



The Scottish Parliament  
Pàrlamaid na h-Alba

## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

### AGENDA

**17th Meeting, 2012 (Session 4)**

**Wednesday 24 October 2012**

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

1. **Draft Budget Scrutiny 2013-14:** The Committee will take evidence on the Scottish Government's Draft Budget 2013-14 from—

David Bookbinder, Head of Policy and Public Affairs, Chartered Institute of Housing in Scotland;

Fraser Stewart, Lead Member, Housing Investment, Glasgow and West of Scotland Forum of Housing Associations (GWSF);

Gordon MacRae, Head of Communications and Policy, Shelter Scotland.

2. **Water Resources (Scotland) Bill:** The Committee will take 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).

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

Road Works (Inspection Fees) (Scotland) Amendment Regulations 2012 SSI/2012/250.

4. **European Union issues:** The Committee will consider an update on its EU priorities, together with a report on its EU engagement activity in 2011-12.

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The papers for this meeting are as follows—

**Agenda item 1**

PRIVATE PAPER

ICI/S4/12/17/1 (P)

Written evidence

ICI/S4/12/17/2

**Agenda item 2**

PRIVATE PAPER

ICI/S4/12/17/3 (P)

Written evidence

ICI/S4/12/17/4

**Agenda item 3**

Note from the Clerk

ICI/S4/12/17/5

[The Road Works \(Inspection Fees\) \(Scotland\) Amendment Regulations 2012](#)

**Agenda item 4**

Paper from the Clerk

ICI/S4/12/17/6

**Infrastructure and Capital Investment Committee**

**17th Meeting, 2012 (Session 4), Wednesday, 24 October 2012**

**Draft Budget Scrutiny 2013-14**

**Written evidence**

The Committee has received written evidence on its scrutiny of the Scottish Government Draft Budget 2013-14 from the following organisations, in support of their oral evidence at this meeting.

- Chartered Institute of Housing in Scotland
- Glasgow and West of Scotland Forum of Housing Associations
- Shelter Scotland

## WRITTEN EVIDENCE FROM CIH SCOTLAND

**Key Messages**

The £770m in the three year Affordable Housing Supply Programme should be sufficient to allow supply targets to be met, but there are serious doubts over whether low grant rates are sustainable in the longer term.

There are also doubts about what type of housing can be provided at current grant rates. More expensive provision such as wheelchair standard housing, housing in remote rural areas and housing as part of urban regeneration projects may be very difficult to fund.

The introduction of a three year programme has been very welcome, but it is not a rolling programme.

The size of the next three year budget (2015/16-2017/18) will be shaped *not* by the usual spending review process in Autumn 2014 but by the level of approvals of new affordable housing next year (13/14) and the year after (14/15). If approvals fall, so will the size of the budget.

So-called innovative finance models are welcome but are *not* a replacement for the grant that is always needed to provide social rented housing. 'Innovative finance' is usually alternative forms of private finance to replace the lending which banks are no longer undertaking.

Most innovative finance models fund higher rent housing and not social rented housing. Mid-market rent might 'pay for itself' but it generally cannot cross subsidise social rented housing.

**General Comments – is the Scottish Housing Budget adequate?**

In CIH Scotland's view, the £770m which is now in the three year Affordable Housing Supply Programme 2012/13-2014/15 will be sufficient to enable the Scottish Government to achieve its target of 6,000 affordable homes per year, of which at least 4,000 are for social rent. Greatly reduced grant rates – particularly for housing associations – make this annual target achievable in the shorter term, though there are serious doubts about the long term sustainability of such rates.

A year ago, the original draft budget for the three year period stood at just £630m – this contrasted with *single year* budgets of around £350m in 2011-12 and an original baseline figure of £490m in 2010-11. CIH felt that even in a tough budget round, the original £630m three-year allocation represented a disproportionately big hit for housing, and it is therefore entirely appropriate that as a result of Barnett consequentials and other new money, some of the damage has since been addressed with £140m added to the original £630m, including the £40m announced by the Finance Secretary in late September.

It is crucial to bear in mind that most of the annual funding is used to pay out on completion of homes that were approved around two years earlier. This means that most of the 2012-13 budget will go to pay for homes approved under the more generous grant regime which existed two years ago.

**It also means that the size of the next three year budget (2015/16-2017/18) will be shaped *not* by the usual spending review process in Autumn 2014 but by the level of approvals of new affordable housing next year (13/14) and the year after (14/15).** If approvals in these two years fall because of uncertainty about how much money there will be to pay out on those approvals 18-24 months later, then by default this will shape the next three year housing budget as there will be fewer completed homes to pay out on.

This makes it essential that the Scottish Government acts to introduce a rolling three-year programme – something which, for the avoidance of doubt, is not currently in place.

**1. Review of the first year of the affordable housing programme – what has worked and what less well? What can be learned for future years? How will the new local delivery focus work, what barriers does it need to overcome to maximise its effectiveness? Is the programmed expenditure sufficient to meet objectives?**

Even allowing for the fact that some current housing expenditure is paying out on homes completed at higher grant rates, in pure numbers terms, the £770m should be sufficient to enable at least 6,000 new affordable homes to be funded each year. A significant minority of the 6,000 homes – in particular those mid-market rent homes facilitated through the National Housing Trust – are provided at little or no public subsidy other than a loan guarantee, leaving the bulk of the funding to be channelled to social rented housing and other programmes requiring subsidy.

We are bound to note that a programme of 6,000 affordable homes (of which at least 4,000 are for social rent) is nowhere near what is needed to enable serious housing need to be addressed. We recognise the realities of the difficult financial climate but always urge the Scottish Government to seek every opportunity to find new funding which could help see the 6,000 target exceeded.

CIH Scotland does have concerns about what *range* of housing can be provided within the programme and we set out these concerns in our response to Question 2 below.

Whilst it is currently too early to ascertain how the new three year programme is working, CIH Scotland welcomes the principle of giving local authorities greater influence over the distribution of resources for affordable housing in line with their Local Housing Strategies.

Relationships between local authorities and their RSL partners are generally very good. It will, however, be an intriguing challenge – for the many councils now directly providing new rented homes – to decide how much money to channel to RSLs and how much to channel to council house building. The lower grant rate at which councils can build (e.g. because they have access to cheaper loan finance and often have land) means important judgements have to be made in each area about the respective capacity of councils and RSLs to deliver new housing.

**2. Is there sufficient financial capacity, including local authority borrowing capacity? Operating prior to the existing subsidy regime, the Bramley research suggested that under a range of subsidy and rent scenarios that there would be sufficient capacity for the social sector to deliver additional supply over the long term. Two years on from the analysis, and given the continuing difficult environment, how does this**

**assessment of financial capacity look now and should Government continue to predicate its analysis on it?**

Whilst Bramley's estimate of capacity among councils seems to be fairly accurate (and may even have been an under-estimate), we are aware of concerns that in relation to RSLs his research may have been flawed. For example it may not have taken sufficient account of the numerous calls on RSL reserves, including the meeting of the Scottish Housing Quality Standard and further similar standards for existing housing. It is also almost certain that the lending climate for RSLs has become even tougher than it was predicted to be at the time of the research, and both councils and RSLs face much uncertainty over the impact of the welfare reforms – something else the Bramley research cannot have foreseen. The general message seems to be that RSLs can deliver for now, but that it remains very unclear what longer term capacity they will maintain to build at current grant rates.

A more pertinent question at this stage might be *what type of* (rather than how much) housing councils and RSLs can deliver at current grant rates. The lower the grant rate is, the more concern we would have that certain types of more expensive provision will be overlooked:

- It is already clear, for example, that the amount of housing built to full wheelchair standard has fallen to worryingly low levels.
- We also have serious concerns that the regeneration of difficult estates will largely fall by the wayside as providers steer clear of the higher costs such as those associated with contaminated brownfield sites.
- Housing with innovative 'green' features can attract a slightly higher grant rate, but we know that some councils have received no applications from RSLs to make such provision as the RSLs believe it is impossible even at the higher rate
- Housing in more remote rural areas can also attract higher grant rates but the same anxiety applies that in the coming years providers will increasingly steer clear of such provision
- The provision of specialist housing with care for older people has all but dried up.

We would also want the Committee to note that whilst CIH very much welcomes any legitimate new form of innovative finance for affordable housing, no such private finance is a replacement for grant. Innovative finance replaces the private finance which used to come from banks and building societies, and more often than not facilitates provision other than social rent – most notably mid-market rent.

Furthermore, whilst mid-market rent housing is extremely welcome in those areas where there is a clear need for it (i.e. normally where there is a so-called 'healthy' private rented market), it *cannot* cross-subsidise the provision of social rented housing. Only sales, and potentially full market rent provision, can cross-subsidise social rented housing.

**3. Is there sufficient land supply, subsidised or otherwise, including section 75 affordable housing agreements, to enable new supply where it is needed? In particular, is the delivery compromised by the performance of housing and land markets in providing opportunity for social and affordable supply? To what extent is the supply target constrained by the performance of the market sector and what opportunities would flow from market recovery?**

Whilst there are still likely to be some areas of particular housing pressure where land remains in short supply or there are infrastructure issues (such as connecting to water networks in remote areas), in general terms there are fewer land supply problems than there were some years ago. However, as mentioned earlier, some types of land which are more expensive to develop on are likely to be avoided as social landlords seek to build within current grant rates.

The developer downturn is inevitably having an impact on the provision of affordable housing. For the time being there can be little or no further significant reliance on Section 75 contributions from developers, and some larger scale regeneration projects predicated on high levels of private sales have been seriously affected.

**4. Housing Benefit is undergoing major reforms including both the rental market's Local Housing Allowance but also for social tenants, for instance, as a result of the introduction of Universal Credit. There has been much focus on the impact of changes to non-dependent deductions, ceilings on household benefit bills, the end of rent direct so that social landlords have to organise payment of rent with benefit recipients and, the under-occupation or bedroom tax proposals. Proposals such as the NHT have been designed to not fall foul of new ceilings on HB but indirectly are there risks to new supply as a result of the reforms e.g. if arrears rise because of the end of rent direct or the implications of the under-occupation charge reducing affordability - how will this impact on lender decisions about new supply?**

Had the welfare reforms arrived a few years ago the position might have been different. But the combination of lower grant rates and welfare reform (not to mention meeting the Scottish Housing Quality Standard and newly proposed Energy Efficiency Standard) will put immense pressure on the capacity of social landlords to deliver new homes.

Preparing for welfare reform means not only expectations of lost income but also a necessity to proactively invest, for example increasing the number of housing officers who will be working closely with tenants to help them make benefit claims and pay their rent when their Universal Credit is paid directly to them. All this will inhibit investment in new housing.

**5. Will the new system of multi-year local RPA retain sufficient central oversight to remain 'strategic' in a system where more than 4/5 of affordable programme is delivered locally?**

The greater influence now accorded to local authorities stops well short of the fuller control over resources which was given to Edinburgh and Glasgow many years ago. CIH welcomes the Scottish Government's retention of overall control of the new programme, as this will enable money which is not able to be spent in one area to be temporarily moved elsewhere so as to ensure that underspend does not occur.

**6. What are the longer term implications of the apparent shift in the geography and nature of providers developing in the RSL sector as a result of lower grant rates and the premium on financial strength - for the shape of the RSL sector?**

The geographic distribution of the affordable housing programme will need to be closely monitored. It is well known that an increasing proportion of smaller RSLs are no longer



developing. That does not necessarily mean that no new homes are being provided in those RSLs' traditional patches: indeed it is the local authority's responsibility to focus new provision on areas where it is most needed, but it will be important for us all to keep a close eye on any consequences – for *communities* – of many smaller RSLs no longer building new homes.

The fact that some smaller RSLs are no longer developing does not mean that it will be more difficult for them to survive and indeed thrive as landlords. In fact, if an RSL is not developing it may well be taking on a lot less risk than that being taken on by developing RSLs. Welfare reform may prove to be a greater threat to financial stability.

**7. Are the underlying conceptions and prioritisation of housing need (e.g. 2/3 social rent in the programme) reasoned and reasonable? Are the spatial allocations of the RPA consistent with an acceptable way of determining need (e.g. affordable need, regeneration, homelessness, etc.)?**

Although there is no evidence that the social/affordable two thirds/one third split is a particularly scientific one, it seems a reasonable approach nationally, not least as provision such as mid-market rent can help alleviate real market pressure in terms of the very limited options open to people on low/middle incomes. But in those *local* areas where there is little or no demand for alternative tenures, a two thirds/one third split may be wholly inappropriate because the overwhelming need is for social rented housing.

The allocation of monies within the affordable housing programme is largely based on historical accident and this is why a new distribution formula is being worked on by the Scottish Government and COSLA, based more closely on key factors affecting housing need. Any change to the way monies are distributed results in winners and losers, and it remains to be seen how easy it will be for local authorities to collectively agree a new formula.

**8. The Committee also has a requirement to assess how spending has taken account of climate change issues and to report to the Rural Affairs, Climate Change and Environment Committee. We would be grateful if you could take any such considerations into account in your response/evidence, particularly in the area of energy efficiency.**

As alluded to earlier, it will be important to monitor take up of the slightly higher grant rate for certain types of 'greener' new homes. In the longer term, if take up is low, it would indicate that the actual extra costs are greater than those allowed for by the grant rates in place.

By far the greatest challenge to the housing sector is the retrofitting of existing stock to increase its energy efficiency and at the same time help alleviate fuel poverty across all housing tenures.

## WRITTEN EVIDENCE FROM GLASGOW AND WEST OF SCOTLAND FORUM OF HOUSING ASSOCIATIONS (GWSF)

### Introduction

GWSF represents 66 **community-controlled housing associations and co-operatives (CCHAs)** in 9 local authority areas in west central Scotland. CCHAs provide housing for 75,000 households in the region and own around 28% of all RSL housing in Scotland. This submission sets out our views on the seven thematic areas the Committee has specified.

