



**Environment and Rural Development Committee**

**17th Meeting, 2006**

**Wednesday 17 May 2006**

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

1. **Water Environment and Water Services (Scotland) Act 2003:** The Committee will consider the Water Environment and Water Services (Scotland) Act 2003: Annual Report to the Scottish Parliament – 2005, and take evidence from—

Rhona Brankin MSP, Deputy Minister for Environment and Rural Development, and Joyce Carr and Ruth Gilpin, Water Framework Directive Team, Scottish Executive.

2. **Subordinate legislation:** Rhona Brankin MSP, Deputy Minister for Environment and Rural Development, to move motion S2M-4300—

that the Environment and Rural Development Committee recommends that the draft Private Water Supplies (Notices) (Scotland) Regulations 2006 be approved.

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

the Private Water Supplies (Scotland) Regulations 2006, (SSI 2006/209);

the Private Water Supplies (Grants) (Scotland) Regulations 2006, (SSI 2006/210);

the Land Management Contracts (Menu Scheme) (Scotland) Amendment Regulations 2006, (SSI 2006/213); and

the Croft House Grant (Scotland) Regulations 2006, (SSI 2006/214),

and may take evidence from Bob Perrett, Head of Crofting Branch, Scottish Executive, on SSI 2006/214.

4. **Crofting Reform etc. Bill (in private):** The Committee will consider its approach to its Stage 1 report.

**Mark Brough**  
Clerk to the Committee  
Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 1</u>	
<a href="#">Water Environment and Water Services (Scotland) Act 2003: Annual Report</a>	ERD/S2/06/17/1a
Briefing by SPICe	ERD/S2/06/17/1b
Submission from the Drinking Water Quality Regulator For Scotland	ERD/S2/06/17/1c
Submission from the Federation of Small Businesses in Scotland	ERD/S2/06/17/1d
Submission from NFU Scotland	ERD/S2/06/17/1e
Submission from Scottish Environment LINK	ERD/S2/06/17/1f
Submission from the Scottish Environment Protection Agency (SEPA)	ERD/S2/06/17/1g
Submission from Scottish Natural Heritage (SNH)	ERD/S2/06/17/1h
Submission from Scotch Whisky Association (SWA)	ERD/S2/06/17/1i
Submission from RSPB Scotland	ERD/S2/06/17/1j
<u>Agenda Item 2</u>	
<a href="#">The draft Private Water Supplies (Notices) (Scotland) Regulations 2006</a>	ERD/S2/06/17/2a
<u>Agenda Item 3</u>	
<a href="#">The Private Water Supplies (Scotland) Regulations 2006, (SSI 2006/209)</a>	ERD/S2/06/17/3a
Extract from the Subordinate Legislation Committee's 18th Report, 2006	ERD/S2/06/17/3b
<a href="#">The Private Water Supplies (Grants) (Scotland) Regulations 2006, (SSI 2006/210)</a>	ERD/S2/06/17/3c
<a href="#">The Land Management Contracts (Menu Scheme) (Scotland) Amendment Regulations 2006, (SSI 2006/213)</a>	ERD/S2/06/17/3d
The Croft House Grant (Scotland) Regulations 2006, (SSI 2006/214)	ERD/S2/06/17/3e

Supplementary memo from the Scottish Executive	<a href="#">ERD/S2/06/17/3f</a>
Extract from the Subordinate Legislation Committee's 19th Report, 2006	<a href="#">ERD/S2/06/17/3g</a>
<u>Agenda Item 4</u>	
Paper by the Clerk [ <i>Members only</i> ]	ERD/S2/06/17/4a

## **Background note from SPICe**

### **The Water Environment (Controlled Activities) (Scotland) Regulations 2005**

The Water Environment and Water Services (Scotland) Act 2003 gave Scottish Ministers powers to introduce regulatory controls over activities in order to protect and improve Scotland's wetlands, rivers, lochs, transitional waters (estuaries and saline lagoons), coastal waters and groundwater. To fulfil these duties, the Scottish Environment Protection Agency (SEPA) will regulate certain activities under [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005](#) (CAR). This briefing provides a summary of the main issues relating to the CAR, as discussed by the Environment and Rural Development Committee on 25 May 2005.

The Scottish Parliament approved the Regulations on 1 June 2005, setting in place a transitional period from 1 July 2005 until 31 March 2006. Some of the activities that are controlled as of 1 April 2006 are:

- abstractions from surface and groundwater (taking water e.g. for irrigating crops)
- impoundments of rivers, lochs, wetlands and transitional waters (holding water behind a dam)
- engineering in rivers, lochs and wetlands
- engineering activities in the vicinity of rivers, lochs and wetlands which are likely to have a significant adverse impact upon the water environment
- activities liable to cause pollution

The CAR provide for 3 levels of authorisation over discharges, abstractions, impoundments and engineering activities. These aim to allow for proportionate controls over such activities so that environmental protection can be provided whilst minimising the regulatory burden, and are as follows:

1. **General Binding Rules (GBRs)** are the simplest level of control. They cover specified activities and define conditions that provide the necessary level of environmental protection. SEPA consider these activities to be very low risk. e.g. weirs less than 1m high, abstractions of less than 10m<sup>3</sup>/day, change of surface water runoff which doesn't cause pollution to the water environment
2. **Registrations** allow for the registration of small-scale activities which individually pose a small environmental risk but which cumulatively can result in environmental harm. A registration will include details of the scale of the activity and its location; and the authorisation is only valid so long as the activity is carried out within these constraints.
3. **Licences** allow for site-specific conditions to be set to protect the water environment. A licence will require the identification of a 'responsible person' who will be responsible for ensuring that the terms of the licence are complied with.

If SEPA considers that a GBR or a registration will not provide sufficient environmental protection, SEPA will be able to require a higher level of control. For example, SEPA could require an activity which was covered by a GBR to be registered or even licensed.

Significant areas of discussion included:

- the tiered nature of the charging scheme, which means that costs appear to fall on large volume water users regardless of the environmental risks posed
- whether the above licensing scheme is necessary, and whether it will impact positively on the environment
- whether an environmental risk assessment of an industry's water abstraction activities should be carried out after licensing, not before
- the nature of the consultation process. i.e. whether large volume water users such as the whisky industry and hydroelectric companies had been adequately consulted, and whether their views had been adequately taken into account
- primarily in the case of whisky distilleries, whether the point of abstraction from the water body is a suitable place to measure water use
- whether the whisky industry has a major impact on the water environment, and the extent to which the licensing scheme will impact on their business
- the role of SEPA and Ministers, and flexibility within the licensing scheme, regardless of volume of abstraction.

Alasdair Reid  
Senior Research Specialist  
SPICe

**Agenda Item 1**

**Environment and Rural  
Development Committee**

17 May 2006  
ERD/S2/06/17/1c

**SUBMISSION FROM THE DRINKING WATER QUALITY REGULATOR FOR  
SCOTLAND**

Thank you for inviting me to provide a written submission to the Environment and Rural Development Committee, to assist in its consideration of the Water Environment Act Annual Report and the three new statutory instruments laid by the Scottish Executive on private water supplies.

My particular interest in the Water Environment and Water Services (Scotland) Act 2003 relates to Section 6 of the Act, which requires Scottish Ministers to identify surface and ground water sources used to supply drinking water for more than 50 people or supply more than 10 m<sup>3</sup>/day and designate them as Drinking Water Protected Areas (DWPAs). The Water Environment (Controlled Activities) (Scotland) Regulations 2005 are also key to ensuring better protection for water sources used to supply drinking water.

The identification of DWPAs and the Controlled Activity Regulations (CAR) dovetail very well with the requirement placed on Scottish Water, by Scottish Ministers through the Quality and Standards process, to develop Water Safety Plans for public drinking water supplies in Scotland. Water Safety Plans are being promoted by the World Health Organisation as the best means of protecting public health and involve taking a Hazard Analysis Critical Control Point (HACCP), or risk assessment approach, to drinking water safety from the water catchment to consumers' taps.

It is important that the Water Safety Plan, DWPA and CAR requirements are considered jointly and I will be working with Scottish Water and the Scottish Environment Protection Agency (SEPA) to ensure that this happens.

DWPAs and the CAR also apply to private water supplies but there is insufficient information currently available to designate DWPAs for private supplies. However, The Private Water Supplies (Scotland) Regulations 2006 include reporting requirements that should allow SEPA to designate DWPAs for private supplies.

The overriding objective of the private water supplies regulations is to protect public health and transpose the requirements of EC Directive 98/83/EC (the Drinking Water Directive), in respect of private water supplies, into national legislation. I welcome the introduction of the regulations because many private water supplies in Scotland are unwholesome and not up to modern standards.

Research commissioned by the Scottish Executive in 2001 found that none of the 33 private water supplies being monitored in North-East Scotland throughout 2002 was

free from bacteriological contamination. The research was undertaken to validate a risk assessment approach to the management of private water supplies and provide additional evidence to support the adoption of such an approach into the private supplies regulations. The results of the study were published in 2003 and although they confirmed the need for new private supplies regulations, they concluded that the complex nature of private water supplies meant that validation of a risk assessment approach was not possible without further work.

It has taken time to develop and validate the risk assessment approach that is now incorporated into the Private Water Supplies (Scotland) Regulations 2006 but I welcome the approach adopted and consider that it will bring real public health benefits by ensuring that private supplies are clean and wholesome. This is important, not only for the 150,000 or so people that rely on private water supplies each day, but also the thousands of tourists and visitors that encounter these supplies on an annual basis.

The 2006 private supplies regulations will undoubtedly uncover deficiencies in private water supplies in Scotland that will cost money to rectify. I am pleased therefore that Scottish Ministers are supporting these regulations with a grant scheme.

Like all regulations however, enforcement is the key to compliance. The proposal, in the draft Private Water Supplies (Notices) (Scotland) Regulations 2006, to place a duty on local authorities to issue a notice, when private supplies are non-compliant with the regulations, is therefore essential. The provision of a sanction in the case of non-compliance with a notice is also essential and should address the deficiencies in the old regulatory regime whereby local authorities were effectively powerless to ensure that non-compliances are addressed.

As Drinking Water Quality Regulator for Scotland, I have a statutory function to “supervise the enforcement by local authorities of the drinking water quality duties which it is their responsibility to enforce”. Since the local authorities only had powers under the old private water supplies and not duties, I had no authority to intervene in the enforcement of the regulations. The draft private supply notice regulations therefore provide a robust regime for the enforcement of the standards set in the Private Water Supplies (Scotland) Regulations 2006 and should ensure that public health is protected.

I hope that the above is of assistance to the Committee in its consideration of the Annual Report on the implementation of the Water Environment and Water Services (Scotland) Act 2003 and the three statutory instruments on private water supplies that have recently been laid before the Parliament.

**Agenda Item 1**

**Environment and Rural  
Development Committee**

17 May 2006  
ERD/S2/06/17/1d

**SUBMISSION FROM FEDERATION OF SMALL BUSINESSES IN  
SCOTLAND**

**Introduction**

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper.

The FSB has taken a strong interest in policy developments relating to the provision of water services in Scotland and we have submitted comments to the Scottish Executive on various aspects of water services in the past four years including: the development of the Water Services Act and the opening up of the non-domestic market to retail competition; consultations on principles for charging for water and waste water; priorities for investment in the Q&S III programme; the recent draft determination of charges; and, the development of regulations for private water supplies.

The Federation has welcomed many of the recent policy decisions taken by the Scottish Executive in relation to water charges and investment. We were particularly heartened that the Scottish Executive acknowledged our concerns about over-charging non-domestic customers and the resulting subsidy to domestic customers; the need to keep rises in business water bills in line with inflation following the dramatic increases seen in 2003; the move towards a new banded system for surface water drainage charges, and the need to remove rateable value as a measure for charging for water and ensuring that meters are installed for all non-domestic premises. We also welcomed the inclusion of funding to remove development constraints as part of the Q&S III programme.

