REGULATORY REFORM (SCOTLAND) BILL

I agreed to come back to the committee on a number of points raised in my oral evidence on 5 June relating to Part 1 of the Bill once I had discussed with the Minister for Energy, Enterprise and Tourism:

1. In relation to the point made by Claudia Beamish MSP on whether or not the purpose and effect of the Bill would change significantly if sustainable development was substituted for sustainable economic growth

While I recognise that sustainable development is well understood in the context of environmental legislation and regulatory activity the Scottish Government is convinced that retention of the term "sustainable economic growth" is essential. The Scottish Government's central Purpose is "to focus the Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. By sustainable economic growth we mean building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can enjoy a better quality of life too." The rationale for Part 1 of the Bill is to promote greater regulatory consistency by imposing a statutory duty in relation to sustainable economic growth, empowering regulators to further align their activities and approach with the Scottish Government's Purpose.

2. In relation to the point made by Nigel Don MSP on whether or not the hierarchal approach taken in Section 38 would be a suitable approach for setting out the duty on regulators in Section 4

While the twinned definition of the general purpose of SEPA works well in that context it would be less effective in a more general clause such as section 4 which applies to a range of regulators.
3. In relation to the point raised by Graeme Dey MSP on how other regulators are covered by the Code of Practice in Section 5

The Scottish Government recognises that many Scottish local authorities and regulators already take economic and business factors appropriately into account in regulatory activity, and is determined to build on that existing good practice to drive further performance improvements and promote consistency. Clause 5 of the Bill therefore gives Scottish Ministers the powers to issue a code of practice, linking the proposed economic duty to statutory guidance which provides clarification on the practicalities of determining an appropriate balance between economic and other regulator-specific objectives. We believe that any such Code of Practice must be developed by regulators and stakeholders and are establishing a short-life group with the following remit:

Develop a draft Scottish Regulators’ Code of Practice, for consultation later in 2013, providing guidance which regulators would have regard to when determining policies, setting standards or giving guidance in relation to their duties. The draft code should address and take account of the inter-relationship between: supporting sustainable economic growth; risk assessment; information, advice and inspections; compliance and enforcement actions; and accountability.

The proposed Code will apply to all regulators listed in schedule 1 – and will not be specific to any particular regulator. It is not intended to circumvent or replace other codes of practice, or the powers to do so. Indeed, by developing this code in an open and collaborative way, involving regulators and other stakeholders, the intention is for it to complement detailed and subject-specific codes which already exist.

4. In relation to the point raised by Jim Hume MSP on whether the Bill could be clearer on who will be consulted on in relation to the Code of Practice

A short life working group, comprising COSLA, business representatives - including the Regulatory Review Group, the Federation of Small Businesses and the Scottish Chambers of Commerce - and regulators including SEPA and SNH, has been asked to develop the Code of Practice, which will be publicly consulted on prior to introduction. Regulatory bodies not involved in the working group will be kept informed of progress and invited to contribute. However, as the draft Code will then be the subject of substantive open consultation and parliamentary scrutiny the Scottish Government is not convinced of that there is merit in being more specific in the Bill. This clause is deliberately wide, providing scope to be as inclusive as possible.

I trust the committee finds this information useful in the preparation of their Stage 1 Report.

I am copying this letter to the Convener of the Economy, Energy and Tourism Committee.

PAUL WHEELHOUSE