



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Infrastructure and Capital Investment Committee**

**11th Report, 2012 (Session 4)**

### **Stage 1 Report on the Water Resources (Scotland) Bill**

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## Infrastructure and Capital Investment Committee

### 11th Report, 2012 (Session 4)

#### CONTENTS

#### Remit and membership

Report	1
Introduction	1
Part 1: Development of water resources	2
Part 2: control of water abstraction	15
Part 3: Scottish Water's functions	22
Part 4 – Raw water quality	28
Part 5 – Non-domestic services	32
Part 6 – Sewerage Network	33
Part 7 – Water Shortage Orders	37
Policy and Financial Memoranda	40
General principles of the Bill	41
<b>Annexe A: Reports from other Committees</b>	<b>42</b>
<b>Annexe B: Extracts from the minutes of the Infrastructure and Capital Investment Committee</b>	<b>43</b>
<b>Annexe C: Oral evidence and associated written evidence</b>	<b>45</b>
<b>Annexe D: Other written evidence</b>	<b>47</b>



The Scottish Parliament  
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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



The Scottish Parliament  
Pàrlamaid na h-Alba

## 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.”<sup>1</sup>

### *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.<sup>2</sup> The Committee took evidence on the Bill at seven meetings between 19 September and 7 November.<sup>3</sup> 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.<sup>4</sup>

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<sup>5</sup> (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.<sup>6 7</sup> The James Hutton Institute saw the Bill as an important step to firming up the Hydro Nation agenda,<sup>8</sup> and Scottish Water

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<sup>1</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Col 1086.

<sup>2</sup> 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>

<sup>3</sup> See Annexe C for a list of the oral evidence and associated written evidence received by the Committee.

<sup>4</sup> Policy Memorandum, paragraph 19.

<sup>5</sup> 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.

<sup>6</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 998.

<sup>7</sup> Centre for Water Law. Written submission, page 1.

<sup>8</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 998.

welcomed the proposals that “provide a strong statutory basis for developing Scotland’s water resources in the interests of Scotland”<sup>9</sup>.

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.

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<sup>9</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1027.

<sup>10</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 999.

<sup>11</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 999.

<sup>12</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 844.

<sup>13</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 908.

<sup>14</sup> 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>

<sup>15</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 909.

<sup>16</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Cols 909 and 918.

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).<sup>17</sup> 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”<sup>18</sup>. 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”.<sup>19</sup>

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”<sup>20</sup>. 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”<sup>21</sup>.

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.<sup>22 23</sup> 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”<sup>24</sup>.

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<sup>17</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 855.

<sup>18</sup> RSPB Scotland. Written submission, page 2.

<sup>19</sup> RSPB Scotland. Written submission, page 2.

<sup>20</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 14 November 2012, Col 1130.

<sup>21</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 14 November 2012, Col 1130.

<sup>22</sup> Consumer Focus Scotland. Written submission, page 6.

<sup>23</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 911.

<sup>24</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1000.



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.<sup>25</sup> 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.<sup>26</sup> 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<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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,<sup>31</sup> and Consumer Focus Scotland called for the experiences gained in Scotland to be shared there<sup>32</sup>.

21. In addition, RSPB Scotland<sup>33</sup> and Scottish Environment LINK<sup>34</sup> 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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<sup>25</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1004.

<sup>26</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 917.

<sup>27</sup> A Blueprint to Safeguard Europe's Waters. See European Commission website: [http://ec.europa.eu/environment/water/blueprint/index\\_en.htm](http://ec.europa.eu/environment/water/blueprint/index_en.htm)

<sup>28</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Cols 999-1000.

<sup>29</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 911.

<sup>30</sup> SSE. Written submission, page 3.

<sup>31</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1001.

<sup>32</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 915.

<sup>33</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 859.

<sup>34</sup> 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”<sup>35</sup>. 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”<sup>36</sup>. 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”<sup>37</sup>. 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”<sup>38</sup>. 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”<sup>39</sup>. 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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<sup>35</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Cols 1086-1087.

<sup>36</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1087.

<sup>37</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1087.

<sup>38</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1088.