We now look forward to seeing further detail from Scottish Water and the Scottish Executive about how some of these developments are to be taken forward e.g. will there be a rolling programme of meter installation for non-domestic premises in advance of a new system of charging in 2010? Equally, does Scottish Water hold the relevant information on its customer database to move to a new system of surface water drainage charging in 2010? Lastly, we hear repeated complaints from small businesses about ongoing problems with lack of water and sewage infrastructure in many areas, despite the announcement of new funding.



The Federation is not best-placed to comment on the implementation of the Water Framework Directive in Scotland however we welcome the opportunity to submit comments to the Environment and Rural Development Committee on the Private Water Supplies Regulations. We have limited our comments to brief remarks about the regulations as laid before Parliament, however our response to the Scottish Executive consultation on the regulations in 2005 is also available if the Committee requires further detail on any aspect of our comments.

### **Preparation for Implementation of the Drinking Water Directive in Scotland**

- In our original response to the Scottish Executive we commented that:

*“We are astonished that in preparing the transposition into Scottish law of the Drinking Water Directive more time has not been spent building up data on a) exactly how many businesses will be affected by these regulations; b) the size of these businesses and the nature of their supply (e.g. volume used, shared with other businesses or domestic?); c) how often these businesses are currently visited (and checked); d) how much businesses are paying in charges; and e) the total income and cost to local authorities of the existing scheme. We understand that this is because most local authorities hold only the most basic information about existing private water supplies.”<sup>1</sup>*

- It is worth noting that the Scottish Executive has welcomed discussion of the implementation of these regulations with stakeholders and we acknowledge some of the changes in emphasis since the draft regulations were written, however we remain disappointed that given the lengthy timescales involved in implementing the Directive more work was not carried out at an earlier stage to provide more robust information on which the development of regulations could be based.

### **Awareness Raising**

- We have stressed the importance of local authorities carrying out a comprehensive awareness-raising exercise with affected premises in advance of the introduction of the new testing regime. As a minimum we would expect each local authority to write to every premises currently on their database (within the next two months) outlining the changes and likely costs. We understand that the Scottish Executive is preparing appropriate material and that guidance for local authorities will accompany this material.

### **Risk-based Approach**

- We welcome the move towards a risk-based approach to testing which should reduce the cost and time burdens on both businesses and local authorities.

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<sup>1</sup> <http://www.fsb.org.uk/documentstore/filedetails.asp?id=279>

## **Regulatory Impact Assessment**

- Whilst we criticised the partial Regulatory Impact Assessment for basing virtually all its cost comparisons on estimates rather than any firm data, it is nonetheless a relatively comprehensive assessment. We note that the RIA outlines that the greatest cost will fall on smaller businesses and that small supplies are twice as likely as large supplies to fail to reach the required standard – highlighting how important it is to ensure that assistance is properly targeted at small businesses.

## **Definition of ‘Type A’ Supplies**

- This should be more tightly defined in informative material being prepared by the Scottish Executive and a list of ‘FAQs’ prepared. It seems likely there will be a number of queries in relation to the reference to ‘commercial activity’. Does this include, for example, farm workers washing their hands from an outdoor tap (but where the water is technically available for consumption by the workers)?

## **Temporary Departure Applications**

- Application forms should be standardised for all local authorities to ensure that no additional administrative requirements are placed on applicants and to remove the need for local authorities to produce forms.
- We are concerned that Section 8 (4) (b) of the regulations requires every applicant for a Temporary Application to notify every consumer likely to be affected by the departure. There are obvious difficulties with this in relation to tourism businesses. These appear to be addressed in later references to informing consumers where their contact details are ascertainable, however, from our reading of the regulations this caveat does not seem to apply in relation to Temporary Departures which we are unsure about.
- We believe that the requirement for applicants to inform the local Health Board of their application places an unnecessary burden on businesses – the local authority could more easily copy or forward completed applications it receives to the Health Board.

## **Grant Scheme**

- The FSB welcomed the provision of a grant scheme open to business however we felt that a scheme based on a percentage of the total cost of upgrade work, rather than a flat rate grant, would have been more equitable. This is because the (albeit estimated) statistics suggest there will be a number of small businesses for whom the upgrade costs will be significantly above the estimated average cost of around £1200. For

these businesses the proposed grant, even at the increased level of £800, still leaves them with a large bill for necessary works.

- Despite our disappointment with the final scheme we welcome the inclusion in the regulations, under Section 8(2) of the Grant Regulations, of a discretionary power for local authorities which enables them to exceed the maximum £800 grant limit if they believe that the upgrade works could not be completed without hardship.
- We hope that local authorities will be given clear guidance on the awarding (and refusal) of grants to ensure a transparent and consistent system across Scotland.
- A standard grant application form should be used by all local authorities. Again, this ensures that no unnecessary information is required and removes the task of producing forms from local authorities.

### **Costs to Local Authorities**

- The burden of enforcing the new regulations will fall most heavily on a small number of Scotland's councils. It is important that these local authorities are adequately resourced to carry out an effective advisory and enforcement role so that they do not abuse discretion in relation to charges for additional testing.

### **Information Notices**

- The Federation acknowledges the variable quality of private water supplies and has no wish to compromise public health however we do not accept that the provision of information notices for the public in every premises which uses a private supply is necessary. We feel that tourism businesses can be legitimately concerned that such notices do not assist the promotion of Scotland as a location of fresh air, pure water etc. We are not aware of the exact nature of the notices required but we are concerned that the regulations (under Section 36) currently state that local authorities can decide on the nature of these notices. We do not support this approach and would prefer a standardised approach across Scotland.

**Agenda Item 1**

**Environment and Rural  
Development Committee**

17 May 2006  
ERD/S2/06/17/1e

**SUBMISSION FROM NFU SCOTLAND**

**IMPLEMENTATION OF THE WATER ENVIRONMENT AND WATER SERVICES  
(SCOTLAND) ACT 2003**

1. Submission of views in April 2006 to United Kingdom Technical Advisory Group on the Water Framework Directive (UKTAG) marked the 12<sup>th</sup> formal submission by NFU Scotland (NFUS) on implementation of the Water Framework Directive (WFD). NFUS appreciates the pressures on the Parliament, Scottish Executive and agencies to comply with these EU requirements. Indeed, the quality of Scotland's environment is an important aid to the reputation of Scotland's farming output. However, we are dismayed at the extent of regulatory activity that is being applied when, in most places, the water environment is in good or excellent ecological condition.
2. The avalanche of extra regulation, driven by EU legislation, has been the subject of a recent submission to the Parliament's European Committee. We have proposed a new approach to meeting EU requirements that should result in limitation of regulation to known problem areas.
3. On the specifics of WFD-driven regulation, we would be grateful for this Committee's attention to the principle of charging those who are regulated. The Scottish Executive's underfunding of the Scottish Environment Protection Agency (SEPA) to carry out administration and monitoring activity obliged by the Directive is a national disgrace. Such work is carried out in the wider public interest and to meet the objectives of the WFD. Charging those costs to those who are regulated, when those same persons have to meet the costs of compliance, is morally repugnant.

**Summary**

4. In summary, the NFU Scotland views are:
  - We welcome the recognition by UKTAG that, whatever further refinement takes place, most Scottish waters are bound to be classified as being in good or excellent ecological condition. That has profound implications for regulation of activities that may impact on the water environment.
  - NFUS takes the message from the UKTAG report that a proportionate response to the Directive's requirements would be to devise methods for attaining good condition, or for maintaining good and excellent condition, that apply only where there are problems.
  - Agriculture is highly regulated already. New General Binding Rules to apply in all places are not needed to combat diffuse pollution from agricultural

activities. Sustaining existing good practice and preventing new problems can be addressed by educational activity. We recommend that this can be best tackled by advice and information, such as is provided to farmers in Scotland by the Prevention of Pollution From Agricultural Activity (PEPFAA) Code.

- Those who are obliged to comply with regulations introduced under the 2003 Act should not also be charged for the privilege of being regulated.

## **Background**

5. Environmental legislation is in danger of damaging farm sustainability. A subsequent reduction in farming activity and land management would have serious environmental consequences.
6. The agriculture industry is currently undergoing significant change as a result of Common Agricultural Policy reform and there is considerable uncertainty amongst many farmers caused by poor market prices, further potential changes to the support regime and the increasing burden of regulation.
7. Feedback from our members suggests that it is regulatory pressures that are the most immediate concern facing farm businesses. Indeed, the increasing burden of regulatory cost is exacerbating the long-term problem of poor farmgate prices, which are harming farm sustainability. This is primarily due to farmers' weak position as small, individual businesses in the supply chain. As 'price-takers' rather than 'price-setters', farmers have to absorb the additional cost of new regulation with no corresponding increase in already low farmgate prices. On top of this, they often suffer the consequences of increased regulatory costs aimed at processors and retailers because these are passed down the food supply chain to farmers.
8. When faced with a new EU Regulation or a Directive, there appears to be little analysis of the relevance of the legislation to Scotland or to individual industries. Indeed, there is concern that the Scotland Act places a blanket obligation on the Scottish Executive to implement legislation in full. Also, regulations tend to be introduced cumulatively, with apparently little regard paid to whether existing measures may already be addressing the issue.

## **Charging**

9. NFUS rejects the proposition that all those who are subject to regulation in the public interest, regardless of whether or not they are causing environmental damage, should pay for its administration through charges. This is seen as a mechanism to increase SEPA's revenue. If SEPA is inadequately funded, any shortfall should be made up by the Scottish Executive, not by businesses.
10. If Scottish Ministers are adamant that charges are made by SEPA, they should be as low as possible. Unlike other industries, farmers are unable to pass on such costs as charges to customers.
11. Regulations to govern the use of water are obliged by the EU Water Framework Directive. To bring these into effect, the Water Environment and Water Services Act and subordinate legislation has placed responsibilities on SEPA. The Scottish Executive grant-in-aid to SEPA is inadequate, relative to

the functions it must discharge. The outcome is that the Scottish Executive is funding the costs of public administration and monitoring by obliging SEPA to levy charges on businesses.

12. These regulations are being introduced in the wider public interest as well as to meet EU obligations. Those who are to be regulated will have to meet the costs of compliance with the rules. They are also being charged for the administration of regulation. This latter cost flies in the face of the Polluter Pays Principle because a financial penalty is being applied to those who, through their compliance with the rules, are ensuring that the objectives of the Directive are being met.
13. In European terms, Scotland is not a country that is short of water. Without denying the desirability of using it wisely, most of the time, and in most places, it is not scarce. The perverse effect of these charges could be to drive the production of crops that may need irrigation to other countries with less plentiful supplies.
14. In that event, the Scottish Executive would have contributed to the degradation of the water environment in other countries, increased the impact of climate change by adding food miles to home consumption and reduced the opportunity for improved diet by supply of fresh fruit and vegetables from local resources.

### **Current Environmental Performance**

15. "Good" ecological condition is an objective for all water bodies by 2015, except where heavily modified or where attainment would impose disproportionate costs. For the exceptions, alternative objectives can be set. The alternatives can be some combination of delayed timetables or the best that can be reasonably achieved in the circumstances, below Good Status. Prevention of deterioration of existing status is also an objective.
16. We are pleased to note (at page 31 of the UKTAG report) that new standards will result in limited changes in Scotland because the majority of water bodies will continue to be classed as better than Good.
17. We expect few, if any, cases involving agriculture where alternative objectives have to be set for attaining or maintaining something less than Good Status.
18. As regards maintaining High and Good Status, which are the norms in rural Scotland, the agriculture sector is uniquely subject to two sets of EU cross compliance rules – covering Good Agricultural and Environmental Condition and certain Statutory Management Requirements (SMRs). EU support payments are conditional on compliance with both sets of conditions and, for SMRs, double jeopardy applies. Not only can a breach result in financial penalties, it can result in prosecution.
19. Additionally, the PEPFAA Code provides a vehicle for advising and informing farmers about good practice. It is supplemented by advisory activity on protection of the water environment by the Scottish Agricultural College, centred on use of the 4 Point Plan for use of slurries and manures and the Farm Soils Plan which is relevant to prevention of over-enrichment of watercourses by phosphates.

20. Existing rules, combined with such educational activity provides the means of preventing deterioration of ecological status, without need of extra regulation.

