



The Scottish Parliament
Pàrlamaid na h-Alba

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

AGENDA

14th Meeting, 2012 (Session 4)

Wednesday 19 September 2012

The Committee will meet at 10.00 am in Committee Room 2.

1. **Declaration of interests:** Jim Eadie will be invited to declare any relevant interests.

2. **Subordinate legislation:** The Committee will take evidence on the Property Factors (Scotland) Act 2011 (Modification) Order 2012 [draft] from—

Margaret Burgess, Minister for Housing and Welfare, Gordon Paterson, Team Leader, Private Housing Services, Frances Murphy, Senior Policy Officer, Private Housing Services, and Annalee Murphy, Solicitor, Scottish Government.

3. **Subordinate legislation:** Margaret Burgess to move—S4M-04090—

That the Infrastructure and Capital Investment Committee recommends that the Property Factors (Scotland) Act 2011 (Modification) Order 2012 [draft] be approved.

4. **Water Resources Bill:** The Committee will take evidence on the Bill at Stage 1 from—

David Harley, Water and Land Unit Manager, SEPA;

and then from—

Lisa Webb, Water Policy Officer, RSPB Scotland;

Chris Spray, Council Member, Scottish Wildlife Trust;

Andy Myles, Parliamentary Officer, Scottish Environment LINK.

ICI/S4/12/14/A

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The papers for this meeting are as follows—

Agenda item 2 and 3

Cover note

ICI/S4/12/14/1

[Property Factors \(Scotland\) Act 2011 \(Modification\) Order 2012 \[draft\]](#)

Agenda item 4

PRIVATE PAPER

ICI/S4/12/14/2 (P)

Written evidence

ICI/S4/12/14/3

Infrastructure and Capital Investment Committee

14th Meeting, 2012 (Session 4), Wednesday, 19 September 2012

Subordinate Legislation

Title of Instrument	Property Factors (Scotland) Act 2011 (Modification) Order 2012 [draft]
Type of Instrument	Affirmative
Laid Date	21 June 2012
Minister to attend the meeting	Yes
SSI drawn to the Parliament's attention by Subordinate Legislation Committee	No
Reporting Deadline	3 October 2012

Procedure

1. The Infrastructure and Capital Investment Committee has been designated as lead committee for this instrument and is required to report to the Parliament.
2. Under Rule 10.6.1 (a), this Order is subject to affirmative resolution before it can be made. It is for the Infrastructure and Capital Investment Committee to recommend to the Parliament whether the Order should be approved.
3. The Minister for Housing and Welfare has, by motion S4M-04090 (set out in the agenda), proposed that the Committee should recommend the approval of this Order. The Minister will attend in order to speak to and move the motion. The formal debate may last for up to 90 minutes. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask questions of the Minister and her officials.
4. At the end of debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee's recommendation.

Property Factors (Scotland) Act 2011 (Modification) Order 2012 [draft]

Background

5. The Committee has previously considered the Property Factors (Scotland) Act 2011 (the Act) and the Property Factors (Code of Conduct) (Scotland) Order

2012 [draft] which have been created to provide increased protection for homeowners.

6. The Property Factors (Scotland) Act 2011 (the Act) requires that any person wishing to be directly concerned with the governance and control of property must apply to join the register of property factors. As part of this the applicant must provide certain information as set out in section 5(2) of the Act, including details of specific criminal convictions and contraventions of law. The purpose of providing this information is to allow the Scottish Ministers to be better informed when considering whether a person is suitable to be a property factor. The Act also provides that the register be made publically available online after 1 October 2012.

7. The Act further states under section 3(2) that the information of the details outlined above need only be provided as they stand at the time of application to the register and need not be updated, even if additional convictions and contraventions are made, until the next date of application (required every three years).

Purpose

8. The purpose of this Order is to amend the Act as it relates to the publication of individuals details in the property factors register. This Order provides for the omission of details from the register relating to a factor's criminal convictions and contraventions, when it is made publically available. These details would be deemed to contravene the European Convention on Human Rights were they to be made publically available and Scottish Ministers consider that full disclosure of such personal information would not be in the public interest. If homeowners wish to raise concerns regarding an individual involved in factoring they can do so via the respective authorities.

Financial implications

9. It is not anticipated that the coming into force of the Order will have any direct financial effects on the Scottish Government, local government, or on business.

