

WRITTEN EVIDENCE FROM SCOTTISH ENVIRONMENT LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK welcomes this opportunity to offer views on the general principles of the Water Resources (Scotland) Bill.

Summary

- The Water Resources Bill must ensure that any development of Scotland's water resources is sustainable; LINK is concerned by the emphasis on development for economic gain.
- We seek clarity on the intention of the provisions relating to large-scale abstractions and urge that appropriate steps are in place to ensure full accountability of Ministerial decisions;
- The sustainable management of river catchments to improve and maintain water quality must be supported and the importance of peatlands as a water resource must be recognised;
- Scotland must lead by example in the sustainable management of water resources and must meet Water Framework Directive (WFD) objectives, minimise water leakage, promote water efficiency in households and industry, and reduce carbon emissions from water industry operations;
- Scottish Water has a range of existing statutory duties in relation to biodiversity, climate change and water efficiency. There must be adequate Parliamentary scrutiny of how these are being met.

Questions

Q1. Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland's water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government's aim of making Scotland a Hydro Nation?

LINK would like to see a clear definition of the Hydro Nation concept. **LINK believes a Hydro Nation should be one where a healthy water environment exists through a sustainable and integrated approach to river catchment management from source to sea.** This approach would deliver land management, such as peatland restoration, to improve raw water quality thus reducing water treatment costs and bringing multiple benefits including wildlife habitat, recreational space, flood risk management, carbon storage and climate change adaptation. Scotland's water industry has a key role to play in achieving this.

A Hydro Nation must lead by example through the positive management of its own water resources and this would include minimising leakage and improving water efficiency in households and businesses. This would not only reduce pressure on the

water environment but would drive down the energy use and greenhouse gas emissions associated with abstraction, treatment and pumping of water.

LINK is concerned by the bill's emphasis on maximising economic benefits from Scotland's water resources. We feel strongly that any development of water resources must be sustainable and the provisions in Part 1 of the bill must ensure sustainability. The proposed duty "*in ways designed to contribute to the sustainable use of the resources*" is not sufficiently robust to ensure sustainable development and this must be strengthened. We are concerned that the bill is skewed towards economic benefit and believe there should be specific reference to environmental benefits in s.1(3). It must be remembered that the Water Framework Directive states "*Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such*".

Scottish Water has existing statutory duties in relation to sustainable development, conservation of flora and fauna¹, biodiversity², climate change mitigation and adaptation³ and water use efficiency⁴. Any proposals in this bill must not contradict existing duties. We are concerned by Part 8 of the bill which will repeal Section 26 of the Water Environment and Water Services (Scotland) Act 2003 (WEWS) which requires an annual report on WFD implementation to be laid before Parliament. **If this is repealed, we seek clarity on what steps will be taken to ensure that Parliament adequately scrutinises WEWS Act implementation.** As outlined in LINK's Governance Matters publication, there is concern that such scrutiny of implementation of existing legislation is insufficient, partly because Parliament's time is taken up by passage of new legislation. LINK urges that this is addressed.

Q2. What are your views on the proposal that Scottish Ministers should be able to direct public bodies to participate in the development of water resources?

We agree that Scottish Ministers must consult the body in question but there must also be wider public consultation. Furthermore, a number of additional public bodies should be included in this bill on the basis that they could contribute to a sustainable catchment management approach. We suggest that WICS, the National Parks, FCS and Scottish Canals are all considered.

Q3. Do you have any comments on the requirement for Scottish Ministers to report to the Scottish Parliament on these activities every three years? Is this sufficient to ensure that Scottish Ministers will be held accountable for meeting the duty placed upon them to ensure the development of Scotland's water resources?

Adequate parliamentary scrutiny of the implementation of these duties will be critical and LINK does not believe that a reporting period of 3 years is sufficiently frequent. Annual reporting would be more appropriate.

¹ Water Industry (Scotland) Act 2002

² Nature Conservation (Scotland) Act 2004

³ Climate Change (Scotland) Act 2009

⁴ Water (Scotland) Act 1980

Q4. In your view is the new licensing regime necessary and will it offer the desired benefit of ensuring that the value of the water resources of Scotland are maximised for the people of Scotland?

Abstraction places significant pressure on the water environment and can result in permanent loss of freshwater and terrestrial habitats, drainage of wetlands and peatlands and subsequent loss of biodiversity. Any abstraction must be undertaken in full compliance with the WEWS Act and sustainable development principles, and must have due regard for climate change predictions of increased drought frequency in parts of Scotland. LINK is concerned that the intention behind this regime is to allow abstractions to be undertaken solely for economic gain and that this will compromise achievement of WFD obligations.