### **Diffuse Pollution**

21. The annual report to Parliament from the Scottish Executive highlights a SEPA view that agriculture is potentially a significant source of diffuse source water pollution, without qualifying that view to be restricted to landward water bodies. Diffuse pollution from non-rural land uses is assessed as a greater threat for transitional and coastal waters, i.e. where most people live. (SEPA Pressures and Impacts Report, pages 24 to 26) The annual report does point out that diffuse pollution from other sources can be more potent and will be addressed in a strategy paper later this year.
22. A draft strategy for control of diffuse pollution from rural land uses has been the subject of recent consultation. . The Scottish Executive's consultation paper proposes that this be done through a "strategy" for dissemination of best practice, through direct controls and through incentives to good practice, paid under Land Management Contracts.
23. The first and third components of the proposed strategy are not contentious, although we have commented on the details of how they may be implemented. The second is. Our response focused on the notion of more direct controls.
24. In summary, the NFU Scotland views are:
- The farming industry is highly regulated already. (See footnote.) The consultation paper has not demonstrated that any additional direct controls are needed for the agriculture sector.
  - Classification by SEPA of a waterbody as "at risk" does not necessarily mean that an actual diffuse pollution problem exists. It indicates a potential problem.
  - As a specific instance, we oppose the proposal to ban all direct access by livestock to watercourses adjacent to improved land. In places where that could generate a diffuse pollution problem, farmers are already obliged to take action.
  - Any further development of good practice guidance should be carried out in the context of the PEPFAA Code, so as to ensure consistency and avoid duplication.
  - Extension of cross compliance obligations and good practice guidance to other rural land users would be welcome.
  - Incentives to good practices, which enable new Brussels rules to be met or which exceed the requirements of statutory obligations, would be welcome.
25. We would be happy to provide full text of our case against introduction of more general binding rules for agriculture under the Controlled Activities Regulations.

## Water Abstraction Licencing

26. The annual report provides little indication of the difficulties encountered in devising proportionate controls under the Controlled Activities Regulations (CAR). We accept that consultation with the industry yielded significant improvements, especially with regard to the transitional arrangements for existing water users.
27. However, the outcome remains unsatisfactory. In those areas where rainfall is high and/or water bodies' volumes are at satisfactory levels, there should be no need to license abstraction. Also, in respect of new entrants to the industry, or introduction of new activities using private water supplies, charges are disproportionate.
28. The CAR regime is considerably improved from the initial proposals. However, it does not properly accommodate the peripatetic nature of fruit, vegetable and potato production. Farm businesses, which engage in such production, do not necessarily do so on their own ground, nor on a continuing basis on an established area of let ground. To guard against the establishment of plant diseases, production moves from place to place.
29. Irrigation of these crops may or may not take place in a crop year, depending on weather conditions. However, the opportunity to irrigate is a necessary precondition to use of a field for these purposes. The proposed application costs for a field without an existing licence would make production uneconomic. Therefore, an effect of the charging system in the long run will be to reduce Scottish production of fruit, vegetables and potatoes. We note that provision of locally produced fresh food is an essential part of the Scottish Executive's Healthy Eating Campaign.
30. Ministers have approved a SEPA proposal that the initial application charge for complex licences (above 100 cubic metres per day) from October 2006 be £2,944. Neither this charge, nor the £446 annual charge at the lower band level, have been justified. When challenged in the Regulatory Stakeholder Group, it was acknowledged that the true costs for dealing with an agricultural-scale application would be lower.
31. The charge is the same as that which applies to:
  - a point source sewage discharge from premises accommodating over 100 people;
  - any discharge of inorganic effluents and other trade effluents;
  - discharge of leachates from landfill sites.These subjects present more significant threats to the water environment. Therefore, it is disproportionate to apply this charge to new sites for agricultural abstraction.
32. Agricultural prices produce uncertain and often negative returns to producers. Faced with such an additional cost (application charge of £2,944 plus a subsistence charge of £446 or £2,232) it is most unlikely that any fruit or vegetable grower without an existing licence would be prepared to take the commercial risk of moving on to an unlicensed site. Production could not



expand in the first instance. Because of the need to rotate sites, it will fall in the long run.

33. We have welcomed the intention, expressed in the SEPA News Release of 16 December, that applications will not be required for registration or licence of new abstractions for supply to water troughs and to sprayer bowsers.
34. We have also welcomed Ministerial agreement to increase the upper limit for Band 5 to 2,000 cu m per day. However, We do not believe that any credible case can be advanced to show that regulatory effort would be different at 3,000 cu m per day. In that range the annual regulatory charge rises from £446 to £2,232.
35. The charging scheme is complicated. The following estimates are based on summer irrigation of crops for “simple” and “complex” licences of up to 5 abstraction points and within these volumes used. While SEPA’s arithmetic (in calculating costs to be recovered by charging) have been checked by KPMG, the independent accountant was not in a position to question whether the work proposed to be undertaken was necessary. In particular, agriculture has been included with unlike activities in estimating the monitoring that ought to be undertaken. We challenge whether farm monitoring will justify these charges.
36. On the basis of the approved annual charges, the additional annual bill from SEPA for crop irrigation would be typically as follows:

Usage	2006/7	2007/8 and onwards (plus inflation)
Band 6: 50 to 100 cu m per day	£134	£196
Band 5: 100 to 2,000	£446	£652
Band 4: 2,000 to 10,000	£2,232	£3,260

37. We have asked for an increased threshold for Band 5, to 3,000 cu m per day. The purpose of a wider band is to accommodate the uncertain requirements of potato producers whose livelihoods could be jeopardised by arbitrary restrictions that prevent irrigation that can arise at a few critical moments of the growing season. By granting this flexibility, use of 2 unit mobile irrigation equipment could generally be accommodated within a single band.
38. For the exceptional situation, where for example hydroponic production of fruit coincides with vegetable production, the five fold increase in subsistence charge from Band 5 to Band 4 is too extreme. Even with our proposed increase in the Band 5 upper threshold, the spread of scale in Band 4 is very wide. We suggest an intermediate band between 3 and 5 megalitres, with a lower multiple or a very much reduced multiple for Band 4 as amended by our proposal.

### **Dip Disposal Licencing**

39. The CAR system also involves licensing of spent sheep dip disposal. The disincentive effect of charges for land disposal of spent sheep dip should be considered further. Existing holders of authorisations for disposal of spent

dip and/or pesticides to land have been transferred into the new regulatory system without charge. However, the initial charge for registering new disposal sites has been set at £542. Before 1 April 2006, the charge was £172.

40. No justification has been provided to the Regulatory Stakeholder Group for the increased administrative or monitoring effort which would justify a 215 per cent increase in costs, and thence in charges. The proposed level in charge to farmers who might wish to commence dipping, or who have abandoned it in the past and want to start again, is the same as that proposed for other kinds of applications. For example, the proposed charge is the same as that which would apply to:
- a point source sewage discharge from a caravan park accommodating up to 100 people;
  - a discharge of cooling water with chemical additions from a factory of any size;
  - surface water discharges from industrial estates of any size.
41. The significance of the subject is that this disincentive to sheep dipping coincides with a major effort to combat the increasing incidence of scab in the sheep population. This is a major animal welfare concern.

## **Conclusion**

42. The upside of the bulk of waters in Scotland having Good or High Status is that agriculture has an opportunity to be seen as behaving responsibly. In return for that, the industry wants more vigorous action to ensure that its efforts are not undercut by cheap imports from countries whose farmers behave less responsibly.
43. The downside that we must guard against is “gold plating” of rules and the higher attendant administration expenses. Regulation should be restricted to known and understood problem areas. Relative to many European countries, these should be few and far between in Scotland. Here, agriculture is much more extensive than usual in much of the rest of Europe. For instance, Scottish agriculture is much less dependent on abstraction of water for irrigation. Therefore, regulation in the interest of the water environment ought to be less onerous.

## **Footnote**

The farming industry is already bound by rules that act against diffuse pollution. Not least of these, are the cross compliance rules upon which receipt of the Single Farm Payment (SFP) depends.

The industry is already subject to EU Statutory Management Requirements (SMRs) to prevent pollution and, from 2005, the main farm support, the SFP, is conditional on adherence both to these and to maintaining land in Good Agricultural and Environmental Condition (GAEC).

The Statutory Management Requirements which are relevant are: SMR 2, Protection of Groundwater Against Pollution; SMR 3, The Use of Sewage Sludge in Agriculture; SMR 4, Protection of Water in Nitrate Vulnerable Zones ( NVZ); and SMR 9, Restrictions on the use of plant protection products. Note that these obligations give rise to double jeopardy – prosecution under relevant implementing legislation and potential penalties of up to 100 per cent of the SFP.

Several GAEC rules are relevant to avoiding diffuse pollution from agricultural activities. This comes about chiefly through the CAP Regulation's attention to soils, especially soil erosion which is the main transmission vector for delivery of phosphates to water bodies. (Annex IV) The relevant GAEC rules are: GAEC 1, Post-harvest management of land; GAEC 2, Wind erosion; GAEC 3, Soil capping; GAEC 4, Erosion caused by livestock; GAEC 5, Maintenance of functional field drainage systems; GAEC 6, Muirburn Code; GAEC 8, Arable stubble management; GAEC 11, Overgrazing; GAEC 15, Field boundaries (re. watercourses); and GAEC 16, Non-productive landscape features (re. ponds). Breaches of these rules could incur potential penalties of up to 100 per cent of the SFP.

## SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Scottish Environment LINK is the forum for Scotland's voluntary sector environment organisations. LINK Freshwater Taskforce welcomes the opportunity to submit evidence to the Environment and Rural Development Committee on progress of implementation of the Water Environment and Water Services Act (WEWS Act) in Scotland, the Act that transposed the European Water Framework Directive (WFD), the most important piece of European environmental legislation aiming to protect and enhance the water environment.

The WEWS Act is a progressive piece of legislation and significant decisions need to be taken each year to ensure its proper implementation. LINK Freshwater Taskforce has been continuously engaged in the implementation of the WFD in Scotland and this submission seeks to highlight areas of good progress, as well as those areas of some concern. Comments are made in the following areas:

**General issues** - Policy integration; Public participation; Funding

**Specific issues**- Responsible authorities; Designating Ministerial functions; Sustainable Flood Management; Further pressures and impacts analysis; Restoration and Remedial measures; Agriculture and diffuse pollution; Scottish Water; Marine issues

### **General issues**

**Introduction:** So far, the implementation of WFD has involved putting in place structures and policies to ensure that statutory requirements are fulfilled. For the first time, Scotland has a statutory framework in place that allows us to manage activities that could damage the water environment. Successful implementation of the WFD will continue to need to connect the management of all activities and work towards achieving a common objective. However, with all the major structures in place, it is time to start delivering on the ground. This will only be achieved by taking a more proactive approach. SEPA needs to take clear leadership, actively encourage restoration, catchment working and good water management. Proper policy integration, public participation and funding will be key to making the Act really work for a healthy and fully functioning water environment that benefits all.

**Policy integration:** The Scottish Executive has been working closely across departments and SEPA to ensure integration with key policy areas. Good progress has been made in some areas, but much better policy integration is still required in

relation to some areas particularly land use and including farming, fishing, marine and forestry.

For example, the recently published consultations on Fisheries and Aquaculture Bill and the Rural Development Plan for Scotland take little account of the catchment based approach to water management that is required by the WFD. Policy integration is key in delivering WFD objectives, and integration is a statutory obligation in the Act, therefore relevant departments need to ensure this is done in the most effective way.

**Public participation:** The Scottish Executive and SEPA are committed to engaging stakeholders in key areas of WFD implementation. We are really encouraged by this commitment and the progress that has been achieved to date. Several stakeholder groups have been established, which are welcome and SEPA has been commended in Europe for its role in Scotland's WFD implementation.

