



The Scottish Parliament
Pàrlamaid na h-Alba

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

AGENDA

16th Meeting, 2012 (Session 4)

Wednesday 3 October 2012

The Committee will meet at 10.00 am in Committee Room 5.

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

Philip Hogg, Chief Executive, Homes for Scotland;

Kennedy Foster, CML policy consultant for Scotland, Council of Mortgage Lenders;

Jim Hayton, Policy Manager, ALACHO;

Graham Harper, Policy Manager, Scottish Federation of Housing Associations.

2. **Water Resources (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

David Crookall, Environmental Specialist Advisor, SSE;

Andy Limbrick, Environment Consultant, Energy UK;

Stephen Freeland, Policy Executive, Scottish Environmental Services Association.

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

Green Deal (Acknowledgment) (Scotland) Regulations 2012 SSI/2012/214

ICI/S4/12/16/A

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The papers for this meeting are as follows—

Agenda item 1

PRIVATE PAPER

ICI/S4/12/16/1 (P)

Written evidence

ICI/S4/12/16/2

Agenda item 2

PRIVATE PAPER

ICI/S4/12/16/3 (P)

Written evidence

ICI/S4/12/16/4

Agenda item 3

Note from the Clerk

ICI/S4/12/16/5

[Green Deal \(Acknowledgment\) \(Scotland\) Regulations 2012
SSI/2012/214](#)

Infrastructure and Capital Investment Committee

16th Meeting, 2012 (Session 4), Wednesday, 3 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.

- ALACHO
- Homes for Scotland
- Scottish Federation of Housing Associations

WRITTEN EVIDENCE FROM THE ASSOCIATION OF LOCAL AUTHORITY CHIEF HOUSING OFFICERS (ALACHO)

Introduction

As the representative body for Scotland's local authority chief housing officers, ALACHO welcomes the opportunity to provide evidence to the Committee's meeting on 3rd October, and submits the written evidence below in support of our position.

ALACHO Response

ALACHO understands the Committee have agreed to focus its consideration of the draft budget on the following key themes, and has therefore responded to each in turn:

- 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?**

Given we're only in the first few months of the new affordable housing supply programme (AHSP) management system most councils would say it's a little too early to reach firm conclusions on progress. However, the key components of the new regime, namely : three year resource planning assumptions; single integrated council / RSL investment programmes governed by priorities identified in local housing strategies (LHS) and set out in strategic local programmes (SLPs); and a degree of devolved programme management by councils, had all been previously sought by councils and were therefore strongly welcomed. Consequently, local councils have a significant interest in ensuring the new arrangements are successful. The new local delivery focus requires a fair degree of partnership and co-ordination between councils RSLs and indeed the private sector to ensure deliverable programmes are developed and output targets achieved. So far this seems not to have been a problem, and most councils appear to be submitting robust SLPs.

Despite some RSLs being concerned that they would be disadvantaged at the expense of councils favouring their own projects for development, this does not seem to have occurred, with most local SLPs appearing to deliver the intended "mixed economy of provision" specified in the guidance supporting the new regime. Of more significance for the future perhaps is the fact that several councils report local RSLs withdrawing from further new housing development due to perceived inadequacies resulting from changes to the grant (subsidy) regime. Time will tell how many RSLs (and indeed councils) can "stay in the game" at grant rates of £40,000 and £30,000 respectively. Moreover, some councils also question the equity of higher government grant contributions being available for RSLs compared to themselves. That said, councils appear to be reasonably confident they and their partners can deliver on the government's affordable housing targets over the next three years, even if beyond that things are less certain, particularly regarding RSL contributions.

Overall, whilst programmed expenditure is likely to be sufficient to meet current government output targets, most councils would say the current output of social housing does not come

close to meeting the absolute needs identified in local housing strategies. For this to occur would require a significant addition to the national affordable housing budget, and quite possibly upward movement in grant levels.

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?

Looking across the three year time horizon of the current programme, councils seem confident that the financial capacity exists to deliver on the government's targets. Local SLPs are the key delivery document. These were formulated on the basis of known grant rates and funding capacity (council and RSL) so should be pretty authoritative documents in terms of a three year delivery period. Looking to the longer term (i.e. 2015/16 and beyond) councils seem *reasonably optimistic* that, given continued subsidy of £30,000 a unit, they could collectively meet Bramley's estimate of a notional 2000 council units per year (although this will depend on resource assumptions being known well in advance of the next three year period from 2015/16 onwards). Any optimism must of course be tempered by the as yet unknown impact of welfare reforms on council revenues, as any reduction in forecast revenues would diminish resources available for funding new house building. Welfare reform has of course has the potential to impact equally on RSLs, who, due to perceptions of insufficient grant subsidy and a different lending regime from councils, seem less confident about meeting Bramley's "targets". If Government is indeed predicating its analysis of capacity on Bramley's report, it would be wise to revisit the research assumptions on a regular basis taking account of changed economic and financial circumstances, and to regularly check capacity with social housing providers.

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?

ALACHO is not aware of any *systemic* issues with lack of land supply inhibiting the provision of new affordable housing. A few councils do report this as an issue, usually in areas of existing high market pressure. However, many more report the stalling of developments under Section 75 agreements (where developers are obliged to contribute an element of total site capacity for social housing in return for planning permission). This suggests that prevailing economic and housing market conditions (especially lack of mortgage finance at the starter end of the market) are a more significant problem than land supply per se. A market upturn would potentially kick-start some of the S75 deals which may be stalled at the moment. However, it does not appear that the council new supply target is being constrained by the performance of the market sector at this stage. Doubtless, under the new AHSP management regime, councils and Scottish government will be working closely to monitor overall output to assess whether output is being constrained by land supply, performance of the market sector, or any other factor.

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?

The potential impact of welfare reforms on councils was mentioned above. The net costs of new council house building (i.e. deducting government grant) are effectively funded from surpluses on housing revenue accounts. To the extent surpluses are less than forecast, due for example to a reduction in projected rental income resulting from the impact of rents being paid direct to tenants(or for example, a requirement to meet higher energy efficiency standards) councils ability to service increased debt is diminished. Elected members will then have to decide whether to increase rents to compensate or to reduce new building. Because of differing lending regimes, the potential impact on lender decisions would be confined to the RSL sector, whereby lenders may be more reluctant to lend if they feel their clients' net income will be insufficient to repay loans, whether as a result of welfare reform consequences or any other factor.

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?