Consideration by the Subordinate Legislation Committee

10. The SLC considered this instrument at its meeting on 4 September 2012 and agreed to raise no points relating to it.

11. A copy of the Order and the accompanying documents, are contained within the papers.

Steve Farrell
Clerk to the Committee
September 2012

Infrastructure and Capital Investment Committee

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Water Resources (Scotland) Bill - Stage 1

Written evidence

The Committee has received written evidence on its scrutiny of the Water Resources (Scotland) Bill at Stage 1, from the following organisations, relevant to this meeting:

- SEPA
- RSPB Scotland
- Scottish Environment LINK

WRITTEN EVIDENCE FROM THE SEPA

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

SEPA would like to reiterate our support for the Scottish Ministers’ ambition to become a Hydro Nation. We believe that placing a duty upon the Scottish Ministers to develop it is vital to its success. We do note that the Bill (1(3)) says “economic and other benefit” whereas the policy memo in paragraph 2 makes it clear that the “value should be measured in economic, environmental and social terms”. SEPA suggests that the Bill is amended to specifically include environmental and social aspects.

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

SEPA supports the development of a Hydro Nation. We believe that our core duties to protect and improve the environment are essential foundations to a successful Hydro Nation. We work closely with many other public, private and NGO organisations to develop and implement River Basin Management Plans, which have the ambitious environmental objective (appropriate for Scotland as a Hydro Nation) for 98% of water bodies to be at Good Status by 2027. As a designated body SEPA may be given additional extra duties under the direction of Ministers. Providing these do not compromise our ability to carry out our core duties, or create a conflict of interest, then we are supportive of the duty on Scottish Ministers to direct public bodies to participate in the development of water resources. To this effect we welcome the inclusion of a period of consultation prior to any direction from the Scottish Ministers.

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

SEPA has no strong views on the reporting period. Three years would seem a reasonable length of time. Any shorter would perhaps be overly onerous and any longer would be insufficient to ensure a quick response to any particular issue that requires Scottish Parliament input. We would suggest aligning the reporting periods with the River Basin Management Planning (RBMP) cycle which is every six years. This would mean two reports per RBMP cycle and allow the Scottish Parliament to assess progress in meeting objectives.

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

SEPA’s main concern would be a conflict with our duty to protect the water environment from abstractions under the Controlled Activity Regulations 2011 (CAR). As the Bill clearly sets out that it does not affect the requirements under CAR then we have no further

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comment to make as the issue of water rights is for the Scottish Ministers to determine on behalf of the Scottish people.

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

SEPA considers that the threshold is appropriate. This is a very large abstraction volume requiring a large amount of infrastructure and investment, and therefore will only occur in exceptional circumstances.

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

SEPA considers the list of possible purposes that may be exempt from requiring approval to be appropriate. Used in conjunction with the abstraction threshold it is unlikely that it will provide any additional regulatory burden for Scottish industry.

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

SEPA is fully supportive of Scottish Water being given specific powers to develop its assets to support the generation of renewable energy. Scottish Water currently transports water and waste water around the country through existing pipework and we believe that there is potential to develop assets to generate energy. Likewise, there are opportunities to utilise waste water as a product with energy production potential. However, such development of the assets should not be at the expense of the environment, or of meeting future environmental objectives. SEPA would still expect Scottish Water to comply with the requirements of the Controlled Activities Regulations 2011.

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

SEPA are pleased that Scottish Water's core functions are safeguarded and the new duties will not affect the financial provisions allocated to its core duties.

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

SEPA welcomes the proposals to give Scottish Water powers of entry and inspection to premises in order to protect raw water to ensure it is fit for drinking water purposes.

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

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SEPA welcomes this proposal and considers it entirely appropriate and necessary. It will help to ensure there is no unnecessary investment in drinking water treatment to deal with poor water quality arising from poor land management. SEPA and Scottish Water are currently working in partnership to work with land managers within a number of catchments to reduce pesticide levels that otherwise would have required expensive treatment to remove.

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

SEPA has no comment.

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

SEPA has no comment.

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

SEPA welcomes the proposal to grant Scottish Water powers of entry and inspection to prevent certain substances and pollutants entering the sewer network. This is an appropriate step to ensure that the network and treatment systems work efficiently and effectively and that there is no unnecessary investment in end of pipe treatment where sewer catchment management would be the more cost effective solution.

