



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 19 September 2012

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**INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE**  
**14<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

**DEPUTY CONVENER**

\*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

**COMMITTEE MEMBERS**

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Jim Eadie (Edinburgh Southern) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Margaret McCulloch (Central Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Burgess (Minister for Housing and Welfare)  
David Harley (Scottish Environment Protection Agency)  
Annalee Murphy (Scottish Government)  
Frances Murphy (Scottish Government)  
Andy Myles (Scottish Environment LINK)  
Gordon Paterson (Scottish Government)  
Chris Spray (Scottish Wildlife Trust)  
Lisa Webb (RSPB Scotland)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

Committee Room 2



## Scottish Parliament

### Infrastructure and Capital Investment Committee

Wednesday 19 September 2012

[The Convener *opened the meeting at 10:00*]

#### Interests

**The Convener (Maureen Watt):** Good morning, everyone. I welcome you to the Infrastructure and Capital Investment Committee's 14th meeting in 2012. I remind those who have not done so to switch off their mobile phones and BlackBerrys, as they affect the broadcasting system.

Agenda item 1 is a declaration of interests. I welcome the committee's new member, Jim Eadie, and I invite him to declare any relevant interests.

**Jim Eadie (Edinburgh Southern) (SNP):** I have no registrable interests.

**The Convener:** I hope that you enjoy your time on the committee.

I take the opportunity to record our thanks to Aileen McLeod for her valuable contribution to the committee's work, particularly in her role as European reporter. We will be looking for a new person—to be decided on later—to take on that post.

## Subordinate Legislation

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

10:02

**The Convener:** Agenda item 2 is consideration of an affirmative instrument. I refer members to paper 1, to which the draft order and the executive note are attached. I welcome Margaret Burgess, the Minister for Housing and Welfare, to her first evidence session with the committee, and I congratulate her on her appointment. I also welcome the supporting officials from the Scottish Government's private housing services division, who are Gordon Paterson, team leader, and Frances Murphy, senior policy officer.

I invite the minister to introduce the draft order.

**The Minister for Housing and Welfare (Margaret Burgess):** I thank the committee for inviting me to speak about the draft order, which the Scottish ministers have laid for Parliament's approval.

The order amends the Property Factors (Scotland) Act 2011 to allow certain personal information that is supplied by applicants to be omitted from the public register of property factors. The act requires ministers to take into account certain information when deciding whether an applicant is a fit and proper person to be entered on to the property factors register. That is information about a person's criminal convictions for offences that involve fraud or other dishonesty, violence or drugs and about other contraventions of the law in relation to discrimination, property or debt. However, the act does not set out how ministers should obtain that information in order to consider it.

We concluded that it is necessary to ask applicants to self-declare information about any convictions or contraventions when they apply to be on the register. The Property Factors (Registration) (Scotland) Regulations 2012, which were recently made under the negative procedure and which came into force on 1 July, create the requirement for property factors to supply the information when they apply to be on the register. Those regulations were made under the power in the 2011 act for ministers to prescribe further information that is to be supplied in an application.

The 2011 act also contains a requirement to include in the public register all the information that is supplied in an application. That means that, if the order that the committee is considering was not made, ministers would be obliged to publish personal information, some of which is sensitive, on the public register of property factors. Ministers'

view is that that cannot have been the Parliament's intention when it approved making the register of property factors available to the public. Publication of that data would not be in the public interest, either.

Under the 2011 act, ministers are required to decide whether a person is fit and proper and the purpose of gathering this information is to inform that decision. The Government's concern is that publication of such information is likely to contravene the right to private life as guaranteed by article 8 of the European convention on human rights.

Removing the requirement to publish the personal information in the application will neither water down the requirement for each property factor to comply with the fit-and-proper-person test nor affect the publication of information on the business and property portfolio held by the property factor business. In short, it will not impact on the 2011 act's key intention of increasing the transparency of the relationship between property factors and the home owners for whom they provide a service.

**The Convener:** Thank you, minister. I note that we have been joined by Annalee Murphy, solicitor, from the Scottish Government.

I invite questions from members.

**Alex Johnstone (North East Scotland) (Con):** Do you believe that the apparent requirement to publish such information deters certain individuals from coming forward? Are there any examples of that happening?

**Margaret Burgess:** I am not aware of any, but the legal team might be.

**Frances Murphy (Scottish Government):** We are not aware of any examples of people who have been deterred by the legislation in the way you suggest. In fact, there has been quite a large response to registration; we have already received 200 applications in which this information has been submitted.

**Alex Johnstone:** Is it safe to assume, though, that if the loophole had not been closed, it would have been a deterrent in the longer term?

**Margaret Burgess:** It might well have been.

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** I find it a little odd that people with a number of convictions are seeking to be registered as property factors. How common is that?

**Gordon Paterson (Scottish Government):** At this stage, we do not know how many applicants will come forward and declare convictions. We have received one application containing a self-declaration of past convictions, but we need to

make a judgment on how old they are and what they were for.

We are aware that there are issues in the industry, and that the 2011 act was aimed at addressing them. However, until we get the applications in, we will not know how many people will declare convictions.

**Adam Ingram:** I understand that the Rehabilitation of Offenders Act 1974 applies to those who have convictions, which means that, if those convictions are past a particular time limit, they will not need to be declared. I would have thought current convictions to be relevant information.

**Margaret Burgess:** Such information might be relevant to ministers in making a judgment and taking a decision, but it is not relevant to the public.

**Jim Eadie:** Although I entirely understand your point about full disclosure of personal information and why that should not be put into the public domain, what about new information coming to light that will not be placed on the register? Under section 3(2) of the 2011 act, information need only be provided at the time of application to the register and need not be updated, even if additional convictions and contraventions come to light, until the next date of application. Can you or the legal team give us the rationale behind that decision?

**Annalee Murphy (Scottish Government):** That provision is in the act, which was passed by Parliament and which, as you will be aware, emanated from a member's bill. The act makes it clear that only certain information will be updated as set out in section 7, which means that the conviction and contravention information in the application will be a snapshot in time. If the property factor wants to continue to operate, they will need to reregister and reapply after three years. The fact that such information is simply a snapshot in time is another reason for not including it in the register; under the Rehabilitation of Offenders Act 1974, it could become inaccurate in that three-year period if, for example, a conviction becomes spent.

**The Convener:** As members have no more questions, we move to the formal debate on the SSI. I invite the minister to move motion S4M-04090.

*Motion moved,*

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

*Motion agreed to.*

**The Convener:** I thank the minister and her officials for their attendance and suspend briefly for a changeover of witnesses.

10:12

*Meeting suspended.*

10:13

*On resuming—*

## **Water Resources (Scotland) Bill: Stage 1**

**The Convener:** Item 4 is further stage 1 consideration of the Water Resources (Scotland) Bill. We will take evidence from two panels of witnesses, the first of which is from the Scottish Environment Protection Agency. I welcome to the meeting David Harley, water and land unit manager with SEPA, and thank him for his written submission.

Margaret McCulloch will begin the questioning.

**Margaret McCulloch (Central Scotland) (Lab):** I have two questions. First, what are SEPA's views on the adequacy of the consultation that took place before the bill was introduced?

**David Harley (Scottish Environment Protection Agency):** We have no particular comments to make about it.

**Margaret McCulloch:** So you were quite content with it.

**David Harley:** Yes.

**Margaret McCulloch:** Secondly, will the bill have a positive net impact on Scotland's environment, particularly the water environment? Could it have included further safeguards to protect the environment?