This is essentially a question for government although, as mentioned above, given that, as requested, an element of devolved (but not absolute) programme management has been afforded to local government under the new management arrangements, councils have a vested increase in making the new scheme successful, and will be working closely with Scottish Government colleagues to this end.

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?

It certainly looks like there may well be fewer RSLs developing in future, and certainly post 2015 when the current programme ends. This need not be a bad thing, if those remaining are able to generate scale efficiencies in procurement, whilst retaining the generally acknowledged benefits of local management and service delivery provided by local RSLs. The extent to which council house building will fill any gaps emerging as RSLs cease developing remains to be seen.

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.)?

Given the current economic climate and the need to maximise resources for affordable housing the assumptions behind the 2/3 social rent 1/3 affordable housing split in the programme are probably justifiable. Although outstanding needs could easily justify spending the whole allocation on social housing, ALACHO accepts the premise that there are other forms of need, and the principle of maximising output in the interests of those on middle incomes, testing new forms of provision, and supporting construction output, is reasonable in the circumstances.

Being largely a function of historical accident, spatial resource allocations currently have no discernible co-relation with patterns of need. It is to be hoped that the new formula based model of resource allocation currently being finalised between Scottish government and COSLA will go some way to shifting the basis of capital allocations for affordable housing on to a more transparent and needs based footing.

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.

There is some evidence that attempts are being made to take account of climate change issues within the AHSP budget. Higher grant benchmarks are available for greener homes, and a specific £10 million greener homes challenge fund has been announced. Whilst this is very welcome, for most councils the key task in the medium to long term will be to retrofit their existing housing stock to meet higher energy efficiency standards. Unfortunately it could well be that the costs of this exercise will diminish sums available for investment in new supply.

WRITTEN EVIDENCE FROM HOMES FOR SCOTLAND

Context

Homes for Scotland is the representative body of the Scottish home building industry, with nearly 200 full and associate members. Its members build around 95% of all new homes for sale built each year, as well as a significant proportion of the affordable housing output annually.

Questions posed and responses from Homes for Scotland

Q1. 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?

HFS Response - From what we understand the Scottish Government has demonstrated that on paper the funds allocated to the affordable housing programme can deliver the affordable homes target set. We also understand that 2013/14 allocation was to be the lowest within the 3 year budgeting period. Some of the questions/concerns we have are listed below:

- How much of the target relies on the continued success of NHT at low funding at £2k per unit? If round 2 of the NHT and future phases deliver less than forecast, what impact will this have?
- Are the targets predicated on the growth of private supply to supplement the affordable housing programme through S75 contributions? Private sector completions are at extremely low levels, with completions in 2011 the lowest since the second world war.
- Impact of the challenging cap levels. The Government seems confident that RSLs and Local Authorities have the capacity to deliver at lower cap levels for the short term. Although believing strongly that efficiencies should be promoted, we do have concerns about the sustainability of the cap levels. Our concerns relate also to the procurement of construction services, where desperation to win tenders has forced contractors to reduce prices drastically with the aim of keeping work programmed and construction workers in jobs, but these levels are unsustainable in the medium to longer term and its not unlikely that we will see the loss of more construction firms before the recession is over. We are pleased to note that a review of procurement is soon to be undertaken and are hopeful that the result will be a transparent system which allows early partnerships to be formed.
- „Payment on completion“, when funding is paid to developers once the homes are built, looks set to continue. This approach may help the Scottish Government be creative in budget assumptions, but it can cause difficulty to the organisations

delivering the homes. Short term finance must be sought from other sources to front fund projects. Up front funding continues to be a problem for the industry.

- In 2011, the industry welcomed the launch of the Innovation Fund. This fund allowed all constituted housing organisations, including the private sector, to bid directly for affordable housing funding to deliver development projects. Although we have concerns about the number of resources that can be wasted through blind bidding, we were encouraged by the flexibility of the fund and the creativity it inspired. No allocation for a repeat of this fund has been made. We would be extremely keen for this fund to become a long-term, programmed feature of the affordable housing budget with bidding „windows“ for the sector to put forward ideas they have for the delivery of much needed new homes.
- Within the overall budget, the funds allocated to housing supply are tied to the „affordable housing investment programme“. This of course brings with it rigidity on how this money can be spent. Homes for Scotland has some ideas on how a few tweaks to existing programmes could maximise effectiveness/take-up. An example of this is New Supply Shared Equity. This would involve a review of what is termed „affordable“ in certain market areas to ensure it is realistic in terms of what can be provided within areas of high demand while still within reach for those currently locked out of the market. The benefits of leveraging that these changes could achieve have the potential to far outweigh any concerns relating to the intended use of these „public funds“.

Around 80% of affordable housing supply funding is allocated directly to Local Authorities for delivery through Resource Planning Assumptions (RPAs). With well informed local housing strategies and investment programmes, Local Authorities should well be best placed to plan and deliver affordable housing in their areas. Many Local Authorities will wish to develop their own council housing, while some will have existing framework arrangements with RSLs. What about the private sector? How do they gain access to funding from Local Authorities to deliver affordable housing projects? With challenging grant levels and the need to rely on cross subsidy, all housing sectors must be given the opportunity to be involved. What is a private home builders route in? We liked the Innovation Fund because it acknowledged the role of the private sector and offered private companies a direct route in. Could this be mirrored in the RPAs?

Q2. 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?

HFS response - No additional comments other than to re-emphasise the importance of the private sector to work along with the “social” sector for delivery going forward.

Q3. 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?

HFS Response - Housing land supply has not been the main determinant of delivery of affordable housing. Housing completions statistics show that, while the private sector has been strongly influenced by the economic context – increasing output during periods of strong demand and money supply, decreasing output after 2008 as the recession took hold – affordable housing completions have remained relatively-stable. The biggest increase in completions came in the period 2008 – 2010 and relates clearly to the acceleration by the Scottish Government in that period of the Affordable Housing Investment Programme. That would suggest very clearly that the biggest influence on affordable housing numbers is the level of public investment available through what is now termed the Affordable Housing Supply Programme.

Housing land supply has been constrained to a greater or lesser extent for many years, through both the period of growth prior to 2008 and subsequently. If land supply had been a constraint on affordable housing, then perhaps there might have been problems in spending the AHIP/AHSP. This has not been the case. Local Authority Strategic Housing Investment Programmes (SHIP) contain many more potential projects than can be funded and delivered. Where local issues of underspend arose, it has been a simple matter to find projects elsewhere to take up the money.

