. It makes it explicit that ministers, in deciding whether to grant approval of a qualifying abstraction, must have regard to any advice given by the Scottish Environment Protection Agency or Scottish Water under section 13. That is a useful addition for the sake of listing in section 10 everything that ministers are bound to consider.

Section 14 enables ministers to make regulations about monitoring and record keeping for the purpose of the approval regime under part 2 in relation to abstractions. Amendment 10 clarifies that such regulations may, in connection with monitoring and record keeping, include provision about access to premises, about the steps that can be taken at the premises, and for summary offences arising from a failure to comply with the regulations or from the obstruction of someone exercising functions under the regulations.

Amendment 11 makes such regulations subject to the affirmative procedure, in light of the substantial nature of what regulations may do by virtue of amendment 10.

I move amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Nicola Sturgeon]—and agreed to.

Amendment 10 moved—[Nicola Sturgeon]—and agreed to.

Amendment 11 moved—[Nicola Sturgeon]—and agreed to.

Section 16—Monitoring and records

Amendment 10 moved—[Nicola Sturgeon]—and agreed to.

Section 18—Procedure for regulations

Amendment 11 moved—[Nicola Sturgeon]—and agreed to.

Section 21—Value of water resources

The Deputy Presiding Officer (John Scott): Group 6 is on Scottish Water’s functions. Amendment 12, in the name of Nicola Sturgeon, is grouped with amendments 13 to 18.

15:15

Nicola Sturgeon: Amendment 12 has been prepared following dialogue with stakeholders.
Section 25 of the Water Industry (Scotland) Act 2002 sets out the scope of Scottish Water's activities, enabling it to engage in any activity that is not inconsistent with the economic, efficient and effective exercise of its core functions. However, that provision does not give Scottish Water any legal right to interfere with private property or any third party rights.

The bill amends section 25 of the 2002 act to clarify that the range of activities in which Scottish Water may engage extends to activities that it considers will assist in the development of the value of Scotland’s water resources. Some stakeholders were concerned that that bill provision, as originally drafted, might give additional powers to Scottish Water to interfere with private property or other third party rights. Amendment 12 aims to assist the comprehension and clarity of section 25 of the 2002 act by clarifying that the section concerns the scope of Scottish Water’s activities and does not bestow any new legal powers on it.

At stage 2, I indicated that I would reconsider part 3 of the bill, which concerns Scottish Water's functions. That was due in part to Jim Eadie's helpful comments at that stage. Although initially the bill was drafted so that the duty on the Scottish ministers at part 1 was in effect mirrored in part 3 by a duty on Scottish Water, I have thought further about the issue and I am suggesting revised provisions with amendments 13 to 18.

The duty on ministers in part 1 of the bill concerns value in its broadest sense, encompassing considerations other than economic value. Scottish Water remains a designated body under part 1 and as such it has an important role to play in supporting ministers to meet their obligation to take steps to develop the value of Scotland’s water resources, when it is directed by ministers to do so.

Part 3 of the bill, however, is about Scottish Water and its own assets, which range from water treatment works, through equipment and land, to more intangible assets such as the technical experience that it might have built up over a number of years. Unlike part 1, the value to be developed in part 3 is commercial value, which is consistent with our vision for Scottish Water as a successful 21st century Scottish company.

It would not be appropriate to force Scottish Water and its subsidiaries, which operate in a competitive environment, to develop the non-commercial value of their assets. However—this is an important point—Scottish Water remains subject to the duty, when exercising its functions, to "act in the way best calculated to contribute to the achievement of sustainable development."

That duty is enshrined in section 51 of the 2002 act.

I believe that the amendments proposed as a group provide the right balance when taken with the existing provisions in the 2002 act. They ensure that Scottish Water remains subject to the clear responsibility to act sustainably, while leaving it properly task to act commercially with regard to developing the value of its assets. The economic, efficient and effective exercise of its functions remains—

Malcolm Chisholm: Will the cabinet secretary take an intervention?

Nicola Sturgeon: Yes.

Malcolm Chisholm: I am trying to understand Nicola Sturgeon’s argument. She will understand why stakeholders have found it puzzling that there is one definition of value in part 1 and another in part 3. I understand that she has tried to explain the reasons for that, but I still find it very difficult. It appears that part 3 will limit the factors that Scottish Water takes into account and that it will therefore, in effect, act against the laudable intentions of widening the scope of value in part 1.

Nicola Sturgeon: I am not sure whether Malcolm Chisholm has misunderstood. The reference I made to stakeholders’ concerns related to the issue that is being addressed by amendment 12, not the issue that I am talking about at the moment, although I fully accept that he may have been referring to other discussions with stakeholders.

I am trying to set out the issue clearly and to draw attention to the distinction between part 1 and part 3. Part 1 relates to the duty on ministers and concerns value in its broadest sense. In contrast, part 3 relates specifically to Scottish Water. The duty on Scottish Water is principally to ensure that the commercial value of its assets is enhanced and developed.

It would not be appropriate to force Scottish Water and its subsidiaries to develop the non-commercial value of their assets, but Scottish Water remains subject to the duty, when exercising its functions, to "act in the way best calculated to contribute to the achievement of sustainable development."

That duty is enshrined in section 51 of the 2002 act. Taken together, the amendments will strike the right balance.

I underline the fact that, as Scottish Water is a publicly owned utility, ministers have a close relationship with it. It will be appropriate at times for ministers to offer the organisation guidance on the direction that it should take in developing the value of its assets and expertise. I ask members to
support amendment 12 and the other amendments in the group.

I move amendment 12.

Elaine Murray: Given the confusion—I, too, am slightly confused by the amendments and about how the parts of the bill will interact—it would help to have more reassurance from the cabinet secretary on the record.

Some stakeholders—probably not the stakeholders who were referred to in relation to amendment 12—have raised the use of the term “commercial” in amendment 14, which should in no way diminish the need to consider biodiversity and sustainable development duties.

Will the cabinet secretary make it clear that the provision is not contrary to a contribution to the wider aspiration of developing Scotland as a hydro nation? There seems to be an element of conflict, as more emphasis appears to be given to commercial value than to social and environmental value. It would help to have it clearly stated that the provision in no way conflicts with the bill’s other aspirations.

Nicola Sturgeon: I am happy to give Elaine Murray that clarity and assurance. The point that must be stressed is that the amendments, which are proposed as a group, must be looked at and read in conjunction with existing provisions in the 2002 act. The provisions ensure that Scottish Water remains subject to a clear responsibility to act sustainably but leave it properly tasked to act commercially in developing the value of its assets.

The economic, efficient and effective exercise of Scottish Water’s functions remains a key principle. Through the amendments and the 2002 act, we will ensure that that remains the case.

As I said, the amendments will further allow ministers to issue guidance on how Scottish Water should take steps to develop the value of its assets. Scottish Water must have regard to such guidance. As I said, it is a publicly owned utility. Given the relationship of communication and accountability between ministers and Scottish Water, it might be appropriate on occasions for ministers to offer it guidance on the direction that it should take when developing its assets.

When we take the amendments in conjunction with the existing provisions, we see that the clarity and assurance are there for Elaine Murray. I hope that, as a result, members will support the amendments.

Amendment 12 agreed to.

Section 22—Development of assets

Amendments 13 to 16 moved—[Nicola Sturgeon]—and agreed to.

Section 23—Supporting renewable energy

Amendments 17 and 18 moved—[Nicola Sturgeon]—and agreed to.

Section 28—Agreements about activities

The Deputy Presiding Officer: We move to group 7. Amendment 4, in the name of Dr Elaine Murray, is the only amendment in the group.

Elaine Murray: The bill enables Scottish Water to enter into agreements for the purpose of protecting or improving raw water quality. Such management agreements will help to contribute to sustainable catchment management, whereby drinking water quality issues are addressed at source rather than through more expensive water treatments further down the chain.

The cabinet secretary stated at stage 2 that Scottish Water is not obliged to meet those objectives, but my contention is that that is not correct. As Scottish Water is designated as a responsible authority for the purposes of the Water Environment and Water Services (Scotland) Act 2003, it is obliged to contribute to the delivery of the water framework directive and the WEWS act objectives. As a public body, Scottish Water also has a range of other statutory duties, such as contributing to sustainable flood management and furthering the conservation of biodiversity.

Amendment 4 is slightly different from the amendment that I lodged at stage 2—members will be relieved to hear that. It aims to ensure that, in delivering sustainable catchment management, Scottish Water integrates that with its existing statutory duties.

The amendment that I lodged at stage 2 had a similar purpose, but there was a lack of clarity in the way in which it was drafted with regard to its intention. The amendment has therefore been redrafted to make it clear that the intention is not to give Scottish Water powers to enter into agreements that would, for example, reduce flood risk while not improving raw water quality. The amendment is intended to ensure that Scottish Water meets and integrates its various different statutory duties.

I move amendment 4.

Nicola Sturgeon: Section 28 inserts new section 68A into the Water (Scotland) Act 1980. The new section enables Scottish Water to enter into agreements with landowners or local authorities for them or Scottish Water to carry out any activities that Scottish Water considers necessary to improve raw water quality—that is, the raw water that, once treated, becomes part of the public drinking water supply.

As Elaine Murray said, amendment 4 is a slight refinement of the amendment to section 28 that
she lodged at stage 2. I still do not support the amendment. It lists five pieces of legislation, including “the Water Resources (Scotland) Act 2013”, under which Scottish Water will have certain duties, and it requires Scottish Water to have particular regard to those duties when making agreements under the section. That runs contrary to what the section is trying to do.

The new section of the 1980 act is about empowering Scottish Water to enter into voluntary agreements with landowners and local authorities when it is deemed that cost-effective action can be taken to address drinking water quality issues at source and thereby improve drinking water quality by means other than through treatment at a treatment works. Such agreements are not intended to be a vehicle by which Scottish Water complies with other statutory duties that have been placed on it, although they might sometimes further the same objectives.

It goes without saying that Scottish Water must comply with all statutory duties that are placed on it, and it could not enter into an agreement that would place it in breach of any such duty. The provision in amendment 4 would be an unnecessary complication and a distraction from the purpose of the section, which is to encourage agreements between Scottish Water and others for the purposes of improving raw water quality. I also argue that it is a duplication, given that Scottish Water must comply with all the legislation to which it is subject.

Taking those comments into account, I ask Elaine Murray to withdraw amendment 4. If the amendment is pressed, I ask the Parliament to reject it.

Elaine Murray: The debate on the amendment has been helpful because it has helped to clarify some of the issues around section 28. I am content with the explanation that has been given of the way in which the statutory duties must be fulfilled and the nature of section 28. I therefore intend to withdraw the amendment as I am content with the explanation that we now have on the record.

Amendment 4, by agreement, withdrawn.

After section 33

The Deputy Presiding Officer: Amendment 5, in the name of Dr Murray, is the only amendment in group 8.

Elaine Murray: I am sure that members will be happy to hear that this is my final amendment.

I lodged the same amendment at stage 2 to try to ensure that the offence of the discharge of fats, oils and grease would cover a wider range of establishments. The discharge of those substances causes an estimated 55 per cent of sewer blockages. The bill gives us an opportunity to prevent the problem by ensuring that the offence covers potentially high-risk establishments. Public sector premises such as educational establishments and offices can have large catering facilities. It is therefore sensible to treat them in the same way as public sector hospitals and care homes, which are already covered due to their inclusion in the definition of trade premises under the Sewerage (Scotland) Act 1968.

15:30

At stage 2, the cabinet secretary stated that public sector premises, with the exception of hospitals and care homes, are currently excluded from part 2 of the 1968 act, which is the point that I am trying to make, and also said that my amendment raised the question whether the consent regime ought to be extended to cover such premises. In fact, there is a case that they should be covered. It seems illogical that some public sector premises are covered and some are not.

I believe that amendment 5 would give additional power to the legislation to prevent the discharge of these materials, which causes more than half of the sewer blockages in Scotland.

I move amendment 5.

Alex Johnstone: The discharge of fat into sewers was one of the issues of genuine concern for a number of people who gave evidence. It is a matter of some concern that, if the bill remains as it is, the law will continue to permit certain types of public sector body to discharge in that way. I therefore have significant sympathy for amendment 5 and would be inclined to support it.

Nicola Sturgeon: We debated this issue at stage 2 and I accept some of the prima facie arguments that are being made. It would be interesting for all of us to trail back through things so that we could understand fully the reasons for the distinctions between different classes of public body.

As Elaine Murray has explained, the amendment would bring premises that are used or managed by public bodies or office-holders, such as schools, within the new offence relating to the discharge of fat, oil and grease from trade premises. It would also—I stress this point—subject them to the new power for Scottish Water to recover the cost of rectifying any damage caused to sewers or drains as a result of such discharges.
The regime that was created by the Sewerage (Scotland) Act 1968, as far as I am aware, works well. Certainly, I have not heard from Scottish Water in particular any suggestion to the contrary. The regime will be further improved by the addition, through the bill, of the provisions expressly prohibiting the discharge of fats, oils and grease from trade premises into the public sewer, and allowing Scottish Water to recover the costs of rectifying damage caused by such discharges. Those provisions are to be inserted into the 1968 act, and complement provisions that are already in that act.

As I said a moment ago, Scottish Water has not drawn to our attention any particular problem caused by the existing definition of trade premises, which covers premises that are used by trade and industry and specifically includes hospitals and care homes but does not include other premises that are used or managed by public bodies. I am therefore not convinced by the argument that we should now apply the new offence to all such premises.

Alex Johnstone: I intervene to ask a simple question. Is the cabinet secretary able to justify the fact that schools will be protected but hospitals will not be?

Nicola Sturgeon: My point is that we have not had any expressions of concern from Scottish Water that the current system—whatever the historical reasons for that system—is not working well.

If we pass the amendment, there will also be a risk that those premises will be brought within the trade effluent consent regime in the 1968 act. To bring them within that regime would place an additional burden on the public bodies concerned and I am simply not convinced that there is a problem with discharges into the sewerage network from those premises that needs to be addressed.

I understand the point that members are making, I am simply not convinced that the way to respond to that point is to include those additional public bodies in the ambit of the legislation in the way that the amendment would. For those reasons, I ask Elaine Murray to withdraw amendment 5.

Elaine Murray: I am slightly confused by the cabinet secretary’s arguments, I must admit. It seems illogical that hospitals are covered by this regime but other parts of the public sector that have large catering facilities, such as schools, are not.

The cabinet secretary argues that Scottish Water has not reported any problems with the current system. If there is no problem, the powers will not be used. The powers are there in case a problem arises.

I am sure that there are probably historical reasons why certain parts of the public sector and certain public sector establishments are included and others are not, but that does not mean that the situation could not be tidied up at this point. Because I do not really understand the differences between those different types of public sector establishments in respect of this offence of discharging fats and oils, and given that the discharging of fats and oils into the sewers is a problem in general, I cannot see what would be lost by the inclusion of educational facilities and so on in the legislation. Therefore, I intend to press the amendment.

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlile, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)

Against
Baxter, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Section 37—Content of order

The Deputy Presiding Officer: Amendment 19, in the name of Nicola Sturgeon, is grouped with amendments 20, 22 and 23.

Nicola Sturgeon: Amendments 19 and 20 make minor refinements to the water shortage provisions, and in particular to the content of any water shortage order that ministers might make. It is important that any such order is as clear as possible and that ministers have sufficient flexibility to make an order that is appropriate to the community or the area affected.

Amendment 19 builds in additional flexibility by allowing water-saving measures to be tailored so that they apply only to certain purposes that are specified in the order, should that be appropriate and sufficient to reduce the demand on the network.

Amendment 20 allows for a water shortage order to include exemptions from, or exceptions to, the measures in the order, or to make different provision for different purposes. That might be because ministers agree that a certain activity is critical and should continue, or that a certain group of people should be exempted from the measures.

Amendments 22 and 23 are very minor drafting changes, to aid clarity.

I move amendment 19.

Amendment 19 agreed to.

Amendment 20 moved—[Nicola Sturgeon]—and agreed to.

Before section 48

The Deputy Presiding Officer: Amendment 21, in the name of Nicola Sturgeon, is grouped with amendment 24.

