



The Scottish Parliament

Environment and Rural Development Committee

15th Meeting, 2004

Wednesday 9 June 2004

The Committee will meet at 10.00 am in Committee Room 1.

1. **Petitions:** The Committee will take evidence from Allan Wilson MSP, Deputy Minister for Environment and Rural Development, and Mrs Mary Mulligan MSP, Deputy Minister for Communities, in relation to the following petitions—

PE517 and **PE645** on control of odours from waste water treatment works.

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

Framework Guidance on Preparing a National Park Plan, (SE/2004/98); and

the Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004, (SSI 2004/245).

Tracey Hawe

Clerk to the Committee
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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>PE517 and PE645 – Note from the Clerk together with relevant background briefing and correspondence.</p> <p>Copy of petitions <u>PE517</u>, and <u>PE645</u>.</p>	<p>ERD/S2/04/15/1a</p> <p>ERD/S2/04/15/1b</p>
<p><u>Agenda Item 2</u></p> <p>Framework Guidance on Preparing a National Park Plan, (SE/2004/98).</p> <p>the Horticultural Produce (Community Grading Rules) (Scotland) Revocation Regulations 2004, (SSI 2004/245).</p> <p>Extract from the Subordinate Legislation Committee's 24th Report.</p>	<p>ERD/S2/04/15/2a</p> <p>ERD/S2/04/15/2b</p> <p>ERD/S2/04/15/2c</p>

PETITIONS PE517 AND PE645 ON THE CONTROL OF NOXIOUS ODOURS FROM WASTE WATER TREATMENT PLANTS

PE517 By Mr Rob Kirkwood, on waste water treatment plants.

1. The petition expresses concern that local authorities appear to be able to allow waste water treatment plants to operate outwith the terms of existing environmental protection and planning legislation. The petitioner calls for the Scottish Parliament to investigate this situation.
2. The petitioner also calls for the Parliament to investigate possible solutions to the problem of noxious odours and airborne bacteria released from such plants. The petitioner suggests covered conical shaped tanks positioned far away from residential communities as a possible solution.
3. The petitioner is specifically concerned with sewage processing at the Seafield Waste Water Treatment Plant in the Leith Links area of Edinburgh. The petitioner is concerned that the odours and gases from this plant are having a detrimental impact on the health and quality of life of nearby communities.

PE645 By Mrs Norma Rutherford, calling for the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste treatment works.

4. The petitioner is specifically concerned with the Kirkcaldy Waste Water Treatment Works which began operating in September 2001. The petitioner claims that despite the statement in the original plans for the Treatment Works that there would be no odour emissions, noxious odours are emanating from the plant.
5. The petitioner argues that the noxious odours have a detrimental effect on the health and quality of life of the local community. The petitioner states that the Treatment Works is 'within a stone's throw' of residential housing.

Progress of the petitions

Meeting on 10 September 2003

6. The Committee first considered petition PE517 at its meeting on 10 September 2003. The Committee agreed to write to the Minister for Environment and Rural Development requesting an update on how the Executive plans to take forward issues relating to odour control and, in particular, issues relating to waste water treatment plants. A copy of the letter to the Minister is attached at Annex A, and a copy of the Minister's response is attached at Annex B.
7. The response notes that in England and Wales, a court decision which had ruled that local authorities could be prevented from taking

enforcement action against Water Companies that did not comply with removing offensive odour has been overturned in the High Court. The response notes that leave to appeal to the House of Lords has been granted, and that the ruling is expected during the course of 2004. The response adds that, in the interim, the English High Court ruling of 15 May 2003 may be persuasive in Scotland.

8. The response also notes that, whatever the outcome of the appeal, the Executive proposes to produce a voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works.

Meeting on 19 November 2003

9. The Committee considered the Executive response at its meeting on 19 November 2003. The relevant extract of the *Official Report* of the meeting is attached at Annex C.
10. At the meeting, the Committee also considered petition PE 645 by Mrs Norma Rutherford on the control of noxious odours from a waste water treatment works in Kirkcaldy. The Committee agreed to consider this petition alongside PE517, on the basis that the issues raised by the petitions were broadly similar.
11. The Committee also agreed to take forward issues initially raised by petitions PE541 and PE543 relating to the regulation of noxious odours from landfill sites as part of its consideration of petition PE517.
12. The Committee agreed to write to the Minister for Environment and Rural Development to raise issues relating to the regulation of odour and noting the Committee's intention to consider these issues in its consideration of the proposed Water Services Bill, which is expected to be introduced to Parliament shortly.
13. The Committee also agreed to write to the Minister for Communities regarding the planning issues raised by the petitions noting the Committee's desire to see these issues taken forward as part of the proposed Planning Bill.

Executive Response

14. The letters issued to the Ministers requested that the Minister for Environment and Rural Development liaise with the Minister for Communities in order to provide the Committee with a co-ordinated response in January. These letters are attached at Annex D.
15. The Convener wrote to the Deputy Minister for Environment and Rural Development on 18 March noting that the response was outstanding and urging the Deputy Minister to issue the response as soon as practicable. The letter is attached at Annex E.

16. The Executive response was received from the Deputy Minister for Environment and Rural Development on 26 March and is attached at Annex F.

Guidance for local authorities

17. The Committee had requested that the Minister should write to local authorities reinforcing the existing powers available to them. The response notes that Executive officials are of the view that local authorities are aware of the present position, but that officials plan to write to local authorities in the near future on this issue.

House of Lords appeal

18. The response states that, if the House of Lords allows the appeal, the Executive does not expect a final ruling until November 2004 at the earliest.

Consultation

19. The response further states that, in the event of the appeal being allowed, the Executive would propose to publish a consultation on future legislative options.

Voluntary Code of Practice

20. The response re-iterates that the Executive is producing a Voluntary Code of Practice, adding that the intention is to publish a draft Code for public consultation in the Summer.

Abatement notices

21. The response provides details of the 8 abatement notices served by local authorities under the statutory nuisance provisions of the Environmental Protection Act in Scotland since 1999. In relation to PE517, the response notes that 6 of these notices have been served by Edinburgh City Council on Seafield Waste Water Treatment Works and that Scottish Water has appealed against the timescales imposed in the last notice.

Monitoring odour nuisance

22. The Committee requested information on the measurement of odour nuisance and on the Executive's definition of what constitutes such a nuisance. The response states that Environmental Health Officers use their noses to establish whether a statutory odour nuisance has occurred and measurement is based on the officers' experience. The response also quotes the definition in the Environmental Protection Act 1990 as "any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance".

Scottish Water funding

23. The Committee's letter to the Minister for Environment and Rural Development Committee expressed concern that odour nuisance does not seem to be ranked as an investment priority at present, perhaps due

to a number of other significant pressures on Scottish Water's finances. The response states that funding has or will be provided for the period 2003/03 to 2005/06 for the Delivery of Quality and Standards II and that the Executive accepts the Committee's request for the need for higher standards of odour control to be considered in consultations on Q&S III.

Forthcoming legislation

24. The Committee requested that planning issues be addressed within the forthcoming Planning Bill and that issues relating to odour nuisance be addressed in the Water Services Bill. The response states that Scottish Ministers do not consider these bills to be appropriate legislative vehicles for dealing with these issues.

Interaction between planning and environmental regulation

25. The response outlines the impact of the phased implementation of the Pollution Prevention and Control (Scotland) Regulations 2000 which requires plants regulated under PPC to use best available techniques to prevent or minimize pollution, including offensive odour. The response notes that only plants which meet certain criteria are regulated by SEPA under PPC.
26. The response explains the roles of planning authorities and SEPA in granting permissions and licences for the operation of waste water treatment works. It also details their roles in relation to monitoring the operations of water treatment works to ensure accordance with planning and licensing conditions. The response acknowledges that the dividing line between planning and environmental controls is not always clear, and adds that the Executive is currently carrying out research into the interaction between planning and environmental regulation.

Scottish Water planning permissions

27. The Committee requested information on 'permitted development rights'. The response notes that the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, grants a general planning permission for a broad range of developments which, because of the nature of the proposals, would almost without exception be granted. Annex A to the response lists the permissions which apply to sewerage undertakings.

Landfill

28. The Committee re-iterated its recommendation from its Report on its Inquiry into the National Waste Plan that the Executive designates a minimum distance for new landfill site developments from residential areas. The Committee added that it also considered such a designation appropriate in relation to new waste water treatment works.
29. The Executive response notes that the Landfill (Scotland) Regulations 2003 require "the distances from the boundary of the site to residential and recreational areas" to be taken into account during the planning application process. The response then notes that factors such as

prevailing winds can be taken into account within this requirement and that the same factors can apply in considering new waste water treatment developments. The Executive does not, however, consider that specifying a statutory minimum distance is appropriate.