However, successful implementation of the WFD will also require a wider engagement from local communities in the River Basin Management Plan process. This level of engagement may be difficult to achieve using 'traditional' approaches so will require a more 'proactive' approach. The new River Basin Management Strategy for Scotland presents clear thinking on public engagement and highlights SEPA's commitment to achieve the appropriate level of participation. It is clear the role of SEPA is changing, and while SEPA has accommodated this change to date, the organisation will need government support, adequate funding and encouragement to take its strategy forward.

**Funding:** The success of the WEWS Act implementation depends on adequate resourcing of the Competent Authority (SEPA) and others designated to have responsibility towards delivering River Basin Management Plans. During the last Spending Review allocations, SEPA faced a significant shortfall in the implementation costs, which threatened to undermine the implementation of WFD in Scotland. SEPA itself stated that "*the cuts made to the resource plan were considered by SEPA to represent an acceptable level of risk. However, it could no longer be claimed to be fully delivering WEWS/WFD requirements*" (Minutes of the Regulatory Stakeholder Group meeting, 22<sup>nd</sup> of October 2004). Whilst further funding of £2.85 million was allocated to SEPA to allow important capital and research projects to take place, this should not be repeated in future.

The Committee might seek assurances from the Minister that SEPA and others involved in WFD implementation get adequate funding to fulfil their duties. To fulfil the objectives of the Act the Scottish Executive could consider funding routes that may be available due to the integrated nature of the Act. One example might be to join up different aspects of the Climate Change, Agriculture/Diffuse Pollution and Flood Scheme budgets to fund wetlands in catchments, another to look creatively at the funding streams that are available through Rural Development Plan funding to deliver WEWS Act requirements in relation to catchment working.

## **2. Specific issues**

**Responsible authorities:** Designating responsible authorities under Section 2 of the WEWS Act is an important step in ensuring an integrated approach to water management and protection. The Scottish Executive recently issued a designation order that identifies roles of the key public bodies in delivering WFD objectives. However, what that designation will mean for them in practice is still unclear. Responsible authorities need *direction* and *guidance* from the Scottish Executive to ensure that they understand the new duties and are able to fulfil their requirements.

Guidance may be adapted using some good examples of how bodies, which are now, or largely involve, Responsible Authorities, have managed to work together to achieve an integrated approach to a catchment-based issue. *The Glasgow Strategic Drainage Scheme* brought Glasgow City Council, Scottish Water, SEPA and Scottish Enterprise Glasgow together to deal with urban flooding problems in Glasgow<sup>1</sup>. *Three Dee Vision* brought Scottish Water, SNH, SEPA, Aberdeenshire Council, Aberdeen University and MLURI together with the local community on the Tarland Burn Catchment on Deeside to address catchment diffuse pollution issues<sup>2</sup>. Both have been successful at ensuring integration. The *Tweed Forum* also provides an excellent example of partnership working directed at dealing with multiple issues within a large catchment<sup>3</sup>.

**Designating Ministerial functions:** Section 2 of the WEWS Act requires the designation of relevant SEPA and Ministerial functions. However, this requirement has not yet been fulfilled. The role and functions of Ministers and SEPA in applying the terms of the Act are not clearly set out anywhere yet, so it is not clear where their responsibilities fall and therefore who to hold accountable for ensuring the delivery of specific functions.

This is very important, since some organisations and bodies that are not agencies or departments of the Scottish Executive also have a role in delivering WFD requirements and such bodies need to be regulated through Ministerial functions. For example, the economic regulator for Scottish Water – the Water Industry Commission (WIC) has no direct duty to consider sustainability when costing Scottish Water’s investment programmes but Scottish Water does have to fulfil its legal duties on sustainability and sustainable flood management when drawing up that programme. This has impossible implications for Scottish Water, who are being instructed to consider the long term best value, while the WIC is primarily concerned with short term costs. This issue needs to be addressed by designating WIC’s functions under the Section 2 of the WEWS Act, and/or by giving the WIC guidance on to how to take consideration of SW’s sustainable duties.

**Sustainable flood management:** The Scottish Executive has made some progress in promoting and discussing the duty in Section 2 of the WEWS Act on

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<sup>1</sup> [http://www.wapug.org.uk/past\\_papers/Autumn\\_2005/A2005fleming.pdf](http://www.wapug.org.uk/past_papers/Autumn_2005/A2005fleming.pdf)

<sup>2</sup> <http://www.3deevision.org/>

<sup>3</sup> <http://www.tweedforum.com/>

Scottish Ministers, SEPA and responsible authorities to 'promote sustainable flood management'. However, three years after the passing of the Act and the implementation of this statutory duty, nothing different has yet actually happened. It does not appear to have influenced the development of flood solutions nor has it influenced a change of approach to flood alleviation on the ground. Despite the clear direction from Parliament during the passage of the legislation, there is still much to be done on the implementation of this duty and any obstructions to progress need to be addressed.

The process to even define Sustainable Flood Management has been too slow. The public consultation to agree definition has not been published yet, after a two year wait, so the key principles and guidance that should aid implementation have not yet been agreed or put in place. While the process is slow, one obstruction to delivering the duty may be that the Flooding Act 1961 currently limits the scope of sustainable flood management schemes and the use of forest and agricultural land for involvement in flood processes. The Scottish Executive is still taking their directions for spending on flooding from this piece of legislation rather than the more recent Act passed by the Scottish Parliament.

This means that Scottish Executive spending is not targeted at delivering the Sustainable Flood Management duty as set out by the Scottish Parliament in the Water Services and Water Environment Act. To deliver the duty, the Executive needs to direct resources and integrate policies on agriculture, land use planning and statutory planning systems to be in line with the principles of the WEWS Act, not the 1961 Act. It should, if necessary bring forward proposals to revise dated legislation from 1961 to be compatible with the WEWS Act passed in 2003.

In order to fully support the implementation of the duty, more research is also needed to improve understanding of the cause of floods and benefits of soft engineering techniques on flood rates and flows. Efforts so far have concentrated on inland flooding. The Scottish Executive needs to focus more on coastal areas and put in place appropriate strategies to ensure sustainable adaptation to the impacts of flooding and climate change at coasts too.

**Further Pressures and Impacts analysis:** Further characterisation is currently focusing on refining water bodies<sup>4</sup> which may have been classified as being at risk of failing to achieve WFD objectives, but where the certainty of that assessment is low. This is important in order to target improvements. However, the UK administration (including the Scottish Executive) has made a commitment in March 2005 to further assess the status of 'small water bodies', which fall below the size or importance criteria of the initial assessment<sup>5</sup>. These include some of the most important components of rivers, such as springs, headwaters, small lochs and

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<sup>4</sup> Water bodies may be entire bodies of water such as loch, or parts of bodies of water such as river sections. Certain size and importance criteria have been applied to enable better management and reporting on Scotland's water environment.

<sup>5</sup> Water Framework Directive: Note from the UK administrations on the next steps of Characterisation, March 2005

associated wetlands. Whilst some work on small water bodies is being undertaken in England and Wales, Scotland has fallen behind this commitment. Scotland has a substantial number of small water bodies, which are of biodiversity, water resource management or other importance (such as BAP priority habitats) and the limitations of the current assessment leaves a significant number of water bodies without WFD protection.

**Restoration and remediation measure:** Catchment restoration is one of the key mechanisms for achieving good ecological status under the WFD. Whilst much of it will be delivered through RBMP and other initiatives, there will be times when SEPA will be required to take direct action. SEPA does not currently have powers that would allow it to carry out such habitat restoration. Such powers should include requiring the removal of unused dams, restoring morphological features, wetlands and natural river flows where damage to watercourses occurred in the past. The Scottish Executive stakeholder group, which concluded that no immediate steps were needed to be taken, consisted only of statutory organisations. External stakeholders and NGOs have not been given an opportunity to express their views on this matter. These regulations will take time to develop and, so far, there has been little progress to deal with this issue. Remedial and restoration powers will be important in achieving WFD objectives, and should be reconsidered as a matter of urgency.

**Agriculture and Diffuse pollution:** The Scottish Executive has recently consulted on measures to control diffuse pollution from agriculture and forestry. Diffuse pollution is a complex problem, which requires well thought out solutions. The proposed approach in Scotland does not go far enough, and offers a piecemeal solution, with no long-term thinking, effective leadership or enforcement. It heavily relies on existing measures, soft regulations and support provided through the reform of the Common Agricultural Policy (CAP), which has a limited budget.

This approach will not deliver changes in land use and land management that are required to achieve WFD objectives. The Scottish Executive needs to put in place more effective regulations. Farmers and other land managers need more support and advice to understand where the problem comes from and bring about improvements in water quality. For example, DEFRA in England and Wales is investing £25 million in a new initiative 'Catchment Sensitive Farming', which includes putting in place catchment officers to provide farmers with free guidance and advice on the ground to aid improvements in priority catchments. It also includes a separate budget of £5 million in grant aid on capital investments and farm improvements. Such measures should be considered in Scotland.

**Scottish Water:** Scotland has a long history of chronic under-investment in environmental improvements to water services, and an appalling rate of water leakage, which is currently estimated at over 50% and the poorest standards in some of Scotland's most disadvantaged areas, financially and geographically. The Quality and Standards III investment programme (2006 – 2014) provides an opportunity to address some of these issues and bring better protection and



improvements in water quality and environment. Whilst we greatly welcomed the Q&S III public consultation process, it did not deliver proper public scrutiny. Especially with such strong public interest in this area, the consultation process should have made public engagement more accessible.

It is of serious concern that there appears to be a 'mismatch' between the roles of the Scottish Water and that of the Water Industry Commission (WIC), its economic regulator. In theory, the regulatory framework should work; but in practice Scottish Water is faced with limitations in fulfilling its legal duties on sustainability, biodiversity and sustainable flood management. The WIC estimates the cost of investment projects on the basis of economic parameters (short term, cheap solutions), and by doing so does not give SW room for sustainable development and to design projects that would solve problems over longer term, enhance biodiversity or contribute to sustainable flood management. Whilst the new regulatory framework is in its infancy, it is currently failing to enable SW to fulfil its core duties and make investment more sustainable.

**Marine issues:** The WEWS Act requires the achievement of good status out to 3 nautical miles into sea. So far, there has been little progress to meet the Scottish requirements, and no direction from the Scottish Executive as to how this will be achieved. Marine areas need to be protected against damage caused by operations such as dredging and other activities impacting on seabed and shoreline. Current control systems for engineering activities lie with the Fisheries Research Services, which has very limited remit, and does not fully meet the requirements of the WEWS Act. This needs to be addressed as a matter of urgency.

**Conclusion:** Much progress has been made on this progressive piece of legislation, but, as outlined, there are some obstacles in the way that could hinder further progress. With the WEWS Act, Scotland established itself as a leader in this area and has been commended on its leading role within Europe. It is hoped the Scottish Executive will seek to address the issues that have become apparent in implementation in order to keep up momentum, to meet obligations under Scottish and European statute and essentially to ensure that Scotland maintains a healthy water environment for all who rely upon it.

SUBMISSION FROM SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

Thank you for your recent email correspondence dated 21.04.06, requesting briefing from the Scottish Environment Protection Agency (SEPA) regarding the above. Our comments are as follows:

**1. Purpose**

- 1.1. This briefing note provides the Committee with an overview of SEPA's approach to implementation over 2005. It is intended to complement the information provided in the Annual Report to Parliament.

**2. Background**

- 2.1. SEPA considers that the implementation of the 2003 Act and the consequent Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) provide a key opportunity to modernise environmental regulation in Scotland.

**3. Scope of CAR**

- 3.1. Until 1 April 2005, SEPA was responsible for controlling the pollution of the water environment. CAR replaces key elements of the previous regulatory regime and introduces controls over abstractions, impoundments and engineering work. This provides SEPA with the ability to ensure that the most effective measures are chosen to deliver environmental benefits.
- 3.2. SEPA has been working to ensure that it will focus on delivering the most effective measures across all pressures. SEPA is determined to deliver the greatest benefits for Scotland's environment for the lowest costs.