Nicola Sturgeon: Amendments 21 and 24 exempt the Crown, although not persons in the service of the Crown, from criminal liability under parts 2 and 7 of the bill. Those parts deal with the control of large-scale water abstractions and water shortage orders, and it is the Scottish Government’s policy that the Crown should not be exposed to criminal liability. The Crown will not be
Water Resources (Scotland) Bill

The Deputy Presiding Officer (John Scott):
The next item of business is a debate on motion
S4M-05711, in the name of Nicola Sturgeon, on
the Water Resources (Scotland) Bill.

15:42

The Deputy First Minister and Cabinet
Secretary for Infrastructure, Investment and
Cities (Nicola Sturgeon): First, for the purposes
of rule 9.11 of standing orders, I wish to advise the
Parliament that Her Majesty, having been
informed of the purport of the Water Resources
(Scotland) Bill, has consented to place her
prerogative and interests, so far as they are
affected by the bill, at the disposal of the
Parliament for the purposes of the bill.

I am pleased to open this stage 3 debate on the
Water Resources (Scotland) Bill. At the outset, my
thanks go to the Infrastructure and Capital
Investment Committee for its thorough
consideration of the bill. I thank all those who
provided written and oral evidence to the
committee as well as those who responded to the
Government consultations and everyone who has
worked with us throughout the legislative process.
My thanks are also due to the Subordinate
Legislation Committee for its scrutiny and its
reports on the bill. I also place on record my
thanks to Scottish Government officials—in
particular, those in the bill team—who have
worked extremely hard to bring the bill to this point
today.

I am sure that every member in the chamber will
agree that we in Scotland are extremely fortunate
in having a beautiful environment. We perhaps do
not always think of our water environment in that
way—as we struggle through the rain—but we are
extremely lucky to have it. We are also very
fortunate in having, in Scottish Water, a very high-
performing public corporation. The Government
intends that Scottish Water will remain a high-
performing public corporation. The Government
intends that Scottish Water will remain a high-
performing public corporation, which I know will
not please those Conservative members who are
in the chamber this afternoon.

The bill recognises the critical importance of our
water resources and it rightly tasks ministers with
leading a collective effort to make the most of this
natural asset. As members are aware, the bill is
just one part of an ambitious and evolving
programme of action that intends to develop
Scotland into a hydro nation. That transformation
into a hydro nation will be achieved over the years
ahead through collaboration and partnership. We
will of course report to Parliament on progress,
and I hope that everyone will feel able to play a
positive role in what is a vital agenda.
We also have a responsibility to demonstrate good stewardship of our water resources, not only for the benefit of people here in Scotland but to show that good stewardship to the rest of the world. Many other countries around the globe would wish to have the abundance of water that we enjoy, because many of them face increasing water scarcity. We have knowledge to share with them. No doubt we have some lessons to learn from some of them, too, but we need to play our part in the global effort to better manage the world’s water and support international co-operation and learning on water issues.

One good example of how we are doing that is the work that Scottish Water, the Scottish Environment Protection Agency and the James Hutton Institute are doing with the Government of Malawi. Those water experts will be discussing the management and governance of water and waste water and have the Scottish Government’s full support in that endeavour.

Neil Findlay (Lothian) (Lab): I sincerely hope that, when Scottish Water works abroad, it does not engage with commercial opportunities to try to privatise the development of services in some countries. There is a move for that. Throughout the world, some big commercial opportunities are looking to exploit poor countries’ water provision.

Nicola Sturgeon: Neil Findlay raised that point at stage 1 of the bill. I fully recognise the point that he makes; it is a serious one. I simply say, as I did at stage 1, that Scottish Water is in a great position to lead by example not only as a high-performing public water authority but as one that has built up, and will continue to build up, extensive expertise that should be shared around the world for the benefit of those in other countries who do not have the water abundance and water expertise that we do. Scotland should be proud of Scottish Water, not only for what it does at home but for the international example that it can set as a high-performing public body.

As everybody appreciates, not only do we have expertise in water governance, we have academics with specialist knowledge of global water issues and management, as well as a track record of developing new and innovative technologies in the sector. Scottish Water is also providing technical advice to the water industry in Qatar, for example.

We have a number of enterprises that provide water services. Biomatrix Water is based in Moray but delivers ecological engineering services internationally.

Those are all good examples of how we are able to share with other parts of the world something that we have built up in Scotland as a result of the particular circumstances that we have here. The bill helps us to do that. It strengthens the focus on what we are trying to do.

Part 1 of the bill gives ministers a duty to take steps to develop the value of our water resources.

During the passage of the bill, I listened to, and came to agree with, the considerable weight of opinion that the value of our water resources should be expressed in terms of not just economic but social and environmental benefit. Our intention was never to drive economic benefit to the detriment of social and environmental factors, because we need to develop all aspects of value. Therefore, I am pleased to have amended the bill to make that absolutely clear. We thank all those who made that point at previous stages of the bill.

We will deliver against the duty to develop the value of our water resources, and the bill adds momentum to a wide-ranging programme of work that is already being energetically pursued.

We have completed a feasibility study on delivering a water innovation park, for example, which has concluded that we should progress with that proposal. Scotland’s centre of expertise for waters—CREW—led by the James Hutton Institute, is busy producing research that will support the hydro nation agenda, including a recently published report on the latest evidence and thinking about developing the value of water resources.

The climate justice fund has also recently awarded its first grants. Work has started on water-related action in sub-Saharan Africa. That demonstrates that we are serious about sharing skills and knowledge and being a global force for progress in the vital area of water stewardship.

A cohort of hydro nation PhD scholars has been recruited to deliver new primary research in water-related topics, and we are also very pleased to support the United Nations international year of water co-operation.

Co-operation is vital not only if we are to better manage water resources domestically—it is important for us domestically notwithstanding the relative abundance of our water—but if we are to contribute to the better management of resources around the globe.

The hydro nation agenda and the bill in particular speak of our determination to develop all aspects of water value, from the environmental improvements that are crucial to maintaining and improving our landscape and habitats, to innovations in water management and water efficiency to keep water bills low for households and businesses alike. Again, that is a very important objective. I take the opportunity to remind members that we have domestic water bills for 2013-14 that are on average £54 lower than
bills in England and Wales. That is another testament to the success of our public corporation, Scottish Water.

The bill further supports Scottish Water in its objectives. For example, late on in the amendment stage we debated how we can support Scottish Water in being able to maintain its assets better through new controls on fats, oils and greases and allow it to take proactive action with new water-sampling powers. The bill modernises the procedures to be followed when there are water shortages and puts further emphasis on the delivery of even greater returns from Scottish Water’s estate and infrastructure, most importantly by generating more renewable energy, which is another important objective in this country.

Understandably, I have talked a lot today about Scottish Water, and no doubt other speakers in the debate will do that too. However, it is important to reflect that more players are involved in the agenda than just Scottish Water; organisations such as Scottish Enterprise, Highlands and Islands Enterprise, Scottish Natural Heritage and SEPA have key roles to play, and we must always be mindful of that. Those organisations are important to the development of the value of our water resources. For that reason, the bill enables ministers to direct them as well as Scottish Water in relation to this agenda.

More broadly, our academics and engineers from the wider water industry, and individual land managers and farmers all have diverse roles to play in the different types of partnerships. Individuals can also play their part by respecting water as a resource that should be used carefully and responsibly. In that regard, the bill supports communities that share septic tanks; it supports communities to maintain them more effectively as one part of a broader work plan to improve our management of such tanks.

As I said at the amendment stage and as was commented on at stage 1 and regularly throughout the bill’s passage, the bill’s abstraction provisions are the most controversial provisions, so it is probably appropriate that I take a moment to comment on abstraction. As members will be aware, abstraction is the process by which water is taken from a river or other water body for a specific purpose. That is currently regulated by SEPA, using the controlled activities regulations. When an application for abstraction is made, SEPA considers the request and the impact of the abstraction on the water body from an environmental perspective and then decides whether to grant a licence. I am pleased that the bill contains new powers for ministers to consider applications for the largest abstractions from the water environment. That will not alter SEPA’s role as the environmental regulator, because the controlled activities licence will have to be sought in the usual manner. However, it is about ministers deliberately taking a broader view and looking to the future and not just taking the important but rather narrower view of environmental aspects. We need to take that broader view because we are looking at a future where our water assets will be increasingly valuable in a world of growing water scarcity.

I think that we all want Scotland to be a great place in which to do business and we all want new enterprises to be attracted to Scotland. As a relatively water-rich country, we may increasingly see businesses that are heavy users of water wanting to move into Scotland. We should not necessarily discourage that, but the new abstraction procedure will enable us to ensure that the best use is made of our water resources and that we support the needs of large water abstracters.

As we move towards the end of the bill’s legislative passage, we are looking towards the bill’s implementation and drawing up the regulations and guidance that will be necessary to support that important process. Throughout the passage of the bill, we have taken an open and collaborative approach to consulting with stakeholders. As I have said, one of today’s amendments came out of a particular approach by a stakeholder. I want to be clear to members that, as we move into the phase of regulations and implementation and guidance, we will work with stakeholders to ensure that the regulations and guidance are developed collaboratively and take account of any concerns raised.

We should never lose sight of the fact that we are incredibly fortunate to have great water resources in Scotland. We must charge ourselves with a duty to make the most of what is a wonderful natural advantage. Water is part of the very spirit of Scotland, and we should be mindful not only of how lucky we are but of its lack of availability elsewhere in the world. We must understand and discharge our duty to conserve and protect the resource that we have. We must also be creative and innovative in developing the full potential of what is our most fundamental and precious resource. The bill sets us on that journey. I ask—and I hope—that members will support the Water Resources (Scotland) Bill at decision time.

I move,

That the Parliament agrees that the Water Resources (Scotland) Bill be passed.

15:56

Elaine Murray (Dumfriesshire) (Lab): The bill has not changed a great deal since the stage 1 debate at the end of the December, which makes
it a bit difficult to think of anything terribly new to say about it. I did my best to protract the amendment stage—obviously without a great deal of success.

The bill is not particularly radical—it is less radical than we had expected after the hype that had preceded its introduction. The provisions are reasonable in relation to the bill’s aspirations to promote the economic, environmental and social benefits of a natural resource that Scotland possesses in so much abundance; they are also sensible and something on which we can all agree.

Stewart Stevenson is not in the chamber—we will all, I think, be thankful that presumably we will be spared his analysis of the composition of his body that he gave us at stage 1.

I am pleased that progress has been made on issues that were raised at stage 1. The most important example is that of the changes that have been made to ensure that the value of Scotland’s water resource specifically includes not only economic benefits, but social and environmental benefits. That issue was addressed initially in an amendment that the cabinet secretary lodged at stage 2, but it has been reinforced further by Jim Eadie’s amendment 25.

Of course, I was disappointed—but perhaps not surprised—that my amendment on the specific inclusion of peatlands has been unsuccessful. We often talk in the chamber about the enormous contribution that Scotland’s huge natural peat bogs and other peatlands resource make to our environment. Indeed, peatlands—like our water resource—are a resource that Scotland possesses in abundance. Although stage 3 offered an opportunity to address the situation, there seems to be a reluctance to follow up the rhetoric with legislative action.

The information that was given at stage 2 on how the Government is supporting the restoration, protection and maintenance of peat bogs and peatlands is, of course, welcome. However, the bill presented an opportunity to progress the sustainable management of peatlands specifically as part of the development of Scotland’s water resource. I am disappointed that neither the Government nor, indeed, other members agreed.

I am disappointed about my trade effluence amendment, too. I hope that no incident occurs, but if any public sector body causes problems and there is an incident, I will be the first to run up and say, “I told you that we could have solved these problems in the bill”.

At stage 1, concerns were raised about part 2, which is on water abstraction, with many witnesses questioning the necessity of that part of the bill, which was added fairly late on in the process. At stage 2, Alex Johnstone, supported by the RSPB, the Association of Salmon Fishery Boards and other stakeholders, unsuccessfully attempted to have the provisions on abstraction removed.

I understand that regulations will be introduced on the information that will accompany an application. I presume that those will come before the Infrastructure and Capital Investment Committee for examination. The issue of the non-consumptive nature of water abstraction for the whisky industry was raised at stage 1, and I will be interested to learn whether that issue will be addressed through the regulations.

During stage 1, some concerns were raised about the adequacy of the reporting provisions in the bill and about the wider hydro nation project. Indeed, the committee agreed that it wished to scrutinise the bill, if enacted, annually during the first reporting period. That, too, has been addressed by an amendment that has been agreed to, and I am sure that the committee will be pleased to take on that responsibility.

At stage 2, I suggested that the bill should make specific reference to the registration, care and maintenance of septic tanks and the need for SEPA to educate the public about and raise awareness of the legal obligations on septic tank owners. From time to time, those of us who represent rural areas are approached by constituents with issues that have arisen as a result of how private septic tanks are—or are not—maintained. Alex Johnstone expressed support for an amendment on the matter that I lodged at stage 2. I did not move the amendment, because the cabinet secretary told us that SEPA, Scottish Water and Scottish Government officials had agreed to a work plan to address issues such as increasing the registration of septic tanks, sharing data on locations and generally raising public awareness of owners’ responsibilities to maintain and empty their tanks.

The Infrastructure and Capital Investment Committee has been offered briefings from Scottish Water and SEPA about progress with that work, and I hope that there will be time to include the issue in our work programme. Members such as me who represent rural areas, where there are many private septic tanks, can help to promote such work in our constituencies and can assist with the raising of public awareness. I am looking forward to learning more about the work plan, and I hope to be able to play a part in publicising progress with it in my constituency and in ensuring that my constituents are made more aware of their responsibilities.

Reference has been made to the desire of some members to privatise Scottish Water. I was a member of Strathclyde Regional Council when it
held a referendum on whether the then Conservative United Kingdom Government’s plans to privatise water services should be followed. I think that about 90 per cent of people rejected those privatisation plans.

Mary Scanlon (Highlands and Islands) (Con): My memory of that is that it was tied in with the reorganisation of local government. The Conservative Government at the time was looking at police forces, education authorities and so on. My understanding is that there were six options, of which privatisation was one. It was not the only option.

Elaine Murray: I thank Mary Scanlon for that intervention. The referendum that was held by Strathclyde Regional Council was fairly clear. It asked the people of Strathclyde whether they wanted their water services to be privatised. At the time, Strathclyde Regional Council had responsibility for the water supply in Strathclyde. The privatisation of water services was comprehensively rejected by the people of a region that comprised almost half the population of Scotland, and I do not think that the position in Scotland will have changed greatly since then.

Scottish Water is a success story. It is more efficient and cheaper than many of its private sector comparators south of the border. Of course we all receive complaints from constituents from time to time. Those complaints often have substance and we follow them up, but I have always found Scottish Water to be efficient and prompt in responding to any issues that I raise with it.

A few weeks ago, I and the convener and deputy convener of the Infrastructure and Capital Investment Committee attended a David Hume Institute seminar, at which we were advised that Scottish Water is the only public utility in the UK that has achieved the gold standard in procurement. I had not known that. We should be proud of such achievements. We should not go down the line of, “Public sector bad; private sector good.” There are times when we should celebrate the fact that the public sector is doing better than the private sector. It can do better than the private sector and, with the right powers and the right direction, it will.

In one of my amendments, I made reference to the subsidiaries of Scottish Water, which include Scottish Water Horizons, Scottish Water Business Stream—I do not know about other members’ experience of that body, but I find it remarkably diligent in pursuing payment of bills that have only just been dispatched—and Scottish Water International, which was formed at the beginning of last year and which is already using Scottish Water’s expertise to the benefit of a number of other countries. I recognise the concern that Neil Findlay expressed at stage 1 and earlier today. We would not want such work to be engaged in at the expense of people who live in poorer countries, and we certainly would not want Scottish Water, as a public company, to participate in the privatisation of water resources in other countries. However, it can bring a lot of expertise and experience.

Scottish Water proves that the public sector can deliver excellence and it would be a great mistake to sell it off for the sake of a one-off injection of finance. In fact, that money might not necessarily help the financial situation in Scotland; the UK Treasury might also lay claim to it.

The public sector is often depicted as bloated and inefficient but that is not true of this public company. As I have said, Scottish Water is a testament to the public sector’s ability to deliver excellence and the additional responsibilities conferred by the bill will enable it to develop our water resource further—

Mary Scanlon: It is not all to do with the public sector; many Scottish Water infrastructure projects are carried out through a very good and successful partnership with the private sector. Indeed, one such organisation, Morrison Construction, works very well and to very high standards in that partnership.