Current Position

30. At its meeting of 21 April 2004 the Committee considered the Executive response, detailed above. Following discussions, it was agreed that both the Minister for Environment and Rural Development and the Minister for Communities should be invited to give evidence to the Committee. (See Annex G for an extract of the Official Report for the meeting).
31. Members may also wish to note that, in response to question S2W-8053, the Deputy Minister for Environment and Rural Development indicated on 19 May 2004 that proposals for a voluntary code of practice are being developed by an expert working group and will be issued for consultation later this year.
32. Members may also wish to note that Scottish Water's 'Sustainability Report 2002/03' indicates that there are approximately 600 waste water treatment plants in Scotland. 66 of these plants did not meet SEPA requirements on quality discharges during 2002-03. This indicates that the Executive is on track to meet the current target of having less than 70 works not in compliance. Scottish Water plans to reduce the numbers of works not in compliance to less than 45 by 2006.
33. The Committee highlighted this issue, along with issues regarding the design of waste water treatment plants in its recent Stage 1 report to the Finance Committee on the Scottish Executive Budget 2005-06.
34. The Committee noted the representations received from petitioners in relation to odour nuisance issues. In relation to the current target on numbers of waste water treatment facilities not in compliance, the Committee recommended that the target be reviewed, with the objective of achieving more effective odour control in relation to future waste water treatment facilities together with a reduction in the number of existing facilities not in compliance.
35. The Committee also noted that these representations indicated that there has been a lack of attention to odour control issues in the design of waste water treatment plants. The Committee further noted that the design of such plants is to become a standardised process and requested that the Minister should bear the issue of odour control in mind when making budgetary decisions in relation to the water spend.

Options for Action

36. Following consideration of the evidence from the Deputy Ministers for Environment and Rural Development, and Communities, the Committee is invited to consider what further action it wishes to take in relation to these petitions.

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

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16 September 2003

Dear Ross

At its meeting on 10 September 2003 the Committee considered a number of public petitions, some of which have been re-referred following consideration by predecessor committees in the first session. The Committee agreed to write to you on a number of points.

Petition 365

This petition (by Mr Iain MacSween on behalf of the Scottish Fishermen's Organisation Ltd) calls on the Parliament to review the status of fixed quota allocations and to take appropriate action to ensure that access to fish stocks is not sold to owners whose main place of business is outwith the UK.

The Committee is aware that no trade in these quota shares was originally intended but that concerns have arisen that a grey market appears to have developed with fishermen who can afford to do so buying or leasing additional quota. The Committee is also aware that the former Rural Development Committee touched on the subject in its report on Current Issues Facing the Scottish Fishing Industry in February 2003. That Committee noted concerns about the compatibility with EU state aid rules of a quota purchase scheme operated by Shetland Islands Council, and also noted that the current and previous decommissioning programmes have not required quota allocations to be surrendered.

I would be grateful if you could provide the Committee with a detailed briefing outlining your current position on the operation of the quota system and the tradeability of quota entitlement. I would also be grateful if you would address your thinking in the way the quota system is treated in the decommissioning scheme, and any current or future developments you are considering in quota management (including the response to the European Commission's decision on the Shetland Islands Council scheme).

Petition 449

This petition by the Scottish Gamekeepers' Association calls for an independent investigation into the impact of predatory birds on waders and songbirds, and private stocks of fish and gamebirds.

Following evidence from the petitioners and Scottish Natural Heritage, the Convener of the then Rural Development Committee wrote on 26 February 2003 to the Deputy Minister for Environment and Rural Development drawing attention to perceived gaps in the science base and the lack of substantial research into the interaction of various species and habitats.

In noting the Deputy Minister's response of 13 March, the Committee is anxious to learn whether the Executive has yet identified specific research projects, and the timescale for commissioning such projects. In view of the anecdotal nature of much of the evidence which indicates a significant increase in predatory birds over a relatively short number of years, the Committee believes it is important to have clear factual knowledge about their impact on other species. I would therefore be grateful if you could provide the Committee with an update on the current position, detailing:

- the stage scientific investigations have reached
- the progress which is being made in the moorland forum, and
- your intentions in respect of obtaining any further information.

Petition 517

This petition concerns odour nuisance from waste water treatment plants and is specifically related to the plant at Seafield in the Leith Links area of Edinburgh. The Committee noted information on the ongoing situation at Seafield and anecdotal evidence of problems elsewhere in Scotland. It concluded that the regulation of odour nuisance in general, and specifically in relation to water treatment plants, is an issue that requires further examination.

A letter from your department's Air Climate and Engineering Unit dated 21 August 2003 provided the Committee with an update on the court ruling in England and Wales relating to the regulation of odour nuisance, and the outstanding appeal against the ruling which has been lodged with the House of Lords. The Committee particularly noted your commitment to at least introducing a voluntary code of practice and the possibility of conducting a consultation on legislative change after the House of Lords ruling. I would be grateful if you would advise the Committee of the progress of the appeal, and any other developments relating to the regulation of odour nuisance.

However, the Committee noted that the outstanding appeal does not preclude the Executive from initiating proposals for legislative change to address problems relating to odour regulation. I would therefore also be grateful if you could outline your thinking on whether you would consider a legislative approach regardless of the outcome of the appeal.

I have undertaken to provide the Committee with a regular update on the progress of all petitions referred to the Committee. I next intend to do so in early November 2003. I would therefore be grateful if you could let me have your comments on the above points by the end of October.

I look forward to hearing from you.

Yours sincerely

Sarah Boyack MSP
Convener

PETITIONS 365, 449 AND 517

You wrote to me on 16 September asking for an update on a number of petitions. You have already received briefing on Petition 449, which you required prior to your meeting with the Scottish Gamekeepers' Association on 28 October, and I attach a briefing note as requested on Petition 365 and the operation of the fish quota system and the tradeability of quota entitlement.

The position regarding Petition 517 and the progress of the appeal that has been lodged with the House of Lords on the court ruling in England and Wales relating to the applicability of the statutory nuisance regime to odour from sewage treatment works is as follows.

I can confirm that leave to appeal has now been granted, and the ruling is expected during the course of next year. In the interim, the English High Court ruling of 15 May 2003, (that the statutory nuisance provisions of section 79(1) (g) in Part III of the Environmental Protection Act 1990 do apply to odour from sewage treatment works), may have persuasive authority in Scotland.

I understand that several Scottish local authorities have considered or are considering issuing abatement notices under Part III of the Environmental Protection Act 1990, for example the present action being taken by the City of Edinburgh Council in connection with Edinburgh's Seafield Sewage Treatment Works.

I can confirm again that while the House of Lords ruling is awaited, progress is being made on a proposed voluntary Code of Practice which will provide advice and guidance to local authorities, the public and the water industry on the resolution of odour and other nuisance problems from sewage treatment works. The Scottish Executive intends to consult on a draft of the Code in early 2004. My officials are working with Defra and other relevant stakeholders on the preparation of this Code. In the light of this I think it would be inappropriate at this stage to consider a legislative approach. However, I would reiterate that if the House of Lords rules that the statutory nuisance provisions of the Environmental Protection Act 1990 do not apply to odour from sewage treatment works we would wish to consult on legislative change after that.

I trust this information will be helpful.

ROSS FINNIE

**Extract from the *Official Report*, dated 19 November 2003
Environment and Rural Development Committee**

Col 474

Waste Water Treatment (PE517 and PE645)

The Convener: PE645 is a new petition that calls on the Scottish Parliament to take a range of steps to ensure the control of offensive and noxious odours from waste treatment plants. The committee is required to consider the petition and to agree a course of action. Everyone will have read their papers, so I imagine that they have noted that the issues that are raised in the petition are broadly similar to those that were raised in PE517, although this is the first time that we have considered the new petition. Are members content to accept the referral from the Public Petitions Committee and to consider PE645 alongside PE517? The local member is here this morning.

Marilyn Livingstone (Kirkcaldy) (Lab): Petition PE645 relates to the Pathhead waste water treatment works in Kirkcaldy, which is affectionately known as the "Pathhead pong". Matters have moved on since the petition was submitted, but issues remain. The residents group, the council and I met Scottish Water, but we have reached an impasse. As members are aware, we are awaiting judgments and we are considering closely what the City of Edinburgh Council is doing. Fife Council will monitor the situation over six weeks and we have issued recording sheets as we did in the past. With the residents in Kirkcaldy who still suffer from the odours, although there are fewer of them now, we are looking at the measures we can take because of that impasse.