<sup>39</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

Parliament on the issue, and ministers will be required to report to the Parliament on what has been done to carry out that duty.”<sup>40</sup>

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.

*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.<sup>41</sup> Despite

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<sup>40</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

<sup>41</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Cols 844-845.

the assurance of Scottish Government officials that such factors were included in the phrase “other benefit”,<sup>42</sup> 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”<sup>43</sup>.

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.<sup>44</sup> UKELA<sup>45</sup> and the Centre for Water Law<sup>46</sup> 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.<sup>47</sup>

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”<sup>48</sup>.

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.<sup>49</sup>

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”<sup>50</sup>.

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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<sup>42</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 12 September 2012, Col 808.

<sup>43</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 845.

<sup>44</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Cols 908-909.

<sup>45</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1002.

<sup>46</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1003.

<sup>47</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Cols 856-857.

<sup>48</sup> Scottish Natural Heritage. Written submission, page 1.

<sup>49</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 955.

<sup>50</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

such as environmental or social benefits”<sup>51</sup>. 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”.<sup>52</sup>

**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 environment 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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<sup>51</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

<sup>52</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

any direction should be the subject to consultation prior to the direction being issued.<sup>53</sup>

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<sup>54</sup> and, except in emergencies, to hold a public consultation.<sup>55</sup> RSPB Scotland<sup>56</sup> and Scottish Environment LINK<sup>57</sup> 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”<sup>58</sup>.

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.<sup>59</sup> 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”<sup>60</sup>.

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.”<sup>61</sup>

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<sup>62</sup> said that the Forestry Commission should be included as a designed body on the basis that it is a large

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<sup>53</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 955.

<sup>54</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1005.

<sup>55</sup> UKELA. Written submission, page 2.

<sup>56</sup> RSPB Scotland. Written submission, page 3.

<sup>57</sup> Scottish Environment LINK. Written submission, page 2.

<sup>58</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1028.

<sup>59</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1005.

<sup>60</sup> UKELA. Written submission, page 2.

<sup>61</sup> Subordinate Legislation Committee, 48th Report, 2012 (Session 4): Water Resources (Scotland) Bill. The report is available on the Parliament’s website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56165.aspx>

<sup>62</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1005.

landowner, especially in protected source regions and the Scottish Wildlife Trust (SWT)<sup>63</sup> highlighted the impact that planting trees, for which the Forestry Commission is responsible, had on the water balance.

49. RSPB Scotland,<sup>64 65</sup> Scottish Environment LINK<sup>66 67</sup> and the SWT<sup>68</sup> 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”<sup>69</sup> 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”<sup>70</sup>.

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.<sup>71</sup>

52. The Cabinet Secretary envisaged that the power of direction would be “used sparingly”<sup>72</sup>. 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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<sup>63</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 860.

<sup>64</sup> RSPB Scotland. Written submission, page 3.

<sup>65</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 859.

<sup>66</sup> Scottish Environment LINK. Written submission, page 2.

<sup>67</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 861.

<sup>68</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Cols 860-861.

<sup>69</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 861.

<sup>70</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 861.

<sup>71</sup> James Hutton Institute. Written submission, page 2.

<sup>72</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1089.

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”<sup>73</sup>. 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”<sup>74</sup>.

**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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<sup>73</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1090.

<sup>74</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1090.



59. The Centre for Water Law<sup>75</sup> and UKELA<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup> 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”<sup>80</sup>. 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.<sup>81</sup> Scottish Water’s view was that the three-year reporting cycle was an appropriate length of time.<sup>82</sup>

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”<sup>83</sup>. 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

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<sup>75</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1006.

<sup>76</sup> UKELA. Written submission, page 2.

<sup>77</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 31 October 2012*, Col 1028.

<sup>78</sup> UKELA. Written submission, page 2.

<sup>79</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 19 September 2012*, Cols 862-863.

<sup>80</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1006.

<sup>81</sup> SEPA. Written submission, page 1.

<sup>82</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 31 October 2012*, Col 1028.

<sup>83</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1006.

Bill.<sup>84</sup> 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”<sup>85</sup>.