Elaine Murray: I certainly agree with the member. As she will know, we have been in favour of partnerships between the public and private sectors. Others in the chamber might in the past have expressed their dislike of public-private partnerships but even the Scottish Futures Trust is taking forward models based on them.

That work is very much to be welcomed, and I think that the public sector can play a strong role in it. I do not want a successful public sector company such as Scottish Water to be sold off to the private sector.

The bill will enable Scottish Water to develop our water resource further, which I believe will deliver multiple economic, environmental and social benefits to Scotland.

The Deputy Presiding Officer: I call Alex Johnstone, who may have a generous five minutes.

Alex Johnstone (North East Scotland) (Con): First of all, I congratulate Elaine Murray on taking so much time. When one is given enough time to speak, one relaxes and finds an awful lot more to say. That has certainly been my experience.

In supporting the bill at stage 3, I want to clarify one or two misunderstandings about my personal
position and the position of the Conservative Party on the water industry. We will all remember that, back in the days before Scottish Water was created, the Scottish water industry—or, I should say, its constituent parts—was a bit of a basket case. The various parts of the industry were underinvested in, poorly resourced and, in some cases, not managed as well as they might otherwise have been. The creation of Scottish Water was therefore something of an inevitability. It was necessary for things to be gathered up, put in one place and pointed in the right direction.

Since the Scottish water industry became Scottish Water, things have come on in leaps and bounds. I will not criticise Scottish Water’s performance, which I believe to be extraordinary. Everyone concerned, from the management right down to those in the field and the contractors that work with the organisation, deserves to be praised for what they have achieved. They have made the Scottish water industry something that we can all be proud of. Now that Scottish Water has been in place for 10 years and more, I believe that this legislation is necessary to ensure that the industry can change, develop and progress.

Although I think it essential to express my support for the industry, I believe that certain alternative structures could, if allowed, encourage it to develop more effectively. The word “privatisation” has been used in the debate—indeed, it is often used by those on the Labour benches and the Government’s back benches—but it does not actually describe what the Conservative Party has been proposing for the past five or six years. If members recall, we proposed the mutualisation of the industry. We believed that it could be freed from the dead hand of state control and become the property of its customers rather than the taxpayer.

**Elaine Murray:** I believe that in his objection to one of my amendments the member said that he regretted that the bill did not enable Scottish Water to become “a private company”.

**Alex Johnstone:** There is a wonderful debate to be had—indeed, we had it in the chamber some years ago—about whether a mutual or co-operative model is a private sector or a public sector model. We were keen to emphasise that we wanted the industry to be owned by its customers rather than by the Government.

With that little bit of fine tuning, I will progress to talk about one or two other key things that the bill brings to our attention.

As it is, Scottish Water has an amazing level of expertise, skill and talent. Much of the bill is about setting Scottish Water free from the dead hand of state control. In that respect, it does many of the things that Conservative members would wish to do, but it chooses a different model to achieve those objectives. Part 3 will have that specific effect as it will let Scottish Water do valuable things and work in partnerships that will allow it to progress the industry in Scotland. The minister claimed that water bills in Scotland are £54 lower than those south of the border, of course, but the Government consistently fails to take into account the billions of pounds of taxpayers’ money that have been invested. Unless we recover that money some day, that figure is an inaccurate representation.

In looking through the other parts of the bill, it is fascinating to see that a whole part of it—part 7—is devoted to the issue of water shortages. I come from a community that has been washed away on more than one occasion in the past two or three months, and I would love to experience a water shortage. I look forward to doing so in future. When the regulations are eventually implemented and ministers have to make pronouncements on water shortages, I will be out there with my deck chair enjoying the change in the weather that we will experience.

Part 4 has a key part to play in respect of raw water quality. I value the opportunity that it gives the industry to work hand in hand with other organisations and individuals to ensure that raw water is of the highest quality in Scotland.

Elaine Murray has already touched on part 6. In my postbag, the issues of private sewage works and septic tanks in particular are of a surprisingly high level of significance, and I value the opportunity to look at them afresh—perhaps that is the wrong word to use in relation to sewage. I hope that I will be able to give appropriate advice in a number of current cases and take forward the issue of septic tanks in a constructive, engaged and co-operative manner, because quite often that experience is not reflected when those issues are being dealt with.

Part 2 relates to water abstraction, in which I developed a peculiar interest during stage 1. My concern was that the issue had been added to the bill late and without adequate consultation, and that there was little or no explanation about why a number of provisions, although they were not wrong, had been included. That is why I lodged a series of amendments at stage 2 that would have removed part 2 completely. Unfortunately, those amendments were not supported, and I thought that I would not waste our time today by lodging them all again. However, I take the opportunity to express my concern again and, later in the debate, Mary Scanlon will go into some detail about our concerns around part 2 and abstraction interests.

Had I been in a position to influence what is in the bill, I would have done things differently, but much of what is contained in it is worthy of
support. With that one regret, I take my final opportunity to express my support for the bill at stage 3.

The Deputy Presiding Officer: We now move to the open debate. We have some time in hand. Gordon MacDonald has a generous four minutes.

16:14

Gordon MacDonald (Edinburgh Pentlands) (SNP): Water is one of Scotland’s primary assets and the Water Resources (Scotland) Bill creates a framework that will allow the development of Scotland’s water as an economic resource; at the same time, the bill safeguards the fulfilment of Scottish Water’s core functions.

Scotland has an abundance of water with almost 2 per cent of the land surface covered by freshwater lochs and rivers. Scotland has approximately 70 per cent by area and 90 per cent by volume of all the UK’s inland surface water. We therefore have a duty to use that resource wisely and to maximise its potential.

The Infrastructure and Capital Investment Committee’s stage 1 report highlighted the level of support for the Water Resources (Scotland) Bill from a range of organisations, including the centre for water law, the Institution of Civil Engineers Scotland, the UK Environmental Law Association and SEPA. In the stage 1 debate, I commented briefly on the £44 million that Scottish Water will invest to meet its new obligations. The return, in relation to potential savings and meeting our climate change targets, will be substantial.

Part 3 will place a new duty on Scottish Water to promote the use of its assets for the generation of renewable energy. That could take the form of putting water turbines into high-pressure water pipes, converting reservoirs into hydro dams, or placing wind turbines on some of the 70,000 acres of land that it owns, all of which would help us to meet our climate change targets.

In October 2011, members of the committee toured the new water treatment works at Glencorse, outside Edinburgh. That new facility incorporated a hydro turbine that meets more than 60 per cent of the site’s energy needs. Scottish Water estimates that it could boost its hydro power capacity through the development of hydro turbines to deliver an additional 25,000MWh per year from existing assets by 2015. That highlights the potential energy savings that could be made by retrofitting turbines in other waterworks throughout the country.

However, it is not just about making savings for Scottish Water. Scotland has a wealth of experience in hydro power stations dating back to 1927, and has one of the largest hydroelectric pump storage schemes at Cruachan dam. The existing 145 hydro power stations contribute approximately 12 per cent of Scotland’s electricity generation, and initial studies by Black and Veatch on behalf of Scottish Water have identified 30 sites with the potential for cost-effective hydro power generation. Again, such developments will help us to achieve our 2020 renewables targets.

In allowing Scottish Water to develop non-core activities, we must protect the 2.4 million households and 152,000 businesses that it supplies with 1.3 billion litres of water and sewerage services every day. The bill achieves that by inserting new section 50A into the Water Industry (Scotland) Act 2002, which places a duty on Scottish Water to “take reasonable steps to develop the value of its assets and expertise” only in so far as it “is not inconsistent with the economic, efficient and effective exercise of its core functions” which are to provide water and sewerage services in Scotland.

Scottish Water has delivered one of the UK’s largest investment programmes for the lowest bills. It delivered £491 million of investment in 2011-12, which is 20 per cent higher than its delivery plan target. In the past 10 years, a total of £5.5 billion has been invested across Scotland.

Scottish Water, one of the few remaining publicly-owned water companies in the UK, recently announced that the average household bill for water and sewerage for in 2013-14 will be £334, compared with the average bill south of the border of £388. That is an 11 per cent saving for the average household in Scotland. In comparison, the average charge back in 2002-03 was £30 higher than in England and Wales.

Scottish Water has delivered higher-than-planned investment in its core activities, with average annual bills equating to less than £1 per day for all water and waste services—or the cost of a single 500ml bottle of water.

I am sure that people throughout Scotland see the benefits of Scottish Water being a publicly-owned company.

As climate change leads to even more wet weather, there will be a requirement to build bigger sewers to help to deal with the increased rainfall. Residents in Kingsknowe in my constituency, who have suffered regular flooding since 1999, will be pleased to know that Scottish Water plans to replace the main sewer in the next financial year. I hope that even more efficient use of Scottish Water assets will mean that people throughout Scotland see further benefits from having a locally-owned and locally-controlled water company.
Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I was pleased to be on the Infrastructure and Capital Investment Committee during stage 1, but I departed to pastures new in the Finance Committee before stage 2. I found this bill to be one of the most difficult ones that I have had to grasp—indeed, an image of trying to grasp water in my hand occurred to me several times when I was considering it. I have no doubt that that was due to deficiencies in my understanding.

I have come to appreciate the bill a little more over time. Part of the problem is that, although the bill is modest and worthy, it does not live up to the expectations and rhetoric around the hydro nation that we heard before it was introduced. Having said that, I think that the bill is worth while and that the parliamentary process has been good. I was not present at stage 2, but I read the Official Report of proceedings and it is fair to say that the cabinet secretary listened and responded to many—although not all—of the concerns that had been expressed about the bill.

Across the Parliament there is wide acceptance that water is more than a prized natural resource and is an essential that we cannot do without. Key industries, from agriculture and food and drink to manufacturing and energy, depend on Scotland’s natural water resources and have an interest in ensuring their sound management.

Water is held particularly dear by people in Scotland, and Scottish Water’s status as a public company is highly valued, as members said. That goes back to the key privatisation debates that Elaine Murray and I remember so well—privatisation was an early issue that I was concerned with in the Westminster Parliament. The debates showed the strength of the people of Scotland’s feelings on the matter, and the Scottish Government was right to decide that there should be no change to the status of Scottish Water. A consequence of the current status, as the cabinet secretary reminded us, is that water bills in Scotland are significantly lower than water bills in England.

The bill sits with the hydro nation agenda, which is all about realising the value of Scotland’s water for the benefit of the Scottish economy as a whole, as well as Scottish industry. However, we must be clear that the value of Scotland’s water cannot be measured simply in pounds and pence. Water is a valuable resource in the widest possible sense, so I am pleased that at stage 2 the Scottish Government agreed to the amendment that widened the concept of the value of Scotland’s water resources. It is about realising not just economic benefit but environmental and social benefits and it is right that that is explicit in the bill. There must be an all-Scotland response to our economic difficulties, but the development of our economic potential has to be consistent with important principles of sustainability, especially where Scotland’s water is concerned.

I welcome today’s further developments in that regard. Jim Eadie talked about the need to attend to all three pillars of sustainability and his amendment 25 strengthened those pillars, as did the cabinet secretary’s amendment on the monetary and non-monetary value of Scottish Water.

I welcome the duties on the Scottish ministers in part 1. I perhaps did not appreciate the issue at the beginning of the process. It is important that things that ministers could choose to do will now be requirements. I am pleased about that. However, as I said earlier, I still think that there is a bit of a contradiction between the duties of the Scottish ministers and the rather narrower duties of Scottish Water.

I suppose that I should apologise to the cabinet secretary for asking her to explain her explanation—no doubt there was another failure of understanding on my part—but I was expressing concern that external stakeholders raised, and in relation to today’s amendment to section 22, I am concerned that Scottish Water may interpret its duties in a rather narrower sense as a result of the insertion of the word “commercial” before “value” in new section 50A(1) of the Water Industry (Scotland) Act 2002. It is important that Scottish Water meets its wider duties relating to the environment—meeting water framework directive obligations, minimising carbon emissions and so on.

As the cabinet secretary indicated, co-operation is vital for Scottish Water. I would have liked that to have been stated in the bill in relation to all its statutory duties. Working in partnership with other bodies will be crucial for Scottish Water in achieving its objectives. The same applies to the whole issue of scrutiny. I am pleased that Jim Eadie’s amendment 26 on scrutiny was agreed to but, again, there must be scrutiny of all Scottish Water’s statutory duties.

I think that we are getting a little bit of extra time, so I will briefly—

The Presiding Officer (Tricia Marwick): You do not have to be that brief, Mr Chisholm.

Malcolm Chisholm: I have not commented on two of Elaine Murray’s amendments, so perhaps it is in order to express some disappointment that her amendment 2, asking for ministerial duties to apply to Scottish Water Business Stream and Scottish Water Horizons, was not accepted. It seems that Scottish Water describes those bodies as stand-alone businesses. It concerns me that Scottish Water will not view it as part of its duty to
issue directions, and it would have been better if Scottish ministers were able to issue directions to those two companies, too.

Like other members, I am puzzled about the provisions for fats, oils and greases not being changed with reference to schools and certain other public bodies. The reason seems to be to do with the possibility of financial burdens being imposed on the public purse. If there is time, perhaps the cabinet secretary could explain in her summing up what those burdens under the Sewerage (Scotland) Act 1968 are—those seem to be the main reason why she did not accept Elaine Murray's amendment 5.

I was also disappointed that the cabinet secretary did not accept Elaine Murray's amendment 1 on peatlands, which are a vital part of Scotland's water resource. Peatland restoration can improve raw water quality, as well as having other economic and environmental benefits.

Having expressed some disappointment regarding those various amendments, I welcome the fact that the cabinet secretary has accepted other amendments, both today and at stage 2, and the fact that we now have a better bill than we had at the start of the process.

The Presiding Officer: I call Maureen Watt. You have a very generous amount of time, Ms Watt.

16:27

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Thank you, Presiding Officer. I am not sure how much of it I will take, but here goes.

It is with a little tinge of sadness for me that we are drawing to the close of consideration by the Infrastructure and Capital Investment Committee and the Parliament of the Water Resources (Scotland) Bill. I admit that I found the whole process fascinating. If I were leaving university today, I would consider the water industries in Scotland as offering very exciting career opportunities.

I add my thanks to all those who have been involved in the passage of the bill, including the committee clerks, the bill team and the stakeholders who helped us in our deliberations. Early on, the committee visited Scottish Water's sampling offices at the Heriot-Watt science park, where we learned a great deal about Scottish Water's activities. The water supply and waste water sub-sector in Scotland is estimated to have a market value of £709 million and to employ around 6,000 people. I am referring not to Scottish Water itself, but to the more than 300 companies in the sector in Scotland.

Scottish Water's record since its formation has been impressive. Since 2002, Scottish Water has stripped out 40 per cent of its costs, and it now provides water to Scottish customers at a lower cost than any of the private companies in the rest of the UK. Drinking water quality is at its highest level, leakage has been reduced by 70 million litres per day, and it has recorded the highest-ever customer satisfaction level. Even this week, Scottish Water announced that it is to invest around £250 million in improving water projects in the Clyde area.

To me and to SNP colleagues, it is inconceivable that the Tories and their Lib Dem colleagues can still be hell bent on privatising this valuable Scottish resource. Let us face it: mutualisation is the first step on that road. When I challenged Alex Johnstone on that on the way back from Heriot-Watt, he admitted—as he did today—that indeed Scottish Water was impressive, but he trotted out the old broken record of the Tories: public bad, private good.

There we have it: dogma rules okay. Private fat cats, not the whole Scottish population, should benefit. We saw Thatcher sell off Scotland's oil resources in the 70s, and given half the chance, the Tories would sell off—

Neil Findlay: Will the member give way?

Maureen Watt: Yes.

Neil Findlay: When I challenged—oh, I have not put my card in.

The Presiding Officer: It is okay, we have plenty of time. We can wait for you.

Neil Findlay: I do not want to waste your time.

I am sure that Maureen Watt will agree that a reason for people such as the Tories to be circling with their fangs dripping with blood is that they see Scottish Water as a potential cash cow, because it is so successful.

Maureen Watt: If Mr Findlay had let me finish, I would have said that frankly, and fortunately, there is not even half a chance—not even one iota of a chance—that the Tories in Scotland will see water privatised, certainly not in the near future.