### 1. The affordable housing programme

#### Budget and Targets

- 1.1 In relation to the 21,000 social housing target, we suggest that the Committee should seek information about:
- Units approved prior to 1 April 2012, which will now be counted as completions in the period to 2014/15
  - How many of the units still to be approved are the subject of detailed, costed proposals
  - What contingency plans are in place, if currently programmed social housing units cannot be built at the subsidy levels on offer.
- 1.2 A key test is whether the output targets can be met while also addressing the wider objectives championed by the Scottish Government. These wider objectives include greater environmental sustainability, community regeneration, town centre renewal, development of brownfield land and high quality place making, amongst other things.
- 1.3 A system driven by arbitrary subsidy benchmarks will compromise the achievement of these wider objectives, although this would not be apparent from current programme assessment and reporting methods, which are extremely limited in our view.

#### Strategic Level Issues

- 1.4 The introduction of 3-year funding programmes at local authority level is welcome, but needs to operate on a rolling rather than a “stop, start” basis. In Glasgow, for example, most new projects in the current programme will not be approved until 2014/15, with subsidy payable from 2015 onwards. The momentum of the programme depends on knowing sufficient funds will be available to honour commitments in the next spending review period.
- 1.5 Much of the emphasis in the housing programme is now on the interface between central and local government. “Bottom up” inputs to the planning process have been weakened, since housing association Strategy and Development Funding Plans no longer form part of the process.

## Delivery Level Issues

- 1.6 The programme framework introduced in May 2012 will prevent some GWSF members from developing at all. For others, it creates obstacles in developing certain types of sites/housing that are strategically important but unavoidably more expensive to produce. Our main concerns about the new framework are that:
- There is a complete transfer of risk to developing organisations, at a time of unprecedented risks due to the lending environment, welfare reform etc
  - Payment of subsidy is now deferred until project completion, resulting in unfunded financing costs and making no provision for feasibility studies, advance site acquisition funding or design fees.
  - Subsidy benchmark levels work in some cases but not others – but at an overall level, they are not evidenced, adequate or sustainable.
- 1.7 GWSF has raised all of these issues with the Scottish Government, through correspondence with officials<sup>1</sup> and by submitting an independent expert report which sets out the difficulties the benchmark-based subsidy system creates in relation to developing urban brownfield sites.<sup>2</sup>
- 1.8 Our correspondence with the Government is ongoing, but indicates that:
- It remains unclear how the housing programme can continue to accommodate urban brownfield sites, to any significant degree.
  - It is unclear whether the Government's subsidy levels apply at an overall programme level as well as to individual projects. On this point, we have been told the Government "does not have a precise set of assumptions".
  - The Government has said that the subsidy benchmarks "have been broadly based on an analysis of past projects", and that it "has no plans to revert to a system of calculating subsidy based on an analysis of costs for all projects". This means that the subsidy levels are not being set on a reasoned or transparent basis.

## What can be learned for future years?

- 1.9 The main changes we wish to see are:
- Subsidy benchmarks set with reference to real costs, and to be used as a tool for project appraisal rather than across whole programmes
  - Express and meaningful flexibility for local authorities and housing associations to deliver on the most important local strategic priorities, taking account of the nature of sites and the intended client groups
  - The reintroduction of housing association strategy and development funding plans and of funding for site acquisitions/other advance costs.

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<sup>1</sup> <http://www.gwsf.org.uk/uploads/002oct12/investmentcorrespondencewithsgsept12.pdf>

<sup>2</sup> <http://www.gwsf.org.uk/uploads/April12/nbmreportweb.pdf>

## 2. Financial Capacity Issues and the Bramley Research

- 2.1 The Bramley research gives a theoretical and global view of financial capacity in housing associations, as we told Government officials in writing when the brief was being prepared. The financial capacity that actually exists is very different, for example depending on how and when individual housing associations were set up and how they were funded. In short, financial capacity can only be examined meaningfully at an individual organisational level taking account of financial variables.
- 2.2 This approach to assessing financial capacity is now even more important:
- Access to borrowing has become more challenging, with some lenders using new borrowing as a reason for seeking to re-price existing loans
  - Welfare reform policies will threaten revenue streams and remove scope for new development being subsidised by higher rents
  - Use of reserves/borrowing capacity to subsidise new development are “one off” occurrences – they are not a sustainable strategic choice
  - Asset management/borrowing strategies cover existing stock (major repairs and renewals, higher energy efficiency obligations), as well as financial headroom for new building
  - The Scottish Housing Regulator is correctly stressing the importance of prudence and informed risk assessment in the current economic climate.
- 2.3 For all of these reasons, we would question whether policy is based on assumptions about financial capacity that are either reasoned or flexible.

## 3. Land Supply and Performance of the Market Sector

- 3.1 The Government has removed upfront funding for site acquisitions and other advance capital costs, a key feature of housing association finance since the 1970s. This will mean there is no pipeline of future sites, unless housing associations adopt a more speculative approach to land purchases and much higher levels of risk. Land purchase in cities and town centres commonly involves complex acquisition issues, such multiple ownerships or the need for site remediation works depending on ground conditions and previous usage. The changes to the funding system do not recognise these risks.
- 3.2 The housing market downturn has resulted in many sites earmarked for private sector development becoming “stalled”. Derelict and undeveloped land is blighting some of our members’ neighbourhoods, but there has not been significant activity to re-market the sites concerned.
- 3.3 The housing market downturn has greatly reduced opportunities to cross-subsidise the costs of new social housing through mixed tenure development. CCHAs have been at the forefront of introducing home ownership to their communities through mixed tenure development. This has helped create greater choice and more mixed communities, it has also generated sales receipts that can be set against the costs of social rented housing provision.

#### **4. Housing Benefit and Welfare Reform**

- 4.1 Welfare reform measures will increase rent arrears and homelessness and reduce the income stream of social landlords in all parts of the sector. Some lenders are already pursuing aggressive policies to re-price existing loans. Pressure on revenue streams will give lenders leverage to do more of this and will affect the availability and terms of private finance for new housing supply. For this reason, a number of housing associations – including some CCHAs - are now switching to bond finance rather than traditional project-specific loans.
- 4.2 GWSF has asked the Government to publish information on whether higher rents are currently being used to offset the costs of new housing. We hope to receive this information in the near future. It seems clear that welfare reform measures will remove scope in future for using rents to generate additional capacity.
- 4.3 The UK Government has said it intends to make substantial further cuts in welfare spending, beyond the measures now being introduced. We are concerned that this could include setting caps on rental values for benefit purposes in the social rented sector, as is already the case in the private rented sector. This is a further reason why Government policy on housing investment should not be predicated on irresponsible risk-taking, when the nature of future risks is neither fully understood or quantifiable.

#### **5. Central Oversight and Local Delivery of the Housing Programme**

- 5.1 There has been significant delegation to local level for the best part of a decade in Glasgow and Edinburgh. The new system for other local authorities appears to give the Scottish Government the controls it needs to maintain central oversight.
- 5.2 We are more concerned that there is not enough transparency and accountability for what the housing programme is actually delivering, at national and local level. The Scottish Government publishes little detailed information about the planning and management of the housing programme, and it is now 10 years since we have seen any independent evaluation<sup>1</sup> of housing programme outcomes (as opposed to high level output figures on units produced and money spent).
- 5.3 Changes to the funding system mean that there is no longer a rigorous base of data to inform assessments of programme outcomes. In our view, it is vital to have better knowledge of what outcomes the housing programme is generating and how this is being achieved (for example, in relation to key inputs such as rent levels, land costs, construction costs, use of reserves, use of additional borrowing).

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<sup>1</sup> The last comprehensive evaluation was published in 2005 but was restricted to projects approved in the period up to and including 2002.

## 6. Geography/nature of providers and future implications for the RSL sector

- 6.1 GWSF's membership is made up of local, community-controlled housing providers. Some of our members are withdrawing from development, others are continuing but are saying that there will soon come a point when the risks to their tenants, assets and organisations can no longer be justified. There is no appetite among our members to surrender their autonomy, local control or financial stability, in return for small numbers of new houses.
- 6.2 We do not see the growing share of the housing programme directed to large national and regional developers as being indicative of greater efficiency or expertise. Instead, it reflects ability in some cases to develop at a loss for longer, business models predicated on growth, and greater risk-taking to achieve this.
- 6.3 This will not be sustainable. The largest Scottish developers also tend to have high and increasing levels of debt, and will have the greatest exposure to future risks arising from welfare reform. The next stage of the process (already underway) will be for even larger, UK-wide RSLs seeking entry to the Scottish sector, on the basis of their supposedly greater financial capacity. A number of Scottish RSLs have stated that the ability to build new houses is a main reason for them seeking to become subsidiaries of large UK group structures.
- 6.4 This emerging trend replicates what has already happened in England during the 2000s. Lower grant rates and a premium on financial strength there have coerced smaller, local housing providers into large group structures as the price of attracting housing investment. This has reduced local autonomy and accountability, despite commitments to the contrary.
- 6.5 Reliance on scale and "greater financial capacity" may also take Scottish social housing into uncharted waters in terms of financial risk. Earlier this year, the use of free-standing derivatives – a financing method also being used by a number of the largest Scottish and UK providers, to generate financial capacity to build – brought down the Netherlands' largest social housing provider, Vestia, which owned approximately 90,000 houses. This resulted in a €1.6 billion emergency government-backed loan to Vestia, and the sell-off of tens of thousands of houses<sup>1</sup>.
- 6.6 We believe that current policy on housing investment needs to be linked to a strategic view on the Government's part about the kind of housing sector it wishes to promote in Scotland. Borrowing capacity is only one element of a much wider equation, in terms of what delivers effective and sustainable housing investment.

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<sup>1</sup> <http://www.insidehousing.co.uk/finance/never-too-big-to-fail/6523836.article>

## **7. Resource Allocation and Prioritisation within the Housing Programme**

- 7.1 The linkages between specific investment objectives and resource allocation are not sufficiently clear in our view. In the recent past, the Housing Association Grant system was based on sub-programmes linked to specific policy objectives (for example, urban regeneration, rural housing, specialist provision etc). That direct line of sight to policy objectives is now far weaker, in the absence of meaningful public reporting on the housing programme.
- 7.2 We are not aware of an empirical basis for determining the balance of the programme between social rent and other types of housing. Instead, we think this reflects financial and political judgements about how to balance a highly pressured housing budget and a range of housing needs, from social housing to needs among higher-income groups that arise from wider housing market factors. Naturally, our preference as social housing providers is that social housing should receive the greatest priority, to meet the needs of people who are on low incomes, poorly housed, or homeless.
- 7.3 GWSF members are adopting a pragmatic response to meeting a wider range of needs, including mid market renting housing, where this contributes to area regeneration or meets identified needs. There is, however, concern, that subsidy limits are creating strong pressure to include higher levels of mid market rented housing than are desirable, simply to make projects feasible.
- 7.4 The Scottish Government and COSLA are currently considering the question of spatial allocations. GWSF has not been directly involved in these discussions, and we await further information with interest.

## WRITTEN EVIDENCE FROM SHELTER SCOTLAND

**Key messages**

- Shelter Scotland welcomes the additional funding for affordable housing announced in the draft 2013/14 budget and the emphasis put on investment in housing. This increase goes some way to repairing the disproportionate cut to housing in the original budget for this spending review period. **It is however, a concern that the scale of the affordable housing deficit in Scotland – particularly socially-rented housing - is still not reflected in the Scottish Government budget<sup>1</sup>.**
- There is very little transparency around the housing budget which makes detailed scrutiny of how the budget will be spent across the spending review period very difficult. Without scrutiny of the Level 4 data for the 2013/14 budget, it is impossible to understand how the affordable housing budget is being allocated for the forthcoming year.
- Our understanding is that the affordable housing budget for this 3 year spending review period (2012/13 to 2014/15) totals £770m. **This represents a 45% cut in cash terms over the spending review period as compared to the previous spending review period** of 2009/10 - 2011/12<sup>2</sup>. The Scottish National Party (SNP) made a manifesto commitment to build 30,000 socially rented houses over the lifetime of this parliament which equates to around 6,000 a year. In Government, Scottish Ministers revised this down to 30,000 *affordable* homes of which only two thirds would be for social rent.
- With more than 157,000<sup>3</sup> people on council house waiting lists across Scotland, **Shelter Scotland has long been campaigning for a commitment to build 10,000 socially rented homes a year** building on the analysis carried out by Professor Bramley in 2006 commissioned by the Scottish Government <sup>4</sup>. This research was carried out before the recession hit and Shelter Scotland urges the Scottish Government to undertake new national analysis to reflect current need, market conditions and priorities.
- Recently published statistics on completions of affordable housing in 2011/12 is reasonably consistent with the 30,000 target but this will largely reflect building work started in the previous spending review period with much more generous grants than

<sup>1</sup> We have focused specifically on the affordable housing budget because: a) It is the biggest part of the budget and commonly regarded as the litmus test for housing commitment and b) Other organisations giving evidence will look, for example, at energy efficiency spending.

<sup>2</sup> Shelter Scotland correspondence with Scottish Parliament officials November 2011

<sup>3</sup> Scottish Government housing statistics <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists> (Published August 2012)

<sup>4</sup> 'Local housing need and affordability model for Scotland (update)' Bramley et al (2006) [www.scotland.gov.uk/Resource/Doc/1035/0085202.pdf](http://www.scotland.gov.uk/Resource/Doc/1035/0085202.pdf)



currently envisaged. Moreover, there was a considerable decline in the number of affordable houses started last year which suggests problems in getting building projects off the ground and may lead to difficulties in delivering on the Government's targets.