**4. Risk focused**

- 4.1. SEPA has devoted considerable efforts to ensure that the approach it takes to regulation is risk-based. Partly this will involve applying an appropriate level of regulatory control (licences or registration) as allowed under CAR. Very substantial progress has been made with an estimated 80 to 90% of activities expected to be covered by Registration.
- 4.2. Registration will be a "hands-off" form of control. Very simple application forms have been developed which define the location and scale of the activity.
- 4.3. SEPA has developed licence templates to cover the remaining 10 to 20% of activities. SEPA intends that licences should be as simple as possible with the complexity of the licence being determined by the scale of environmental risk at the site.
- 4.4. SEPA has given a commitment to review how it determines risk as its experience of managing the regimes develops. Any changes to the risk

assessment process will be paralleled by changes in the charging scheme to ensure that charges remain proportionate to environmental risk.

## **5. Consultation and participation**

- 5.1. The introduction of new controls poses challenges to both SEPA and those subject to the new regulations. Over the past two years, SEPA has put considerable efforts into working with stakeholders to address their concerns about the application of CAR. A key mechanism for discussion with stakeholders was a stakeholder group which was closely involved in the development of the charging scheme.
- 5.2. SEPA considers that the process of consultation with stakeholders has been successful in addressing many of their legitimate concerns. It was not possible, however, to deal with all the issues raised and there are areas where further work is required. SEPA will continue the participative approach to implementation. We firmly believe that (continuing) discussions with stakeholders is a vital mechanism for delivering effective regulation.
- 5.3. In the longer term, through adopting this collaborative approach, SEPA expects that those who are newly subject to regulation will accept the changes as they gain understanding and experience of how the regime is in practice applied.
- 5.4. An important component of participation will be the River Basin Management Planning process which we have been preparing for in 2005. This will provide the basis upon which common objectives can be agreed for improving the water environment.

## **6. Statutory instruments**

- 6.1. The introduction of CAR has allowed the simplification of Scotland's environmental legislation by providing a single consistent approach to protecting the water environment.
- 6.2. As a consequence, a number of statutory instruments have been considered by the Committee which repeal the following control regimes:
  - Control of Pollution Act 1974,
  - Groundwater Regulations 1998,
  - Irrigation Controls under the Natural Heritage Act 1991 and,
  - Controls under the Water (Scotland) Act 1980 which controlled abstractions for public water supply.
- 6.3. SEPA strongly welcomes this simplification of the regulatory regime which delivers a recommendation of the Hampton Review which addressed how to minimise regulatory burdens.

## PRIVATE WATER SUPPLIES (SCOTLAND) REGULATIONS 2006

Private drinking water supplies are subject to control by:

- local authorities for the purposes of maintaining drinking water quality under the proposed 2006 regulations; and
- SEPA for the purposes of controlling the amount of water abstracted from the environment under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR).

Both sets of Regulations require the creation of a register to support these different purposes. It is clearly important that CAR and the Private Water Supplies (Scotland) Regulations (PWS) are implemented by SEPA and local authorities working together to ensure efficient regulation and minimise the impact on those using private water supplies. To this end, SEPA has worked in close collaboration with the Executive to ensure the requirements of CAR can be delivered insofar as is possible by the information to be contained in the PWS register. SEPA welcomes the PWS Regulations in this context.

SEPA considers that the most efficient way to deliver these joint objectives is that a **single register** should be created covering both CAR and the 2006 Regulations. This is a matter of implementation rather than for the Regulations, however, we do consider that it is relevant to highlight this potential regulatory efficiency to the Committee.

Regulation 35 imposes a duty on Local Authorities to make the PWS register available, and to provide information to SEPA, including an annual return. We welcome the suggested collaborative approach. This is a very positive move towards efficient and effective regulation. However, SEPA believes the most efficient way forward would be the creation of a single, shared, national database with standard data formats. SEPA has already developed an on-line registration system for registrations under CAR. This could be expanded to cover the information and reporting as required by the PWS Regulations. SEPA would be able to contribute to developing and servicing of such a central database system.

We understand that the Local Authorities already have a single, centralised system for recording food surveillance monitoring data and strongly support a similar approach for Private Water Supply regulation.

I hope this response is helpful.

**Agenda Item 1**

**Environment and Rural  
Development Committee**

17 May 2006  
ERD/S2/06/17/1h

**SUBMISSION FROM SCOTTISH NATURAL HERITAGE (SNH)**

Thank you for giving us the opportunity to submit written evidence on the WEWS Act Annual Report 2005 to the Environment and Rural Development Committee.

SNH regards the Water Environment and Water Services Act as a major step forward in the protection and better management of Scotland's aquatic environment. We are pleased with the progress that has been made in rolling out the regime that it establishes. Our main comments relate to the further steps that are needed to complete this implementation and to the contribution that SNH could make to the process. They are set out in the attached short note.

We hope that the Committee will find this brief contribution of some value

We agree and welcome the fact that the Water Framework Directive represents a significant shift in attitude to water resource management and takes a more holistic approach to protection of the water environment.

The annual report sets out the main achievements of the Executive and SEPA in implementing the Water Framework Directive (WFD) and we would commend the action that has been undertaken, in particular the introduction of the Controlled Activities Regulations (CAR), the initial consultation on tackling diffuse pollution and the production of the strategy for River Basin Management Planning.

The report also draws attention to some of the issues that remain to be addressed before the Directive is fully implemented. SNH looks forward to working with the Executive and the SEPA to take forward a number of these, including:

- further water body characterisation (including decisions on whether to add some small water bodies to the existing list of characterised water bodies);
- the practicalities of implementing CAR – especially in relation to the requirements of the Habitats and Birds Directives and to planning legislation;
- River Basin Management Planning through the National Advisory Group, Area Advisory Groups and Fora;
- the preparation of a strategy to deal with diffuse pollution, including guidance, controls and incentives;
- amendments to the Food and Environment Protection Act 1985 to cover engineering works in coastal waters, to ensure full integration with the WFD regime;
- development of the Programme of Measures to achieve WFD objectives; and
- contributing to WFD monitoring effort where required.

**Agenda Item 1**

**Environment and Rural  
Development Committee**

17 May 2006  
ERD/S2/06/17/1i

**SUBMISSION FROM THE SCOTCH WHISKY ASSOCIATION**

Whilst broadly welcoming the Private Water Supplies (Scotland) Regulations 2006, we should like to highlight an inconsistency between the approach taken in these Regulations and the recent Water Environment (Controlled Activities) (Scotland) Regulations ('CARs') 2005. While under regulation 33 of the CARs, there is a requirement to maintain a Public Register of Information, regulation 34 states:

"(1) Information relating to the affairs of any individual or business which is commercially confidential shall only be included in the register if–

(a) the individual or the person for the time being carrying on the business has given consent to that inclusion; or

(b) the information requires to be included in the register in pursuance of a direction under regulation 39.

(2) For the purposes of these Regulations, information is only commercially confidential in relation to the affairs of any individual or business if SEPA has determined that putting it on the register would prejudice to an unreasonable degree the commercial interests of that individual or business."

This approach was supported by the SWA because of the need to protect water supplies to distilleries from deliberate contamination by third parties. As you can imagine, such an action could cause a great deal of damage to a company's distilling activities and brand reputation internationally.

Scotch Whisky companies have of course also acquired private water supplies such as springs and boreholes over many years. Significant investments have been made to protect these water sources. We note, however, that there is no equivalent to the 'commercially confidential' clause in The Private Water Supplies (Scotland) Regulations 2006, either under regulation 34 or 35 which outline the information requirements. While committed to sharing the relevant information with the authorities, under the terms of the Regulations as drafted, there is concern that such commercially sensitive details could be made publicly available without the prior consent of the distiller.

Needless to say, the Association would be happy to provide any further information on this point which the Committee would find of assistance.

## SUBMISSION FROM THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS SCOTLAND

RSPB Scotland greatly welcomes the opportunity to provide written evidence to aid the ERDC's consideration of the WEWS Act Annual Report 2005. RSPB Scotland strongly supported the work of the Committee during the passage of the Bill through Parliament, and has been continuously engaged in the implementation of the WEWS Act since then. This submission seeks to brief the Committee in detail about the progress in fulfilling commitments towards diffuse pollution. General comments about the progress of the implementation are given in the briefing produced by the Scottish Environment LINK, which is consistent with our views.

### **Introduction**

Many of Scotland's rivers, lochs, and coasts, including some of our prime wildlife sites, are affected by diffuse pollution from agriculture and other activities, both rural and urban. The major source of rural diffuse pollution is excess nutrients and sediment run-off, poor soil and nutrient management, incorrect fertiliser application and management of slurry. If nothing is done about this, SEPA estimates that diffuse pollution from agriculture will become the largest cause of water pollution by 2010<sup>1</sup>, with adverse environmental and economic impacts.

### **Impacts of diffuse pollution**

Enrichment of waters by nutrients can lead to eutrophication, a process by which excessive growth of potentially toxic algae changes the fragile balance of aquatic habitats. **Every year**, across the UK, **£250 million** of public money is spent on cleaning up the mess. Current regulations are proving insufficient and new measures are needed to strengthen the existing system.

### **Developing a Diffuse Pollution Strategy for Scotland**

The Scottish Executive has recently consulted on its proposals to address diffuse pollution from agriculture and forestry, a first step in addressing this complex problem. Whilst we greatly welcome this initiative, we are concerned that the current proposals do not fully meet the requirements of the WFD<sup>2</sup>, nor do they propose the provision of adequate support and advice to deal with this problem effectively. Current proposals rely heavily on existing streams of funding, such as CAP pillars 1 and 2. This pot of money is already under pressure to deliver other government obligations, and it is unlikely to be sufficient to address diffuse

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<sup>1</sup> SEPA Diffuse Pollution initiative: <http://www.sepa.org.uk/dpi/index.htm>

<sup>2</sup> WFD **Article 9** requires the agricultural sector to make an adequate contribution to the recovery of costs of water services and WFD implementation and taking account of polluter pays principle.

**WFD Article 10** requires a combined approach for diffuse and point source pollution, including (in the case of diffuse impacts) the controls including, as appropriate, best environmental practice.

**WFD Article 11** requires basic and supplementary measures be put in place, and fully operation by 2012, including for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Controls may take the form of a requirement for prior regulation, prior authorisation or registration based on general binding rules.

pollution. Measures developed under the new Rural Development Programme should promote multiple objectives, catchment working, and promote wetland restoration; instead of funding investment in holdings.

### **Developing a programme of measures**

Addressing diffuse pollution needs an approach that consists of a package of measures such as effective regulation; providing farmers and crofters with more support, free advice and capital improvement funding; and more incentives for wetland restoration, good management and catchment working. A key component is the incorporation of the polluter pays principle and cost recovery as required by the WFD.

### ***More effective regulations***

Ploughing, seedbed preparation, crop spraying, fertiliser and slurry application are all activities that can contribute to diffuse pollution. These activities need to be controlled by a set of rules that would minimise their impact on the water environment. The level of authorisation and the structure of the regime should be related to the risk posed to the water environment, an approach that is consistent with the Controlled Activities Regulations. SEPA, as the lead organisation in the implementing the WFD, should be responsible for enforcement of these new rules.

### ***Restoring wetlands***

The loss of hundreds of kilometres of riverine systems and associated wetlands over the past decades has exacerbated the problem. Many wetlands have suffered from drainage, conversion to forestry or farmland, and engineering practices. Such pressures adversely affect the ecological status of surface waters and groundwaters – which the WFD is seeking to protect. Wetland restoration and management, as part of a wider strategy, can be used as a cost effective measure to reduce the impacts of diffuse pollution and flooding. Naturally functioning wetlands can soak up pollutants and clean water in the process, as well as acting as natural sponges to absorb floodwaters. Restoration of this valuable resource should therefore be a priority for the Scottish government and part of a diffuse pollution strategy.

### ***Incentives through Lands Management Contracts***

Catchment scale measures such as restoring and managing wetland systems to soak up agricultural pollutants should be integral to the development of Land Management Contracts (LMCs). Whilst the funding available through the LMCs may be limited, catchment working and wetland management and restoration provide wider, cost effective benefits to the society in flood management, climate change mitigation, tourism and amenity.