The Scottish Government's annual bulletin monitoring planning consents for affordable housing shows a consistent pattern of over 70% of all consents annually for affordable housing being for projects delivered entirely by the public sector i.e. Housing Association projects or Council house-building. This reinforces the point that the primary method of delivering affordable housing remains through public subsidy. That must always be the case – private developers are businesses and cannot be expected to provide subsidy to affordable housing. Where they assist in delivering land or other types and tenures of affordable housing, it remains within the context of delivering mixed-tenure developments which are viable.

Housing land does constitute a constraint on house building generally. Scottish Planning Policy requires planning authorities to ensure the availability at all times of a minimum 5-year supply of effective housing land measured against the housing requirements in their development plans. In reality few Councils succeeded in doing this either in the growth years or more recently during the recession. At 2011, Homes for Scotland's monitoring of housing land supplies across Scotland showed that only 3 or 4 of the 29 mainland authorities have a 5-year effective land supply. The Scottish average is 60% of the required supply; in the worst cases there is less than 40% of the required supply.

In the growth years, the consequence of a lack of supply was not a constraint on affordable output, but a driving up of land prices which drove higher house prices, contributing to the problem of affordability. A second consequence was that it became much harder for Housing Associations to buy land. While this has not yet been a major constraint on output in national terms, it has created a situation where land in the control of Housing

Associations is now at a low level. Land supply may therefore become a problem in the future, even if it has not been one up to now. The value of housing land still remains high, especially in stronger market areas, and since these are often also the areas with high affordable housing need the Housing Associations may still have difficulties in acquiring land in the future. However, it is often in these strong market areas where there is most public and political resistance to releasing more development land. Examples of such areas are Edinburgh; East Lothian; North-East Fife; Stirling; East Dunbartonshire; East Renfrewshire; Aberdeen.

Scottish Planning Policy recognised the need to make available land for all types and tenures of housing, and proposed that the solution to land shortages and land prices was that development plans should identify a “generous” land supply. Clearly that generous supply has yet to work through the planning system based on the figures above. More worrying, the slow pace of plan production under the 2006 Act is delaying the identification of these new “generous” supplies. Homes for Scotland’s monitoring of development plan progress, based on the timescales in each Council’s annual Development Plan Scheme, shows that around 75% of plans across Scotland have fallen behind schedule. It will probably be at least three years until comprehensive Local Development Plan coverage exists in Scotland. Whether these plans will indeed identify generous land supplies in the face of public and political opposition remains to be seen.

If land price was a barrier to Housing Associations building land banks, then it might have been expected that they would take advantage of the recession to acquire land no longer being pursued by the private sector. This has happened to a degree, and in addition there has been greater co-operation between public and private sectors to promote mixed-tenure developments where the affordable component could help kick-start the wider development. In addition, the National Housing Trust and Innovation Fund funding streams have encouraged some joint working. However, the Council audits of housing land supply do not suggest that Housing Associations have been very successful in acquiring significant new land holdings.

Even within a constrained market, planning authorities are not contributing to promoting development by processing planning applications more quickly. If the application includes an element of affordable housing, then this is delayed along with the private development, although Housing Associations seem to fare no better in terms of speedy decisions.

All the evidence would suggest that the performance of the private house building sector is not a major constraint on affordable housing output. Undoubtedly more private activity would result in more land coming forward in areas where planning affordable housing policies apply, but there still needs to be the resources available to subsidise social-rented housing. It also needs to be understood within planning and housing authorities that the private sector has limited capability to provide other options with little or no subsidy. Provision such as shared-equity or discounted sale are possible, but in limited quantity and only where Councils accept that these contribute towards meeting affordable needs. That acceptance is far from universal.

The levels of subsidy per unit for affordable housing have fallen sharply, both in terms of Housing Association Grant and the benchmarks for other funding streams. The consequence has been that Housing Associations have been funding higher proportions of the development costs from their own reserves or commercial borrowings. There are clearly

limits to how much they can fund in this way. Funds committed in this way clearly are not being used to purchase new land.

Conclusions

Homes for Scotland supports the views of other housing commentators that the principal method of securing more affordable housing is subsidy through the Affordable Housing Supply Programme.

Land for housing has not so far been a significant constraint on delivering affordable housing. However, the price of housing land has meant that the supply of land controlled by Housing Associations and Councils has not been replenished quickly enough and problems may arise in the future.

Particular problems of land supply have been experienced in areas of strong market demand, and in these areas there may well be emerging land supply problems. A generous land supply therefore remains a key future requirement for all housing delivery. It will ensure that all sectors can access sufficient land; that the price of land will be held down.

Land supply is one part of the planning process. The speed and efficiency of planning decision-making in Councils is clearly a concern, and planning reform needs to drive much quicker decision-making.

The financial capability of both Housing Associations and developers to deliver affordable housing is increasingly-constrained.

Q4. 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?

HFS response - Any impact on the health of an organisation's finance will have an impact on its ability to expand. There is undoubtedly a risk that the changes to the welfare system being imposed will risk resulting in higher arrears for an organisation to manage. Higher arrears will impact on gearing ratios and will provide a much less attractive investment for corporate funders/lenders in approving projects going forward. At the very least it could make private borrowing more expensive to reflect the higher risk. With the changes looming and negative feeling/comments about the impact that they will have spreading across the sector, confidence in the rented sector is very likely to be damaged. At a time when provision of mid market and market segments is being encouraged to meet need, we have concerns about the impact this knock in confidence could have on new entrants to this market including private developers. Given that the budget is based on ambitious

assumptions for mid market rent to meet affordable housing targets at varying funding caps, this may have an impact on delivery in practice.

Q5. 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?

HFS response - See comments above regarding RPAs. The system in place, with Local Authorities submitting strategic investment plans to central government for sign-off, should provide sufficient oversight. We would like to see a direct „route“ for the private sector to help deliver in RPAs. We believe that a number of central pots must remain centrally managed such as New Supply Shared Equity and NHT. We would like a central pot for Innovation to continue and be re-introduced into the programme.

Q6. 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?

HFS response - We would promote efficiencies to ensure public funds are spent in the delivery of new homes, and not supporting the organisation that is doing the delivering, and for that reason if the nature of providers shift because of the lower grant rates on offer then so be it. What must be monitored, however, is the delivery of homes where they are needed. We must not let rural communities lose out at the expense of a central Scotland focus. Higher grant caps should be allowed to reflect local circumstances such as higher construction costs in outlying areas.

Q7. 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.)?