- The level of grant subsidy per house suggested by the budget is extremely low if targets are to be met. Whatever proportion of the affordable housing budget is allocated across local authorities and housing associations, Shelter Scotland shares the concerns of other housing organisations that the Scottish Government has not fully explored how the target will be achieved with grant rates at this level and what the possible consequences might be on quality of the houses built, rent levels or both. Longer-term this low level of subsidy is unlikely to be sustainable.
- Ongoing reform of the welfare system will have a significant impact on the demand and affordability of social housing for low income households in Scotland with corresponding implications for the ability of councils and housing associations to invest in future house building on the back of loans funded from rental income.

## Introduction

Shelter Scotland welcomes the opportunity to put forward evidence on the recently published Scottish Government Draft Budget for 2013/14. Without scrutiny of the Level 4 data, it is impossible to assess the budget implications for the supply of affordable and socially rented homes in the forthcoming financial year.

Information supplied by Scottish Government officials for the 3 year spending review period as a whole, suggests that the overall budget for affordable housing (the main part of the overall Housing and Regeneration budget plus the funding for affordable housing contained in the Local Government budget) stands at £770m including the additional £40m announced as part of the 2013/14 budget. **That represents, in cash terms a reduction from £1.39bn which is 45% compared to the previous spending review period.**

Spending Review period			
		2009/10 – 2011/12	2012/13 – 2014/15
Affordable Housing Budget		£1.39 billion	£770 million
Total number of affordable houses completed:		22,205	<i>Target 18,000</i>

Number of <b>socially- rented</b> completed:	15,690	<i>Target 12,000</i>
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### Delivery of affordable housing

Shelter Scotland's view is that **the greatest priority for government investment should be for additional social rented housing**. Within the Scottish Government's revised target of around 30,000 affordable homes there is a commitment to build at least 20,000 socially-rented houses. In Shelter Scotland's view, this is insufficient and that while welcome, other forms of affordable housing (mid market rent and subsidised owner occupied housing) cannot substitute for socially rented housing. It is too early to appraise the success of the first year of the Affordable Housing Programme since there is no information available on the allocation of funding in terms of location and type of housing being built and output data will not be available until August 2013.

These other forms of affordable housing (mid market rent and subsidies for owner occupiers) traditionally rely on smaller direct subsidy. It can, therefore, be assumed that a large proportion of the £770m 3 year budget is for local authority and housing association subsidy for the delivery of socially rented homes. In purely numerical terms, the £770m budget will only be able to deliver 18,000 affordable homes over three years (around 6,000 per annum) if the per house grant subsidy is drastically cut to in the region of £35-40k. Historically, grant rates for affordable housing have been much higher and it is unclear if this low level grant is practicable or sustainable. In 2010/11 the average grant per unit was £57k and in 2008/09 it was £71k<sup>5</sup>.

Overall, Shelter Scotland believes that the benchmark for new build affordable housing should build on the Bramley research<sup>6</sup> and we believe that **at least 10,000 affordable homes should be built each year to meet housing need**. Given the economic pressures and the impact of welfare reforms, we would welcome updated Scottish Government research on national housing need. The level of need suggested by the following:

- There is a projected increase of just over 21,000 households in Scotland per annum over the period 2010 to 2035<sup>7</sup>;

<sup>5</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/investment/ahip/AHIP201011Report>

<sup>6</sup> 'Local housing need and affordability model for Scotland (update)' Bramley et al (2006)  
[www.scotland.gov.uk/Resource/Doc/1035/0085202.pdf](http://www.scotland.gov.uk/Resource/Doc/1035/0085202.pdf)

<sup>7</sup> Projections from the latest GRO Scotland publication (2010) predict 21,000 a year over the period 2010-2035 but in the shorter term that growth will be 23,000 households per annum between 2010-2020.  
<http://www.gro-scotland.gov.uk/files2/stats/household-projections/2010-based/2010-based-household-proj-publication.pdf>

- Since 1979 490,000 homes have been sold off through Right to Buy<sup>8</sup>. Although the number of RTB sales has fallen considerably in recent years, we still lost over 2,000 homes in 2010/11.
- 157,700 households were on local authority house waiting lists (excluding transfer requests) in March 2012;
- Over 35,000 households were accepted as homeless or potentially homeless by local authorities in 2011/12<sup>9</sup>

### Impact of welfare reforms

Shelter Scotland believes that the impact of changes to the welfare system will have serious negative consequences on some of the most vulnerable households across Scotland. At the same time as local authorities are cutting budgets and withdrawing contracts for advice and support services, we are seeing an increasing demand for informed advice and information as people struggle to manage financial pressures and rent/mortgage payments<sup>10</sup>. The knock-on effect could potentially put increased pressure on household budgets and increase the numbers of people who find themselves homeless or threatened with homelessness.

Our main concerns relate to:

- **Payment of Universal Credit directly to recipients, 1 month in arrears:** increase cost of rent collection; higher risk of falling into rent arrears
- **A reduction in housing benefit for those who are 'under occupying' a property:** increasing demand for smaller properties against a backdrop of limited supply
- **Changes in benefit entitlement for private tenants:** particularly limiting housing benefit for under 35 year olds to the shared room rate

Collectively, these changes will impact on the ability of some households in the social rented sector and households who are looking for housing in that sector, to meet the rental charges set by social landlords. In turn, this may impact on the financial viability of social landlords and their ability to borrow for future house building. The impact of changes to housing benefit allowance in the private rented sector (PRS) could also impact on affordability of mid-market rental (MMR) developments.

<sup>8</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/Sales>

<sup>9</sup> While recent Scottish Government statistics have shown a reduction in the number of homelessness applications potentially as a result of increased homelessness prevention activity, it is too soon to truly understand the reasons behind this reduction and whether it reflects changing practices or a real reduction in housing need.

<sup>10</sup> Shelter Scotland saw a 20% increase in calls to our National Housing Helpline in July 2012 compared to the same period last year

[http://scotland.shelter.org.uk/news/august\\_2012/rise\\_in\\_number\\_seeking\\_housing\\_advice](http://scotland.shelter.org.uk/news/august_2012/rise_in_number_seeking_housing_advice) Citizen's Advice Scotland recorded 15,000 more cases in 2011 than in 2010 <http://www.bbc.co.uk/news/uk-scotland-16125144>

It is unclear if the Scottish Government has considered the implications of the welfare reform programme in their planning for the delivery of affordable housing both in terms of financial capabilities of social landlords and on the types of housing that are increasingly in demand. It is critical that the Scottish Government utilises the funding made available by the Westminster government specifically for independent advice in face of welfare reforms, to continue to fund vital money and debt advice services.

## **Conclusions**

Shelter Scotland remains concerned about investment levels in socially rented housing and the ability of local authorities and housing associations to deliver the number of socially rented houses required to meet housing needs. Although the Scottish Government hopes to achieve its target of around 6,000 houses per year through reduced subsidies and other measures, there are question marks about the longer term viability of this strategy and its ability to help those most in need.

**Infrastructure and Capital Investment Committee**

**17th Meeting, 2012 (Session 4), Wednesday, 24 October 2012**

**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, in support of their oral evidence at this meeting.

- The IHP-Help Centre for Water Law, Policy And Science
- The Institution of Civil Engineers
- The James Hutton Institute
- The UK Environmental Law Association (UKELA)

## WRITTEN EVIDENCE FROM THE IHP-HELP CENTRE FOR WATER LAW, POLICY AND SCIENCE

Firstly, we would like to reiterate our continued support for a political agenda that focusses on water and for most of the provisions in the draft Bill. We will be pleased to work with the Committee and the Government to further that agenda and the successful implementation of the Bill.

Our response below makes some detailed analysis; we would firstly make 6 key points which are of relevance to several parts of the Bill and our response.

- The need to take an ecosystems approach and protect the water environment for its own sake as well as for human uses;
- Clarity around powers and functions, especially regarding the Ministers and Scottish Water;
- Checks and balances on the exercise of powers to ensure transparency and accountability;
- The need for partnership working at a catchment scale;
- Clarity around the definition of Scottish Water's core functions;
- The desirability of Scottish Water playing a more active role in education and awareness-raising in different aspects of water management.

### *The Water Resources Bill Parts 1 – 3*

Part 1 of the Bill restates most of the draft clauses from the proposal in the second consultation. The duty on Ministers remains as it was, to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. Whereas the draft was qualified with the usual formulation of a sustainable development duty in Scotland (ie, “in the way best calculated to contribute to the achievement of sustainable development”) it is now qualified by a requirement to “do so in ways designed to contribute to the sustainable use of the resource”. We would prefer to see a stronger provision to ensure that the ecological impacts of any decisions are taken into account. “Sustainable use” may be more specific, but it still indicates a focus on human uses, and we are unconvinced that “designed to contribute” is an improvement. We would like to see a parallel duty on the Ministers to protect the aquatic resource.

The definition of the “value of water resources” remains unchanged. Whilst it mentions “other benefit” as well as “economic”, we would still like to see some stronger provision recognising the inherent value of the resource, which is quite distinct from any human “uses” or “activities”. We suggest that inclusion of a duty to take an “ecosystems approach” would be helpful here, and that both the ecosystems approach and the land use strategy might be relevant to the supporting policy environment.

Clauses 2-4 also remain unchanged. We would continue to seek some changes here to strengthen accountability and transparency. We would suggest that before directions are given to any designated body, that the Ministers are required to consult all the designated bodies and hold a public consultation. Directions have the force of law and yet they are not always easy to find. A similar requirement should apply to the amendment of the list of designated bodies.

On reporting, we also note the repeal of s.26 of the Water Environment and Water Services (Scotland) Act (2003 asp.3, WEWS). We appreciate that it may be some time before there is a need to report under this legislation and that reporting does take human resource that could be used elsewhere, and we note that reporting under the Flood Risk Management (Scotland) Act (2009 asp.6) is still required. Nonetheless we would like clarity that the three yearly reporting here will be an ongoing requirement. We suggest that early stage reporting is useful regarding the process of implementation, whilst later stage reporting could be used to assess outputs and performance against targets.

Part 2 of the Bill, on a new consenting regime for “qualifying abstractions” is new and it is not wholly clear what is behind these proposals, as there has been no consultation on these. The Policy Memorandum issued with the Bill has several paragraphs addressing these powers, and suggests that the Ministers are better placed to take account of a wide variety of social and economic impacts and consequences – climate change, population change, urbanisation and industrialisation are all mentioned – than SEPA, whose remit under the Water Environment (Controlled Activities) (Scotland) Regulations (SSI 2011/209, CAR) is focused on environmental consequences. This may well be true, and we note that clause 18 clarifies that these approvals do not affect any requirement for a CAR authorisation, so all of the procedural requirements under CAR (eg for third party representations) will still apply to these abstractions.

We also note the caveat (and powers of amendment) relating to this and also appearing in other parts of this Bill, which presumably relate to the current proposals to reform the system of environmental regulation in Scotland. It is especially important in the light of those reform proposals that a “joined up” approach is taken to all consenting regimes impacting on the environment, including all the requirements as to transparency and participation.

The policy memorandum does make clear that this regime will impose criteria wider than the environmental tests in CAR, and therefore we accept that relying on Ministers’ call in powers under CAR might not be able to achieve the same effect without significant revision to CAR. If the intention is to secure additional political control over large scale abstractions for industrial use within Scotland, perhaps by foreign investors, then that is reasonable. Clarification of the resolution of any disagreement between the Ministers and SEPA would be helpful; perhaps a public inquiry would be an appropriate way forward, as on the face of it, the Ministers could simply call in the CAR application and decide it themselves, in line with the consent under this Part. This may be unlikely, but administrative frameworks

should always be designed to limit unfettered discretion even if such is not envisaged in practice.

The Policy Memorandum also says that Ministers might “have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth” (para.24). The implication would seem to be that there is a likelihood of applications to abstract large quantities, possibly for use outwith Scotland, and that SEPA’s powers and environmental focus would not enable SEPA to prevent such use. At the very least, if out-of-Scotland uses are envisaged, the exemptions should specifically not apply outwith Scotland; the Institute of Civil Engineers has recently counselled against complacency in assuming an abundant resource in the longer term.

There seems to be a presumption that the Ministers, and/ or SW, hold ownership rights over water in its natural state sufficient to enable that resource to be divested, anywhere and for any purpose. Yet water, running water, has always been a special branch of property law (see, eg, for an early discussion, *Magistrates of Linlithgow v Elphinstone* (1768) M Dict. 12805). This question was not directly addressed in WEWS when the new comprehensive water use licences were brought in under CAR, and the new licencing regime was never challenged, presumably because those abstracting under the common law recognised that it was proportionate and within the state’s margin of appreciation. That regime enables control of abstractions, and other water uses, for purposes within Scotland but it does not amount to ownership of the water. A better understanding of it might be that the Ministers, and other public authorities, all answerable to Parliament, are exercising some form of public trust, or managing a public good, which enables them to allocate the water. Bulk sale for purposes outwith Scotland is a very different thing. We recognise that SW already has a statutory power to do this under s.13A of the 1980 Act and wonder if this needs to be tied into this new regime in some way.

In terms of the outline of a licensing regime, clauses 9-17, applications may be made to the Ministers, who *may* make procedural regulations, which in turn *may* (*inter alia*) provide for publicity and third party representations (our emphasis). Fees may be levied for administrative costs but these will require regulation. Certain criteria are specified for the Ministers’ decision and conditions can be imposed, but these seem quite broad and general. There is a provision for compensation (cl.11(2)(c) ) and it is not clear if this is financial, or a compensation flow, or potentially both.