Scottish Water and any of the other 300 companies in the sector can now also compete for global water supply and waste water treatment works, which amount to around £8 billion in the UK and £242 billion worldwide.

Water scarcity and access to clean water and sanitation are global concerns, and Scotland, as a known hydro nation, can play an international role on them. The Government has commissioned a virtual centre of expertise on water, which can pull together advice and information on water management. As the cabinet secretary mentioned,
the James Hutton Institute, which is based in my constituency, is leading on that, as is the University of Dundee’s United Nations Educational, Scientific and Cultural Organization centre for water law, policy and science, and Scottish Water itself. All those organisations provide a strong basis for Scotland to be known as a hydro nation.

The Government wants Scotland to be “the helpdesk to the world on water governance” and those three institutions also provide a strong basis for that. The fact that Scottish Water already works in countries such as Qatar, India and Canada demonstrates the potential to meet that aim. Scottish Water International works with Governments at national and state level on methods of governance, openness, transparency and accountability and we have already seen the benefit of that, when John Swinney was able to find £50 million to use elsewhere in the Scottish budget rather than on Scottish Water. WaterAid is supported financially and with expertise by many who work in the industry and it is a good example of how Scotland works worldwide.

Although Scottish Water is a high-performing public company, it is not resting on its laurels. I was interested to hear from Peter Peacock, and the body he now chairs, Customer Forum, on how willing Scottish Water is to engage with it and others to have other perspectives on the industry. Scottish Water would tend to admit that it comes to the area from a rather geeky engineering background, so it is interesting to hear from customers and others on how the industry is perceived.

Business Stream still has a lot to do to assure business customers that it deserves their business, as competitors from other parts of the UK enter the market. I wish Scottish Water’s new chief executive, Douglas Millican, all the best in his new role and I hope that the message of the passing of the bill is that Scotland appreciates this fantastic resource and is about how we manage it and use our experience to help other countries benefit from Scottish expertise.

Part of my constituency is rural—as is part of Elaine Murray’s—and I recognise totally the importance of septic tanks to a lot of our constituents. I sincerely hope that the parts of the bill to improve maintenance where previously there may have been problems will be beneficial.

I am mindful of the costs of water purification. I hope that, through partnership with landowners and farmers, we will be able to drive down those costs, by ensuring that the water that comes off our hills needs less treatment before it reaches customers.

I say to the cabinet secretary that I hope that an information campaign will be run in several languages on the disposal of fats and oils before there are any charges or convictions. Some business premises are perhaps still not aware of their duties and responsibilities on such disposal.

The bill offers huge opportunities for all who are involved in the water sector in Scotland. I support the bill.

The Presiding Officer: Thank you very much, Ms Watt. I appreciated your speech.

16:35

Mary Scanlon (Highlands and Islands) (Con): I thank the Infrastructure and Capital Investment Committee for its work on scrutinising and amending the bill. It was nice to hear the committee convener say that she had enjoyed the process so much that she was quite sad that it was over. I thank Maureen Watt for that.

I realise that not everyone who is in the chamber was politically active 20 years ago but, when Elaine Murray spoke, I remembered the options for moving responsibility for water following the replacement of the regional and district councils. One option was to use the same arrangement as that for the police and to have eight water authorities. I clearly remember the six options, but Strathclyde Regional Council did not choose to put those options to voters.

That has jogged my memory on the fact that, after local government reorganisation, three water authorities were established—North of Scotland Water Authority, East of Scotland Water Authority and West of Scotland Water Authority—which became Scottish Water. I am not a member of the Infrastructure and Capital Investment Committee, but I think from what I have heard today that we could learn quite a bit from that merger, particularly as we look ahead to the merger of our police boards.

As Maureen Watt and others have said, there is no doubt that we have a modern water industry that is fit for purpose. Maureen Watt made the point that, since 2002, Scottish Water has stripped out 40 per cent of the costs. In 2002, it was one of the highest-cost water producers in the United Kingdom, so stripping out costs was essential in order to move forward.

When I spoke in the stage 1 debate, I raised the issue of water abstraction. It is worth putting it on the record again that the absence of any consultation on part 2 of the bill, which is on abstraction, in the two public consultation exercises is unacceptable in creating good legislation. I hope that that does not become an acceptable precedent for future legislation.
The Government's response to the committee said:

"my officials have been and continue to be in dialogue with a number of organisations ... to explain the policy intention and"

give

"reassurance that their views will be taken into account."

That dialogue is welcome, but it can never be a substitute for thorough consultation.

On seeking reassurances, I will ask about the concerns that the Scotch Whisky Association raised at stage 1 about the 10-megalitre limit on abstraction and about the significant difference between the amount of water that is abstracted and the amount that is consumed in the whisky distilling process. No distillery in Scotland currently uses 10 megalitres of water a day but, given the increasing demand for whisky—which, by law, can be produced only in Scotland—the day might come when that limit needs to be exceeded.

A significant point is that two thirds of the water that is abstracted for whisky distilling is returned to the source in a timeframe of between two and 12 hours. Surely it would be more sensible in this case to measure the water that is consumed rather than measure the water that is abstracted without taking into account the two thirds that is returned to source. I seek an assurance from the cabinet secretary that she will address those concerns and consult the industry when the regulations are drafted. I appreciate that she alluded to that earlier.

At stage 1, the committee questioned whether there was a need for a new abstractions regime given that the existing controlled activities regulations system was considered to be working well. Several witnesses found it difficult to see the benefit of an additional layer of regulation, and the committee’s report stated that Energy UK considered that part 2 of the bill was not in keeping with the better regulation agenda.

My final point is about the leakage rate. When I mentioned it to my colleague Alex Johnstone, he said, “Dinnae mention that. It's a lot better than it was.” I appreciate that it is a lot better, and we should all welcome that, but 700 million litres of leakage every day is a significant amount and, I would think, an unacceptable level. I hope that the leakage rate will continue to fall because, despite our high volumes of rainfall, water remains a scarce resource.

16:41

Richard Baker (North East Scotland) (Lab): As Elaine Murray said in her speech at the beginning of the debate, the Water Resources (Scotland) Bill does not rank among the most significant or contentious legislation that we have debated. Malcolm Chisholm was right to describe it as not having lived up to the hype that existed before it was introduced.

However, the bill is important because, as almost everyone has said in the debate, Scotland’s extremely abundant water resources are an invaluable asset to our country. It is right that we use the great natural advantage that we have to the benefit of our people, and that we share with others around the world our expertise in making best use of what is a precious, and in some places scarce, resource. Neil Findlay’s point about the nature of that overseas intervention is important; the political context of some countries and ownership of their water resources will be important factors for Scottish Water to take into account.

The ambition to have a successful and growing Scottish Water is the right one, which means that we must consider carefully any legislative changes to how we operate our water services. It is right that we are ambitious for the future of Scottish Water—with it remaining in the public sector—and for its roles as not only a service provider but a contributor to economic growth.

The future of Scottish Water has been keenly debated again today between those of us who believe that it should remain in public ownership and those who believe that it should be taken out of the public sector, including Mr Johnstone. To be fair, I thought that Mr Findlay was a bit uncharitable in describing Mr Johnstone as a vampire, with his “fangs dripping with blood”. Even I thought that that was going a little too far, but it shows how intense the debate can become. It is far from clear whether some of the additional resources that the proponents of privatisation or mutualisation of Scottish Water say would be released would, in fact, arise. Some of the economic arguments that are made in that regard are faulty.

However, it is without doubt important that we get the best possible performance from Scottish Water. That will certainly be expected by consumers in Scotland, who have just seen their water charges increase by 2.8 per cent. That increase is lower than increases in other parts of the UK, but it is an increase.

Parliament has an important role to play in ensuring proper and effective stewardship of our water resources. The issues can be contentious, but it is clear from the debate today that, by and large, the bill is not contentious. Perhaps the biggest question has been around the focus of, and necessity for, some of its provisions.

We agree that the hydro nation agenda should be promoted by ministers. Personally, I have been
less persuaded of the need to place a legal duty on ministers to carry out the work—particularly as the legal duty has no effect. However, as Malcolm Chisholm said, it is vital work that needs to be happening on behalf of ministers anyway.

There are a range of opportunities for Scottish Water to expand its business, boost our economy and improve its services to customers, and it must seek out those advantages. In recent years, Scottish Water has had considerable success in many areas. However, as regards its economic focus and contribution, in the stage 1 debate I highlighted the submission to the committee by Jim and Margaret Cuthbert on Scottish Water’s approach to outsourcing activities and procurement, which they say has resulted in a situation in which

“management skills and”

research and development

“seem to be almost completely derived from outside Scotland.”

Since then, members in the cabinet secretary’s party have also highlighted that point, but it has not resulted in changes to the bill, so I hope that ministers—indeed, the cabinet secretary—will reflect on the issue in advance of the proposed procurement bill.

The measures in the bill that give definition to Scottish Water’s core and non-core services have received general support, including from us. We have also supported the proposal that the Scottish Government should be able to lend directly to Business Stream, and we have agreed that there is a clear logic behind new powers to enable licensed water and sewerage service providers to demand and recover charges from non-domestic customers in situations where payment is due, so there is a range of areas of agreement.

The amendments that Elaine Murray lodged focused on aspects of the bill as they touch on environmental issues; that has been a running theme throughout consideration of the bill. In its stage 1 report, the committee made the case that the definition of the value of water in the bill should include environmental and social elements, so we welcome the fact that the cabinet secretary took that on board at stage 2. However, Malcolm Chisholm has today expressed concerns about consistency in relation to parts 1 and 3 of the bill, which the cabinet secretary should address.

Abstraction is a major concern—as Mary Scanlon said—not least because it was not consulted on before the bill was introduced, which is a deficiency in the bill. There is also concern about duplication of regulation in that area, which is a problem for the businesses that are involved. That is deemed by the cabinet secretary not to be a problem in abstraction, but when it comes to peatlands it seems that it is. We are disappointed that the cabinet secretary has not included peatlands within the compass of the bill because peatlands are dealt with in other areas of legislation and the Scottish Government’s work. There has not been an impediment for the Government with regard to abstraction and a number of other areas. As Malcolm Chisholm said, peatlands are an important water-management resource, so that is an area of disappointment for us, but we are where we are.

On the additional powers that ministers have given to Scottish Water, the key is that Scottish Water works sensibly and in close co-operation with others that operate regulatory regimes so that we do not—where it might be a difficulty—have wasteful duplication of effort.

Our concerns about the bill are not so great as to prevent us from supporting it. The RACCE Committee has done a good job in debating and scrutinising the bill. Although we have reservations on some aspects of it, of course we agree that Scottish Water and our natural water resources represent an area of significant potential for Scotland. Ministers are right to focus on that. The bill, although it is limited in scope, is part of a much broader and important agenda, which is why we will support it.

16:48

Nicola Sturgeon: I thank all members for their contributions to the debate. I was not involved in the pre-legislative stages of the bill, which were the consultations that took place. I came to the issue relatively late; the result of that has been—I do not mind admitting—a bit of a steep learning curve for me.

I agree strongly with Maureen Watt’s point; I, too, have thoroughly enjoyed learning about the issues that have been under consideration through the bill. The subject is hugely interesting and it is hugely important to Scotland. As Maureen Watt said, it opens up huge opportunities for people to get involved in water-resource management and all the associated issues, so I am pleased to have been involved in the bill. I am grateful to members who, through the committee and debates in Parliament, have played their part in making the bill what it is today—the bill that I hope Parliament will finally approve. Unsurprisingly, this has been a fairly consensual debate. I am glad about that.

Elaine Murray played a constructive role this afternoon. We were not able to agree to all the amendments that she lodged, but they allowed us to focus on important issues and, I hope, to develop a shared understanding of some issues that lie behind the bill.
Elaine Murray also said in her opening comments that she did not think that the bill had changed much. I disagree; I think that the Government has listened as the bill has progressed through Parliament. For example, we listened to the point that was made by many stakeholders at stage 1 that we had to be explicit not just about seeking to drive economic value in relation to water but also about the need to be mindful of social and environmental benefits, so we amended the bill to reflect those concerns.

We also made changes in response to amendments that were lodged by Jim Eadie around the reporting obligations on ministers. Where we have not been able to agree to amendments, we have nevertheless thought carefully about the issues, and some of the points that have been made will inform our thinking as we move towards drafting regulations and guidance.

Elaine Murray said that the bill is not radical. Again, I disagree. The bill is about recognising the enormous importance of our precious resources and it is also about making clear our commitment to managing those resources responsibly, and about recognising that that is not something that we do just for our own benefit, but is a responsibility and an obligation that we have to the wider world. That is radical in intent. The provisions in the bill and the provisions that will be in regulations and guidance that will underpin and give flesh to the bones of the bill will allow us to translate that radical intent into radical reality.

The other point that is worth making, which others have made as we have gone through the process, is that the bill is not the totality of an agenda but is part of a bigger agenda—the hydro nation agenda, which will see us becoming able to take advantage of and exploit all our resources and expertise responsibly and sustainably. That agenda is ambitious, radical and exciting, and I hope that members will support it for that reason.

My mind has been struggling for the last part of the afternoon with two competing images of Alex Johnstone: one that he put there himself of him lounging on a deckchair, and one that was supplied by Neil Findlay, which was of Alex Johnstone with his “fangs dripping with blood”. I am not quite sure which one I prefer. Alex Johnstone should not take it the wrong way when I say that Neil Findlay’s version is winning the battle of the images at the moment, probably because it fits better with my prejudices about Tories than does the other, more relaxed version.

Alex Johnstone spent much of his speech trying to—in his words—“explain the Tory position” on privatisation of Scottish Water. Despite what sounded like some protestations, it still seemed very much to me as if the Tories are in favour of privatising Scottish Water. As members in various parts of the chamber would, I would say that Scottish Water is working well as a public corporation; indeed, it is performing better than some private water companies. We should be proud of that and build on it. Of course it is the case that Scottish Water needs to work with others to discharge its responsibilities and further its ambitions, but it also operates in an intensely competitive commercial environment and does so as a successful public company. That is the way we should keep it.

Having said all that, I also say that Alex Johnstone has, throughout the progress of the bill, been very constructive in his comments and contributions, so I thank him for that. His contributions, in particular around abstraction, have strengthened the bill. We will ensure that we take account of some of the points that he made when we produce regulations on abstraction.

There have been many good contributions today. Gordon MacDonald raised some extremely well made points about climate change. Maureen Watt’s speech, which I have already mentioned, highlighted the need for a public awareness campaign on disposal of fats, oils and greases, which is a good suggestion to which we will give some thought.

Malcolm Chisholm’s speech—for all his protestations to the contrary—demonstrated a firm and clear grasp of the detail of the issues in the bill. He asked specifically whether obligations under the Sewerage (Scotland) Act 1968 would apply if the provisions on discharge of fats, greases and so on were applied to other public bodies. The principal obligation would be a requirement to apply for trade effluent consent licences. Given that that is an onerous administrative and financial burden, it would not be right to impose such a burden on bodies that Scottish Water tells us are not the offenders when it comes to discharge of those materials. We want to legislate for problems that exist rather than for problems that do not exist.

Mary Scanlon mentioned the importance of the regulations on abstractions. I can assure her that we will consult stakeholders in developing the regulations. As I am sure she is aware, the bill includes specific provision for ministers to leave certain water out of a count when calculating an abstraction. We proposed that to cover, for example, cooling water that is returned to the water environment. I hope that that reassures Mary Scanlon and stakeholders such as the whisky industry, which has been particularly concerned about that point.

Richard Baker also made some good points in his speech, including on peatlands, which we discussed in the context of an amendment from Elaine Murray. If I may try my best to simplify the
issue, I say that I think that it would not be right to include peatlands in the bill not because peatlands are unimportant—as he rightly pointed out, peatlands are dealt with in other work and are given a specific chapter in the draft report on policies and proposals—but because, in summary, peatlands are, as their name suggests, a form of land, whereas the bill is about water resources in the conventional sense. That is why the judgment has been taken that it was not appropriate to include peatlands within the scope of the bill.

I think that I have covered most of the contributions to the debate. If I have missed anyone out, I apologise for that.

**Mary Scanlon:** On the issue of the 10-megalitre abstraction limit that I raised earlier, given that by law whisky can be produced only in Scotland, will the Government consider any request from the whisky industry to distil more than 10 megalitres?