HFS response - We are not sure that the 2/3rds social rent split was ever justified. We understand with the criticism from some organisations/commentators (following a misprint in the pre-election manifesto), that the Scottish Government was pressured into defining their commitment to „affordable housing“; however we would promote the continued use of „other“ affordable tenures to meet the needs identified within local housing strategies. New forms of affordable housing have already demonstrated just what they can achieve through leveraging investment and at a time when housing production is at an all time low, promotion of new supply across all tenures should be the overall focus. As mentioned above, we also have ideas on how a few tweaks to existing programmes could help maximise their potential. At this time getting Scotland out of the recession should be at the forefront.

Q8. 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.

HFS response - Although being sympathetic to the climate change agenda, HFS cannot support the proposal to further increase energy efficient standards of new homes through regulation, at this time. New homes built today are already 70% more energy efficient than they were in 1990. Increasing the standards and therefore costs of building a new home

even further when supply and affordability are in crisis is the wrong thing to do at present. Additionally, it does not make economic sense, with the resultant cost of carbon to achieve these proposed higher standards being way above any recognised benchmark value. HFS was pleased that the Scottish Government placed such a strong emphasis on retrofitting existing homes in its draft Sustainable Housing Strategy. New homes built being built today are currently only replacing Scotland's 2.33million existing homes at a rate of around 0.5% per annum. Clearly the big „wins“ for climate change are in upgrading the existing stock. HFS has some useful ideas on how we can work together to ensure climate change targets are achieved. Any decision relating to climate change however, whether in new build or existing homes, must not compromise the housing market or wider economy.

WRITTEN EVIDENCE FROM THE SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

1 Introduction

1.1 As the national representative body for housing associations and co-operatives in Scotland, SFHA welcomes the opportunity to respond to the Infrastructure and Capital Investment Committee's call for evidence to inform its scrutiny of the 2013-14 Budget. We are pleased that the Committee is focusing its scrutiny on housing spending.

1.2 Housing associations and co-operatives in Scotland own, manage and maintain 46% of the country's affordable rented housing stock and 11% of the total stock. This represents 274,996 homes across Scotland. In addition, they provide a range of broader tenancy sustainment and community regeneration services across the country, from the most densely urban to the most remote rural communities. They operate in some of the poorest communities in our country.

1.3 Housing associations and co-operatives are the principal developers of new, genuinely affordable rented housing in Scotland. Between 2007-08 and 2011-12 Scotland's housing associations and co-operatives completed over 90% of all new social housing built in Scotland.

1.4 This evidence outlines our response to the specific questions provided in advance by the Committee.

2 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?

2.1 Generally speaking it is too early to say. There are two issues currently which can be learned from:

- Many housing associations and co-operatives do not yet have their programme agreements for the current year. The SFHA acknowledges that this situation has arisen due to the implementation time required for the new investment framework. However, it will cause significant delays to site starts. To avoid this in future years, it is imperative that programme agreements are in place of 1st April each year.
- We know of at least one local authority that has decided not to pursue any joint working with their housing association partners. This is regrettable, given that there is only one housing association operating in the area concerned, one with an exemplary track record on development. The SFHA is lobbying on behalf of the association and we are aware that Scottish Government officials share our concerns. The Scottish Government, rightly, wishes to see a spread of developers in each local authority area and we would hope that the guidance issued by the Scottish Government will be adhered to. In terms of local delivery, local authorities and housing associations/co-operatives have been working in partnership for a number of years. To our knowledge, the new arrangements have not affected this, with the exception of the issue highlighted in the preceding paragraph.

2.2 It is the SFHA's view that the programmed expenditure on new affordable housing supply is unlikely to meet the Scottish Government's objective to build 30,000 homes for social rent and other tenures. Many housing associations and co-operatives have indicated to both the SFHA and to the Scottish Government that they are unable to develop new supply at the lower grant rates. Whilst the flexibility introduced to the subsidy framework is welcomed, it remains difficult to deliver genuinely affordable high quality social rented housing at these subsidy benchmarks. At the previous benchmark target level of £64.5k/unit, the rent which had to be charged was broadly affordable to most social rent tenants on low incomes and was sufficient to meet the running costs and loan repayments of a new dwelling in the long term, albeit not in remote rural areas and in some urban settings. The current framework requires housing associations and co-operatives to find an additional £20-25k, either from reserves or additional borrowing. Additional borrowing, if it can be secured, increases the rent which has to be charged to support repayments.

2.3 The SFHA is aware of the increasing challenges for housing associations and co-operatives seeking to access private finance in the current economic climate. We have been exploring members' recent experiences with lending institutions. There appears to be a limited number of potential sources of funding, with most lenders unwilling to lend for more than five years compared to the thirty year terms commonly offered previously. Some lenders are unwilling to lend to anyone other than existing customers and are taking the opportunity to re-price existing loans as a condition of new borrowing. Re-pricing of an existing loan is also becoming common as a condition of consent to a specific action (consent to specific actions being a requirement of most loan agreements). All of this is making it difficult for many in the sector to fund new supply and/or refinance to improve existing stock. SFHA will be seeking to discuss this in more detail with lenders, their representative bodies and with the Scottish Government.

2.4 The Scottish Government has been encouraging our sector to use its reserves to help fund new supply. These reserves have been built up over a long period of time and are earmarked primarily for the future maintenance of stock and for prudent risk cover. They can only be used once and there is limited scope for them to be used for other purposes.

2.5 In addition to the funding challenges created by the current economic climate, there is also the threat to the sector's rental stream, upon which lenders rely, presented by welfare reform. We have previously given evidence to the Committee about the potential impact of welfare reform on our sector. The planned changes and restrictions to Housing Benefit generally will impact on demand for housing, levels of household indebtedness, and potentially increase homelessness. We have highlighted that the combined consequence of the direct and indirect impacts of the reforms will reduce household income in our sector by around £220m in total over the period from now until 2016-17. Many/most working age benefit claimants face reduced support under the new Universal Credit, which will be paid direct to the claimant. Currently, Housing Benefit claimants have the right to choose to have it paid direct to their landlord and 96% of tenants in our sector choose to do so. . When the new integrated Universal Credit begins its phase-in from October 2013, rent collection will become more costly, less efficient and more precarious.

2.6 All of this provides the backdrop for a number of stalwart developers in our sector deciding that they cannot continue to develop, given the current terms. This is at a time when the Scottish economy needs the stimulus that investing in new affordable housing supply could provide. In our parallel evidence to the Finance Committee, we have

highlighted this economic case and have emphasised that there are significant numbers of shovel ready projects that our sector could bring into if the right funding is in place.

3 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?

3.1 We are not in a position to comment on local authority financial capacity.

3.2 With regard to the research referred to, The Housebuilding Capacity of Local Authorities and Registered Social Landlords in Scotland, Bramley et al 2010, we would wish to make some observations.