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

SEPA welcomes the proposal to create a new enforcement provision regarding the entry of fat, oil and grease into the sewer. SEPA and Scottish Water put significant effort into responding to pollution incidents as a direct result of blockages to the foul sewer caused by fat or grease, and direct discharges of oil into surface water sewers. Such measures are necessary to act as a deterrent against reckless „in-house“ management.

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

SEPA welcomes the proposal to allow one owner to maintain their sewage treatment plant without the consent of the other owner(s). Appropriate maintenance of sewage is essential to ensure the environment is protected. Shared maintenance of small private treatment plants is a long standing problem for SEPA. Often one owner is willing to carry out the necessary measure but cannot get the necessary consent of the others

SEPA would have liked to have seen the Bill expanded to allow Scottish Water to maintain or empty the plant where neither owner would be willing to undertake maintenance with additional provisions to recover their costs. SEPA also believes there should be provision

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within the Bill for Scottish Water to require owners of poor private drainage and treatment systems to connect into the foul sewer where it is reasonable to do so.

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

We do consider that these provisions are proportionate and will assist in reducing water demand during water shortage. However they do not remove the requirements (under the Controlled Activities Regulations 2011) for Scottish Water to apply for authorisation (or a variation to an existing authorisation) for a new abstraction or for changes to existing abstractions.

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

SEPA has no comment on this.

WRITTEN EVIDENCE FROM RSPB SCOTLAND

RSPB Scotland welcomes the opportunity to offer views on the general principles of the Water Resources (Scotland) Bill. We outline the aspects of the Bill that we think are positive and offer our comments and recommendations on the aspects that we think could be substantially improved.

In summary:

- The Water Resources Bill must ensure that any development of Scotland's water resources is sustainable;
- We seek clarity on the intention of the provisions relating to large-scale abstractions and urge that appropriate steps are in place to ensure accountability of abstraction approvals;
- Scotland must lead by example in its management of water resources. Safeguarding the natural environment, meeting Water Framework Directive objectives, cutting water leakage and minimising carbon emissions from water industry operations are all crucial;
- Management of river catchments to improve or maintain water quality must be supported and the importance of peatlands as a water resource must be recognised;
- More must be done to promote water efficiency in order to avoid over-abstraction of water from the natural environment and to reduce the energy use associated with the abstraction, treatment and pumping of water;
- Scottish Water has a range of existing statutory duties in relation to biodiversity, climate change and water efficiency. There must be sufficient Parliamentary scrutiny of how these are being met.

RSPB Scotland's vision for a Hydro Nation

Scotland's water resources are essential for providing drinking water, producing food, sustaining world-renowned businesses and supporting native biodiversity, all of which are dependent upon a clean and abundant supply of water that is used sustainably. Native species and habitats are, of course, important in their own right and we have a moral and statutory obligation to protect them, but there is increasing recognition of the contribution that the natural environment makes to social wellbeing and the economy through ecosystem services¹ and wildlife tourism and recreation². It would be extremely short-sighted to allow the development of water industry activity to happen at the expense of the resource upon which it depends.

RSPB Scotland believes a **Hydro Nation is one where a healthy water environment exists through a sustainable and integrated approach to river catchment management from source to sea**. This approach would use land management, such as peatland restoration, to improve raw water quality thus reducing water treatment costs and bringing multiple benefits including wildlife habitat, amenity, flood risk management, carbon storage and climate change adaptation. **Scotland's water industry has a key role to play in achieving this.**

¹ http://www.rspb.org.uk/Images/Valuingnature_tcm9-230654.pdf

² <http://www.rspb.org.uk/ourwork/policy/economics/caseformature/Economies/index.aspx>

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A Hydro Nation must lead by example through the positive management of its own water resources. The River Basin Management Plans³ indicate that pollution and abstraction remain significant pressures on Scotland's water environment. Scotland must ensure it can meet Water Framework Directive (WFD) requirements to improve water quality and avoid further deterioration of water bodies if it is to share its expertise on an international scale.

RSPB Scotland believes that more must be done to reduce leakage and increase water use efficiency in Scotland. This would not only reduce pressure on the water environment but would drive down the energy use and greenhouse gas emissions associated with abstraction, treatment and pumping of water. While we acknowledge the progress that Scottish Water has made in reducing leakage in recent years, leakage remains unacceptably high. During 2009-10, 704 million litres of water were lost each day in Scotland through leakage⁴ and we think that the target Economic Level of Leakage of 612 million litres per day⁵ is still too high. A Hydro Nation should be one that strives to reduce leakage while improving water efficiency in households and industry. It should seek to increase energy generation from renewable sources that are sited in ways that minimise negative impacts on designated sites and native wildlife.