**Nicola Sturgeon:** We will continue to discuss with the whisky industry and other stakeholders those details as we develop regulations. I will reflect on the point that Mary Scanlon has made.

Let me conclude my summing up by saying a word or two about Scottish Water, which has understandably featured strongly in this afternoon’s debate. Scottish Water is a public sector success story. Now in its 10th year, Scottish Water is an organisation that we can be extremely proud of, given that it has delivered significant efficiencies, reduced leakages—although I take Mary Scanlon’s point that there is work still to do—and built new infrastructure. Scottish Water continues to be ambitious for the future and must continue to drive forward with efficiency to ensure that its assets are resilient and meet the needs of customers.

In that regard, on Monday this week I was pleased, along with its chair and chief executive, to launch Scottish Water’s massively ambitious plans for investment in the infrastructure of the Glasgow and Clyde area. Over the next five years, that investment will include expenditure of £250 million—perhaps £500 million in total—which will support 500 jobs and ensure that Glasgow has the infrastructure that it needs to continue to grow. We will continue to challenge Scottish Water to do more and to go further not just at home but by looking for opportunities abroad.

In conclusion, I look forward to continuing to work with stakeholders as we take forward the provisions of the bill into regulations and guidance to ensure that the provisions play their full part in the development of the hydro nation agenda. Water underpins every economy, and in Scotland we are well placed to ensure that it plays a full role in our future prosperity. This is a new and exciting agenda, and I am confident that we will all rise to the challenge of it.

Therefore, I am pleased to commend to Parliament the motion that the Water Resources (Scotland) Bill be passed.
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- Commencement
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Schedule 1—Water shortage orders
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An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

**PART 1**

**DEVELOPMENT OF WATER RESOURCES**

1. **Duty of the Scottish Ministers**
   
   (1) The Scottish Ministers must—
   
   (a) take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources,
   
   (b) do so in ways designed to promote the sustainable use of the resources.

   (2) In fulfilling the duty under subsection (1), the Scottish Ministers are to act so far as is consistent with the proper exercise of their—
   
   (a) functions under the 2003 Act and the 2009 Act,
   
   (b) other functions (whether or not relating to water resources or environmental matters).

   (3) In subsection (1), the reference to the value of water resources—
   
   (a) means the value of the resources on any basis (including their monetary or non-monetary worth),
   
   (b) extends to the economic, social, environmental or other benefit deriving from the use of the resources (or any activities in relation to them).

   (4) In this section—
   
   “the 2009 Act” means the Climate Change (Scotland) Act 2009,
“water resources” means wetland, inland water and transitional water as defined by section 3 of the 2003 Act.

2 **Involvement of public bodies**

(1) For the purpose of securing its participation in development of the kind mentioned in section 1(1), the Scottish Ministers may give a designated body directions as to the exercise of its functions.

(2) Directions under subsection (1) may be—
   (a) of a general or specific character,
   (b) for collective or individual application.

(3) Before giving directions under subsection (1), the Scottish Ministers are to consult each body to which they would apply.

(4) A body must comply with directions under subsection (1) applying to it.

(5) Directions under subsection (1) may vary or revoke earlier such directions.

(6) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to a designated body.

3 **Designation of bodies**

(1) In section 2, the references to a designated body are to any of the following—
   (a) Scottish Water,
   (b) the Scottish Environment Protection Agency,
   (c) Scottish Natural Heritage,
   (d) Scottish Enterprise,
   (e) Highlands and Islands Enterprise.

(2) The Scottish Ministers may by regulations modify the list in subsection (1) by—
   (a) adding a public body,
   (b) updating or removing an entry.

(3) Before making regulations under subsection (2), the Scottish Ministers are to consult each body to which the modification would relate.

(4) Regulations under subsection (2) are subject to the negative procedure.

4A **Report on steps taken**

(1) The Scottish Ministers—
   (aa) for each successive period of 12 months within the 3 years beginning with the date on which section 1(1) comes into force, must prepare an annual report on how (and the extent to which) they have fulfilled the duty under that section during the relevant period,
   (b) from time to time as they consider appropriate, may prepare a further report on how (and the extent to which) they have fulfilled the duty under section 1(1) during any subsequent period of at least 3 years.
(2) A report may include such additional information as the Scottish Ministers consider appropriate.

(3) A report is to be laid before the Scottish Parliament as soon as reasonably practicable after the end of the period to which the report relates.

5

PART 2

CONTROL OF WATER ABSTRACTION

Introduction

5 Qualifying abstraction

(1) In this Part, “qualifying abstraction” means abstraction of water by any person—

(a) from a particular body of inland water within Scotland, and

(b) at a rate above the relevant threshold.

(2) In this Part, “abstraction” in relation to a body of inland water has the same meaning as in section 20(3)(b) of the 2003 Act in relation to a body of water of the sort to which that section relates (see section 20(6) of that Act).

(3) In this Part, “inland water” is as defined by section 3 of the 2003 Act.

6 Prohibition arising

(1) A qualifying abstraction is prohibited if it is not—

(a) approved as described in subsection (2), or

(b) exempt by virtue of section 7.

(2) It is approved if—

(a) it has been approved by the Scottish Ministers under this Part, and

(b) their approval has not ceased to have effect by reason of—

(i) the expiry of any period specified under section 11(1)(a) (including where extended), or

(ii) the imposition of a suspension or revocation under section 14(1)(a) to (c).

7 Exemption from approval

(1) A qualifying abstraction is exempt if, on the day on which this subsection comes into force, it is subject to an authorisation under the Controlled Activities Regulations.

(2) The exemption under subsection (1) comes to an end if the authorisation subsequently—

(a) is varied so as to relate to a greater rate of abstraction than that to which it relates on the day mentioned in that subsection, or

(b) ceases to have effect for any reason, except temporarily.

(3) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of the exercise by Scottish Water of its core functions in relation to premises in Scotland.

(4) A qualifying abstraction is exempt if it is carried out for the sole or principal purpose of—
(a) generating electricity by hydro-power,
(b) irrigating agricultural or horticultural land,
(c) operating a fish farm, or
(d) maintaining a quarry or a coal or other mine.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) The Scottish Ministers may by regulations—
(a) modify any of the exemptions under this section,
(b) specify further circumstances in which a qualifying abstraction is exempt from their approval under this Part.

8 The relevant threshold

(1) In this Part, “the relevant threshold” means—
(a) the rate of 10 megalitres of water per day, or
(b) such other rate as the Scottish Ministers may by regulations prescribe.

(2) The Scottish Ministers may by regulations prescribe a method of calculation for the purpose of subsection (1).

(3) Regulations under subsection (2) may (in particular) include provision for all or some of an amount of water abstracted to be left out of account in specified circumstances.

8A Consultation on changes

Before making regulations under section 7(6) or (8)(1)(b) or (2), the Scottish Ministers must consult—
(a) Scottish Water,
(b) SEPA,
(c) Scottish Natural Heritage,
(d) such other persons as they consider appropriate.

Role of Ministers

9 Application for approval

(1) Any person may apply to the Scottish Ministers for their approval of a qualifying abstraction.

(2) The Scottish Ministers must by regulations make provision about the procedure in relation to an application under subsection (1).

(3) In particular, the regulations may—
(a) specify the form in which it is to be made,
(b) fix a reasonable fee for making it,
(c) describe the information that is to accompany it,
(d) require the applicant to give public notice of it,
(e) allow interested persons to make representations about it.

10 Factors as to approval

(1) In deciding whether to approve a qualifying abstraction, the Scottish Ministers must have regard to—

(a) the applicant’s financial position,
(b) the proposed use of the water to be abstracted,
(c) any—
   (i) economic, social or other benefit that may arise in Scotland (or an area within it) in consequence of the abstraction,
   (ii) adverse impact of any kind that may arise in Scotland (or an area within it) in consequence of the abstraction,
   (ca) any relevant advice given under section 13(3) or (4),
   (d) such additional factors as they consider to be relevant.

(2) If the Scottish Ministers do not approve a qualifying abstraction, they must give the applicant their reasons.

11 Conditions of approval

(1) If the Scottish Ministers approve a qualifying abstraction, they may—

(a) specify the period for which their approval has effect,
(b) attach conditions to their approval.

(2) Conditions under subsection (1)(b) may—

(a) impose restrictions on—
   (i) the rate at which water may be abstracted (above the relevant threshold),
   (ii) the purposes for which the water may be used,
(b) require that particular steps be taken in relation to the abstraction or any associated operations,
(c) relate to compensation for any adverse impact of a specific kind caused by the abstraction,
(d) concern such other matters as the Scottish Ministers consider to be relevant.

(3) It is the holder who is subject to any conditions attached under subsection (1)(b).

(4) Except with the Scottish Ministers’ prior consent, their approval of a qualifying abstraction is not transferable by the holder to another person.

(5) After consulting the holder, the Scottish Ministers may—

(a) under subsection (1)(a), extend any period specified under that subsection,
(b) under subsection (1)(b)—
   (i) vary or remove any conditions attached to their approval, or
   (ii) attach new conditions to their approval.
12  **Additional requirements**

(1) The holder must—

(a) at such times and in such form as they may require, give the Scottish Ministers a report on the holder’s activities in carrying out (or in relation to) the abstraction or any associated operations, and

(b) pay the Scottish Ministers such reasonable fee as they may by regulations fix in accordance with subsection (2)(a) (and do so as required by virtue of subsection (2)(b)).

(2) Regulations under subsection (1)(b)—

(a) must relate to costs attributable to the exercise of the Scottish Ministers’ administrative functions under this Part,

(b) may require payment of the fee annually or otherwise.

(3) In the application of subsection (2)(a), no account is to be taken of costs to which a fee fixed by virtue of section 9(3)(b) relates.

13  **Advice from other bodies**

(1) Subsections (3) and (4) apply where the Scottish Ministers are considering—

(a) an application under section 9(1),

(b) what period (if any) should be specified under section 11(1)(a), or

(c) what conditions (if any) should be attached under section 11(1)(b).

(2) Subsection (3) does not apply if Scottish Water is the applicant.

(3) Scottish Water must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the exercise of its core functions in relation to premises in Scotland.

(4) SEPA must give the Scottish Ministers such advice as they may reasonably seek from it concerning any adverse impact on the environment in Scotland.

(5) In subsection (3), the reference to Scottish Water’s core functions is to be construed in accordance with section 70(2) of the 2002 Act.

(6) In subsections (3) and (4), the references to impact are to impact that may arise if the qualifying abstraction in question were to be carried out.

14  **Suspension and revocation**

(1) The Scottish Ministers may suspend or revoke their approval of a qualifying abstraction—

(a) if the holder requests that they do so,

(b) if the holder—

(i) breaches any conditions attached under section 11(1)(b), or

(ii) fails to comply with section 12(1), or

(c) in such other circumstances as they may by regulations prescribe.

(2) Before imposing a suspension or revocation under subsection (1)(b) or (c), the Scottish Ministers must—
Part 2—Control of water abstraction

15 Appeal against decision

(1) For the purpose of subsections (2) to (4), a relevant decision is one—
   (a) following an application under section 9(1), not to approve a qualifying abstraction,
   (b) to specify a period under section 11(1)(a),
   (c) to attach any conditions under section 11(1)(b), or
   (d) to impose a suspension or revocation under section 14(1)(b) or (c).

(2) The applicant or (as the case may be) holder may appeal to the sheriff against a relevant decision, if aggrieved—
   (a) in the case to which subsection (1)(a) or (d) relates, by the making of the relevant decision,
   (b) in the case to which subsection (1)(b) relates, by the shortness of the period so specified,
   (c) in the case to which subsection (1)(c) relates, by the nature or terms of the conditions so attached.

(3) An appeal under subsection (2) must be made—
   (a) by way of summary application,
   (b) within the period of 21 days beginning with the day on which the relevant decision is duly intimated.

(4) In the appeal, the sheriff may uphold, vary or quash the relevant decision.

16 Monitoring and records

(1) The Scottish Ministers may by regulations make provision about the monitoring of—
   (a) an abstraction of water from a body of inland water that is, or is suspected of being, a qualifying abstraction,
   (b) any activities appearing to relate to such an abstraction of water or any associated operations.

(2) The Scottish Ministers may by regulations make provision about—
   (a) the keeping of records in connection with this Part, or
   (b) the extent to which such records are to be made available to them, SEPA or other interested persons.

(3) Regulations under subsection (1) or (2) may confer functions on the Scottish Ministers, SEPA or other specified persons.

(4) Regulations under subsection (1) or (2) may include provision—
   (a) allowing entry onto premises under a warrant or otherwise,
   (b) about the steps that may be taken at premises so entered,
(c) for summary offences and penalties as respects—
   (i) failure to comply with requirements imposed by the regulations, or
   (ii) obstruction of persons exercising functions conferred by the regulations.

17 Abstraction-related offence

(1) A person commits an offence if the person wilfully or recklessly—
   (a) contravenes the prohibition constituted by section 6(1), or
   (b) breaches any conditions to which the person is subject by virtue of section 11(2)(a).

(2) A person who commits an offence under subsection (1) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum,
   (b) on conviction on indictment, to a fine.

17A Corporate offending

(1) Subsection (2) applies where—
   (a) an offence under section 17 is committed by a relevant organisation, and
   (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.

(2) The responsible official (as well as the organisation) commits the offence.

(3) “Relevant organisation” means—
   (a) company,
   (b) limited liability partnership,
   (c) ordinary partnership,
   (d) other body or association.

(4) “Responsible official” means—
   (a) in the case of a company, director, secretary, manager or similar officer,
   (b) in the case of a limited liability partnership, member,
   (c) in the case of an ordinary partnership, partner,
   (d) in the case of another body or association, person who is concerned in the management or control of its affairs,

but in each case also includes person purporting to act in such a capacity.

Regulations etc.

18 Procedure for regulations

(1) Regulations under section 7(6), 8(1)(b) or (2), 14(1)(c) or 16(1) or (2) are subject to the affirmative procedure.

(2) Other regulations under this Part are subject to the negative procedure.

(3) Regulations under this Part may make different provision for different purposes.
19  **Controlled Activities Regulations**

(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.

(2) An authorisation under the Controlled Activities Regulations is subject to approval of a qualifying abstraction by the Scottish Ministers under this Part, so far as relevant in relation to the activities to which the authorisation relates (except where the authorisation exempts the abstraction under section 7(1)).

(3) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations.

(4) The Scottish Ministers may by regulations modify—

(a) subsections (1) to (3),

(b) section 7(1).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the 2003 Act.

20  **Other definitions for Part**

In this Part—

“holder” means person in whose favour the Scottish Ministers’ approval under this Part has effect for the time being,

“premises” includes any land, building or other place,

“SEPA” means the Scottish Environment Protection Agency.

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**PART 3**

**SCOTTISH WATER’S FUNCTIONS**

**Exercise of functions**

21  **Value of water resources**

In section 25 (Scottish Water’s general powers) of the 2002 Act, after subsection (1) there is inserted—

“(1A) Subsection (1) extends to allowing Scottish Water to engage in any activity that it considers will assist in the development of the value of Scotland’s water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2013).”.

22  **Development of assets**

After section 50 of the 2002 Act there is inserted—
“50A Development of assets

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to develop the commercial value of its assets and expertise.

(1A) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.

(3) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.

23 Supporting renewable energy

After section 51 of the 2002 Act there is inserted—

“51A Supporting renewable energy

(1) So far as it considers is not inconsistent with the economic, efficient and effective exercise of its functions, Scottish Water must take reasonable steps to promote the use of its assets for the generation of renewable energy.

(1A) In complying with subsection (1), Scottish Water must have regard to any guidance for the time being issued by the Scottish Ministers.

(2) In this section, “assets” means property, rights and other assets (whether tangible or intangible).”.

24 Meaning of core functions

In section 70 (interpretation) of the 2002 Act, for subsection (2) there is substituted—

“(2) In this Act, references to core functions, in relation to Scottish Water, are to its functions under or by virtue of—

(a) the 1968 Act and the 1980 Act,

(b) any other enactment (including this Act) so far as relating to the provision of water or sewerage services in Scotland.”.