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.<sup>86</sup> 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”<sup>87</sup>.

65. The Cabinet Secretary confirmed that the intention was for the Bill to initiate a continuous three-year cycle.<sup>88</sup> 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.<sup>89</sup>

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.<sup>90</sup>

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”<sup>91</sup>.

**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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<sup>84</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1006.

<sup>85</sup> Scottish Environment LINK. Written submission, page 2.

<sup>86</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1007.

<sup>87</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 31 October 2012*, Col 1028.

<sup>88</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Col 1090.

<sup>89</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Cols 1090-1091.

<sup>90</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Col 1090.

<sup>91</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Col 1091.

**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.<sup>92</sup> 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"<sup>93</sup>. 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"<sup>94</sup>.

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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<sup>92</sup> Policy Memorandum, paragraph 23.

<sup>93</sup> Policy Memorandum, paragraph 25.

<sup>94</sup> 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<sup>95</sup>; 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<sup>96</sup>. 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.<sup>97</sup>

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—

“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.”<sup>98</sup>

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”.<sup>99</sup> 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.

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<sup>95</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Cols 863-864.

<sup>96</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 864.

<sup>97</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 956.

<sup>98</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1003.

<sup>99</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1009.

78. Energy UK considered that Part 2 of the Bill was not in keeping with the better regulation agenda.<sup>100</sup> 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).<sup>101</sup>

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"<sup>102</sup>. 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"<sup>103</sup>. 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.<sup>104</sup>

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."<sup>105</sup>

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"<sup>106</sup>. 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

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<sup>100</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 3 October 2012*, Cols 956-957.

<sup>101</sup> Scotch Whisky Association. Written submission to the Finance Committee, page 2. The submission is 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)

<sup>102</sup> SEPA. Written submission, page 1.

<sup>103</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 19 September 2012*, Col 846.

<sup>104</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 31 October 2012*, Col 1029.

<sup>105</sup> Subordinate Legislation Committee, 48th Report, 2012 (Session 4): Water Resources (Scotland) Bill. The report is available on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56165.aspx>

<sup>106</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 7 November 2012*, Col 1091.

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”<sup>107</sup>.

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”<sup>108</sup>. 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”<sup>109</sup>.

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.<sup>110</sup> 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”<sup>111</sup>.

**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**

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<sup>107</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1091.

<sup>108</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1092.

<sup>109</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1092.

<sup>110</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1093.

<sup>111</sup> Letter from Scottish Government Bill Team to Finance Committee, 29 October 2012. The correspondence is available on the Parliament’s website:

[http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/SG\\_Bill\\_team\\_to\\_Convener\\_29.10.2012.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/SG_Bill_team_to_Convener_29.10.2012.pdf)

**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,<sup>112</sup> 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,<sup>113</sup> 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<sup>114</sup>; Scottish Environment LINK called for further clarification before Stage 2<sup>115</sup>; and the Scotch Whisky Association questioned whether the threshold applied to entire organisations or individual sites<sup>116</sup>. 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.<sup>117</sup> ICE agreed, but recognised that for practical purposes it made sense to have a single figure threshold.<sup>118</sup>

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.

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<sup>112</sup> 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.

<sup>113</sup> SEPA. Written submission, page 2.

<sup>114</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1008.

<sup>115</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 864.

<sup>116</sup> Scotch Whisky Association. Written submission, page 2.

<sup>117</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1008.

<sup>118</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1008.

Under the current proposals, we would be looking at 20 abstractions over the five years since CAR came into force.”<sup>119</sup>

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 37,024,340m<sup>3</sup>), 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”<sup>120</sup>.

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.”<sup>121</sup>

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”<sup>122</sup>. 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”<sup>123</sup>. 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”<sup>124</sup>. 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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<sup>119</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1009.

<sup>120</sup> Scotch Whisky Association. Written submission, page 2.

<sup>121</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 847.

<sup>122</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1093.

<sup>123</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1093.

<sup>124</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1093.



**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 megalitres 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”<sup>125</sup>.