3.3 SFHA was represented on the steering group for this Scottish Government-commissioned research. We made known our serious concerns about the over-simplification of the main conclusion, i.e. that “social landlords can build more new homes for less”. We emphasised to the Scottish Government that the report did not take into account several significant factors, such as the looming costs of improving existing and new build stock to meet climate change standards, decreasing income through cuts to Housing Benefit and the risks inherent in direct payment if housing costs to tenants, plus the cost of the wide range of services beyond bricks and mortar which associations and co-operatives provide.

3.4 On the day the research was published, SFHA’s Chief Executive, Dr. Mary Taylor, said:

“While we are at the forefront of efforts in maximising the return on the public pound, the SFHA finds this study and its conclusions to be flawed. It was produced using mainly desk top modelling and not tested with the housing providers which it analyses.”

“Housing associations and co-operatives build for and rent to those in greatest need, many of whom have low incomes. It does not make sense to put rents beyond the reach of those in low paid jobs or to rely on Housing Benefit to take the strain. It is more cost effective in the long run to put a decent amount of public subsidy into the construction of homes to keep rents affordable”.

Since the research was published, our sector’s operating environment has become significantly more challenging. In 2010, one could assume that lenders would continue to have the funds and desire to continue lending to our sector on a broadly similar basis as previously. However, the private finance market now is not nearly as benign as it was in 2010. Long-term borrowing generally is not now available (see 2.3 above).

3.5 In correspondence (unpublished) with the Scottish Government, Professor Bramley has conceded that there are issues with the modelling of the capacity of one of the associations used as a case study in the research. Professor Bramley has conceded that a certain cautionary note is needed about the conclusions of the study regarding baseline level of capacity in the RSL sector – it is likely to be rather below the figure published in the

report. A key conclusion from the research was that there is not a load of spare capacity at the moment and that there is a case for creating more headroom with slightly higher rents, i.e. mid market rent levels and not genuinely affordable social rent levels.

3.6 For all of these reasons, we would urge the Scottish Government not to predicate its projections about the house building capacity of our sector on the 2010 research.

4 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?

4.1 The SFHA is unaware of any national shortage of land availability.

4.2 In a small number of local authority areas, where high market pressure exists, there is a limited supply of land, but not to the extent where this would pose any short-term issue.

4.3 In more remote areas, there remains a shortage of land that can be developed with reasonable infrastructure costs.

4.4 Many of our members report that S75 sites (where land is provided by a developer at no cost as a condition of planning) are stalled due to the developer's unwillingness to develop housing for sale, which is in turn caused by market conditions. These sites will play a more significant role in future if subsidy targets are to stay at the existing low level. It is important that the planning system continues to press for such contributions.

5 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?

5.1 We would agree that while "mid rent" used for the National Housing Trust is pitched at Local Housing Allowance (LHA) levels, this should not create affordability issues for the target client group deemed by the provider to be able to afford it (i.e. where there is a local market for the product). However, any future changes to the LHA may create its own set of affordability issues for mid market rent.

5.2 As we have referred to above, it is proposed that Universal Credit will be paid direct to the claimant and that it will be paid monthly in arrears. Although discussions are continuing between the Department for Work and Pensions (DWP) and social landlord representatives as to how to protect vulnerable tenants from getting into arrears with their rent, we remain to be convinced that sufficient protection will be in place to ensure that

support for rent costs will reach landlords. SFHA is working closely with the Scottish Demonstration Project in an advisory and support capacity, in order that the lessons learned can be shared with the sector, subject to DWP permission.

5.3 Despite informed projections having been made about the impact of direct payments on rent arrears in our sector, it remains a huge unknown. We know that lenders share our grave concerns about the potential impact, as they have lobbied alongside us throughout the passage of the legislation. We await the learnings from the Scottish demonstration project on direct payment and to this end, we are working closely with Dunedin Canmore HA as the project rolls out. The fact remains that, as the new integrated Universal Credit begins its phase-in from October 2013, rent collection will become more costly, less efficient and more precarious. This will be of serious concern to lenders, who have up until now viewed our sector's revenue stream as secure. This will exacerbate the existing challenges for our sector in procuring finance for developing new supply and for reinvesting in existing stock.

5.4 Reductions in HB will affect those on the lowest incomes most. As well as having a detrimental effect on quality of life, many will be forced to choose between many of life's essentials such as clothing, food, heating or their rent. Again, our members expect to see a rise in rent arrears and are preparing for this as far as is possible in terms of raising tenant awareness, tenancy support etc. We are lobbying the Finance Committee to recommend increasing the budget for the People and Communities Fund and to make this available for tenancy sustainment initiatives.

5.5 The under occupancy penalty will have a significant impact upon the household income of tenants who may not be able to move to smaller accommodation due to the unavailability of suitable alternatives. Whilst increased funding has been made available for Discretionary Housing Payments by the DWP, it is unlikely to be sufficient for the anticipated level of demand and is in any case only a short term remedy. So many households will face having to pay the "bedroom tax" from a decreased total household income, again forcing them to face the "heat or eat" decisions referred to above.

5.6 To sum up, Welfare Reform, in all of its many facets, will impact on our members revenue income and therefore upon their ability to meet loan repayments.

6 Will the new system of multi-year local Resource Planning Assumptions retain sufficient central oversight to remain „strategic“ in a system where more than 4/5 of the affordable programme is delivered locally?

6.1 Local authorities have performed an enabling role in housing development strategy for a number of years. However, it is imperative that the Scottish Government retains overall control, to ensure that its national strategic priorities are delivered.

6.2 With regard to the "multi-year" local Resource Planning Assumptions, at present have budget certainty in place for 2012-13 through to 2014-15. We understand that the Comprehensive Spending Review for 2015-16 will take place in 2013. We would appreciate early confirmation that the Scottish Government will honour its commitment to a rolling 3 year programme to allow housing associations and co-operatives to plan for future years and meet the required completion dates, i.e. 31st March of the financial year that the spend is allocated.

7 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?

7.1 As we have referred to above, the number of developing housing associations and co-operatives has already decreased. The sector cannot continue to provide new genuinely affordable social rented homes at current subsidy levels. As the number of developing associations continues to fall, there is no guarantee that the numbers of developers remaining can cover the whole of Scotland. While there could be a case made for a smaller number of developing organisations, it is precisely those organisations who choose to continue to develop that will ultimately be financially weaker as a consequence of developing in the current climate.

8 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.)?