Financing and borrowing

25 Subsidiaries of Scottish Water

(1) After section 42 of the 2002 Act there is inserted—

“42A Financing and borrowing: subsidiaries

(1) The Scottish Ministers may pay to a subsidiary of Scottish Water grants of such amounts as they may determine.

(2) A subsidiary of Scottish Water may borrow—

(a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,

(b) money from any other person, whether—

(i) in sterling or otherwise,

(ii) the person is in the United Kingdom or elsewhere.
(3) A grant or loan made in pursuance of subsection (1) or (as the case may be) (2)(a) may be made subject to such conditions as the Scottish Ministers think fit.

(4) A loan made in pursuance of subsection (2)(a) is to be repaid to the Scottish Ministers at such times and by such methods (and interest on the loan is to be paid to them at such times and at such rates) as they may from time to time direct.

(5) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).

(6) This section does not apply where the subsidiary is an undertaking established under section 13(1) of the Water Services etc. (Scotland) Act 2005.

(7) In this section and section 42B(1), “subsidiary” is as defined in section 1159 of the Companies Act 2006.

42B Borrowing: Budget Acts

(1) In any financial year, the net amount of sums borrowed by Scottish Water and any subsidiary of Scottish Water in pursuance of sections 42 and 42A (taken together) must not exceed the amount specified for that year for the purposes of this section in a Budget Act.

(2) In subsection (1), “net amount” means amount of sums borrowed in the financial year less—

(a) any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year, and

(b) any sums borrowed, with the consent of the Scottish Ministers, by way of overdraft or otherwise for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.”.

(2) In section 42 (financing and borrowing) of the 2002 Act, subsections (4) and (5) are repealed.

(3) The title of section 42 of the 2002 Act becomes “Financing and borrowing: Scottish Water”.

26 Water and sewerage undertaking

(1) Section 14 (financing, borrowing and guarantees) of the 2005 Act is amended as follows.

(2) For subsection (2) there is substituted—

“(2) In such circumstances as the Scottish Ministers may by order specify, the undertaking may borrow—

(a) from the Scottish Ministers (and they may lend to it) sums of such amounts as they may determine,

(b) money from any other person, whether—

(i) in sterling or otherwise,

(ii) the person is in the United Kingdom or elsewhere.
(2A) Borrowing may be made in pursuance of subsection (2) only with the consent of Scottish Water (except where it is the lender).”.

(3) In subsection (3), for the words “(2)(a)” there is substituted “(2)”.

(4) In subsection (6), after the word “subsection” there is inserted “(2)(b) or”.

Other matters

26A Errors in metering

In section 54 (register of meter to be evidence) of the 1980 Act—

(a) in subsection (3), for the words “five per cent” there is substituted “the relevant percentage”,

(b) after subsection (3) there is inserted—

“(4) In subsection (3), “the relevant percentage” means—

(a) in the case of a high flow rate, 2.5%,

(b) in the case of a low flow rate, 6%.

(5) The Scottish Ministers, by regulations—

(a) must define “high flow rate” and “low flow rate” for the purpose of subsection (4),

(b) may amend a percentage figure appearing in subsection (4).”.

PART 4

RAW WATER QUALITY

27 Steps for sake of quality

(1) In section 38 (entry of premises) of the 1980 Act, after subsection (8) there is inserted—

“(9) This section does not apply in relation to the purposes mentioned in section 76M(1).”.

(2) After Part VIA of the 1980 Act there is inserted—

“PART VIB

RAW WATER QUALITY

76M Power to enter

(1) Scottish Water may—

(a) enter any premises for the purposes of—

(i) assessing or monitoring the quality of any raw water, or

(ii) investigating or isolating anything that appears to be affecting, or may affect, the quality of any raw water,

(b) take any steps at the premises which are reasonably required for those purposes.

(2) Subsection (1)—
(a) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes,
(b) does not authorise entry into a house.

(3) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

(4) In subsection (1), the reference to affecting the quality of the water is to affecting its quality adversely (directly or indirectly).

(5) In this section, “raw water”—
(a) means water contained in any bodies of water—
   (i) identified by an order made under section 6(1) of the Water Environment and Water Services (Scotland) Act 2003, or
   (ii) specified by an order made under section 76R(1),
(b) also includes water that flows or drains into any bodies of water so identified or specified (or is capable of doing so).

(6) But excluded from the definition given by subsection (5) is any water that is used or available as or for a private water supply within such meaning as the Scottish Ministers may by order prescribe for the purpose of this subsection.

76N Entry warrants

(1) Scottish Water may apply to the sheriff for a warrant authorising it to—
(a) enter particular premises for the purposes mentioned in section 76M(1),
(b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—
(a) that there are reasonable grounds for entering the premises for those purposes, and
(b) that—
   (i) the first and second conditions are met, or
   (ii) the third condition is met.

(3) The first condition is that—
(a) admission to the premises has been refused,
(b) the taking of steps at the premises has been obstructed, or
(c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) A warrant under subsection (1)—
(a) remains valid until the purposes mentioned in section 76M(1) are fulfilled,
(b) allows the use of reasonable force (if required),
(c) does not authorise entry into a house.

(7) Subsection (1) has effect whether the water or thing is located at the premises or elsewhere.

76O  Approved persons

(1) Subsection (2) applies to the authority conferred on Scottish Water by—

(a) section 76M(1), or

(b) a warrant under section 76N(1).

(2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in section 76M(1).

76P  Taking steps

(1) Subsections (2) to (6) apply in relation to the exercise of the authority mentioned in section 76O(1)(a) or (b).

(2) An approved person must, if required by the occupier of the premises—

(a) produce evidence of the approved person’s identity (and approval), and

(b) explain the nature of the authority by (as the case may be)—

(i) reference to section 76M, or

(ii) showing a copy of the warrant.

(3) An approved person may take onto the premises—

(a) other persons acting under the approved person’s direction,

(b) such equipment as is necessary in connection with the steps that may be taken there.

(4) The steps that may be taken by an approved person at the premises include—

(za) inspecting or measuring any water found there,

(a) carrying out tests on or taking samples from any soil, water or other substance found there,

(b) installing or maintaining any measuring, testing or sampling equipment for use there.

(5) An approved person may enter the premises only at a reasonable time.

(6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.

(7) In subsections (2) to (6), “approved person” means person approved as mentioned in section 76O(2).

76Q  Obstruction offence

(1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in section 76O(1)(b).
(2) In subsection (1), “approved person” means person approved as mentioned in section 76O(2).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

76R **Specifying bodies of water**

(1) For the purpose of section 76M(5)(a)(ii), the Scottish Ministers may by order specify any bodies of water that are—

(a) used for the abstraction of water intended for human consumption, or

(b) intended to be used as mentioned in paragraph (a).

(2) An order under subsection (1) may specify any bodies of water by reference to a map prepared in connection with the order (and laid along with it).

(3) The Scottish Ministers must send to the Scottish Environment Protection Agency a copy of—

(a) an order made under subsection (1), and

(b) any map prepared in pursuance of subsection (2).

76S **Orders under this Part**

An order under section 76M(6) or 76R(1) is subject to the negative procedure.”.

28 **Agreements about activities**

(1) In section 68 (agreements as to drainage) of the 1980 Act, in subsection (1), for the words “collecting, conveying, or preserving the purity of,” there is substituted “collecting or conveying”.

(2) After section 68 of the 1980 Act there is inserted—

“68A **Agreements for water quality**

(1) With respect to the matters mentioned in subsection (2), Scottish Water may enter into agreements with—

(a) the owners and occupiers of any land (in so far as their interest enables them to bind it), or

(b) a local authority.

(2) The matters are—

(a) the carrying out by a party to the agreement of such activities as Scottish Water considers necessary for the purpose of protecting or improving the quality of any raw water,

(b) the refraining by a party to the agreement from such activities as Scottish Water considers detrimental to the purpose of protecting or improving the quality of any raw water.

(3) In subsection (2), the references to protecting or improving the quality of water include—

(a) preventing any deterioration in the quality of the water,
(b) reducing or eliminating the amount of any treatment that the water
requires in order to be wholesome.

(4) Section 68(2) applies to an agreement under this section as it applies to an
agreement to which that section relates (if the agreement under this section is
with the owners of the land).

(5) In this section, “raw water” has the same meaning as in section 76M.”.

**PART 5**

**NON-DOMESTIC SERVICES**

**29 Deemed contracts**

After section 20 of the 2005 Act there is inserted—

“Contractual matters

**20A Deemed contracts**

(1) Subsection (4) applies as respects the circumstances specified in subsection (2)
or (3).

(2) The circumstances are that water is supplied to eligible premises by Scottish
Water otherwise than in pursuance of arrangements made between—

(a) a water services provider, and

(b) the occupier of the premises.

(3) The circumstances are that sewerage is provided to, or sewage is disposed of
from, eligible premises by Scottish Water otherwise than in pursuance of
arrangements made between—

(a) a sewerage services provider, and

(b) the occupier of the premises.

(4) The relevant parties are deemed to have made arrangements with each other for
the provision to the premises of the services to which subsection (2) or (as the
case may be) (3) relates.

(5) The terms and conditions set by a scheme made under section 20B are
incorporated into the arrangements—

(a) as if they were agreed by the relevant parties, and

(b) so far as they are relevant having regard to the purposes or areas to
which they extend.

(6) The arrangements are effective as from the later of—

(a) the day on which the premises began to receive those services,

(b) the day on which the occupier acquired the premises,

(c) the day on which section 29 of the Water Resources (Scotland) Act 2013
came into force.

(7) Sections 16 to 20 have effect in relation to the arrangements as if they were
made ordinarily between the relevant parties.

(8) In this section—
(a) the references to the relevant parties are to—
   (i) the water services or (as the case may be) sewerage services
       provider that is designated in accordance with a scheme made
       under section 20B, and
   (ii) the occupier of the premises,
(b) the references to the occupier of premises are, if the premises are
    unoccupied, to be construed as references to the owner of the premises.

20B Commission's scheme

(1) The Commission must make a scheme setting out the terms and conditions to
    be incorporated into any arrangements deemed by section 20A(4) to have been
    made.
(2) A scheme under this section may—
    (a) specify the basis on which a particular water or sewerage services
        provider is to be designated in connection with section 20A(8)(a)(i),
    (b) in respect of the services to which section 20A(2) or (as the case may be)
        (3) relates—
        (i) fix the maximum charges that may be recovered by the water or
            sewerage services provider so designated,
        (ii) allow the water or sewerage services provider so designated to set
            the particular charges that are to be recovered by it.
(3) A scheme under this section may—
    (a) make different provision for different purposes or areas,
    (b) for future application, revise an earlier such scheme.
(4) Before making a scheme under this section, the Commission must consult—
    (a) every water or sewerage services provider,
    (b) Scottish Water, and
    (c) the National Consumer Council.
(5) As soon as practicable after the Commission makes a scheme under this
    section, it must—
    (a) in a manner appropriate for bringing the scheme to the attention of
        persons likely to be affected by it, publish a notice stating its effect,
    (b) send a copy of the scheme to—
        (i) every water or sewerage services provider,
        (ii) Scottish Water, and
        (iii) any other person who requests it.”.

30 Notification of occupancy

(1) In section 34 (orders and regulations) of the 2005 Act, after subsection (2) there is
     inserted—
“(2A) Regulations under section 20C(4) or 20D(4) are subject to the negative procedure.”.

(2) After section 20B of the 2005 Act there is inserted—

**20C Notification of occupancy**

1 Subsection (2) applies to any premises—

(a) to which water is supplied under section 16(2), or

(b) to which sewerage is provided, or from which sewage is disposed of, under section 16(5).

2 The owner of the premises must give the water or sewerage services provider the required information if there is a change in occupancy because they—

(a) are occupied by a new occupier, or

(b) have fallen vacant.

3 In subsection (2), “required information” means—

(a) the address of the premises,

(b) the identity of the new occupier or (as the case may be) the fact that the premises have fallen vacant,

(c) the day on which the change in occupancy occurred.

4 The Scottish Ministers may by regulations—

(a) make rules for timing and procedure in connection with subsections (1) and (2),

(b) by addition, modify the list in subsection (3).

**20D Liability for charges**

1 Subsection (2) applies if, without reasonable excuse, an owner of any premises to which section 20C(1) relates fails to comply with section 20C(2) (except where the new occupier is the owner or the premises have fallen vacant).

2 The new occupier’s liability (if any) to the water or sewerage services provider for the relevant charges becomes shared jointly and severally with the owner.

3 In subsection (2), “relevant charges” means charges arising by virtue of any arrangements to which section 16(1) or (as the case may be) (4) relates.

4 The Scottish Ministers may by regulations make rules for—

(a) timing and procedure in connection with subsections (1) and (2),

(b) exempting an owner from liability under subsections (1) and (2) where, although information supplied by the owner is inaccurate or incomplete, the owner has taken prescribed steps to ensure its accuracy or completeness.”.
PART 6

SEWERAGE NETWORK

Discharge into public sewer

31 Priority substances etc.

(1) In section 29 (decision on application for trade effluent consent) of the 1968 Act, after paragraph (o) of subsection (3) there is inserted—

“(p) the elimination from or diminution in any trade effluent of any priority substance or pollutant.”.

(2) After section 29 there is inserted—

“29A Priority substances etc.

(1) In section 29(3)(p)—

“pollutant” has the meaning given by regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),


(2) The Scottish Ministers may by regulations modify the definitions in subsection (1).

(3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of (as the case may be)—

(a) the Regulations or Directive mentioned in subsection (1), or

(b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003 or directive concerning the same subject-matter as that Directive.

(4) Regulations under subsection (2) are subject to the negative procedure.”.

32 Substances generally

(1) In section 46 (certain matter not to be passed into drains) of the 1968 Act—

(a) in subsection (2), for the words “a fine not exceeding £40,000” there is substituted “imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both)”;

(b) after subsection (2) there is inserted—

“(3) This section does not apply in relation to the passing of fat, oil or grease from trade premises into a public sewer or a drain connecting with such a sewer.”.

(2) After section 46 there is inserted—

“46A Offence as to fat, oil or grease

(1) A person commits an offence if—
(a) the person passes, or permits to be passed, any relevant substance from trade premises into—

(i) a public sewer, or

(ii) a drain connecting with such a sewer, and

(b) the condition in subsection (2) is met.

(2) The condition is that the relevant substance (alone or in combination with any matter with which it comes, or may come, into contact)—

(a) interferes with, or is likely to interfere with, the free flow of the contents of the sewer, or

(b) adversely affects, or is likely so to affect, the treatment or disposal of the contents of the sewer.

(2A) But no offence is committed under subsection (1) if the relevant substance is passed in accordance with the provisions of Part II of this Act.

(3) In subsections (1) to (2A), “relevant substance” means fat, oil or grease.

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

46B Damage caused by fat, oil or grease

(1) Subsection (4) applies if—

(a) an owner or occupier of trade premises passes, or permits to be passed, any relevant substance from the premises into—

(i) a public sewer, or

(ii) a drain connecting with such a sewer, and

(b) the condition in subsection (2) is met.

(2) The condition is that, as a result—

(a) the sewer or drain is damaged or blocked, or

(b) the free flow of the contents of the sewer is otherwise interfered with.

(2A) But subsection (4) does not apply if the relevant substance is passed in accordance with the provisions of Part II of this Act.

(3) In subsections (1) and (2A), “relevant substance” means fat, oil or grease.

(4) Scottish Water may recover, from the owner or (as the case may be) occupier, any expenses that it reasonably incurs in investigating or remedying the damage, blockage or interference.”.

33 Powers of entry

In section 48 (powers of entry) of the 1968 Act, in subsection (1)—
(a) in paragraph (f), at the beginning there is inserted “monitoring, inspecting, testing or”,

(b) after paragraph (f) there is inserted—

“(g) installing or maintaining any monitoring, testing or sampling equipment for use on the premises,

(h) investigating the source of any matter or substance (other than sewage) which is passing from the premises into—

(i) public sewers, public SUD systems or public sewage treatment works; or

(ii) sewers, SUD systems or sewage treatment works not vested in Scottish Water but forming (or forming part of) any such system as is mentioned in the said section 46(1)(b)(ii).”.

Private sewage works

34 Common maintenance

After Part II of the 1968 Act there is inserted—

“PART IIA

PRIVATE SEWAGE TREATMENT WORKS

38A Application of Part

(1) This Part applies to any private sewage treatment works if the discharge of their contents is subject to an authorisation under the Controlled Activities Regulations.