100. SSE<sup>126</sup> welcomed the exemption for hydro generation, but suggested that gas-fired power stations could also be added to the list and Energy UK<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup>

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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<sup>125</sup> Scotch Whisky Association. Written submission, page 2.

<sup>126</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 958.

<sup>127</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 958.

<sup>128</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1029.

<sup>129</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1029.

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”<sup>130</sup>.

**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”.<sup>131</sup>

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.<sup>132 133</sup>

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<sup>130</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1092.

<sup>131</sup> Policy Memorandum, paragraph 28.

<sup>132</sup> SEPA. Written submission, page 2.

<sup>133</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 848.

109. Similarly, RSPB Scotland<sup>134</sup> and Scottish Environment LINK<sup>135</sup> 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.<sup>136 137</sup>

110. The Centre for Water Law commented that Part 3 of the Bill adds clarity to Scottish Water's core and non-core functions.<sup>138</sup> 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"<sup>139</sup>. 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"<sup>140</sup>.

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"<sup>141</sup>. It considered that it kept the core and non-core parts of its business were 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."<sup>142</sup>

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<sup>134</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 866.

<sup>135</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 866.

<sup>136</sup> Scottish Environment LINK. Written submission, page 4.

<sup>137</sup> RSPB Scotland. Written submission, page 4.

<sup>138</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1011.

<sup>139</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 916.

<sup>140</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 26 September 2012, Col 916.

<sup>141</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1030.

<sup>142</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1031.

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.<sup>143</sup> 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.<sup>144</sup> 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."<sup>145</sup>

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."<sup>146</sup>

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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<sup>143</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1038.

<sup>144</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1038.

<sup>145</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1041.

<sup>146</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1041.

the benefits but bear none of the costs – that would not work in a rational commercial world”<sup>147</sup>.

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”<sup>148</sup>.

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”<sup>149</sup>. 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”<sup>150</sup>. 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.<sup>151</sup>

**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),<sup>152</sup>

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<sup>147</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1038.

<sup>148</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1094.

<sup>149</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1094.

<sup>150</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1094.

<sup>151</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1094.

<sup>152</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 954.

SSE<sup>153</sup> and Energy UK<sup>154</sup> 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.<sup>155</sup> 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"<sup>156</sup>.

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"<sup>157</sup>. 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.<sup>158</sup>

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".<sup>159</sup> 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"<sup>160</sup>.

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—

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<sup>153</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 953.

<sup>154</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 953.

<sup>155</sup> SESA. Written submission, page 2.

<sup>156</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 3 October 2012, Col 953.

<sup>157</sup> SSE. Written submission, page 3.

<sup>158</sup> SSE. Written submission, page 3.

<sup>159</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1030.

<sup>160</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Cols 1030-1031.

“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.”<sup>161</sup>

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”<sup>162</sup>.

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”<sup>163</sup>. 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”<sup>164</sup>.

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 overly generous.”<sup>165</sup>

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<sup>161</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1032.

<sup>162</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1031.

<sup>163</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1040.

<sup>164</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1040.

<sup>165</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Cols 1040-1041.

131. Similarly, the Cabinet Secretary was “very clear”<sup>166</sup> 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.”<sup>167</sup>

**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.<sup>168</sup> 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.<sup>169</sup>

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<sup>166</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1093.

<sup>167</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1094

<sup>168</sup> Policy Memorandum, paragraph 32.

<sup>169</sup> 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”<sup>170</sup>. 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”<sup>171</sup>.

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.”<sup>172</sup>

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.<sup>173</sup> 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”.<sup>174</sup>

141. Similarly, RSPB Scotland observed that the Bill reflected a shift towards a sustainable catchment management approach, which it considered to be extremely positive.<sup>175</sup> The Centre for Water Law<sup>176</sup> and UKELA<sup>177</sup> also highlighted

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<sup>170</sup> Scottish Land and Estates. Written submission, page 3.

<sup>171</sup> Centre for Water Law. Written submission, page 6.

<sup>172</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 849.

<sup>173</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1033.

<sup>174</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 19 September 2012, Col 869.

<sup>175</sup> RSPB Scotland. Written submission, page 5.

<sup>176</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1013.