Roseanna Cunningham: I am concerned that we have two petitions from two widely different areas, but which seem to relate to the same problem. That might be evidence that the problem is much more widespread. Although we see that problem in the context of individual petitions, perhaps we need to take the bigger issue more seriously. I know that the committee's work load is horrendous for the foreseeable future, but I am wondering about option C in the paper on PE517, which proposes monitoring the situation. That option could also apply to PE645 and it would allow us to monitor developments that are wider than those in the two petitions. My guess is that they might only be the tip of the iceberg.

The Convener: The suggested action on PE645 addresses the broader issues with which we have been dealing under PE517. The two petitions relate to issues which, although they are experienced locally, are not local issues because they raise broader issues throughout Scotland. I am keen that we agree to consider PE645, but that we consider it alongside PE517, which picks up the point that the issues are not isolated and that they are public policy issues.

Marilyn Livingstone: My constituents would have no problem with that. They know that, although their petition concerns the Pathhead works, broader issues are involved, as the convener said.

The Convener: So we would agree to pursue option A, which is that we accept the referral of PE645 and undertake further consideration of the issue in conjunction with PE517. I want to ensure that we deal with the petition properly, instead of simply closing it down.

Des McNulty (Clydebank and Milngavie) (Lab): I think that I am in the same position as other members, in that an existing sewage works in my area has been producing odours for a long time. The works have recently been renewed and the smell periodically worsens. Moreover, there is a proposal for a significant extension to an existing sewage works 500yd from the centre of Clydebank, which means that we will get the smells from the north side of Glasgow and from Renfrewshire in quite a narrow space.

I want to identify three action points in connection with this issue. First, I would like the committee to highlight that the matter should be taken into consideration in the proposed Water Services (Scotland) Bill. Legislation that relates to this matter is coming down the track and, given colleagues' comments about what is happening around Scotland, it is entirely unacceptable that only one abatement notice has been served since 1999. As the Executive will have an opportunity to examine legislation in this area when the proposed bill is introduced, an early indication from the committee that it would expect such an examination would send an important signal.

Secondly, the petition raises the significant planning issue of permitted development rights. There is no legislative obligation on water authorities to carry out normal planning scrutiny or to provide notification of proposals to develop an existing facility, however small it might be. As a result, planning authorities have no opportunity that is backed by legislation to enforce conditions as far as planning consent is concerned. Although such conditions were enforced with the proposed Erskine works, which are on the opposite side of the Clyde from my constituency, that was done largely on a grace-and-favour basis. We need to address the way in which permitted development powers are used in that respect and how they allow public authorities to by-pass legislative planning mechanisms as opposed to mechanisms that address odour problems.

Thirdly, Scottish Water recognises that it could maintain higher odour-control standards. However, with the funding regime that it operates under the water industry commissioner and the Scottish Executive's policy direction, it is not funded to achieve such standards. Indeed, it could be criticised for imposing higher standards, which is a completely topsy-turvy arrangement. I suggest that the committee could flag up the issue to the Finance Committee, which is investigating the funding regime of the water authority.

I suppose that I am making three suggestions. First, I suggest that the committee writes to Ross Finnie in relation to his legislative powers; secondly, that it writes to Margaret Curran to ask about permitted development rights in the context of the on-going consultation on planning matters; and thirdly, that it writes to the Finance Committee in the context of its investigation into Scottish Water's funding regime.

The Convener: We know that you are the convener of the Finance Committee, so I take it that you are actively seeking that advice from us.

Alasdair Morrison was about to ask a question.

Mr Morrison: I have nothing to add.

The Convener: I seek members' agreement that we accept the referral of PE645 and that we wrap it up with PE517.

Members *indicated agreement.*

The Convener: It was important that Marilyn Livingstone was able to speak about how the matter has impacted on her constituents.

I want to pick up some of the other issues that were raised by Des McNulty in relation to the previous petition and which are also relevant to PE645. I will bring everyone up

to date on the progress of PE517 and then bring in Susan Deacon, who is keen to speak on it.

This is the second time that we have considered PE517. At our meeting of 10 September, we agreed to write to the Minister for Environment and Rural Development to seek his view on all the issues that arise from it, including the effectiveness of the current system for regulating odour nuisance from water treatment plants, on which Des McNulty has just commented. The minister's response is attached to the petition cover note. We will try to sweep up some of the broader issues that Des McNulty and Marilyn Livingstone have raised and consider how to proceed with PE517.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I attended the previous meeting at which this issue was raised, so members will be aware of my interest in petition PE517. Seafield sewage works, which prompted the petition, is in my constituency.

The specific point that I would like to make is in direct response to the minister's reply. It is approximately 18 months since PE517 was submitted to the Parliament. I recognise that the petition has been progressed actively by the Public Petitions Committee and by the Transport and the Environment Committee before the election and by the Environment and Rural Development Committee since. Nonetheless, 18 months have elapsed since the issues were first raised.

It is more than six months since the Minister for Environment and Rural Development, Ross Finnie, acknowledged to the Transport and the Environment Committee that there were inadequacies in the statutory and regulatory regime and gave certain commitments in that regard. I am deeply concerned that we are not moving forward further and faster.

Other members are absolutely right when they say that this is not an isolated case—I have acknowledged that from the outset. We are hearing about more and more such cases across the country. Recently one Sunday newspaper investigated the issue and established from the Scottish Environment Protection Agency that in excess of 30 plants are subject to various forms of investigation. The four members present who have experience of the issue in their constituencies know that we are dealing with a major environmental nuisance to the community. The existing arrangements have proven somewhat inadequate in addressing that.

My fundamental point is that I have read the minister's response and do not believe it to be satisfactory. It is a reiteration of the situation that prevailed a considerable time ago. I understand that a House of Lords ruling is awaited, but I am not convinced that consultation on legislative change must await that. There is a wide range of issues on which discussion and debate could usefully be initiated. I echo Des McNulty's suggestion that we seek other vehicles for addressing the problem.

Even if the House of Lords rules that the statutory nuisance provisions of the Environmental Protection Act 1990 apply to odour from sewage treatment works, that does not deal with the wider legislative and regulatory issues that are involved—for example, the planning issues to which Des McNulty referred.

I can do no more than request that the committee, in its response to PE517 and PE645 and, indeed, to the minister, goes beyond simply noting the current position. Every further month or six-month period that elapses during which work is not actively commenced to tighten up the regulatory and statutory regime in this area is time during which communities are suffering.

I realise that this is the third time that I have echoed Des McNulty—it is becoming worrying—but he was right to touch on the complex issue that is the nature of Scottish Water and to say that it must have a basis on which to invest time, energy

and, crucially, money in the development of its infrastructure. Odour is not treated seriously enough at the moment. It has been seen as the cinderella in the major investment projects that have been carried out at a range of pre-existing and new waste water treatment plants.

Last week, several of us attended a briefing with Scottish Water and the chair, Professor Alan Alexander, essentially or loosely acknowledged that point, although I do not want to put words into his mouth. The Scottish Parliament has an opportunity to make a difference, but if the minister's response is accepted as it stands, people will start to lose faith in the Parliament's processes and powers to address an issue that affects thousands of people throughout Scotland.

Christine May (Central Fife) (Lab): Although my area has not submitted a petition, the Levenmouth sewage treatment works is experiencing similar problems. Scottish Water has been very good at coming to meetings, but one of my criticisms is about what I and the community perceive as its lack of urgency in taking steps. I echo what Susan Deacon said: unless Scottish Water comes under pressure from those who have the power to legislate—us—I suspect that it will feel no sense of urgency, particularly because of all the other pressures that it is under. If that happens, the situation will continue in which my constituency has been told that it might be up to a year before any remedial work can be planned and put in place. That is not acceptable to the community, but we cannot put any more pressure on Scottish Water and we hope that the committee can use its powers to do so.

The Convener: No member of the committee has spoken thus far. The options that we have available to us require a varying amount of work. Option A says that we are happy with the Executive's response and that we will defer further consideration of the petition until the House of Lords appeal is resolved. We have had representations from colleagues who have odour problems in their patch saying that that is unsatisfactory. The second option is for us to write to the minister outlining further views and asking how the Executive plans to address the issues relating to odour control on landfill sites. The committee has been picking up on that issue and announced that in the report that was published yesterday. Thirdly, we could appoint a reporter to monitor developments in relation to noxious odours from waste water treatment plants and landfill sites, and then report back to the committee.