10:15

**David Harley:** The bill certainly adds to our existing powers to protect the water environment and helps in several key areas. For example, the additional controls on pollutants going into the sewerage system and Scottish Water's additional powers in taking samples will both be beneficial. The overall hydro nation agenda complements the river basin planning process, on which we are very much a lead authority. In the main, the bill is a good thing and will assist us in our role.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Why does SEPA think that the bill should be amended to require the Scottish ministers to specifically consider social and environmental factors in seeking to develop the value of Scotland's water?

**David Harley:** Given that the bill specifically mentions "value", we think that that should include environmental and social elements, which we feel are integral to the value of Scotland's water. As you can imagine, we are particularly interested in all that.

**Malcolm Chisholm:** Last week, the officials suggested that such factors were included in the phrase “other benefit”, but you feel that it would be better if they were made explicit in the bill.

**David Harley:** Yes.

**Malcolm Chisholm:** In your written submission, you express concern that a direction from Scottish ministers should not “compromise” SEPA’s ability to undertake its “core duties”. I am not going to ask you to explain all your core duties, but it might be useful if you could describe what they are in relation to water. Secondly, should the bill be amended to ensure that a situation does not arise that might threaten those core duties?

**David Harley:** In terms of scale, water forms probably our largest core duty. About a third of the organisation is involved in protecting and reporting on the water environment and regulating in that respect. When I say “water environment”, I should stress that I am talking not just about Scottish Water’s activities but about all water environment issues, whether they are to do with land use, agriculture or other industries such as distilling or hydro. One of our key objectives is to deliver on the river basin management plans, which report on and set objectives for protecting and improving the water environment. We certainly would not want that work to be compromised in any way; indeed, we want it to be protected.

**Malcolm Chisholm:** Could the bill be amended to address such concerns?

**David Harley:** I am not sure how that could be achieved, but we would welcome any additional guarantees with regard to our core duties to protect and improve the water environment.

**Malcolm Chisholm:** I do not want to put ideas in the Government’s head, but can you think of a direction that it could make that might threaten your core duties?

**David Harley:** Not in this context. I suppose that we do not want to be distracted from our core duty; if there were too much emphasis on value, we could be. That would not happen if environmental factors were included in the bill—which they should be, given that they are integral to the value of Scotland’s water.

**Malcolm Chisholm:** You are worried that you might be taken away from your environmental focus.

**David Harley:** Exactly.

**Malcolm Chisholm:** Still on the subject of directions, when asked for possible examples of what a direction to a designated body could include, Scottish Government officials indicated that it could include the creation of a subsidiary or a requirement to work abroad. What are your

views on those examples? Should the bill set out the potential scope of a direction?

**David Harley:** As I have said, our core duty is to Scotland’s environment. We would assist in any initiatives to facilitate work that might happen abroad, but we are tasked to protect Scotland’s water environment.

**Malcolm Chisholm:** Do you think, then, that the bill should restrict the potential scope of a direction in some way?

**David Harley:** To be honest, I have no comment on that.

**Malcolm Chisholm:** Thank you.

**The Convener:** As you will be aware, Scottish Water already works overseas. Are you fully aware of what it is doing and might there be some avenue for SEPA to use its skills to help in other countries, perhaps developing countries, where sewage and so on is a problem? That work has been very beneficial to Scottish Water as it has allowed employees to develop new career avenues. Would SEPA be up for that?

**David Harley:** Yes, we would be interested in that, but in these constrained days we would have to ensure that we also concentrate on our core duties. However, we would facilitate, assist with and co-operate in those initiatives.

**The Convener:** As no one else has any more questions on that part of the bill, we will move on to Alex Johnstone’s questions.

**Alex Johnstone:** I have a couple of questions on abstraction. SEPA indicated in written evidence that it supports the proposed new regime for the control of large-scale abstraction. Could you explain why you consider the new regime to be necessary and what it adds to the current controlled activities regulations regime?

**David Harley:** The controlled activities regulations deal with environmental issues, and we do not need any further powers in that regard. Further powers may be needed if ministers feel that there is a need to consider wider social or economic issues, but in SEPA’s view the powers that we have are sufficient to protect the water environment.

**Alex Johnstone:** We have heard evidence from a number of specialist interest groups, including calls for the abstraction regime in future to be based around consumption rather than abstraction. Scottish Government officials indicated that that could be difficult, but they did not reject the suggestion out of hand. What is SEPA’s view on that?

**David Harley:** In relation to a new regime or to our existing powers?

**Alex Johnstone:** We are talking about the new regime, but if the suggestion also relates to your existing powers, now is the time to tell us.

**David Harley:** We are interested in all forms of abstraction. Even if an abstraction returns the water to the water environment, there is a gap, and a stretch of river could be depleted of water. That stretch could be several hundred metres, several miles or tens of miles. In the hydro sector, for example, there are a lot of cross-catchment transfers of water, which can result in localised impacts unless they are properly addressed. From an environmental point of view, it is important that we deal with both consumptive and non-consumptive uses of water.

**Alex Johnstone:** That is very comprehensive—thank you.

**Adam Ingram:** We heard evidence from the bill team to suggest that there could be a growing market for Scottish water beyond our boundaries. Do you see any dangers in that prospect that might require you to ensure that environmental protection remains in place?

**David Harley:** The controlled activities regulations give us the powers to deal with the environmental considerations, whether in relation to an internal abstractor or to somebody beyond Scotland. The same would apply: we would use our powers to ensure that the environmental impact is sustainable and minimised. It does not really make a difference to us who makes that application or comes forward with the proposal.

**Adam Ingram:** Scottish ministers would consider proposals that may be presented for large-scale transfer of water away from Scotland. What would happen if they approved a proposal that would, in your view, have a negative environmental impact? How do we square that circle?

**David Harley:** First, the CAR still applies, so we would do our job. I understand that ministers are required to consult us in the process if the new regime comes to pass, so I would hope that our views would be taken into account.

**Adam Ingram:** But you do not think that anything needs to be written into the bill to guarantee that your advice would be taken.

**David Harley:** That would be helpful, if extra strength was needed in that regard.

**The Convener:** I will move on to part 3, on Scottish Water's functions. SEPA states in its written evidence that although it is

"fully supportive of Scottish Water being given specific powers to develop its assets to support the generation of renewable energy ... such development of assets should not be at the expense of the environment, or of meeting future environmental objectives".

What do you mean by "future objectives" and how might they impact on the work of Scottish Water?

**David Harley:** We work very closely with Scottish Water and the Scottish Government on the quality and standards process, which is Scottish Water's investment programme. It deals with improving Scottish Water's assets, sewage works and abstractions and, in essence, with investing in its system. The environmental considerations are extremely important. Scottish Water has many hundreds of abstractions and many thousands of sewage works, all of which have a potential to cause an impact—whether because they are ageing or because they are not working as they were designed to. There is an established and effective investment process, whose prioritisation we influence. We would not want to see any distraction from that process.

**The Convener:** Could you give an example to make clearer what you mean?

**David Harley:** One example is that, at the moment, SEPA, the Scottish Government, Scottish Water and representatives from Glasgow are considering how best to deal with Glasgow's sewage, which currently discharges into the Clyde. How we eventually deal with that will take considerable investment. That is a large-scale example. Currently, all around the country various sewage works and Scottish Water assets are being invested in and improved to ensure that the water environment is improved. We must remember that the river basin management plans have very ambitious objectives for Scotland's water environment. The quality and standards process is the means by which we achieve those objectives in terms of water quality—mainly from sewage discharges—but also in terms of abstractions, because some abstractions result in environmental impacts at the point of abstraction.