There is a duty on the holder to report on their activities – but only to the Ministers and in such form as the Ministers require. We would suggest that such reports should be publicly available. Both SW (unless they are the applicant) and SEPA must give advice on adverse impacts if asked – but the Ministers are not required to ask for advice. We suggest that this should be a requirement. As SEPA will also be determining the CAR application, it should not be unduly burdensome for SEPA to also advise the Ministers. We also wonder if



situations might arise where SEPA was the applicant and whether this should be provided for in cl.13. Suspension and revocation are available at the holder's request, on a breach of condition, or in other circumstances which must be set out in regulation; and the holder must first be informed and allowed to make representations. Appeals may be made to the Sheriff; and the Ministers *may* make regulations to provide for monitoring, the keeping of records and importantly, the access to such records. We would hope that such records would be made public, and anyway would be covered by either the Freedom of Information (Scotland) Act (2002 asp.13) or (probably) the Environmental Information (Scotland) Regulations (SSI 2004/520). Given the high degree of Ministerial discretion, especially in a unicameral Parliament, we would like to see more detail around publicity, and clarity of roles and functions, to achieve maximum transparency and accountability.

There is a general prohibition on making a qualified abstraction without consent and an offence is committed if this is contravened, or any condition breached, "wilfully or recklessly", with a fine on summary charge of (only) the statutory maximum. A higher amount in line with environmental permitting offences might be more appropriate. The offence is not strict liability, which makes conviction less likely, but there are no parallel strict liability offences (as under CAR) or any lesser administrative penalties as are under consideration in the new regime for environmental regulation.<sup>1</sup>

Part 3 takes forward the proposals for new duties on SW. The new general power (cl.21, adding s.25(1A) to the Water Industry (Scotland) Act 2002 (the 2002 Act) clarifies that in particular, SW's existing general power extends to "do anything that Scottish Water considers will assist in the development of the value of Scotland's water resources...". This is certainly specific but does still depend on knowing what that development is likely to mean.

Clause 22 inserts a new s.50A, requiring SW to "[s]o far as it considers it not inconsistent with the economic, efficient and effective exercise of its core functions... take reasonable steps to develop the value of its assets and expertise"; value is (again) stated to include "economic and other benefit" which (again) will stem from "use ... or activities" and assets include "property, rights and ... intangibles". There is a similar duty (cl.23, s.51A) requiring SW to "take reasonable steps to promote the use of its assets for the generation of renewable energy". In themselves these are unobjectionable, as any entity would surely wish to maximise their assets and expertise; again though the precise meaning and intent of cl.22 in particular come back to what may be meant by developing value in this context, beyond a clear focus on energy and climate change, and the various activities and plans outlined in the second Hydro Nation consultation.

Clause 24 establishes a new s.70(2) in the 2002 Act to redefine SW's core functions, but this no longer excludes the exercise of its general powers under s.25(1) and in time, the

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<sup>1</sup> SEPA/Scottish Government 2012 *Consultation on proposals for an integrated framework of environmental regulation* available at [www.scotland.gov.uk/Resource/0039/00392549.pdf](http://www.scotland.gov.uk/Resource/0039/00392549.pdf)

proposed s.25(1A). Taken together, it would seem to mean that “hydro nation” activities are no longer excluded from s.70 insofar as they are “relating to the provision of water or sewerage services in Scotland”. If anything, this would seem to potentially widen the definition of the core. Again, this may well depend on the specific activities in question and what is meant by developing the value of the resource. If the intention is to bring these activities, whatever they might be, within the regulatory settlement then that is a significant change that needs to be much more explicit. The current consultation on Investing in Water Services<sup>2</sup> begins by stating that it is not related to the Hydro Nation or the Water Resources Bill, but dividing line is not always easy to draw. If, for example, and given the focus on renewables generation, the intention is to distinguish between generation of power used by SW for its own activities, which would be “relating to”; and “external” generation for supply, through SW Horizons, which would not, then that might be a helpful clarification for the accompanying policy,

The parallel consultation on Investment does mention several “innovations” that may take place in the near future, including catchment protection, managing pollutants at source and customer education, all of which are in the Water Resources Bill in some way. This again indicates the difficulties of segregating the policy environment for SW’s core functions, from its new opportunities.

#### *The Water Resources Bill Parts 4-8*

Part 4, inserting a new Part VIB (s.76M – 76R) into the 1980 Act, grants broad powers of entry to SW. We note the definition of raw water to include not only water bodies under s.6 of WEWS, but also any other body of water “used for consumption” and designated under this Part, and any water flowing or draining into those waters. We wonder if the intention is that this Part should potentially apply to water for private supply, and suggest this should be clarified. We also note that water “flowing or draining” may emanate from peat bogs. Currently, wetlands are protected under WEWS to a greater extent than under the WFD, but peat bogs are not included in that definition. This might be an opportunity to revise the definition of wetlands to make that inclusion.

We note the new power (new s.68A) for SW to enter into agreements to improve raw water quality. We agree that a water services provider should be a key stakeholder for water resource management – both at large-scale, through river basin planning under the WFD, and through this small-scale, “catchment based” approach that is developing in England as well. We might have expected more references, at least in the accompanying policy documents, to the WEWS Act and the WFD regime as a context for this Bill, as the WFD is a catchment-based instrument, as is the Floods Directive (2007/60/EC) and the Flood Risk Management (Scotland) Act (2009 asp.6, Floods Act). This might in turn address some of the concerns over the new general duties, if the Ministers’ view is that sufficient “protection”

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<sup>2</sup> Scottish Government 2012 *Investing in and Paying for Your Water Services from 2015: An Invitation to Engage with the Government and to Provide Your Views* <http://www.scotland.gov.uk/Resource/0039/00395226.pdf>

is provided through the general duties in WEWS. It is important that the service provider is involved in the protection of raw water and there is much that the service provider can do. We suggest a duty similar to that in s.1(2)(d) and 1(3) of the Floods Act, requiring SW to work in partnership at a catchment scale with Non-Governmental Organisations as well as statutory agencies and local authorities.

It is arguable that SEPA is better placed than SW to carry out monitoring of raw water quality and that if further monitoring is required, that SEPA should have additional resources here. It is our understanding that currently SEPA is reducing its water quality monitoring network. We accept that it may be that SW's relationship with landowners could be more conducive to achieving positive behavioural change.

It is also important to maintain a strong regime to control diffuse pollution through the environmental regulator, and that SW is not diverting resources to encourage, persuade or incentivise farmers and land managers to behave in ways that they are already required to do by law. SW should be working closely with SEPA here and a specific duty to coordinate their activities with SEPA's programmes might help to clarify. We assume that this is a core function, regulated by the Water Industry Commission and paid for by SW's customers.

This is one of several provisions in the Bill where we think that a requirement for SW to provide information and education around the wise use and management of water, to supplement s.1 of the 1980 Act, might be useful. We identify a number of these opportunities below.

Given the wide powers of entry granted under this Part, there is no specific provision for compensation, though presumably the general provision in s.10 of the 1980 Act will apply.

As the term "premises" is used throughout, but must clearly mean land as well as buildings, it would probably be helpful to provide (as is done later in Part 7) that "premises" includes land and buildings.

We are content with Part 5 on commercial premises and the provision of retail services by licensed providers, including SW Business Stream. We have no specific comments on this proposal.

Part 6 makes amendments to the Sewerage (Scotland) Act (1968 c.47). Clause 31 addresses priority substances<sup>3</sup> and is intended to require industrial operators to eliminate or diminish these substances before they are discharged as trade effluent. We would support this in principle, to reduce the costs of treatment and the need to make special provision for specific difficult substances and also to reinforce the principle of producer responsibility. It does leave open the possibility that if operators install their own pre-treatment then revenue

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<sup>3</sup> This proposal looks ahead to the review of the Priority Substances Directive (2008/105/EEC, Annex X to the WFD and see also COM(2011) 876).

to SW from trade effluents will fall, and it does not address the possibility that some priority substances may emanate from private houses or other sources of domestic sewage. This is another area where a requirement for SW to provide education and information might be helpful and relevant.

Clauses 32-33 address substances generally into sewers, and then especially fats and grease. Section 46 of the 1968 Act is already a general offence and on summary charge, that is now subject to an increased penalty of up to 12 months imprisonment as well as the current £40,000 fine. There is then a new s.46A and 46B, creating specific offences for the passage of fats, oils and grease into sewers from trade premises, and enabling SW to recover costs of investigating and remedying the same. Of course the existing general offence covers oil and grease, and the biggest problem is tracing the culprit; also much fat, oil and grease emanates from private houses (and the same difficulty applies). We would support this additional clarification and expansion of the current provisions. We would suggest that a more specific duty on SW to provide information and education would again be useful here. It might be desirable to also consider what information and education provisions could be put in place to assist rural communities with either private water supplies or private sewerage provision, or both. SW, or SW working with SEPA, may be better placed than local authorities to offer such information even if they are not providing the service in these areas.

We welcome clause 34 which makes much needed provision for the maintenance of commonly owned private sewage treatment works (generally, septic tanks). It enables any one owner to carry out the works and then recover the costs from the others, and is based on the sort of scheme that applies under the Tenements (Scotland) Act 2004 (asp.11). Liability to pay, and the right to enforce, are personal and do not lapse when the property is sold; that would probably accord with conveyancing practice. In the policy memorandum, it is stated that a more comprehensive scheme, such as SW to taking over such works, is not acceptable as it would interfere with property rights. It seems likely that cost is a bigger factor here; most owners of a malfunctioning common septic tank would probably be delighted if the public authority took it over. We agree it will be effective for the most common situation, where one part-owner resists and therefore the others will need to pay (only) a proportion of that one share of the cost. If there is resistance from a larger proportion of owners, then much will depend on one person being willing to do the administration, outlay the cost and then go to court to recover payment, so it is only a partial solution.

We wonder if this is another area where a more specific duty on SW to provide education and information would be relevant, perhaps working with SEPA; we are thinking here specifically of phosphates, and more generally of effective maintenance of septic tanks.

We welcome Part 7 on Water Shortage Orders, to apply in the event of a “serious deficiency of water supplies” or threat of the same. We agree with the retention of both

ordinary orders resulting from shortages, and emergency orders where there is also a risk to health, or social or economic well-being.

We also welcome the measures in sch.2, to apply as recommended by SW where there is a threat of shortages, and are pleased to note that these do not apply to domestic users before commercial. It is good to see the opportunity taken to clean up the statute book by repealing and replacing, rather than amending, the relevant parts of the Natural Heritage (Scotland) Act.

## WRITTEN EVIDENCE FROM THE INSTITUTION OF CIVIL ENGINEERS

The Institution of Civil Engineers is a UK based international organisation with over 75,000 members ranging from professional civil engineers to students, approximately 8,000 of whom live in Scotland. It is an educational and qualifying body and a registered charity. Founded in 1818, ICE has become recognised worldwide for its excellence as a centre for knowledge transfer.

ICE Scotland would like to thank the committee for the invitation to take part in this consultation and submit the enclosed comments for your consideration.

### Summary

ICE welcomes the Water Resources Bill. We welcome the Scottish Government's efforts to maximise the value of Scotland's water resources through the Hydro Nation agenda. In scrutinising the Bill we suggest that committee consider the following:

- The Water Resources Bill is only one element of the Hydro Nation agenda. The Committee should consider the bill alongside other initiatives including the establishment of the Hydro Nation Forum and the discussion paper "Paying For Water Services".
- The bill commits the Scottish Government to reporting on its progress against the duty to promote the value of Scotland's water on a one off basis in three years. ICE Scotland recommends at least biennial reporting against the duties contained in the Bill.
- Similarly further work is required in identifying metrics and benchmarks against which the success of the Hydro Nation initiative can be judged. Ministers, with input from the Hydro Nation Forum should be asked to publish a transparent reporting framework.
- The licensing regime as envisaged by the Bill at present does not allow for sufficient ministerial oversight of water abstractions. A number of the proposed exemptions from ministerial oversight e.g. irrigation, introduce significant environmental risks and should be subject to scrutiny.
- The legislative distinction between Scottish Water's core and non core functions is a positive step. ICE Scotland welcomes this separation because we believe it provides Scottish Water with strategic clarity.

- The Hydro Nation agenda provides a platform for further development of the skills and capacity of Scotland's already world class civil engineering sector, opening up opportunities for the export of high value services. We believe greater emphasis should be placed on this aspect of the Hydro Nation agenda. This will require effective coordination of the resources of stakeholders including the Enterprise Agencies, Scottish Water and the Scottish Funding Council. In addition there would be value in providing greater scope for the Hydro Nation Forum to input into the allocation of the £9b core budget.

## Part 1

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

ICE Scotland sees the provisions as sufficient legislatively and recognises that the Water Resources Bill (WRB) is only one part of the broader Hydro Nation agenda. Whilst the locus of the committee in this instance relates to the WRB the Scottish Government has set in motion a number of other work streams including but not limited to the "Paying for Water Services" discussion paper and the establishment of the Hydro Nation Forum (HNF) to advise the Cabinet Secretary. The WRB should therefore be seen in this context and not in isolation. A fully integrated approach to maximising the value of Scotland water resources is essential.

ICE supports the Hydro Nation agenda and the steps the Scottish Government has taken so far. Scotland does have an abundance of water and it would be remiss not to seek to capitalise on a plentiful natural asset whilst continuing to ensure good stewardship of its resources. We see other drivers such as climate change pressures in water stressed areas and the challenges associated with the future global energy mix as further underscoring the need to develop the value of Scotland's water and expertise in water management.

We look forward to working collaboratively with the Scottish Government and other stakeholders, including parliamentarians, over the coming years to support the Hydro Nation agenda, its internationalisation and the role it will play in supporting the export of Scottish civil engineering expertise and entrepreneurship.

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

The water industry in Scotland is highly regulated and largely within public ownership providing ministers with significant powers to direct public bodies. However, by explicitly including these provisions in the WRB the Scottish Government is able to provide clearer strategic leadership whilst providing key agencies such as SEPA and Scottish Water with

unambiguous objectives. ICE sees this leadership as essential to the developing the value of Scotland's water resources.