Noting what has been said today, it seems to me that there are two issues. One is a short-term enforcement issue on local authority powers. I wonder whether it would be helpful for the ministers to write to local authorities and tell them what the Executive's powers are at the moment. Guidance might come along later this year in the form of a voluntary code, but it would be no bad thing if ministers were to tell councils what they think the current provision is, to reinforce the fact that the House of Lords ruling will be binding under Scots law. Local authorities are allowed to take enforcement action and it might be useful if that fact was reinforced.

Des McNulty has highlighted what we can do with the proposed Water Services (Scotland) Bill and the planning bill, which concerns permitted development rights. When we come to scrutinise those two bills—the water bill will be our responsibility and the planning bill will be the responsibility of the Communities Committee—we could gear up to make points at stage 1. Would it be worth it if we said now that that work had to be done? We could write to the ministers with our views and ask them to start considering those views in the context of both bills. Alternatively, we could appoint a reporter to do that for the committee and then we could tell Ross Finnie and Margaret Curran what we are looking for.

I seek members' views. Do we do it ourselves now or do we write to the ministers and tell them that we expect those issues to be considered in the bills that are being

prepared? We could write the letter tomorrow, or we could do the scoping work for the discussion of the principles of both the bills.

Mr Morrison: The first option—writing to the minister—is the obvious first course of action.

The Convener: We have written to the Minister for Environment and Rural Development and have received feedback, so we would be writing to make a concrete proposal that the issue be addressed in the Water Services (Scotland) Bill. That would pick up Des McNulty's point that the current legislative framework under which Scottish Water works does not require it to address the issue to the extent that we think it needs to be addressed. We will flag that up now and, in effect, get the minister to do the work. Is that agreed?

Members indicated agreement.

The Convener: The second point is—this is an efficient use of time—permitted development powers under the proposed consolidated planning bill. Following the same principle, we will write to Margaret Curran and say that the issue has been highlighted and that it should be picked up in the planning bill. We do not want the issue to be dealt with at stage 3 of the two bills; we want the work to be done now so that it sends the message to a series of agencies that the issue is one that the Parliament feels is important and on which it wants legislative action. We should ask for a response from the minister and, if we think that the response is lukewarm, we can appoint a reporter and do the work ourselves. We are firing a shot across the Executive's bows and saying that the committee expects the issue to be included in the bills.

Do members feel that that would be a good way to proceed? It picks up Susan Deacon's point about time scale and raising the issue up the agenda so that people outside the Parliament can see that we think it important and want it to be dealt with through legislation.

Members indicated agreement.

Des McNulty: I suggest a third letter, which would be to Ross Finnie in the context of the quality and standards consultation that he will be opening in February 2004 and would say that we seek higher standards of odour control, which would have to be factored into the way in which arrangements between the water industry commissioner and Scottish Water would be addressed as part of that consultation. Again, we would be asking the civil servants to do early work on how that could best be achieved.

The Convener: It might be worth copying our correspondence to—I have forgotten the technical term—the environmental regulator for the water industry, as opposed to the water industry commissioner. They are different: one deals with environmental standards and the other is about the water industry as a whole.

Des McNulty: You mean SEPA and the water industry commissioner: the WIC deals with economic aspects, which have been a barrier, and SEPA deals with environmental considerations and enforcement.

The Convener: We should flag up that we are taking an early interest in the matter and that it will be coming to those to whom we are writing. Is there anything else that we should do at this stage to ensure that we have swept up all the issues properly?

Marilyn Livingstone: You talked about a letter to local authorities outlining to them what measures can be taken at the moment. In my area, we have found that the most difficult thing is measuring the odour. That difficulty needs to be pointed out. Scottish Water is putting monitors around the site in my area at the moment.

Secondly, the definition of nuisance seems to be quite loose. We need to tighten up how we measure and define nuisance. My constituents who are living with the odour would say that it is a nuisance, but the issue is how the local authority determines nuisance.

I would appreciate it if those points could be clarified.

The Convener: Those are important issues to put in front of the ministers. I clarify that my suggestion is that Ross Finnie should write to local authorities to clarify the current legal position, but it is important to put your points about measurement and definition into a letter. The other ministerial letter that we need to write is to the Minister for Communities, and, out of courtesy, we should copy that letter to the convener of the Communities Committee. Des McNulty, as a local member, also requested that we write to the convener of the Finance Committee to recommend that the issue be addressed.

That is a lot of letter writing, but it is quite a concrete way in which we can flag up the issues. We will make a judgment on the responses that we get from the ministers and decide whether we are happy with them or whether we feel that we need to take ownership of the issue and appoint a reporter.

Des McNulty: I want to pick up on a point that Marilyn Livingstone made. There is an issue about the method of measuring odours and the standard that is set for that. There is also a related issue about having a cordon sanitaire around such plants, which is to do with how close they should be to residential and other areas. Planning is the other way in which the problem can be dealt with. It is probably worth flagging up that we want both those issues to be considered.

The Convener: We certainly picked up that issue during our waste inquiry. As members will be aware, we identified the need for minimum distances between new landfill sites and such areas, and suggested that the minister should adopt that.

I think that we have swept up all the issues that are raised by the petition for today. I hope that members of the Communities Committee will be able to read the *Official Report* of today's meeting and will realise that we were persuaded by the arguments that people have made, which need to be acted on. That picks up on Susan Deacon's point.

Are we agreed on the way forward for the petition?

Members *indicated agreement.*

The Convener: I thank members—especially visiting members—for their comments.

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

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27 November 2003

Dear Ross

**ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND
LANDFILL SITES**

Thank you for your response to my letter dated 16 September which related, in part, to petition PE517 on noxious odours from Seafeld waste water treatment works. The Committee considered your response at its meeting on 19 November. I enclose a copy of the relevant extract of the *Official Report* of the meeting for your information.

The Committee also considered petition PE645 for the first time at this meeting. This petition raises similar concerns to those in petition PE517, but in relation to waste water treatment works in Kirkcaldy. The Committee agreed to consider these petitions together due to the broad similarities in subject matter. In addition, the Committee noted its previous decision to incorporate consideration of issues relating to noxious odours from landfill sites (raised in PE541 and PE543) as part of its consideration of PE517.

The Committee acknowledged your commitment to consider further legislation once the appeal currently before the House of Lords is decided. However, the Committee believes that the House of Lords judgement will not resolve all of the issues, regardless of its outcome.

Having considered the concerns raised by the petitions and by other examples cited by a number of Members, it has become clear that the problem initially flagged up to the Committee by petition PE517 is not an isolated issue. Indeed, the amount of evidence before the Committee on this subject appears to indicate general inadequacies within the current system for the regulation of odour nuisance in Scotland. The Committee considers that a

number of issues exist, both with regard to the immediate management and regulation of existing facilities and with regard to the longer term legislative framework and the approach to the development of new facilities.

Local Authority Enforcement

The Committee discussed the regulation of waste water treatment works by local authorities, noting that only one abatement notice has been served in response to odour nuisance since 1999. Again, the Committee acknowledges the importance of the House of Lords judgement in determining the enforcement powers available to local authorities. However, in the short term, the Committee agreed that it may be worthwhile reinforcing to local authorities the existing statutory powers available to them in relation to the control of noxious odours. The Committee therefore requests that you write to local authorities conveying this information.

The Committee noted that local authorities may encounter difficulties measuring odour nuisance, and that this may hinder their capacity to monitor odour from waste water treatment works effectively. The Committee also noted that a local authority's definition of the level at which an odour constitutes a 'nuisance' may differ from the views of local residents living in close proximity to landfill sites and waste water treatment works.

The committee would be grateful if you would provide it with information on the current methods for measuring odour utilised by local authorities and any problems encountered with these methods. In addition, the Committee would be grateful for clarification as to the exact definition of 'nuisance' upon which local authorities base their regulation of odour levels.

Scottish Water

Members suggested that the investment and funding regime for Scottish Water may not be allocating an appropriate level of funding to tackling the problem of odour nuisance. Members suggested that odour nuisance does not seem to be ranked as an investment priority at present, perhaps due to a number of other significant pressures on Scottish Water's finances.

The Committee agreed that the investment and funding regime for Scottish Water ought to take account of the need for better odour control. I would be grateful for your views on this issue. You may wish to note that, I have written to the Convener of the Finance Committee inviting the Finance Committee to consider this issue within its current investigation into the funding regime for Scottish Water.