**The Convener:** Could that be peatlands, for example, which might dry out because of water abstraction?

**David Harley:** It is not specifically peatlands. It is generally lochs, rivers and groundwater.

**The Convener:** Okay.

In response to the Scottish Government's consultation on the legislative proposals, it was suggested by Scottish Land & Estates and the Scottish Anglers National Association that giving Scottish Water new powers to access land to test water would duplicate powers already held by SEPA, and that that would therefore be a poor use of taxpayers' money. Do you regard those powers as duplication and how will you differentiate SEPA's role from that of Scottish Water?

**David Harley:** Those powers complement SEPA's role. We have a large initiative under way

that is looking at diffuse pollution in 14 priority catchments around Scotland. It is looking at rural diffuse pollution—in essence, pollution that is associated with land management. This is a very challenging area for us and for Scotland to deal with. Diffuse pollution comes from a range of activities and involves a range of pollutants and pollutant pathways. One area of particular concern for Scotland is diffuse pollution that pollutes raw water and causes drinking water problems. The traditional solution for dealing with raw water is to invest heavily in treatment systems, plants and technology to remove pollutants from water, but that is not sustainable. We should be thinking about how best to get the pollutants off the land in the first place and minimise their effect on raw water. It is far, far more efficient to do that.

10:30

In those areas where there are drinking water problems, we feel that it is appropriate that Scottish Water works with us and landowners to assist in mitigating the situation. That is already happening, and we work hand in hand with Scottish Water staff in a number of catchments, in particular the Ugie catchment in the north-east. We also work with land managers to raise awareness, advise them of their obligations and assist them in mitigating the pollutants that affect drinking water. We think that Scottish Water's proposed role is complementary.

**The Convener:** Are the powers sufficient at present, or do you envisage new regulations being imposed on those landowners in order to safeguard and raise the quality of water before it goes to treatment?

**David Harley:** We have a series of general binding rules, which set out the baseline requirement on land managers to protect the water environment. We are at an early stage in regulating those general binding rules and in making people in the sector aware of their obligations. It is hard for us at this stage to specify any additional regulations. We need more time on the initiative; when we have gathered data and evidence we can perhaps make the case for further regulations.

**The Convener:** Are the current initiatives encouraging lands and estates to farm in different ways and to consider when to use fertilisers, or which fertilisers they use? Can you give examples?

**David Harley:** Yes. In a wider sense, examples include planting buffer strips to allow a strip of wild land between farmed land and a water course, which has major advantages in that it prevents cattle from getting into water courses and prevents

application of fertilisers and spreading of slurry close to water courses.

There are specific examples to do with drinking water, and we feel that additional measures are needed to address the use of pesticides. Some of those measures go above and beyond the general binding rules—for example, the use in farmyards of biobeds, which are areas in which one can fill machinery with pesticides and which allow the breakdown of pollutants in the system.

Other examples include safe storage of pesticides and filling with pesticides in the right place, not beside a water course or over a drain—some measures are really quite simple. Another possible measure that is not set out in the general binding rules is to get farmers to replace a damaging or high-risk pesticide with one that may pose less risk to the water environment.

**The Convener:** I think that Alex Johnstone will want to come in here.

**Alex Johnstone:** I was not going to ask a specific question, but I want to raise an issue that we discussed when we visited Scottish Water—use of slug pellets. It is a limited practice, but it has contributed greatly to contamination of drinking water. Scottish Water has already been testing and working with farmers to eliminate that pollutant. That is one example of where a lot of positive work is needed to take out very small-use pesticides in order to make a big difference to drinking water.

**David Harley:** I agree.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** Mr Harley indicated in written evidence that SEPA expends considerable effort in dealing with the effects of blockages to the sewer system that are caused by grease, fat and oil. How much does it cost to deal with such incidents? Will the proposed new system of encouraging traders to use proper disposal methods be robust enough to deal with that problem?

**David Harley:** On the first question, it is difficult to quantify the costs. We have a pollution database that records the nature of pollution across Scotland's water environment, but it does not go down to the level of specifying pollution by fats, oils and greases, although it does cover pollution from Scottish Water's assets. Sometimes it is very hard to know exactly what the main cause of pollution is, but it is a significant issue.

Once fats, oils and greases have cooled down, they clog up systems, which can compromise the working of the waste stream and result in overflows from the waste part of Scottish Water's infrastructure. Blockages can also result from surface water being contaminated with foul, or waste, water. Across the board, a significant

number of pollutions are caused, as a result of that. Therefore we welcome the powers, because it is important that Scottish Water can properly control what gets into its system.

**Gordon MacDonald:** How easy will it be to trace the trade premises that are responsible, bearing in mind that on an average high street there might be three or four premises next to one another that all use fats, greases and oils?

**David Harley:** There will no doubt be challenges associated with that, but Scottish Water has expertise in that—that is its job. We work with it in such matters. Probably today or tomorrow, a SEPA officer will be working in conjunction with Scottish Water officers to try to trace where a problem in a Scottish Water sewer has come from. You are right that, in some cases, that is not straightforward, but in other cases, it might well be. The issue is challenging, but the powers are meaningful.

**Gordon MacDonald:** Why do you consider that the proposed powers to deal with septic tanks that are in multiple ownership do not go far enough? How could the powers be improved?

**David Harley:** As you know, we regulate septic tanks by a system of registration under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. There are two main reasons for the system. One is to ensure that when new septic tanks are proposed, they are sited in the right place and that the right treatment is provided. So the first reason is to do with new development. The second reason is to ensure that we have a good understanding of where septic tanks are situated so that, should there be, in an area, an accumulation of septic tanks, which might cause a problem, we understand the issue and can tackle it.

I am sorry: what was the second part of your question?

**Gordon MacDonald:** Is there any way in which the proposed powers can be improved?

**David Harley:** A particular issue for us is that, when a septic tank that is shared by several householders causes a problem, it is difficult to take enforcement action. Of course we ratchet up the level of interaction with those people, but the difficulty is that although septic tanks individually do not cause a huge impact—they do not cause fish kills or major downgrades of water courses—cumulatively, they cause a problem and, locally, as you can imagine, they can be pretty messy and cause nuisance and amenity problems. It is hard for us to make a case to a procurator fiscal on the back of one person's contribution to a pollution problem. If there is shared ownership and not everybody plays ball, we get stuck and it is hard for us to proceed. Quite often, several people want

to proceed and do the right thing by the environment by sorting out or upgrading the system, but we end up in a kind of quagmire. The power in the bill under which not all the owners will have to buy in to an upgrade or investment will assist us.

**Gordon MacDonald:** How is the registration system working? Are all septic tank owners registered and how is the register maintained?

**David Harley:** Not everybody is registered. It is hard to get an exact number, but we think that about 60 per cent of tanks are registered. Until now, we have relied on the house conveyancing system to register septic tanks at the point of sale. That will get us there, but slowly. The register is not complete, which is why the Government has asked SEPA and Scottish Water to work together to try to understand more about the problem and to find out exactly where the unregistered septic tanks are. We will have an awareness-raising and communications initiative to get more people registered. Through that, we will be able to better understand the issue.

**The Convener:** Do you envisage a situation in which many people who have septic tanks that are in multiple ownership or old septic tanks will have to replace them?