It is not entirely clear why the new licensing regime is even necessary because there is already scope for Ministers to call in and determine abstraction applications under the existing Controlled Activities Regulations. Further confusion arises because s.19(1) of this bill implies that CAR authorisation would still be required for such cases so it would seem that two different processes would be operating in parallel.

If Part 2 is retained, we urge that Ministers are required to seek advice from SEPA rather than this being optional as per s.13(4). There must also be a requirement to consult SNH where an abstraction might impact on a designated site. Any approvals process should be transparent and consultative and allow any decisions to be challenged in a fair and appropriate manner. Ministers should have to consult SEPA, SNH and any other appropriate persons, and a public inquiry, or other transparent assessment of the evidence, should be initiated if objections arise.

Q5. Is the threshold set in the Bill for defining large scale abstractions of greater than 10 megalitres of water per day appropriate?

It is not clear why the 10MI per day threshold has been proposed and without knowing the intention of this part, we cannot comment on its appropriateness.

Q6. Is the list of possible purposes by which a large scale abstraction may be exempt from requiring Ministerial approval, such as where an abstraction is carried out for the purpose of generating electricity by hydro-power, appropriate?

Please refer to our response to question 4. This whole part is not clear given that such 'exemptions' still require an authorisation under CAR and could be called in under Regulation 20 of CAR.

Q7. What are your views on Scottish Water being given specific powers to develop its assets and support the generation of renewable energy?

It is crucial that any duty on Scottish Water to develop the value of water resources (s.21) ensures that development is sustainable. Section 50A does not currently have sufficient provision to ensure that development of assets would have to balance the social and environmental impact. We would recommend inclusion of wording that is consistent with that in Section 10(1)(c) to strengthen sustainability.

LINK recognises the contribution that renewable energy can make to mitigating climate change and meeting Scotland's ambitious carbon emission reduction targets. Therefore, we agree that Scottish Water should support the generation of renewable energy but it is critical that all developments are sited, constructed and managed to minimise adverse impacts on biodiversity and the wider environment. The bill must have a clear requirement to ensure that any use of Scottish Water assets for renewable energy generation is sustainable. Scottish Water should be required to produce a strategy to underpin its development of renewables in Scotland. We wish to see water industry taking an open, transparent and engaging approach to its proposed development of renewables, enabling stakeholders to input at an early stage to ensure that renewable energy generation is maximised and potential negative environmental impacts avoided.

Q8. Are you content that the definition of core powers will provide sufficient safeguards for core water and sewerage functions against risks incurred by Scottish Water in pursuing non-core functions?

No, we are not certain that the definition does this. As the definition includes any functions under this bill '*so far as relating to the provision of water or sewerage services in Scotland*', this will surely have to be taken into account in the financing arrangements for the next water industry investment period. Therefore, it is odd that the current Government consultation⁵ on Scottish Water investment "*does not consider any of the issues covered by the Hydro Nation Agenda or the Water Resources (Scotland) Bill*" and "*concentrates on the core water and sewerage services provided by Scottish Water to its customers*". There must be clarity as to how any new duties or functions under this bill will be incorporated into Quality & Standards IV.

Q9. Do you have any views about the proposals to give Scottish Water new powers of entry and inspection of premises (other than a house) in relation to the quality of raw water?

We welcome provisions to give Scottish Water power to enter land to assess or monitor the raw water quality. Please also see our comments to question 10 in relation to Part 4 of the bill.

Q10. Do you have any views on how the proposal allowing Scottish Water to enter into agreements with owners or occupiers of land to undertake works to prevent the deterioration of water quality will work in practice and whether this is necessary and/or appropriate?

LINK supports this proposal which will facilitate a shift towards a sustainable catchment management approach to improving raw water quality. While this is extremely positive, **there must be safeguards to ensure that land managers do not receive financial payment from Scottish Water for management that is already required by legislation or as a condition of cross-compliance for receipt of Single Farm Payment.**

⁵ Scottish Government consultation on [Investing In and Paying for Your Water Services from 2015](#)