The Committee also agreed to request that you consider the need for higher odour control standards in any forthcoming consultation with Scottish Water, the Water Industry Commissioner and SEPA on quality and standards. I am also copying this letter to the Water Industry Commissioner and SEPA for information.

Water Services (Scotland) Bill

In considering your previous response to the Committee on PE517, the Committee noted that the outstanding appeal currently awaiting consideration in the House of Lords does not preclude the Executive from consulting on or initiating legislative change to address problems relating to odour regulation.

The Committee considers that the forthcoming proposed Water Services Bill provides a suitable opportunity for the Executive to legislate to address the issues raised above. The Committee intends to consider issues raised by petitions PE517 and PE645 within its scrutiny of the Bill. I would therefore urge you to address these issues and the concerns of the Committee comprehensively during the early development of the Bill.

Planning

Issues were also raised during the meeting in relation to permitted development rights. It was suggested that Scottish Water, as a public body, is subject to less stringent constraints within the planning application process in comparison with other developers. It was also suggested that there is currently no legislative obligation on Scottish Water to provide notification of proposals to develop existing waste water treatment works.

As outlined above, the Committee is aware that local authorities may experience difficulties enforcing planning conditions relating to odour nuisance. However, apparent weaknesses in the planning system would seem to compound this problem.

Another concern raised at the meeting in connection with planning related to the approval of planning applications for waste water treatment works in close proximity to residential areas. For example, petition PE645 states that Kirkcaldy waste water treatment works was built 'a stone's throw' from housing.

As you are aware, the Committee recommended in its report on the National Waste Plan that you give consideration to amending the Landfill (Scotland) Regulations 2003 to specify a minimum distance which must be maintained between new landfill developments and residential areas. The Committee requests that you consider adopting a similar approach in relation to new waste water treatment works, revising existing legislation to specify a minimum distance.

The Committee believes that these issues should be addressed within the forthcoming Planning Bill. I have therefore written to the Minister for Communities (copied to Johann Lamont MSP, Convener of Communities Committee) highlighting the above points on planning applications and developments. I would be grateful if you would liaise with the Minister for Communities in order to provide a co-ordinated response to the Committee on these issues.

I have undertaken to provide the Committee with a regular update on the progress of all petitions referred to the Committee. I next intend to do so in

late January 2004. I should therefore be grateful if you could let me have your comments on all of the above points by 8 January.

I look forward to hearing from you.

Yours sincerely

Sarah Boyack MSP
Convener

Cc Chief Executive, SEPA
Water Industry Commissioner

Enc Extract of *Official Report* 19 November 2003

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

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27 November 2003

Dear Margaret

ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

The Committee considered petitions PE517 and PE645 on noxious odours from waste water treatment plants at its meeting on 19 November. I enclose a copy of the relevant extract of the *Official Report* of the meeting for your information.

Having considered the concerns raised by the petitions and by other examples cited by a number of Members, it has become clear that the problems flagged up by petitions PE517 and PE645 are not isolated issues. Indeed, the amount of evidence before the Committee on this subject appears to indicate general inadequacies within the current system for the regulation of odour nuisance in Scotland.

The Committee considers that a number of issues exist, both with regard to the immediate management and regulation of existing facilities and with regard to the longer term legislative framework and the approach to the development of new facilities.

Issues were raised during the meeting in relation to permitted development rights. It was suggested that Scottish Water, as a public body, is subject to less stringent constraints within the planning application process in comparison with other developers. It was also suggested that there is currently no legislative obligation on Scottish Water to provide notification of proposals to develop existing waste water treatment works.

The Committee is aware that local authorities may experience difficulties enforcing planning conditions relating to odour nuisance due to practical problems such as difficulties measuring odour. However, apparent weaknesses in the planning system would seem to compound this problem.

Another concern raised at the meeting in connection with planning related to the approval of planning applications for waste water treatment works in close proximity to residential areas. For example, petition PE645 states that Kirkcaldy waste water treatment works was built 'a stone's throw' from housing.

The Committee recommended in its recent report on the National Waste Plan that the Minister for Environment and Rural Development give consideration to amending the Landfill (Scotland) Regulations 2003 to specify a minimum distance which must be maintained between new landfill developments and residential areas. The Committee requests that the Executive considers adopting a similar approach in relation to new waste water treatment works, revising existing legislation to specify a minimum distance.

The Committee considers that the proposed Planning Bill provides a suitable opportunity for the Executive to legislate to address the issues raised above. I would urge you to address these issues and the concerns of the Committee comprehensively during the development of the Bill.

I have also written to the Minister for Environment and Rural Development on this matter. The Minister is due to respond to these issues by 8 January. I would be grateful if you would liaise with the Minister in order to provide a co-ordinated response to the Committee on these issues.

You may wish to note that I have copied this letter to Johann Lamont MSP, the Convener to the Communities Committee.

Yours sincerely

Sarah Boyack MSP
Convener

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Allan Wilson MSP
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18 March 2004

Dear Allan

**ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND
LANDFILL SITES**

You will recall that I wrote to the Minister for Environment and Rural Development and the Minister for Communities on 27 November 2003, detailing a number of concerns regarding the regulation of odour nuisance.

In the letters I requested that the Minister for Environment and Rural Development liaise with the Minister for Communities to provide the Committee with a co-ordinated response outlining the Executive's position in relation to these issues. This response was requested by 8 January in order to allow the Committee to consider the petitions at a meeting at the end of January. Following a request from Executive officials, the Clerk to the Committee then agreed a two week extension to this deadline.

As you know, I undertake to provide Committee Members with a regular update on the progress of all petitions referred to the Committee. As the Executive response has been outstanding for the past two months, the Committee has not had the opportunity to consider these petitions for a considerable period.

The Committee is very conscious that the petitioners have all been subject to odour nuisance for long periods of time. In addition, the Committee is concerned that the amount of evidence on this issue suggests general inadequacies within the current system for the regulation of odour nuisance. For these reasons, the Committee is keen to return to its consideration of these petitions, as soon as is practicable.

I would be grateful if you could ensure that the Committee receives this response as soon as possible together with an explanation of the reasons for the delay in providing this response.

I look forward to your prompt response.

Yours sincerely

Sarah Boyack MSP
Convener

cc Susan Deacon MSP

Waste Water Treatment (PE517 and PE645)

The Convener: The first item on the agenda is petitions. Members will remember that we agreed that we would have regular wrap-up sessions on petitions. We have three current petitions. Members have extensive background paperwork to go with the petitions, which should bring them up to speed with where we are on all of them. I will be looking for agreement on how to proceed with them.

The first petitions are PE517 and PE645, which we last discussed at our meeting on 19 November. We agreed to put them together because they both deal with the control of noxious odours from waste water treatment plants. We wrote to the Minister for Environment and Rural Development, raising a large number of issues, including the key issue of the effectiveness of the current system for regulating odour nuisance from water treatment plants. Members now have the responses.

The paper from the clerk sets out four options for further action. If members feel that the Executive's response is satisfactory, we could agree to defer further consideration of the petitions until the appeal to the House of Lords is resolved, which is likely to happen in November. Members may wish to write to the Minister for Environment and Rural Development on outstanding issues or to invite him to the committee to give oral evidence

Col 950

and to explore further issues about the regulation of odour nuisance—members should note that a consultation exercise is likely to be conducted in the summer on that issue. Alternatively, we may want to appoint a reporter to delve into the issue in more depth.

Over to members. Can I have a steer on how you would like to deal with the petitions?

Maureen Macmillan (Highlands and Islands) (Lab): I do not think that I want to delve into the depths of sewage treatment works—as a reporter or in any other way. However, we must keep a close eye on what is happening. We are still waiting for the House of Lords decision, which is now due sometime in November. Once the consultation exercise has concluded, I would like to bring the minister to the committee to ask him about what is happening, what the result of the consultation was and what the Executive intends to do. It is an important issue that we should not let slip.

Nora Radcliffe (Gordon) (LD): I have one or two specific questions. Paragraph 29 of the clerk's paper states that

"the distances from the boundary of the site to residential and recreational areas"

are

"to be taken into account".

I do not see why that should preclude the setting of a minimum distance. Local circumstances are taken into account, but I do not see why there should not be a minimum distance from a dwelling-house at which we could say it would be totally unreasonable to have such a development. We should write to the Executive, asking why it is setting its face so hard against setting a minimum distance.