ICE is on record as being supportive of the current governance arrangements of the water industry in Scotland, recognising that the regulatory regime has driven significant improvement and investment in tandem. ICE therefore sees reinforcing these arrangements to promote the value of Scotland's water as key to the success of the Hydro Nation agenda.

ICE is particularly supportive of the provision to separate Scottish Water's activities between 'core' and 'non core' business to ensure that the overall standards of the company's key functions continue to rise as they have done over the past several years. This proposed delineation in law should also be helpful to Scottish Water, ministers and other stakeholders in terms of setting the company's strategic priorities over the next regulatory period and in achieving those priorities.

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

It is the understanding of ICE Scotland that the bill actually requires ministers to report to the Scottish Parliament not every three years but in three years (from the date the duty comes into force). If this interpretation is correct we do not believe that a one off report in three years is sufficient and that a duty should be placed on ministers to report at regular intervals. ICE Scotland recommends an amendment to the bill requiring ministers to report to parliament on a biennial basis with a possible sunset clause to prevent requiring the Scottish Government to report on the development of Scotland's water in perpetuity.

In relation to reporting progress to the Scottish Parliament ICE would like to understand more about what metrics and benchmarks the Scottish Government will report against. The reporting measures to be used need not be framed in legislation but it is important that some meaningful metrics and benchmarks are identified at an early stage. ICE Scotland therefore recommends that ministers, under advice from the Hydro Nation Forum, be given a duty to develop a clear reporting framework to enable all stakeholders to assess the progress of this initiative. More frequent reporting will also help promote a process of continuous improvement.

## **Part 2**

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



Please see ICE's response to question 6; we believe the new regime and the question of exemptions are best responded to jointly.

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

ICE Scotland sees 10 megalitres as a reasonable de minimus threshold.

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

ICE Scotland has some reservations in respect of the proposed licensing regime. We believe that a licensing regime is necessary and that all large scale water abstractions i.e. above the de minimus threshold identified in Question 5 should be subject to some level of consistent control and regulation.

ICE understands that in some catchment areas there are concerns that abstraction licences may be allocated but not utilised. The abstraction licence may then become a bankable asset should there be a change in the market e.g. if the area becomes water stressed.

ICE does not see the regime as envisaged by the bill at present as a sustainable approach to water resource management. All abstractions (over and above the 10 megalitres threshold) should be subject to some consistent level of control and regulation. Abstractions for the purposes of generating hydro power, irrigation, fish farming, operating a quarry or coal mine are all explicitly earmarked for exemption from ministerial approval yet all carry environmental impact risks and as such should be subject to ministerial decision.

### **Part 3**

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

ICE is supportive of Scottish Water's efforts to develop its assets and the generation of renewable energy. The inclusion of specific powers can only help promote this work further.

ICE is clear on the desirability of a significant portion of Scotland's future energy needs to be drawn from renewable sources as part of the de-carbonisation process and meeting the 2020 Climate Change Scotland Act targets and therefore see additional investment in their development as welcome.

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

ICE Scotland is particularly pleased to see the Scottish Government give statutory recognition to Scottish Water's core and non core functions. ICE sees the core and non core functions as equally essential for Scotland's future. Similarly they are not mutually exclusive and the proposed distinction adequately differentiates between the two categories.

As we have highlighted previously in this evidence this distinction not only provides sufficient safeguards but should in fact give greater strategic clarity to Scottish Water to enable the company to perform both its core and non core functions better in the future.

#### **Part 4**

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

ICE Scotland has no comment to make in this regard.

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

In principle, ICE supports collaborative arrangements with landowners within a catchment where this helps to deliver water management solutions which are cost beneficial to both society and the environment. For example, an agreement to implement a change in agricultural practice to control pollution at source reduces the need for disproportionately expensive investment in pollution control works elsewhere in the catchment.

#### **Part 5**

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

ICE Scotland has no comment to make in this regard.

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

ICE Scotland has no comment to make in this regard.

## Part 6

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

ICE Scotland has no comment to make in this regard.

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

As referenced in our response to question 10 ICE supports arrangements which will help to deliver water management solutions that are likely to provide cost benefits. We consider measures that prevent difficult to treat substances from entering the sewer system in the first place as sensible.

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

ICE Scotland has no comment to make in this regard.

## Part 7

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

ICE Scotland endorses the Scottish Government's analysis that it is prudent to plan for the possibility of a drought event. Given the potential impacts climate change and population growth may have on the availability of water for domestic and commercial use this is sensible contingency planning but greater clarity regarding the definition of 'a drought event' is required.

Moreover water shortages can be caused by events other than drought for example flooding of water treatment plants. ICE Scotland is firmly of the view that building infrastructure resilience must be a part of a broader programme to ensure the security of water supply which encompasses both quality and quantity.

## Financial Implications

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

The accompanying documentation suggests the Scottish Government has allocated £3m per year for three years to support the development of the value of Scotland's water. Whilst ICE would like to see a greater investment we recognise that there are currently significant financial constraints on public budgets.

ICE Scotland would like to understand more about how the budget will be spent. Additionally we take the view that greater value to the Hydro Nation agenda will be achieved through effective coordination of the various other resources available from the Enterprise Agencies, Scottish Water and the Scottish Funding Council to drive the Hydro Nation initiative. ICE Scotland is particularly supportive of initiatives to support engineering employment, skills and development and knowledge growth. Whilst ICE Scotland understands that some of the budget is earmarked for funding the Hydro Nation Forum there is utility, above and beyond the WRB, to allow the HNF to input into how the allocated budget is spent.

#### **Additional Comment – energy and climate change**

ICE Scotland would like to make one further point in respect of the Water Resources Bill. We note that one of Scottish Water's major drivers is increasing water and waste water quality. Raising standards in this respect is usually achieved through high energy treatment processes which make achieving the 2020 Climate Change Act targets even more challenging. This tension between emissions reduction and driving up standards calls for a more balanced approach from Scottish Water and requires SEPA's attention. ICE Scotland would see the continued omission of this issue from the Bill as a missed opportunity which we would like to see addressed before the Bill receives assent.

## WRITTEN EVIDENCE FROM THE JAMES HUTTON INSTITUTE

**Expertise and experience of the James Hutton Institute in relation to the responses below**

As Scotland's largest Institute for water, soils, crops, environment and people, the James Hutton Institute has significant water resources management expertise in the areas of:

- Robust scientific understanding of catchment functioning linking biophysical, social and economic factors.
- Providing the socio economic context and frameworks for water governance, water economics, ecosystem services valuation, and sustainable behaviours.
- Understanding and evaluating the consequences of future change in water resources availability and demand, land use and management, policy and climate change.
- Developing risk-based approaches to whole systems analysis, including life cycle analysis of products and processes, and protection of the food chain.
- Options for new plant varieties and agronomic practices which increase water use efficiency, optimise the use of precious resources, and ensure soil protection.
- Proven ability to understand the tolerance and variability of natural and managed water systems, to help develop smart regulation, and increase resource efficiency.
- Operational experimental platforms and trails from individual plant, to field, to farm, to landscape.

Our answers to the following questions below are shaped by our expertise in the above areas.

**Part 1: Development of Water Resources**

*This places a new duty on the Scottish Ministers to take such reasonable steps as they consider appropriate to ensure that the value of Scotland's water resources is developed through the Hydro Nation programme. It provides for Ministers to direct designated public bodies as to their involvement in this development. It also places a requirement on Ministers to report to the Scottish Parliament on the fulfilment of the duty. This Part of the Bill is designed to create an explicit focus for the Scottish Ministers on Scotland's water resources and their potential and the continuing development of the Hydro Nation programme.*

**Q1.** *Section 1 of the Bill proposes placing a duty on Scottish Ministers to take such reasonable steps as they consider appropriate to ensure the development of the value of Scotland's water resources. Do you consider these proposals to be sufficient to drive forward the delivery of the Scottish Government's aim of making Scotland a Hydro Nation? The bill as presented is a starting point for a commitment to develop water resources. As such it must lead to further details of the 'reasonable steps' within a time frame which allows the progression of actions under the current inertia of the Hydro nation agenda. For example, are the steps limited to the water industry themes in the current bill or is there an intention for wider steps to begin to overlap with developments in environmental (for example water quality and flood management) policy? In this respect it needs to be*

recognised that improving the value of the water resource has wide connotations across factors influencing water quality (determining fitness for different uses with different values) and quantity (determining where and when the resource can and cannot be used, or knock on impacts such as flooding). These are issues wider than abstraction and industrial effluent regulation. The term value also has a wide range of meanings that in their broadest sense (as in an ecosystem approach) include habitat, food and energy production, human well being and recreational benefits. Undoubtedly these are all part of the way Scotland should realise the economic/societal benefits of its waters through via tourism, generation of Scotland's food brands (whisky, beef, cereals, seafood). These are important components of protecting the water asset and the tools the science and regulation communities are developing to address these (and their interactions with the industrial water resource sectors) are themselves saleable assets of Scotland to internationalise under Hydro nation. SEPA and Scottish Water are becoming aware of the benefits of catchment-based source protection of water resources and are developing their own catchment programmes (mostly for issues of pollution/colouration). Increasingly, upcoming issues of resource security, energy and climate/land use change will impact on the availability of water resources for realising economic benefits and an overarching bill could be well placed to include these factors. Strengthening this aspect in the bill would pave the way to unite water, energy and food in a way which would maximise the stated aim of contributing to sustainable use of the water resources. Perhaps some formal linkage with the recent Land Use Strategy (2011) could assist in this respect.

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

Bringing the five stated public bodies together is a key action and we agree that some form of ministerial leadership would benefit this. The combination of effective regulation, major public water company with national assets and enterprise links to small businesses (both reliant on clean available water, and those developing technologies to improve water resources) seems potentially powerful. The ability of these bodies to get together and resolve sticking points (for example policy hurdles in new novel water treatment facilities, or small business reluctance to invest in technological development) is crucial to breaking the status quo of inherited systems of water management which may need to be addressed for future policy, economic and societal needs. This resolution of issues between these bodies would benefit from a higher level bill demanding and coordinating new styles of water governance. The ability to increase this list of public bodies as needs arise seems sensible (for example, Forestry Commission, research interests).

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

An analysis of the impact of the bill in terms of better governance and realised value of the water resources should be undertaken to provide evidence of the effects. This should be with a view to whether the stated aspects of the bill are sufficiently wide ranging, concise enough to implement and strong enough to bring effects. We would like to see consideration then, perhaps earlier, of whether there would be benefits to this current bill encompassing the aspects addressed in response to question 1 alongside these industry aspects of water management.

## **Part 2: Control of Water Abstraction**

*This part provides for the Scottish Ministers to control large scale water abstractions. It proposes prohibiting abstractions from the water environment that are above the specified threshold rate, unless they are exempt or are approved by the Scottish Ministers. The policy intention is to ensure that applications for abstractions are considered not only in terms of their environmental impact but also in their broader and long-term impact on the value of the water resources of Scotland.*

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

Higher level control of abstractions seems appropriate.

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

The most important point for abstraction is to match the abstraction rate to the source so to minimise economic and biophysical damage and make it sustainable. The rate should be dependent on waterbody type and resource potential, for example ground waters considering recharge rate, lochs considering volume and inputs, rivers considering flow regime and upstream area. In an ideal situation there would be a simple methodology for assessment of value/benefits gained from the abstraction versus the loss of services from the waterbody. The latter would be highly site specific (for example EU habitat designations) but with a simple tool these important decisions should be made. SEPA would currently do this for smaller abstractions but the same approach should be adopted for larger abstractions otherwise the chosen rate seems arbitrary. It would be interesting to know what abstractions of this size are operating today across Scotland and their national importance to which sectors.

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

The logic behind these possible exemptions should be made clear. The three examples are very different. Hydro-power potentially uses water for energy and returns it unpolluted downstream; it may change flow dynamics but maintains overall discharge. Irrigation tends to indicate a net sink of water as it is lost by plant uptake or evapotranspiration. Fish farms or quarries may abstract water use it and return it to the waterbody likely contaminated in some form. Therefore each situation brings a different impact. The amount, condition and timing of return of water to the system are important considerations of each abstraction case.

## **Part 3: Scottish Water's functions**

*This part places a new duty on Scottish Water to develop the value of its assets and expertise and to promote the use of its assets for the generation of renewable energy. Provision is also made for the Scottish Ministers to give grants or to lend directly to subsidiaries of Scottish Water, and for the water and sewerage undertaking established by Scottish Water to be able to borrow from the Scottish Ministers or any other person. The policy intention is that these new powers will encourage Scottish Water to develop commercially and generally to support the Hydro nation agenda.*

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

Scottish Water as a large consumer of energy for treating and distributing waters is in an ideal position to become a model of renewable energy use and contribute to Scotland's desire to be seen as a centre for knowledge and engineering on renewable. The situation of Scottish Water in Scotland as a public company looking after national infrastructure assets free of share-holder demands places some freedom on them to pursue this. However, powers for investment in subsidiaries as given by the bill would enable work with industry and research communities to develop the necessary technologies. The great advances in the sustainability of water and energy (which in turn would really mark the Hydro nation as a global leader) may require somewhat radical approaches of 'localism' in distribution, water reuse, waste stream separation and treatment. These are further back in terms of research to marketplace and it is less fair to place cost burdens on consumer bills.

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

These aspects are outside of our area of expertise.

#### **Part 4: Raw Water Quality**

*This part gives Scottish Water certain additional powers of entry for the purpose of monitoring the quality of "raw water" (water that may be used for human consumption) and for the purpose of investigating anything that may be affecting the quality of such water. It also allows Scottish Water to enter into agreements with owners and occupiers of land, as well as with local authorities, for the carrying out of activities for the purpose of improving the quality of raw water. The policy intention is to safeguard and improve, where possible, the quality of raw water.*

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

This area actually gets to the core of the aspects we address under question 1. The language used though does not at present draw out enough understanding of the land owner/managers role. There is a large section on rights with respect to 'premises' where these are undefined. Only a small section (68A Agreements for Water Quality) looks to unite Scottish Water with the existing powers of SEPA for controlling land based activities. For all the reasons given in response to question 1 these issues are key to current and future water resource management by source protection.