8.1 SFHA is not aware of any evidence-based methodology being followed to determine what proportion of the Affordable Housing Supply Programme should be for social rent and what should be for Intermediate Rent and other forms of provision intended for higher earning households. We understand that the Scottish Government, in amending its manifesto commitment to build 30,000 socially rented homes, set a revised target of 20,000 socially rented homes and 10,000 other tenures. This proportion was arrived at by considering the existing proportion of social rent at the time and setting an upper limit for the proportion of other tenures. While the assumptions may well be reasonable, the SFHA would wish to highlight that they are not reasoned.

8.2 SFHA is not aware of any modelling that has been undertaken to calculate the number of households currently in housing need who could support an intermediate rent tenancy without the need for Housing Benefit or its successor.

8.3 In terms of the spatial allocations for the Resource Planning Assumptions, then hitherto, the answer is no. The SFHA was part of the SHIF 2 Group (Strategic Housing Investment Framework) which met over the summer of 2012 to consider a scientific rationale for the RPAs. The report from the group has been finalised and is with COSLA for consideration. However, we have noted that this would not apply to the two TMDF authorities (Edinburgh and Glasgow). We are keen to have an opportunity to comment on the conclusions of this exercise.

9 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.

9.1 Housing associations and co-operatives in Scotland have a history of leading on energy efficiency and in addressing fuel poverty. They continue to have the most energy efficiency housing in Scotland of all sectors.

9.2 Housing associations and co-operatives have made significant strides towards meeting the energy efficiency standards set in the Scottish Housing Quality Standard, investing considerable sums without any funding being made available by the Scottish Government in order to enable social landlords to retrofit their existing homes.

9.3 While the SFHA generally supports the introduction of the forthcoming Energy Efficiency Standard, funding and finance are major issues. More generally, the proposals come at a time when social landlords face considerable financial challenges as already stated.

9.4 It is therefore vital that the Standard and the associated level of investment can be funded through a combination of housing association and co-operatives maintenance programmes and through available grants and tariffs. We believe that as the proposals stand that is not the case. While ECO will help to fund some investment in difficult to treat properties (and social landlords will continue to prove adept at drawing in funding through initiatives such as the SFHA Carbon Portal), there is too much uncertainty about ECO to assume that the significant costs that many landlords will face can be met by either ECO, their investment programmes or a combination of the two.

10 Concluding Comments

10.1 The financial climate in which housing associations and co-operatives operate has changed markedly in recent times and continues to change. We are finding private finance more difficult to obtain, more expensive and for shorter periods.

10.2 Welfare reform and direct payments of housing costs to households pose a significant risk to housing associations' and co-operatives' income streams.

10.3 Developing at current subsidy benchmarks is unsustainable.

10.4 The sector's reserves have been built up over a long period of time. They can only be used once and there is limited scope for them to be used for purposes other than those they have already been designated for.

10.5 The SFHA continues to make the case for a higher subsidy and additional resources to ensure that the people of Scotland all have access to a safe, warm and affordable home. The Scottish Government has undertaken to fund 30,000 homes over the course of the parliament. To put the scale of the shortage in perspective, there are 335,000 households on waiting lists in Scotland.

Infrastructure and Capital Investment Committee

16th Meeting, 2012 (Session 4), Wednesday, 3 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.

- SSE
- Scottish Environmental Services Association

WRITTEN EVIDENCE FROM SSE

Background

As you will be aware, SSE owns and operates extensive hydro generation schemes in the North of Scotland. We also have considerable interests in many other forms of renewable generation in Scotland as a whole. Furthermore, we own and operate a competitive and expanding water business. It is against this background that we are responding to this consultation.

Overview

We welcome the strategic vision of the Water Resources (Scotland) Bill and agree that Scotland has much to offer in terms of developing a Hydro Nation that is recognised around the world. SSE's historic and ongoing interest in hydro generation and associated matters mean that we have much to offer in terms of practical experience and knowledgeable expertise in helping Scotland achieve its strategic vision both directly and through appropriate partnerships. We look forward to playing an important part in this. In creating a legal structure to deliver the strategic vision it is important to ensure that preferential powers and/or commercial advantage are not bestowed to any one party i.e. that a level playing field is maintained at all times. In this regard, some parts of the Water Resources (Scotland) Bill still give us cause for concern. In our previous response to the Water Resources Bill consultation we identified three potential unintended adverse consequences due to the scope of the legal drafting presented being too broad, these were:

- existing hydro generation assets and operations could be at risk;
- an uneven playing field could be created in, what is, a competitive generation market and the provision of energy infrastructure; and
- the proposals to allow Scottish Ministers to lend to Scottish Water's subsidiaries could be construed as being "state aid".

After reviewing the new drafting on the Water Resources (Scotland) Bill we were satisfied with changes made to the Bill which addressed some of our concerns, however there are still areas which may have adverse consequences.

A new section has been introduced into the Bill dealing with water abstraction. This has not been subject to consultation and it is not clear what issues it is designed to address leaving the powers for Scottish Ministers very broad and wide ranging. This introduces significant uncertainty and risk not only for new developments but also for existing ones. We have expanded on the above high level points below.

Changes to the Bill which SSE supports

SSE has around 1100MW of established hydro generation capacity and is a major contributor to Scotland achieving its stated renewable generation targets. Accordingly, as we have stated above, we support the principle of advancing Scotland as a Hydro Nation and hence, the high level concept of developing the value of this resource.

We were originally concerned with the inclusion of a duty being placed on Ministers "*to take all reasonable steps to develop the value of Scotland's water resources*" in the Bill. We felt that this all encompassing ministerial power could, if unfettered, prejudice the proper efficient and economic operation of existing hydro generation schemes. SSE supports its

removal from the amended Bill as this will eliminate the possible risks to the rights of existing hydro schemes.

SSE supports the duty to *"take such reasonable steps as they consider appropriate for the purpose of ensuring the development of the value of Scotland's water resources"* with an extra caveat stating that they must *"do so in ways designed to contribute to the sustainable use of the resource"*. This caveat will limit the activities which could be undertaken to develop the value of Scotland's water resources.

A further amendment to this section is also supported by SSE, *"So far as it considers is not inconsistent with the economic, efficient and effective exercise of its core functions, Scottish Water must take reasonable steps to develop the value of its assets and expertise"*. As this puts caveats on what steps Scottish Water can take in order to develop the value of its assets and expertise, which the previous draft did not. This will therefore further limit the potential consequences of this section of the Bill.