**David Harley:** There will be a requirement for that, but I do not think that it will be a wholesale requirement. We will target the areas where there are problems. We do not want to be heavy-handed on the issue and knock on all the doors to check all septic tanks, and we certainly do not have the resources to do so. However, where there are problems and known issues, we should direct our resources to those places. If replacement or upgrading is required, we will pursue that. However, I do not envisage there being a nationwide issue involving huge numbers of people. We will work where there are known problems.

**The Convener:** You obviously know where there are problems. Are you pre-warning people that there is a problem in their area with waste water?

**David Harley:** The Scottish Government has asked SEPA and Scottish Water to work on the issue. We need to understand fully and document where the impacts are, although you are right that we have an idea of where some of them are. We then need to carry out awareness raising, get people registered and ensure that they maintain their tanks properly. That is a key issue. Desludging the tank every couple of years is a minimum requirement, but that might not be happening, so we need to ensure that it happens. Only when that sort of level of maintenance is

secured and we still have a problem would we ask for upgrades or other solutions.

**The Convener:** Do septic tanks need to be desludged every two years? In some cases, people are told that they do not need to do it every two years because the tank is working extremely efficiently.

**David Harley:** Tanks need to be desludged. That is the sort of awareness raising that we need to do. The solids do not disappear. The idea is that the liquid part overtops and goes into the environment and becomes treated in soakaways or is diluted by discharge into a watercourse, but the solids remain. Therefore, at some point, they will clog up the system. When that happens, the system either overflows into the environment and causes more pollution than is necessary or makes a mess in the garden, which is not pretty.

**The Convener:** It is smelly, too.

**Adam Ingram:** SEPA has welcomed the proposed introduction of water shortage orders, but you have highlighted that the water shortage order provisions will not replace the controls that are imposed by the controlled activities regulations on new or altered water abstractions. How do the controls work? Are they compatible with the proposed water shortage order regime?

**David Harley:** The controlled activities regulations were amended in 2011 to allow us to fast track CAR applications in the event of there being water scarcity for some reason. In that process, it is important that we work with Scottish Water and other water users to ensure that the public supply is secured and that other water users such as industry or fisheries are not impacted on. It is also important that the water environment is protected as far as possible in that challenging circumstance. We have that process already.

The water shortage orders are more to do with Scottish Water having the ability to manage its system and potentially to impose restrictions on water use within its system to facilitate that. The measure gives extra flexibility in those situations.

**Adam Ingram:** Are the two systems compatible?

**David Harley:** Yes. That is the short answer.

**The Convener:** As members have no further questions, I thank David Harley for his evidence and suspend the meeting briefly to allow for a change of witnesses.

10:44

*Meeting suspended.*

10:48

*On resuming—*

**The Convener:** We continue to take evidence on the Water Resources (Scotland) Bill at stage 1, this time from a range of environmental organisations. I welcome Lisa Webb, who is water policy officer for RSPB Scotland; Chris Spray, who is a council member of the Scottish Wildlife Trust; and Andy Myles, who is parliamentary officer at Scottish Environment LINK.

**Adam Ingram:** I thank the witnesses for giving their time to the committee. Were you satisfied with the consultation process on the bill and with the Scottish Government's response to the concerns that you raised?

**Lisa Webb (RSPB Scotland):** In general we have been happy with the consultation process. There have been two formal consultations on the hydro nation aspect. However, we are concerned about the part of the bill on large-scale abstractions, which was not mentioned in the consultation responses. We are unclear about the purpose and intention of that aspect of the bill.

**Andy Myles (Scottish Environment LINK):** LINK's members have been in contact with the Government for a long time on matters relating to fresh water—our contact goes way back to the days of the Water Environment and Water Services (Scotland) Bill in the first session of the Scottish Parliament. There has been an on-going process, so we are fairly plugged into Government agencies, businesses and consultation with most stakeholders on water issues.

**Adam Ingram:** You might be plugged in, but are you listened to? Do you get a fair hearing and response?

**Andy Myles:** I think that we have done, over the years. For example, in the first parliamentary session, LINK organised a trip for members of the Scottish Parliament to Insh marshes, near Aviemore, to look at flood plains. I think that committee members who took part in the visit found it exceptionally useful. They learned about flood plains, which were then included in the definition of "wetland" in the WEWS bill. The civil servants asked whether they could come and see the flood plain, too, and did so. We did not need to take the Scotch Whisky Association, because there is a distillery next to the flood plain.

There is a mutual understanding of many issues, which was reflected in, for example, a meeting that we recently had with SEPA and the Confederation of British Industry Scotland to discuss the better regulation consultation, particularly in relation to water issues. The Scotch Whisky Association was part of the CBI

delegation. The expertise in LINK member organisations is recognised and I think that we have been listened to fairly well, over many years. We have not always got our way, of course.

**Chris Spray (Scottish Wildlife Trust):** I will add to that, wearing my hat as a trustee director of Tweed Forum, which is one of the most well-known of the catchment organisations that operate in Scotland. We have had fantastic consultation. The previous minister spent a day with us in the Borders, talking about water issues and catchments and listening very well. There has been good input on that side.

**Adam Ingram:** That is good to hear.

Your organisations expressed concern about the definition of “hydro nation”. Will you talk about your concern and explain what you think a hydro nation should be?

**Lisa Webb:** Certainly. We are keen that a hydro nation is one in which the water environment is managed at the catchment level, with an integrated approach. Such an approach can deliver a multitude of benefits for Scotland, including improved water quality, flood-risk management, carbon storage and so on. A hydro nation should be mindful that a healthy environment underpins its economy and a range of services.

The rhetoric around some of the hydro nation proposals was all about Scotland having an abundant and clean water resource. It does, but there is still a way to go. Only two thirds of our water bodies have good or better status under water framework directive definitions, so there is a long way to go if we are to improve our water bodies and prevent deterioration. We do not want to be complacent. A lot of the talk around hydro nation is about selling our expertise internationally; we are keen to get things right at home first.

**Chris Spray:** We welcome the interest in hydro nation, in a catchment approach and in water as a key issue for the Parliament to address. As Lisa Webb said, we start from the position that the environment underpins the economy. The economy is the wholly-owned subsidiary of the environment—it is that way round. We are delighted to see a landscape approach that will tie in nicely with the ecosystem approach of the land-use strategy. We very much welcome the approach and will help to develop it.

**Malcolm Chisholm:** I will go through the bill section by section. I think that all the witnesses have expressed some concerns about part 1 of the bill. Not surprisingly, you would like there to be an explicit reference to social and environmental factors in section 1(3) of part 1. I will have to be careful as I cannot remember what their exact words were, but the Government officials basically

gave the impression that social and environmental factors would be included there. I think that they said “would” rather than “could”.

Do you think that it is just an omission and that the intention of the Government is to include social and environmental factors, or are you more suspicious than that? Are you concerned that a message is being sent that the economic factors are the overriding ones and anything else is a bit subsidiary?

I am not quite clear whether you have a serious concern or whether you just think that the fact that social and environmental factors are not mentioned is an almost accidental omission.

**Lisa Webb:** It is fair to say that we are somewhat concerned about the omission, especially given the emphasis on sustainable economic growth. We would like to see environmental and social benefits and impacts explicitly mentioned at that point to ensure that they are taken into account.

**Andy Myles:** We have a broad concern across Scottish Environment LINK about sustainability being defined in terms of sustainable economic growth. Sustainable economic growth can be viewed as a contradiction in terms—economic growth is not necessarily sustainable development.