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”<sup>178</sup>.

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.<sup>179</sup> 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”.<sup>180</sup> 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”.<sup>181</sup>

145. A number of other issues were raised in evidence to the Committee. The Centre for Water Law<sup>182</sup> and UKELA<sup>183</sup> 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.<sup>184</sup>

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<sup>177</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1014.

<sup>178</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1095.

<sup>179</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1033.

<sup>180</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1096.

<sup>181</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1096.

<sup>182</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1013.

<sup>183</sup> UKELA. Written submission, page 7.

<sup>184</sup> 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”<sup>185</sup>. 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.”<sup>186</sup>

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”<sup>187</sup>.

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.<sup>188</sup> The Cabinet Secretary confirmed that it was envisaged that the term premises meant land and building, and did not include houses.<sup>189</sup> 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.**

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<sup>185</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1034.

<sup>186</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1034.

<sup>187</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1097.

<sup>188</sup> UKELA. Written submission, page 7.

<sup>189</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1096.

**150. 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”<sup>190</sup>.

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”<sup>191</sup>. 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”<sup>192</sup>.

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

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<sup>190</sup> Policy Memorandum, paragraph 35.

<sup>191</sup> Consumer Focus Scotland. Written submission, page 7.

<sup>192</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1097.

pay and who they should pay, just because the information has not been made clear”<sup>193</sup>.

**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 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.<sup>194</sup>

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.<sup>195</sup> 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.<sup>196</sup> 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”<sup>197</sup>.

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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<sup>193</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1097.

<sup>194</sup> Policy Memorandum, paragraph 40.

<sup>195</sup> UKELA. Written submission, page 8.

<sup>196</sup> SCDI. Written submission, page 5.

<sup>197</sup> 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”<sup>198</sup>.

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”<sup>199</sup>.

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”<sup>200</sup>.

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.<sup>201</sup> 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”<sup>202</sup>.

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<sup>203</sup> and Scottish Environment LINK<sup>204</sup> 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.<sup>205</sup>

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.<sup>206</sup> 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.<sup>207</sup>

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<sup>198</sup> Scottish Water. Written submission, page 5.

<sup>199</sup> Scotch Whisky Association. Written submission, page 3.

<sup>200</sup> Glasgow City Council. Written submission, pages 2-3.

<sup>201</sup> Rio Tinto Alcan. Written submission, page 5.

<sup>202</sup> Scottish Land and Estates. Written submission, page 3.

<sup>203</sup> RSPB Scotland. Written submission, page 6.

<sup>204</sup> Scottish Environment LINK. Written submission, page 6.

<sup>205</sup> UKELA. Written submission, page 8.

<sup>206</sup> Glasgow City Council. Written submission, pages 2-3.

<sup>207</sup> 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”<sup>208</sup>. It stated that, despite being regulated under the CAR, “pollution from septic tanks remains a pressure on the water environment”<sup>209</sup>.

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”.<sup>210</sup> 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).<sup>211</sup> 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.<sup>212</sup>

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<sup>208</sup> RSPB Scotland. Written submission, page 6.

<sup>209</sup> RSPB Scotland. Written submission, page 6.

<sup>210</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Cols 1015-1016.

<sup>211</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1016.

<sup>212</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report, 24 October 2012*, Col 1016.

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”<sup>213</sup>. 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”.<sup>214</sup>

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”<sup>215</sup>. 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<sup>216</sup>; and James Hutton Institute suggested that 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”<sup>217</sup>.

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”<sup>218</sup>. 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

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<sup>213</sup> Highland Council. Written submission, page 1.

<sup>214</sup> Highland Council. Written submission, page 1.

<sup>215</sup> Consumer Focus Scotland. Written submission, page 8.

<sup>216</sup> RSPB Scotland. Written submission, page 6.

<sup>217</sup> James Hutton Institute. Written submission, page 6.

<sup>218</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1035.



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.<sup>219</sup> 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”<sup>220</sup>.

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.<sup>221</sup> 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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<sup>219</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1035.

<sup>220</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1099.