### ***Catchment officers and financial support***

Promoting less intensive agriculture and giving farmers and crofters free advice in pollution hotspots would also help to address the problem. A separate budget for small on-farm investments in priority catchments should be made available and planned as part of the forthcoming Spending review. These proposals are in line with recent developments in England and Wales.

- ***Initiatives in England and Wales***

In England and Wales, a major new initiative has been launched to tackle diffuse pollution, with tens of millions of pounds being invested to provide for freshwater



catchment advisors - an innovative development that is likely to prove extremely effective in raising awareness of the issue and how to address it. As well as catchment officers, Defra has also made available a separate budget to provide farmers with grant support for small capital investments on farms. Such measures include biobeds, water gates, sediment ponds and traps, aiming to reduce impacts of diffuse pollution inputs from farms. Some of the funding is also directed towards raising awareness, as many farmers may not realise that activities they perform on daily basis cause pollution. Catchment officers can point out these problems and advise land managers to put in place cost-effective measures that would save them, and taxpayers, considerable sums of money.

### **Conclusions**

The Scottish Executive's proposals for diffuse pollution measures are a first step in addressing this complex problem. There is still much to be done to develop an approach that is fully compliant with the requirements of the WFD. Scotland has fallen behind other countries in Europe in addressing this issue, and more work is urgently required to solve this problem.

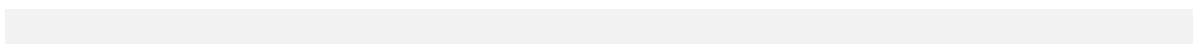
### **The members of the Committee may consider asking the Minister:**

How has the polluter pays principle been incorporated into the proposals for diffuse pollution measures?

How will the Scottish Ministers ensure that the new diffuse pollution regulations incorporate the requirements of Article 9 of the WFD, which requires the agricultural sector to make an adequate contribution to the recovery of costs of water services and WFD implementation, and taking account of the polluter pays principle?

Diffuse pollution is a significant issue in Scotland. The Scottish Executive is currently developing measures to address this problem, but these appear to heavily rely on existing measures for support and advice. In England and Wales, Defra developed a major new initiative '*Catchment sensitive farming*', which uses separate funding streams to put in place catchment officers and help farmers fund capital improvements on their farms. With the already stretched Common Agricultural Policy budget, and a large number of priorities being placed on the Rural Development Programme, would the Scottish Ministers consider taking a similar approach?

What progress has the Scottish Executive made in putting in place policies that would enable SEPA to restore rivers, lochs and wetlands in order to meet the WFD requirements?



**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Private Water Supplies (Notices) (Scotland) Regulations 2006, (SSI 2006/draft)						
<b>Responsible Minister</b>	Rhona Brankin, Deputy Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)	✓	<b>Negative</b>	10.4		
		10.6.1(b)			10.5		
		10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development Committee		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	The purpose of this Order is to make amendments consequential upon the 2003 Act and regulatory regime which controls activities which impact on the water environment established in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 made under section 20 of the 2003 Act.						

<b>Laid Date</b>	20 <sup>th</sup> April 2006	<b>40 day date</b>	10 <sup>th</sup> May 2006
<b>1<sup>st</sup> SLC Meeting</b>	25 <sup>th</sup> April 2006	<b>20 day date</b>	29 <sup>th</sup> May 2006
<b>Lead Committee Report Due</b>	22 <sup>nd</sup> May 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	David Williamson, ext. 45097
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC Use Only:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>				<b>Partially Revokes</b>			
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Private Water Supplies (Scotland) Regulations 2006, <b>(SSI 2006/209)</b>						
<b>Responsible Minister</b>	Rhona Brankin, Deputy Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment & Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	The purpose of instrument is to implement the Drinking Water Directive in respect of private water supplies to ensure the provision of clean and wholesome drinking water.						

<b>Laid Date</b>	20 <sup>th</sup> April 2006	<b>40 day date</b>	10 <sup>th</sup> May 2006
<b>1<sup>st</sup> SLC Meeting</b>	25 <sup>th</sup> April 2006	<b>20 day date</b>	29 <sup>th</sup> May 2006
<b>Lead Committee Report Due</b>	22 <sup>nd</sup> May 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	David Williamson, ext. 45097
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>	✓	<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								

**Subordinate Legislation Committee**

**Extract from 18<sup>th</sup> Report, 2006 (Session 2)**

**Subordinate Legislation**

The Committee reports to the Parliament as follows—

**Instrument subject to annulment**

**The Private Water Supplies (Scotland) Regulations 2006,  
(SSI 2006/209)**

1. The Committee asked the Executive to explain the purpose of the words “With effect from 3 July 2006” in regulation 37(1) given that the Regulations as a whole come into force on that date.

2. The Executive, in its response printed in Appendix 2, acknowledges that the words are not required but considers that in the context of regulation 37 as a whole, the inclusion of a specific reference to that date is helpful and provides additional certainty for local authorities and for those to whom the Regulations will apply.

*Comment*

3. Whilst the Committee notes the Executive’s explanation, it considers the inclusion of the wording unnecessary.

**4. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of a failure to follow proper legislative practice.**

## **APPENDIX 2**

### **The Private Water Supplies (Scotland) Regulations 2006, (SSI 2006/209)**

In your letter of 25<sup>th</sup> April, you reported that the Subordinate Legislation requested an explanation of the following matter:

“It is not clear why the words “With effect from 3 July 2006” in regulation 37(1) are necessary as the Regulations as a whole come into force on that date.

### **The Scottish Executive Environment and Rural Affairs Department responds as follows:-**

1. The Private Water Supplies (Scotland) Regulations 2006 (“the Regulations”) comprise part of a package of three sets of Regulations to deliver the Executive’s policy in relation to the transposition of Council Directive 98/83/EC on the quality of water intended for human consumption in respect of private water supplies which come into force on 3 July 2006.
2. Private Water Supplies in Scotland are presently regulated by the Private Water Supplies (Scotland) Regulations 1992 (as amended) (“the 1992 Regulations”) and the Water (Scotland) Act 1980. Regulation 37(1) of the Regulations contains provision to revoke, inter alia, the 1992 Regulations and the explicit reference to 3 July 2006 ties in with the savings provisions in regulation 37(2) and (3) which also refer to that date.
3. Whilst the Executive acknowledges that regulation 1 of the Regulations makes general provision for the commencement of the Regulations on 3 July 2006, it considers that in the context of regulation 37 as a whole, the inclusion of a specific reference to that date is helpful and provides additional certainty for local authorities which have responsibility for regulating private water supplies under the 1992 Regulations and which will be responsible for administering the new regulatory regime provided for in the Regulations, and for those to whom the Regulations will apply, as to the arrangements which will apply during the transition from the old regime to the new.

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Private Water Supplies (Grants) (Scotland) Regulations 2006, <b>(SSI 2006/210)</b>						
<b>Responsible Minister</b>	Rhona Brankin, Deputy Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment & Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	The purpose of instrument is to provide financial assistance to users to ensure the provision of clean and wholesome drinking water under the Drinking Water Directive.						

<b>Laid Date</b>	20 <sup>th</sup> April 2006	<b>40 day date</b>	10 <sup>th</sup> May 2006
<b>1<sup>st</sup> SLC Meeting</b>	25 <sup>th</sup> April 2006	<b>20 day date</b>	29 <sup>th</sup> May 2006
<b>Lead Committee Report Due</b>	22 <sup>nd</sup> May 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	David Williamson, ext. 45097
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Land Management Contracts (Menu Scheme) (Scotland) Amendment Regulations 2006, <b>(SSI 2006/213)</b>					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment & Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of instrument is to update the reference to dates and to clarify the intention of certain options under the Land Management Contracts Menu Scheme by adding further detail.					

<b>Laid Date</b>	21 <sup>st</sup> April 2006	<b>40 day date</b>	30 <sup>th</sup> May 2006
<b>1<sup>st</sup> SLC Meeting</b>	2 <sup>nd</sup> May 2006	<b>20 day date</b>	11 <sup>th</sup> May 2006
<b>Lead Committee Report Due</b>	22 <sup>nd</sup> May 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Eileen Kennedy, 46559
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Croft House Grant (Scotland) Regulations 2006, <b>(SSI 2006/214)</b>						
<b>Responsible Minister</b>	Rhona Brankin, Deputy Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment & Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	The purpose of instrument is to regulate the operation of the Croft House Grant Scheme.						

<b>Laid Date</b>	21 <sup>st</sup> April 2006	<b>40 day date</b>	30 <sup>th</sup> May 2006
<b>1<sup>st</sup> SLC Meeting</b>	2 <sup>nd</sup> May 2006	<b>20 day date</b>	11 <sup>th</sup> May 2006
<b>Lead Committee Report Due</b>	22 <sup>nd</sup> May 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Willie Crosbie, 46208
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								



## **ADDITIONAL MEMORANDUM FROM THE SCOTTISH EXECUTIVE**

### **THE CROFT HOUSE GRANTS (SCOTLAND) REGULATIONS 2006 (SSI 206/214)**

Additional information for the Environment and Rural Development Committee

1. The old Crofters Building Grants and Loans Scheme (CBGLS) was reviewed in 2003/4 with full consultation with stakeholders resulting in a package of changes to the scheme. Changes, which included geographically targeted grant rates, no new loans and higher rates for house rebuilding and improvements, were announced in August 2004.
2. The Regulations in question are necessary solely for the purpose of changing the period for which grant conditions apply and the interest rate to be applied when recovering grant in the event that a beneficiary breaks grant conditions. However this was an opportunity to set out the whole scheme in the one SI.
3. The new Croft House Grant Scheme (CHGS) opened to applications on 1 January 2005. As the SI bites only when grant conditions are broken, it was not necessary to hold back the opening of the scheme and the day to day operation of the scheme is largely unaffected.
4. The Croft House Grant Scheme provides grants for new houses and the rebuilding and renovation of existing croft houses. The scheme is geographically targeted with three levels of grant determined by priority areas with the highest grant available in the more remote and fragile communities.

#### **Uptake**

5. The new scheme has been well received, with an increase in demand, and an increase in the numbers of crofters building new houses or improving existing croft houses. Numbers of approved applications were as follows -

2003-04	CBGLS	132
2004-05	CBGLS	113
2005-06	CHGS	259 (includes those who withdrew from CBGLS and re-applied under CHGS)

#### **Priority areas**

6. An external panel was set up to determine the geographical areas appropriate to the 3 levels of grant and to advise Ministers. The panel considered factors such as the fragility of the communities, depopulation, remoteness, building costs and planning factors, but agreed that the overriding factor was population decline given that the aim of the scheme is to help retain the population in these remote and economically fragile areas.
7. Grant levels were set with the aim of maximising the benefit to crofting communities from the funds available. It is a matter of balancing additionality with the numbers of

crofting households which can be assisted. The higher the grant rates the fewer houses can be built and improved. The reason for designating some areas as high priority was to generate additional activity in these areas.

## Consultation

8. The minimal interest in this consultation exercise reflects the fact that very few cases are caught by these grant conditions, which apply where scheme rules have been breached, and because the new penalty arrangements are generally more favourable to crofters than previously.

9. Generally comments were supportive. In relation to the purpose of the SI, the Minister adopted the proposals which attracted most votes. A Report summarising and discussing responses to the consultation exercise is attached. Paper copies of individual responses can be made available to the Committee if required.

## Budget

10. The scheme budget is currently £3.7m per annum.

## Grant rates

11. The grant and loan rates under the **Crofters Building Grants and Loans Scheme** were -

	<b>Grant</b>	<b>Loan</b>	<b>Interest rate</b>	<b>Period of loan</b>
<b>New House</b>	£11,500	Up to a maximum of £17,500	7%	Up to 40 years
<b>House Improvements</b>	£2,000	Up to a maximum of £10,500	7%	Up to 20 years

12. Under the **Croft House Grant Scheme** grant rates for a new house are:

<b>Geographic Priority Area</b>	<b>Grant</b>
High	£22,000
Standard	£17,000
Low	£11,500

13. The Rebuilding and Improvement Grant provides assistance levels similar to those for new housing and with similar geographic targeting.