To be a credible Hydro Nation, Scotland must ensure its river basin and water resource management is sustainable and address the issues outlined above. Without doing so, any efforts to promote expertise and policy elsewhere could be perceived as hypocritical.

We set out our views on each part of the bill below and, where appropriate, cross reference to questions in the Infrastructure and Capital Investment Committee's [call for views](#).

Part 1 – Development of Water Resources

We feel strongly that any development of water resources must be sustainable and the provisions in Part 1 of the bill must ensure sustainability. The proposed duty "*in ways designed to contribute to the sustainable use of the resources*" is not sufficiently robust to ensure sustainable development and we believe that this must be strengthened. We are concerned that the bill is skewed towards economic benefit and there should be specific reference to environmental benefits in s.1(3).

We urge that the bill definition of 'water resources' encompasses peatland habitats. Despite the fact that blanket and raised bogs are undoubtedly wetland habitats⁶, they are not considered as wetlands for the purposes of implementation of the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act)⁷. As we outline below in our comments on Part 4, peatland is a vital part of Scotland's water resource and must be considered as such. The development of water resources allowed for by Part 1 of the bill must be able to encompass peatland restoration that delivers a multitude of social,

³ http://www.sepa.org.uk/water/river_basin_planning.aspx

⁴ <http://www.scottish.parliament.uk/business/pqa/wa-10/wa0806.htm>

⁵ *Scottish Water Carbon Plan (2010)*

⁶ http://www.sepa.org.uk/science_and_research/what_we_do/biodiversity/wetlands.aspx

⁷ For example, SEPA 'Guidance on monitoring and protection of wetlands' states that protection is restricted to wetlands "*directly dependent upon surface or groundwater bodies and does not include rainwater dependent wetlands such as peat bogs*".

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environmental and economic benefits including improved water quality, flood risk management, carbon storage, climate change adaptation and biodiversity.

When designating public bodies to deliver this duty, we agree that Scottish Ministers must consult that particular body (s. 3(3)) but **there must also be wider public consultation**. Furthermore, we believe that **a number of additional public bodies should be included in this bill on the basis that they could contribute to the sustainable development of Scotland's water resources**. We suggest that WICS, the National Parks, FCS and Scottish Canals are all considered.

Adequate parliamentary scrutiny of the implementation of these duties will be critical. Therefore, and in response to Question 3, **we do not believe that a reporting period of 3 years is sufficiently frequent** to ensure that Scottish Ministers are held accountable for meeting this duty.

Part 2 - Control of Water Abstraction

Abstraction places significant pressure on the water environment and can result in permanent loss of freshwater and terrestrial habitats, drainage of wetlands and peatlands and subsequent loss of biodiversity. A green light must not be given to water-intensive activities without applying all principles of sustainable development. Any abstraction must be undertaken in full compliance with the WEWS Act and give due consideration to climate change predictions of increased drought frequency in parts of Scotland.

This part proposes to bring abstractions over 10 megalitres (MI) per day under Ministerial control. Certain activities are exempt from this provision including those that already have a Controlled Activities Regulations authorisation when the Act is brought into force, those undertaken by Scottish Water for its core functions, or hydropower, agricultural irrigation, operating a fish farm, quarry or coal mine. **It is not clear why the 10MI per day threshold is proposed**. We are concerned that the intention behind this bill is to enable abstractions to be undertaken for economic gain and that this might compromise achievement of Water Framework Directive obligations. It should be remembered that the Directive states "*Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such*".

The purpose of this part is not clear, particularly because it would seem there is already scope for Ministers to authorise such abstractions under existing regulations. We recommend that the Committee considers one of two options with regard to this Part:

Option 1 – Part 2 could be omitted from the Bill and all abstractions continue to be authorised under the Controlled Activities Regulations as normal. Regulation 20 of CAR enables Ministers to call in and determine applications, therefore, the need for these provisions in the bill is not entirely clear. Furthermore, s.19(1) of this bill states that CAR authorisation would still be required so it would seem that two different processes would be operating in parallel.