In paragraph 26 of the clerk's paper, we are told that the Executive is carrying out research into the dividing line between planning and environmental controls. Will that research be used as input into the planning bill, so that we can pick up properly the difficulties in the planning system, which is partly where the controls belong? If the Executive is not planning to do that, how will it use that research to undertake some sort of action?

The Convener: Susan Deacon has been involved with PE517 for months. Do you have any views on the way forward, Susan?

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Colleagues will know of my interest in the petition as the constituency member for the area that includes the Seafield sewage works, which is the subject of petition PE517. I have read carefully the ministerial response to the committee and I am bitterly disappointed with its

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contents. We have waited almost six months for a five-page response that goes into considerable detail about why lots of things cannot be done. That is a wholly unacceptable response to the views on the issue that have been put to the Parliament not just by my constituents but by a range of communities and MSPs over some years.

I want to highlight the extent to which the Executive has engaged in delaying tactics. On 6 March 2003, Ross Finnie gave me a commitment, in response to a parliamentary question, that there would be a consultation exercise on potential legislative change. On 11 September 2003, Allan Wilson said that there would be a draft voluntary code, which was due to be finalised and issued for public consultation towards the end of last year. I note that the latest ministerial response contains no commitment to consultation on legislative change, but we are told that the consultation even on the draft voluntary code is not to commence until the summer. That is wholly unacceptable and calls into question the seriousness with which ministers are treating the issue.

I am very pleased that the committee has continued to pursue the matter assiduously. As I said when we debated the issue previously, if we fail to achieve some tangible progress in the near future, people—not only in my constituency, but in communities throughout Scotland—will lose faith in the Parliament's processes for addressing what is a real issue for them. There is

dread in my constituency as we approach another summer, as such problems are always worse in summer. Scottish Water's own independent research, which was commissioned following pressure from me and the local community last year, showed that people who live as far as 2 miles away from the sewage works have to close their windows and not hang out washing on a summer's day because of the smell from the sewage plant. I believe that that is unacceptable in such a built-up area. I agree entirely with Maureen Macmillan's suggestion that the minister should be called to account before the committee and required to answer these points.

The Convener: No other member has indicated that they wish to comment at this time. Maureen Macmillan has suggested that we invite the minister back to explore the matter further. Nora Radcliffe has raised some specific issues, especially the minimum distance and input into the planning bill. Susan Deacon has made the point that no commitment has been made to legislation and that a voluntary code is not yet before us.

Maureen Macmillan suggested that we invite the minister to appear before us once there has been consultation on the voluntary code. Perhaps we should invite him before the summer recess, to keep up the pressure on the matter. That would allow us to raise the issues that Susan Deacon

Col 952

has placed on the agenda. As she mentioned, it is now a year since hopes were raised that a voluntary code would be issued, but the timetable has slipped again. Perhaps we should keep the matter on our agenda and not close the petition. The minister could give evidence to us before the summer recess to explore the voluntary code and distances and to get some thoughts about the research that is needed and the issues that should be explored.

Susan Deacon suggested that sewage works affect people living as far as 2 miles away. When we discussed the matter in committee, we identified 0.5km as the sort of distance that should separate waste management and treatment facilities from residential areas. It would be useful for us to consider the impact that such developments can have on local communities.

How do members feel about the approach that I have outlined? I see members nodding.

Nora Radcliffe: We are caught between two stools—planning matters and environmental matters. We need both the Minister for Communities and the Minister for Environment and Rural Development to appear before us to provide answers. I do not see how the Executive can say that this issue does not fall into the area of planning. The letter from the Minister for Environment and Rural Development states that certain things are planning matters and that under the statutory nuisance provisions of the planning process responsibility lies with local authorities. We want to square off ministers' shoulders—we are fed up with sloping shoulders.

The Convener: I see that there is 100 per cent assent in the committee to those comments. Do we agree to invite both ministers to appear before the committee, so that we can explore this issue in more detail?

Members *indicated agreement.*



SCOTTISH EXECUTIVE

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25th TL
March 2004

Sarah Boyack

ODOUR NUISANCE FROM WASTE WATER TREATMENT WORKS AND LANDFILL SITES

I refer to your letters of 27 November and 3 December, to Mr Finnie and Ms Curran, on behalf of the Environment and Rural Development Committee about various odour control issues raised by the Committee at its meeting on 19 November. Ms Curran and I acknowledge the concerns raised and as you requested I am responding to your questions on this issue.

With regard to local authority enforcement, you requested that the Minister for the Environment and Rural Development write to local authorities reinforcing the existing powers available to them. On the basis of information gathered by my officials, it would appear that all local authorities are aware of the present position. However to make the present position absolutely clear to local authorities, my officials plan to write to local authorities in the near future on this issue.

With respect to the appeal process in the House of Lords, we understand that the House of Lords has not yet decided to whether to allow the appeal by Thames Water to be heard. It is envisaged that a decision whether to allow this appeal will then be made by the House of Lords by March. If the House of Lords does grant leave to appeal, we do not expect a final ruling until November 2004 at the earliest.

As you already know the Executive is not waiting until the result of the appeal to take appropriate action, and is proceeding with the production of a Voluntary Code of Practice. Scottish Water, local authorities, the Water Industry Commissioner and SEPA will be involved in this process with a view to the draft Code being put to public consultation this summer. The Code will confirm the present legal position, and set out procedures agreed with operator and enforcer to resolve odour issues.

You observe that only one abatement notice under the section 80 of the statutory nuisance provisions of the Environmental Protection Act 1990 has been served in Scotland since 1999]. However I understand that Edinburgh City Council has served a total of six notices on Seafield waste water treatment works, and that Argyll & Bute Council have served two notices, one against Rothesay waste water treatment works, and one on Bi-water Leslie due to odour emissions generated during commissioning works. SEPA supplied information last September which illustrated there were some 28 investigations being undertaken in 2002-03 at waste water treatment works in Scotland. The present situation at Seafield, is that Scottish Water have appealed against the timescales imposed in the last abatement notice served.

As to your questions on methodology and definition of nuisance, my officials advise through feedback from Environmental Health Officers (EHOs) that EHOs use their nose to establish whether a statutory nuisance has occurred. The measurement is based on the officer's experience. The relevant definition is contained in section 79(1) (d) of Part III of the Environment Protection Act 1990 as "any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance." It must be noted there is no such thing as an odour free waste water treatment works, but odours can be minimised with correct planning, operating and monitoring and enforcement controls.

With regard to your points on the relevant priority of odour control within Scottish Water's investment and funding regime, I can advise that funding has or will be provided for the period 2002/03 to 2005/06 for the delivery of Quality and Standards II. We accept your Committee's request that the Executive consider the need for higher odour control standards in future Q&S III consultations with the appropriate authorities.

You further raise the issue of the Executive initiating legislative change using the forthcoming Water Services and Planning Bills. The Scottish Ministers consider neither of these Bills to be the appropriate legislative vehicle for dealing with this matter. Nevertheless in order to address the concerns of the Committee, and if the House of Lords does allow the appeal by Thames Water, we would propose to publish a consultation on future legislative options, to accompany the proposed Voluntary Code of Practice consultation in March. This will enable the Executive to move quickly to consider further legislation if the House of Lords ruling is for inapplicability.

We would certainly wish to involve SEPA in any consultation to introduce improved odour control standards from waste water treatment works. Waste water treatment works that meet certain criteria (including capacity) will fall within the scope of the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC) on a phased basis over the next few years. Plants regulated under PPC will be strictly controlled by SEPA and will be required to use best available techniques to prevent or minimise pollution, including offensive odour. While SEPA will continue to regulate waste water treatment works (WWTW) under PPC to BAT standards, it would be advantageous to have SEPA's input into whether there are practical steps that could be taken to improve standards in order to minimise the risk of odour.

Local authorities remain the main bodies responsible for the monitoring and enforcement of odour control from WWTW through the statutory nuisance provisions and planning process. SEPA has no authority to regulate odours arising from sewage works unless there is a waste management licence (WML) attached to the site. A small proportion of WWTWs have such a licence, usually regulating operations involving the disposal or recovery of sewage sludge. In the future, some larger sewage works will also be brought under PPC. The threshold in the PPC relates to the disposal of non-hazardous waste in plant with a capacity exceeding 50 tonnes per day by biological or physico-chemical treatment, which results in final mixtures or compounds which are then discarded. In these

cases, as with permits for landfill sites, SEPA will have the power to include conditions relating to odour.