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

The exact nature of these 'agreements' should be clarified as they sound potentially powerful but unless specified likely to be subject to challenge. If the agreements are intended to formalise an ability for Scottish Water to address source protection problems (such as pesticides from farmland) then the powers and financial backing for the agreements needs to be made clear. SEPA well understand that effective regulation



includes enforcement in combination with awareness and demonstration engagement. The latter has resource implications but is a crucial part of success.

### **Part 5: Non-Domestic Services**

*This part introduces measures allowing water providers to demand and recover charges from customers where due, and requires landlords to inform a water provider when there is a change in occupancy in their property (as happens with other utilities). The policy intention is that the measures will help to ensure that the water market is operating efficiently and that those receiving water and sewerage services pay for them.*

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

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

Both questions 11 and 12 are outside of our area of expertise.

### **Part 6: Sewerage Network**

*This part allows Scottish Water to control inputs of certain priority substances and pollutants into the sewerage network through trade effluent consents, prohibits the input of fats, oils and grease into the public sewer, and gives Scottish Water improved monitoring powers in relation to inputs into sewers. It also makes provision for common owners of private sewage treatment systems, such as septic tanks, to be able to carry out essential maintenance without the consent of all their co-owners in certain circumstances. The policy intention is to restrict inputs into the sewer that can cause harm to the water environment and can be costly and difficult to remove.*

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

This seems appropriate. Contamination of sewage materials (through combined industrial and domestic effluents entering the systems) is a major barrier to the recovery of other high value nutrient and energy waste resources (mainly domestic sources). Reducing the contamination via industrial effluents would be a first stage to resource recovery at sewage works.

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

If this has been found to be a specific cause of drain and sewerage blockage then this seems appropriate. However this is very specific when other large issues (for example water quality and land management agreements) are addressed at quite a high level only.

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

Private sewage discharges into the environment are a considerable source of water pollution but vary considerably in terms of their pollutant loads and impacts. This is dependent on condition of the tank, importantly the soak-away quality and behaviour of the

users. The proposed powers appear to apply to multiple occupancy septic tanks greater than two properties. This is the next level of regulatory targeting following larger waste water treatment work discharges and is a considerably easier target than small domestic septic tanks which are largely unregistered. Targeting these is therefore appropriate but it would be better to use a campaign of awareness-raising of tank behaviour including maintenance requirements and general use than to rely solely on enforcement of emptying them with or without consent.

### **Part 7: Water Shortage Orders**

*This part makes provision for the management of temporary water shortages by allowing Scottish Water to apply for, and the Scottish Ministers to make, Water Shortage Orders. These orders would replace the current Drought Orders and authorise Scottish Water to abstract water from or discharge it to any place, relax requirements to which Scottish Water is subject, and impose water saving measures. The policy intention is to update the law in relation to the management of interruptions to the public water supply by streamlining the process and allowing Scottish Water, SEPA and Scottish Ministers to react swiftly and in a proportionate way to such water shortages.*

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

Yes, they should be beneficial. However, to gain public approval (and likely adherence to) they need to be seen as proportionate to other aspects such as the ability of Scottish Water to control leakage and industrial abstractions (especially as earlier text in the bill proposes exemptions for some of these abstractions).

### **Financial implications**

*The costs implications for the Bill are set out by the Scottish Government in the Financial Memorandum, which accompanies the Explanatory Notes. Additional costs are anticipated in a number of areas in relation to, for example, companies seeking to apply for consent for large-scale water abstractions, co-operation agreements between Scottish Water and landowners to protect drinking water sources, obligation on the part of landlords to inform water providers of any change of occupancy of their property, and regulating the discharge of priority substances into the sewer network. The Bill also creates five new offences, all of which could result in offenders receiving fines. In addition, Scottish Ministers have allocated £3 million per year from 2012/13 to 2014/15 to finance the development of the Hydro Nation agenda. Whilst this cost is not directly attributable to the Bill, it will support a range of actions central to the delivery of the duty on Ministers to develop the value of Scotland's water resources (Part 1 of the Bill).*

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

The aspects of costs should be part of a balance of costs versus benefits (and opportunities lost) sought to inform decisions of water management. This needs to be holistic and with consideration of wider implications/costs of environmental and societal benefits/costs. True effectiveness in some of these aspects has considerable resource implications (for example entering into land owner agreements) and these actions need to be made on the basis of holistic cost benefits analysis made open to all the levels of stakeholders so that they remain committed. After all the success of a Hydro nation is also

reliant on a widely accepted ethos for sustainable benefits from our waters, not just a set of technical tools. Communication, especially of cost-benefits is key to this.

## WRITTEN EVIDENCE FROM THE UK ENVIRONMENTAL LAW ASSOCIATION (UKELA)

The UK Environmental Law Association (UKELA) is the UK's foremost membership organisation working to improve understanding and awareness of environmental law, and to make the law work for a better environment. UKELA's Scots Law Working Group comprises Scottish lawyers, consultants, academics and other professionals with an interest in environmental law in Scotland.

We responded in detail to the consultation on the Bill earlier this year. We welcome the opportunity to provide evidence to the Committee and will be glad to engage in any further discussion that the Committee might wish.

We welcome many of the specific proposals for amending legislation in Parts 4 to 7 of the Bill, but we have concerns about many of the provisions in Parts 1 to 3.

Part 1 of the Bill restates most of the draft clauses from the proposal in that consultation.

### *Clause 1(1)*

The duty on Ministers remains as it was, to “take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland’s water resources”. Whereas this duty was qualified in the draft clause with the usual formulation of a sustainable development duty in Scotland (ie, “in the way best calculated to contribute to the achievement of sustainable development”) it is now qualified by a requirement to “do so in ways designed to contribute to the sustainable use of the resource”. We would prefer to see a stronger procedural provision to ensure that the ecological impacts of any such steps are taken into account. “Sustainable use” may be more specific, but we are unconvinced that “designed to contribute to” is an improvement, and the word “use” (both here and in clause 1(3)) suggests a priority for steps that involve the human use of water, as opposed to letting it flow/sit naturally for the benefit of nature. This could be allayed by clarifying that “use” includes leaving water to fulfil its role in natural ecosystems, not just for direct human benefit. Failing this, we would like to see a parallel duty on the Ministers to protect the aquatic resource.

### *Clause 1(3)*

Related to the above, the definition of the “value of water resources” remains unchanged. Whilst it mentions “other benefit” as well as “economic”, the emphasis is clearly on economic benefit and human use, but we would note that water is essential to support all forms of life on earth. We would still like to see some stronger provision recognising the inherent value of the resource, which is quite distinct from any human “uses” or “activities”. The EU Water Framework Directive (2000/60/EC), for example, acknowledges from the outset that “water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such”.

Clauses 2-4 also remain unchanged. We would continue to seek some changes here to strengthen accountability and transparency.

#### *Clause 2*

We would suggest that before directions are given to any designated body, the Ministers are required to consult all the designated bodies for their views and hold a public consultation, except in emergencies. Directions have the force of law and yet they are not always easy to find, so there should also be a provision requiring their publication.

#### *Clause 3*

A similar requirement to consult should apply to any amendment of the list of designated bodies; we note that at least one respondent to the Hydro Nation consultation has asked to be so designated.

#### *Clause 4*

We appreciate that it may be some time before there is a need to report under this legislation and that reporting does take human resource that could be used elsewhere. Nonetheless we would like clarity that the three yearly reporting here will be an ongoing requirement, not just a one-off. Also, the report is to be laid “as soon as reasonably practicable”: we consider that a maximum period for laying the report should be stipulated (“as soon as reasonably practicable, *and in any event within X months of the end of the reporting period*”), otherwise the requirement is effectively open-ended.

Part 2 of the Bill, on a new consenting regime for “qualifying abstractions” is new and was not suggested in either of the consultations; nor did it appear to be suggested by any respondents. As such we consider that it is appropriate to articulate general concerns as well as particular points about individual provisions.

We have a number of general concerns about this Part:

- The underlying purpose of and need for the new regime;
- Its relationship to existing and future consenting regimes;
- The degree of transparency and publicity around the new application process.

We suggest that the policy objectives as stated in the accompanying Policy Memorandum could be achieved by Ministers exercising their current call in powers under the Water Environment (Controlled Activities) (Scotland) Regulations (SSI 2011/209, CAR, Reg.20), for all applications of this type. This would avoid the need for a separate consenting regime and ensure integration if further reforms are made to CAR.

The Policy Memorandum contains several paragraphs addressing these powers, and suggests that the Ministers are better placed to take account of a wide variety of social and economic impacts and consequences – climate change, population change, urbanisation

and industrialisation are all mentioned – than SEPA, whose remit under CAR is focused on environmental consequences. However, CAR (regulation 15) requires SEPA, before determining any application for a new controlled activity such as an abstraction, to apply the requirements of Article 4 of the Water Framework Directive (WFD). This Article sets out the requirements of good ecological status, as well as the circumstances in which deterioration in status may be permitted and the conditions that must be met. If the benefits of a proposal to human health, human safety or sustainable development outweigh the costs of failing to maintain good ecological status, or if the proposal is of overriding public interest, derogation from the requirement of good ecological status may be granted and the proposal can proceed. The balancing exercise required to determine this involves the consideration by SEPA of a wide range of social and economic, as well as environmental factors. A qualifying abstraction under this Bill would, because of its size, almost certainly cause deterioration in ecological status, so before deciding if it could be authorised under CAR, SEPA (and Ministers, if they exercised their call-in powers) would have to consider a much wider range of factors than the direct impact of the abstraction on the water environment. This rather calls into question the policy justification for this separate Ministerial approval regime for qualifying abstractions.

If the intention is to secure additional political control over large scale abstractions for industrial use within Scotland, perhaps by foreign investors, then that is a reasonable policy objective. However the Policy Memorandum also says that Ministers might “have a longer term and wider view of the merits of any large scale abstraction which related to the end use of water outside Scotland, which although environmentally sustainable, did not properly take account of the longer term view of the value of that resource and the needs of indigenous economic activity and growth” (para.24). The implication would seem to be that there is a likelihood of applications to abstract large quantities, possibly for use outwith Scotland, and that SEPA’s powers and environmental focus would not enable SEPA to prevent such use. Yet currently, proposals for abstraction for export are being raised by the Ministers themselves. Further, it would seem generally likely that the economic, and perhaps the social, factors might support large scale abstractions for many purposes either within or outwith Scotland, whereas the environmental factors would, normally, be those restricting development: under WFD/CAR, the benefits of any large scale abstraction for human health, human safety or sustainable development would have to be huge in order to outweigh the considerable impact on the water environment of such an abstraction. Accordingly, we question whether creating an extra layer of decision-making power for Ministers adds anything to the existing regulatory regime as regards having the policy effect that seems to be intended, of protecting against unsustainable large-scale abstraction for use outwith Scotland.

At the very least, if out-of-Scotland uses are envisaged, the exemptions listed in clause 7(4) should specifically not apply outwith Scotland, in the same way as the exemption for public water supply under clause 7(3) is restricted to Scotland. It is worth noting that the Institute of Civil Engineers has recently counselled against complacency in assuming an abundant resource in the longer term.

There also seems to be an underlying presumption that the Ministers, and/ or Scottish Water, hold ownership rights over water in its natural state sufficient to enable that resource to be divested, anywhere and for any purpose. Yet water, running water, has always been a special branch of property law (see, eg, for an early discussion, *Magistrates of Linlithgow v Elphinstone* (1768) M Dict. 12805). This question was not directly addressed in the Water Environment and Water Services (Scotland) Act (2003 asp.3, WEWS) when the new comprehensive water use licences were brought in under CAR, and the new licensing regime was never challenged as an interference with property rights either at common law or in terms of the European Convention on Human Rights, presumably because those abstracting under the common law recognised that the new regime was proportionate and within the state's margin of appreciation. That regime enables control of abstractions, and other water uses, for purposes within Scotland but it does not amount to ownership of the water. A better understanding of it might be that the Ministers, and other public authorities, all answerable to Parliament, are exercising some form of public trust, or managing a public good, which enables them to allocate the water. Bulk sale for purposes outwith Scotland is a very different thing.

Our final general concern about this Part is that it runs counter to the general policy drive towards doing away with unnecessary regulation. Any large scale abstraction will almost certainly require planning permission as well as CAR authorisation, and both are subject to Ministerial call-in, so the imposition of a third consenting regime on developers seems excessive as well as unnecessary.

#### *Clause 9*

In terms of the outline of a licensing regime, applications may be made to the Ministers, who *may* make procedural regulations, which in turn *may (inter alia)* provide for publicity and third party representations (our emphasis). Fees may be levied for administrative costs but these will require regulation. We consider that, if this separate approval regime for large abstractions is deemed necessary (which we have queried above), it should be made subject to a transparent process involving advertising and public participation, given that significant interests will be at stake, as acknowledged in the Policy Memorandum. If the detail of that process is going to be left to secondary legislation, full public consultation will be needed on the proposed regulations.

#### *Clause 11*

Conditions can be imposed, but these seem quite broad and general. There is a provision for compensation (cl.11(2)(c) ) and it is not clear if this is financial, or a compensation flow, or potentially both. This should be clarified.

#### *Clause 12*

There is a duty on the holder of an approval to report on their activities – but only to the Ministers and in such form as the Ministers require. We would suggest that such reports should be publicly available.