14. The rates for Rebuild and Improvement Grants are:

<b>Geographic Priority Area</b>	<b>Grant</b>
High	<b>40%</b> of costs up to a maximum of £22,000
Standard	<b>30%</b> of costs up to a maximum of £17,000
Low	<b>20%</b> of costs up to a maximum of £11,500

## **Next review**

15. Ministers agreed that an internal review of the impact of geographical targeting would be carried out 2 years after introduction. The arrangements for that review are not yet in place. There are no plans to review the provisions of the scheme.

Further details of the CBGLS consultation are available at  
<http://www.scotland.gov.uk/Publications/2003/09/18239/26849#1>

<http://www.scotland.gov.uk/consultations/environment/cbglsc.pdf>

Further details of the CHGS Statutory Instrument consultation are available at  
<http://www.scotland.gov.uk/Resource/Doc/57346/0016924.pdf>

Further details of the provisions of CHGS are available at  
<http://www.scotland.gov.uk/Publications/2005/11/04110635/06359>

A map showing CHGS priority areas is available at  
<http://www.crofterscommission.org.uk/documents/PriorityAreaMap.pdf>

## **BOB PERRETT**

ERAD - 1  
1<sup>st</sup> Floor  
Pentland House  
☎ 46192

11 May 2006

# **CONSULTATION ON REGULATIONS TO GIVE EFFECT TO THE CROFT HOUSE GRANT SCHEME (CHGS)**

## **CONSULTATION REPORT**

**This report summarises responses received from the consultation exercise that took place between 12 September 2005 and 5 December 2005.**

### **Acknowledgements**

The Department would like to thank all those who took the time to respond to the CHGS consultation.

**February 2006**

**Scottish Executive**

## **Introduction**

1. The Croft House Grant Scheme (CHGS) exists to provide grant assistance to eligible crofters and owners to build adequate housing on their croft. The main aims of the Scheme are; to help retain/increase the population of remote areas in the crofting counties; to improve and maintain the quality of housing stock available; and to enable crofters to continue to live and work on their crofts.

## **Background**

3. CHGS opened for applications on 1 January 2005 with the previous scheme, the Crofters etc. Building Grant and Loan Scheme (CBGLS), closing to applications on 31 December 2004.

4. The main changes between the two schemes being that the new scheme no longer has the facility to provide loans and the amount of money that is available to applicants has altered both in the amount available and the way in which it is allocated. These changes were agreed, following a consultation held in September 2003 and were incorporated in the draft Statutory Instrument issued for consultation in September 2005.

## **Consultation**

5. The consultation was undertaken to provide an open forum for discussion of the proposed regulations. These regulations involve changes from the grant regulations which currently apply and involve amendment of the period for which grant conditions apply, the inclusion of arrangements for monitoring and allocation of the budget for the scheme and setting a new interest rate to be applied to recovery of grant should the applicant breach grant conditions.

## **Responses**

6. In total 10 responses to this consultation were received as follows: -

### Individuals

Hugh Donaldson, Crofter

### Organisations

Cairngorms National Park Authority  
NFU Scotland (NFUS)  
Crofters Commission  
Scottish Crofting Foundation (SCF)  
Comhairle nan Eilean Siar (CNES)  
Scottish Environmental Protection Agency (SEPA)  
Highlands & Islands Enterprise (HIE)  
Deer Commission for Scotland  
Scottish Natural Heritage

Two of the organisations did not offer substantive comments.

## **Detail of responses**

7. The consultation document posed 5 questions about the content of the draft regulations. The following paragraphs detail the responses to these questions and other comments and discuss the issues raised.

*Q1- Do you agree that expenditure should be controlled using these methods when overall demand exceeds available resources?*

*Q2 – If you do not agree, what suggestions do you have for controlling expenditure in these circumstances?*

8. The majority of responses received accepted that there should be some way of controlling the expenditure on the scheme as long as there was a mechanism put into place to prevent applicants being approved and then having assistance either withdrawn or temporarily suspended, and thus causing hardship. None of the responses suggested alternatives to the measures contained in the draft regulations although one response did ask why it was necessary to include measures to control expenditure as in recent years the Scheme has not been fully subscribed.

9. There were 2 responses that appeared to argue that that assistance under the scheme should be focused on need rather than being geographically targeted.

### *Discussion*

10. The requirement to control expenditure in the Scheme is due to the change from grant and loan to a grant only scheme. The possible uptake under the scheme is now unknown. This coupled with the changes to the assistance available for house improvements, which has increased considerably from the amount previously available means there is potential to exceed the scheme budget. The question as to why it is necessary to control expenditure also supposes that the existing scheme budget will not change. It is appropriate to set a budget which reflects demand with mechanisms for responding to demand rather than set a budget at a level higher than any possible projection of demand would suggest is necessary. At present it is of course too early to predict long term demand and there are no plans to change the existing provision but demand in the first year of CHGS has been far higher than it ever was in recent years under the predecessor scheme.

11. The concerns about hardship appear to have been founded on a misunderstanding of the proposals. Some of those responding had assumed that it was proposed that payments to successful applicants who had started work would be stopped or reduced if it appeared that the budget was likely to be overspent. The consultation document clearly indicates that the intention is to enable Ministers to offer a lesser amount of grant when an application is approved or refuse approval where approval of an application for the full amount might lead to future overspending of the scheme budget.

12. The decision that this scheme should be geographically targeted was taken following the consultation undertaken before the CHGS was created. An independent panel was set up to assess where the different priority areas should be, and has since been disbanded. When the details of the geographical targeting were announced the Minister at the time indicated that the impact of targeting would be reviewed after the scheme has been running for two years (January 2007). CNES suggested in their response that when the targeting is reviewed the panel selected to decide the targeting priorities should be democratically accountable and drawn from local authorities.

13. Aiming housing support at those most in need of assistance by use of means testing instead of geographical targeting was also considered prior to the creation of the Croft House Grant Scheme. However, there is an existing scheme (the Rural Home Ownership Grants Scheme(RHOGS)) which provides means tested support to low income families in rural areas for whom construction of a new house for owner occupation is the best housing option. CHGS is intended to maintain/provide suitable housing stock on crofts in remote and fragile areas of the country and thus allow crofters to live on their crofts. The scheme is also aimed at attracting specialists to these areas e.g. nurses, dentists, mechanics etc. to further strengthen the local community, thus means testing is not appropriate. CHGS aims to maximise the number of houses on croft land.

14. If CHGS were means tested it would not be appropriate to offer more generous assistance than is offered under RHOGS. It is therefore unlikely that a means tested scheme would attract additional applicants. In addition a considerable number of existing applicants might not qualify for assistance. The majority of crofters do not incur the high site acquisition costs which most RHOGS applicants need to meet. So even if the incomes of crofters matched the pattern of income for RHOGS applicants the crofters costs, in many cases, would be considerably lower. Consequently the assistance offered to a crofter under a means tested CHGS regime would be lower in most circumstances than would be available to a RHOGS applicant with a similar income.

*Q3 – Is the interest rate chosen sufficient to provide a penalty and to discourage applicants from breaking grant conditions, and if not, please indicate your preference?*

15. The majority of responses were in favour of setting a punitive rate to be applied to all those who break the grant conditions to discourage the selling of the property shortly after completion. There were two responses including the response from the Scottish Crofting Foundation who favoured 12.5% (option A – the current rate) as the interest rate; one respondent indicated that the 10% suggested as option B was acceptable but would have liked to see the amount as LIBOR + 5% and the Cairngorms National Park Authority wanted the total amount of grant repaid regardless of when during the grant recovery period the conditions of grant were breached. Another 3 responses were content with the 10% interest rate (option B - as proposed in the draft statutory instrument). Only one response favoured the least punitive 1% above LIBOR (London Internet Offered Rate) (option C – the rate applied to most other grant schemes).

### *Discussion*

16. Most responses favoured applying the 10% interest rate proposed in the draft statutory instrument which is significantly above the high street interest rate as to be a preventative measure against those who look to make money from a quick sale.

*Q4 – Do you agree that the benefit of reducing the period for which grant conditions apply to the new houses should be extended to those who received CBGLS grant to build a new house more than 15 years ago?*

17. Six of the responses were content for the 15 year grant condition period to be extended to all applicants who received assistance under CBGLS on the grounds of consistency and fairness. One respondent thought that the period should be reduced further to 5-10 years to bring it into line with other schemes such as those run by Highlands and Islands Enterprise and the Cairngorms National Park Authority asked for the period to be retained at the current 20 years.

### *Discussion*

18. The majority of responses including the response from the SCF supported the reduced period during which the grant conditions under CHGS should apply and agreed these should be extended those who have received assistance previously. This period is felt to still be significant enough to provide value for money for the assistance given and meet the aim of the scheme in retaining population in the area.

*Q5 – Are there any other items which should be included in this list of eligible operations, or any which should be omitted from the list?*

19. Most responses agreed that the list of items eligible for assistance under this scheme adequately covered an appropriate range of works. However, 4 responses suggested that the provision of a source of renewable energy for domestic use should be added to the list and one suggested that provision of a hard standing for vehicles outside a house should also be covered. Two responses mentioned the need to ensure that foul water drainage includes the construction of a septic tank and soak away system.

### *Discussion*

20. As the Executive currently encourages the use of renewable energy sources wherever practical the request that these should be added to the list of eligible operations seems reasonable. We have looked into this and there is a selection of tried and tested products on the market that would be suitable for domestic use. We consider that the existing list adequately covers hard standings but they are not explicitly mentioned and we agree that it add to clarity if this item is separately identified on the list. We are satisfied that the description “provision of a foul and rainwater drainage system” in the list of eligible operations includes the construction of a septic tank and soak away system. They are an integral part of such a system in many rural areas.



## Other Comments

### **Amount of assistance**

21. There was some concern raised about the amount of grant in relation to the cost of building houses in remoter areas of Scotland. And one response suggested that grant funding should be reviewed as soon as possible to take into account of the rising cost of house building. The apparent concern was that crofters generally have a limited income and therefore may have difficulty funding a new house or house improvements even with the new levels of grant.

### *Discussion*

22. These comments appear to be based on the assumption that this grant scheme is intended to compensate for higher building costs in some parts of the crofting counties. If this assumption was correct logic would suggest that the scheme benefits should be directed at non crofters who do not have the benefit of low cost house sites rather than at crofters. The funding on offer is intended to encourage the construction of houses in circumstances where the financial risks associated with building a house on a croft may otherwise be a major disincentive to such projects. The results of the introduction of the current arrangements in terms of increased demand from applicants in the first year of operation suggest that funding for individual applicants is more than adequate in the areas where the increase in demand is most marked.

### **The role of the landlord**

23. The Scottish Crofting Foundation suggested that the Statutory Instrument should not provide for the landlord to be given notice of the application for assistance or be given an opportunity to comment on the application. They took the view that the landlord would be given the opportunity by the council at the planning stage to state the case for or against approval of the project.

### *Discussion*

24. This suggestion is based on a misunderstanding. The requirement to inform the landlord of an application for assistance to build a house on a croft was a feature of the previous scheme. In part it was connected to the landlord's potential liability under the provisions of the Crofters (Scotland) Act 1993 when a crofter defaults on a loan from the Department and gives up the croft. However, the landlord would also be liable to compensate the crofter for an improvement to the croft if the crofter gives up the tenancy and therefore needs to be informed of the creation of a significant additional potential liability on his land. There is also a need to check entitlement to assistance. Only the landlord can positively confirm that an applicant is in fact the tenant of the croft and that there is not an existing house on the croft. This arrangement is therefore necessary and does not afford the landlord an opportunity to object to the project on planning grounds.

## **Construction on non-croft land**

25. The SCF suggested that a crofter should be able to build a house on land which does not form part of a croft if there is no suitable land on the croft for a house site e.g. where the croft is on an uninhabited island such as Scarp in Harris.