In relation to your comments about the planning aspects, we should firstly say that it is a long established principle that the land use planning system should not be used to duplicate other statutory controls or to regulate activity more appropriately controlled by other legislation. The dividing line between planning and environmental controls is not always clear, but as a general principle the planning system should focus on whether the development itself is an acceptable use of land and, where necessary, regulate the location of development. The weight to be attached to matters such as pollution or nuisance through the planning process will depend on the scope of any other, perhaps more relevant, regulatory controls in place. Of course, granting planning permission for a development would not imply a guarantee that any other relevant consent would be forthcoming. In this regard, the Executive is currently carrying out research into the interaction between planning and environmental regulation. This will identify strengths and the causes and impacts of any weaknesses in the way they interact and should also identify possible solutions to any weaknesses.

Potential odour problems can be considered at planning application stage, particularly through an environmental impact assessment. Where appropriate, conditions can be attached to new planning permissions on matters such as design specifications and location where the purpose is to avoid or mitigate potential odour issues. The power to attach conditions must be exercised carefully, and on a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In this respect, there are six key tests for the validity of conditions. These are that conditions should only be imposed where they are (1) necessary, (2) relevant to planning, (3) relevant to the development to be permitted, (4) enforceable, (5) precise and (6) reasonable in all other aspects. As with planning controls generally, conditions need to relate to clear land use planning objectives and should not be used to duplicate controls available under other legislation.

Where conditions are attached to a planning permission, there are a range of enforcement powers available to planning authorities to ensure those conditions are complied with. These include serving enforcement notices or breach of condition notices requiring particular action to be taken, serving stop notices or seeking interdicts to prevent particular activity from continuing, or taking direct action to remedy breaches of planning control. To make such actions feasible, any particular conditions would need to meet the six criteria identified above. Planning enforcement action would not be an appropriate method to control odour where relevant planning conditions have been complied with but, nevertheless, odour remains an issue.

You have suggested that Scottish Water is subject to less stringent planning procedures. Scottish Water, like all developers, requires to meet necessary planning requirements, whether that be by applying for planning permission or in certain circumstances by carrying out development which is deemed to be 'permitted' by the planning system. The *Town and Country Planning (General Permitted Development) (Scotland) Order 1992* (the GPDO), as amended, grants a general planning permission across Scotland for a broad range of developments which, because of the nature of the proposals, would almost without exception be granted. In effect, this removes the need to obtain planning permission from the planning authority in the defined circumstances and applies to all developers. These 'permitted development' rights are necessary to ensure we have an efficient planning system where resources within planning authorities can be appropriately allocated and developers, and indeed individuals, are not hampered unnecessarily by the planning system. A mechanism exists whereby planning authorities can withdraw certain permitted development rights within designated areas, subject to confirmation by Ministers. For the most part permitted development rights apply to either relatively minor developments (such as house extensions), proposals in relation to existing development, or to development required by statutory undertakers in carrying out their duties. These include permitted development in the circumstances set out in Class

43A of Schedule 1 of the GPDO (extract attached as Annex A) in relation to sewerage undertakings. In effect, this allows Scottish Water to carry out works such as the construction of a control kiosk for a pump station or monitoring station (within defined size limits) without the need to apply for planning permission. Before exercising these permitted development rights, Scottish Water must give at least 28 days notice to the planning authority that it intends to carry out the development. Permitted development does not of course allow Scottish Water to operate any part of the facility without complying with any other necessary (non-planning) regulatory requirements. As noted above, other developments by Scottish Water, not subject to permitted development rights, require to follow the usual planning process.

You mention your recommendation in your Committee's report on the National Waste Plan that the Landfill (Scotland) Regulations 2003 be amended to specify a minimum distance between new landfill developments and residential areas. The Executive responded to this report on 14 January, but for convenience the main and relevant points are set out below.

The Scottish Executive has addressed issues of siting and odour in the 2003 Regulations. These Regulations provide that all landfills, both new and existing, will be permitted not (as at present) under the Waste Management Licensing Regulations 1994 (as amended) but under the more stringent PPC Regulations (again, as amended). New landfills will be permitted under the PPC Regulations from the outset, whereas existing landfills will have to have a PPC permit by 31 March 2007 (or 16 July 2009 in the case of the smallest installations).

The 2003 Regulations make a number of stipulations about the content of the permit. In terms of location, Schedule 3 paragraph 1(1) lists a number of factors which must be taken into consideration. One of these, sub-paragraph (a) is "the distances from the boundary of the site to residential and recreational areas, waterways, water bodies and other agricultural or urban sites". It was not considered appropriate to put definitive limits on these distances in the context of the 2003 Regulations, since they are a matter that is properly to be considered in the context of the individual application for a permit. It may also be that this distance will vary with local circumstances, such as topography, prevailing winds etc. Planning considerations will also separately apply, but Regulation 5 which states that planning permission may be granted only where the requirements of Schedule 1 paragraph 1(1) have been taken into consideration. These same factors for not specifying a minimum distance can apply in considering the proximity of waste water treatment plants to residential areas.

To conclude, both the Scottish Executive and Scottish Water recognise that there are continuing but manageable problems relating to odour control from waste water treatment works, and are working together to resolve these issues. Scottish Water and its predecessor organisations have introduced odour abatement technology where appropriate and have developed odour management plans for the larger waste water treatment facilities. However over the past 5-10 years odour has become a very emotive subject, due to increased awareness of odour, the increased production of new works to achieve EC legislative obligations and partly due to changing patterns and intensity of rainfall and increasing temperatures. The Executive do intend to work with Scottish Water in future Quality and Standards III discussions, and with the WIC, local authorities and SEPA to produce a Voluntary Code of Practice to best resolve odour control problems. The Executive will advise local authorities of the current legal position and will also consult on future legislative change this summer, if the House of Lords allow the appeal from Thames Water to be heard.

I hope this response goes some way to alleviating your Committee and the Public Petitions and Finance Committee's concerns on the issue of odour control.

Yours sincerely



ALLAN WILSON

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
(SCOTLAND) ORDER 1992

EXTRACT

SCHEDULE 1

CLASSES OF PERMITTED DEVELOPMENT

PART 13

DEVELOPMENT BY STATUTORY UNDERTAKERS

Sewerage undertakings

Class 43A. — (1) Any development relating to sewerage by a sewerage authority or by a person authorised under section 3A of the Sewerage (Scotland) Act 1968 in relation to that development, being—

- (a) development not above ground level required in connection with the provision, improvement, maintenance or repair of a sewer, outfall pipe or sludge main or associated apparatus; or
- (b) development consisting of the erection, construction, maintenance, improvement or other alteration of—
 - (i) a control kiosk for a pump station or monitoring station, where the control kiosk does not exceed 6 cubic metres in volume, 2 metres in height, 3 metres in width or 1 metre in depth;
 - (ii) a sewer pipe which is supported on pillars or a truss above ground to maintain a gradient and which does not exceed 1 metre in height;
 - (iii) a raised manhole cover or sampling chamber which does not exceed 1 metre in height or 1 metre in width;
 - (iv) a vent pipe which does not exceed 3 metres in height; or
 - (v) a concrete head wall for sewer discharge pipes which does not exceed 1.5 metres in height, 1.5 metres in length or 0.5 metre in depth.

(2) Development is permitted by this class subject to the condition that not less than 28 days before the beginning of operations the sewerage authority or, as the case may be, the person authorised under section 3A of the Sewerage (Scotland) Act 1968 shall give notice in writing to the planning authority of its intention to carry out the development, identifying the land under or on which the development is to take place.

**Extract from the Official Report of the Environment & Rural
Development Committee's 11th Meeting – 21 April 2004**

Waste Water Treatment (PE517 and PE645)

The Convener: The first item on the agenda is petitions. Members will remember that we agreed that we would have regular wrap-up sessions on petitions. We have three current petitions. Members have extensive background paperwork to go with the petitions, which should bring them up to speed with where we are on all of them. I will be looking for agreement on how to proceed with them.

The first petitions are PE517 and PE645, which we last discussed at our meeting on 19 November. We agreed to put them together because they both deal with the control of noxious odours from waste water treatment plants. We wrote to the Minister for Environment and Rural Development, raising a large number of issues, including the key issue of the effectiveness of the current system for regulating odour nuisance from water treatment plants. Members now have the responses.

The paper from the clerk sets out four options for further action. If members feel that the Executive's response is satisfactory, we could agree to defer further consideration of the petitions until the appeal to the House of Lords is resolved, which is likely to happen in November. Members may wish to write to the Minister for Environment and Rural Development on outstanding issues or to invite him to the committee to give oral evidence

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and to explore further issues about the regulation of odour nuisance—members should note that a consultation exercise is likely to be conducted in the summer on that issue. Alternatively, we may want to appoint a reporter to delve into the issue in more depth.