We tend to adopt the legal definition of sustainable development that is shared and agreed by the UK Government and all three devolved Administrations. We also note that sustainable development is defined in European law and that all our water legislation falls under the European Union water framework directive. Therefore, sustainability is at the heart of the matter and sustainability—within the definitions that all the Administrations in the UK have accepted—is quite clearly a matter that includes respecting environmental limits. However, as Chris Spray said, we think that the different aspects cannot be separated out. We cannot have a bill that is only about the economics of water. If we are to deal with the water environment, we must do so from a sustainable perspective, which includes social, economic and environmental considerations.

We are concerned when legislation appears to be weighted towards the economic and to have left out the social and environmental factors. Our advice, for what it is worth, is that when dealing with matters of sustainability, it is better always to remember that there are three principal parts—environmental, social and economic. It is the relationships between them that are vital.

As Chris Spray said, there is a tendency in much of our media and our public discourse, not just in Scotland but across the western world, to

consider economics as somehow supreme—as having primacy. Our view is that the economy is based in our environment and if we treat the environment badly, we can end up with terrible economic consequences.

We worry about all three parts of the sustainable development definition, not just the environmental part. We are equally concerned that people in Scotland have clean water to drink and to bathe in and for all other social purposes. Our economy and many of our industries are based on clean water. We want those concerns to be remembered just as much as our concerns for biodiversity and wildlife, for which clean water is crucial.

**Malcolm Chisholm:** That was useful.

**The Convener:** Can you give some examples of when sustainable economic growth might be in conflict with social and environmental factors?

11:00

**Andy Myles:** I do not think that sustainable economic growth will end up in conflict with those aspects. I do not tend to see the issue in terms of conflict; we see it in terms of relationships.

Before the meeting, Chris Spray mentioned the possibility of the appearance of parasites. Will he explain that example?

**Chris Spray:** I will give an example. PricewaterhouseCoopers did work that estimated that the salmon that run up the Tweed are worth roughly £18 million a year and 512 jobs to the local economy. You probably did not know that the water in the jugs here almost certainly comes from the Tweed—the top-of-the-Tweed reservoirs provide Edinburgh with its water. Economic growth that took water from the top of a catchment might have an unknown and unintended effect downstream on other people's uses. That is an example that we know is important.

Industries such as the whisky industry depend on having a very clean environment. It could be a marketing disaster if a certain parasite came into the country and attached itself to salmon, because getting rid of *Gyrodactylus*—I think that I have got that right—would be a challenge. That would probably lead us to have to take dramatic and drastic action, which would not fit with the marketing of the countryside in relation to whisky and tourism that trades on how good and clean Scotland's water and environment are.

A link is inherent. My colleague Andy Myles is right that the issue is not about conflict, but we must recognise the link. Whether the omission from the bill is by accident or design is not for us to comment on or even to worry and wonder about; we just feel that the reference to social and

environmental factors must be in the bill. The water framework directive says clearly that

“Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.”

We can—absolutely—have sustainable use, but we need to know the limits.

**Malcolm Chisholm:** The water framework directive will still apply. Does that reassure you or do you feel that the directive will be diluted by section 1 or by the bill more generally?

**Andy Myles:** In the last analysis, only the courts can answer that question. You are asking for a legal judgment on whether the bill transposes the water framework directive properly. Our legal expertise across the LINK organisations is considerable, but it is not enough to give you good advice on that subject, because we tend not to be lawyers.

**Chris Spray:** It is worth saying that Scotland has a good track record of turning European directives into pretty aspirational and holistic legislation. The Water Environment and Water Services (Scotland) Act 2003 and the Flood Risk Management (Scotland) Act 2009 are very good bits of legislation that have the wonderful catchment outlook. We are happy with that, but we are keen to see the follow-up on implementation.

**Alex Johnstone:** I have had a sudden attack of *déjà vu*, which has been caused by Andy Myles, who was probably around at the time that I am remembering. About 12 years ago, I was in the process of dropping Conservative opposition to the creation of national parks and becoming a supporter of legislation to create them. Part of the reason for that was that we managed during the passage of the National Parks (Scotland) Bill to enshrine in that bill the balancing of environmental, social and economic issues.

Andy Myles has come right back to that and pointed out that the same thing is required in the Water Resources (Scotland) Bill. After the National Parks (Scotland) Bill was passed, did we put that step of progress on the shelf and have we not done enough with it since then?

**Andy Myles:** If you will pardon my saying so, that question is broad, because it reflects almost everything that LINK does. We still pursue sustainability. We have produced publications on specific issues in relation to that, and our broader discourse in Scottish public life concerns the fact that sustainability still needs to be pursued. The record of the Parliament and of successive Scottish Governments on making progress towards sustainability has been good, but it would be difficult for me, as the representative of Environment LINK, to say that we have yet achieved sustainability.

On the way to attempting to achieve sustainable development and sustainability, there are brilliant examples of legislation, such as those that Chris Spray has mentioned, or wider legislation such as the Climate Change (Scotland) Act 2009 or the Marine (Scotland) Act 2010. Superb steps have been taken that we, as organisations, have pushed and campaigned for and that the Parliament has dealt with by taking significant steps forward. I would not say that we have lost the edge in that agenda, but it is our job constantly to speak up for environmental concerns within legislation that is passing through the Parliament. That is what we are doing.

There is no suggestion that the Water Resources (Scotland) Bill is a setback for the sustainability agenda. Apart from anything else, as Malcolm Chisholm has pointed out, European law is supranational and would be directly applicable over and above any legislation that is passed in the Scottish Parliament, although that is a broad interpretation of the legal position.

If the Parliament is pushing through legislation that will improve the water environment, it is worth while if it takes all those aspects into account. It is difficult to separate out social, economic or environmental aspects of water and deal with them alone.

**Alex Johnstone:** Thank you.

**Malcolm Chisholm:** I have some more specific questions about part 1 of the bill. What benefit would there be in extending the definition of water resources to include peatland habitats? One of the witnesses has already raised that.

**Lisa Webb:** We did, yes. A recent International Union for Conservation of Nature report has indicated that about 70 per cent of our drinking water comes from peatland-dominated catchments. We are keen to see a sustainable catchment management approach to improving drinking water quality. In doing so, there needs to be recognition that peatland restoration and good peatland management is an integral part of delivering that improvement.

I do not know whether members are aware that when peatlands become badly eroded or damaged, the amount of dissolved organic carbon, which is basically what gives the water its brown peaty colour, increases, and it takes more effort and expenditure at the water treatment works to remove that dissolved organic carbon. Ensuring that peatlands are covered by the definition in the bill could help us to manage peatlands for the benefit of water quality and deliver economic benefits by driving down costs at water treatment works.

**Chris Spray:** I was at one time the director of a water company just south of the border, and that

question of dissolved organic carbon and treatment using trihalomethane, which is a carcinogen, is of increasing interest and is increasing costs to water companies across the UK. However, one of the fundamental points is that by missing peatlands out, we are moving away from the whole catchment approach. One of the delightful things about the proposed legislation is that it talks about a catchment-wide approach, which should include groundwater as well as surface water. It should include water in all its various forms. The idea that we can leave one element out is inherently flawed from the start.

The catchment approach highlights the fact that economic gains are to be made by treating the problem at its source as opposed to treating it with a large new treatment works, or whatever, and those gains continue up to the way in which we manage catchments for flooding. The Flood Risk Management (Scotland) Act 2009, which I mentioned earlier, is a superb act that asks people to treat the problem at source. That is far better because it brings multiple benefits for the environment, wildlife, people and the economy. It is far better than just building a wall downstream.