*Clause 13*

Both Scottish Water (unless they are the applicant) and SEPA must give advice on adverse impacts if asked – but the Ministers are not required to ask for advice. We suggest that this should be a requirement. As SEPA will also be determining the CAR application, it should not be unduly burdensome for SEPA to also advise the Ministers.

*Clause 16(2)*

Ministers *may* make regulations to provide for monitoring, the keeping of records and importantly, the access to such records. We would hope that such records would be made public, and anyway would be covered by either the Freedom of Information (Scotland) Act (2002 asp.13) or the Environmental Information (Scotland) Regulations (SSI 2004/520). Given the high degree of Ministerial discretion, especially in a unicameral Parliament, we would like to see more detail around publicity, to achieve maximum transparency.

*Clause 17*

The offence is not strict liability, which makes conviction less likely. We would recommend that, if a separate approval regime is deemed necessary (which we have queried above), it is subject to strict liability offences (as under CAR) and administrative penalties, as are under consideration in the new integrated framework for environmental regulation. A higher upper limit to the fine (on summary conviction) than the statutory maximum might be more appropriate, in line with environmental offences, where an upper limit of £40,000 is the norm.

Finally, there is no provision for the sequencing of the different approvals, and what might happen if the ministers approve an abstraction but SEPA do not (or the other way round.) If such a conflict arose, we suggest a public inquiry might be the best response.

Part 3 takes forward the proposals for new duties on Scottish Water. Our key concerns here are the additional powers for Scottish Water (SW) and the need to ensure that these are separated from their core functions.

*Clause 21*

The new general power clarifies that in particular, SW's existing general power extends to "do anything that Scottish Water considers will assist in the development of the value of Scotland's water resources...". This is certainly specific but does still depend on knowing what that development is likely to mean, as queried above in relation to Clause 1. We appreciate that many different activities and actions have been put forward under the Hydro Nation consultations, many but not all of which will be relevant to SW.

*Clause 22*

As in Clause 1, value is stated to include "economic and other benefit" which (again) will stem from "use ... or activities". We consider that, in the context of SW's assets and expertise (as opposed to water resources), the emphasis on economic (as opposed to



environmental) benefit is more justifiable; again, though, the implications of cl.22 in particular come back to what may be meant by “developing value” in this context.

### *Clause 23*

We note favourably that SW is already taking steps to use its assets for the generation of renewable energy, and we welcome the introduction of this new duty for SW to do so.

### *Clause 24*

The proposed new s.70(2) in the 2002 Act no longer excludes the exercise of SW’s general powers under s.25(1) and in time, the proposed s.25(1A). Taken together, it would seem to mean that “hydro nation” activities are no longer excluded from s.70 insofar as they are “relating to the provision of water or sewerage services in Scotland”. If anything, this would seem to potentially widen the definition of the core functions. Again, this may well depend on the specific activities in question and what is meant by developing the value of the resource. If the intention is to bring these activities, whatever they might be, within the regulatory settlement then that is a significant change that needs to be much more explicit. The current consultation on Investing in Water Services<sup>1</sup> begins by stating that it is not related to the Hydro Nation or the Water Resources Bill, but the dividing line is not always easy to draw. If, for example, and given the focus on renewables generation, the intention is to distinguish between generation of power used by SW for its own activities, which would be “relating to”; and “external” generation for supply, through SW Horizons, which would not, then that might be a helpful clarification for the accompanying policy.

The Investment consultation does mention several “innovations” that may take place in the near future, including catchment protection, managing pollutants at source and customer education (all of which are in the Water Resources Bill in some way), as well as generating electricity from waste (which is relevant to the Hydro Nation). This again indicates the difficulties of segregating the policy environment for SW’s core functions, from its new opportunities; and the need for clarity.

### *Clauses 25 and 26*

The Ministers have stated in the Investment consultation that the total borrowing available for SW will be less than currently in the next price review. We would agree that separate provision for borrowing by SW Horizons in particular will allow the furtherance of the Hydro Nation agenda whilst minimising risk for the core business and its customers, but it is important that any lending to the subsidiaries would not reduce the moneys available to SW. Reforms to SW’s corporate structure were mentioned in the first Hydro Nation consultation but were not taken forward; whilst there may be no need to do so, this again comes back to clarity about the core functions, and the separation required for non-core activities.

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<sup>1</sup> Scottish Government 2012 *Investing in and Paying for Your Water Services from 2015: An Invitation to Engage with the Government and to Provide Your Views* <http://www.scotland.gov.uk/Resource/0039/00395226.pdf>

## Part 4

### *Clause 27*

Given the wide powers of entry granted under this clause, we would seek clarification that the general provision for compensation in s.10 of the 1980 Act will apply. As the term “premises” is used throughout, but must clearly mean land as well as buildings, it would probably be helpful to provide (as is done later in Part 7) that “premises” includes land and buildings. Also, if the intention is that the new Part VIB of the 1980 Act should potentially apply to raw water for private supply, this should be clarified.

### *Clause 28*

We note the new power (proposed s.68A of the 1980 Act) for SW to enter into agreements with land owners, occupiers or local authorities to do or refrain from doing anything that will impact on raw water quality. A water services provider should be a key stakeholder for water resource management – both at large-scale, through river basin planning under the WFD, and this small-scale, “catchment based” approach that is developing in England as well. We might have expected more references, at least in the accompanying policy documents, to the WEWS Act and the WFD regime as a context for this Bill, and this might in turn address some of the concerns over the new general duties, if the Ministers’ view is that sufficient “protection” is provided through the general duties in WEWS. It is important that the service provider is involved in the protection of raw water and there is much that the service provider can do. However it is arguable that SEPA is better placed than SW to carry out monitoring of raw water quality and that if further monitoring is required, that SEPA should have additional resources here. It is our understanding that currently SEPA is reducing its water quality monitoring network.

It is also important to maintain a strong regime to control diffuse pollution through the environmental regulator, and that SW is not diverting resources to encourage, persuade or incentivise farmers and land managers to behave in ways that they are already required to do by law (i.e. the general binding rules relating to diffuse pollution under CAR). SW should be working closely with SEPA here and a specific duty to coordinate their activities with SEPA’s programmes might help to clarify. We assume that this is a core function, regulated by the Water Industry Commission and paid for by SW’s customers.

This is one of several provisions in the Bill where we think that a requirement for SW to provide information and education, to supplement s.1 of the 1980 Act, might be useful. We identify a number of these opportunities below.

We are content with Part 5 on commercial premises and the provision of retail services by licensed providers, including SW Business Stream. We have no specific comments on this proposal.

## Part 6

*Clause 31*

We would support this provision in principle, to reduce the costs of treatment and the need for SW to make special provision for specific difficult substances, and also to reinforce the principle of producer responsibility. It does leave open the possibility that if operators install their own pre-treatment then revenue to SW from trade effluents will fall, and it does not address the possibility that some priority substances may emanate from private houses or other sources of domestic sewage. This is another area where a requirement for SW to provide education and information might be helpful and relevant.

*Clauses 32-33*

Section 46 of the 1968 Act is already a general offence and it appears to cover oil and grease, but the biggest problem is tracing the culprit; also much fat, oil and grease emanates from private houses (and the same difficulty applies). Nevertheless, we would support this additional clarification and expansion of the current provisions. We would suggest that a more specific duty on SW to provide information and education to domestic customers (and through Business Stream, to business customers) would again be useful here. It might be desirable to also consider what information and education provisions could be put in place to assist rural communities with either private water supplies or private sewerage provision, or both. SW, or SW working with SEPA, may be better placed than local authorities to offer such information even if they are not providing the service in these areas.

*Clause 34*

We welcome this clause. We would note that the proposals will not address a situation where no one owner is willing to take on the responsibility of coordinating the work, making the expenditure and then having to recover the same. We wonder if this is another area where a more specific duty on SW to provide education and information would be relevant, perhaps working with SEPA; we are thinking here specifically of phosphates, and more generally of effective maintenance of septic tanks and soakaways. We recommend that pro-forma styles of the two types of notice are set out in schedules to the Bill for use by affected property owners, in order to ensure consistency and reduce the risks of legal challenges to notices that are served.

We welcome Part 7 on Water Shortage Orders, and note that many of our concerns in response to the last consultation have been addressed. Perhaps the water-saving measures listed in Sch. 2 could also be tied into stronger provisions on information and education. We wonder if there is scope for an exception for ponds where fish life is at risk.

*Part 8*

Clause 48 and Schedule 3 repeal section 26 of the WEWS Act, which requires an annual report to Parliament on the operation of that Act. This reporting is high level, in contrast to the river basin management plans, but contains a useful overview of activities, and we

caution against repealing it without good reason. We note that reporting under the Flood Risk Management (Scotland) Act (2009 asp.6) is still required.

**Infrastructure and Capital Investment Committee**

**17th Meeting, 2012 (Session 4), Wednesday, 24 October 2012**

**Subordinate Legislation**

<b>Title of Instrument</b>	Road Works (Inspection Fees) (Scotland) Amendment Regulations 2012 SSI/2012/250
<b>Type of Instruments</b>	Negative
<b>Laid Date</b>	13 September 2012
<b>Minister to attend the meeting</b>	No
<b>SSIs drawn to the Parliament's attention by Subordinate Legislation Committee</b>	No
<b>Reporting Deadline</b>	29 October 2012

*Background*

1. The New Roads and Street Works Act 1991 (the Act), sets the powers for road works authorities to carry out inspections of the progress and standard of the work done by the road work undertakers. The Act further provides for the road work authorities to charge a fee to the undertakers for inspections made. The number, scale and duration of works carried out by each undertaker will determine the amount and the frequency of the inspections carried out. This means that works of greater duration will generate more than one unit of inspection.

*Purpose*

2. The fee per inspections is set at £32.00 under the Act, however the Roads Authorities and Utilities Committee (Scotland) (RAUCS)) has suggested increasing it by £1.00 to £33.00, to reflect an increase in road works authorities costs.

3. . The purpose of these Regulations is to bring into force the change, from 1 November 2012.

*Consideration by the Subordinate Legislation Committee*

4. The Subordinate Legislation Committee (SLC) determined that it did not need to draw the attention of the Parliament to the Regulations.

**Recommendation**

5. A copy of the SSI and its accompanying documents are included with the papers.

**6. The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on this instrument.**

Steve Farrell  
Clerk to the Committee  
October 2012

**Infrastructure and Capital Investment Committee**

**17th Meeting, 2012 (Session 4), Wednesday, 24 October 2012**

**European Union issues**

**Purpose**

1. The Committee is invited to note the two papers included at the Annexes that include an update on the Committee's EU priorities and a report on the EU engagement activity in 2011-12.
2. Both papers have been prepared by Aileen McLeod in her role as the Committee's former EU Reporter.

**Update on EU priorities**

3. At its meeting on 10 July 2012, the Committee instructed the EU Reporter, Aileen McLeod, to undertake some initial investigation on the Committee's list of priority topics and to report to the Committee. An update paper is included at **Annexe A**.
4. **The Committee is invited to note the update paper provided by Aileen McLeod.**

**Report on EU engagement**

5. The European and External Relations Committee (EERC) has requested that all subject committees submit a report of their EU engagement for the period of 2011-12. The report has been prepared by Aileen McLeod and is included at **Annexe B**.
6. **The Committee is invited to note the Report and to agree to submit it to the EERC for consideration.**

Steve Farrell  
Clerk to the Committee  
October 2012

## **Infrastructure and Capital Investment Committee**

### **Update on European Union priorities**

#### **Introduction**

1. The Committee agreed its EU priorities on 22 February 2012. The Committee also agreed to seek details from the Scottish Government on the level of engagement that Ministers and officials had undertaken, or planned, in relation to each of the Committee's priority topics. The Committee considered the Government's response at its meeting on 10 July 2012.
2. At its meeting on 10 July, the Committee agreed to instruct the EU Reporter, Aileen McLeod, to undertake some initial investigation on the Committee's list of priority topics and to report to the Committee.
3. Aileen McLeod left the Committee in September, but has provided the following update for consideration by the Committee.

#### **UPDATE FROM EU REPORTER**

#### **Review of State aid guidelines for broadband networks**

4. The current guidelines for broadband networks, which lay down how public funding should be granted to broadband development in line with the EU State aid rules, are being reviewed.
5. In September 2012, the Committee submitted its Report on broadband infrastructure to the European Commission as part of the review of the guidelines. It is anticipated that further information will be provided by the Commission once it has collated the responses to the consultation.

#### **The Digital Agenda for Europe**

6. The Digital Agenda is one of the seven flagship policies of Europe 2020 (Europe 2020 is a strategy aimed at delivering growth and competitiveness in Europe by 2020). The Digital Agenda emphasises the specific role that ICT has in delivering the objectives of Europe 2020 and includes targets for improving broadband speeds across the EU. Funding for the Digital Agenda will be provided through the Connecting Europe Facility, through which an allocation of Euros 9.2bn has been allocated for this purpose.
7. In August 2012, the Committee submitted its Report on broadband infrastructure to the European Commission as part of an initiative to improve broadband infrastructure. It is anticipated that further information will be provided by the Commission as it develops its policy in this area.

#### **Directives on public procurement**

8. The Internal Market and Consumer Protection Committee of the European Parliament is currently scrutinising proposals for the revision of public procurement rules. Over 2500 amendments have been submitted. Scotland's MEPs and the Scottish Government have



been engaging with the process within the Parliament. Both Ian Hudghton MEP and Catherine Stihler MEP have tabled amendments that seek to incorporate socio-economic considerations into the tendering process. It is anticipated that the Committee will vote on its report on 29 November 2012 with the vote in plenary scheduled for 4 February 2013.

9. The Scottish Government intends to bring forward its own legislation in the shape of a public procurement Bill, which will implement the EU directives. It is understood that the Government Bill is likely to be introduced in March 2013.