The original consultation document and associated legal drafting specifically sought to clarify that Scottish Water should promote the full utilisation of its assets and to plan and promote renewable generation. We believed that the principle behind this was to clarify that Scottish Water would not be restricted to its "conventional" water and sewerage functions. We still support this principle and believe that maximising the efficient use of potential renewable resources is a laudable aim. We were concerned that the original drafting was too open ended and that the proposed power, if unfettered, could have conferred undue preference to Scottish Water. SSE therefore supports the amendment in Section 21 clarifying that *"The power in subsection (1) includes, in particular, the power to do anything that Scottish Water considers will assist in the development of the value of Scotland's water resources (as construed in accordance with section 1 of the Water Resources (Scotland) Act 2012)."*, since the removal of "any of Scottish Water's assets" avoids creating the preferential "rights" afforded to Scottish Water through the previous wording of the section.

Areas of concern that remain in the Bill as published

In our response to the consultation on the first draft of the Water Resources Bill we identified several areas which SSE felt put its operations at risk. Some of these concerns have been addressed, as illustrated above, however some remain.

In order to exercise its function to develop the value of Scotland's water resources, it is proposed that Ministers could issue directions to a designated body. One such designated body being Scottish Water. If Scottish Water is to develop hydro generation and other renewable assets for commercial purposes as proposed, it will necessarily become a market participant in the established competitive generation market and must be bound by the same requirements as other market participants. We therefore do not believe that it is appropriate for Scottish Water, as a competitor, to be potentially afforded special "powers" that could (by design or default) influence its position in the market. We therefore do not believe that Scottish Water should be given any such directions where a competitive market is impacted, either directly or indirectly (be it electricity generation or an openly competitive water market).

Certainly, prior to any directions being given to any designated body, there should be an open and transparent consultation process to canvas the views of any interested party, not just the proposed designated party as currently proposed.

One of the clarifications being sought through the legal drafting is to specifically enable Scottish Ministers to lend directly to Scottish Water subsidiaries. We understand that this is already taking place indirectly and the purpose of the drafting is specifically to enable Scottish Water to receive loans from the Scottish Government to support investment in renewable energy generation and infrastructure on a commercial basis. In our view, given Scottish Water's particular status, we are concerned that this could be construed as state aid and would have the potential to distort competition and affect trade in the competitive electricity generation market. We also question the appropriateness of Business Stream's apparent receipt of loans from the Scottish Government for it to operate in competitive water retail market. On this basis alone, if progressed, we believe that this could be challengeable and we do not believe that it is appropriate for this provision to proceed. Furthermore, any current practices that indirectly provide for the same loan facility to Business Stream should be scrutinised to ensure that no inappropriate aid is being provided.

Competitive framework

We note that the Water Resources (Scotland) Bill does not make any explicit provision for developing the competitive framework for the water industry in Scotland, as we had suggested in our response to the earlier consultation paper. However, we are also aware that the recently published draft Water Bill for England and Wales has set out the aim of establishing "a seamless cross-border market in water and sewerage retail services". It is evident that the UK Government is in discussion with the Scottish Government about the possibility of changes to Scottish law to complement the sections of the draft Water Bill that allow Ofwat to cooperate with the Water Industry Commissioner for Scotland in relation to licensing and regulation of retail licences.

As noted in our response to the earlier consultation, SSE has a subsidiary with a growing competitive water business in England and Wales using the "inset" model, whereby last mile infrastructure as well as water supply is provided as an appointed undertaker for a specific greenfield area. The draft Water Bill allows this business model to be pursued in England and Wales by means of retail infrastructure authorisations within the water supply and sewerage services licensing framework. The advantage of this approach for SSE is that, once a supply licence is granted with the relevant authorisations, inset infrastructure can be provided at different sites without the burden of site by site application to Ofwat.

SSE welcomes the joint consideration by the Scottish and UK Governments of legislation to streamline the two water markets, following on from the draft Water Bill. We would welcome the extension to Scotland of the provisions in the draft Water Bill that allow for the "inset" form of competition through additional types of licence authorisations. If the Water Resources (Scotland) Bill cannot be used to further the joint working of the two separate water markets, we hope that separate legislation can be brought forward to address this in the near future.

New section of the Bill

SSE seeks clarification regarding Part 2 of the Bill, the Control of Water Abstraction. SSE has several concerns relating to this part of the Bill which have been outlined below:

- The late inclusion of water abstraction to the Bill and the lack of communication with consultees regarding this addition, with inadequate consultation with large

abstractors, such as SSE, despite the explanatory note stating intentions to consult large abstractors over the summer recess.

- The rationale for its inclusion is unclear. Existing legislation, e.g. Controlled Activities Regulation (CAR), already provides a regulatory mechanism for controlling and licensing water abstraction. The justification for its inclusion in the outline document is vague and does not provide an explanation for why this new heavy handed and broad regulation is required. Further to this, the new regulation will increase the regulatory and financial burden placed on water abstractors further. It is not made clear why existing legislation is not sufficient to deal with the potential increase in large water abstraction and why power of approval should be shifted from SEPA to Ministers, as existing legislation allows Ministers to become involved already.
- SSE is supportive of the intention to grandfather existing water abstraction licences which were provided under CAR and the exemption of hydro-generation from requiring a licence under the new regulations. SSE is however, concerned with the omission of other power generation sources and the ability of Ministers to change exemptions in the future with no clause to state whether Ministers would be required to justify these changes to exemptions.
- There is also no information on what reasons Ministers can give for not approving a qualified abstraction.
- The reasoning behind providing Scottish Ministers with the decision on whether a licence can be transferred to another person is not explained, and is contrary to CAR.

We would welcome an early opportunity to participate in industry consultation on these recent changes and to explore how the legislation might be amended to more clearly define and address the issues that have led to the late inclusion of this section and to avoid some of the adverse consequences that would otherwise arise. We are concerned that the lack of consultation on these important changes would otherwise leave the Bill open to legal challenge and the prolonged uncertainty and delay that this could create.

We would also propose further discussion on other sections of the Bill in order to ensure, in a similar way, that the purpose is always clear and that the drafting is tightened up to replace potentially ambiguous wording, e.g. „reasonable“, „sustainable“ and „anything“ with more specific terminology.

We have already contacted the industry trade body, Energy UK and asked them to coordinate industry engagement for these purposes.

Conclusions

While SSE supports the strategic vision of Scotland the Hydro Nation and some of the amendments made to the Water Resources (Scotland) Bill we do have serious concerns with certain aspects of the proposals and legal drafting. We would very much welcome the opportunity to discuss all of these points with you and, in particular as a matter of urgency, the issues we have raised in respect of the proposals for legislation.