Over to members. Can I have a steer on how you would like to deal with the petitions?

Maureen Macmillan (Highlands and Islands) (Lab): I do not think that I want to delve into the depths of sewage treatment works—as a reporter or in any other way. However, we must keep a close eye on what is happening. We are still waiting for the House of Lords decision, which is now due sometime in November. Once the consultation exercise has concluded, I would like to bring the minister to the committee to ask him about what is happening, what the result of the consultation was and what the Executive intends to do. It is an important issue that we should not let slip.

Nora Radcliffe (Gordon) (LD): I have one or two specific questions. Paragraph 29 of the clerk's paper states that

"the distances from the boundary of the site to residential and recreational areas"

are

"to be taken into account".

I do not see why that should preclude the setting of a minimum distance. Local circumstances are taken into account, but I do not see why there should not be a minimum distance from a dwelling-house at which we could say it would be totally unreasonable to have such a development. We should write to the Executive, asking why it is setting its face so hard against setting a minimum distance.

In paragraph 26 of the clerk's paper, we are told that the Executive is carrying out research into the dividing line between planning and environmental controls. Will that research be used as input into the planning bill, so that we can pick up properly the difficulties in the planning system, which is partly where the controls belong? If the Executive is not planning to do that, how will it use that research to undertake some sort of action?

The Convener: Susan Deacon has been involved with PE517 for months. Do you have any views on the way forward, Susan?

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Colleagues will know of my interest in the petition as the constituency member for the area that includes the Seafield sewage works, which is the subject of petition PE517. I have read carefully the ministerial response to the committee and I am bitterly disappointed with its

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contents. We have waited almost six months for a five-page response that goes into considerable detail about why lots of things cannot be done. That is a wholly unacceptable response to the views on the issue that have been put to the Parliament not just by my constituents but by a range of communities and MSPs over some years.

I want to highlight the extent to which the Executive has engaged in delaying tactics. On 6 March 2003, Ross Finnie gave me a commitment, in response to a parliamentary question, that there would be a consultation exercise on potential legislative change. On 11 September 2003, Allan Wilson said that there would be a draft voluntary code, which was due to be finalised and issued for public consultation towards the end of last year. I note that the latest ministerial response contains no commitment to consultation on legislative change, but we are told that the consultation even on the draft voluntary code is not to commence until the summer. That is wholly

unacceptable and calls into question the seriousness with which ministers are treating the issue.

I am very pleased that the committee has continued to pursue the matter assiduously. As I said when we debated the issue previously, if we fail to achieve some tangible progress in the near future, people—not only in my constituency, but in communities throughout Scotland—will lose faith in the Parliament's processes for addressing what is a real issue for them. There is dread in my constituency as we approach another summer, as such problems are always worse in summer. Scottish Water's own independent research, which was commissioned following pressure from me and the local community last year, showed that people who live as far as 2 miles away from the sewage works have to close their windows and not hang out washing on a summer's day because of the smell from the sewage plant. I believe that that is unacceptable in such a built-up area. I agree entirely with Maureen Macmillan's suggestion that the minister should be called to account before the committee and required to answer these points.

The Convener: No other member has indicated that they wish to comment at this time. Maureen Macmillan has suggested that we invite the minister back to explore the matter further. Nora Radcliffe has raised some specific issues, especially the minimum distance and input into the planning bill. Susan Deacon has made the point that no commitment has been made to legislation and that a voluntary code is not yet before us.

Maureen Macmillan suggested that we invite the minister to appear before us once there has been consultation on the voluntary code. Perhaps we should invite him before the summer recess, to keep up the pressure on the matter. That would allow us to raise the issues that Susan Deacon

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has placed on the agenda. As she mentioned, it is now a year since hopes were raised that a voluntary code would be issued, but the timetable has slipped again. Perhaps we should keep the matter on our agenda and not close the petition. The minister could give evidence to us before the summer recess to explore the voluntary code and distances and to get some thoughts about the research that is needed and the issues that should be explored.

Susan Deacon suggested that sewage works affect people living as far as 2 miles away. When we discussed the matter in committee, we identified 0.5km as the sort of distance that should separate waste management and treatment facilities from residential areas. It would be useful for us to consider the impact that such developments can have on local communities.

How do members feel about the approach that I have outlined? I see members nodding.

Nora Radcliffe: We are caught between two stools—planning matters and environmental matters. We need both the Minister for Communities and the

Minister for Environment and Rural Development to appear before us to provide answers. I do not see how the Executive can say that this issue does not fall into the area of planning. The letter from the Minister for Environment and Rural Development states that certain things are planning matters and that under the statutory nuisance provisions of the planning process responsibility lies with local authorities. We want to square off ministers' shoulders—we are fed up with sloping shoulders.

The Convener: I see that there is 100 per cent assent in the committee to those comments. Do we agree to invite both ministers to appear before the committee, so that we can explore this issue in more detail?

Members *indicated agreement.*

**Subordinate Legislation Committee
Extract of 24th Report, 2004**

1. At its meeting on 1st June the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds within its remit.

2. The report is also addressed to the following committees as the lead committees for the instruments and draft guidance specified:

Environment and Rural Development Framework Guidance on Preparing a National Park Plan (draft) (SE/2004/98)

Draft guidance subject to annulment

Framework Guidance on Preparing a National Park Plan (draft)
(SE/2004/98)

Introduction

1. The Committee recalled that, although it had no substantive points on the draft, it had referred two presentational drafting suggestions to the Executive for comment.

2. The Committee suggested that there ought perhaps to be some indication in the Guidance that it is in draft and that it is subject to a form of Parliamentary procedure under its parent Act. That information would be shown as a matter of course on a draft SSI and the Committee considered that it would have been useful for it to have been included in the draft Guidance perhaps either, as with an SSI, as an italic header which could be removed once the time for annulment had passed or as a frontispiece to the draft Guidance.

3. The Committee also suggested that it might be useful, following the SSI precedent, to record in the text the fact that the statutory procedure has been complied with in respect of the Guidance.

4. In its helpful response, reproduced at Appendix 2, the Scottish Executive readily accepted the Committee's suggestions which it undertook to consider in any future guidance which may be issued under the National Parks (Scotland) Act 2000.

Report

5. The Committee welcomes this constructive approach from the Executive. The Committee agrees that the changes are purely presentational and for the information of the reader. The Committee also shares the Executive's view that the validity of the Guidance is not affected in any way. The Committee hopes that these suggestions will also be taken into consideration by other Departments as appropriate when laying similar documents before the Parliament.

6. The Committee draws the attention of the lead committee and the Parliament to the Executive's response for information.

Appendix 2

FRAMEWORK GUIDANCE ON PREPARING A NATIONAL PARK PLAN (DRAFT) (SE/2004/98)

In its letter of 25 May the Committee commented as follows –

The Committee asks the Executive why there is no indication in the Guidance that it is in fact a draft and that it is subject to a form of Parliamentary procedure under its parent Act. Such information would be shown as a matter of course on a draft SSI and the Committee considers that it would be useful for it to be included in the draft Guidance perhaps as with an SSI as an italic header which could be removed once the time for annulment had passed or as a frontispiece to the draft Guidance.

The Committee considers that it might also be useful, following the SSI precedent, to record in the text the fact that the statutory procedure has been complied with in respect of the Guidance. The Committee asks the Executive to comment on this point.”

The Scottish Executive responds as follows –

1. The Executive notes the comments of the Committee on the absence of reference on the face of the draft to the fact that it is a draft and is subject to Parliamentary procedure. The Executive considers that the Committee’s suggestion is a very helpful one and will consider the use of this approach in any future guidance which may be issued under the National Parks (Scotland) Act 2000. It does not consider, however, that the absence of an italicised header in the form described affects the validity of the draft Guidance or its procedure.

2. The Executive is again grateful for this helpful indication from the Committee. It is happy, in future, to consider a reference on the face of draft Guidance under the National Parks (Scotland) Act 2000 or on a frontispiece both to the nature of the Parliamentary procedure and to the fact that the Guidance complies with the procedure. The Executive adds, however, that it has kept the two National Park Authorities informed of this procedure and had intended in the event of successful completion of that Parliamentary procedure to advise the Park Authorities of that fact. The Executive does not, however, consider that the absence of such reference affects the validity of the draft Guidance or its procedure.

Scottish Executive

27th May 2004