It is just wrong to leave peatlands out of the bill. It is against the whole approach, which should be catchment-wide. Where the water sits is not relevant; it is the fact that the water moves through the catchment.

**Malcolm Chisholm:** Thank you. Still on part 1 of the bill, your written submissions ask for additional organisations to be listed as designated bodies in the bill. Can you name some of those bodies? Scottish Canals and the national park authorities were mentioned in one or other of the written submissions. Why should those or other bodies be included in the bill?

**Lisa Webb:** LINK's thinking behind that is that the catchment management approach can deliver a multitude of benefits, as Chris Spray mentioned. Partnership is key to that approach. It should involve not just Scottish Water alone, but Scottish Water's regulators and wider partners including perhaps the Forestry Commission, the national park authorities and non-governmental organisations—although a duty could not be placed on NGOs. We need to see some sort of duty to ensure that a partnership approach is delivered.

**Chris Spray:** That would follow the Flood Risk Management (Scotland) Act 2009, which has a duty for people to work in partnership and is working very well indeed. We wish for the duty in the bill to recognise that the quality and quantity of our water is fundamentally affected by how we manage our land. For example, planting trees has a huge impact on the water balance, and that involves the Forestry Commission.

It is even more important that Scottish Water and others enter into agreements with NGOs and catchment organisations such as the Scottish Wildlife Trust, which is working in places such as Coigach and Cumbernauld with local communities. They can go places where—with due respect—the SEPAs of this world cannot go, because they do not go in with a regulatory stick. They can go and talk to land managers in a way that Scottish Water cannot. It is about partnership. To have a duty to work in partnerships and for those partnerships to recognise the value of communities and the third sector is very important. That could be a superb part of the bill.

**Malcolm Chisholm:** How many extra bodies are we talking about? There are five at the moment. Are we talking about an extra two or three, or are we talking about a lot more than that?

**Andy Myles:** We suggest that the national park authorities, the Forestry Commission, Scottish Canals and the Water Industry Commission for Scotland be added, but there are other partners with other expertise. Following on from what my colleagues have said, I stress that our view is that the partnership approach allows the elimination of possible conflicts or mistakes at the earliest possible stage.

There will be economic consequences to decisions, which could be got right because there was a duty to seek the opinion of the Forestry Commission, for example, which has a duty under the Government's proposals to increase considerably the amount of forest coverage in Scotland and to ensure that that increase is achieved in a way that is sensitive to the water environment. If the increase was made by plugging up huge catchment areas with Sitka spruce, that would have a considerable effect on the quality of the water that comes out of those catchments. It therefore makes sense, in our view, to include those public bodies at the earliest stage, so that the benefits of their experience can be reaped and to ensure that problems are not run into down the line. We are arguing for a preventative approach. I substantially agree with what Chris Spray has been saying. The NGOs are happy to play their part in giving their advice—as we do in many other areas of Scottish economic and social life—to try and eliminate problems before they arise, with regard to the way that we develop Scotland together.

**Chris Spray:** There are some very good examples south of the border and abroad where the critical role of an NGO helps oil the whole process. We are not saying that NGOs should be registered relevant bodies, but that the relevant bodies must work with them. The examples that we have given include United Utilities working with the RSPB and colleagues in the lake district, and

South West Water, which, to my knowledge, has given £9 million to the Westcountry Rivers Trust—an NGO—over 30 years to develop a catchment approach. That works out at about 60p or 70p on everyone's bill and tackles all their water quality and quantity issues at source.

Abroad, there are some fantastic examples. In America, the whole of New York city's water supply comes from a catchment in the Catskills 135 miles away. Working with the communities through an NGO—a farmers council—in that other area saves the city building a treatment works that would cost several billion dollars. There are good examples elsewhere. We want there to be a wider definition of the appropriate authorities so that it includes land managers, and we want the bill to say that they must work with NGOs, because there are fabulous examples of that being the most effective partnership economically as well as environmentally.

11:15

**Malcolm Chisholm:** Thank you. We have a disagreement on section 4 between you and SEPA. In your written evidence, you suggest that having to report every three years is not sufficient to ensure that the Scottish ministers are held accountable for meeting their duty, whereas SEPA's view is that it would be overly onerous to have to report more frequently than that, and that the bill's chosen reporting period could fit in conveniently with the six-year reporting cycle for river basin management planning. What is your take on SEPA's view?

**Andy Myles:** I hesitate to describe the situation as us being in conflict with SEPA, but our view is that, under existing legislation, annual reports have to be presented to the Parliament on a range of environmental matters, and it would seem most appropriate to fit the reporting arrangements under the bill into the same cycle.

In addition, we want to ensure that the Parliament has the ability to hold the executive branch to account. In the overall approach to achieving sustainability, one of our concerns is to ensure that our governance arrangements—the methods and processes of government—are adequate and fit for purpose. We think that an annual reporting requirement would be of great assistance to the Parliament because, once a year, it would give a parliamentary committee a document that it could take up and use in holding the executive branch to account.

There are many such reports. Sadly, quite a few of them simply sit on the shelf once they have been laid before the Parliament—they are not followed up. There are annual reports that the agencies present to the Parliament with which

very little happens. For you, as parliamentarians with the responsibility to hold the Government to account, the more hooks you have, the better. LINK members will continue to campaign to ask parliamentarians and parliamentary committees to use those hooks. If the reporting cycle is only every three years, a precedent might be set for reporting in other areas to occur only every three years. It would obviously be three times as efficient for an organisation such as SEPA for the reporting cycle to be only every three years, but a Government agency should have such matters under consideration all the time.

Frankly, each report will not be completely new. Whether the cycle is every year or every three years, one report will very much follow on from the previous report. We are not asking the Government to do something that is hugely onerous; we are asking it to do something that is sensible and which fits in with the pattern of public scrutiny that we have established in Scotland.

**Malcolm Chisholm:** Thanks very much.

**Alex Johnstone:** I will move on to issues of abstraction. Am I right in detecting from your earlier remarks that you feel that you were not consulted appropriately on the development of the control of water abstraction proposals that are in the bill?

**Lisa Webb:** I think that that would be fair to say.

**Alex Johnstone:** You seemed to give the impression that you were consulted on other parts of the bill. Is it specifically in the area of abstraction that you feel that you were not adequately engaged with?

**Lisa Webb:** Yes, because the proposal on large-scale abstractions was a late addition. It was not mentioned during the formal consultation, but it appeared in the bill that was introduced. An explanatory note said that there would be further consultation over the summer recess, but that did not really happen.

**Alex Johnstone:** I thought that I would clarify that before I moved on to specific questions.

In your written evidence, you indicated your concern that the new regime for authorising large-scale abstractions could be used to allow abstraction to be undertaken solely for economic reasons. Why do you consider that to be a problem? How might the bill be amended to alleviate the situation?

**Lisa Webb:** It is good to remind everyone that abstraction places unnecessary pressure on freshwater habitats, with consequences for wildlife and biodiversity. In addition, abstraction is recognised in our river basin management plan as one of the most significant pressures on the water environment.

It is not clear to us why the proposals for bringing large-scale abstractions under ministerial control are included in the bill, given that—as we believe—there are already powers under the controlled activities regulations for ministers to call in applications and determine abstraction authorisations. It is not clear to us what the purpose, intention or even the legal need for the proposals is.

**Alex Johnstone:** Were there any clues in the 10 megalitre per day threshold that has been set in the bill to indicate why that alternative regime was necessary?

**Lisa Webb:** Not especially. It is a large volume of water, obviously.

**Alex Johnstone:** In your written evidence, you suggest that you do not see the rationale for that threshold. Do you have an alternative proposal for how the threshold might be set?