10. The European Parliament Office in Edinburgh hosted a seminar on Reforming the EU Public Procurement Regime. At the event for key Scottish stakeholders, Catherine Stihler MEP and Alyn Smith MEP gave their perspectives on the proposed EU legislation and the development of a future public procurement Bill by the Scottish Government. Overall, the Scottish Government's proposals (set out in its consultation) appeared to mirror those at EU level and this was broadly welcomed. However, as the EU directive was still in the process of being considered, the final EU legislative position was not yet clear.

### **Trans-European Transport Network (TEN-T)**

11. The TEN-T seeks to establish a single, multimodal network that integrates land, sea and air transport networks throughout the EU. The aim is to allow goods and people to circulate quickly and easily between Member States and assuring international connections.

12. The Scottish Government, in partnership with the Northern Ireland Executive, has successfully lobbied to have the A75 from Stranraer to Carlisle included as a priority link and as part of the TEN-T core network.

13. The Transport and Tourism Committee of the European Parliament is currently considering the development of TEN-T. The deadline for tabling amendments was 28 September 2012 and the Committee is scheduled to vote on its report on 27 November 2012 with the vote in plenary possibly in January 2013.

14. Funding for the development of TEN-T will be provided through a €50bn Connecting Europe Facility. The Commission proposes that the CEF will provide funding for transport (€31.7bn, of which €10bn will be ring-fenced from the Cohesion Fund); energy (€9.1bn); and telecommunications and ICT (€9.2bn). The creation of the CEF is linked to the wider ongoing negotiations on the EU budget for 2014-20 (Multiannual Financial Framework). It is unclear what the outcome of these negotiations will be and the impact this could have on the CEF.

### **Passenger rights in all transport modes**

15. In December 2011, the European Commission published a non-legislative Communication outlining its intention to improve passenger rights across all modes of transport for EU citizens.

16. The Transport and Tourism Committee of the European Parliament recently considered a report on the Passenger rights dossier, which will be presented and put to a vote in plenary in October. The aim of the Transport and Tourism Committee's report is to influence the Commission's thinking ahead of the publication of legislative proposals.

## **Draft regulation on electronic identification and trusted services for electronic transactions in the internal market**

17. The proposal seeks to ensure mutual recognition and acceptance of electronic identification across borders; and to enhance current rules on e-signatures and provide a legal framework for electronic seals, time stamping, electronic document acceptability, electronic delivery and website authentication.

18. The European Commission adopted the proposal in June 2012, which will now be considered by the European Parliament and the Council.

19. It is understood that Scottish Government officials have met with the UK policy leads to discuss the draft Regulation and with the Government Digital Service (GDS), which is responsible for the implementation and development of the UK solution for citizen Information Assurance / ID Management (IA/IDM) and authentication. Scottish Government officials will continue to work with GDS to develop the IA/IDM and Authentication work stream, which forms part of Scotland's Digital Future.

## **Smart ticketing, multimodal scheduling, information, online reservation**

20. Multimodal transport is the transportation of goods from one country to another under a single contract, but performed with at least two different means of transport. In April 2011, the Commission launched a public consultation on an EU multi-modal journey planner, the objective of which was to collect information and opinions from stakeholders across the EU on the vision, feasibility and possible technical/organisational implementation issues of European and national multi-modal journey planners.

21. Following on from this, a legislative proposal is expected in 2014 that may include rules on access to information, data exchange, and liability. It could also include a proposal to ensure access of private service providers to travel and real-time traffic information.

22. The Scottish Government recently announced plans for the introduction of the Saltire Card, which is designed as the first step in rolling out an integrated ticketing system across different modes of transport in Scotland. Further work is yet to be undertaken, but it is hoped that the system will be operational in 2014.

## **Framework for future EU ports policy**

23. The European Commission held a Ports Policy Conference in September to discuss a new Ports Policy Package, which is expected to be launched in 2013. The conference brought together Commission officials, MEPs, representatives of the Member States and stakeholders to discuss the challenges facing European ports and how ports can unlock their full growth potential as essential nodes of the Trans-European Transport Network (TEN-T). Central to discussions were the new TEN-T guidelines, which foresee the introduction of 10 implementing pan-European corridors<sup>1</sup>. The conference also discussed the results of the recent stakeholder consultation (launched in June 2012).

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<sup>1</sup> Each corridor must include three transport modes, three Member States and two cross-border sections at least. All corridors start and/or end in a seaport and cross one or more inland ports.

24. The conference itself was addressed by a number of senior figures, including Commission Vice-President Siim Kallas, who is responsible for the transport portfolio. A series of plenary sessions focused upon the macro ports policy and the role of organised labour, followed by six workshop discussions: (i) Port's Performance in the horizon 2020; (ii) Concessions in ports; (iii) Public and Private funding for EU Ports; (iv) Ports in the new TEN-T Concept; (v) Single Market for Port Services; and (vi) Administrative simplification in ports.

25. Following the consultation phase, and the drafting of a detailed impact assessment in early 2013, the Commission is expected to bring forward proposals in autumn 2013. These proposals are expected to support the reduction of the administrative burden in ports, improve the transparency of port financing and address port service issues.

### **Revising passenger ship safety**

26. The European Commission is currently undertaking a passenger ship safety legislative review, which comprises an evaluation of the current legislation. The Commission recently conducted a consultation on passenger ship safety, which included aspects relating to the recent Costa Concordia accident. The Scottish Government intended to make a submission to the Commission consultation and the Committee has requested a copy of this.

### **Safeguarding Europe's Water Resources (EU water blueprint)**

27. The EU water blueprint, which is expected to be introduced by mid-November 2012, will focus on enforcement and implementation of existing laws rather than new legislation. The blueprint – in effect a mandatory review of the EU's water legislation – is aimed at improving efficiency, security of supply and strengthening enforcement. It also aims to integrate EU policies to improve conservation in agricultural and cohesion programmes. A conference will take place on the proposals in late November 2012, with the European Council's conclusions on the proposal due before the end of the year.

Aileen McLeod MSP  
Former EU Reporter  
Infrastructure and Capital Investment Committee  
October 2012

**INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE  
EU ENGAGEMENT 2011 - 2012**

**EU Reporter: Aileen McLeod MSP**

**Agreed committee priorities**

- Review of State aid guidelines for broadband networks
- The Digital Agenda for Europe
- Directives on public procurement
- Trans-European Transport Network (TEN-T)
- Passenger rights in all transport modes
- Draft regulation on electronic identification and trusted services for electronic transactions in the internal market
- Smart ticketing, multimodal scheduling, information, online reservation
- Framework for future EU ports policy
- Revising passenger ship safety
- Safeguarding Europe's Water Resources (EU water blueprint)

**Committee actions**

*Introduction*

1. The Committee agreed its EU priorities on 22 February 2012. The Committee also agreed to seek details from the Scottish Government on the level of engagement that Ministers and officials had undertaken, or planned, in relation to each of the Committee's priority topics. The Committee considered the Government's response at its meeting on 10 July 2012.
2. Although Aileen McLeod left the ICI Committee in September, she prepared this report as well as a written update on each of the Committee's EU priorities, both of which were considered in October. The ICI Committee agreed to note this report and to submit it to the EERC.

*Review of State aid guidelines for broadband networks*

3. In the course of taking evidence from Scottish stakeholders and the Scottish Government in relation to the inquiry into broadband infrastructure (2011-12), the Committee questioned witnesses on the EU funding mechanisms for rolling out superfast broadband and on the level of support provided by central government for this purpose. The Committee included discussion of these issues in its Report.
4. The Committee agreed to consider the draft EU guidelines in conjunction with follow-up work on its broadband infrastructure inquiry. The Committee will undertake this follow-up work at a suitable point later in the Session.
5. In September 2012, the Committee submitted its Report on broadband infrastructure to the European Commission in response to the consultation on the *Revision of the guidelines on public funding to broadband networks*.

*The Digital Agenda for Europe*

6. In the course of taking evidence from Scottish stakeholders and the Scottish Government in relation to the inquiry into broadband infrastructure (2011-12), the Committee questioned witnesses on the EU targets for faster broadband speeds. The Committee included discussion of this issue in its Report.
7. The Committee agreed to monitor the progress of the Digital Agenda and the sourcing of potential EU funding for Scotland in conjunction with follow-up work on its inquiry into broadband infrastructure. The Committee will undertake this follow-up work at a suitable point later in the Session.
8. The Committee also agreed to monitor the European Commission activity in relation to high-speed broadband networks and to submit its Report on broadband infrastructure to the Commission in response to the consultation on the *Initiative to reduce the cost of rolling out high speed communication infrastructure in Europe*.

*Directives on public procurement*

9. In the course of general evidence-taking sessions in June and October 2011, the Committee questioned the Cabinet Secretary for Infrastructure and Capital Investment on the EU framework for public procurement and its connection with any future Scottish legislation on the subject.
10. The Committee also raised relevant issues regarding the development of the EU public procurement directives during informal briefings with Scottish Government officials and the Jimmy Reid Foundation (in April and June 2012, respectively). The Committee will continue to raise relevant EU issues during a future briefing from the David Hume Institute, which will include participation by the Scottish Futures Trust, and in the course of its scrutiny of the review of public procurement in Scotland and the forthcoming Public Procurement Bill.

*Trans-European Transport Network (TEN-T)*

11. The Committee agreed to include discussion on the TEN-T in conjunction with its work on the update of the STPR and NTS and in relation to future consideration of high speed rail developments.
12. The EU Reporter undertook to keep the Committee updated on the European Parliament consideration of TEN-T and on developments relating to the associated funding stream (Connecting Europe Facility).

*Passenger rights in all transport modes*

13. The Committee agreed to monitor the development of the European Commission proposals in relation to transport rights.

*Draft regulation on electronic identification and trusted services for electronic transactions in the internal market*

14. The Committee agreed to monitor the development of the European Commission proposals in relation to the framework. The EU Reporter undertook to keep the Committee updated on progress regarding the proposal and made contact with the relevant officials in the Scottish Government on the issue.

*Smart ticketing, multimodal scheduling, information, online reservation*

15. The Committee agreed to monitor the development of the Commission's proposals for lorry parking slots in connection with maritime freight along with other Intelligent Transport System-related proposals.

*Framework for future EU ports policy*

16. The Committee considered that the proposals could merit further consideration and, as a first step, instructed the EU Reporter to seek further details from the European Commission and report to the Committee.
17. The EU Reporter met, in July 2012, with Scottish Government officials in Brussels and, in September 2012, with the Head of the Ports and Harbours Team in Edinburgh. The Reporter also made contact with the lead officials in the European Commission Directorate-General for Mobility and Transport and the Transport Secretary of the UK Permanent Representation in Brussels.
18. In addition, the Reporter approached the British Ports Association, which provided a briefing ahead of a conference on Ports Policy in Brussels. The Scottish Parliament European Officer provided feedback to the Committee from the conference.

*Revising passenger ship safety*

19. The Committee requested a copy of the Scottish Government response to the European Commission's consultation on passenger ship safety. The EU Reporter undertook to keep the Committee updated on progress regarding the proposal and to assess any potential implications for Scotland.

*Safeguarding Europe's Water Resources (EU water blueprint)*

20. Due to its relevance to the Water Resources (Scotland) Bill and the forthcoming public procurement Bill, this topic was subsequently added to the Committee's original list of EU priorities. However, because the topic sits with the Rural Affairs, Climate Change and Environment Committee, the ICI Committee has agreed to provide updates on any work that it undertakes to the Rural Committee.
21. In the context of its scrutiny of the Bill, the Committee questioned witnesses on their views of the development of EU water initiatives. The Committee intends to raise this issue with the Deputy First Minister/Cabinet Secretary when she gives evidence to the Committee on the Bill in November 2012.
22. In addition, the Committee agreed to seek details about how the Scottish Government has engaged and plans to engage on the EU policy as it develops, and what the Government considers are the implications for Scotland and in particular whether it considers there to be any potential subsidiarity concerns. The response from the Scottish Government has not yet been received.

**Other EU engagement**

23. In the course of general evidence-taking sessions in June and October 2011, the Committee questioned the Cabinet Secretary for Infrastructure and Capital Investment on potential EU funding streams for large infrastructure and housing projects, such as through structural funding and the JESSICA programme.

24. In its reports on the next ScotRail franchise (May 2012) and on the Draft Budget 2011-12 (November 2011), the Committee compared the performance and cost of Scotland's (and the UK's) railway to cheaper examples on the European continent.

### **Subsidiarity**

Number of proposals received: 2

25. In February 2012, the Committee considered two directives that related to public procurement. The Committee considered the directives together because each raised the same subsidiarity concern, namely that a UK procurement body should be established. The UK and Scottish governments considered that this element of the directives should be revised because it did not take account of the division of legislative competence in the UK, where procurement is devolved, which therefore made the plans to create a UK body unworkable.

26. As advised by the EU Reporter, the Committee agreed that the directives raised subsidiarity concerns. The Committee communicated its view to the relevant House of Lords EU Sub-Committee and the House of Commons European Scrutiny Committee. The Committee's response contributed to the decision by the House of Commons to raise a Reasoned Opinion with the European Commission, which subsequently led to the revision of the directive in line with the Committee's opinion.

### **Number of issues referred to European & External Relations Committee**

27. None. The Committee has successfully incorporated its consideration of EU issues with other topics in the work programme, such as its broadband infrastructure inquiry, scrutiny of the Water Resources (Scotland) Bill, and informal briefings on public procurement. The Committee has, therefore, not had any call to refer issues to the EERC.

### **Other comments**

28. The Committee recognises that it is important to engage with relevant EU issues at an early stage of policy development in order to have the best chance of influencing the process. The Committee will continue to plan its EU work programme with the aim of being able to engage with Scottish stakeholders and the European institutions at the earliest opportunity.

Aileen McLeod MSP  
Former EU Reporter  
Infrastructure and Capital Investment Committee  
October 2012