Option 2 – If Part 2 is retained, we think Ministers must be required to seek advice from SEPA rather than this being optional as per s.13(4). There must also be a requirement to consult SNH where an abstraction might impact on a designated site. Any approvals process should be transparent and consultative and allow any decisions to be challenged in

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a fair and appropriate manner. Ministers should have to consult SEPA, SNH and any other appropriate persons, and a public inquiry, or other transparent assessment of the evidence, should be initiated if objections arise.

Please consider the above as our response to questions 4-6.

Part 3 – Scottish Water’s functions

This part relates to developing the value of water resources and Scottish Water assets, renewable energy generation, and financing and borrowing. We set out our views on these bill provisions, which should be considered as our response to questions 7 and 8.

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

RSPB Scotland recognises the importance of renewable energy and its contribution towards mitigating climate change and meeting Scotland’s ambitious carbon emission reduction targets. Therefore, we are supportive of Scottish Water being encouraged to develop renewables but all developments must be sited, constructed and managed to minimise adverse impacts on biodiversity. **The bill must have a clear requirement to ensure that any use of Scottish Water assets for renewable energy generation is sustainable and balances social and environmental impacts. We would like to see a requirement for Scottish Water to produce a strategy to underpin its development of renewables, including onshore wind and hydropower schemes, in Scotland.** Such a strategy must have clear cross-reference to existing duties such as Scottish Water’s biodiversity duty⁸ and should be subject to Strategic Environmental Assessment. We wish to see water industry taking an open, transparent and engaging approach to its proposed development of renewables, enabling stakeholders to input at an early stage to help ensure that renewable energy generation is maximised and potential negative environmental impacts avoided.

Section 24 introduces a new definition of core functions. As this will include any functions under this bill *‘so far as relating to the provision of water or sewerage services in Scotland’*, this will surely have to be taken into account in the financing arrangements for the next water industry investment period (Quality & Standards IV). Therefore, it is odd that the current Government consultation⁹ on Scottish Water investment *“does not consider any of the issues covered by the Hydro Nation Agenda or the Water Resources (Scotland) Bill”* and *“concentrates on the core water and sewerage services provided by Scottish Water to its customers”*. **There must be clarity as to how any new duties or functions under this bill will be incorporated into Quality & Standards IV.**

RSPB Scotland believes there must be scrutiny of how Scottish Water is meeting all existing statutory duties connected with its functions, for example those related to furthering the conservation of flora and fauna¹⁰, biodiversity¹¹ and promoting water

⁸ Nature Conservation (Scotland) Act 2004

⁹ Scottish Government consultation on [Investing In and Paying for Your Water Services from 2015](#)

¹⁰ Water Industry (Scotland) Act 2002

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efficiency¹². As highlighted by LINK's [Governance Matters](#) publication, consideration should be given as to how to improve the capacity for Parliament's Committees to schedule serious scrutiny work, for example the possibility of setting aside specific time or meetings for the function.

Part 4 – Raw water quality

RSPB Scotland wholeheartedly supports a sustainable land management approach to addressing raw water quality issues in catchments. It makes absolute sense for water industry to facilitate positive management of upland and peatland areas, from where approximately 70% of drinking water supply arises¹³. The IUCN UK Commission of Inquiry on Peatlands acknowledged that peatland restoration, in areas previously damaged by drainage for example, can improve raw water quality by addressing the problem of 'brown water' caused by the presence of Dissolved Organic Carbon (DOC). The release of DOC is exacerbated through damage and degradation of blanket bogs and is potentially linked to climatic factors. A recent SEPA study indicated that DOC in Scottish rivers has doubled over the last twenty years¹⁴. Removing DOC is not only costly for water companies but the process to remove DOC from water can result in a chemical reaction that produces trihalomethanes which can be harmful to human health. Therefore, it makes sense on many levels to take action to protect and restore peatlands, something that was recognised by that very commitment in the SNP manifesto¹⁵. The economic sense of catchment management is apparent with Scottish Water estimating that implementing best practice could save upwards of £10m over a 25 year period in one large drinking water catchment alone.¹⁶ Sustainable catchment management underway in other parts of the UK is already showing positive results for water quality and biodiversity¹⁷.