**Chris Spray:** I think that our question would be, “Why a threshold? Why not just build on the controlled activities regulations?” The basis of CAR is simple things that people get on and do. The peak of the triangle, if you like, is very complex licences. This would seem to be a very complex licence, with lots of externalities brought in as well. We are at a loss to understand the threshold, and our uncertainty reflects that.

**Andy Myles:** I hope that in the passage of the bill—not only in the committee’s stage 1 proceedings, but if the bill proceeds to stage 2 and stage 3—there will be ample opportunity for all committee members and ourselves to get to the bottom of where the 10 megalitre figure came from. We said in our written evidence that we cannot really comment on the appropriateness of the figure because we do not know where it came from and we do not know the evidence upon which it is based.

What we know, and what we said elsewhere in our written evidence, is that there are huge economic savings to be made from tackling issues such as leakages. In the Government’s hierarchy, reducing use and reducing waste would be a far better economic approach than placing the emphasis on an abstraction regime for which we have not really seen the evidence.

**Alex Johnstone:** You have specifically suggested that Scottish ministers should have to consult SEPA and others when considering applications under the new regime, even though that may result in duplication of effort with SEPA. Is such duplication worth while? What additional benefits would it achieve?

**Lisa Webb:** Our point was that if part 2 remains in the bill, ministers should have to consult SEPA so that environmental impacts are properly

considered. We think that they should also have to consult Scottish Natural Heritage, where proposed abstractions could have an impact on designated nature conservation sites. At the moment, there is no obligation in the bill for that to happen. I think that the bill says that ministers may consult SEPA, but we would like it to be compulsory for them—

**Alex Johnstone:** Basically, you are suggesting that the bill is strengthened to ensure that that happens.

**Lisa Webb:** Exactly.

**Andy Myles:** CAR and other regulations and regulatory frameworks will still apply. It is strongly to be hoped that if a new part of the regime is added, the evidence suggests that there is no conflict there.

**Adam Ingram:** We asked a question earlier with regard to appropriate consultation with SEPA, particularly in the area of large-scale abstractions and perhaps with the advent of a new commodity market for Scottish Water elsewhere. As the bill team indicated last week, there is a prospect of Scottish Water resources perhaps being traded south of the border. Would you be concerned about what system of checks will be used? Will it be down to Scottish ministers determining the economic case, or should other checks and balances be put in place?

**Chris Spray:** If we build on the CAR basis of regulation, there has to be an environmental impact assessment. That is the key aspect.

The economic case is another question. Why would south of the border want to get very expensive water from here when water could be got from much closer, for example from Kielder Water? That is one of western Europe's largest reservoirs, which sits a bit further south of us and is already connected through to Durham, Teesside and into Yorkshire.

Water is very expensive to move and the energy costs are phenomenal. Scottish Water is already the biggest energy user in the country. There are economic questions, but the environmental issues have to be assessed, too. We do not want to see them being circumvented, hence our concern about the omission—deliberate or otherwise—of environmental and social aspects, which we discussed earlier. Our concern is based on the environmental challenge. We will leave the economics to folk who can work out the economics of—I was going to say, “transferring coals to Newcastle”, but I will stick with transferring water to wherever.

**Andy Myles:** With regard to the economic facts, I return to the issue of leakages. Many of the areas in England where water shortages are occurring or feared—I would use inverted commas

for the word “shortages”—still have significant problems with leakage. Efficiency in the system would be desirable for both economic and environmental reasons. We would like the emphasis to be placed on the proper and efficient use of the water that we extract. We need to make our existing water distribution systems more efficient, rather than looking for water elsewhere.

**Jim Eadie:** I return to the issue of sustainability that Andy Myles spoke about earlier. He said, rightly, that that goes to the heart of the matter. The submission from RSPB Scotland states:

“We believe that any duty on Scottish Water to develop the value of water resources must ensure that any such development is sustainable ... We would recommend inclusion of wording that is consistent with that in Section 10(1)(c) to strengthen sustainability.”

What would be the benefit in setting out in the bill a requirement for Scottish Water to exercise its non-core functions in a sustainable manner?

**Lisa Webb:** There would be a lot of value in doing that. We need a really strong and clear sustainable development duty at the forefront of the bill.

**Chris Spray:** If we are to use Scottish Water as an excellent global example of a very responsible way to manage water resources, showing that we are doing it sustainably has to be one of the key elements of promoting—rather than marketing—that example. Scottish Water is seen as an ideal governance model for many places, and to not require sustainability would be a very odd position to take.

11:30

**Andy Myles:** It would also run contrary to the clear indication that we have given to the rest of the world of our intention to be world leading in fighting climate change. If we decide that our water industry will not have a duty for sustainable development on non-core issues, we are in danger of looking foolish in the eyes of the world. The cost of abstracting water and transporting it around is extraordinary, and the process uses a vast amount of energy. You move out from the environmental field into the field of full sustainability. I do not want our responsibility in Scotland—freely taken on and unanimously agreed to, by all the parties, in the previous session of Parliament—to take a leading role in fighting climate change to be undermined.

**Jim Eadie:** There is unanimity across the panel that that is a significant omission from the bill.

**Lisa Webb:** Yes. The bill needs to be strong and clear, so that is an omission.

**Jim Eadie:** May I tease out what the omission means in practice? What practical examples do you have of the effect of not having that

requirement in the bill? What would that allow to happen that would not otherwise happen?

**Andy Myles:** This is another matter that is down to governance. We considered the issue fairly fully in our paper, "Governance Matters", which we published earlier in the year. We considered the effect of sections in a bill that clearly state that there is a responsibility for sustainable development and asked whether it is worth having them. We believe that the answer is yes, because you are passing the law of the land.

A bill is not a policy statement or a strategy document; it is law and it should be justiciable. Any citizen should be able to take up a matter in a court of law if he believes that it is not being dealt with properly. If it is stated clearly in the bill that there is a sustainability duty, any citizen can do that. I cannot predict the court's decision, as it would relate to either process or merit, but the matter would be clearly justiciable and someone would not have to go to court to suggest that the Scottish Government has that duty in any case, under international obligations, in the water framework directive. It would be better to include the duty in the bill, and therefore in Scots law, than for someone to have to go to court and say, "It's in the water framework directive, so you have to do it in any case."

**Chris Spray:** With one eye on climate change, we are aware that there are many examples globally of overabstraction from key sources of water supply leading to dramatic economic and environmental damage for the region. Places such as Lake Chad and the Aral Sea have to all intents and purposes shrunk to between 15 and 20 per cent of their original size as a result of economic drivers to produce water for irrigation. That has had a dramatic impact on the environment and the wider economy. I am not suggesting that that large-scale effect is about to happen in Scotland, but there are many examples on that scale and there must also be examples on a smaller scale where there has been such conflict.

**Jim Eadie:** I welcome the witnesses' responses. I was trying to tease out what practical and material impact this might have in a Scottish context. Perhaps the RSPB can help us.

**Lisa Webb:** Sorry, I am not clear about the question.

**Jim Eadie:** You have set out clearly the principle that sustainability should be a duty in the bill. I am asking what material and practical impact the omission of such a duty would have in a Scottish context. Mr Spray has given an international example. Can you share, either now or on reflection, any examples that are specific to Scotland?

**Lisa Webb:** Our view is that as this goes forward and Scottish Water is expected to develop the value of Scotland's water resources, having sustainability as a duty in the bill would instil a sufficient safeguard to ensure that that development is sustainable.