The use of sustainable land management to improve raw water quality in catchments brings social, environmental and economic benefits including flood risk management, carbon storage, climate change adaptation, biodiversity and recreational space. Since 70% of drinking water supply arises in upland peat-dominated catchments⁶, conservation and restoration of peatlands is a vital and integral element of catchment management. The [IUCN UK Commission of Inquiry on Peatlands](#) acknowledged that peatland restoration in areas previously damaged by drainage for example, can improve raw water quality by addressing the problem of ‘brown water’ caused by Dissolved Organic Carbon (DOC) from peatlands. Peatland restoration can bring down financial costs associated with DOC removal and alleviate the presence of harmful trihalomethanes which arise as disinfection by-products from the treatment process. Therefore, it makes sense on many levels to take action to protect and restore peatlands, something that was recognised by that very commitment in the SNP manifesto⁷. Given all of the above, it is critical that this bill’s definition of ‘water resources’ encompasses peatland habitats. We are concerned that the definition in Part 1 of the bill relies on WEWS Act definitions because although blanket and raised bogs are undoubtedly wetland habitats⁸, they are not considered to be wetlands for the purposes of WEWS Act implementation⁹. The Part 4 definition of ‘raw water’ is that which is contained in bodies of water used for drinking water abstraction, or water that flows or drains into such bodies of water. As the majority of drinking water arises from peatland-dominated catchments, this definition should encompass peatland habitats. *However*, we are concerned that if this is left open to interpretation, the relevance of blanket and raised bogs might be overlooked. **Therefore, LINK seeks a strong and explicit reference to peatlands in the definitions of water resources and raw water.**

It would be appropriate to place a duty on Scottish Water, SEPA and any other appropriate persons, to work in partnership to deliver sustainable land management that is positive for raw water quality while maintaining a healthy environment and the multiple benefits that fully functioning ecosystems provide. The delivery of multiple benefits is entirely consistent with the Government’s Land Use Strategy. This sustainable land management approach has been established in drinking water catchments elsewhere in the UK. Initiatives such as [SCaMP](#) with United Utilities and [Upstream Thinking](#) with South West Water are demonstrating how water companies, statutory agencies, NGOs and land managers can together deliver catchment management that is positive for water quality and a suite of wider benefits.

Q11. Are the new duties to be placed on landlords appropriate and do they raise any concerns?

We have no comments on this.

Q12. Do you have any comments on the proposed arrangements for the creation of a scheme setting out the terms and conditions under which a deemed contract for the provision of water is to exist?

⁶ Bain, C.G. *et al.* (2011) [IUCN UK Commission of Inquiry on Peatlands](#), IUCN UK Peatland Programme, Edinburgh

⁷ Page 35 of [SNP Manifesto 2011](#)

⁸ http://www.sepa.org.uk/science_and_research/what_we_do/biodiversity/wetlands.aspx

⁹ For example, SEPA ‘Guidance on monitoring and protection of wetlands’ states that protection is restricted to wetlands “*directly dependent upon surface or groundwater bodies and does not include rainwater dependent wetlands such as peat bogs*”.

We have no comments on this.

Q13. Do you have any comments about the proposal granting Scottish Water powers of entry and inspection of land or non-domestic property in relation to passing substances and pollutants into the sewer network?

We welcome this proposal on the basis that it should strengthen protection of the water environment.

Q14. Do you have any comments about the creation and enforcement of a new offence of passing, or permitting to be passed, fat, oil or grease into the public sewer network?

LINK welcomes the creation of an offence in relation to the passing of fats, oils and grease from trade premises. However, we query the proposal to use the 1968 Act definition of trade premises and suggest that this definition is expanded to include establishments not currently covered by the 1968 Act. For example, educational establishments with catering facilities, such as schools and universities, could be included.

Q15. Do you have any comments on the proposal to allow any one proprietor to carry out works to private sewage treatment works, such as septic tanks, to maintain and empty these shared assets without having to secure the consent of the other owners?

LINK supports this proposal on the basis that it will improve protection of the water environment. Despite being regulated under the Controlled Activities Regulations, pollution from septic tanks remains a pressure on the water environment and research indicates that phosphorus loading from septic tanks is underestimated¹⁰. It is essential that SEPA uses its enforcement powers to bring remediation when a septic tank is identified as causing a pollution problem. We would like to see greater awareness raising on septic tank maintenance and registration, and consideration must be given to whether the development planning process could do more to identify and record septic tank locations.

Q16. Are the proposals to create new water shortage and emergency water shortage orders proportionate and will they have the desired effect of dealing with temporary water shortages?

While we agree that these orders are needed to cope with temporary water shortages, we urge that steps are taken to encourage households and businesses to improve water efficiency and reduce consumption at all times, not just during periods of low rainfall. Scottish Water already has a duty to “*promote the conservation and effective use of the water resources of Scotland*”¹¹. More could be done to fulfil this duty and LINK would like to see Scottish Water work alongside others to execute an effective strategy to deliver a water efficiency campaign. As part of this, steps could be taken to ensure water-saving devices are adopted in new developments and that retrofitting measures, such as cistern displacement devices or ‘toilet hippos’, are installed.

¹⁰ <http://nora.nerc.ac.uk/2531/2/DudleySepticTanksRep.pdf>

¹¹ Water (Scotland) Act 1980

Q17. Do you have any comments on the estimated costs associated with the Bill?

We have no comments on this.