WRITTEN EVIDENCE OF THE SCOTTISH ENVIRONMENTAL SERVICES ASSOCIATION

The Scottish Environmental Services Association (SESA) is the sectoral trade association representing Scotland's managers of waste and secondary resources. SESA's Members seek to align economic and environmental sustainability through delivering compliance with relevant EU waste and environmental law.

SESA's Members provide local authorities and businesses with services and facilities to enable further progress towards the objectives of Scotland's Zero Waste Plan. Our sector is fully prepared to continue investing in new state of the art facilities to ensure the management of Scotland's waste meets exacting environmental standards, and in return, expects the Scottish Government to provide both an enabling policy framework and a level playing field to allow our industry to make the necessary investment.

Bio-waste

A key objective of the Scottish Government's Zero Waste Plan is to capture the value of organic materials such food and green (garden) wastes and reduce the negative climate change impacts of these materials in landfill. The composting of green waste produces beneficial soil conditioners and nutrient rich products while food wastes can be treated in facilities such as anaerobic digestion plants to produce electricity, heat and fertiliser. Other organic waste streams, such as liquid waste from industrial process are also a suitable feedstock for treatment through anaerobic digestion.

SESA's Members are committed to further investment in organic waste treatment facilities, essential for diverting this waste stream from landfill and many have already made significant capital investments in this area although delays in the introduction of new legislation has meant that the predicted growth in market availability of materials has yet to be fulfilled.

If, as proposed, the scope of Scottish Water's commercial activities should be further expanded into the waste management sector, it is essential that Scottish Water's waste management facilities operate on a fully transparent and competitive basis. However, we are greatly concerned by recent Scottish Water activity – and provisions in the Bill – which directly undermine our industry's current and future investment in delivering the objectives of the Zero Waste Plan. For Scottish Water to press ahead with further investment in new facilities while the commercial case for such infrastructure remains unproven seems irresponsible given current pressures on public bodies' expenditure and public accountability.

We are also disappointed that fair competition or state aid implications have not been addressed by the Scottish Government in either of its previous consultations (December 2010 and March 2012).

We offer the following comment on the Water Resources (Scotland) Bill.

Part 3, question 7

SESA remains greatly concerned by proposals in the Bill which would allow Scottish Water to engage in commercial activities beyond its core functions. Clause 23 (amending section

51 of the 2002 Act) enables Scottish Water to develop redundant assets for the generation of renewable energy (i.e. into waste management facilities). However, this clearly has the potential to distort the marketplace by putting private sector waste management companies at a competitive disadvantage compared with Scottish Water.

The potential for such market distortion was noted by the Office of Fair Trading in its 2011 study¹ of competition in England between water companies and waste management companies in the treatment of organic wastes.

The OFT noted that the planning system places water companies at a competitive advantage over waste management companies in the development of waste management facilities. Water companies, with planning consent in place for existing water/sludge treatment facilities could co-locate new waste recycling facilities on existing sites – a considerable advantage in obtaining (and driving down costs of) relevant planning consents.

Economic regulation was also cited by the OFT as an additional means by which organic waste treatment markets could be distorted in favour of water companies. It noted that the economic regulation framework enables water companies to enjoy a capital cost advantage relative to other waste companies.

Whilst the OFT report was limited in scope to England, SESA Members also report distortions in competition arising from Scottish Water's (and their subsidiaries") commercial activities. For example, we believe that the development of existing Scottish Water-owned land banks and the use of public money to invest in new waste treatment facilities enables Scottish Water to offer organic waste collection services below the market rate.

SESA Members also report difficulty in competing with Scottish Water Business Stream for liquid waste (a suitable feedstock for anaerobic digestion), as the latter entity appears to have inherited a disproportionately high number of the de-regulated Scottish Water customer base and has in effect been given almost monopoly status to introduce new organic waste services.

Scottish Water – clarifying commercial powers

Notwithstanding SESA's concerns, if the Scottish Government is minded to allow Scottish Water to develop commercial activities, we seek urgent and strong assurances that any waste facilities owned by Scottish Water will operate fairly on the competitive market with in-built transparency on the level of commercial returns achieved by the use of public assets and resources.

Such clarity and detail is essential in primary legislation to inform the democratic process. However, imprecision in the Bill appears to provide Scottish Water with wide powers where the likely character of their execution remains opaque. Without greater joined-up thinking on Scottish Government policy there is a real risk that elements of private sector investment to support the Zero Waste Plan could be withheld or be diverted elsewhere if there is no confidence that fair market conditions will subsist.

¹ http://www.offt.gov.uk/shared_offt/market-studies/oft1372.pdf

Infrastructure and Capital Investment Committee

16th Meeting, 2012 (Session 4), Wednesday, 3 October 2012

Subordinate Legislation

Title of Instrument	Green Deal (Acknowledgment) (Scotland) Regulations 2012 SSI/2012/214
Type of Instruments	Negative
Laid Date	2 July 2012
Minister to attend the meeting	No
SSIs drawn to the Parliament's attention by Subordinate Legislation Committee	No
Reporting Deadline	22 October 2012

Background

1. The Green Deal was established under the Energy Act 2011 and applies to Great Britain (excluding Northern Ireland). It aims to improve the energy efficiency of residential and non-residential buildings by providing the funds necessary to alter them to a higher standard of energy efficiency. The financing of this initiative is set to be repaid over a number of years through each property's electricity bills.

2. It is likely that the Committee will consider energy efficiency in housing and the Scottish Government's home energy assistance measures as part of its future inquiry into fuel poverty.

Purpose

3. In the instance of a change in the ownership of a property where the Green Deal applies, these Regulations provide for the requirement for the Green Deal to be acknowledged by the purchasing party. It further necessitates that party to recognise their responsibility to meet the Deal's requirements.

4. The Regulations also provide for the circumstances in which a person will not be required to obtain an acknowledgment, applying to those who have gained a confirmation under regulation 36 of the Framework Regulations, an affirmative instrument passed by the UK Parliament in 2012.

5. The UK Government carried out a consultation on the Deal in 2011-12 which included a draft of the Scottish Acknowledgement Regulations.

<http://www.decc.gov.uk/assets/decc/11/consultation/green-deal/3528-green-deal-form-acknowledgment-scot-si.pdf>

Consideration by the Subordinate Legislation Committee

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

Recommendation

7. A copy of the SSI and the executive note is included with the papers.

8. **The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments.**

Steve Farrell
Clerk to the Committee
September 2012