**Chris Spray:** It is, in a sense, hypothetical, but I go back to the example that I gave earlier of the Edinburgh water supply. The flow of the Tweed and, indeed, the Tay, which is one of Britain's largest rivers, is heavily controlled by the reservoirs upstream. What is taken out fundamentally affects what is down below. The Tweed is very important for salmon, which, as well as being an iconic fish, is a flagship industry for Scotland, with £18 million and 512 jobs dependent on that one situation. That could be affected by taking water from the upper reservoirs, as that would reduce the ability to release water into the stream.

You are right to challenge us to provide examples. At the moment, the system is working well and we have a lot of water in Scotland, although not necessarily in Buchan and the east side. Scotland is blessed with a very good water resource. Nevertheless, with climate change having dramatic impacts over even small areas, we want to get some assurance built into this.

**Jim Eadie:** Thank you. I will move on to a slightly different point. Do you have any concerns about the financing that would be required to fulfil the new duties that are being placed on Scottish Water? What impact might that have on the consumer interest?

**Chris Spray:** I refer you to my earlier example of South West Water putting between 60p and 70p on its bills to release £9 million over 30 years for tremendous work in the catchment that has proven to be fantastically cost-benefit positive. Otherwise, we are not finance experts.

**Andy Myles:** We are not the greatest experts on finance, but I am not certain that there would be a huge cost to Scottish Water in fulfilling those duties. The general duties regarding sustainable development, in particular, are consistent with other duties that all public bodies in Scotland have under the Climate Change (Scotland) Act 2009. It might be said that the bill would place no additional costs on Scottish Water because, under other legislation, Scottish Water already has duties to be fulfilled.

**Lisa Webb:** The Scottish Government has estimated that there could be £10 million of savings over 25 years in one large drinking water catchment if the catchment management approach was adopted. Therefore, there is the potential for savings to be made and passed on to customers as well.

**Jim Eadie:** That is very helpful. Thank you.

**The Convener:** Let us move on to part 4, "Raw Water Quality".

**Gordon MacDonald:** Part 4 provides powers to enable Scottish Water to gain access to inspect and monitor factors that may affect the quality of raw water and to enter into agreements with landowners to implement best practice. Why is it necessary to place a further duty on Scottish Water, SEPA and others to work in partnership to deliver sustainable land management?

**Chris Spray:** We have already given some examples of huge success being achieved through partnership working, and that is what we are pointing to. We would say that the problem should be treated at the source by working with the people who are at the source—the local communities—finding out how they could benefit and looking for multiple benefits. As I said, there could be flood prevention benefits, wildlife benefits, access benefits and tourism benefits all added together. Our experience of partnership working under the Flood Risk Management (Scotland) Act 2009 has been really good, and non-governmental organisations have been key in delivering that. We stress that this is one of the most positive areas of the bill, and we would like it to be developed to include the NGOs among all the others.

**Andy Myles:** The argument again relates to consistency. Within the Climate Change (Scotland) Act 2009, Parliament unanimously passed the sustainable land use strategy for the whole of Scotland, which is about multiple uses of land. We cannot extricate the water regime from land use; therefore, it makes sense, for consistency, to put such a duty in the bill. It is possible that the duty already exists under the Climate Change (Scotland) Act 2009, but it would do no harm to clarify the matter.

**Chris Spray:** The ecosystem approach, which is fundamental to the land use strategy, involves using local knowledge, working at the appropriate local scale and working in partnership with other key organisations. As my colleague said, we would like to see that emphasised. More of the same would be really good news.

**The Convener:** We move on to questions on the sewerage network from Margaret McCulloch.

**Margaret McCulloch:** Good morning. You state in your written submissions that you would like further action to be taken to encourage the registration and maintenance of septic tanks. What further action do you seek?

**Lisa Webb:** I think that we suggested that the development planning process be looked at to see whether there are any stages in it that encourage

and incentivise people to register septic tanks. That needs to be looked at. The reason for that suggestion is that there are indications that we do not have a good handle on where septic tanks are and how well they are being maintained, which makes SEPA's job difficult. Research has indicated that phosphate pollution is arising from septic tanks, but in some cases we are unaware of their exact location. We hope that the bill will plug the gaps by covering the development planning process.

**Margaret McCulloch:** I think that SEPA says that that is happening for new builds.

**Lisa Webb:** Okay.

**Margaret McCulloch:** The problem is probably how we can ensure that existing septic tanks are registered.

**Lisa Webb:** In that case, perhaps there could be awareness-raising campaigns and so on to encourage people to register.

**Margaret McCulloch:** Will you expand on your suggestions in your written evidence that Scottish Water should develop a strategy to reduce water consumption and improve water efficiency?

**Chris Spray:** In part, there is an economic case for that. As I said, one of the biggest costs for a water company is the cost of energy for pumps. Water companies pump water up to a treatment works, from the treatment works to the tap, and from the tap to the sewage treatment works, and that is where all the costs lie. If there is a leakage rate of 30 to 40 per cent—I am not sure what Scottish Water's rate is at the moment, but it will be in that area—an awful lot of energy and carbon will be used to pump water unnecessarily. There is therefore an economic case for improving efficiency.

We need to look at the downside—not the supply end, but the demand end—and promote conservation and education. We are perhaps missing a trick by not doing more to promote education and raise awareness. That is what we are looking for. The issue takes us back to Margaret McCulloch's good point about septic tanks.

**Andy Myles:** On the question of leakage, it is safe to say that the environmental organisations have much appreciated the improvements that have been made in the past several years—under Administrations of all colours, through the Scottish Parliament—to reduce leakage. A huge amount of energy and pressure has been put in to reduce wastage, but there is still a long way to go. Again, I do not know the exact percentage, but wastage rates have been coming down. We want that to continue, because it will save energy and costs.

**Chris Spray:** Eventually, we will reach an economic level of leakage and it will not be worth while to chase further improvements, but we can certainly get the percentage down into the teens, as has happened further south and elsewhere.

**Margaret McCulloch:** Going back to water consumption, what other things could be done to raise the awareness of individuals, households, businesses and young people in schools of the importance of water and the fact that it should not be wasted?

**Chris Spray:** It is important to encourage the education end. You are absolutely right—it is about changing individuals' behaviour, and that is perhaps the part that is missing.

If people go out of their house and leave the gas, electricity and water on, assuming that the house does not either flood or blow up, their bills will be dramatically higher for two of those utilities, but there will be no change in their water bills. That brings us back to one of the key issues around the bill, which is value. Until we individually value water—the word “value” is used at the beginning of the bill—that will continue, and people will not understand that wasting water increases energy costs, pumping costs and waste costs.

**Andy Myles:** A major part of the journey of Scotland and the rest of the planet towards sustainability is attitudinal change. That is a major part of the Climate Change (Scotland) Act 2009, but it needs to be replicated in the water environment. The Government has been doing good work in the area, but we believe that there is room for improvement. That is the reason for our comments in our submission. The Government should continue in the direction that Scotland is already travelling in, because that will take us further down the road towards sustainability. There are economic, social and environmental benefits to be obtained from going down that road.

**Margaret McCulloch:** Thank you.

**The Convener:** As there are no further questions, I thank you for coming along to give us your evidence, which has been very helpful.

That concludes our business for today. Our next meeting will be on 26 September, when we will continue our consideration of the Water Resources (Scotland) Bill and take evidence on the active travel elements of the draft budget for 2013-14.

*Meeting closed at 11:46.*



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