### *Discussion*

26. If a crofter is unable to find suitable land on the croft on which to build a house then there are alternatives that the scheme will fund. The crofter can build on an apportionment on common grazing land and be entitled to assistance under the scheme. If none of these options are available to the crofter then another piece of land can be added to and incorporated in the croft and this has been done in some cases. Given that the aim of this scheme is to provide and improve houses on crofts so that crofters can live on the croft financing the construction of a house elsewhere for someone who just happens to be the tenant of a croft is hardly consistent with the aim of the scheme. The CHGS can only apply to land which falls within the scope of the primary legislation and that legislation will only be changed to afford greater flexibility if the Crofting Reform etc. Bill is enacted by the Scottish Parliament. Where a crofter with a low income cannot build on the croft or on croft land it may be possible to take advantage of RHOGS to construct a house on other land.

## **Taking account of planned legislation**

27. CNES suggested that the Statutory Instrument should be updated to reflect the provisions in the Crofting Reform Etc. Bill relating to purposeful use. This is not possible because these provisions have yet to be enacted and until they are they cannot be reflected in secondary legislation. However, under the current scheme crofters will be eligible for assistance if they need to live on the croft for any legitimate business reason and whether or not they are agriculturally active.

## **Grant scheme administration**

28. CNES suggested that the administration of the scheme should remain under the direct control of Ministers and additional funding for the scheme should be actively sought. This is not a matter on which we consulted and clearly reflects an expectation that Ministers will be better able to obtain additional funding for the scheme and perhaps a view that it will be easier to bring pressure to bear on Ministers to find that increased funding. The crofting Reform Etc. Bill makes provision to enable the Crofters Commission to create and run grant schemes for crofters but the provisions in the existing legislation enabling Ministers to run grant schemes will not be repealed.

## **Scottish Housing Quality Standards**

29. The response from the Cairngorms National Park Authority pointed out that the Scottish Housing Quality Standard is being applied to Community Scotland grants and suggested that the same standard should be applied to this scheme to ensure that housing was refurbished to a minimum standard.

### *Discussion*

30. The requirement to which this response referred is being applied to the construction of houses for letting. At one time under the CBGLS the Department specified and enforced construction standards on applicants. This was a legacy from the past preceding the development of universal building standards applied by Local Authority Building Control Departments. We ended that practice because it was costly and it exposed the Department to liability when things went wrong for crofters building their own homes.

31. Our current policy is to link payment of the final instalment of grant to production of a completion certificate from Building Control coupled with strict requirements relating to timely completion of the project. This opens up the possibility that if a crofter does not build to the required standards and thus fails to obtain a completion certificate any grant already paid could be recovered.

32. Whilst it makes sense to apply the Scottish Housing Quality Standard to houses being built for occupation by a third party. In the case of CHGS the person who receives the grant is the person who has to live in the house. It is that person who is affected by the consequence of a failure to construct to an adequate standard. It makes little sense to put in place requirements which would be expensive to monitor when the only person who would benefit is the person to whom the grant is being given and who should be responsible for looking after his/her own long term interests.

### **Roads and water supplies**

33. The SCF response also suggested that the Department should restore provision of grants for roads and water supplies in the Crofting Counties Agricultural Grants Scheme (CCAGS).

### *Discussion*

34. This comment is based on a misunderstanding. Grants are available for these purposes under CCAGS, and will continue to be available under the revised CCAGS regulations intended to become operational on 1 April 2006. However, the grants under that scheme must be for agricultural purposes. This means that they are restricted to the provision of agricultural roads for access to land for stock management purposes and the provision of water supplies for watering stock, irrigation or other agricultural purposes.

35. Until recently there were separate grants under CBGLS for the provision of roads and water supplies. Assistance is still given under CHGS for these purposes. In the case of new houses it is expected that these will be funded from the overall grant package but in the case of an existing house which lacks an adequate road or water supply it will now be possible to fund the construction of a road or upgrade a water supply as part of the total improvement package. In practice this means that in the case of improvement to an existing house the total amount of grant potentially available to construct a road or install a water supply could be much greater than hitherto.

## **Fire Damage**

36. The Crofters Commission expressed concerns about the condition that gives Ministers power to reclaim grant in the event of fire.

### *Discussion*

37. This condition is not new and was contained in the previous scheme. However, in practice, the grant would only be recovered if the house is not rebuilt to the same standard as the previous dwelling. The scheme approval is given on the requirement that the applicant obtains adequate insurance on the property to cover this eventuality.

38. The only occasion when the Department would consider requesting repayment of any grant assistance provided is if the applicant is not intending, during the period of the grant conditions, to re-build the house or is intending re-building the house to a lesser size or standard than the originally funded house.

**Subordinate Legislation Committee**

**Extract from 19<sup>th</sup> Report, 2006 (Session 2)**

**Subordinate Legislation**

The Committee reports to the Parliament as follows—

**The Croft House Grant (Scotland) Regulations 2006, (SSI 2006/214)**

1. The Committee asked the Executive to explain:

(a) Why the Executive cited the whole of section 42 in the preamble to the above Regulations when subsections (1) to (3) and (5) do not appear to be relevant.

(b) Why the preamble to the Regulations narrates that the Crofters Commission had been consulted when the consultation provision referred to in section 42(1) of the 1993 Act does not appear to be relevant to the making of the Regulations.

(c) Why is there no definition of “Geographical Targeting Panel” in regulation 2.

(d) Whether “standard priority area” in regulation 2 should read “standard level priority area”.

(e) To explain the vires for the provisions in regulations 8 and 11 which state that the conditions or termination of conditions of a grant shall be recorded in the form set out in Schedules 2 and 3 of the Regulations respectively “or a form to the like effect” whereas section 42(6)(d) of the 1993 Act requires that the form be “prescribed by the regulations”.

(f) To explain the meaning of the words “be observed” in regulation 9(6) i.e. which provisions of the Regulations are to be “observed” and by whom.

(g) To explain the vires for the provision in regulation 10(4) which provides in respect of repayment of grant that interest is to be applied at the rate of 10 per cent per annum “or any other rate determined by the Scottish Ministers”. The Committee notes that the enabling power requires that the rate must be specified in the Regulations and does not appear to authorise the sub-delegation provided for in this regulation.

(h) To explain what is meant by the “powers, rights and duties” conferred on the Crofters Commission and referred to in regulation 12(2) and which power authorises this sub-delegation.

(i) To explain the effect of paragraph 7 of Schedule 1, given paragraph 27 of that Schedule.

2. The Executive, in its reply printed in Appendix 2, provided a response on each of these points.

3. On point (a), the Committee considers that as it stands, the effect of the incorrect citation of enabling powers means that the regulations are of doubtful procedural competence. It notes that not only are different forms of instruments prescribed for different purposes, but instruments made under different parts of the section are subject to different procedures and consultation requirements. It is not considered good legislative practice to combine procedures in the same instrument.

4. It appears however, that from examination of the terms of the instrument, no problems arise in practice with the *vires* of the instrument, the terms of which are fully within the ambit of the correct subsections of section 42. The Committee is concerned however that the Executive does not appear to have appreciated the potential effect of the incorrect citation.

5. On point (b), the Committee noted the link to point (a) and the incorrect citation. The preamble must cite all powers and requirements that are relevant to the *vires* of the instrument. It is not therefore necessary to narrate non-statutory consultations.

6. On point (c), the Committee does not agree with the Executive that a definition of the term is unnecessary and superfluous. It considers that it is not clear how the panel is established or who the members are, and it is clear from other definitions that the panel has purposes other than simply for the definition of “high level priority area”.

**7. The Committee draws the attention of the lead committee and the Parliament to this instrument on the following grounds:**

- **defective drafting of the citation of the enabling powers on point (a), rendering the instrument *ex facie* of doubtful competence procedurally but that in practice the validity of the instrument is not likely to be affected;**
- **failure to follow proper legislative practice on point (b), not however affecting the validity of the instrument;**
- **that its meaning could be clearer on points (c), (f) and (i);**
- **defective drafting as acknowledged by the Executive on point (d);**

- that further information was requested from and supplied by the Executive on points (e) and (h); and
- that there are doubts as to whether it is *intra vires* as acknowledged by the Executive on point (g).

## **APPENDIX 2**

### **The Croft House Grant (Scotland) Regulations 2006, (SSI 2006/214)**

On 2 May 2006 the Committee asked the Executive for an explanation of the following matters:-

(a) Why the Executive cited the whole of section 42 in the preamble to the above Regulations when subsections (1) to (3) and (5) do not appear to be relevant.

(b) Why the preamble to the Regulations narrates that the Crofters Commission had been consulted when the consultation provision referred to in section 42(1) of the 1993 Act does not appear to be relevant to the making of the Regulations.

(c) Why is there no definition of "Geographical Targeting Panel" in regulation 2.

(d) Whether "standard priority area" in regulation 2 should read "standard level priority area".

(e) To explain the vires for the provisions in regulations 8 and 11 which state that the conditions or termination of conditions of a grant shall be recorded in the form set out in Schedules 2 and 3 of the Regulations respectively "or a form to the like effect" whereas section 42(6)(d) of the 1993 Act requires that the form be "prescribed by the regulations".

(f) To explain the meaning of the words "be observed" in regulation 9(6) i.e. which provisions of the Regulations are to be "observed" and by whom.

(g) To explain the vires for the provision in regulation 10(4) which provides in respect of repayment of grant that interest is to be applied at the rate of 10 per cent per annum "or any other rate determined by the Scottish Ministers". The Committee notes that the enabling power requires that the rate must be specified in the Regulations and does not appear to authorise the sub-delegation provided for in this regulation.

(h) To explain what is meant by the "powers, rights and duties" conferred on the Crofters Commission and referred to in regulation 12(2) and which power authorises this sub-delegation.

(i) To explain the effect of paragraph 7 of Schedule 1, given paragraph 27 of that Schedule.

### **The Scottish Executive responds as follows:**

(a) The Executive agrees that subsections (1) to (3) and (5) are not relevant to these Regulations and need not therefore be referred to, expressly or by implication, in the preamble. However, the Executive does



not think that by referring to the whole of section 42, rather than the specific subsections, there is any prejudice to the validity of the Instrument, although it acknowledges that it would have been good drafting practice to refer to these subsections.

(b) The Executive agrees that there is no statutory requirement to consult the Crofters Commission on this occasion. However, the Commission was consulted on the Regulations and while it may not have been necessary to state so in the preamble, the Executive does not consider that this prejudices the validity of the Instrument.

(c) The Executive agrees that the term “Geographical Targeting Panel” is not expressly defined in Regulation 2. However, the meaning of that term is included within the definition of “high level priority area”. The Executive considers that any further definition is unnecessary and superfluous.

(d) The Executive agrees that the term “standard priority area” in Regulation 2 should read “standard level priority area” and it is grateful to the Committee for drawing this error to its attention. The Executive considers that this error does not affect the validity of the Instrument, but it will take the opportunity to correct it when the Instrument is next amended.

(e) Regulations 8 and 11 state that the conditions or termination of conditions of a grant shall be recorded in the form set out in Schedules 2 and 3 to the Regulations respectively “or a form to the like effect”. The Instrument does prescribe the form of the notice. The words “or a form to the like effect” have been included to cover the possibility that a small mistake or change might be made to the forms. In that event the Executive considers that such a mistake or change should not affect the validity of the form and the Executive does not consider that the inclusion of these words affects the proposition that the form of the notice has been prescribed.

(f) The Executive considers that the term “be observed” does not require further clarification along the lines suggested by the Committee. The Regulations and the conditions require to be observed by anyone who is subject to them for the period specified.

(g) The Executive accepts the Committee’s point regarding the words “or any other rate determined by the Scottish Ministers” in regulation 10(4). The Executive will amend this provision when the Instrument is next amended. Ministers will ensure that in the interim this apparent power is not used.

(h) The Executive does not consider that there is sub-delegation in regulation 12(2). The provision merely records what the Commission may do while acting as agents of Scottish Ministers and does not grant any further powers to the Commission.

(i) Paragraph 7 of Schedule 1 and paragraph 27 of that Schedule have slightly different purposes. Paragraph 7 provides for the upgrading or rewiring of croft houses but paragraph 27 provides for provision of an electricity system to new or refurbished croft houses. To provide flexibility the items in Schedule 1 are interchangeable. Some are available individually and others can be grouped together.