In response to questions 9 and 10, we certainly welcome provisions to give Scottish Water power to enter land to assess or monitor the raw water quality and to enter into agreements with the owners or occupiers of land in order to protect and improve raw water quality. While this shift towards a sustainable catchment management approach is extremely positive, there must be safeguards to ensure that land managers are not receiving financial payment from Scottish Water for management that is already required by law. To that end, **we believe there should be a duty on Scottish Water and SEPA, and any other appropriate persons, to work in partnership to deliver sustainable land management in ways that delivers multiple benefits and avoids 'paying the polluter not to pollute'.**

The bill definition of raw water is that which is contained in bodies of water used for drinking water abstraction, or water that flows or drains into such bodies of water. As stated above, the majority of drinking water arises from peatland-dominated catchments and arguably most of this water will be draining into other water bodies being used for drinking water

¹¹ Nature Conservation (Scotland) Act 2004

¹² Water (Scotland) Act 1980

¹³ Bain, C.G. *et al.* (2011) [IUCN UK Commission of Inquiry on Peatlands](#), IUCN UK Peatland Programme, Edinburgh

¹⁴ Moxley, J. (2009) *Trends in organic carbon in Scottish rivers and lochs*. Unpublished SEPA Factsheet.

¹⁵ Page 35 of [SNP Manifesto 2011](#)

¹⁶ Water Resources (Scotland) Bill [Explanatory Notes](#)

¹⁷ United Utilities Sustainable Catchment Management Executive Report (2011)

http://corporate.unitedutilities.com/documents/Vol_1_Executive_Report.pdf

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abstraction. However, we are concerned that if left open to interpretation, the relevance of blanket and raised bogs might be overlooked. Therefore, **we seek a strong and explicit reference to peatlands in this definition of raw water, and in the definition of ‘water resources’ in Part 1.**

Part 5 – Non-domestic services

We have no comments on this part.

Part 6 – Sewerage network

We welcome the amendment to the Sewerage (Scotland) Act 1968 to bring restrictions on the presence of priority substances and pollutants in trade effluents. The creation of an offence in relation to the passing of fats, oils and grease from trade premises into a public sewer or drain is welcome and we support that Scottish Water would be able to recover any expenses incurred in remedying damage caused by a discharge. However, we query the proposal to use the existing 1968 Act definition of trade premises. **We suggest that this definition is expanded to include other establishments that are not currently covered by the 1968 Act.** For example, this could include educational establishments with catering facilities, such as schools and universities.

The bill will enable a proprietor of a community-owned septic tank to keep tanks in good working order by enabling them to have works undertaken without consent of other owners, and to give them powers to recoup costs from other owners as necessary. We welcome this on the basis that it will improve protection of the water environment. Despite being regulated under the Controlled Activities Regulations, pollution from septic tanks remains a pressure on the water environment. It is essential that SEPA uses its enforcement powers to bring remediation when a septic tank is identified as causing a pollution problem. Research indicates that phosphorus loading from septic tanks is underestimated and that knowledge on the location and state of septic tanks may be inadequate¹⁸. **We would like to see more done to increase public awareness on septic tank maintenance and registration, for example, campaigns to incentivise registration of existing tanks. Consideration must also be given as to whether the development planning process could be improved to ensure it acquires information on septic tank locations.**

Please consider the above as our response to questions 14 and 15.

Part 7 – Water Shortage Orders

We have no objection to water shortage orders being made in times of serious water deficiency. While we agree that these orders are needed to cope with temporary water shortages, we urge that steps are taken to encourage households and businesses to improve water efficiency and reduce consumption at all times, not just during periods of low rainfall. Scottish Water already has a duty under the Water (Scotland) Act 1980 to “*promote the conservation and effective use of the water resources*”. **We believe that more should be done to fulfil this duty and we would like to see Scottish Water execute an effective strategy that involves working with others to deliver a water efficiency campaign and to undertake retrofitting where appropriate.** As we state in

¹⁸ <http://nora.nerc.ac.uk/2531/2/DudleySepticTanksRep.pdf>

our comments on Part 3, we would like to see Parliamentary scrutiny of how this existing duty is being implemented.

Please consider the above as our response to question 16.

Part 8 – General Provisions

This part repeals Section 26 of the WEWS Act which requires an annual report on WFD implementation to be laid before Parliament. It is critical that the implementation of all legislation is scrutinised by Parliament. As outlined by Scottish Environment LINK's [Governance Matters](#) publication, there is widespread concern that such scrutiny of implementation of existing legislation is insufficient, partly because Parliament's time is taken up by passage of new legislation. **In respect of this s.26 repeal, we urge that the Committee considers what steps can be taken to ensure that Parliament adequately scrutinises WEWS Act implementation.**

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.