(2) In this Part, “private works” means private sewage treatment works to which this Part applies.

38AA Other rules

(1) This Part prevails over any rule of law or real burden—

(a) requiring the agreement, of any owner of common property, to the carrying out of maintenance of the property, or

(b) concerning the recovery, by any owner of common property from another owner of the property, of the cost of such maintenance, so far as the rule or burden is applicable in connection with measures of the kind to which section 38B relates.

(2) In subsection (1), “real burden” is to be construed in accordance with the Title Conditions (Scotland) Act 2003.

38B Common maintenance

(1) Subsection (2) applies where two or more persons own any private works in common.
(2) Any of the persons may take (or cause to be taken) any measures that the person considers necessary for ensuring that the works are properly maintained so that they comply with any applicable conditions under the Controlled Activities Regulations.

(3) Subsection (2) is subject to section 38C.

(4) In subsection (2), the reference to being properly maintained includes being emptied as required from time to time.

38C Notice and effect

(1) Before taking (or causing to be taken) any measures under section 38B(2), a person must serve on each of the other owners a notice—

(a) giving the person’s name and address,

(b) specifying the private works in question,

(c) in addition to describing the measures to be taken, stating—

(i) why the measures are to be taken,

(ii) when the measures are to be taken,

(d) containing—

(i) an estimate of the cost of the measures,

(ii) a note showing the proportion of that cost for which each owner would be liable (along with their names and addresses),

(e) directing the reader to this Part.

(2) The measures described in the notice may be taken under section 38B(2) at any time after the end of the period of 28 days beginning with the day on which it is duly served (or, if it is so served on different days, the last of those days).

(3) Unless the notice has expired, the measures may be so taken—

(a) with or without the agreement of any or all of the other owners,

(b) subject to any review or appeal under section 38D.

(4) The notice expires—

(a) at the end of the period of 12 months beginning with the day on which it is duly served, or

(b) if it is extended in any review or appeal under section 38D, at the end of the period of extension.

(5) A notice under subsection (1) may be served by two or more persons acting together.

38D Review of notice

(1) A person on whom a notice is served under section 38C(1) may apply to the sheriff for a review of the notice, if aggrieved by the serving of the notice or its terms.

(2) An application under subsection (1) must be made—

(a) by way of summary application,
(b) within the period of 28 days beginning with the day on which the notice is duly served.

(3) In the application, the sheriff may—
   (a) uphold, vary or quash the notice,
   (b) make any further order necessary.

(4) The sheriff’s decision in the application may be appealed to the sheriff principal, but only on a point of law.

(5) The sheriff principal’s determination of the review is final.

(6) An application under subsection (1) may be—
   (a) made by two or more persons acting together,
   (b) heard by the sheriff along with another such application relating to the same notice.

38E Recovery of cost

(1) Where measures have been taken under section 38B(2)—
   (a) each of the owners of the private works is liable for a proportion of the actual cost of taking them, and
   (b) any of those owners is entitled to recover from any of the other owners the proportion of that cost for which the other owner is liable.

(2) Subsection (1) is subject to subsections (3) to (8).

(3) The proportion of the cost mentioned in subsection (1)(a) for which each owner is liable is the equivalent to the owner’s pro indiviso share of the ownership of the private works.

(4) Liability accrues to an owner under subsection (1)(a) only when there has been duly served—
   (a) a notice under section 38C(1) relating to the measures, and
   (b) a notice under subsection (5) relating to the measures.

(5) Before exercising the entitlement to make recovery under subsection (1)(b), an owner must serve on each of the other owners a notice containing—
   (a) a statement of the cost mentioned in subsection (1)(a),
   (b) a note confirming the proportion of that cost for which each owner is liable in accordance with subsection (3) (along with their names and addresses).

(6) The entitlement of an owner to make recovery under subsection (1)(b) is not—
   (a) established unless the owner has—
       (i) incurred the cost mentioned in subsection (1)(a), and
       (ii) duly served a notice under subsection (5),
   (b) exercisable until after the end of the period of 30 days beginning with the day on which the notice under subsection (5) is duly served (or, if it is so served on different days, the last of those days).
(7) A notice under subsection (5) is valid only if it is accompanied by an invoice or other clear evidence of the cost mentioned in subsection (1)(a).

(8) Section 38D applies in relation to a notice under subsection (5) as it does in relation to one under section 38C(1), except that in relation to a notice under subsection (5) a review under section 38D is competent only if the actual cost of the measures grossly exceeds the estimate of the cost of them contained in the notice under section 38C(1).

38F Liability of owner

(1) Subsection (2) applies to a person who is liable under section 38E(1)(a).

(2) The person does not stop being so liable merely because the person ceases to be an owner of the private works.

(3) Subsection (4) applies to a person who is entitled to make recovery under section 38E(1)(b).

(4) The person does not stop being so entitled merely because the person ceases to be an owner of the private works.

38G Controlled Activities Regulations

(1) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,

(c) a reference to any conditions under the Controlled Activities Regulations is to any conditions of an authorisation under those Regulations.

(2) The Scottish Ministers may by regulations modify—

(a) subsection (1),

(b) sections 38A(1) and 38B(2).

(3) Regulations may be made under subsection (2) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the Water Environment and Water Services (Scotland) Act 2003.

(4) Regulations under subsection (2) are subject to the negative procedure.”.
PART 7
WATER SHORTAGE ORDERS

Main provisions

35 Proposal for order

(1) Scottish Water may propose to the Scottish Ministers that they make a water shortage order if it believes that there is—

(a) a serious deficiency of water supplies in an area, or
(b) a threat of a serious deficiency of water supplies in an area.

(2) A proposal must include—

(a) a draft water shortage order,
(b) details of—

(i) the deficiency or threat as respects the water supplies,
(ii) the steps that Scottish Water has taken to abate the deficiency or threat,
(iii) the steps (other than steps in accordance with the draft order) that Scottish Water intends to take in order to abate the deficiency or threat,
(iv) how Scottish Water considers that the taking of those steps will abate the deficiency or threat,
(v) any prior communications about the proposal between Scottish Water and persons likely to be affected by the draft order,

(c) such other information as the Scottish Ministers may reasonably require.

(3) A proposal must be accompanied by—

(a) a map or plan showing the location of—

(i) any source from which Scottish Water proposes to abstract water,
(ii) any place to which Scottish Water proposes to discharge water,
(iii) any works which Scottish Water proposes to carry out,
(iv) any premises at which Scottish Water proposes to take any other steps in order to abate the deficiency or threat,

(b) a copy of any associated application made by Scottish Water under the Controlled Activities Regulations,

(c) such other documents as the Scottish Ministers may reasonably require.

(4) The Scottish Ministers may instruct Scottish Water about the form in which a proposal is to be presented to them.

36 Making of order

(1) The Scottish Ministers may make an ordinary water shortage order in relation to an area if the first and second conditions are met.

(2) The Scottish Ministers may make an emergency water shortage order in relation to an area if the first, second and third conditions are met.

(3) The first condition is that Scottish Water has made a proposal.
(4) The second condition is that the Scottish Ministers are satisfied that the deficiency or threat in question exists.

(5) The third condition is that the Scottish Ministers are satisfied that there is a risk to the health, or social or economic well-being, of people in the area.

(6) The function of making a water shortage order is not exercisable by Scottish statutory instrument.

37 **Content of order**

(1) A water shortage order may contain such provision as the Scottish Ministers consider necessary or expedient to abate—

(a) a serious deficiency of water supplies in an area, or

(b) a threat of a serious deficiency of water supplies in an area.

(2) In particular, a water shortage order may—

(a) permit Scottish Water to—

(i) abstract water from any source specified in the order,

(ii) discharge water to any place specified in the order,

(iii) carry out and maintain works on any premises specified in the order for any purpose specified in the order,

(b) impose conditions or restrictions on any abstraction or discharge of water so permitted,

(c) relax any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) restrict or prohibit the abstraction of water by any person from any source specified in the order,

(e) impose one or more water saving measures in relation to—

(a) persons of such descriptions as are specified in the order,

(b) premises of such categories as are so specified,

(c) other property of such types as are so specified,

(d) such purposes or circumstances as are so specified.

(2A) A water shortage order may include—

(a) provision by way of exceptions or exemptions,

(b) different provision for different purposes in any respects.

(3) An emergency water shortage order (but not an ordinary water shortage order) may permit Scottish Water to supply water by means other than through pipes.

38 **Abstraction and discharge**

(1) Permission as mentioned in section 37(2)(a)(i) or (ii) allows Scottish Water to abstract or (as the case may be) discharge the water even if—

(a) it is not otherwise entitled to do so,
(b) the abstraction or discharge would interfere with any right of any other person in the water.

(2) A restriction or prohibition as mentioned in section 37(2)(d) restricts or prohibits the abstraction of the water even if the restriction or prohibition interferes with any right of any person to abstract the water.

39 Further provision
Schedule 1 makes further provision in relation to water shortage orders.

Appeal and offence

40 Appeal against order

(1) A person who is aggrieved by a water shortage order may appeal to the sheriff against—
(a) the making of the order,
(b) the terms of the order.

(2) An appeal under subsection (1) must be made—
(a) by way of summary application,
(b) within the period of 14 days beginning with the day on which notice of the order is published under paragraph 6 of schedule 1.

(3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

(4) In the appeal, the sheriff may—
(a) affirm the order,
(b) direct the Scottish Ministers to—
(i) amend the order in a specified manner,
(ii) revoke the order wholly or partly.

(5) The sheriff’s determination of the appeal is final, except on a point of law.

41 Non-compliance offence

(1) A relevant person commits an offence if the person, without reasonable excuse, fails to comply with—
(a) a water saving measure imposed by a water shortage order, or
(b) a restriction or prohibition on the abstraction of water imposed by such an order.

(2) In subsection (1), “relevant person” means person who is, or ought to be, aware of the order.

(3) A person who commits an offence under subsection (1) is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum,
(b) on conviction on indictment, to a fine.
41A Corporate offending

(1) Subsection (2) applies where—
(a) an offence under section 41 is committed by a relevant organisation, and
(b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of, a responsible official of the organisation.

(2) The responsible official (as well as the organisation) commits the offence.

(3) “Relevant organisation” means—
(a) company,
(b) limited liability partnership,
(c) ordinary partnership,
(d) other body or association.

(4) “Responsible official” means—
(a) in the case of a company, director, secretary, manager or similar officer,
(b) in the case of a limited liability partnership, member,
(c) in the case of an ordinary partnership, partner,
(d) in the case of another body or association, person who is concerned in the management or control of its affairs,
but in each case also includes person purporting to act in such a capacity.

Recommendations and directions

42 Recommendations issuable

(1) If Scottish Water believes that there is a threat of a serious deficiency of water supplies in an area, it must—
(a) publicise the threat in the area, and
(b) recommend that people in the area comply with such water saving measures as it considers will assist in abating the threat.

(2) Scottish Water must take such steps as it considers appropriate to bring its recommendation under subsection (1)(b) to the attention of people in the area.

43 Directions on functions

(1) The Scottish Ministers may give Scottish Water directions as to the exercise of its functions under a water shortage order.

(2) Scottish Water must comply with directions given to it under subsection (1).

(3) Directions under subsection (1) may vary or revoke earlier such directions.

(4) This section is without prejudice to any other enactment providing for the Scottish Ministers to give directions to Scottish Water.
44  **Water saving measures**

In this Part, “water saving measures” means measures listed in schedule 2.

45  **Serious deficiencies**

The references in this Part to a serious deficiency of water supplies (whether actual or threatened) are to an insufficiency of water supplies available to Scottish Water to enable it to carry out its functions under Part II of the 1980 Act.

46  **Controlled Activities Regulations**

(1) Nothing in this Part affects any requirement for an authorisation under the Controlled Activities Regulations.

(2) An authorisation under the Controlled Activities Regulations is subject to any restriction or prohibition as mentioned in section 37(2)(d), so far as relevant in relation to the activities to which the authorisation relates.

(3) In this Part—

(a) “the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (S.S.I. 2011/209),

(b) a reference to an authorisation under the Controlled Activities Regulations is to an authorisation as defined by regulation 2 of those Regulations,

(c) a reference to an application under the Controlled Activities Regulations is to an application in accordance with regulation 11 (including as applied by regulation 24) of those Regulations.

(4) The Scottish Ministers may by regulations modify—

(a) subsections (1) to (3),

(b) section 35(3)(b),

(c) in schedule 1, paragraphs 2(5)(b)(iii), 3(2)(b)(iii) and 7(b)(ii).

(5) Regulations may be made under subsection (4) only if the Scottish Ministers consider them to be necessary or expedient in consequence of any revocation or amendment of—

(a) the Controlled Activities Regulations, or

(b) any subsequent regulations made under section 20 of the 2003 Act.

(6) Regulations under subsection (4) are subject to the negative procedure.

47  **Other expressions in Part**

In this Part—

“emergency water shortage order” means one under section 36(2),

“ordinary water shortage order” means one under section 36(1),

“premises” includes any land, building or other place,

“proposal” means proposal under section 35(1) (relating to a water shortage order),
“water shortage order” means emergency water shortage order or ordinary water shortage order.

PART 8
GENERAL PROVISIONS

5

Miscellaneous

47A Crown application
(1) No contravention by the Crown of any provision made by or under Part 2 or 7 makes the Crown criminally liable.
(2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing such a provision, declare unlawful any act or omission of the Crown which constitutes a contravention by the Crown of such a provision.
(3) Despite subsection (1), any such provision applies to persons in the public service of the Crown as it applies to other persons.
(4) Schedule 2A makes further provision about the application to the Crown of Parts 2 and 7.

48 Repeal of enactments
Schedule 3 makes minor and consequential repeals.

49 Ancillary power
(1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
(2) Regulations under this section—
(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
(b) otherwise, are subject to the negative procedure.

50 Key definitions
In this Act—
“the 1968 Act” means the Sewerage (Scotland) Act 1968,
“the 1980 Act” means the Water (Scotland) Act 1980,
“the 2002 Act” means the Water Industry (Scotland) Act 2002,
“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003,
“the 2005 Act” means the Water Services etc. (Scotland) Act 2005.
Commencement and short title

51  Commencement

(1) Except section 48 (and schedule 3), this Part comes into force on the day after Royal Assent.

(2) The other provisions of this Act (including that section (and schedule)) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

52  Short title

The short title of this Act is the Water Resources (Scotland) Act 2013.
SCHEDULE 1
(introduced by section 39)

WATER SHORTAGE ORDERS

Notice of proposal

5 1 (1) Scottish Water must publish notice of a proposal—
    (a) in at least one newspaper circulating in the area to which the proposal relates,
    (b) on its website, and
    (c) in such other manner as it thinks fit.

(2) A notice under sub-paragraph (1) must contain details of—
    (a) Scottish Water’s reasons for making the proposal,
    (b) the nature of the proposal, and the general effect that it would have (if implemented),
    (c) any premises that Scottish Water would intend to enter in connection with the proposal (if implemented).

10 3 (3) A notice under sub-paragraph (1) must also—
    (a) name a place where a copy of the proposal, and any map or plan which accompanies it, may be inspected free of charge at all reasonable hours,
    (b) state that representations about the proposal may be made by any person—
        (i) in writing to the Scottish Ministers,
        (ii) within the period of 14 days beginning with the day on which the notice is published under this paragraph.

Notifying owners etc.

2 1 Sub-paragraph (2) applies where—
    (a) a draft order would permit Scottish Water to—
        (i) carry out and maintain works on any premises, or
        (ii) take any other steps on any premises, and
    (b) Scottish Water would not otherwise be entitled to do so.

(2) Where this sub-paragraph applies, Scottish Water must (so far as reasonably practicable) give every owner, lessee and occupier of the premises—
    (a) a copy of the proposal containing the draft order,
    (b) a notice—
        (i) explaining the nature and general effect of the draft order,
        (ii) specifying the premises and the way in which they would be affected by the draft order,
        (iii) stating that representations about the proposal may be made by the person concerned in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to that person,
(c) either—
   (i) a map or plan showing the location of the premises, or
   (ii) details of the place where such a map or plan may be inspected.

(3) Scottish Water must make such a map or plan available for inspection at all reasonable times and free of charge.