<sup>221</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 12 September 2012, Col 819.

streamlining the current process and allowing Scottish Water, SEPA and Scottish Ministers to react swiftly and in a proportionate way to such water shortages.<sup>222</sup>

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.<sup>223</sup>

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.<sup>224</sup> 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).<sup>225</sup>

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.<sup>226</sup> 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.<sup>227</sup>

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.<sup>228</sup> 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”<sup>229</sup>.

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<sup>222</sup> Policy Memorandum, paragraph 45.

<sup>223</sup> Policy Memorandum, paragraph 45.

<sup>224</sup> Scotch Whisky Association. Written submission, page 3.

<sup>225</sup> Scotch Whisky Association. Written submission to the Finance Committee, pages 2-3. The submission is 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)

<sup>226</sup> Rio Tinto Alcan. Written submission, page 6.

<sup>227</sup> Scottish Land and Estates. Written submission, page 4.

<sup>228</sup> Scottish Natural Heritage. Written submission, page 3.

<sup>229</sup> RSPB Scotland. Written submission, page 6.

189. The equality of treatment for domestic and non-domestic users was an issue on which Consumer Focus Scotland<sup>230</sup> and the Centre for Water Law<sup>231</sup> 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”<sup>232</sup> 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.<sup>233</sup>

190. In addition, Consumer Focus Scotland commented on the need for Scottish Water to specify that “adequate forward notice”<sup>234</sup> 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”<sup>235</sup>.

192. In evidence to the Committee, the Cabinet Secretary stated that she envisaged that Water Shortage Orders would be used “very rarely”<sup>236</sup>. 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”<sup>237</sup>. 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

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<sup>230</sup> Consumer Focus Scotland. Written submission, pages 8-9.

<sup>231</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 24 October 2012, Col 1018.

<sup>232</sup> Consumer Focus Scotland. Written submission, page 9.

<sup>233</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 12 September 2012, Col 821.

<sup>234</sup> Consumer Focus Scotland. Written submission, page 9.

<sup>235</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 31 October 2012, Col 1036.

<sup>236</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1099.

<sup>237</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1099.

she would be happy to talk to the Association about the use of Orders.<sup>238</sup> 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”<sup>239</sup>.

**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.<sup>240</sup> 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.<sup>241</sup> 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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<sup>238</sup> Scottish Parliament Infrastructure and Capital Investment Committee. *Official Report*, 7 November 2012, Col 1100.

<sup>239</sup> Letter from Scottish Government Bill Team to Finance Committee, 29 October 2012. The correspondence is available on the Parliament’s website: [http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/SG\\_Bill\\_team\\_to\\_Convener\\_29.10.2012.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/SG_Bill_team_to_Convener_29.10.2012.pdf)

<sup>240</sup> 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)

<sup>241</sup> The letter to the Scottish Government Bill Team is available on the Parliament’s website at: [http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/20121003\\_Convener\\_to\\_WR\\_Bill\\_team.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/20121003_Convener_to_WR_Bill_team.pdf) and the reply from the Bill Team is available at: [http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/SG\\_Bill\\_team\\_to\\_Convener\\_29.10.2012.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/SG_Bill_team_to_Convener_29.10.2012.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.<sup>242</sup>

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.**

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<sup>242</sup> Subordinate Legislation Committee, 48th Report, 2012 (Session 4): Water Resources (Scotland) Bill. The report is available on the Parliament's website at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56165.aspx>

## **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

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/56165.aspx>

- Correspondence between the Finance Committee and the Scottish Government

[http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/20121003\\_Convener\\_to\\_WR\\_Bill\\_team.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/20121003_Convener_to_WR_Bill_team.pdf)

[http://www.scottish.parliament.uk/S4\\_FinanceCommittee/General%20Documents/SG\\_Bill\\_team\\_to\\_Convener\\_29.10.2012.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/SG_Bill_team_to_Convener_29.10.2012.pdf)

**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—

Nicola Sturgeon, Cabinet Secretary for Infrastructure, Investment and Cities, Christina Phillips, Bill Manager, Water Industry Team, and Stephen Rees, Legal Directorate, Scottish Government.

**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 \(62KB PDF\)](#)

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