(4) Sub-paragraph (5) applies where a draft order would restrict or prohibit the abstraction of water by any person.

(5) Where this sub-paragraph applies, Scottish Water must give the person—
   (a) a copy of the proposal containing the draft order,
   (b) a notice—
      (i) explaining the nature and general effect of the draft order,
      (ii) explaining the effect of the draft order in relation to the abstraction of water by the person,
      (iii) explaining the effect of the draft order in relation to any associated authorisation under the Controlled Activities Regulations,
      (iv) specifying the period for which the restriction or prohibition is likely to have effect,
      (v) stating that representations about the proposal may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

(6) In this paragraph, reference to the effect of a draft order (including something permitted or otherwise done under it) is to the effect that a water shortage order would have if it were made in the same terms as the draft order.

(7) In this paragraph and paragraphs 3 to 5, “draft order” means draft water shortage order included in a proposal.

Additional notice

3 (1) Sub-paragraph (2) applies where—
   (a) the Scottish Ministers intend to make a water shortage order that would restrict or prohibit the abstraction of water by any person, and
   (b) because the restriction or prohibition is not mentioned in the draft order, the person has not been given a notice under paragraph 2(5).

(2) Where this sub-paragraph applies, the Scottish Ministers must give the person—
   (a) a copy of the proposal containing the draft order,
   (b) a notice—
      (i) explaining the nature and general effect of the draft order,
      (ii) explaining the effect that the restriction or prohibition would have on the abstraction of water by the person,
      (iii) explaining the effect that the restriction or prohibition would have on any associated authorisation under the Controlled Activities Regulations,
(iv) specifying the period for which the restriction or prohibition is likely to have effect,
(v) stating that representations about the proposal, and the restriction or prohibition, may be made by the person in writing to the Scottish Ministers within the period of 14 days beginning with the day on which the notice is given to the person.

SEPA’s advice

4 (1) The Scottish Ministers must seek SEPA’s advice in relation to—
   (a) any adverse impact on the water environment that may arise if a water shortage order were made in the same terms as the draft order,
   (b) the need to restrict or prohibit the abstraction of water by any person, by reason of any such adverse impact.

(2) SEPA must give the Scottish Ministers advice sought under sub-paragraph (1).

(3) In this paragraph—
   “SEPA” means the Scottish Environment Protection Agency,
   “water environment” is as defined by section 3 of the 2003 Act.

Representations and decision

5 (1) The Scottish Ministers must not decide whether to make a water shortage order until—
   (a) the period for making representations under paragraphs 1 to 3 has expired, and
   (b) they have received advice under paragraph 4.

(2) Before deciding whether to make a water shortage order, the Scottish Ministers must consider—
   (a) any representations timeously made,
   (b) the advice so received.

(3) The Scottish Ministers may decide to—
   (a) make a water shortage order in the same terms as the draft order,
   (b) make such an order in such other terms as they consider appropriate,
   (c) refuse to make such an order.

(4) The Scottish Ministers must notify Scottish Water of their decision under sub-paragraph (3).

Publication of order

6 (1) Where the Scottish Ministers make a water shortage order, Scottish Water must publish notice of the order—
   (a) in at least one newspaper circulating in the area to which the order relates,
   (b) on its website, and
   (c) in such other manner as it thinks fit.
(2) Where the Scottish Ministers make a water shortage order that imposes water saving measures, Scottish Water must—
   (a) publish notice of the order—
       (i) in at least one newspaper circulating in the area to which the order relates,
       (ii) on its website, and
       (iii) in such other manner as it thinks fit, and
   (b) take such steps as it considers appropriate to bring the order to the attention of persons who are subject to the water saving measures.

(3) A notice under sub-paragraph (2) must specify—
   (a) the water saving measures that are imposed by the order,
   (b) the persons in relation to whom the measures are imposed,
   (c) the circumstances (if any) that are specified in the order in relation to the measures.

(4) If sub-paragraph (2) applies, sub-paragraph (1) does not apply.

Notice regarding abstraction

7 Where the Scottish Ministers make a water shortage order that restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person—
   (a) a copy of the order,
   (b) a notice—
       (i) explaining the effect of the order in relation to the abstraction of water by the person,
       (ii) explaining the effect of the order in relation to any associated authorisation under the Controlled Activities Regulations,
       (iii) specifying the period for which the restriction or prohibition has effect.

Effect of order

8 (1) An ordinary water shortage order—
   (a) has effect from the day 3 days after the day on which notice of it is published under paragraph 6,
   (b) ceases to have effect on the day falling 6 months after the day on which it first has effect.

(2) An emergency water shortage order—
   (a) has effect from the day after the day on which notice of it is published under paragraph 6,
   (b) ceases to have effect on the day falling 3 months after the day on which it first has effect.

(3) The Scottish Ministers may extend the period for which a water shortage order has effect—
   (a) on the application of Scottish Water,
(b) on more than one occasion.

(4) The period for which a water shortage order has effect may be extended (in total) by a period of not more than two months from the day on which the order would otherwise cease to have effect under sub-paragraph (1)(b) or (as the case may be) (2)(b).

5 Notice of extension

9 (1) This paragraph applies where the Scottish Ministers extend the period for which a water shortage order has effect under paragraph 8(3).

(2) Scottish Water must publish notice of the extension—
   (a) in at least one newspaper circulating in the area to which the order relates,
   (b) on its website, and
   (c) in such other manner as it thinks fit.

(3) Where the order imposes water saving measures, Scottish Water must—
   (a) publish notice of the extension—
       (i) in at least one newspaper circulating in the area to which the order relates,
       (ii) on its website, and
       (iii) in such other manner as it thinks fit, and
   (b) take such further steps as it considers appropriate to bring the extension to the attention of persons who are subject to the water saving measures.

(4) A notice under sub-paragraph (3) must specify—
   (a) the water saving measures that are imposed by the order,
   (b) the persons in relation to whom the measures are imposed,
   (c) the circumstances (if any) that are specified in the order in relation to the measures.

(5) If sub-paragraph (3) applies, sub-paragraph (2) does not apply.

(6) Where the order restricts or prohibits the abstraction of water by any person, the Scottish Ministers must give the person notice of the extension.

Appeal against extension

10 (1) A person who is aggrieved by the extension of the period for which a water shortage order has effect under paragraph 8(3) may appeal to the sheriff.

(2) An appeal under sub-paragraph (1) must be made—
   (a) by way of summary application,
   (b) within the period of 14 days beginning with the day on which notice of the extension is published under paragraph 9.

(3) The sheriff may suspend the effect of the order (or of any part of it) pending the determination of the appeal.

(4) In the appeal, the sheriff may—
   (a) affirm or quash the extension,
Schedule 1—Water shortage orders

(b) direct the Scottish Ministers to amend the order in a specified manner.

(5) The sheriff’s determination of the appeal is final, except on a point of law.

Review and revocation of order

11 (1) The Scottish Ministers may review a water shortage order at any time.

(2) Following such a review, the Scottish Ministers may revoke the order wholly or partly.

(3) Where the Scottish Ministers revoke the order (whether wholly or partly), Scottish Water must publish notice of that fact—
   (a) in at least one newspaper circulating in the area to which the order relates,
   (b) on its website, and
   (c) in such other manner as it thinks fit.

(4) Where the revocation of the order (whether wholly or partly) removes a restriction or prohibition on the abstraction of water by any person, the Scottish Ministers must give the person notice of the revocation.

Power to enter

12 (1) Scottish Water may—
   (a) enter any premises for the purposes of—
      (i) assessing whether there is a serious deficiency, or threat of a serious deficiency, of water supplies in an area,
      (ii) carrying out its functions under a water shortage order,
      (iii) carrying out its functions under Part 7,
      (iv) determining whether a water saving measure, or restriction or prohibition on abstraction, imposed by a water shortage order is being complied with,
   (b) take any steps at the premises that are reasonably required for those purposes.

(2) Sub-paragraph (1) authorises entry only if the occupier of the premises has been given at least 24 hours’ notice of the intended entry for those purposes.

Entry warrants

13 (1) Scottish Water may apply to the sheriff for a warrant authorising it to—
   (a) enter particular premises for the purposes mentioned in paragraph 12(1),
   (b) take any steps at the premises which are reasonably required for those purposes.

(2) The sheriff may grant the warrant sought if satisfied—
   (a) that there are reasonable grounds for entering the premises for those purposes, and
   (b) that—
      (i) the first and second conditions are met,
      (ii) the third condition is met, or
      (iii) the fourth condition is met.
(3) The first condition is that—
   (a) admission to the premises has been refused,
   (b) the taking of steps at the premises has been obstructed, or
   (c) such refusal or obstruction may reasonably be expected.

(4) The second condition is that notice of the intention to seek a warrant has been given to the occupier of the premises.

(5) The third condition is that the premises are unoccupied.

(6) The fourth condition is that the case is one of urgency.

(7) A warrant under sub-paragraph (1)—
   (a) allows the use of reasonable force (if required),
   (b) remains valid until the purposes mentioned in paragraph 12(1) are fulfilled.

Approved persons

14 (1) Sub-paragraph (2) applies to the authority conferred on Scottish Water by—
   (a) paragraph 12(1), or
   (b) a warrant under paragraph 13(1).

15 (2) The authority is exercisable on behalf of Scottish Water by any person approved (in writing) by Scottish Water for the purposes mentioned in paragraph 12(1).

Taking steps

15 (1) Sub-paragraphs (2) to (6) apply in relation to the exercise of the authority mentioned in paragraph 14(1)(a) or (b).

15 (2) An approved person must, if required by the occupier of the premises—
   (a) produce evidence of the approved person’s identity (and approval), and
   (b) explain the nature of the authority by (as the case may be)—
      (i) reference to paragraph 12, or
      (ii) showing a copy of the warrant.

15 (3) An approved person may take onto the premises—
   (a) other persons acting under the approved person’s direction,
   (b) such equipment as is necessary in connection with the steps that may be taken there.

15 (4) The steps that may be taken by an approved person on the premises include—
   (a) carrying out any inspection or test, or taking any measurement, there,
   (b) installing or maintaining any measuring, testing or sampling equipment for use there.

15 (5) An approved person may enter the premises only at a reasonable time.

15 (6) If the premises are unoccupied, an approved person must leave them as effectively secured against entry as they were when that person entered them.
(7) In sub-paragraphs (2) to (6), “approved person” means person approved as mentioned in paragraph 14(2).

Obstruction offence

16 (1) A person commits an offence if the person intentionally obstructs an approved person in the exercise of the authority mentioned in paragraph 14(1)(b).

(2) In sub-paragraph (1), “approved person” means person approved as mentioned in paragraph 14(2).

(3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Compensation

17 (1) Scottish Water must compensate any person who has sustained loss or damage in consequence of—

(a) the abstraction or discharge of water by Scottish Water in accordance with a water shortage order,

(b) a restriction or prohibition on the abstraction of water imposed by such an order,

(c) the exercise by an approved person of the authority mentioned in paragraph 14(1)(a) or (b).

(2) Sub-paragraph (1) does not apply to loss or damage that is attributable to—

(a) the fault of the person who sustained it,

(b) the imposition of a water saving measure by a water shortage order,

(c) the relaxation by such an order of any requirement, restriction or obligation regarding the quantity, quality, pressure, filtration or treatment of water to which Scottish Water is subject in relation to the supply of water,

(d) the supply of water by Scottish Water by means other than through pipes, in accordance with an emergency water shortage order,

(e) a serious deficiency of water supplies that the provisions of a water shortage order are intended to abate.

(3) A claim for compensation under this paragraph must be given to Scottish Water—

(a) by notice in writing,

(b) within the period of 6 months beginning with the day on which the water shortage order to which the claim relates expires.

(4) A notice under sub-paragraph (3) must state—

(a) the grounds of the claim,

(b) the amount of compensation claimed.

(5) Any question of disputed compensation under this paragraph is to be determined by the sheriff.

(6) In sub-paragraph (1)(c), “approved person” means person approved as mentioned in paragraph 14(2).
References to publication etc.

18 (1) A relevant requirement is to be fulfilled without undue delay.

(2) In sub-paragraph (1), “relevant requirement” means requirement—
   (a) to publish or give notice of something (or otherwise bring attention to it), and
   (b) imposed on Scottish Water or the Scottish Ministers by paragraph 6, 7, 9 or 11.

19 (1) A reference in this Part to the day on which a notice is published under paragraph 1, 6 or 9 is to the earliest day when the notice has been so published in each manner mentioned in sub-paragraph (2).

(2) That is, published by Scottish Water—
   (a) in at least one newspaper circulating in the relevant area, and
   (b) on its website.

(3) The operation of sub-paragraph (1) is not affected by additional publication of the notice in any manner at any time.

SCHEDULE 2
(introduced by section 44)

WATER SAVING MEASURES

The following are water saving measures—
   (a) refraining from using a hosepipe or sprinkler to water a garden or plants,
   (b) refraining from using a hosepipe or pressure washer to clean—
      (i) a private motor vehicle,
      (ii) a private leisure boat,
      (iii) a domestic path, patio or other artificial outdoor surface,
   (c) refraining from using a hosepipe to—
      (i) draw water for domestic recreational use,
      (ii) fill or maintain a domestic pond,
      (iii) clean the exterior of domestic premises,
   (d) refraining from filling or maintaining—
      (i) a swimming pool,
      (ii) a paddling pool,
      (iii) an ornamental fountain,
      (iv) a non-domestic pond,
   (e) refraining from watering—
      (i) outdoor plants on commercial premises,
      (ii) a fairway on a golf course,
   (f) refraining from using water to clean—
(i) a vehicle or boat (other than a private motor vehicle or private leisure boat),
(ii) an aircraft or railway rolling stock,
(iii) non-domestic premises,
(iv) industrial plant,

(g) refraining from operating—
   (i) a mechanical vehicle washer,
   (ii) a cistern in an unoccupied or closed non-domestic building,

(h) refraining from using water to suppress dust at non-domestic premises,

(i) such other measures as Scottish Water or (as the case may be) the Scottish Ministers consider to be necessary or expedient to abate a serious deficiency, or threat of a serious deficiency, of water supplies.

SCHEDULE 2A
(introduced by section 47A)

CROWN LAND

1 A power of entry conferred by or under Part 2 or 7 is exercisable in relation to Crown land only with the consent of the appropriate authority.

2 (1) In paragraph 1, “Crown land” means land an interest in which—
   (a) belongs to Her Majesty—
      (i) in right of the Crown, or
      (ii) in right of Her private estates,
   (b) belongs to—
      (i) an office-holder in the Scottish Administration, or
      (ii) a Government Department, or
   (c) is held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department.

(2) In paragraph 1, “appropriate authority” in relation to land—
   (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
   (b) in the case of other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or (as the case may be) Government Department having the management of the land,
   (c) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
   (d) in the case of land—
      (i) belonging to an office-holder in the Scottish Administration or to a Government Department, or
(ii) held in trust for Her Majesty for the purposes of the Scottish Administration or a Government Department, 
means the relevant office-holder or (as the case may be) Government Department.

3 (1) In paragraph 2—
(a) “Government Department” means department of the Government of the United Kingdom, 
(b) the references to Her Majesty’s private estates are to be construed in accordance 
with section 1 of the Crown Private Estates Act 1862.

(2) It is for the Scottish Ministers to determine any question that arises as to who in 
accordance with paragraph 2 is the appropriate authority in relation to any land (and 
their decision is final).

SCHEDULE 3
(introduced by section 48)
REPEAL OF ENACTMENTS

15 1 (1) Section 69 of the 1980 Act is repealed.

(2) In the Natural Heritage (Scotland) Act 1991—
(a) Part III is repealed, 
(b) section 24 is repealed, 
(c) Schedules 7, 8 and 9 are repealed.

20 2 Section 26 of the 2003 Act is repealed.
Water Resources (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision for the development of Scotland’s water resources; to bring large-scale water abstraction under Ministerial control; to extend Scottish Water’s functions and to authorise grants and loans in favour of related bodies; to permit the taking of steps for the sake of water quality; to create contracts for certain non-domestic water and sewerage services; to protect the public sewerage network from harm and to allow for maintenance of private sewage works; to enable the making of water shortage orders; and for connected purposes.

Introduced by: Alex Neil
On: 27 June 2012
Supported by: Keith Brown
Bill type: Government Bill